REPORT

Industrial Relations Act 2012

Review of Joint Labour Committees

Commissioned by the Labour Court

Section 11 Industrial Relations Act 2011

Review conducted by Janet Hughes

Completed April 2013

CONTENTS

Section 1: The Review

1.1 Background to the Review

The 1946 Industrial Relations Act established the Labour Court. In turn the Labour Court was empowered by that Act and also by elements of the 1990 Act to establish Joint Labour Committees (JLCs) in certain circumstances. JLCs comprise worker and employer representatives for sectors the scope of which is set out in an Establishment Order for each JLC. These Committees met from time to time requested by either the worker or employer members, more usually the workers' side, and following discussions including negotiations under an independent chairperson they proposed terms to be incorporated into what are known as EROs (Employment Regulation Orders). Following the completion of the process set out in the industrial relations legislation, EROs were approved by the Labour Court and then issued in their name. The terms and conditions of employment set out in an ERO by the Labour Court were legally enforceable i.e. had statutory effect.

By way of a successful High Court action which was heard in 2011, a group of employers in the catering sector (now a body known as the Quick Food Service Alliance) challenged, among other issues, whether the authority delegated to the Labour Court in the relevant legislation amounts to an excessive exercise of delegated discretion and was therefore contrary to the Constitution at Article 15.2.1.

As a consequence of this High Court decision all Joint Labour Committees were suspended in July 2011. The EROs issued by the Labour Court prior to that High Court decision are no longer legally enforceable in their own right, although they may continue to have effect in individual contracts of employment for employees in employment on the various rates of pay set out in the EROs prior to July 2011. In 2012, following the receipt of an independent review report known as the Duffy-Walsh Report, the Minister prepared, and the Oireachtas approved, a new Industrial Relations Act to set out the policies, principles and procedures governing the operation of Joint Labour Committees (and Registered Agreements). In the case of JLCs, the procedures to be adopted by the JLC and the Labour Court, the role of the chairperson, the issues which can be decided and the basis on which they must be considered were all set out. While some of the provisions of the 1946 Act remain unaltered, the Act of 2012 represents a complete overhaul of the way in which JLCs must operate, including providing that proposals by a JLC on rates of pay and conditions of employment can no longer be decided solely by the Labour Court. They must be approved by the Minister and laid before the Houses of the Oireachtas and may be annulled by either House before they can have statutory effect.

The High Court ruling of July 2011 noted that the Act of 1946 provided *'no assistance, guidance, principle or policy in relation to the making of recommendations by joint labour committees or of orders of the Labour Court.'* These omissions were fully addressed in the Act of 2012, apparently by reference to all of the particular shortcomings identified by the High Court in that ruling. Whereas the previous legislation governing JLCs was grounded in a collective bargaining and industrial relations approach where the procedures and decision making are determined in a voluntary process and by the parties to that process, the functioning of collective bargaining through JLCs is now firmly grounded in a precise

statutory framework which is inarguably the most restrictive and onerous process for collective bargaining in the State. In addition to the shortcomings identified by the High Court, others which were also raised by employers during this review, such as the manner in which the casting vote of the Chairperson was exercised and the extent to which the JLCs had previously determined rates of pay for Sundays and Public Holidays are addressed and reduced in the 2012 Act together with the opportunity for individual employers to plead inability to pay in certain circumstances.

Section 11 of the Act of 2012 provides for a review of each Joint Labour Committee to take place *'as soon as practicable after the commencement of section 11 of the Act'* and at least five years thereafter in respect of each Joint Labour Committee. This is the first review to be carried out under the Act of 2012 and is in effect a review of the ten JLCs which are suspended since July 2011.

The Labour Court, with the approval of the Department of Jobs Enterprise and Innovation, decided to commission the review and the undersigned was commissioned following a tender process.

This report represents the outcome of the review and, as required, it contains recommendations in respect of each of the ten JLCs which remain suspended.

1.2 Terms of Reference

The terms of reference for the review are provided by the 2012 Act at section 11 to 11(4).

> "**11.**—The Act of 1946 is amended by inserting the following new section after section 41:
>
> > 41A.—(1) As soon as practicable after the commencement of section 11 of the Industrial Relations (Amendment) Act 2012, and at least once every 5 years thereafter the Court shall carry out a review of each joint labour committee.
> >
> > (2) Before carrying out a review under subsection (1), the Court shall publish in the prescribed manner a notice setting out—
> >
> > > (a) that the Court proposes to carry out a review of a joint labour committee,
> > > and
> > >
> > > (b) that submissions in respect of the review may, before a date specified in the notice, be made to the Court in writing setting out the grounds on which the joint labour committee concerned should be retained, abolished or amalgamated with another joint labour committee,

and the Court shall consider any submissions made in accordance with paragraph (b) and carry out the review within 6 weeks of the date specified in the notice for receipt of submissions.

(3) When carrying out a review under subsection (1), the Court shall have regard to the following:

(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;

(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established, or

(ii) the last review under this section was carried out;

(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established, or

(ii) the last review under this section was carried out;

(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;

(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;

(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;

(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;

(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;

(i) any submissions made in accordance with subsection (2) (b).

(4) Following a review under subsection (1)—

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that—

(i) the joint labour committee is maintained in its current form,

(ii) the joint labour committee is amalgamated with another joint labour committee, or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,

or

(b) where the Court is satisfied that it is no longer appropriate to maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

It is important to emphasise that notwithstanding many general points made in submissions to the effect that the JLC system or JLCs should be abolished, as being archaic and no longer required in light of the introduction of statutory minimum wages, it is not a matter for this review to decide whether or not the State should provide for legally enforceable rates of pay, at all, or through Registered Agreements or Joint Labour Committees. These matters have been decided directly and indirectly by the Oireachtas on a number of occasions when adopting Industrial Relations and related Employment Rights Legislation in 1946 initially, and again in 1990, 2000 (Minimum Wage Act) and 2012.

This is an examination of each of the existing Joint Labour Committees having regard to the requirements of the Act of 2012 and the provisions of the 1946 Act, where relevant, so as to inform the Labour Court when making recommendations to the Minister as required under section 11(4) of the Act regarding the retention or otherwise of the existing JLCs with or without amendment.

Ultimately what recommendations are made to the Minister under section 11(4) of the Act is a matter for the Labour Court.

1.3 Methodology

The Labour Court issued the public notice as required by section 11(2) of the Act in January 2013, with a closing date for submissions of 1st March 2013. The setting of the date of the 1st March 2013 required that the review be completed on or before April 12th 2013.

The approach to the review was divided into three phases: Phase 1, the public notice period; Phase 2, analysis of the public notice submissions and other material; and, Phase 3, consideration of further information requested in respect of certain JLCs and preparation of this final report. The approach adopted throughout the review was consultative, evidence based and comprehensive. It was anticipated that it would be possible to facilitate a greater degree of joint engagement by worker and employer representative bodies with the review, but this proved problematic because of the polarised approaches adopted by those bodies in respect of the majority of the existing Joint Labour Committees.

Details of the activity, analysis and documents considered are set out in the various sections of the report.

When considering recommendations in respect of each of the four options set out in section 11(4), each option was considered in light of the submissions and documentation available to the review having regard to the terms of subsection (3). The issue of 'industrial harmony' as a factor to be considered by the Labour Court is addressed in its own right in Section 3 of this report. The answers to questions posed to the review by the Labour Court contributed to the overall rationale which was adopted in forming recommendations taking into account all of the other information and the requirements of the Act of 2012.

Given that there is new legislation setting out the role of a JLC, and a number of policies, principles and procedures which it must follow, a simplistic approach of leaving all ten JLCs in place 'as they were' was an option open for consideration. This would have allowed all of the existing JLCs to reconvene in their previous form and then allow the new legislation to be applied and tested through practical application. Considering that there was no evident demand or process initiated to change the Establishment Orders, including the various regional distinctions, prior to the High Court ruling, the adoption of an approach to leave the structures as they were, with possibly some regional alterations could be justified. Adopting this approach would have found favour with the trade unions, who did not propose the abolition of any existing JLC, but rather sought to extend the scope of a number of them. In effect, anywhere the trade unions want a JLC, there should be one.

Another simple approach which could have been adopted was to abolish any JLC where a majority of employers sought this option. In effect anywhere the employers do not want a JLC, there should not be one.

To have made recommendations solely on the basis of either of these polar opposite views would allow one or other side, be they representative of employers or workers, to exercise a veto over the legislation and in particular the role of the Labour Court, the Minister and the Oireachtas being the bodies with sole authority to recommend or to decide, as the case may be, when and if the provisions of the Act of 2012 will be followed.

The approach in this Review was not to decide matters on a veto approach, but on a range of considerations, having regard to the primacy of the legislation, the information and views provided and where these were directly opposite, by application of criteria which are considered reasonable and apprpriate.

Every option available under section 11(4) was considered in respect of each of the existing JLCs, whether it was contained in a submission or by reference to another document, whether it emerged from concerns expressed by a State body, an employer or trade union representative.

In circumstances where the review repeatedly encountered polarised perspectives as to the continuation of a particular, or any, JLC, taking into account the relative dearth of real evidence submitted in the context of subsection (3), the Review has been forced, in addition to taking account of all of the submissions and other material, to develop a methodology for deciding which of the options to recommend as they are set out in section 11(4).

The methodology adopted in this review when applying all the provisions of the legislation in respect of each JLC, is to make recommendations which have the objective of: retaining JLCs in a form which is applicable to particular classes or types of workers; eliminating regional distinctions where the JLC is considered relevant through appropriate mechanisms; amending establishment orders to make the scope of a JLC applicable to the competitive element of the sector in which it is to operate. The further objectives, taking all factors into consideration and where it is recommended that a JLC be retained, are to provide as far as possible for fair competition between competing establishments in any sector in terms of wages and conditions of employment, and to provide a scope that is simple to follow and easy to enforce. And where an existing JLC is not considered relevant to a sector for the reasons stated, the recommendation is that it be abolished.

Only those proposals or qualified proposals in some cases, or weaknesses identified to the review in the scope of an existing JLC in terms of achieving the identified objectives, and which are incorporated into the recommendations are deemed to have merit.

In the event that the recommendations from the review are adopted by the Labour Court and the Minister, this would see the current ten JLCs reduced to seven. There are amendments proposed to the scope of each of the Establishment Orders for the seven JLCs which would remain. There are additional consultative processes required and recommended to eliminate some regional distinctions and to expand the scope of certain JLCs. There is sector where the preferred approach recommended is to retain any JLC in its current form.

Section 2: Phases 1 and 2

Activity, Analysis, Outcomes

2.1 Phase 1 - Date of Public Notice to 1st March 2013

Activity

2.1.a Meetings with Corporate Bodies

- Labour Court (2 meetings)
- Labour Relations Commission
- Department of Jobs, Enterprise and Innovation (2 meetings)
- NERA
- IBEC
- ICTU

2.1.b Documents Reviewed

Establishment Orders, EROs and minutes of meetings of JLCs,

2.1.c Meetings with Sector Representatives

Employers[1]

Sector: Agriculture
- IFA

Sector: Catering
- RAI
- VFI
- McDonalds
- Compass Group

Sector: Contract Cleaning (2 meetings)
- ICCA
- ISS
- MSS
- Maybin
- IBEC

Sector: Hairdressing
- Peter Mark

[1] With the exception of the Law Society and Agriculture, IBEC were requested to facilitate employer attendance and representation at the individual sector meetings. The meeting with Agriculture was requested by the IFA through the Department of Jobs, Enterprise and Innovation. RGDATA requested a meeting by making direct contact with the Labour Court.

Sector: Hotels
None[2]

Sector: Law
None[3]

Sector: Retail Grocery
- Retail Ireland
- RGDATA

Sector: Security
- ISS[4]

Trade Unions[5]

SIPTU
- Agriculture
- Contract Cleaning
- Catering
- Security
- Retail Grocery
- Law Clerks
- Hotels

MANDATE
- Retail Grocery
- Law Clerks

UNITE
- Hairdressing

[2] Two dates were initially offered to IBEC to accommodate the various employer bodies. An additional date was added to facilitate organisations unable to attend on the first two dates. IBEC advised they received no response from the IHF.
[3] An e-mail was sent to the Law Society offering a meeting. There was no response. Neither was there any submission in response to the Public Notice.
[4] ISS also spoke about the changing nature of their business at the meetings, with facility management now being the required service, inclusive of cleaning, security, catering and ground maintenance nationally and internationally in some instances.
[5] Representation at the meetings was based on the historical involvement of the various unions as recognised worker representatives on JLCs.

2.2 Phase 2 – 1st to 15th March 2013

Activity

2.2.a Documentation Reviewed

Reports

1993 Review of the Operation of Joint Labour Committees prepared for the Labour Relations Commission by Basil Chubb

1996 Report to the Labour Court on the Catering Joint Labour Committee prepared by Joe Chadwick

1998 Report of the Labour Relations Commission on the Operation and Effectiveness of the Joint Labour Committee (no author given)

2005 Review of the Joint Labour Committee System submitted to the Labour Relations Commission, prepared by the University of Limerick

2011 Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Settling Mechanisms prepared by Duffy-Walsh

Industrial Relations Acts 1946, 1990 and 2012

Establishment Orders, Minutes and EROs for ten existing JLCs

2.2.b Submissions

79 received in response to the Public Notice and read.

2.2.c Questions issued at Sector Meetings

A list of questions prepared by the Reviewer was circulated at each sector meeting giving the representatives some days to consider them and to either include any comments in their response to the Public Notice or by way of a separate submission. Some submissions incorporated responses into the body of their response under various headings and others dealt with the questions individually as part of their written submission.

2.2.d Statements made by the Minister regarding the number of JLCs

In the course of a meeting with the ICTU, I was informed that the Minister had indicated in the Dail that he anticipated that there would be six JLCs. Such a statement or figure (or any figure) had not been brought to my attention by Department Officials at my meetings with them, or by the Labour Court. I therefore sought clarification from the Department as to the basis of such a figure. The response indicated that the Minister had indeed referenced such a figure on more than one occasion, but that was related to the Duffy-Walsh Report. This Review, it was said, is however a separate process taking place sometime after the Duffy-Walsh Report and in the context of the provisions of the 2012 Act.

The response is taken to mean that in terms of any recommendations which are put forward from this Review, this Review is not bound by or required to have regard to any specific figure suggested by Duffy-Walsh, or the Minister. The recommendations from this review in respect of the retention, and in what form, of any of the existing ten JLCs emanate from this review and are not influenced by other factors, statements or reports outside of the Review unless specifically cited.

2.3 Analysis – Submissions and Reports for each JLC in the context of Section 11(3) of the Industrial Relations Act 2012 and other relevant material.

Section 11 subsection (3) requires that when carrying out a review under subsection (1) [the request to carry out a review] regard shall be had to a number of factors detailed under subsection (3) (a) to (i). Subsection (i) requires that regard shall be had to any submissions under subsection (2) – the public notice. The review under section 11 is in respect of <u>each</u> Joint Labour Committee. Ultimately the Court must decide under section (4):

> *"(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that –*
>
> *(i) the joint labour committee is maintained in its current form,*
>
> *(ii) the joint labour committee is amalgamated with another joint labour committee, or*
>
> *(iii) the establishment order pursuant to which the joint labour committee was established is amended,*
>
> *or*

(b) where the Court is satisfied that it is no longer appropriate to maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

Putting all of this together, it is reasonable and logical to analyse the submissions received, and the relevant reports available, against all of the tests set out in section (3)(a) – (h). This appears to be essential to comply with the principle of subsection (i) which obliges the Court to have regard to any submissions received in response to the public notice. Thus, it is the contents of the submissions received in response to the public notice which are used, in the main, to provide the information required for subsections (b) to (i) of section 11(3) and to satisfy the Minister that subsection (3) has been complied with, as required in subsection (6).

To attempt to summarise the contents of the sectors specific submissions, without giving voice to those submissions would, I believe, do an injustice to the public notice process and to those who took the time and trouble to make submissions particularly as this is the first review of its kind.

In reality, the examination of previous reports indicates that no previous review has required the level of analysis as that set out in section 11 of the Act of 2012 and by extension no previous review has given interested parties an opportunity to contribute to such a level of analysis. The Duffy-Walsh report is the most extensive previous review and it is a statistical, macro examination of both the JLC and REA wage setting mechanisms with some regard to what should happen in terms of the JLCs in the different sectors.

This review, set as it is in the new legislation enacted in 2012, is a case by case examination of each of the ten suspended JLCs and whether it is to be recommended that they be retained, at all, and if so, in what form.

The analysis of material received during phase 1 and 2 is set out in Section 4, commencing with details of the dates of establishment and of the most recent ERO issued by each JLC, the key rates of pay as per the most recent ERO and the scope of each JLC as per the Establishment Order. These points are followed by the following sections:

A. Extracts from the sector specific submissions as they relate to section 3 subsections (a) to (h) together with reference to reports commissioned by the Labour Relations Commission or to previous JLC review reports predominantly those commissioned by the Labour Relations Commission which comprise the majority of such reports.

B. An analysis of these extracts is set out by way of a summary and the conclusions of the Reviewer. The extracts, summary and conclusions are set out as they can be read to relate to the wording of each subsection of section 11 of the Act and

in respect of each JLC/Sector. In relation to the alignment of extracts with the subsections of section 11(3), it is the case that most of the submissions were not structured in a format aligned to those subsections. Where they were, with respect, some of the contributions seemed more appropriate for inclusion under other subsections, the requirements of which more closely matched the contents of the submissions.

C. A table at Section 8 indicates the position of the various organisations and individuals where they indicated a position in relation to each JLC under review as to retention, amendment of the establishment order, amalgamation or abolition or a combination of these options.

D. Section 9 sets out the options for consideration at the end of Phases 1 and 2 following on from the analysis of the submissions, the reports, various meetings with Agencies and representative organisations, issues raised around enforcement, together with the examination of the existing Establishment Orders. The options are set out under the sub clauses of subsection (4).

Note re the use of the submissions received in response to the Public Notice

The majority of submissions, particularly from the employer and social justice organisations, dealt with the case for and mainly against the retention of a specific JLC, or all JLCs, in a more general albeit sometimes structured fashion. It is possible that many see the exercise as a simple yes or no answer in terms of abolition or retention of a particular or any JLC. To be fair the public notice sets out the options available to the Court and it is only on reading the legislation that the importance of the details set out in section (3) become apparent. Some license has been taken to fit the comments into the terms of the subsections and the use of the sector specific submissions is useful in analysing the requirements of section 11(3) and reaching conclusions.

Naturally enough not every single comment is included; however, the full submissions are with the Labour Court. There are quite a number of extracts and something from the majority, if not all, sector specific submissions. Every effort is made to include salient points in an even-handed fashion – but of course the lengthier, more detailed submissions which addressed a number of issues receive more space.

2.4. Outcome - Meeting with the Labour Court

On March 15th I met with the Labour Court at my request. Prior to the meeting the activity and analysis in Phases 1 and 2 of the Review was provided to the Court. The members of the Court stated that they felt there was sufficient analysis provided of the material contained in the submissions, that the summaries and conclusions reached are balanced and that they could see no further options to be considered other than those set out in section 9 of the analysis for each JLC or sector.

It was agreed that I would give some general feedback to IBEC/ICTU in terms of the conduct of the review to that point and that questions for certain sectors would be conveyed to ICTU and IBEC and the Law Society in respect of those sectors. It was agreed that although the Law Society had not engaged with the Review, their late request for a meeting should be accommodated. It was also agreed that IBEC would again be offered a meeting with the Irish Hotels Federation.

[redacted]

It was agreed that, following the receipt of the material requested from various parties, I should proceed to finalise the report and make recommendations having considered all of the options identified in the analysis.

This meeting concluded Phase 2 of the Review.

Section 3: Phase 3

Activity, Analysis and Final Outcomes

3 Phase 3 – 15th March 2013 to Recommendations

3.1 Activity

3.1.a Update to IBEC and ICTU

A general update was given to the lead person in each organisation-emphasising that no final decisions had been taken in relation to any JLC; [redacted] that a meeting was offered to the Irish Hotels Federation through IBEC and with IBEC present and also with the Law Society. Aside from these possible meetings, no further meetings with the representative bodies or their constituents were planned. They were advised that total consensus between employers and unions as to the requirement for a legally enforceable mechanism was forthcoming only in Contract Cleaning.

Some further information was requested in terms of the rates of pay that apply in the Retail Grocery sector over and above the former ERO rates. Positions put forward by employers in Agriculture (other than the IFA) and which would, if accepted, affect the structure of the JLC were put to ICTU for consideration and also, separately to the IFA. In the case of Security and Contract Cleaning the employers had suggested amendments to the Establishment Order for each JLC. IBEC were asked what influence the mandatory provisions of section 12(5), as they appeared to be, would have on the position they had adopted in proposing that trainees be excluded from the scope of the JLC. ICTU were also asked for their view on this proposal. The request for views on proposals put forward in individual sectors was put on the basis that varying degrees of consensus had been established as to the principle of retaining a JLC in those four sectors, and in no others.

Subsequent to this discussion, IBEC advised that the Irish Hotels Federation would not meet with IBEC present. Having indicated to IBEC that I was willing only to meet with IBEC present, I declined a later request by the IHF through the Labour Court for a meeting.

IBEC and ICTU responded to the requests for information and in the case of the ICTU, with their comments on the amendments proposed to the Establishment Orders for Agriculture, Contract Cleaning, Security and Hairdressing and also the information requested in relation to the Retail Grocery Sector.

3.1.b Meeting with the Law Society.

The Law Society had made contact before the conclusion of Phase 2 asking if they could meet to discuss the review and indicated that their failure to take up the earlier offer of a meeting or to make a submission in response to the Public Notice were both unintentional oversights on their part. The meeting took place on March 27th and the representatives were asked to make a submission based on the discussion around issues of competitiveness, rates of pay and numbers of employees in the sector covered by the JLC. They indicated that the Society's long standing opposition to the JLC as being largely irrelevant in the sector still remained. They set out their position in writing on April 3rd.

3.1.c Irish Farmers Association

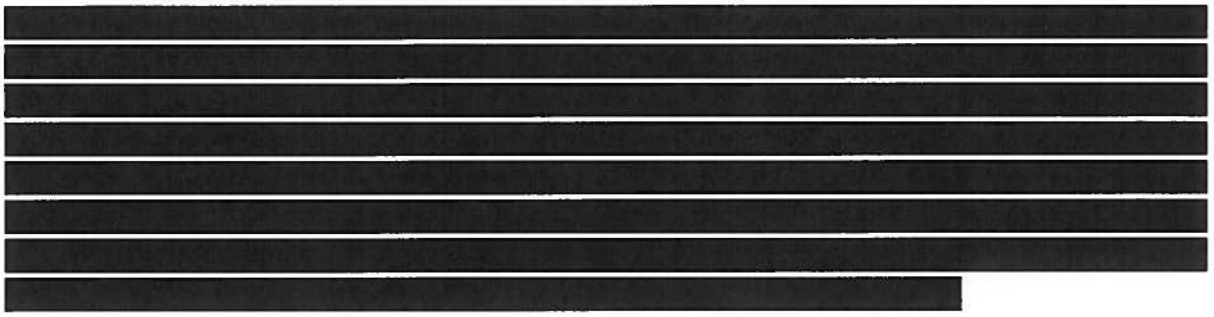
Contact was made with the IFA to advise them of submissions received from other employer representative bodies, which if adopted, would have implications for the structure of the Agriculture JLC as it currently exists, most particularly in the areas of fruit and vegetable production, horse rearing and horticulture. They responded setting out their views on March 27th and reiterated their preferred option is for abolition of the JLC.

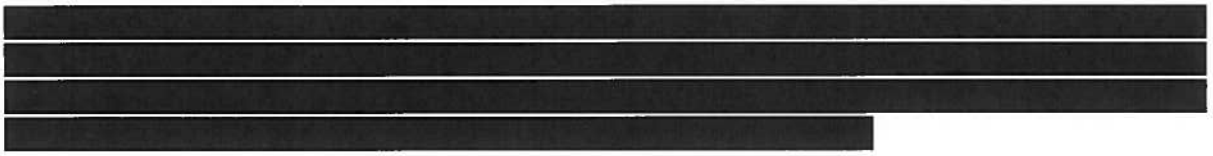
3.1.d NERA

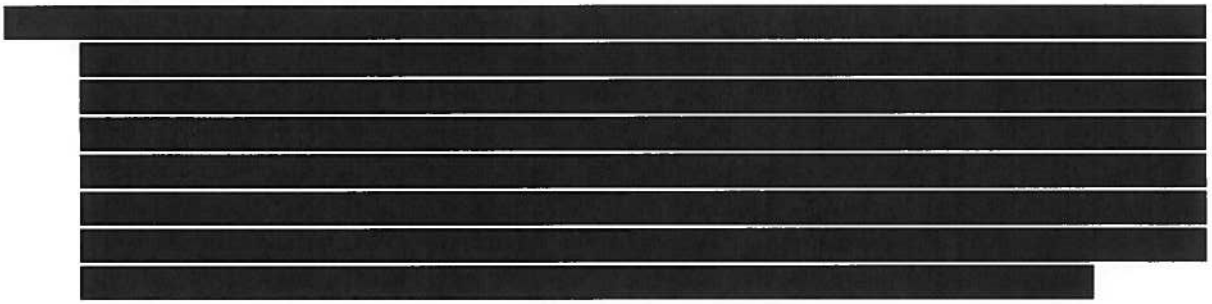
NERA provided details of compliance issues as they related to the JLC employments in the period 2009 to 2011. This material was used to inform some of the analysis under Section 11 of the Act, and in particular sub section (d) which specifically refers to the experience of enforcement in each JLC. A meeting on 1st March discussed NERA's experience of enforcement including difficulties in applying some of the EROs and the issues around interpretation of the Establishment Orders, some of which had led to cases before the Labour and High Courts.

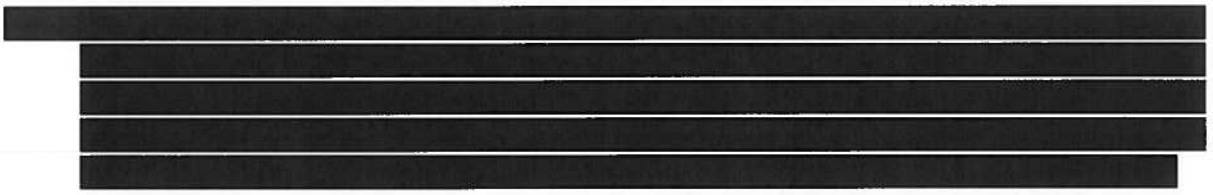
It was agreed that NERA would set out those issues in a memorandum-received on March 29th. These issues were considered in the course of making recommendations.

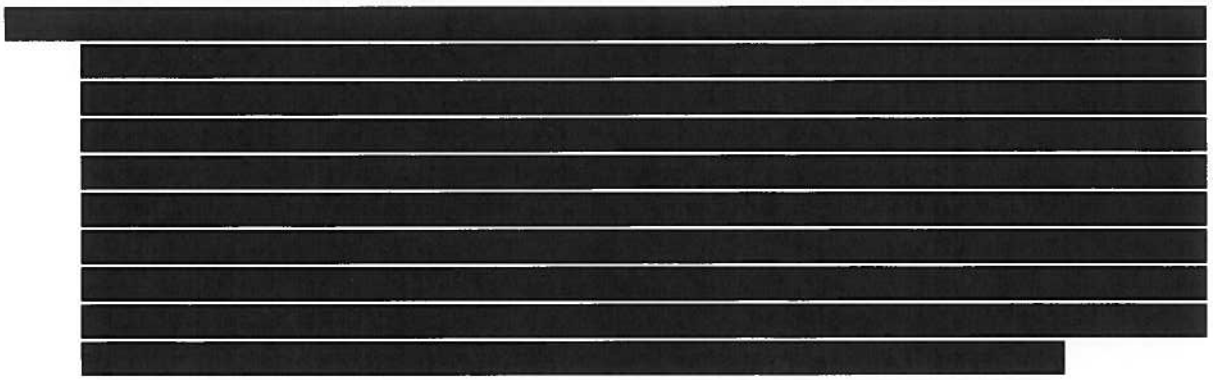
[redacted]











3.2 Analysis

3.2.a Additional information

The additional information and observations requested in respect of Retail Grocery, Agriculture, Hairdressing, Contract Cleaning, Security and Law were each analysed and considered in terms of the conclusions and recommendations in respect of these sectors.

3.2.b Factors to be applied by reference to Section 11(3) of the Act

The Act of 2012 at Section 11 sets out a number of elements which the Review shall 'have regard to'. It then goes on to detail those elements in subsections (a) to (i). Some difficulty arises where the submissions, (h) and reports, (a), do not provide sufficient evidence to provide a factor of tangible experience or a sufficient degree of consensus, either of which could determine the precise shape of a specific recommendation.

Section (f) refers to the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment. This is a factor that is almost impossible to prove. Even where additional jobs are created in a particular employment or sector how much, if any, of that addition to the workforce is caused solely by reducing the margins which would result from applying an ERO to minimum wage levels as suggested in submissions and how much is determined by local or macroeconomic factors is extremely difficult to prove beyond doubt, even allowing for the fact that certainly wages are always a consideration in deciding whether to create new jobs. The same lack of precision applies in terms of the effect of abolishing a JLC in terms of retaining jobs and the revised legislation does allow scope for employers to plead inability to pay a facility not previously available to under the earlier legislation.

Certain factors to be considered in section 11(3) seem to lend themselves more towards consideration of amendments to Establishment Orders, certainly in the context of most of the remaining ten JLCs and this is the way they have been incorporated into the recommendations from this Review. These are subsections (b) classes of workers; subsection (c) type or types of enterprises; (d) the experience of enforcement and (h) regional representation.

The responses to section (g) are helpful in considering the issue of harmonious relations as required by the Court at Section 12(4)(a).

Many of the concerns expressed to this review in relation to adjustments (e) should now be accommodated within the limitations placed on the JLCs in terms of making proposals and the new procedures and considerations to be applied by any JLC, the Labour Court and the Minister, all subject to approval by the Houses of the Oireachtas. Abolition of all JLCs where there is employer opposition without allowing the overhauled procedures and principles to be tested and without any regard to a contrary viewpoint seems a somewhat extreme approach to take in the new circumstances. As set out in the methodology section at Section 1 - a veto

approach by worker or employer representatives is not considered to be within the authority of either constituency in terms of the exercise of statutory discretion. In terms of any position adopted. While regard is to be had to submissions in response to the public notice as required by subsection (i) of subsection (3), the same is true of all the other factors in that section.
One complication in this Review was the apparent reluctance by some groups to suggest any amendments to Establishment Orders for fear that such engagement might compromise their position that a particular JLC should be abolished or retained in its present form. In spite of this reluctance there is, overall, sufficient information and material available to in form the basis of the analysis and to form the basis of a range of recommendations, some of which will be quite far reaching, if adopted by the Minister.

3.2c Questions posed by the Labour Court

In Phase 1 of this Review, the Labour Court set out three questions which they wished to see explored during the Review. These questions were put as being key tests which the Court would apply in any dispute before them regarding pay and conditions and based on their lengthy experience of dealing with such disputes. This discussion with the Labour Court took place on the basis of anticipated difficulties in reaching a common accord across employer and worker representatives in a number of sectors.

The three questions are set out and addressed in turn. They were also raised at a number of sector representative meetings. The analysis takes account of any discussion of these issues and the submissions that dealt with the issues in some aspect. Also taken into account is one aspect of the Duffy Walsh Report and the apparently related reasoning put forward by Government to justify its decision to enact the 2012 legislation and in so doing to retain the JLC system as a means of proposing what could become statutory terms and conditions of employment

1. What is the economic justification for any JLC?

In reality, the responses to this question and the case set out for and against the retention of any or all JLCs centred on the perspective of the person making the submission.

An employer response looked at the economic issue from the point of additional costs, restrictive practices, unfair competition in the same sector and, as can be seen in many of the submissions, a point of view that the National Minimum Wage should be the only statutory enforceable wage, allied to all other employment legislation. And the relative high level of the minimum wage compared to other EU countries is repeatedly mentioned. Both at meetings and in their submissions, employers across all sectors who wish to see their sectors JLC abolished referred to reducing the rate of pay for new entrants (and some existing employees) since the EROs were set aside. The factor of payment, or non-payment, of what are known as unsocial hours premium, represents a considerable cost or reduction in costs which cannot be legally provided for or enforced since the EROs were set aside is also an economic consideration in some sectors.

In relation to the core point made by many employers, that the only statutory rate of pay which is justified is that laid down by application of the National Minimum Wage Act and by extension that JLCs always set rates above that level, this point seems to ignore the requirements of section 12(5) of the 2012 Act, which makes it mandatory that rates proposed by any JLC shall be reduced by the proportions and in the circumstances laid down in the relevant sections of the Minimum Wage Act. The application of this section and these mandatory provisions would reduce the entry rates of pay as they were set out in some previous EROS, and/or extend the period before the full rates of the national minimum wage and an ERO above the level of the national minimum wage are achieved. In other words, the framing of the Act of 2012 appears to have taken account of employer concerns in relation to the application or the potential exclusion of the application of the National Minimum Wage Act in any sector under the previous legislation.

In only two sectors, Cleaning and Security, did employers see the benefits as being of fair competition and protection of terms and conditions of employment for existing employees, a case of agreed mutual interest. The largest employer in hairdressing could see the advantage of having a realisable wage for those in the course of training to be achieved at the end of that period but does not wish to see trainees included in the scope of the JLC. This is despite an acknowledgement by IBEC in Phase 3 that the application of Section 12(5) to the rates contained in the most recent ERO would reduce the rates of pay as set by those orders for many trainees in year 1 and year 2 of their training programme.

Trade Union and similar submissions from other what might be termed social justice groups, looked at economics from the workers perspective, i.e. the capacity and historical record of Joint Labour Committees to set rates of pay and conditions of employment in the sectors covered, above the national statutory minimum. A central argument from this viewpoint is that many of the workers affected have no access to collective bargaining, or where only rates of pay which are legally enforceable can be maintained in a competitive environment. All of these submissions also referred to the importance of JLCs in providing an opportunity for collective bargaining for rates of pay and conditions of employment above the statutory minimum levels in sectors which employ a high number of migrant workers, many with poor English language and literacy skills. Seen from this perspective, the economic justification for a JLC takes on a different complexion than that of the employers.

In the absence of an agreed mutual interest, the differing economic perspectives tend to cancel each other out. However it is noted that the Duffy Walsh Report did emphasise that the profile of workers in many sectors is not unionised, is migrant, young, part time and casual and that this is an important consideration where such workers would be required to bargain for any improvement on the Minimum Wages and Statutory Conditions on an individual basis in the absence of a JLC.

It is to be noted that on presenting the 2011 Bill to the Seanad, the Junior Minister spoke about the enactment of the legislation as being a commitment by Government to poor and vulnerable workers, which suggests that the profile of workers presented by Duffy Walsh in their report was one major consideration in deciding to maintain a JLC system at all. This economic factor, the type of worker who is most likely to be covered by a JLC, has to be a key consideration in deciding whether to recommend the retention of a JLC for any particular sector given that it informed the decision of the Oireachtas to enact the 2012 legislation which gave rise to this review. This conclusion recognises that there may be a disproportionate adverse economic effect for the workers in those sectors where the stated factors apply if the JLC for that sector were to be abolished.

Where the economic issue becomes more focussed is in the scope of any JLC in terms of competiveness within a sector. The perspective of this Review is that any JLC should be structured to cover, as far as possible, the type of establishments that are in competition with each other, and where the level of wages are critical components of that competition. To this end recommendations are included which reduce the scope of a JLC to those establishments which are providing the same service on a competitive basis, and to a significant degree, where this is considered appropriate i.e. Retail Grocery, Hairdressing and Agriculture.

In Hairdressing and Catering the scope of an Establishment Order excluded establishments because of geographical considerations. There are recommendations to initiate the process of consultation about removing these distinctions, where they are considered unjustified.

In Catering, businesses established to provide exactly the same core service as another were excluded. There are definitions or terms and exclusions which, when applied, had the effect of creating unfair competition (and marginal distinctions in terms of enforcement). To this end recommendations are included which would remove what are considered to be out of date and no longer appropriate distinctions as between establishments that operate within same the sector.

In terms of economic issues as a justification for retaining a JLC, it is the conclusion of this Review that the various principles which informed the Government Decision to retain the JLC system do not apply to Hotels in Dublin which never met and therefore never provided protection to any worker in those establishments and also Law, where the classes of workers, among other considerations, are not those described by Duffy Walsh or to the Oireachtas.

None of the considerations or recommendations should be taken to suggest that all rates of pay proposed by a JLC or the conditions of employment should be above the national statutory levels of these things, but rather, that whatever terms are considered justified by application of all the factors which must be applied in the future, the scope of the

Establishment Order should be such as to reflect those establishments within a sector that are genuinely in competition with each other and the main body of workers in those revised sectors. And in making these recommendations every effort has been to provide for a fair level of competition for employers as well as workers within those sectors where it is recommended that JLC should be retained.

Summary in Response to Question 1 posed by the Labour Court

- On the question of economic justification posed by the Labour Court, there are entirely different perspectives on this issue running through many of the submissions and discussions in the majority of Sectors/JLCs depending on whether that perspective was from an employer or trade union/worker perspective.

- The central economic justification for retaining a JLC is that set out to the Oireachtas by the Government when presenting the legislation i.e. maintaining a system of protection for particular classes of workers and that guiding justification has been adopted by this Review in making recommendations as to whether to retain a JLC, together with the relevant elements of Section 11 (3).

- The economic consideration of competitiveness within the same sector has been applied to the detail of the Establishment Orders also taking into account the relevant elements in Section11 (3).

2. What is the logical or natural demarcation between and within a JLC?

This question was posed by the Labour Court based on the difficulties experienced and observed in the Retail Grocery Sector, between that Sector and Catering and within the Catering Sector itself. Real concerns were expressed about the lines which divided grocery operators and the lack of distinction between the various establishments whether grocery was a main or an ancillary service provided. Real complications were recognised for those grocery and food outlets where both services were provided by the same employer. Another distinction raised was that between seated and non-seated establishments sometimes on the same premises as an outlet selling groceries, where one set of workers are covered by a JLC at present and others are not and the Court or NERA might find itself considering who owned the seating.

The thrust of these issues was raised with representative organisations as concerns on the part of the Labour Court.

The same issues also arose in the discussion with NERA in terms of enforcement and also complaints made to them by employers of trying to keep records to cover the different activities and the additional burden of such record keeping. Record keeping also features in a number of public notice submissions.

The distinction in catering between public houses that are covered by being those who serve hot food was a subject in a review of the Catering Sector back in 1996. The general distinctions that apply in public houses in terms of the scope of Establishment Orders were raised in a number of ways in the Review.

The distinction drawn between catering outlets which had seating and the possible distinction between a small number and some greater number of seating was observed at any meeting where this question of logical demarcations was discussed.

In response to this question and in light of the various discussions and submissions, based on a recommendation to retain JLCs for both of these sectors, the Establishment Orders have been examined and a number of recommendations for amendments are designed to address the various concerns and anomalies raised by the questions and the analysis of the material considered by the review.

Summary in Response to Question 2 posed by the Labour Court

- In response to this question and various submissions and discussions a number of recommendations are put forward for both the Grocery Retail JLC and the Catering JLC, designed, as far as it has been found possible, to eliminate unworkable and unjustified demarcations and to reflect the substantial elements of competition in the marketplace in each sector.

3. What level of consensus exists within any sector regarding the retention of any JLC?

The preferred option of the Labour Court is to establish a level of consensus in any matter that comes before it. The Court pointed out that working to reach consensus is the approach adopted by the Court itself, particularly where a matter cannot be decided by facts alone. In this instance the Labour Court's preferred option would be that the level of difference as between employer and trade unions would be reduced and preferably eliminated at least on the main issue to be decided, that is whether a JLC would be retained in some or all of the sectors.

A considerable level of consensus existed in Security and Contract Cleaning between representative employers and the trade unions that agreed statutory rates of pay are an integral element of competition in their sectors, and have benefits for both employers and workers. With the exception of one employer in Security, that level of consensus was maintained in this Review.

In Hairdressing, Peter Mark indicated that they are in favour of retaining the JLC as a Hairdressing JLC but removing trainees - a position put to ICTU and rejected.

In Agriculture, IBEC saw some merit in the JLC as the collective bargaining unit for the sector, but proposed reducing its scope. This position was put to the ICTU and rejected.

Outside of these four JLCs there was little desire expressed to accommodate any perspective other than retain or abolish, as the case may be. Some employer submissions did express a preference for abolition of a particular JLC, but recognising that a contrary decision might be made, made observations about the scope of that JLC mainly on grounds related to fair competition. All of these observations were considered, and some were incorporated into the recommendations.

Efforts to explore issues on a joint basis between employer and union representatives at the conclusion of Phase 2 found little or no favour on either side. This initiative was not pursued.

Summary in Response to Question 3 posed by the Labour Court

- There is some degree of consensus in four sectors as between key employer groups and the trade unions. That level of consensus has been taken into account in the recommendations. In those sectors where some lack of consensus still exists and in those where there is no consensus at all, the recommendations are made on the basis of the requirements of the Act and the analysis of the various issues presented to the Review for consideration.

3.2.d Section 12(4) - To promote harmonious relations and to avoid industrial unrest

Section 12 (4) of the 2012 Act states: *'where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that'*, and then sets out the four options.

The language in this part of the subsection is that which underlies the principles and policies on which the Labour Court was established and which remain in place. The judgement as to which of the four options set out in Section 12 (4) is to be recommended to the Minister is a matter on which only the Labour Court itself can decide, notwithstanding any of the recommendations from this Review. It is considered important however to bring to the attention of the Court material brought to this review which, in the opinion of the Review, is relevant in exploring this question of harmony and the way in which this issue has informed the recommendations from the Review.

Submissions on this issue. Attached to this report are a number of documents. Included are extracts from submissions which were found to specifically refer to the word harmonious or a variation of it. When they are examined, it can be seen that very few sector organisations actually dealt with this issue as it might apply in their sector. The general statements about JLCs in general aside, the sector specific comments are made by two organisations in Retail Grocery both of whom are minority interests in that sector. Another is from the Hotels sector. The positive IBEC comments specific to a particular sector relate to those sectors where they are reflecting a positive disposition towards the retention of a JLC in some form i.e. Agriculture, Hairdressing, Security and Contract Cleaning.

In relation to Hotels and the submissions in Retail Grocery the only concrete example put forward is that of the grocery outlet who cut the employees' wages, apparently with their agreement. Details of the collective bargaining that was associated with this cut are not given.

Based on this aspect of the various submissions, there is no substantial case made in any specific sector as to disharmonious relations and industrial disputes which would follow solely from retaining a JLC other than by reference to achieving pay cuts in their absence.

The extent to which JLCs by their very nature restrict rates of pay and conditions of employment and allow all competitors to influence the outcome through representation and with the added protections for them in the 2012 Act, can be seen in the support given to the JLC by IBEC in four sectors which also takes into account the traditional level of harmonious relations between workers and employers in those sectors due to the existence of a JLC and the functioning of that JLC.

A significant factor considered in relation to this section of the Act, was the submissions received where they addressed directly or indirectly, subsection (g) *'whether the fixing of statutory minimum remuneration and conditions of employment by Joint labour Committees has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector'*

The submissions from employers and trade unions clearly shiow that in the sectors where it is proposed that JLCs be retained, apart from some multiples in the Retail Grocery Sector, collective bargaining is largely absent.

No employer could point to a collective agreement that had been concluded by collective bargaining, as it is usually defined, which could not have been concluded had a JLC been in place, or were it to be in place under the 2012 Act. This is relevant in the context of the analysis required under section 12(4) because if a JLC was in place for many years and it cannot be demonstrated that its being in place historically was an interference with harmonious relations between workers and their employers, or caused industrial unrest, or interfered with collective bargaining then it is reasonable to conclude that the retention of any existing JLC would continue to promote harmonious relations and to avoid industrial unrest in that sector as it has in the past. And, as stated earlier, employers now have provisions added to the legislation which allow them to make a case for inability to pay, albeit with certain limitations.

The amendments proposed to the Establishment Orders to be retained are designed to improve harmonious relations by removing the uncompetitive and unjustified distinctions that exist in certain sectors in the legitimate interests of employers and workers and which have led to disharmony regarding the application of specific EROs. These amendments are proposed in the legitimate interests of employers and workers.

It is important to emphasise in this section of the analysis the conclusion that, the extent to which harmonious relations are restored at the retained JLCs very much depends on the JLC itself, and in particular the Chairpersons ensuring that they adhere to the revised principles and policies set down in the Act of 2012. Any slippage in this regard would undermine any potential for promoting harmonious relations in the various sectors.

3.2.e Overall Summary of the rationale adopted in making Recommendations

The approach taken in this Review in deciding on recommendations to be put forward is as follows.

- To take account of all of the factors set out in subsection 11(3) and to make recommendations consistent with Government Policy in this area in terms of the retention or abolition of a particular JLC where consensus does not exist.

- To take consensus as the deciding factor in retaining a JLC for a sector where that consensus is clear and to a significant degree.

- To make recommendations which would construct a JLC for any sector which would be relevant to the competitive marketplace as it is constructed within that sector, simple to apply and easy to monitor in terms of enforcement, whether or not there is consensus on these matters.

- In the absence of demonstrable evidence to the contrary historically or projected, including a failure to demonstrate the existence of collective bargaining structures in a sector or subsector which would act as an alternative means of achieving the legitimate interests of employers and workers, and thus secure harmonious relations and avoid industrial rest, the Review has concluded that, in recommending the retention and amendment of an establishment order as provided for under section 11(4), to do so will promote harmonious relations and avoid industrial unrest in so far as it is possible to make such a prediction.

3.3 JLC Recommendations - all JLCs

1. Agriculture

Retain JLC with reduced scope.

Amend Establishment Order to cover only those workers in those parts of an establishment engaged in farming, defined as the production, sorting and packing of animals, animal produce, crops, fruit and vegetables for consumable use and those engaged in horticulture including market gardens, garden nurseries and nursery grounds.

The effect of this amendment would be to remove those workers and parts of establishments not engaged in any of the foregoing activities and, specifically from the current scope '*osier land or woodland' 'sports grounds' 'the caring for or the rearing or training of animals' ' and any other incidental activities connected with agriculture'*

The effect of this amendment is to confine the scope of any ERO to any workers on a farming establishment who are engaged in farming as defined, and not those workers in the same establishment or on the same premises who are engaged in related but non-farming work e.g. distribution or food processing.

As the Agriculture JLC was established under Primary Legislation (The Industrial Relations Act 1976), an amendment to the Establishment Order would require amending primary legislation.

2. Catering and Licensed Trade Sector - currently two JLCs

Retain as one JLC – eliminating the regional distinction, clarifying and extending the scope and changing the title, or retain as presently constructed

Amend the definition of a Catering Establishment to define the establishments covered as- a *business or premises approved primarily for the purpose of and continuing to supply prepared food or drink for consumption on or off the premises,* for reward to any persons, *other than those premises where the workers engaged in these activities are covered by the Retail Grocery JLC or are employed by a hotel.*

Amend to delete (c) under Workers to whom this schedule applies '*work incidental to (a) or (b) and performed at any store or warehouse or similar place in the catering establishment'*

The effect of the first of these amendments would be to eliminate the regional distinctions and the distinctions between public houses that serve hot and cold food and once this distinction is removed it is recommended that the scope be extended to all public houses. To omit some public houses could leave to decisions not to provide catering services, or to disputes about what is food for the purposes of enforcement and generally continues the practice of excluding by definitions related to product that the primary purpose of the business.

The effect of these amendments is to remove the distinction between those who provide seating and those who do not which is not considered to be justified given that as they mainly compete within the quick food and coffee shop sector often within the same area, these distinctions are uncompetitive.

The effect of these amendments is that in this expanded JLC it would be appropriate to include off-licences as many are part of public houses and compete with them in many instances.

The effect of the second amendment is to confine the scope of a JLC to those who are involved in the tasks of preparing, serving and selling food or drink in the establishments covered.

The effect of these amendments would be to extend the current scope of a catering JLC in a manner that most of those businesses established for the purposes of providing a catering service in one form or another would then be competing on the same basis in terms of their labour costs. If inclusion or exclusion are defined by the product, or the temperature of the product, or the location of the establishment or the physical arrangements, this highly developed and equally complex sector will continue to give rise to illogical, regional and uncompetitive distinctions in this and other sectors which this review has sought to eliminate as far as this has proved possible.

It is recommended that the Minister should initiate proceedings that would allow for interested parties to express a view on a proposed amendment of the scope of a Catering JLC to encompass a revised title and scope for the JLCs that current operate in the catering sector along the lines as have been recommended in this review and through the exercise of the provisions of section 40 of the 1946 Act which in turn would require the Labour Court to exercise the provisions of section 38 and 39 of the same Act.

Should the Minister decide not to expand some or all of the scope of the existing JLCs it is not recommended that the two existing JLCs should be amalgamated as this would have the effect of having one JLC but with scope would be different for the two different regions comprehended by any ERO. In such a scenario consideration might be given to appointing one person to chair both JLCs in order ensure that there is consistency in respect of the related terms and conditions of employment across all of the sector covered by two Joint Labour Committees.

3. Contract Cleaning

Retain JLC – clarify the scope.

Amend the Establishment Order to read '*Workers in this JLC means workers employed by companies engaged in whole or in part on the provision of cleaning and janitorial services in, or on the exterior of establishments including hospitals, offices, shops, stores, factories, apartment buildings, hotels, airports and similar establishments.*'

The wording of this amendment brings the wording of the Establishment Order into line with that agreed between the unions and the employers in a recently proposed registered agreement for the sector.

It is recommended that the provisions of the Act of 2012 should be applied to these amendments which clarify the establishments and workers covered by the Establishment Order.

4. Hairdressing

Retain JLC – reduce the scope of the establishments covered. Commence a process of consultation to remove the regional distinction between Dublin, Dun Laoghaire, Bray, Cork and the rest of the country.

Amend the Establishment Order: 'hairdressers *employed in any undertaking where hairdressers are employed'*.

The effect of this amendment is to limit the scope of the JLC to those specifically engaged in hairdressing and to ensure that any persons employed as hairdressers in the geographical areas are covered by the terms of any ERO. This will have the effect of removing beauticians and manicurists in hairdressing establishments, which by its definition does not cover the many workers employed at the same in occupation, but not in hairdressing establishments. The current ERO provides that the range of establishments and workers covered in the Dublin area is greater than in Cork.

Without further amendment, this would leave large areas of the country providing exactly the same service outside of the scope of the JLC. This regional distinction is not considered to be justified. While such an amendment has merit in the context of this Review and the factors taken into account when making recommendations, such an amendment would bring within the Scope of a JLC, workers and employers who were not put on notice that such a possibility was under consideration. Such a recommendation, if adopted by the Labour Court or the Minister on foot of this review and without recourse to the relevant sections of the 1946 Act which provide for consultation with interested parties where an extension of the scope of a JLC is under consideration, could be viewed as being ultra vires the scope of this Review and certainly problematic.

It is recommended that the Minister should initiate proceedings under Section 40 of the Act of 1946 to allow for public consultation regarding a proposed amendment to the Hairdressing JLC so as to encompass workers and establishments providing hairdressing services in all parts of the State. This would in turn require the Labour Court to apply the terms of Sections 38 and 39 of the Act of 1946 of the same Act to such a request from the Minister.

Should the Minister decide not to adopt the recommendation to initiate proceedings under the terms of Section 40 of the Act in relation to the extension of the scope of Hairdressing JLC to other geographical areas, it is the view that the recommendation to reduce the scope

of the current JLC in terms of establishments and categories should be implemented within the geographical areas currently encompassed.

5. Hotels - currently two JLCs

Abolish the JLC for Hotels in Dublin.

Retain the JLC outside Dublin and clarify the scope of workers and services covered.

Amend the Establishment Order to remove section (e) of those engaged in the following work: '*work incidental to (a), (b), (c) or (d).*

Amend the Establishment Order to insert a new (e): *'work in leisure facilities and employees of the establishment or a related business , engaged in the provision of personal services such as health, and beautician services provided on the premises to customers of the hotel'.*

Amend the Establishment Order to include outdoor ground workers.

Amend the Establishment Order to insert a new clause (g) *'those workers who are employed by a third party from whom their services are provided on a contract basis, shall have their terms of employment determined by the terms of employment set by the relevant JLC, if such be the case, or in the absence of a JLC, in the employment from whom the service is contracted*

The effect of these amendments is to bring clarity exactly who is covered by a JLC for any part of the Hotels Sector. The removal of incidental work and the replacement with leisure and other facilities will bring the scope more up to date with the range of services provided by many hotels and which otherwise would continue to be comprehended only by the word *'incidental'*.

The effect of these amendments is to recognise that services in a number of hotels are contracted out to third parties and to clarify how rates of pay are to be determined for such employees.

It is recommended that these amendments, which clarify the classes of workers covered by the Establishment Order should be implemented by application of the provisions of the Act of 2012.

Abolish the Dublin Hotels JLC by application of the provisions of the Act of 2012.

This recommendation has the effect of abolishing a JLC which did not meet between 1997, when it was established, and July 2011 when all JLCs were suspended following the decision of the High Court in Grace and others-a period of 14 years. This recommendation will give effect to the de facto position in respect of this JLC- that it has never functioned.

6. Law Clerks

Abolish JLC.

This recommendation has the effect of abolishing a JLC which is not considered relevant to the sector as a whole, or a sufficient part thereof, in determining rates of pay which have any relativity with the National Minimum Wage, nor is it required to set unsocial hours premium. The classes of workers it represents are not exposed to the same type of competition as other sectors, and there is no substantial number of migrant workers with the attendant economic vulnerability.

The provisions of the 2012 Act should be applied to the abolition of this JLC.

7. Retail Grocery and Allied Trades

Retain JLC and rename - Retail Sector - Grocery - Multiple and Symbol Outlets – Scope clarified and reduced.

Amend Establishment Order to reduce the scope of establishments covered by the JLC.

Amend Establishment Order to exclude clerical and incidental work.

Amend the Establishment Order so as to comprehend and confine the application to, establishments owned, or operated by, or working under franchise to, an entity within the Retail Sector trading as a provider of groceries and other goods for sale to the public, including the sale of all food whether it is prepared or consumed on or off the premises and which establishment operates under the title of a multiple or a symbol as recognised in the sector.

Amend the Establishment Order to provide that all workers directly engaged in the preparation for and sale of goods and employed by an establishment which is a multiple or operates under a symbol, are covered by the scope of the Establishment Order to be covered by the terms of any ERO issued by the JLC (except the work of butchers and apprentice butchers).

Amend the Establishment Order to provide that any worker employed by an employer in an establishment on the same premises as an establishment covered by the Establishment Order, but who is employed by an unrelated employer and who is providing a service other than the sale of groceries, would be comprehended by the terms and conditions applicable to any JLC for that other sector, if such be the case, or that employment as the case may be.

The effect of these amendments is to confine the work covered to those engaged directly in the sale and preparation for sale of goods from the establishment covered by the scope of the JLC (except butchers and apprentice butchers).

The effect of these amendments is to continue to provide for a level of competition in terms of rates of pay as between the outlets which comprise the overwhelming majority of the market share in this sector and which compete with each other in terms of the goods and services provided, and on price.

The effect of these amendments is to remove from the scope of this, or any other JLC, those small number of retail grocery outlets who truly are independent and therefore do not operate to the same scale and/or through the same pricing differentials as those who operate as multiples, or those who operate under symbols.

The effect of these amendments is to remove from the scope of the JLC those outlets who do sell some items which are groceries as defined in the Groceries Order, but for whom the sale of such items is an incidental part of their business, e.g. garage forecourts where the attached outlet sells some groceries and food, but which is not trading under a symbol or multiple and therefore is not competing to any significant extent with those entities in respect of the sale of groceries or the catering sector. Including these entities would only reopen the various demarcations which this review regards as unjustified and has sought to eliminate as far as possible.

However those parts of garage forecourts which do not have a symbol store attached, and where there is a franchise or contracted operator preparing and selling food will be comprehended by the Catering JLC in respect of those catering franchises. Similarly, other services contracted onto a garage forecourt, for example cleaning or security will be comprehended by the enforceable terms for those sectors.

The effect of these amendments is to provide that those who are employed by a symbol or multiple operator, but are engaged on a full or part time basis in preparing or serving hot or cold food for sale by that establishment are covered by this JLC and not a catering JLC. This is intended to address the potential inflexibility, the needless calculation of proportions of time spent and difficulties with enforcement posed by the previous application of different EROs for employees who are engaged by the same employer in similar and sometimes overlapping tasks.

It is recommended that the provisions of the Act of 2012 should apply to these amendments which reduce and clarify the scope of the existing JLC without bring in new establishments.

8. Security

Retain JLC - amend the Establishment Order to clarify.

Amend the Establishment Order to define the type of establishment covered - by defining the meaning of a security firm and the meaning of a security service and the primary functions of security operatives.

Meaning of "Security Firm"

A Security firm is an employer who employs persons, hereinafter referred to as Security Operatives, to provide a security service as described hereunder for contract clients of their employer, and performing one or more of the functions set out hereunder:

Meaning of "security service":A service of a security or surveillance nature, the purpose of which is to protect persons and property.

Primary functions of security operatives:

(i) The prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, bonds, stocks, notes or other valuables.

(ii) The prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass, on private property either by physical, electronic or mechanical means.

(iii) The enforcement of rules, regulations and policies related to crime reduction.

(iv) The protection of individuals from bodily harm.

The effect of these amendments is to redefine all of the relevant terms covering workers and employers in the same terms as the most up to date definitions of these terms set out in the proposal for a Registered Agreement submitted by employer and worker representative organisations to the Labour Court in 2012.

It is recommended that the provisions of the 2012 Act should be applied to these amendments which clarify the scope and meaning to be given to the various descriptors of establishments and workers within the sector.

General Amendments to All Establishment Orders

The following are recommendations for amendments which it is proposed should be incorporated in all establishment orders.

(1) Collective bargaining agreements as an alternative to an ERO

- It is recommended that each order should provide the opportunity for parties to a collective agreement, which is legally enforceable and which contains terms no less favourable for those set out in an ERO – to be excluded from the scope of a JLC.

The effect of this amendment will be to allow the parties in any employment or subsector to enter into collective agreements on a voluntary basis and to be excluded from the JLC, provided the terms of that collective agreement are no less favourable and are legally enforceable.

(2) Relevant sections of the Act of 2012 to be included in the establishment order

- The relevant sections of the Act of 2012 (section 12 and subsections) to be set out in each establishment order.

The effect of this amendment is to ensure that all members of a JLC and any worker or employer covered by it have readily available to them the scope and role of the JLC and the principles and procedures which govern decision-making by the JLC.

(3) Role of the Chairperson

- Each establishment order to be amended to set out the role of the Chairperson in facilitating the parties in reaching an agreement and related subsections – in section 42B.

- Each establishment order to be amended to provide that the Chairperson of a JLC shall be required to convene a meeting every 12 months where that Committee has not met in the previous 12 months to consider any matter which in the view of the Chairperson and related to the particular JLC merits consideration. Also to meet with NERA at that meeting to consider any of the terms of the ERO or an establishment order which give rise to difficulties of interpretation and to receive a report on compliance within the sector generally as experienced by NERA.

- In the event that the Chairperson receives a request for a meeting from IBEC or ICTU at any time to consider a particular matter, the Chairperson shall convene a meeting within four weeks of receiving such a request.

The effect of the first part of these recommendations will be to ensure that all Chairpersons and members of each JLC have set out before them in the establishment order the practices and procedures which are to be followed by the Chairperson under the 2012 Act.

The effect of the second part of this recommendation is to clarify how a meeting of a JLC can be convened and by whom. It also defines the responsibility of the Chairperson in this regard. This, together with the revised practices and procedures set out in the 2012 Act should have the effect of removing some of the historical ambiguity and related concerns regarding the role of the Chairperson which were also raised during this review. It would define who is actually responsible for convening a meeting of a JLC and for what purpose. It would ensure that each Joint Labour Committee is fully au fait with the levels of compliance within the sector, the areas of noncompliance. Any difficulties with compliance which can be attributed to the wording of an employment regulation order issued by the committee or the wording of an establishment order, might affect their deliberations in respect of future employment regulation orders.

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished
• None	• Catering (with amendments)	• Agriculture • Contract Cleaning • Hairdressing • Hotels • Retail Grocery and Allied Trades • Security	• Hotels (Dublin) • Law Clerks

Retained 7 Amalgamated 1 Amended 7 Abolished 2

Section 4:

Analysis / Recommendations

Each Sector

Agricultural Workers

Joint Labour Committee

1. Name

Agricultural Workers Joint Labour Committee

2. Establishment Order

S.I. No. 198/1976 – Agricultural Workers Joint Labour Committee Establishment Order, 1976.

Date: 26th August, 1976.

3. Activity

(i) Date of Most Recent ERO

17th December, 2010.

(ii) Date of Last Meeting

3rd June, 2011.

(iii) Rate(s) of Pay as per ERO

New Entrants – 3 months - €8.65
Adult Experienced – €9.33*
Plus terms for board and lodgings
Trainee - €7.28 to €8.19 (6 months).

*This rate was contained in the ERO of December 2010 and was due to take effect on 1st July, 2011. The IFA say that the final meeting of the JLC agreed to a deferral of this increase, but this did not occur before the High Court ruling in July 2011, resulting in confusion on the part of some employers as to whether the correct rate is €9.10 or €9.33. The rate prior to 1st July, 2011, was €9.10.

4. Scope

"AND WHEREAS by the said Section 1 of the Act of 1976, agriculture is defined as including horticulture, the production of any consumable produce which is grown for sale or for consumption or other use, dairy farming, poultry farming, the use of land as grazing, meadow or pasture land or orchard or osier

land or woodland, or for market gardens, private gardens, nursery grounds or sports grounds, the caring for or the rearing or training of animals and any other incidental activities connected with agriculture;"

5. Number of Responses to Public Notice

7.

6. List of Responding Bodies

1. IBEC
2. SIPTU
3. Keelings
4. Irish Racehorse Trainers Association
5. IFA
6. Peninsula Business Services
7. Irish Thoroughbred Breeders' Association

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

The most recent review report submitted to the Labour Relations Commission is that conducted by the University of Limerick in 2005 as part of the Mid Term Review of Sustaining Progress.

There are no specific references to, or study of, this JLC in the report of 2005, or any previous reports conducted in the 1990s, under section 39 of the Industrial Relations Act 1990.

Summary:

- Not applicable.

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

IBEC

"The definitions of "agriculture" and "agricultural worker" that are used in the Establishment Order are extraordinarily wide. They encompass workers who should not be described as agricultural workers such as trainers of racehorses, workers in industrial-scale food production undertakings and green keepers in golf clubs."

Irish Racehorse Trainers Association

"The racehorse-training industry is a particular concern because the nature of the work is significantly different to the work done on farms. The workers in this business perform different duties in different conditions than those performed by workers on farms."

SIPTU

"The latest employment figures for the sector show that there were 19,000 employees in the agricultural, forestry and fishing industry as of quarter 3 2012, of which approximately 4,300 were employed as stable staff and jockeys in the horseracing and thoroughbred industry. The majority of the direct employees are now migrant workers. Migrant workers are particularly prevalent on farms and agriculture generally, mushroom farming and horticulture, including fruit and vegetable harvesting. There are a significant number of female workers employed in the sector, particularly in the mushrooms and horticulture segments."

and

"This sector of industry also has a high reliance on "piece rate work" particularly amongst the mushroom and horticultural industry. Farm labourers are usually employed on an individual basis or in small numbers in rural areas leading to isolation and a lack of opportunity for collective representation by trade unions."

IFA

"In terms of continued relevance of the Agricultural Workers JLC to different enterprises and class of workers, it should be noted that the structure of the agriculture sector and agricultural employment has changed significantly over the past number of decades. With advances in mechanisation and other improvements in efficiency, there has been a reduction in both the number of farms and the number of agricultural workers. In 1965, the number of farm holdings was 350,000, compared

with 140,000 recorded in the CSO Census of Agriculture 2010. In 2010, of the 272,000 labour units on farms, these comprised 140,000 farm-owners, 115,000 family members and 16,500 (or 6% of the total) regular non-family workers.

The establishment in 1980 of the Farm Relief Services, whereby self-employed workers or contractors provide services to farm-owners, such as relief milking, provides an example of the changing structure of farm employment. The majority of farms comprise one or two labour units, mainly family members, with additional employment engaged on a contractual and/or seasonal basis. This employment is often more specialised and therefore not the class of employment or workers who would traditionally have been covered by a Joint Labour Committee. Wage rates for many of these agricultural workers are significantly above the Agricultural Minimum Wage.

A small number of more labour intensive sectors provide more direct employment, generally at a lower skill level initially, and often on a seasonal basis. These employees would continue to be employed at wage rates close to the minimum. However, where employees from this cohort gain experience and skills, resulting in increased output, wage rates have, in general, increased above the minimum to reflect this."

Summary:

- The figures cited by SIPTU, being in 2012, indicate a continuing fall in the number employed in agriculture (19,000) when the number for forestry, fishing and stable staff are included (compared to 16,500 on farms in 2010 as per the IFA figures).

- The submissions confirm the wide variety of skills, work and entirely different establishments comprehended by the Establishment Order enacted in 1976.[7]

Conclusion:

- The number employed in Agriculture and the changes in the subsectors has been quite dramatic since the Establishment Order was transposed from the old Wages Board Definitions in 1976.

[7] From speaking with the IFA, it would appear that the definitions in the Act of 1976, which were translated into the Establishment Order, mirror those comprehended by the previous Wages Board.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

Summary:

- Not applicable

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established"

The following are extracts from the Public Notice Submissions that are deemed relevant to this subsection.

IFA

"In 1965, the number of farm holdings was 350,000, compared with 140,000 recorded in the CSO Census of Agriculture 2010. In 2010, of the 272,000 labour units on farms, these comprised 140,000 farm-owners, 115,000 family members and 16,500 (or 6% of the total) regular non-family workers."

IBEC

"Industrial-scale food producers and processors

The JLC also operates in respect of undertakings which are not farms but instead are in the nature of industrial-scale producers and processors of food and flowers. In particular, the JLC operates in respect of undertakings which grow, process and package fruit, flowers and vegetables. The primary business of these undertakings (is) in processing and packaging but the growing of their raw materials is also a significant part of their business. This type of business has changed dramatically since the establishment of the JLC and its predecessors."

and

"We submit that the Establishment Order needs to be amended to restrict the operation of the JLC to workers on farms, that is, undertakings the primary purpose of which is to raise crops and livestock for human consumption. Certain types of undertakings should be excluded, including undertakings whose primary purpose is food processing, notwithstanding that such undertakings might also engage in a limited amount of primary production."

Keelings

"Keelings grow, sources and supply chain manages fresh produce including fruit, salad, flowers and vegetables from around the world. Keelings has its Head Office in Ireland based in St Margarets, County Dublin. Keelings have operations in the UK, Holland, Spain and China. Keelings employ approximately 2,000 staff with 400 employed in the agricultural sector. It is the view of Keelings that the JLC for Agricultural Workers should be abolished. The model is outdated and irrelevant in today's highly regulated employment environment."

IRTA

"When the IRTA made their submission to the Duffy/Walsh review it submitted that the Irish racing industry cannot operate within the restrictive confines that are imposed by the Agriculture JLC and believe that the racing industry needs to be specifically removed from being bound by it. This is primarily due to the fact that training what are in effect elite thoroughbred athletes creates a set of unique needs and demands that present a set of challenges that are entirely different from those faced by other agricultural sectors, such as fruit and vegetable growers, tillage farmers, etc.

As part of the Duffy/Walsh review an oral presentation was made on 14th March 2011 during which discussion it was acknowledged that the industry is very different from the wider agricultural industry and that there was a strong case for the industry to be excluded from agreements governing agriculture in the broader sense, but was not then within the remit of the review."

ITBA

"The old JLC applied to all agricultural workers which encompassed a diverse range of activities and sectors from racehorse trainers and thoroughbred breeders, mushroom and vegetable growers, dairy farms, beef cattle farms, etc. While all of the employees in these specific sectors work in the Agricultural Industry the nature of each sector and the working conditions that apply to employees in those sectors differ to a significant degree. The different sectors encompass short seasonal type sectors to 24/7 sectors catering for the consumer goods industry."

SIPTU

"With regard to the mushroom segment of the agricultural industry, EU supply was expected to tighten in 2012 affording Irish producers increased exporting opportunity. In addition, demand in the UK is expected to hold up off the back of an EU/industry co-founded mushroom promotion campaign which commenced in 2011. Similarly, the thoroughbred industry has managed to record a recovery after a dip in stallion, foal and mare sales in 2009 and 2010. While sales volumes have continued to fall in 2011, the value of sales has increased.

Despite bad weather conditions, the value of total agricultural output in 2012 was up 3.6%. This followed a very significant increase of 17% in the previous year. The pace of the increase of non-live food exports slowed from 12.8% in 2011 to just under 3% in 2012.

Overall producer prices rose by approximately 7% over the 11 months of 2012 compared to an average 9% increase across the EU 27. Despite concerns about overall price fall in 2012 vegetable prices held up throughout 2012, beef prices climbed and milk prices dipped from elevated levels at the earlier part of the year but recovered to early 2011 levels.

Chief amongst the concerns for the sector for 2013 are increased input costs and the continued weakening of Sterling against the Euro. The Euro has appreciated by over 6% in the 3 months since the start of 2013, however this must be seen in the context of an 6.5% weakening of the Euro relative to Sterling throughout 2012. Exchange rates between May and November 2012 were at or below the important benchmark of £0.80; levels which have not been experienced since 2008."

Summary:

- These submissions point to the conclusion that the mix of active, viable employments within the agriculture sector has changed considerably since the Establishment Order of 1976. Equally, although the number and type of production unit has altered considerably, it is evident that the agriculture sector remains a vibrant, and key, element in the Irish economy.

Conclusion:

- The responses to this Section raise serious questions as to whether the definitions of agriculture as set out in the Establishment Order are appropriate and relevant to the Sector today.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

Summary:

- Not applicable

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

IFA

"At a very practical level, delays in reaching agreement and subsequent publication of revised Employment Regulation Orders has led to confusion among employers as to their obligations, and higher potential levels of non-compliance by employers. In addition, the mechanism for communicating changes to minimum terms and conditions of agricultural employment was not effective, with employers informed of changes only if they were on a list held by the Labour Court. If they were not on this list, the main mechanism they had for keeping up to date was by checking the Labour Court website (or contacting employer organisations).

An example of the difficulties for agriculture employers can be illustrated by reference to the agreement reached in June 2011 by the Agricultural Workers JLC for retention of the agricultural minimum wage at €9.10, rather than increasing it to €9.33 that July. The revised ERO outlining this had not been published by the time of the High Court ruling that deemed EROs unconstitutional (although the date for the wage increase had passed). There is no record available of this agreement having been reached, and, as a result, some employers increased the rate, and have continued to pay this rate."

and

"IFA has always strongly advocated employer compliance with the statutory requirements of agricultural employment. However, if employers are required to

comply with primary legislation to protect employee rights, without an additional requirement to comply with terms specific to the agriculture sector, IFA believes that this will improve compliance levels, reduce confusion on compliance, and allow for a more straightforward policing of compliance by the relevant authorities."

Keelings

"Compliance is ensured through regular inspections by NERA. This has brought about greater rigor in the agricultural sector."

SIPTU

"SIPTU submits that the experience of enforcement has been a mixed one and there is significant evidence of bad behaviour by employers in this sector, with noncompliance with previous EROs and other statutory legislation."

Peninsula

"In its 2011 Annual Report, the National Employment Rights Authority (NERA) highlighted that out of the 59 inspections carried out in the agricultural sector there was only a 37% compliance rate with minimum employment terms and conditions."

NERA

"Figures provided by NERA based on inspections conducted in the JLC sectors extant at the particular time showed the following breakdown in respect of agriculture.

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009	*72*	*32*	*44%*	*€89,713*
2010	*70*	*44*	*63%*	*€17,289*
2011[1]	*33*	*19*	*58%*	*€87,771*

[1] *The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. The figures for 2011 are broken down under a number of headings and in respect of the standard minimum remuneration, the number of breaches was 7, and in relation to the records kept the number of breaches was 14. A similar breakdown of figures for 2009 and 2010 was not provided."*

Summary:

- The greater rigor cited by Keelings is scarcely evident from the figures supplied by NERA, which show an increase in noncompliance as between 2010 and the first six months of 2011.

- The point made by IFA is self-evident and could apply in any sector. That is to say, if there were no regulated terms and conditions including pay rates above those set out in employment rights legislation, the level of noncompliance would certainly reduce, as employers' obligations fell to the minimum standards. However, requirements like record keeping and Sunday premium would still exist as requirements within the Organisation of Working Time Act, 1997, and 14 of the 19 cases inspected in 2011 showed breaches in relation to record keeping, which in turn relates to the calculation of pay and holiday pay and Sunday premium payments.

Conclusion:

- Compliance (or noncompliance) with legislative requirements was an issue in this sector in the period 2009 to 2011, both in relation to the previous ERO and other minimum statutory requirements.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

Keelings

"30 Hour Minimum Working

The Agricultural Industry is heavily weather dependent and in times of bad weather can result in workers being unable to work for days at a time. So as not to leave employees with no pay as a result of bad weather conditions, the current ERO provides for a minimum payment of 30 hours per week whether or not employees work the 30 hours. We understand the intent but it needs modifying to ensure there is flexibility and to allow workers to work safely and comfortably."

SIPTU

"(Since 2010) There is widespread evidence of employers (referred to in 3(d)) driving down the pay and conditions of employment collectively bargained for at the JLC to rates of pay and conditions of employment that are in some cases below the statutory minima provided for in primary legislation."

Keelings

"There should be a pay increase embargo to 2016. … Any future movement has to be based on productivity and skills as anything else is unsustainable in terms of rising costs. This could be done at local level depending on the employer's ability to pay and for any increase thereafter to be self-funding in terms of productivity and efficiency."

IRTA

"Including racehorse training in the old Agricultural Workers Agreement created a myriad of issues for our labour intensive industry. As an example of this, As an example of this, the old Agricultural Workers Agreement imposed prescriptive rest periods on our industry. The rest period system required by the ERO would have disrupted the long established work rotas and routines in Irish training yards that both accommodate the unique needs of the industry and allow staff sufficient rest periods.

For example, the ERO required that all workers be given Saturday and Sunday off every third weekend, resulting in training yards only having two thirds of its workforce available during the two busiest days of the week.

Weekends are critical times for training yards given (a) the practice of putting racehorses through a vigorous piece of exercise on Saturdays and (b) the fact that 58% of Irish race meetings are held on weekends.

In addition, the rules prescribed by the ERO would mean that trainers would not be able to match the same horse with the same exercise rider/handler, which is recognised as best practice by trainers and works best for the handler and the horse from a health and safety point of view.

The rest periods prescribed by the ERO had been agreed to suit the needs of farmers in food production, which is an industry where staff are paid at rates that would be lower than the rates paid by racehorse trainers, and where the rostering of staff is based around activities that are in no way comparable to the type of activities at a training yard.

This is but one example of the type of issue that can be created when a unique industry such as ours is simply grouped together with other sectors of the agricultural industry that are fundamentally different and non-comparable."

IFA

"Adjustments to agricultural wage rates have been made on the basis of national wage agreements, rather than the economic circumstances of the agriculture

sector. While flexibilities were achieved in 2010, the experience for employers was that achieving this flexibility was very difficult and that the JLC structure has not proven sufficiently responsive to adapt to changing economic and employment circumstances in the agricultural sector."

and

"Negotiations commenced in early 2009 to amend this situation in order to preserve employment and viability and introduce more flexibility into the terms and conditions of employment. However, it was not until May 2010 before agreement was finally reached (and a new ERO published) which brought the Agricultural Minimum Wage back to €9.10. Due to the delay in reaching agreement, some employers had increased the minimum wage to €9.33/hour and this wage rate has since remained in place.

In the meantime, between mid-2008 and mid-2009, the number of agricultural employees fell by 4,700, from 20,900 to 16,200 (the numbers rose again to 18,000 by end 2010).

IFA's experience, particularly in the years since the introduction of the national minimum wage and other statutory employment legislation, is that the role of the Joint Labour Committees has been significantly reduced. The committee has functioned largely to increase agricultural wage rates in line with national wage agreements, pushing it above the national minimum wage, without sufficient responsiveness to the economic conditions in the sector."

IBEC

"In relation to pay: centralised pay – negotiation in this sector, rather than pay negotiation at the level of the workplace, has until recent years, promoted harmonious relations between workers and employers. In some sectors of the agriculture sector, employers and workers live and work in such close proximity that arms-length pay setting may have been a better option than any alternatives.

In relation to conditions: the most recent ERO provided a set of standard conditions of employment, including standard template disciplinary, grievance and bullying and harassment procedures which were helpful to those employers who might not otherwise have had the resources to produce and develop such policies.

It is acknowledged that, if the JLC is maintained in some form, the foregoing advantages would be maintained."

Summary:

- The last legally enforceable increase in pay in this sector as issued by the JLC was in 2010 – three years ago in May 2013.

- The frustration expressed by employers in this sector, related to the inflexibility of the system, both as between the different subsectors in agriculture and the delays in achieving a response to market conditions. It is these frustrations that appear to have converted those who would have been traditionally positively disposed towards the JLC system into a negative disposition.

- Some of the opposition to a JLC appears to stem from the wide divergence of the establishments covered by the Establishment Order, and the one size fits all approach in setting terms and conditions of employment, in particular.

- The smaller subsector in terms of representation, i.e., the racehorse breeding and training subsector expressed frustration elsewhere due to their inability to influence the majority thinking at the JLC on the employers' side.

- It is noted that elsewhere the SIPTU points to the fact that within this sector Registered Agreements have been concluded with the mushroom industry with terms and conditions appropriate to that subsector of agriculture.

Conclusion:

- There are real concerns in this sector among employers about the operation and effectiveness of the JLC system based on the contents of the EROs, the chairing of meetings and the inflexibility of the system to address the reality of the working arrangements in the subsectors.

- Some of the employer concerns can be addressed by administrative arrangements governing the convening and chairing of a JLC, if established. Others regarding the factors to be taken into account in deciding to propose an ERO, are set out in the 2012 Act at section 12 – subsection (6), which considerably revises the provisions of the 1946 Act in this regard. It will be a matter for the Chairpersons and the Committee Members to ensure that these factors are taken into account in formulating proposals and to satisfy the Labour Court that they have done so.

- It may be in this sector that a common set of terms and conditions of employment would not be appropriate in terms of their relevance to each subsector. This will ultimately be decided by the processes set out in the Act of 2012, and may be influenced by the construction of the sector and the classes of workers as set out in any Establishment Order.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

IFA

"From an employers' perspective, the feedback that has been received by IFA is very clear. Ireland's agriculture is heavily export dependent and is competing with producers from many parts of the world. It is felt that the imposition of minimum wage rates beyond the National Minimum Wage is the equivalent of exporting jobs. Increased costs undermine the competitiveness of enterprises, reduce employment levels and potentially impact on the viability of enterprises.

It is believed that employment levels on labour intensive farms are less than they would be if wage rates were lower. It has been stated by a number of our employers that a saving in wages in many horticultural businesses would be spent immediately on extra employees.

While employers are clear that the National Minimum Wage must be paid, it is felt that an increase in agricultural wage rates may entice some employers into the black economy. In addition, while a differential of 45c/68c (depending on whether the employer is paying €9.10 or €9.33/hour) per hour between the National Minimum Wage and the Agricultural Minimum Wage may not seem large, the reality is that, for every 20 workers, this difference amounts to an additional worker employed (or one less worker if the differential were reintroduced for new entrants)."

and

"Overall, IFA believe that, following the High Court decision of July 2011, the experience of agricultural employers and employees has been broadly positive. New entrants can be hired at the national minimum wage, and existing workers have retained their agreed terms and conditions of employment."

ITBA

"If The Industry is not allowed to maintain working terms and conditions that allow the specific horse husbandry requirements similar to those successfully operated internationally and in other European countries, it would place The Industry at a distinct competitive disadvantage to these markets and therefore jeopardise its future."

IRTA

"Thoroughbred horse racing is a hugely competitive industry and the Irish industry faces significant threats from abroad, in particular France and the UK, countries with less stringent work practices. The key assets in the industry (racehorses) are highly mobile, and any system that could have the potential to change or alter established work practices could jeopardise place the industry's competitiveness, which ultimately could lead to owners moving horses abroad with the consequent loss of employment."

Keelings

"The JLC takes an industry wide approach with no flexibility given to the economic realities in operating in an ever diminishing market place with continual competitive pressures. The rates of pay have been set at €9.10 and €9.33 respectively in the last round of discussions in 2010. These rates are unsustainable and have snowballed above the national minimum wage of €8.65. This is a barrier to competitiveness and is limiting employment opportunities in the Agricultural sector in Ireland. We are under pressure from all the retailers and the consumer to reduce prices. We are constantly competing with imports from abroad particularly the UK market. Keelings and others haves lost business to our UK competitors. This has meant lost jobs in the agricultural sector in Ireland. The current minimum wage for the standard grade 1 agricultural worker is the UK is £6.21. This rate makes it more economically viable for retailers to import product directly from the UK or Northern Ireland growers."

and

"Keelings are currently carrying out a strategic review of farms. Keeling may have to decide that any future investment in farms takes place in Northern Ireland. This could mean that the potential to grow our business by 33% to accommodate emerging markets such as the Middle East and China could be moved over the border to Northern Ireland. If we were efficient and cost effective this potential future growth could be developed in the existing site in the Republic of Ireland. It will be pivotal to any investment that we continue to be able to compete fairly in the market place and against UK competitors."

SIPTU

"The negligible impact on employment levels in the agricultural sector from the introduction of a wage floor will be influenced by a number of key industry features; (a) the market structure which in turn determines the price setting power of any one operator (b) the share of labour costs as a percentage of total costs, the size of the proposed wage premium and the elasticity of labour

demand in the industry (c) the importance of the service in the context of the total activities of the business.

Those operating in the agricultural sector are by and large price takers and sell into a monopsonistic made up by a small number of very large retailers. However compensation per employee across the agricultural sector accounts for an average 7% of the value of total output in producer prices in the industry and as such any marginal change in the rates of pay would have a minimal impact on the business. As the Agricultural Workers JLC was negotiated and agreed as recently as 2010 with the €9.33 rate of pay taking effect at the start of July 2011, agreement to the reestablishment of this JLC would not imply an increase in JLC wage rate for workplaces adhering to the agreement. For those workplaces that did not maintain the rate for new entrants after July 2011, a rise to €9.33 from the National Minimum Wage would imply an increase of 7.8% or €0.68 per hour. However, in the context of total costs of production the wage increase would mean just a 0.5% increase in overall costs."

Summary:

- The views on the potential effect of restoring rates of pay above the national minimum wage on employment levels, especially at entry level, are so divergent it is not possible to reconcile them.

Conclusion:

- The figures (or lack of them) provided by the employers do not indicate any significant rise in employment levels, especially at entry level, between July 2011, and the end of 2012 – which could confirm to the review that the removal of the rate of €9.10/9.33 as an enforceable rate of pay, has contributed to a small rise in employment levels in some subsectors- horticulture was given as an example by the IFA at their meeting.

  This is one element of the requirement of the review which would benefit from tracking by the employers and trade unions in the period before the next review, due in five years, in the event of a JLC being established.

Note: SIPTU's assumption that in the event that a JLC were to be established rates of pay would be automatically restored to those agreed in 2010/2011 – is just an assumption. A JLC must have regard to the terms of section 12 – subsection (6) of the Act of 2012 – in essence, each JLC would commence its deliberations based on the Establishment Order and with a blank piece of paper.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

SIPTU

"SIPTU contends that within this sector there is no prevalence of collective bargaining between workers and their employers at any level and the JLC is the only means by which workers can bargain to achieve any legitimate interests and rights above the mere national minimum wage.

The vast majority of workers in this industry are not covered by collective agreement at an individual employment level, nor do they work in an employment where a trade union is recognised for the purposes of collective bargaining. SIPTU contends that the fixing of statutory minimum remuneration and of statutory conditions of employment is not, and will not be, prejudicial to the exercise of collective bargaining. In fact, fixing such remuneration and statutory conditions through a JLC for the industry is the only means by which collective bargaining will take place in this sector."

and

"In relation to the mushroom industry, a Joint Industrial Council and Registered Employment Agreement are established for the vast majority of employments in the sector.

Approximately 80% of employers and employees are covered by employment level REAs. Currently, the Joint Industrial Council is investigating the possibility of establishing a National Registered Employment Agreement for the entire industry."

IRTA

"Collectively, our members form a key part of the wider thoroughbred industry that provides well paid employment for highly skilled people. Our collective agreement with the Irish Stable Staff Association (ISSA: the representative body of employees in the industry), dealing with wages and conditions of employment, has been in operation since 2004 and works extremely well. As part of this process career structures/training and development are reviewed on a regular basis to create better career opportunities, promotion prospects and retention within the industry."

and

"Since 2004 a collective agreement exists between the IRTA and the Irish Stable Staff Association on minimum terms and conditions, and sets a minimum level of hourly pay that has always been in excess of the minimum JLC Agriculture rate. That agreement is widely known, respected and operated by all parties within the

sector. The provisions of the Agriculture ERO has been of no assistance to the parties, who have shown that by maintaining and sustaining their own collective agreement they can maintain collective relations which fosters the legitimate interests of workers and employers."

and

"There is no history of employee unrest within the industry and there exists a high degree of mutual respect between employers and employees given the relationship developed between the respective representative organisations (IRTA and ISSA). There is no evidence that the old ERO system advanced in anyway the interest of employees or led to an improvement in their conditions of employment."

ITBA

"By and large other sectors within the agricultural sector tend to provide employment for lower skilled and lower paid workers than would be the case for The Industry, who provide well paid employment for a highly skilled workforce. This means that employers in other sectors are driven by a primary objective of keeping hourly rates of pay as low as possible, whereas this has traditionally not been the case for our industry which pays at rates in excess of the minimum hourly rates of pay set by the old Agricultural Workers Agreement and primary legislation covering minimum pay. Having such massively divergent and conflicting agendas around the same table in a JLC system can only lead to a result that will end up favoring one sector to the detriment of another, and this was very much the experience The Industry had with the old JLC system prior to it being declared unconstitutional in July 2011."

and

"There is no evidence that the old ERO advanced in anyway the interest of employees or led to an improvement in their conditions of employment and The Industry has worked very well since the old ERO system was declared unconstitutional in July 2011. Since July 2011 there has been no evidence, anecdotal or otherwise, of any deterioration of pay and conditions for those working in The Industry."

and

"The ITBA is represented on the Agricultural JLC Committee, however its experience with the system was extremely negative as the ITBA had one seat at a large Committee table and therefore found itself virtually powerless to represent its members' interests in any meaningful way. This was exasperated by the fact that the Committee was made up of representatives from a multitude of different Agricultural sectors with wide ranging and diverse sets of agendas and interests."

Summary

There is nothing in any of the submissions to indicate that the existence of the JLC has been prejudicial to the exercise of collective bargaining in the Sector. SIPTU points to the conclusion of Registered Agreements in the Mushroom Subsector-and at the meeting with the IFA it seemed to be acknowledged that the existence of such agreements is of benefit to the employers and workers.

One part of the Horse Breeding and Training Sector points to the conclusion of a Collective Agreement with an Association representing employees as far back as 2004, again in their mutual interest.

For the remainder of this Sector the JLC appears to provide the only forum for Collective Bargaining as between workers and employers in the Sector.

Conclusion

Evidence presented in the submissions indicates that for the majority of workers in this Sector, the JLC is the only forum for Collective Bargaining but, as such, it has not prevented sub sectors concluding Collective Agreements adapted to the circumstances pertaining in those sub sectors.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

As this JLC had national application this subsection is not applicable to this sector.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• SIPTU		• Irish Racehorse Trainers[1] • IBEC[2] • Irish Thoroughbred Breeders' Association[3] • Peninsula Business Services[5]	• IBEC[2] • Irish Thoroughbred Breeders' Association[3] • Keelings • IFA[4]	[1] This organisation sought the abolition of the JLC or an amendment providing for their exclusion from its scope. [2] IBEC's preferred option is abolition, but in the event of retention their preferred option is the exclusion of Racehorse Trainers and industrial scale Food Producers and Processors [3] This organisation sought the abolition of the Agricultural Workers JLC or an amendment to provide for their exclusion from its scope. [4] The IFA favour abolition of the JLC. The organisation points to the breadth of the definition of agriculture including references to sports grants including golf courses. In the event that a JLC is re-established the position of the IFA is that section 12 of the Act of 2012 must be applied fully and not simply the restoration of previous Employer Regulation Orders. [5] No specific amendments suggested. The submission uses the term "considerably reduce" in terms of scope.

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

This is an option, but to do so would be to leave in place a definition of an agricultural worker related to a sector as defined in the first half of the last century.

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[8]

This option does not arise in this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"[9]

There are a number of options which could lead to an amendment of the Establishment Order.

- One suggestion is to define agriculture as units engaged in farms, that is, undertakings the primary purpose of which is to raise crops and livestock for human consumption.

  Note: Such a definition would appear to exclude mushrooms and fruit production for human consumption as well as horticulture in general and food produced for non-human consumption (and workers in sports grounds and forestry) as well as the rearing and training of horses.

[8] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant to subsection (8) of clause 11 is taken to apply in these circumstances.

[9] The Establishment Order for the agriculture JLC stems from the Industrial Relations Act 1976, and the powers conferred on the JLC are those conferred by section 43(4) of the Industrial Relations Acts of 1946 and 1990. It would appear that any amendment to the Establishment Order would require an amendment to the primary legislation of 1976.

- Another option is to remove the rearing and training of horses on the basis that the nature of that sector is no longer a part of mainstream agriculture but rather a very different subsector, engaged in a very different form of work with different types of workers, classes of workers, enterprises and working arrangements. This would then lead to a redefinition of agricultural workers as being those whose job is related primarily to the production of food plus horticulture as an allied subsector. This would also lead to the exclusion of those employed in forestry and sports grounds and private gardens.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

This remains an option to be considered – but IBEC do point to the extent to which this JLC has contributed to harmonious relations within the sector, notwithstanding the fact that they want to exclude certain categories and reduce the scope of the JLC. If there is no establishment order then as things stand only the mushroom sector would have legally enforceable rates of pay and conditions above the minimum statutory wage and legislation and it is not clear how either the IFA or SIPTU as the representative organisations would view such a prospect-although noting that the IFA have indicated that abolition is their preferred option.

10. Extracts from submissions received in response to requests for information/views

Following on from the proposals from IBEC and other interests in the agriculture sector related to the scope of the JLC that it would be, in effect, reduced to farms if there were to be a JLC for the sector. The proposals to this effect were put to the IFA as they would significantly alter the coverage of the sector.

The ICTU was also asked for their views and the response was as follows:

> *"The SIPTU position, on the queries raised in respect of agriculture is set out in their submission at chapter 8 page 35."*

This is interpreted as meaning that there should be no change in the categories of workers and employments as set out in the Establishment Order.

The IFA's position remains that on balance the Agricultural Workers JLC should be abolished. They go on to say:

> *"If the Agricultural Workers JLC is retained, but amended, we have the following response to the questions that you have raised, taking into account issues of competitiveness and the wide range of farmers and farmer employers that IFA represents.*
>
> *As a general rule, we believe (and have raised with NERA previously) that the Agricultural Workers JLC should only apply where the worker is engaged in farming (primary agriculture). Where another enterprise is being carried out (e.g. food processing, food distribution) on the farm, the employee in this enterprise should not be treated as an agricultural worker, as this would place the enterprise at a competitive disadvantage to a similar enterprise that is being carried out at a location off-farm.*
>
> *We believe that an amended Agricultural Workers JLC should therefore apply to enterprises for the part of the business that can be classified as farming (primary agriculture). For example where an organisation is engaged in food distribution as well as primary agriculture (e.g. edible horticulture) we believe it would not be possible to designate the entirety of this organisation outside the Agricultural Workers JLC without creating a competitive disadvantage for other smaller producers in the horticultural sector.*
>
> *In relation to horse breeding, while we believe it may be possible to remove this industry from an amended Agricultural Workers JLC, it is noted that this industry is considered part of the farming sector for the purpose of other legislation."*

IBEC endeavoured to provide information in terms of the extent to which grounds men/women are covered by the Agricultural Workers JLC. They responded as follows:

> *"The 2011 Census suggests that the following categories appear to be the categories covered by the JLC. (Note that this used "employee" figures, not "total persons employed in sector", which is much larger but includes self-employed people).*
>
> *Farm managers 10,296*
> *Horticultural trades 275*
> *Farm workers 3,976*
> *Agricultural machinery drivers and other farming occupations 3,604*
> *Forestry workers 811*
> *Gardeners and grounds men/women 4,829*
> *Total 23,791*
>
> *Our proposal would exclude 5,640 forestry workers, gardeners and grounds men/women. It would also exclude a small number of employees who may or may not be covered in the above categories, such as those involved in industrial production and processing and race horse training."*

NERA – re terminology which was unclear or open to different interpretation by various parties:

> *""wholly or mainly" or "primarily" or with no criteria specified to determine*
>
> *Also "incidental activities connected to" or "work connected to" – these expressions are vague.*
>
> *Is fruit packing incidental to agricultural work?"*

11. Overall Conclusions leading to Recommendations

The recommendation is that a JLC be retained for this sector with reduced scope.

There is economic justification for a JLC for this sector with appropriate amendments to redefine and reduce its scope to the primary sector within agriculture, i.e. the production of food, while retaining the term horticulture as a closely related activity. Subsectors covered by the existing Establishment Order while important in their own right are, or never were, central parts of the primary food and related production establishment which is essentially the farm. That is to say farms for the production of food and farm workers engaged in the production of that food are the workers who should be comprehended by the Establishment Order. To avoid any lack of clarity, workers up to and including packing of that food and the work associated with nursery gardens and horticultural establishments should also be included.

Parts of the revised sector employ large numbers of migrant workers. These workers would be heavily exposed to a reduction in their established terms and conditions of employment if those terms were not protected by statutory mechanisms. This is in spite of parts of the fruit and vegetable subsectors being heavily unionised.

SIPTU has indicated that consideration is being given to entering into registered agreements covering some or all of the food farming subsector. If this were to become the established practice over the five years before the next review is due, the JLC for agriculture may become redundant at that time.

12. Recommendations

Retain JLC with reduced scope.

Amend Establishment Order to cover only those workers in those parts of an establishment engaged in farming, defined as the production, sorting and packing of animals, animal produce, crops, fruit and vegetables for consumable use and those engaged in horticulture including market gardens, garden nurseries and nursery grounds.

The effect of this amendment would be to remove those workers and parts of establishments not engaged in any of the foregoing activities and, specifically from the current scope *'osier land or woodland' 'sports grounds' 'the caring for or the rearing or training of animals' ' and any other incidental activities connected with agriculture'*

The effect of this amendment is to confine the scope of any ERO to any workers on a farming establishment who are engaged in farming as defined, and not those workers in the same establishment or on the same premises who are engaged in related but non-farming work e.g. distribution or food processing.

As the Agriculture JLC was established under Primary Legislation (The Industrial Relations Act 1976), an amendment to the Establishment Order would require amending primary legislation.

Catering

Joint Labour Committees

NOTE: The analysis of this sector is set out in respect of the Catering sector as a whole and is not subdivided into regional distinctions. The approach adopted is more reflective of the contents of the various Submissions.

A1. Name

Catering Joint Labour Committee

A2. Establishment Order

S.I. No. 225/1977 – Catering Joint Labour Committee Establishment Order, 1976.

Date: 8th July, 1977.

Amended by S.I. No. 236/1992 – Catering Joint Labour Committee Establishment (Amendment) Order, 1992.

Date: 1st September, 1992.

A3. Activity

(i) Date of Most Recent ERO

29th June, 2009.

(ii) Date of Last Meeting

8th April, 2009.

(iii) Rate(s) of Pay as per ERO

Entry Grade – €8.38 to €9.32 after 12 months or 2 years service in the industry.
Plus provision for board and lodgings to be deducted.
Service charge and gratuities/tips are separate from the rates of pay but the amounts are not specified and therefore will vary between establishments and amounts received.

There are separate rates for other grades based on skill levels – but only the Chef grades are higher at the maximum point (€9.72 and €9.92).

A4. Scope

"1. Workers employed in a catering establishment anywhere throughout the State *except the Co. Borough of Dublin and the Borough of Dun Laoghaire* who are engaged on any of the following work, that is to say:—

(*a*) the preparation of food or drink;

(*b*) the service of food or drink;

(*c*) work incidental to *(a)* or *(b)* and performed at any store or warehouse or similar place in the catering establishment.

BUT EXCLUDING.

(i) Workers affected by any Employment Agreement, that is, "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of the council representative of employers".

(ii) Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

(iii) Manager, assistant managers and trainee managers.

2. In this schedule "Catering Establishment" means a premises in respect of which a publican's licence (spirit retailer's on-licence) under the Licensing Act, 1833 to 1988 is held and which serves hot food for consumption on the premises, and a premises or part of a premises primarily used for supplying for reward to any persons, not for the time being resident on the premises, food or food and drink for consumption on the premises, including fish and chip shops and ice cream parlours.

BUT EXCLUDING.

(i) premises registered in the register of hotels under the provision of the Tourist Traffic Acts 1939-1975.

(ii) premises licensed under the licensing Acts 1833-1962 and having not less than 10 apartments normally available for the sleeping accommodation of travellers."

B1. Name

Catering Joint Labour Committee (County Borough of Dublin and The Borough of Dun Laoghaire)

B2. Establishment Order

S.I. No. 351/1977 – Catering Joint Labour Committee (County Borough of Dublin and The Borough of Dun Laoghaire) Establishment Order, 1992.

Date: 27th November, 1992.

B3. Activity

(i) Date of Most Recent ERO

29th June, 2009

(ii) Date of Last Meeting

27th May 2009.

(iii) Rate(s) of Pay as per ERO

Entry Grade – €8.38 to €9.32 after 12 months or 2 years service in the industry.
Plus provision for board and lodgings to be deducted.
Service charge and gratuities/tips are separate from the rates of pay but the amounts are not specified and therefore will vary between establishments and amounts received.

There are separate rates for other grades based on skill levels – but only the Chef grades are higher at the maximum point (€9.72 and €9.92).

B4. Scope

"1. Workers employed in a catering establishment anywhere throughout the Co. Borough of Dublin and the Borough of Dun Laoghaire who are engaged on any of the following work, that is to say:

(*a*) the preparation of food or drink;

(*b*) the service of food or drink;

(*c*) work incidental to (*a*) or (*b*) and performed at any store or warehouse or similar place in the catering establishment.

BUT EXCLUDING

(i) Workers affected by any Employment Agreement, that is, "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of the council representative of employers."

(ii) Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

(iii) Managers, assistant managers and trainee managers.

2. In this Schedule "Catering Establishment" means a premises or part of a premises primarily used for supplying for reward to any persons, not for the time being resident on the premises, food or food and drink for consumption on the premises, including fish and chip shops and ice cream parlours.

BUT EXCLUDING

(i) Premises registered in the register of hotels under the provision of the Tourist Traffic Acts 1939-1975.

(ii) Premises licensed under the Licensing Acts 1833-1962 and having not less than 10 apartments normally available for the sleeping accommodation of travellers."

5. Number of Responses to Public Notice

8.

6. List of Responding Bodies

1. IBEC
2. A Worker (in a catering company, address given)
3. A worker (in a catering company, address given)
4. Peninsula Business Services
5. Supermacs
6. Licensed Vintners Association (LVA)
7. Restaurants Association of Ireland (RAI)
8. Vintners Federation of Ireland (VFI)
8. SIPTU

Two other organisations, BWG and Triode Newhill Management Services Limited made detailed submissions in relation to the case for abolishing the Retail Grocery JLC and asked that their comments be taken into account in respect of the case for abolishing the Catering Joint Labour Committees.

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

The most recent specific review of Joint Labour Committees conducting under section 39 of the Industrial Relations Act 1990 is one which is dated the 14th September, 1998, and which has no author name given. That review preceded the National Minimum Wage. In terms of the Catering Joint Labour Committee, there is a reference to a consideration of an amalgamation with the Hotels:

> *"It may also be appropriate to consider the Hotels and Catering areas for amalgamation at some time. Only one Chairperson (Mr. Dunne, Tailoring JLC) sought amalgamation of some or even all JLCs might be worth looking at when the MW is introduced."*[10]

A subsequent report of 2005 which was submitted to the Labour Relations Commission arose out of the Midterm Review of Part 2 of Sustaining Progress. In respect of the Catering Joint Labour Committees IBEC submitted:

[10] Extract from Section 18 page 21 of the report of September 1998.

"There are also anomalies in the geographical divisions of same JLCs. There is a Catering national JLC and a Dublin/Dun Laoghaire JLC. This geographical division is out of date and leads to crazy anomalies. For example, in Tallaght, one side of the road is national, one side of the road is Dublin and you can have two businesses competing with each other covered by two differing JLCs with different pay and conditions."[11]

In its submission to the same review SIPTU stated:

"SIPTU also supports the elimination of regional JLCs. JLCs should be established on a sectoral basis with national application."[12]

RAI submission to the report of 2005 recommended that the JLC system be abolished. They did say:

"• *In general, the RAI thinks that JLCs are ineffective but if they were abolished, it would mean "giving up" having a forum in which the parties can discuss pay and conditions of employment.*

- *There has to be some protection for staff. When there is free and open market, there could be difficulties. However, the Catering JLCs are irrelevant for skilled and trained staff because market rates of pay are higher than JLC rates.*

  In terms of relevance, the RAI differentiated between the Catering (Dublin) and Catering (Exc. Dublin) JLCs.

- *The Catering (Ex. Dublin) JLC should be abolished. It is an older JLC which initially mirrored developments in the hotel industry and was meant to catch non-unionised hotels. However it has become outmoded because it does not recognise the way in which the catering business has changed in terms of people social habits, the trading difficulties and the special conditions that catering needs in order to grow. It is a 7-day week business with an emphasis on leisure time at weekends rather than midweek. Remuneration for employees has to take that into consideration*

- *The Catering (Ex. Dublin) JLC has also had problems in relation to the interpretation of double-time on Sundays.*

- *The Catering (Dublin) JLC does give some recognition to the needs of the industry. For example it provides for time and a third on Sundays. Thus, the "jury is out" on its abolition or retention.*

- *If the JLC system were to continue, there should be one catering JLC for the whole country."*[13]

[11] Extract from page 31 of the report of 19th May, 2005 Review of the Joint Labour Committee System prepared by the University of Limerick and submitted to the Labour Relations Commission.
[12] Extract from page 41 of Review of the Joint Labour Committee System conducted by the University of Limerick dated 19th May, 2005, submitted to the Labour Relations Commission.
[13] Pages 45 and 46 of the Review of the Joint Labour Committee System submitted to the Labour Relations Commission by the University of Limerick in 2005.

For the sake of completeness, it should be pointed out that there was a comprehensive review of the Catering Joint Labour Committees conducted by Mr. Joe Chadwick in 1996 under the provisions of section 47 of the Industrial Relations Act 1990, wherein reviews and reports of JLC operations can be commissioned by the Labour Court on its own initiative or on the request of a particular JLC. That extremely wide-ranging and detailed review made a number of recommendations, two of which might be considered relevant to the current debate.

1. Pursuant to suggestions that the Catering JLC should examine the Hotels ERO and replicate its provisions in the Catering ERO as much as possible the following recommendation was made:

   "I recommend that the JLC should replicate as many of the Hotels provisions as possible. If nothing else, this would make enforcement by the Inspectors a little less onerous."

2. In relation to a submission that pubs be excluded entirely from the scope of the Catering JLC, it was recommended:

   "I have a lot of sympathy with the case made by the Publicans, especially those outside urban areas, and recommend that pubs should not, on balance be covered by the Catering ERO."

   He went on to say the wording "hot food" is open to more than one interpretation. Further, he recommended:

   "What I would suggest if the pubs remain covered by the ERO would be that the JLC formally notified the Inspectorate that its intention is that only those pubs serving plated hot food as lunches, evening meals – and/or full dinners, should be reckoned as coming with the ERO. Even that type of definition has its problems of interpretation. For example, some pubs serve chicken and chips in a basket!! Quite definitely it would be better to exclude all pubs."[14]

Summary:

- There is no report specifically under section 39 of the 1990 Act to have regard to under this subsection.

Conclusion:

- The remaining entries are of historical interest if only to contrast the albeit reluctant and sometimes negative engagement with the idea of a JLC for this sector among employers who were consulted in past reviews. Even that reluctant type of engagement is almost totally absent from the employer submissions to this review. The recommendations appear to have been largely ignored.

[14] Extracts from Sections 49.1.4 and 49.1.5 on page 72 of the Report of 1996 prepared by Joe Chadwick.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

Peninsula

"• The most recent Central Statistics Office (CSO) Quarterly National Household Survey (Q3 2012) shows the accommodation and food service industry, which would incorporate those under the catering JLC, to have in excess of 123,100 persons employed in this sector.

- *Antisocial and weekend work would be seen as undeniable feature of the industry, and would be seen as the normal working week for those involved in catering."*

RAI

"As the text box below shows, the coverage of JLCs extends well beyond the hospitality sector into a range of other mostly traditional, mainly service activities. However, it does not relate to all employment grades within these sectors, and typically relates to trades and operatives rather than management.

Sectors covered fully or partially by JLCs account for about 350,000 people, including both JLC and non-JLC staff (see Table 1). Hotels and catering are two of the largest, accounting for about three-quarters of the total. Others of significant size include retail grocery, agricultural workers, contract cleaning, security and hairdressing."

and

"It is astonishing that the current catering ERO rates are, respectively, 18% above the current National Minimum Wage of €7.65 per hour. This is not sustainable in a highly cost-competitive trading environment. The rates are a staggering 54% higher than Spain and 23% higher than Britain.

Supermacs

"On the 1st of January 2013, our national minimum wage is rated the fourth highest in Europe at €8.65, with nearest comparable neighbour, the UK in sixth place at the equivalent of €7.29, €1.36 below our little Ireland. (Source; Eurostat).

When the UK introduced a Minimum Wage in 1992, they abolished the equivalent structure to the JLC, having recognised that the employee was sufficiently protected via legislation and the Minimum Wage. The effects of

any further increase so the Minimum Wage in Ireland by reintroducing the JLC system will only add to our problem in relation to competitiveness throughout Europe, and in particular create an unfair advantage for northern operators over southern operators."

and

"Generally speaking, many workers covered by the JLC system are unskilled, and training is provided by the employer in all aspects of operations and health and safety. It is understandable that a higher rate applies to skilled workers who have studied for a number of years and have been examined and received qualifications in their area of expertise, generally speaking this is not the case in the majority of industries traditionally covered by the JLC system."

SIPTU

"What has not changed to any significant extent, save for one element, is that the workforce in this sector continues to be characterised by what was referred to by O'Sullivan and Wallace in their 2011 study on Minimum Labour Standards as "low road" jobs. "Low road" employments are characterised by a high percentage of female workers; a high percentage of part-time work; lower educational attainment; lower availability of in-house training and lower levels of trade union density.

The one element that has changed since the establishment of the JLCs for the hotels sector is that its workforce is increasingly migrant, a factor that is fully consistent with the characteristic of 'low road' jobs. In the third quarter of 2012, over 33% of workers in the sector were of non-Irish nationality."

and

"In recent years there has been a massive expansion in the numbers of restaurants, takeaways, cafes and bars in the Republic of Ireland.

This can be evidenced by a number of factors including: the number of restaurants; the number of workers employed in the sector and its value to the economy.

What also changed since the establishment of the JLC is the licensing hours that such establishments are permitted to trade, which has resulted in less family-friendly working arrangements with staff in the sector having to work longer shifts.

What has not changed since the establishment of the Catering JLCs or since the last Labour Court Review -in 2008- is that these establishments still need to employ workers involved in the following:

a) preparation of food and drink;
b) service of food and drink and
c) indirect work that is incidental to the foregoing.

SIPTU submits that the scope of a retained JLC for the catering sector should be extended to include all workers involved in the activities listed above in the establishments identified including in the industrial contract catering segment of the sector."

Summary:

- The Supermacs submission refers to workers being unskilled on entry with training being provided by the employer in all aspects of operations and health and safety.

- SIPTU also refer to workers in a manner that would equate to being unskilled, i.e. a high percentage of part-time work, lower educational attainment, lower availability of in-house training while also noting the extent to which this workforce has become a workforce made of 67% Irish and 33% non Irish nationals.

Conclusion:

- The Joint Labour Committees for this sector were established in 1977 in the area outside Dublin and amended to include pubs serving hot food in 1992. The JLC for Dublin was established in 1992 but not including pubs serving hot food. While no figures are provided by way of comparisons at that time either in terms of the numbers employed or the mix of employees in terms of trained and untrained workers I think it would be reasonable to observe that there has been a significant increase in the numbers employed in the part of the sector represented by Supermacs and the Quick Service Food Alliance, both of whom made submissions to this review. Based on the Supermacs submission then the workers in this sector which has expanded in the interim would be largely regarded as unskilled within the normal use of that word in employment in categorising workers..

- When the expansion of coffee shops and the growth of hot food service in pubs and the service of food, hot and cold, in garages and supermarkets is added in the changes in the enterprises serving food since 1992, then it is reasonable to conclude that the largest growth of jobs throughout the sector in terms of numbers, many of them part-time, since 1992 would have been in the category of unskilled workers.

"or

(ii) the last review under this section was carried out;"

Summary:

- There were no comments in the submissions deemed specifically relevant to this subsection.

Conclusion:

- There is nothing in the reports prepared by/for the Labour Relations Commission to have regard to under this subsection.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

IBEC

"This JLC has been rendered obsolete by changes in the business in respect of which it operates during the 36 since its establishment (and the 21 years since the amendment of its establishment order). It operates in respect of a number of disparate sectors which should not be combined with each other. Its operation produced a series of arbitrary and irrational distinctions which cannot be justified.

The JLC was created to operate in respect of restaurants of all kinds, from expensive restaurants to fish and chip shops and ice-cream parlours. That in itself was a broad range of business; it is difficult to see how such a broad range could be accommodated within one wage-setting mechanism, since the nature of businesses at different ends of this range is entirely different.

The JLC's establishment order was amended in 1992 to encompass pubs selling hot food. This created an entirely arbitrary range of distinctions whereby workers doing the same work in competing pubs would entitled to different rates of pay if one premises sold hot food and another did not."

and

"Because of loose drafting, the establishment order has been interpreted to apply to some (though not all) locations in which in-house catering facilities have been contract out to a catering contractor. This was never the intention of the JLC. Contract catering operators have an entirely different business model to the restaurants to which the JLC was intended to operate."

and

"Any amendment which seeks to remove some of the arbitrary and irrational distinctions effected by the establishment order would create other arbitrary distinctions. For example, the distinction between pubs which serve food and pubs which do not serve food could be eliminated by the exclusion of pubs from the definition of catering establishment. However, that would create a situation which a pub serving exactly the

same meal as a neighbouring restaurant would not be covered by the JLC, whereas that neighbouring restaurant would be.

Similarly, while expensive restaurants and quick-service food outlets are clearly dramatically different types of business, they may both serve fish and chips. Finding a definition which distinguishes the two types without being arbitrary appears impossible."

Peninsula

"A consistent approach is required when applying any new JLC as for example, a takeaway with no seating area can set their own rates of pay, yet a small café selling the same products but with significantly higher overheads are subjected to the extortionate rates as set by the catering JLC. This is entirely nonsensical and leaves employers unsure as to who the agreements apply to. A quicker and more simplistic system for determining whether or not a specific business falls under the JLC needs to be devised rather than subjecting employers to lengthy court procedures which could also potentially result in significant backpay."

LVA

"Over the past 15 years the Dublin licensed trade has undergone significant structural change. From a traditional services industry with a high degree of homogeneity throughout the trade with little or no difference in operating styles or procedures, whether city centre or suburban, the trade has evolved into a highly fragmented and diverse set of sub-sectors which include traditional family-owned houses, café bars, entertainment venues, superpubs, suburban outlets, gastropubs and small inner city outlets serving their local community. All these outlet types have differing cost structures and their own individual operations. The level of diversification is directly related to evolving consumer needs. In order for a modern pub to stay viable and competitive it must be flexible and able to respond to its customer's needs quickly, for example, by lengthening or shortening hours of trading or adapting the mix of entertainment, food and other services. The inflexible and prescriptive nature of a JLC seriously hampers a pub's ability to stay competitive, even when staff are agreeable to accepting terms and conditions outside of the JLC. The damage that the JLC does to business is not just contained in the cost but also in the imposition of a structure and a way of working that is expected to suit all businesses. This would be a problem even if the economic environment was not so difficult – Irish consumers have changed and will continue to change and a business must follow them to stay in operation. The hospitality market is fast moving and consumer needs are constantly evolving.

Of course it is not just Irish consumers that Dublin pubs serve. Dublin pubs are a vital part of the Irish tourism offer. The Dublin licensed trade needs flexibility to remain viable and competitive in that market which is so important for the national economy."

and

"The last three decades have seen an explosion of legislation and regulation with regards to the employment of staff. It is simply the case that the conditions which prompted the establishment of the JLC system no longer exist. In Ireland whether you are a small pub employing ten or twelve people or a large multi-national employing thousands, you are subject to the full and onerous requirements of the entirety of this legislation."

RAI

"At this moment in time, the Irish Restaurant Industry employs 64,000 people, which is one in four tourism jobs, which contributes €2 billion to the Irish economy each year. However, ***one restaurant per day is closing down*** *in Ireland and it is thought that around 80% of restaurants are running at a loss.*

In essence the ***Irish Restaurant Industry is on the brink****.*

Our Industry pays the highest restaurant labour costs in Europe. Restaurants have reduced their non-fixed costs and prices as much as possible as is in evidence throughout the country."

and

"The Restaurant sector encompasses a large number of owner operated SMEs, but is also a crucial supporter of small businesses, local agriculture and food producers throughout the country. A vibrant restaurant sector is crucial to a successful tourism "product".

SIPTU

"Over the past fifteen years there has been significant growth in the range of hospitality services available to domestic and overseas tourist customers in the Republic of Ireland. The pattern has been for growth both in the number of establishments and also a variation in the range of restaurants, hotels and bars. Now it is commonplace for bars and public houses to have full restaurant facilities as employers seek to ensure their establishment maintains market share. Changes in consumer drinking habits, the effects of the smoking ban and extended licensing hours have contributed to this pattern.

The inclusion of the bar trade within the scope of the establishments covered by a Hospitality JLC would ensure that there is a level playing pitch in terms of pay and conditions of employment across the competing market segments. These establishments employ the same categories of workers trained and skilled to the same level and undertaking the same

core duties as chefs, bar staff, waiting staff and kitchen porter / general operative staff."[15]

and

"The Hotels JLCs were established in 1965 (other excluding Cork) and 1997 (Dublin) respectively. Since the mid-1990s the sector has undergone a radical transformation in terms of a rapid expansion in the number of available rooms and re-orientation towards the leisure and business market segments. Concurrently, there has been major change in the ownership and management structure of Irish hotel operations. A significant number of the world's largest hotel chains now operate in the Irish market.

In terms of the service offering within the sector, there has also been significant expansion in the licensing hours of hotel bars and within the bar trade generally with many now opening past 2.00am (Thursday through Sunday) and no Sunday afternoon closing or early Sunday night closing. Consequently, workers are now engaged in working longer and more unsociable shift hours.

In the cities of Dublin and Cork there has been a discernible change in the manner in which workers' pay and conditions of employment are determined. Historically, these cities did not fall within the geographical scope of the JLC."

and

"Based on current industry trends, SIPTU believes that the hotel industry is well placed to agree to a new JLC for hotel workers. In the wake of the domestic and global downturn in 2008 and the severe fall-off in domestic and international tourism rates, the Irish hotel sector has undergone a radical process of rationalisation. In the 15 years prior to that, the industry had seen a major transformation with a near twofold increase in the number of hotel rooms buoyed on by a combination of increased consumer demand, generous tax breaks and rising room prices. Post 2008, due to a very large oversupply of hotel stock, market saturation gave rise to widespread below cost pricing in order to bolster occupancy rates. In turn, this eroded overall profitability levels.

The year 2011 marked a turning point for the industry with an increase in profit margins for the first time in four years. This was due to a combination of factors including increased operational efficiency, substantial changes to the cost base, reduction in the number of hotels operating in the market and an increase in overseas visitor numbers.

While the global hotel industry had seen a shift in consumer and business demand towards trading down to more budget friendly accommodation options, it appears that Ireland has bucked this trend with diversification

[15] The extracts from the SIPTU submission in respect of their proposed "Hospitality" JLC are included here, hence the references to hotels.

into leisure and business services as well as increased occupancy in the higher end hotels.

Ireland's improved competitiveness within the international industry was reflected in a significant improvement in Ireland's ranking in the World Economic Forum's Travel and Tourism Competitiveness survey 2011. In a survey of room rates in first class branded hotels, Ireland were ranked 7th of the Eurozone countries in 2009, behind Estonia, Slovenia, Slovakia, Austria, Malta and Germany and was significantly ahead of the UK, US and France. This has generated increased profitability in the sector.

Irish industry analysts, Crowe Horwath, in their 2012 annual survey of hotels found that five star hotels registered the largest increase in profitability, with growth in the order of 65.4% in pre-tax profit per available room, followed by a significant increase in the four star sector.

In the first nine months of 2012, demand for hotels rooms in the Irish market was up 5% on the same period in the previous year and while there was a fall in UK tourist traffic, there was strong revival in the number of visitors from North America and Continental Europe. This marked recovery is borne out by data from the Central Statistics Office Service Index which shows a 9.3% increase in the value of hotel services in the larger hotels (100+ staff) provided over the 12 months of 2012.

RevPAR, or revenue per available room, is a performance metric in the hotel industry, which is calculated by multiplying a hotel's average daily room rate (ADR) by its occupancy rate. In terms of revenue generated by available room in the Irish market, there has been a recovery across all geographical regions.

Dublin outperformed other geographical regions in terms of revenue generated. It registered an annual increase of 16.2% in RevPAR to November, 2012. This overall pick up was confirmed by Failte Ireland's tourism barometer, which reported that 79% of hotel businesses reported profits staying still or increasing in 2012. Furthermore, the improvement in market conditions has been reflected in recent times by longer term leases being negotiated for some of Dublin's largest hotels, beyond the one year terms that were agreed during the worst years of the economic crisis.

Debt sustainability remains one of the chief concerns in the hotel sector. Crowe Horwath estimate that as many as 300 (40%) of hotels require refinancing and note that total loans attaching to the Irish hotels sector are something in the order of €6 to €6.7 billion.

As of July 2012, 121 hotels were under the control of NAMA and it is expected that the pace of insolvency in the industry is likely to accelerate over the coming months with the expiry of specific tax reliefs and schemes operating in the sector.
Given the scale of the debt overhang in the industry, it is clear that no amount of reduction to the cost base would be sufficient to meet the debt

servicing needs of many hotels and a clear distinction must be made between longer term solvency issues relating to hotel businesses and the day to day operational liquidity and profitability. In 2011 net margins across all hotel classifications nationally averaged a healthy 12.9%. An increase is expected in 2013 based on last year's occupancy and pricing results. Furthermore, hotels have continued to generate positive EBIDTA (earnings before interest tax and depreciation). However, post boom time margins are wholly insufficient to cover debt servicing payments. Aherne reports that the average interest coverage ratio in hotels has fallen below 1 since 2009."

and

"The Irish hotel industry is made up of a number of chain operators who account for a quarter of the establishments but more than two-thirds of hotel sales. Independent operators account for the remainder of the establishments. With consolidation on-going in the industry, it is widely expected that the hotel market will become increasingly dominated by a small number of large chains. Increased market dominance in local labour markets, particularly in areas outside of Dublin, and at a time when there is a large excess labour supply will mean greater power for employers to suppress wages at the local level. Despite fierce price competition between competitors, the industry has largely proven itself to be a price setter. In the 12 months following the reduction in Value Added Tax (VAT) in June 2011, just under 22% of the effective 4.1% VAT reduction was passed onto consumer prices. Similarly, there was less than 1% of a reduction in room rates during the off-peak season between the last quarter of 2011 and the last quarter of 2012."

and

Over the past decade, growth in the catering / food service sector outpaced the rise in Irish GDP with a very significant increase in the number of establishments and operators across all components of the industry. 22% in r a in total sales between 2003 and 2008 was reversed between 2008 and 2011. However since then the food service industry recorded a return to growth with a 6.8% increase in the value of sales in 2012 compared to the same 12 months in 2011.
Recovery has been driven in part by rationalisation within the industry. Increased consolidation through the acquisition of businesses by a number of multinationals has meant a move towards larger operations, particularly in the industrial/institutional contract catering sector (hereafter this segment will be referred to as 'contract catering'). Based on 2009 data, this sector accounted for 12% of total turnover in the industry but this share is expected to grow in future years. The three largest players in that part of the industry now account for 90% of the value of sales in that area. There is a strong correlation between general economic conditions and the performance of the contract catering sector. Throughout the second half of 2012, there has been a significant pick up in the performance of a number of market services to the industry. Further improvement in the profitability

of these customers is expected which will further drive demand for contract catering in future years."

VFI

"Since the Joint Labour Committees were established there have been significant changes to both the trade or business to which the Joint Labour Committee applies and to the people working within it. In our case there has been serious rationalisation of the number of outlets available as outlined above. In addition, sales of alcohol in those premises has reduced by 34% in the past 5 years. Patterns for the consumption of alcohol in the country have changed significantly from what is called the On-Trade (consumption in pubs, restaurants and hotels) to the Off-Trade (purchases in supermarkets and Off-Licenses for consumption in the home or elsewhere. In the mid 2000's 70% of all alcohol consumed was consumed in the On-Trade and 30% purchased in the Off-Trade for consumption elsewhere. Today, those figures are almost reversed with 60% now purchased in the Off-Trade and only 40% purchased and consumed in the On-Trade. In addition, with lifestyle changes and reducing disposable income the licensed trade is now in serious competition with other areas for the disposable and leisure Euro. This competition includes cinema, gym, greyhound tracks and cheap foreign holidays fuelled by lower flight charges. Many of these competitors are not subject to JLC's and Employment Regulation Orders but are working under general legislation as laid down by the Oireachtas. To re-introduce ERO's in one sector would amount to unfair competition and put our members at a competitive disadvantage."

Summary:

- The number and content of the extracts associated with this subsection go some way to demonstrate the changes in the type of establishment where catering is now provided compared to 1992 and since pubs were included – outside Dublin.

- The IBEC submission points to the distinction in the application of the JLC rates to a person providing food and seating (no numbers specified) and those who provide food but not seating. These outlets could be serving exactly the same food, and be operated by the same employer, albeit in separate locations. A definition of a worker or establishment related to the type or temperature of food is unfair in terms of competiveness and pay rates.

Conclusion:

- The variety of establishments comprehended by the Catering JLCs is very wide, there are geographical distinctions (pubs) and distinctions based on seating and the type of establishment, rather than the nature of the work as the primary focus and the primary purpose of the service provider.

- A definition of a worker or establishment related to the type or temperature of food is unfair in terms of competitiveness- and pay rates. Such distinctions, dating back to a very different catering sector, have damaged the credibility of the JLCs in this sector-aside from all of the other considerations in the submissions and including enforcement.

- Within the sector there are different competitive markets, based on a variety of factors, including the type of service provided, age profile of customers and income distribution.

- The price charged for the same food may be broadly the same in subsectors but varies greatly between the subsectors in catering. I identify four main subsectors within this one sector, all of which are associated with the preparation and serving of food.

    1. Contract catering
    2. Quick Service (including shops and garages)
    3. Restaurants
    4. Public houses

- Given the growth and diversity of the establishments and the growth in unskilled workers entering into this sector, it is perhaps not surprising that the challenge to the constitutionality of the EROs – as provided for under the 1946 Act – came from employers within this sector.

"or

(ii) the last review under this section was carried out;"

Summary:

- There are no comments in the submissions deemed specifically relevant to this subsection.

Conclusion:

- There is nothing in any section 39 review to have regard to in this subsection

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009 Catering Dublin	*79*	*58*	*73%*	*€53,954*
2009 Catering Country	*363*	*290*	*80%*	*€682,515*
2010 Catering Dublin	*101*	*55*	*54%*	*€44,659*
2010 Catering Country	*314*	*200*	*64%*	*€131,941*
2011[1] Catering Dublin	*56*	*32*	*57%*	*€44,578*
2011[1] Catering Country	*151*	*121*	*80%*	*€104,584*

[1] The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. Of the 56 cases in Dublin in 2011,16 show breaches of the standard minimum remuneration and 24 show breaches of records. In Catering Country in 2011, of the 121 found to be in breach 70 were found to be in breach of the standard minimum remuneration and 90 were found to be in breach of records. A similar breakdown of figures for 2009 and 2010 was not provided.

Peninsula

"• In their 2011 annual report, NERA highlighted a 24% compliance rate for the catering industry with €351,807 recovered in unpaid wages. 2010 shows similar trends with a 38% compliance rate and €176,600 recovered in wages.

- *However these figures should be put into context as in 2011 there were 494 inspections taking place in the industry, and 474 inspections in 2010. The catering industry consistently has the highest number of inspections and it stands to reason that by having 30% of all inspections, they should have the highest level of unpaid wages recovered."*

LVA

"The Court is asked in its assessment to have regard to the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector. This is difficult to establish as the regulatory authorities were assessing the sector not against the statutory minimum requirements but against ERO requirements which in themselves are unconstitutional. Any assessment against an unconstitutional provision should not be relevant."

and

"5. In previous reports there was much criticism of the enforcement regime – has it improved?

The proposed changes by Minister Bruton have been welcomed by the LVA and we expect will lead to a quicker and fairer system for both employees and employers. The Rights Commissioners are to be complimented on eliminating their backlog which has been a great help for cases referred to them."

RAI

"The Local Jobs Alliance notes the comments by NERA in relation to compliance rates; "It should be noted that the Feeney Judgement in July 2011 did not result in any significant change in compliance levels in sectors formerly covered by EROs during the second half of 2011 when these instruments were no longer in force.""

SIPTU

"SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of noncompliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional and has been the case with other forms of minimum statutory legislation since.

This all goes to suggest that non-compliance is about bad employer behaviour and not because of the existence of a JLC establishing an ERO. It would be unjust to both workers and compliant employers not to maintain a JLC because of the behaviour of non-compliant unscrupulous employers. The abolition or dilution of a JLC would be tantamount to rewarding bad employer behaviour."

VFI

"The Court is asked in its assessment to have regard to the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector. This is difficult to establish as the regulatory authorities were assessing the sector not against the statutory minimum requirements but against ERO requirements which in themselves were unconstitutional. Any assessment against an unconstitutional provision should not be relevant."

and

"In our view [the enforcement regime] has improved but there have been many incidents of extreme interpretations of certain areas that leave a lot to be desired."

Summary:

- There seems to be common agreement that the system of enforcement as applied by NERA was successful in discerning high levels of noncompliance in this sector.

Conclusion:

- Given the extent to which the payment of double-time on Sundays has been an issue of comment among employers in the catering sector outside Dublin, the fact that in 2011 the figures show that in that six months, 58% of breaches related to non-payment of the minimum pay rates set out in the ERO indicates that non compliance covered far more issues than Sunday Premium..

- Given the extent to which records affect the calculation of hourly pay, premium payments and holiday pay in this sector, especially where there are so many part-time workers, the figures for the breaches in record keeping at 43% in Dublin and 60% outside Dublin remain high in this sector.

- The point made by Peninsula is correct in terms of the relative number not only of cases but of workers who are covered by the calculations of unpaid wages, but nonetheless the overall incidence of breach in every year covering all statutory requirements exceeds 50% in each geographical area, rising to 80% in the country area in 2009 and 2011.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

IBEC

"However, in the post-ERO era, the wage-trend has not been uniformly downward, The CSO data at section 1.3 above demonstrates that wages in the "food and accommodation" sector have significantly increased in the aggregate period of the last 3 quarters for which there is data. Wages have almost returned to 2008 levels. The absence of an ERO has allowed employers to agree (with individuals or unions as the case may be) wages levels which are appropriate for each undertaking, which in some cases has meant pay reductions and in some cases has meant pay increases.

Furthermore, the national minimum wage has not become the default entry-level wage. Certainly for larger employers in the sector, many new entrants are paid significantly in excess of the national minimum wage; some employers continue to pay wages which (when board is taken into account) are comparable to the rates which applied under the former ERO, and many workers continue to receive wages which are higher than former ERO rates. Wage-setting at the level of the undertaking is the best way to balance the need to preserve employment with the aspirations of workers for higher pay."

LVA

"The costs of the JLC's would directly affect the jobs of those employees it was designed to protect and the ability of the trade to remain competitive. There is already an onerous administrative burden on employers from employment legislation. Of course the dreadful economic environment has highlighted in

stark terms this fundamental problem of inflexibility and cost with the JLC. Labour costs are the single largest element of any pubs cost base and flexibility is needed in managing costs. The LVA has not sought any reduction in the national minimum wage but the negative impact of any additional costs arising from a JLC system would be damaging and directly affect competitiveness and cost jobs. The pub trade finds itself at the moment in an extremely challenging economic environment. This includes a combination of fixed or increasing costs that cannot be negotiated such as rates, a huge decline in sales and a banking system that remains completely unresponsive to the needs of small businesses. As any JLC rates are legally binding, even with staff agreement, the employer could not go below the rates. This means that the only cost adjustment that the company can make is to reduce hours or even cut jobs. A number of pubs have closed or gone into receivership and many more are standing on the precipice of failure."

and

"3. Have they any view on the future name / scope of a JLC compared to the Establishment Order?

Without prejudice to our position in support of complete abolition, we recognise the Ministers stated intention that a number of JLC's should remain in operation and as such our position is that if some level of JLC coverage remains over our trade that the existing Employment Regulation Orders and Establishment Orders for both Catering JLC's must be scrapped and that any future order or orders must be formulated from scratch with due regard to the prevailing economic conditions."

RAI

"The Restaurants Association of Ireland is calling for: ***The abolition of the Joint Labour Committees system of establishing wage rates****. This will encourage competitiveness and support commercial viability. Joint Labour Committees, Employment Regulation Orders and Registered Employment Agreements are effectively a throwback to the 1940s when there was a lack of legislation to protect the interests of employees.*

Since then there has been significant new legislation and updating of old legislation to cover areas like minimum wage, unfair dismissals, holiday entitlements, hours of working, maternity leave and other entitlements. As a result of all this legislation employees' rights are fully protected and covered whereas employer's rights are significantly diminished by virtue of the legal status of Employment Regulation Orders and Registered Employment Agreements.

In essence, what has happened is that the national legislation has become the base from which higher impositions have been imposed upon employers. For example there is much debate currently about the appropriateness of the National minimum wage. The National minimum wage is 8% higher than the minimum catering wage rate."

RAI

"The main provisions in practice of a JLC / ERO for restaurants are as follows:

a) Establishment of detailed statutory minimum pay scales by grade, age and length of service, which are above the national minimum wage.
b) Provisions limiting Sunday working.
c) Agreement of Sunday pay rates of time and a third.
d) Establishment of detailed statutory overtime rates.
e) Existence of a sick-pay scheme (in catering only).
f) Necessity to inform staff of their rights under the ERO system, including posting this information publicly in the premises."
g) The need to maintain records to demonstrate compliance."

and

"The costs of regulation for restaurant businesses include the following:

1. *Administrative costs are costs faced by businesses when complying with requirements in regulation, which stipulates that businesses have to deliver certain information to public authorities or third parties. These requirements are also called information obligations.*

    - *For example, EROs oblige employers to keep certain records that they would not otherwise keep to show compliance with various conditions covering breaks and rest periods. Undertaking these additional administrative activities leads to substantial administrative costs.*
    - *There is an enormous cost in time and money of calculating and processing the payroll system for restaurant owners.*

2. *Substantive costs are costs faced by business when complying with the material requirements of regulation. These requirements are also called content obligations.*

    - *For example, where EROs dictates that certain staff must be paid above the national minimum wage rate, then the substantive cost is the hourly premium over the minimum wage for each and every hour worked.*

3. *It also creates a burden on staff in regard to understanding their rights, especially when moving between JLC and non-JLC establishments, or if working part-time in both.*

4. *The JLCs also interfere with efficient operation of hospitality enterprises, e.g. discouraging opening on one of the busiest days (Sunday), and creating a constant preoccupation with avoidance of overtime even where it would otherwise make normal operational sense for employer and employee."*

QSFA

"We feel we must submit the views of our members which are very clear that a re-introduction of the JLC system serves no purpose, but to add cost and regulation to an already heavy burden." and

"It should be noted that Ireland's minimum wage is the 4th highest in Europe, therefore the re-introduction of a JLC system would seriously affect competitiveness for JLC affected industries, particularly with Northern Ireland and the UK."

SIPTU

"There have been no adjustments made to the statutory minimum remuneration and statutory conditions of employment since July 2011.

There is evidence of employers seeking to drive down wage levels and withdraw conditions of employment that workers had achieved through the JLC system and which were enforceable through the ERO up to July 2011.

Since July 2011 the only statutory protection afforded to workers in the hotels sector is the minimum provided by way of primary statutory legislation. Of course, not all conditions of employment enjoyed by workers come from statutory legislation. In the absence of a JLC system where workers, through their trade unions, bargain collectively for a rate of pay and conditions of employment, bad employers will continue to drive down standards."

Summary:

- Each employers submission sets out the basis for their opposition to the reintroduction of a system (EROs) which could provide for higher rates of pay, and conditions of employment, in excess of the minimum rates as provided for in the National Minimum Wage Act – and the various statutory terms and conditions of employment.

- The opposition from employers remains in spite of the reduced scope and authority of the JLC under the Act of 2012, compared to earlier legislation.

- Unions point to there being no increase in basic pay since the High Court decision and maintain that there has been a lowering of the ERO pay rates (higher) to the minimum wage level (lower).

- Employers point to the additional cost of administration arising from the requirement to implement the various terms of the ERO.

Conclusion:

- As a matter of fact, the last increase in pay in this sector was in June 2009* – four years ago in June 2013. For those who did not receive any increase from their employer since that date this represents a four year pay freeze in June 2013. This compares with the national minimum wage which was last revised in 2007-almost six years ago.

- The views of the employers and worker representatives are diametrically opposed in terms of their experiences of any adjustments made to the standard minimum remuneration and standard conditions of employment.

- It appears that the union position is that the JLC should and will always provide rates of pay and conditions of employment above the national minimum wage and other employment statutes – based on their experience in the 11 years since the introduction of the national minimum wage.

- The employers appear to agree with the unions' expectation in the event of the restoration of the JLC for catering, i.e. that they will ensure that all or most rates of pay and conditions are above the national minimum, hence a key factor in their opposition to such restoration, based on their experience.

- On one point, the keeping of records – while the ERO for catering may give precise definition to some of the requirements for this sector in terms of annual leave breaks and so on, most of the sections simply mirror the Organisation of Working Time Act and therefore such record keeping it still required in the absence of a joint labour committee.

- Given that at its maximum, and after a period of training amounting to a year in the same employment that the difference between the minimum wage rates and the wage set by the JLC was 66 cent per hour (7.8%), the depth of feeling on both sides of this argument is difficult to explain as is their inability to find common ground on the issue having worked together on these issues for decades. However, it is evident from the submissions and meetings with some sectoral representatives of employers and the trade unions, that the depth of feeling is substantial. The employer view has not been qualified by the significant alterations in the scope of the JLCs decided by the Minister and enacted in the 2012 Act, particularly in this sector as it would apply to Sunday premium and those entering into employment for the first time before and after the age of 18.

NOTE: The LVA extract is included under this subsection because its content is correct in that in the event that there is a JLC for this sector, the JLC would be required to formulate any proposals in full compliance with section 12 of the Act of 2004, and in particular sections 12(4), (5), (6) and 12(7), and to satisfy the Court that the committee had regard to the six factors set out in section 12(6). In effect, a joint labour committee for this sector, or any sector, would start its deliberations with a blank piece of paper and would be required to comply with the provisions of the Act of 2012, in full.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

IBEC

"Not every catering establishment is in equally dire straits. After the decision in the QSFA case, the great majority did not seek to reduce terms and conditions of employment of workers. However a significant number did so by agreement with workers – and in doing so, saved many jobs which would otherwise have been gravely threatened. Entry level wages gave in many cases were brought down to levels significantly below the rate set in the former ERO."

and

"If the JLC is maintained and proceeds to make EROs, there is a strong likelihood of a significant negative impact on employment levels, especially at entry levels. There is a near-certainty of serious damage being done to harmonious relations between workers and employers."

and

"The former ERO, while in operation, set pay rates at unsustainable levels and caused a significant and enduring loss of employment promptly on the onset of current economic crisis.

The loss of employment was most starkly felt in the catering establishments which closed. However, even in those catering establishments that have remained open, there was a significant reduction in headcount and working hours."

Peninsula

"The industry provides valuable work experience to a large number of persons entering the workforce for the first time, or for those engaged in seasonal work."

and

"Overly restrictive employment conditions with threaten employment and those employees who are unskilled or inexperienced will be the first to suffer by a reduction in hours or by layoff, be it temporary or permanent."

Supermacs

"The successful constitutional challenge to the JLC system by the QSFA removed any ERO's and disabled the JLC system. In the years since, the minimum wage has applied to new employments previously covered by the JLC system. This has not had an negative effect; in fact I would say the opposite. Finally, employers are in a position to pay a minimum entry rate to oftentime's unskilled/untrained/young workers, and pay more to experienced staff who rely on the industry for fulltime employment and family income. This system allows

the employer to reward effort and performance by paying extra, whereas the old system set the bar so high at entry level, the budge was drained and performance pay was difficult to budget."

LVA

"1. What is the economic justification for a JLC for the Sector?

None; minimum wage and other legislation ensure a reasonable floor for terms and conditions of employment. In a time of such economic uncertainty there is a clear imperative to protect existing jobs in pubs. We would also argue that JLC's would inhibit the rate of job creation in such a labour intensive industry once the upturn kicks in."

RAI

"JLC's have had devastating impact in terms of opening hours of establishments, which reduces the service offer in many situations. It is clear that this is sufficiently widespread to be a major dis-improvement in the quality of the tourism sector. It will further impact on the attraction of Ireland as a destination for Tourism."

and

"Restaurants are the economic engine rooms of Irish towns and cities. At present due to this Anti-Business, Anti-Employment system, we cannot employ staff on Sundays due to the unviability of opening our doors. We cannot employ unskilled students and train the next generation of restaurateurs."

MANDATE

"Furthermore and crucially, there has been no major increase in employment in the sectors that were covered by JLCs following the 2011 High Court ruling. This is despite anecdotal statements and polemics from employers asserting that employment in the covered sectors would rapidly increase as soon as the JLCs were abolished. MANDATE is firmly of the view that the debate needs to move on from the narrow focus on pay and the cost of labour to concentrate on the quality of jobs that are covered by the JLC system. Substandard terms and conditions should not be accepted in JLC sectors as an excuse to preserve jobs."

and

"In their seminal paper on the issue of employment and minimum wages Card and Krueger (1994) found no evidence in their study that a rise in the minimum wage in New Jersey reduced employment in fast-food restaurants in the region. There was also no negative effect on the number of outlets remaining open. Of particular relevance to the current review, research carried out in Britain following the weakening and eventual abolition of the Wages Councils, has found no evidence of an employment creation effect. Instead, studies conclude that the

weakening of Wage Councils has played an important part in a rise in wage inequality in Britain (Machin, 1997)."

SIPTU

"SIPTU contends that the impact on employment levels in the hotel sector from the introduction of a wage floor will be negligible. This will be influenced by a number of key Industry features:
a) The market structure which in turn determines the price setting power of any one operator
b) The share of labour costs as a percentage of total costs, the size of the proposed wage premium and the elasticity of labour demand in the industry
c) The importance of the service in the context of the total activities of the business."

and

"Impact on employment levels depends on the combination of the price elasticity of demand for the service provided and the percentage share of labour in total costs. Studies differ on the elasticity of the hotel and hospitality sector, but the evidence over the course of 2012 suggests that while room rates fell by less than 1% across the 12 months, occupancy increased by 5% over the first 9 months of the year. On the face of it, this suggests that the sector is highly price elastic. However, hotel room capacity contracted by 3% over the same period. Employment in the sector increased by 6,800 to 50,100 over the 12 months to quarter 3 of 2012 (non-seasonally adjusted).

Payroll relating to accommodation, food and beverage within the hotel sector accounts for 31.4% of total revenue. Within each department in a hotel, just over a third of the cost in food and beverages is attributable to labour costs, with the payroll accounting for just over a quarter of room costs. Standardisation of the sectoral minimum wage to apply to all hotels nationally implies an increase for some hotel workers in the order of 5% or just €0.44 per hour per employee, which in turn would account for just 1.5% of the value of total output in the sector (in basic prices). With net margins averaging 12.9% in 2011, the hotel sector would be well capable of absorbing a 1.5% increase in its cost base.

Sustained competitiveness in the sector depends on a well-trained, experienced, stable workforce. Deloitte report that research consistently shows that "high employee engagement is correlated with customer satisfaction, customer retention and corporate performance." Based on 2012 figures and relative to other sectors, the rate of job churn across the accommodation and food and beverage sector in Ireland is over 1.5 times the economy's average. The high rate of job churn is strongly correlated with the rate of pay and terms and conditions that prevail in the industry, which are typically at or close to the National Minimum Wage. Again Deloitte note the cost associated with high employee turnover and the negative impact on brand consistency.

The re-establishment of a JLC for the hotel sector or the establishment of a national hospitality JLC is likely to have little or no impact on entry level employment levels. Training rates will still form part of a JLC. Labour demand for

new entrants into a sector is largely determined by the rate of job churn and while the rate may have slowed over the course of the economic recession, the rate for the hotel sector remains well above the economy wide average. Furthermore, labour demand for new entrants is reflected in the number of vacancies in the sector and the 2012 Fás/EGFSN report on vacancies highlights demand for hospitality occupations with a sizable share of these requiring no minimum experience.

Payment of a wage set down by a JLC would act as an efficiency wage and as such have the potential to increase the supply of talented and high quality labour into the industry as opposed to lowering the employment level. By setting a JLC above the national minimum wage, employers in the sector incentivise staff loyalty and provision of higher quality services, improve staff retention, reduce staff turnover and staff search costs."

and

"There is likely to be a negligible impact on employment levels in the catering sector from the introduction of a wage floor. It will be influenced by a number of key industry features:

a) The market structure which in turn determines the price setting power of anyone operator
b) The share of labour costs as a percentage of total costs, the size of the proposed wage premium and the elasticity of labour demand in the industry
c) The importance of the service in the context of the total activities of the business.

Operators within the catering industry are by and large price setters. As has been stated above, less than 30% of the VAT rate reduction introduced in 2011 was passed on to consumers by the food service industry made up of restaurants, cafes, fast food and take away establishments. Contract catering companies have actually increased prices by 1.8% during this period.

While restaurants and bars are made up of a large number of independent establishments, they retain oligopolistic price setting power as they provide differentiated services to the market. Quick service restaurants are dominated by chain operators which account for two thirds of all turnover in that particular sector. Similarly, the contract catering sector is dominated by a small number of very large players, with the three largest operators accounting for 90% of total market turnover.
Impact on employment levels depends on the combination of the price elasticity of demand for the service provided and the percentage share of labour in total costs. Various studies differ on the elasticity of the catering sector, but the evidence between July 2011 and December 2012 suggests that while prices fell by 0.9% over the period, the value of services purchased grew by 6.8%. On the face of it, this suggests that the sector is highly price elastic, however this masks a recovery in the value of sales from a very low base. On-going restructuring of the sector has meant that it continues to experience job cuts while demand for services has improved.

Compensation per employee across the accommodation, food and beverage sector accounts for just 31.6% of the value of total output in producer prices in the industry. A rise in the sectoral minimum wage to previous JLC levels implies an increase in the order of 7.6% or just €0.66 per hour per employee, which in turn would mean an increase of just 2.4% of total costs.

Sustained competitiveness in the sector depends on a trained, experienced workforce and this is a point recently highlighted by an employer body in the Industry. Professionalism of the service giver is a major factor in the quality of the service. Personnel who know how to do their job have self-confidence which translates into good interpersonal relations between the service provider and the service receiver. Relative to other sectors, the rate of job churn across the accommodation and food and beverage sector is over 1.5 times the economy's average based on 2010 figures. The high rate of job churn is strongly correlated with the rate of pay and terms and conditions that prevail in the industry, which are typically at or close to the National Minimum Wage.

A re-established Catering JLC or newly established Hospitality JLC is likely to have little or no impact on entry level employment levels. Training rates will still form part of a JLC. Labour demand for new entrants into a sector is largely determined by the rate of job churn and while the rate may have slowed over the course of the economic recession, the rate for the hotel and catering sector remains well above the economy wide average. Furthermore, labour demand for new entrants is reflected in the number of vacancies in the sector and the 2012 Fas/EGFSN report on vacancies highlights demand for hospitality occupation with a sizable share of these requiring no minimum experience.

Payment of a wage set down by a JLC would act as an efficiency wage and as such the potential to increase the supply of talented and high quality labour into the industry as opposed to lowering the employment level. By setting a JLC above the National Minimum Wage, employers in the sector incentivise staff loyalty and higher quality provision of services, improve staff retention, reduce staff turnover and staff search costs."

VFI

"Where Employment Regulation Orders have had the most adverse effect on employment levels is at entry level. The fixing of Statutory Remuneration above the general level will have its most significant effect in this area. Jobs for chefs, barpersons, restaurant mangers etc. will command a premium above the minimum levels. Because public houses are competing with cinemas, gyms and other outlets as outlined above that are not subject to minimum criteria above those set out in law it will have a negative impact on employment levels. This was seen clearly in the 2009/2010 period when many pubs and restaurants simply closed their doors on Sundays because it was uneconomic to stay open resulting in reduced choice for the consumer and, more importantly, reduced work for employees.

On the basis that JLC's, and resultant ERO's, have had significant adverse effects on employment in the sector in the past, and the continuing weakness

and falling employment in the trade we believe that the JLC in this area should be abolished."

and

"We believe there is no economic justification for a JLC in the sector. Economic theory and research suggests that a minimum wage set above the market equilibrium will reduce employment and increase unemployment. Labour cost is a major element of overall cost competitiveness which is itself a substantial component of overall competitiveness. Forfas, in its October 2010 report argued that additional improvements in labour cost competitiveness was needed to support internationally trading enterprises, locally trading enterprises and to make marginal business opportunities profitable. Economic analysis indicates that the sectors which are most vulnerable to the adverse effects of statutory minimum wage are ones where labour costs are a large component of total costs. Within our sector wage rates range from in excess of 20% to approximately 33% of total costs and of such are very much at the high end of labour costs as a percentage of operating costs. The effect on employment is important in any economic justification and the effect in this case would be negative. Forfas in 2010 reviewed the economics research on the employment impact of minimum wages. It reported that "a majority of international studies surveyed by Neumark and Wascher (2007) gave a relatively consistent indication of negative employment effects of minimum wages". These found that in the studies with a negative employment impact a 10% increase in the minimum wage reduces employment in the relevant labour cohort of between 0% and 5%. On this basis, any increase in wages above the minimum wage would have a negative effect on employment and as such could not be economically justifiable."

Summary:

- The RAI submission in respect of the effect of the Sunday rates of pay on Sunday trading outside Dublin appears to predate the High Court decision, following which presumably in the absence of an established Sunday premium of double-pay, employers were in a position to increase employment at weekends as this particular requirement was always regarded by employers as an obstacle to employment creation prior to the High Court decision. This factor was cited at a meeting with the representative of the RAI who spoke of a small increase in employment in restaurants some of which can be attributed to no longer being obliged to pay double time on Sundays.

- The Supermacs submission indicates that while they are now paying the minimum wage to unskilled/untrained/young workers, that they have offset this reduction by payment to more experienced staff and not in creating additional jobs.

- IBEC in their submission point to wage rates now being at 2008 levels which is one year prior to the most recent ERO for the sector. The rate established by the Joint Labour Committee in 2008 was €361.71, which would have applied to the unskilled adult worker and was €9.27 or 4 cent less than the hourly rate established in 2009.*

Conclusion:

- The information provided in terms of how the fixing of statutory minimum remuneration and conditions of employment impact on employment levels is not very specific and the measurements seem to vary quite considerably.

- There are no figures presented in this sector to counteract the statement made by MANDATE that *"there has been no major increase in employment in the sectors that were covered by JLCs following the 2011 High Court ruling."* Therefore, the reasonable conclusion is that taken in isolation the difference between the minimum wage and the rate of pay for unskilled workers in this sector who are the dominant number within the category of new entrants did not of itself lead to job losses at the level of entrant and its removal has not led to an established increase in the number of jobs in isolation from those same factors.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

IBEC

"Contract catering operators have well-developed mechanisms for established pay rates and conditions of employment, either through individual or collective negotiations. The one-size-fits-all approach of the JLC is particularly inappropriate for the contract catering sector."

A Worker (Kildare)

"I work for – Catering. Staff wages have been cut by 15% and staff numbers have been cut consequently everyone gets less work."

A Worker (Cork)

"I work for – Catering in Cork. Since the collapse of the JLC in catering I have seen changes in terms and conditions of incoming workers. As I am a worker in low pay sector I see the need to have a JLC to protect workers like myself."

LVA

"The level of activity by NERA and the work of the Rights Commissioners, Labour Court and the Employment Appeals Tribunal demonstrate that where an employee is unable to resolve a dispute directly with their employer there are many avenues for them to take to resolve the matter. As the proposed reforms come on stream for these bodies, employees will have a more efficient system for the enforcement of their rights and resolution of disputes where necessary

and renders the JLC system an unnecessary additional layer of protection. Employees have easy access to information and advice regarding their employment. Many organisations such as Citizens Information, NERA and the Migrant Rights centre as well as the Trade Unions provide free or reasonably priced information, advice and representation if necessary for employees."

and

"4. In the absence of a JLC how would they see pay and conditions of employment being developed in the sector?

This should be a matter for individual employers; in some cases involving negotiations with a Trade Union, in other cases negotiated directly with their employees with the assistance of the Labour Relations Commission if necessary."

SIPTU

"SIPTU contends that within this sector there is no prevalence of collective bargaining between workers and their employers at any level and the JLC system is the only means by which workers can bargain to achieve any legitimate interests and rights above the mere National Minimum Wage.

The vast majority of workers in this industry are not covered by collective agreement at individual employment level, nor do they work in an employment where a trade union is recognised for the purposes of collective bargaining."

and

"The retention of this JLC and its extension to have national coverage is justifiable on the grounds of fairness and relevance as the JLC allows the parties to engage and bargain collectively on matters other than the National Minimum Wage or other minimum statutory provisions such as: working hours, overtime, starting and finishing time and sick pay."

VFI

"In the absence of a JLC pay and conditions would be decided by market conditions and relevant legislation. All conditions like holidays, working time, maternity/paternity leave, Sunday premium etc. etc. are covered by primary legislation. That leaves rates of pay. Many of the categories employed in the sector are paid rates well above the minimum level reflecting the importance of the job and competition for experience in the area. A relatively small number of people, primarily at entry level, are at the minimum wage level and the minimum wage was put there to protect people at that level."

Summary:

- Insofar as any of the employers' submissions contend that there is collective bargaining in this sector it appears to be at enterprise level and as described in circumstances where there is to be a reduction of pay and perhaps other conditions such as working hours etc.

- IBEC does draw a distinction between the contract catering operators and other segments of the sector in terms of having individual or collective negotiations on pay and conditions of employment. There is no reference to this subsector in the SIPTU submission in terms of collective bargaining

Conclusion:

- With the possible exception of some contract catering operators, there does not appear to be any, or few, fora for collective bargaining in respect of terms and conditions of employment in this sector other the JLC. Therefore, in the absence of any contrary indication, it is concluded that the fixing of statutory minimum remuneration and of statutory conditions of employment by the Joint Labour Committee has not been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employer and workers in the sector.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

IBEC

"The arbitrary geographical distinction which applied between catering establishments in respect of which the JLC operates and catering establishments in the rest of the country was entirely unjustified. The two JLCs operate in respect of different establishments and set different conditions of employment in respect of the two different geographical areas."

Peninsula

"As an initial observation there is no reason for two different catering JLCs where the rates of pay and premiums are similar, and when the only variance is in the definition of catering establishments.

As an exercise in efficiency the separate catering and hotel JLCs should be merged into one to cover catering and hospitality, as the work carried out in both industries is seen by many to be similar in nature, and catering and hospitality are regularly combined in surveys or reports by the CSO or Eurostat."

LVA

"Careful consideration should be given to the inclusion of any geographic boundaries that could result in different terms for neighbouring businesses – in the case of the Catering JLC's there were cases of pubs in the same neighbourhood having different ERO's applying because of the County Borough boundary. There is no case for dividing a single sector geographically in a small country like Ireland especially considering the urban creep of Dublin into adjoining counties; geographically divided JLC's would again result in neighbouring and competing businesses with different legal obligations.

It is also vital that if there must be a JLC that there is no distortion to the market because of the type of food business. There must be a level playing field for the sector across the whole country, whether you are a pub, restaurant, café, hotel, bistro, tapas bar, gastropub or wine bar serving food. Most importantly it will ensure that for this element that is no competitive advantage to being categorised as being in one particular part of catering over another. So if there must be a JLC, the preference of the LVA is that it would be established as a single national catering JLC to create a level playing field across food businesses."

SIPTU

As stated at the outset of this and previous chapters, SIPTU believes that reform is needed in this area and that there should be one national JLC for Hospitality or, failing that, a single national Catering JLC thereby negating the need for regional representation."

Summary:

- Of those submissions made to this review under this subsection all are agreed that in the event of there being a joint labour committee for the catering sector that the scope of the JLC should be national and not regional.

Conclusion:

- There is a considerable degree of consensus in the submissions that, in the event of their being a JLC for this sector in the future, the continuation of regional representation in this sector is not justified.
- One of options put forward envisages a National Hospitality Sector JLC incorporating Catering and the Hotel Sector.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• A Worker (Catering Company) • A Worker (Catering Company)	• SIPTU[3]	• MANDATE[4]	• Peninsula Business Services[2] • IBEC • Supermacs • LVA[1] • RAI • BWG • Triode Newhill Management Services Limited • VFI[5]	[1] *"Without prejudice to our position in support of complete abolition…so if there must be a JLC, the preference of the LVA is that it would be established as a single national catering JLC to create a level playing field across food businesses."* [2] Peninsula contend that this JLC should be abolished, however, going on to say that it is *"unlikely for the JLC covering persons involved in this line of work to be removed, as it accounts for a significant proportion of all inspections and recovery of monies."* They then go on to propose *"one singular hospital and catering JLC provided as all engaged in similar work".* [3] SIPTU makes the case for the merger of the Hotels and Catering JLCs into one national sector JLC entitled *"Hospitality"* JLC. [4] Mandate "*Furthermore a separate class of worker – workers employed in the bar or pub trade – must be covered by an expanded hospitality JLC.*" [5] VFI *"If there is a JLC… it should only apply where the majority of the business undertaken by an enterprise is covered by the term of reference… it should only apply to those whose primary business is catering in the full catering sense."*

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

- To retain the JLC in its current form would be to retain a regional distinction that has not been justified in any of the submissions which dealt with this issue.
- To retain the JLC in its current form would be to continue the distinction between food served where there is seating, and where there is none and between hot and cold food.
- To retain the JLC in its current form would be to retain the specified list of establishments set out in the Establishment Order by type, such as fish and chip shops.
- To retain the JLC in its current form would be to continue the distinction between the wages of those serving of food and alcohol in the same establishment-or so it would appear.
- To retain the JLC in its current form would be to maintain the difference between pubs serving hot food inside and outside of Dublin

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[16]

There are two different options presented in terms of amalgamation.

1. To amalgamate the two existing Joint Labour Committees. If this option is recommended then the pubs serving food outside of Dublin would come within the scope of an

[16] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant. Subsection (8) of clause 11 is taken to apply in these circumstances.

establishment order unless any sub sector is specifically excluded. One possible obstacle to this approach would be to extend an establishment order to include public houses which were not encompassed by the previous establishment order could be regarded as a new establishment order. This matter requires further consideration.

2. The other alternative in terms of amalgamation is to amalgamate four Joint Labour Committees, i.e. the two for catering and the two for hotels, into one joint labour committee entitled the Hospitality Sector Joint Labour Committee. If this option were recommended it would bring within the scope of a JLC, hotels in Cork and pubs serving food in Dublin, neither of which were encompassed by the previous Establishment Order for their sectors.

3. Option could be deemed to be a new establishment order in these subsectors in the particular geographical areas. This matter requires further consideration.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

The issues addressed here relate to the type of establishment and the class of workers which could be comprehended by any JLC in this sector-leaving aside the option of amalgamation with Hotels- the exercising of which would require further consideration of the classes of workers and the type of establishment.

- One option presented is that the scope of a JLC for the catering sector should be extended to include all workers involved in: the preparation of food and drink; service of food and drink; and indirect work that is incidental to the foregoing.

- If all employments who engage workers for the purposes of providing a catering service (including the service of alcohol) are to be encompassed within one joint labour committee, then the simplest option in terms of the definition of the establishment would appear to be any establishment which is engaged in (a) the preparation of food and /or beverages including alcohol, (b) the service of food and/or beverages including alcohol, (c) the provision of either of the services at (a) and (b) to a third party by means of a paid contract(payment).

- Establishments covered by such a JLC would mean a premises or part of a premises used for supplying for reward to any person, not for the time being resident on the premises, food and/or beverages or alcohol for consumption.

  This approach could avoid all of the current subdivisions in the existing Establishment Orders but would result in the extension of the scope to include establishments without seating and also to all public houses. This may again raise the issue of whether or not the extension of an establishment order to cover geographical areas or types of establishment not previously comprehended by an establishment order would represent a new establishment order requiring a different procedure to be adopted under the Act. This matter requires further consideration.

- One other option is to remove the contract catering element of catering from the generality of any catering joint labour committee on the basis that the competition within that sector is quite distinctly different from the remainder of the catering establishments and would resolve some of the concerns raised in discussions with the contract cleaning sector because of the growing trend towards the provision of facilities management rather than single service providers such as cleaning or catering or security.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

- This remains an option to be considered in light of the submissions received supporting this option and the various conclusions.

10. Extracts from submissions received in response to requests for information/views

NERA

"Wholly or mainly" or "primarily" with no criteria specified to determine.

and

"And when used in the definition related to an employer's business, it was argued that the test could be carried out by reference to the relative annual turnover, relative annual sales, relative profit margins of products (mentioned in an ERO to overall), time spent by employees on that part of the work relative to the other activities in the establishment, the number of staff assigned relative to the number assigned to other activities or any of the above. This was especially problematic with mixed undertakings."

and

"Incidental activities connected to" or *"work incidental to"*

and

"And generally, how far from the original activity does "incidental activities connected to"extend?"

11. Overall Conclusions leading to Recommendations

The recommendation is that there should be one national JLC for catering the scope of which should be clarified and extended to remove outdated and uncompetitive distinctions which are no longer justified.

In the event that the JLCs are not amalgamated and extended, it is recommended that the existing structures and scope be maintained as they are.

This is a complex sector in terms of competitiveness and it, more than any other examined has evolved and altered since the JLCs were established in terms of the nature and form of the competitive market, the number of outlets and the profile of the workforce. This review has identified four subsectors within the one overall sector: restaurants serving food with or without drink; places established as public houses and wine bars serving hot and cold food and other beverages; quick service outlets; and, contract catering. In each of the first three they compete within their own subsector and with other subsectors to a greater or lesser extent. The fourth, contract catering, competes within that subsector and with other businesses providing facilities

management across a range of services- cleaning, security, ground maintenance or any combination of these with catering. Multiple operators on an industrial scale are to be found within the quick food and contract catering services.

Collective bargaining, where it has existed to an extent, is in the contract catering subsector and also public houses in the Dublin area were at one time covered by collective bargaining arrangements but it is not known to what extent this still exists in either subsector.

Under the current Establishment Orders, the sector is divided on a regional basis. Public houses serving hot food outside of Dublin are covered by that JLC while those serving hot food in Dublin are not covered, which may in part relate back to the history of some collective bargaining organisation within that geographical area and superior rates of pay. The continuation of a regional demarcation is not considered to be justified. The industrial scale multiple operators within catering and quick food subsectors operate nationally. The historic regional divide gave rise to differing EROs with different terms and conditions of employment which caused disharmony with employers and gave rise to inequitable differentials between the two areas. Difficulties in changing these terms caused further disharmony. The regional distinction in a sector such as this where outlets are very small is very marked when there are different terms and conditions of employment. In other words, food outlets within range of each other were covered by two EROs, or none.

The demarcations between public houses serving cold and hot food and none; further regional distinctions between public houses serving hot food inside and outside of the Dublin area; the distinction between those establishments serving the same range of products and sometimes exactly the same products but divided for the purposes of the JLC between those with seating and excluding those without contribute to disharmony, unacceptable distinctions and problematic interpretation. When the Catering JLC is extended into the retail grocery market then the two JLCs become entangled which leads to inflexibilities, additional costs and record keeping for employers and a lack of clarity for employers and those bodies charged with overseeing the application and enforcement of EROs.

It has proved impossible to arrive at a definition of the type of establishment which is to be covered which would include every single outlet that sells prepared food for human consumption. However, what follows are recommendations which if adopted would reduce and clarify the current levels of demarcation in the competitive marketplace.

- Remove the regional distinction

- Remove the distinction between pubs serving hot and cold food outside Dublin

- Remove the distinction between places serving food and alcohol and those serving only alcohol

- Remove the overlap within grocery establishments as defined and the Catering JLC

- Remove the distinction between establishments with seating and those with none

- Clarify that the Catering JLC extends to all franchise and contractor food businesses wherever they are located and providing a service.

It is the view of the review that the rationale related to competitiveness taking into account the changes in the types of establishment since the JLCs were originally established are applied then the competitive market which is comprehended by a Catering JLC should be extended in a number of directions and also clarified where there is any ambiguity or unjustified demarcation.

When any premises serving alcohol is included then it follows that the JLC for catering should include off-licences a number of which are attached to public houses and which compete with other off-licences for the sale of alcohol off the premises. In the event that the recommendation to extend the scope of the Catering JLC to premises serving food and drink or food or drink is accepted it is recommended that the title of the Joint Labour Committee be changed to that of the Catering and Licensed Trade JLC.

The recommendations to remove demarcations are designed to reflect the scale and coverage of the catering service and the main competitiveness within the sector. The overwhelming majority of workers within the sector would also be covered. There would be some minor exclusions, e.g. small independent grocers and cake shops, or shops with garage forecourts who are not covered by the retail grocery proposals either, but the review is satisfied that the overwhelming majority of establishments serving food and/or drink for consumption on or off the premises would be comprehended by the recommended amendments in both sectors. Certainly existing demarcations, many of which are viewed as anticompetitive and certainly unfair, would be removed.

In terms of economic justification in respect of the workers in this sector, it is accepted that many are young workers, that there is a large proportion of female workers and part-time workers, and since the Establishment Orders for the Catering sector were created and amended that there is an increasing proportion of migrant workers throughout the sector in all types of establishments.

The only reservation which the review has about trying to comprehend all aspects of this sector within one Catering JLC is that the contract catering segment could be a

discrete segment given its similarity with contract cleaning and contract security in terms of the type of competition within the market as between the operators. As evidenced to this review, increasingly there is overlap between the different sectors in terms of facilities management as distinct from providing a single contracted service. Contract catering is also far more likely to be affected by the provisions of TUPE than other sub sectors in catering.

However, in the absence of dialogue between the representatives and the employers and the lack of engagement in terms of the detail which should apply to any establishment order, as distinct from whether there should be one at all, the review stopped short of recommending that contract catering be covered by a standalone JLC at this time. Such a segmentation of the sector could be achieved through arriving at a collective agreement which would have statutory effect but it would require dialogue and cooperation between the worker and employer representatives to achieve what is, in the view of the review, a desirable objective. Such a development would avoid having contract catering as part of the assessments to be made under the Act of 2012 regarding the rates of pay and terms and conditions of employment to be proposed by the JLC.

12. Recommendations

Retain as one JLC – eliminating the regional distinction, clarifying and extending the scope and changing the title, or retain as presently constructed

Amend the definition of a Catering Establishment to define the establishments covered as- a *business or premises approved primarily for the purpose of and continuing to supply prepared food or drink for consumption on or off the premises,* for reward to any persons, *other than those premises where the workers engaged in these activities are covered by the Retail Grocery JLC or are employed by a hotel.*

Amend to delete (c) under Workers to whom this schedule applies '*work incidental to (a) or (b) and performed at any store or warehouse or similar place in the catering establishment'*

The effect of the first of these amendments would be to eliminate the regional distinctions and the distinctions between public houses that serve hot and cold food and once this distinction is removed it is recommended that the scope be extended to all public houses. To omit some public houses could leave to decisions not to provide catering services, or to disputes about what is food for the purposes of enforcement and generally continues the practice of excluding by definitions related to product that the primary purpose of the business.

The effect of these amendments is to remove the distinction between those who provide seating and those who do not which is not considered to be justified given that as they mainly compete within the quick food and coffee shop sector often within the same area, these distinctions are uncompetitive.

The effect of these amendments is that in this expanded JLC it would be appropriate to include off-licences as many are part of public houses and compete with them in many instances.

The effect of the second amendment is to confine the scope of a JLC to those who are involved in the tasks of preparing, serving and selling food or drink in the establishments covered.

The effect of these amendments would be to extend the current scope of a catering JLC in a manner that most of those businesses established for the purposes of providing a catering service in one form or another would then be competing on the same basis in terms of their labour costs. If inclusion or exclusion are defined by the product, or the temperature of the product, or the location of the establishment or the physical arrangements, this highly developed and equally complex sector will continue to give rise to illogical, regional and uncompetitive distinctions in this and other sectors which this review has sought to eliminate as far as this has proved possible.

It is recommended that the Minister should initiate proceedings that would allow for interested parties to express a view on a proposed amendment of the scope of a Catering JLC to encompass a revised title and scope for the JLCs that current operate in the catering sector along the lines as have been recommended in this review and through the exercise of the provisions of section 40 of the 1946 Act which in turn would require the Labour Court to exercise the provisions of section 38 and 39 of the same Act.

Should the Minister decide not to expand some or all of the scope of the existing JLCs it is not recommended that the two existing JLCs should be amalgamated as this would have the effect of having one JLC but with scope would be different for the two different regions comprehended by any ERO. In such a scenario consideration might be given to appointing one person to chair both JLCs in order ensure that there is consistency in respect of the related terms and conditions of employment across all of the sector covered by two Joint Labour Committees.

Contract Cleaning

Joint Labour Committee

1. Name

Contract Cleaning Joint Labour Committee

2. Establishment Order

S.I. No. 626/2007 – Contract Cleaning Joint Labour Committee Establishment Order, 1976.

Date: 14th September, 2007.

3. Activity

(i) Date of Most Recent ERO

25th June, 2011.

Note: This sector lodged a Registered Employment Agreement for 6 months dated the 3rd February, 2012. They proposed a Revised Registered Agreement to the Labour Court on the 29th January, 2013.

(ii) Date of Last Meeting (of JLC)

25th February, 2009.

(iii) Rate(s) of Pay as per ERO

€9.50 per hour*.

*This is also the rate in the proposed REA for the sector.

4. Scope

"1. Workers employed in Contract Cleaning on any of the following duties, that is to say—

The cleaning of the interior of offices, shops, hospitals, factories, stores and other similar establishments.

BUT EXCLUDING—

(i) Workers affected by any Employment Agreement, that is "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of the council representative of employers."

(ii) Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

(iii) Workers engaged on exterior structural cleaning.

2. In this schedule "Contract Cleaning" means the cleaning of premises by companies engaged in whole or in part on the provision of cleaning and janitorial services in establishments such as hospitals, offices, shops, factories, stores or similar establishments on a contract basis."

5. Number of Responses to Public Notice

6.

6. List of Responding Bodies

1. IBEC
2. SIPTU
3. Peninsula
4. ICCA
5. Derrycourt
6. Noonan

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

There were no conclusions or recommendations specific to this Joint Labour Committee in the most recent review conducted for the Labour Relations Commission (University of Limerick 2005) or in any of the reviews which preceded it in the 1990s.

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

This Committee was originally established in 1984 with a remit for the Dublin area. In 2007, the coverage of the Joint Labour Committee was extended countrywide. Any references under (b)(i) and (c)(i) below must be taken in the context of changes since 2007, where they arise.

IBEC

"The experience in the business since the establishment of the JLC has been positive. Although the former EROs provided for pay rates significantly in excess of the national minimum wage, this was justified by the scope of the JLC, which operates in respect of semi-skilled as well as unskilled workers. Semi-skilled cleaners would include cleaners of hospitals and high technology "clean-rooms". In the absence of a JLC, commercial pressures between contract service providers may create downward pressures on wage rates notwithstanding the semi-skilled nature of many of these roles. This would lead to a comparative diminution of rewards and incentives would create and difficulty in recruiting and maintaining in employment workers in such roles."

ICCA

"The nature of the work undertaken by or Employees we believe should attract a premium payment. We provide services 24/7, 365 days a year in a broad spectrum of environments for example hospital casualty

departments, high specification clean room environments and stadium cleans."

Summary:

- In terms of the class or classes of work this sector has developed to the extent that a recognition has developed that the nature of the work is semi-skilled in many respects.
- There is a recognition by employers for the need for premium payments in specific areas where the sector provides services.

Conclusion:

- It is reasonable to conclude that the employers wish to retain semi-skilled employees and pay premium payments in areas where other, particularly public sector employees receive premium payments and to comply with the Organisation of Working Time Act.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

IBEC

"In order to take account of the changes in the business which have occurred since the establishment of the JLC, the scope of the JLC should be extended to cover certain other types of cleaning activities, such as the cleaning of airports, apartment buildings and the exterior of buildings. These amendments should bring the JLC into line with the (more recent)

employment agreement which has been submitted to the Court for registration."

and

"In order to take account of the changes in the business which have occurred since the establishment of the JLC, the scope of the JLC should be extended to cover certain other types of cleaning activities, such as the cleaning of airports, apartment buildings and the exterior of buildings. These amendments should bring the JLC into line with the (more recent) employment agreement which has been submitted to the Court for registration."

Noonans

"Our business has grown based on approach to delivering solutions to our clients. This means that we can develop solutions which will help our clients to drive costs from their businesses. The way to do this is not a race to the bottom on wages, but through a structured approach in enhancing productivity, dilution control systems and smart chemical packages, uniforms and equipment."

and

"It is our opinion that the number of Irish companies in this space is falling as smaller Irish operations struggle to survive in the current economic climate."

and

"It is our opinion that the scope of the JLC should remain with each sector and within that identify who it applies to. We are concerned that if the scope is not clear that some companies may try to define employees as operatives rather than cleaning operatives etc., so as not to have to pay applicable JLC rates. For example if Noonan are pricing a contract for cleaning a canteen area, we will price it based on cleaning rates, however, our experience has shown that other companies may price it differently."

ICCA

"It is argued that reducing wage rates can improve competitiveness in the economy by driving down cost of doing business in Ireland. However our industry has its foundations in driving costs out of operating models. The ability to drive costs out is a critical success for any company operating in the industry. Costs are driven out not by lowering wage rates but through higher productivity, lower cost equipment, uniforms, vehicles and maximising Information Technology. It should be noted that the industry has seen significant shrinkage in our contracts in the last four years with some reductions of up to 50%."

Summary:

- The submissions from IBEC and ICCA indicate a desire to remove any ambiguity that might arise from the previous Establishment Order. Most of the amendments are contained in the scope of the recent JIC document submitted to the Labour Court as a proposed REA. The extension to "the exterior of buildings" is in addition to the scope of both the Establishment Order and the proposed REA.

- The statement made by Noonans regarding the scope of each sector remaining with that sector is important because it raises potential complications where a service provider engages a contractor to provide more than one service. From my two meetings with representatives of the contract cleaning and security sectors, it emerged that some companies and a growing number of the larger companies in cleaning and catering are providing multi-site service to clients. These may be traditional cleaning companies or more recently contract catering companies. The services provided may be two or more of cleaning, catering, security and ground maintenance were all mentioned. Three of these sectors were clearly covered by previous JLCs, and would provide the majority of the service(s) on any mixed purpose contract.

- In the event that there is no JLC or registered agreement in respect of any one of these three main services provided by some contractors, the pricing of contracts becomes more complex, wage rates will in all likelihood fall for those who are not covered by a collective agreement or an ERO. It raises further potential arising in the context of TUPE.

Conclusion:

- In this sector the submitting organisations for employers and trade unions favour the retention of regulated forms of pay and conditions.

- The issues raised in the employers' submissions in terms of the scope of the Establishment Order could benefit from further joint discussion with the worker and employer representatives to address the issues raised by the employers under this subsection.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

Conclusion:

- There is nothing to have regard to arising from this subsection.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

ICCA

"The ICCA can provide both positive and some negative comments with regard to the enforcement regime. We believe that the appropriate structures provide for enforcement across the board and the supporting Euro details compliance requirements.

Over the years our member companies have actively worked to ensure compliance. Over the past two plus years, we have sustained rates at €9.50 per hour when other companies have actively chased our business at rates of €8.65 per hour. At times our member companies have notified us of the impact this has had on our business.

The issue of TUPE has become greater, with some competitors failing to accept TUPE on transfer while the ICCA encourage our member companies to act appropriately. However, it has been the experience of some companies that TUPE cases have been lost and thereafter redundancy costs incurred because the other company would not accept TUPE. We as an association are very concerned that if there is no wage setting mechanism in place that the number of companies who do not honour TUPE will increase."

Peninsula

"The industry has a strong compliance rate with 51% of the 43 businesses inspected in 2011 being compliant with employment legislation. Employers in this industry are mindful of their obligations to their employees and look to work with the employee unions on this."

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009 Cleaning Dublin	*36*	*8*	*22%*	*€63,459*
2009 Cleaning Country	*142*	*81*	*57%*	*€61,973*
2010 Cleaning Dublin	*27*	*15*	*56%*	*€1,491*
2010 Cleaning Country	*33*	*23*	*70%*	*€23,422*
2011[1] Cleaning Country	*15*	*8*	*53%*	*€10,215*
2011[1] Cleaning Dublin	*5*	*1*	*20%*	*Nil*

[1] The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. The figures for 2011 are broken down under a number of headings and, in the country area, in respect of the standard minimum remuneration, the number of breaches was 3, and in relation to the records kept the number of breaches was 7. In Dublin the level of noncompliance in relation to the standard minimum remuneration was nil and the level of noncompliance with records was 1. A similar breakdown of figures for 2009 and 2010 was not provided.

Summary:

- The NERA figures indicate a declining rate of noncompliance in Dublin and steady levels of noncompliance outside Dublin, although the rate of recovery of unpaid wages has reduced, indicating greater compliance with the SMR (standard minimum remuneration).

Conclusion:

- The NERA figures indicate that there was virtually no issue of noncompliance in Dublin by 2011-and that while a problem remains outside of the Dublin area-the extent of the problem was reduced.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

IBEC

"The situation in respect of contract cleaning is different (from hotels, catering and retail and grocery) in that the pressure on wages is more relative than absolute. The pricing of cleaning contracts is essentially derived from the wage costs of the operators... The absence of an ERO or REA would mean that employers would be forced to pay lower rates."

and

"Another issue arises in respect of the Transfer of Undertakings regulations. Cleaning contracts regularly transfer between operators. The existence of the former ERO gave employers a degree of certainty (when bidding for contracts) about what wage levels would be. In the absence of an ERO or REA, that certainty would be lost; some employers would continue to pay the former rates, others would move to the national minimum wage. Employers might win a contract based on an assumption that transferring workers would be paid the national minimum wage only to learn that the workers are paid more than that. Such an employer may well have no choice but to reduce costs somehow, inevitably leading to legal difficulties and negative effects on harmonious relations between employers and workers."

Noonans

"The JLC and REA mechanisms are used by our company to provide a platform for fair competition and allow us to demonstrate real commercial solutions when delivering services which can then be benchmarked by our clients."

and

"We are aware that it may be viewed that we are seeking to protect a market leading position, however we would argue that irrespective of the size of the organisation that providing a wage setting mechanism provides all Companies with fair competition and an opportunity to retain and grow their business within capacity. It is our view that since the JLC structure fell, and the REA has expired that we are finding it more difficult to compete and that our margins where we do retain business are being impacted very negatively."

Summary:

- The employer submissions recognise that the fixing of rates of pay through legal regulation may be regarded as anticompetitive but point to the counterbalancing positives for workers. Elsewhere they point to the other aspects of the business which have changed and improved which provide measures of competitiveness other than on the basis of the terms and conditions of Operatives.

- The comments from the ICCA indicate that in this sector which is highly competitive with contracts regularly open to tendering – the absence of a JLC or a registered agreement, the rates of pay have and will continue to decline within the sector.

- TUPE has not been interpreted to the extent of providing protection to pre-existing rates of pay and terms of employment including overall income as might have been expected by the employers in this sector.

Conclusion:

- The competition issue directly affects workers in this sector in that from the submissions provided it is evident that in the absence of a registered employment agreement or joint labour committee the opportunity for workers in the sector to earn more than the minimum wage will be, uniquely, restricted in this sector. In the other contractors sector, security, even where there is disagreement among employers regarding the existence of a registered agreement the submission to this review does not suggest that all security workers in the industry would be paid the minimum wage, but rather that the payments would be linked to the type of work and the location of the work. It is noted that the abolition of any regulatory system for providing rates of pay in excess of the minimum wage would revert the concept of this employment to that of unskilled. It might also be said that where employers have in their employment a number of employees on the previous JLC and REA rate of €9.50 per hour they will suffer a negative competitive edge when competing against employers who would only employ those on a national minimum wage.

- The nature of this contracted sector is such that workers are particularly vulnerable to downward wage variations in the absence of a legally enforceable mechanism for rates above the minimum wage which rates have been confirmed to be justified by the employers.

- TUPE does not appear to provide sufficient protection to avoid redundancies and reductions in terms and conditions of employment in this sector.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

IBEC

"The situation in respect of contract cleaning is different in that the pressure on wages is more relative than absolute... The absence of an ERO or REA would mean that employers would be forced to pay lower rates."

and

"Another issue arises in respect of the Transfer of Undertakings regulations. Cleaning contracts regularly transfer between operators. The existence of the former ERO gave employers a degree of certainty (when bidding for contracts) about what wage levels would be. In the absence of an ERO or REA, that certainty would be lost; some employers would continue to pay the former rates, others would move to the national minimum wage. Employers might win a contract based on an assumption that transferring workers would be paid the national minimum wage only to learn that the workers are paid more than that. Such an employer may well have no choice but to reduce costs somehow, inevitably leading to legal difficulties and negative effects on harmonious relations between employers and workers."

Noonans

- *The abolition of the JLC structure will not create employment. While it may reduce labour costs it will increase the following:*
  - *people who previously had no dependency on social welfare will be forced into the social welfare net*
  - *people who had a minimal dependency will now have a greater entitlement to benefits due to a drop in earnings*
  - *there will be a drop in returns by Noonan to the Exchequer as our returns will reduce*
  - *the number of employees losing their jobs will increase. We believe that this will happen as non-adherence to TUPE will increase and Noonan will find it difficult to apply TUPE with some competitors.*

and

"It is our opinion that the number of Irish companies in this base is falling as smaller Irish operations struggle to survive in the current economic climate. The larger global players are picking up these businesses and operating them from international HQ. This is leading to a shift in back office and other support staff functions to other jurisdictions and impacting on employment levels in Ireland.

We believe that if wage regulations are removed competitors could aggressively target the contracts of Irish companies who will not be able to compete on price, which will lead to a reduction in Irish support jobs."

ICCA

"We believe it would have a resulting increase in levels of immigration as our employers would find it very difficult to attract people into our industry when the gap between social welfare and weekly take home pay has reduced. Thus instead of providing employment for qualifying people, we would be seeking to employ people from alternative routes."

and

"The level of redundancies would increase significantly if there was no wage setting mechanism as TUPE would not be honoured. The ICCA have worked hard collectively to apply TUPE and since the JLCs fell and the expiry of the REA our member companies have seen an increase in the number of other companies who will not honour TUPE. This has had a significant impact as some companies have ended up with redundancy situations when TUPE could not be applied on the loss of a contract and the cost of the redundancy is now wholly borne by the employer. Our member companies have found that the courts have issued decisions which result in them paying redundancy costs when TUPE should have been applicable."

Summary:

- The submissions from the employers indicate that the fixing of statutory minimum remuneration and statutory conditions of employment has not impacted negatively on the number of jobs in this sector, particularly at entry level. Indeed there is some indication of jobs being exported in parts of the sector which are not covered by any regulatory wage setting mechanisms. The ICCA will point to the loss of jobs since the JLC was suspended and with the expiry of the temporary REA for the sector.

Conclusion:

- There is no evidence submitted to the review of any negative impact on jobs resulting from the fixing of statutory minimum remuneration and statutory conditions of employment in this sector.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

Noonans

"If the wage setting mechanism is abolished we would have to engage with our staff to implement wage reductions as otherwise we could not compete with other companies. This by its nature would see an increase in IR activity at both a local level and third parties."

SIPTU

"The employers and trade unions in the contract cleaning sector have recently concluded a collective agreement. The intention of the parties to the agreement is to have it registered with the Labour Court as a Registered Employment Agreement pursuant to section 27 of the Industrial Relations Act 1946 and there is very substantial consensus in this sector for a system of centralised collective bargaining at industry level that enables the parties to engage on matters relevant to that sector and to apply minimum and forcible pay and conditions."

ICCA

"We have enjoyed positive industrial relations with the union over the years where applicable and the JLC and REA structures support this as they give detailed guidelines on requirements of all parties in the event of any disputes."

and

"It is the belief of the ICCA that we adopted a proactive approach along with SIPTU to establish an interim REA in the initial period and thereafter to negotiate a longer term REA in the absence of the JLC. This was done as all parties were in agreement that no wage setting mechanism would have a very negative impact on the industry."

IBEC

"If the wage setting mechanism is abolished we would have to engage with our staff to implement wage reductions as otherwise we could not compete with other companies. This by its nature would see an increase in IR activity at both a local level and third parties."

Summary:

- Worker and employer representatives who made submissions to this review are unanimously of the view that the Joint Labour Committee has provided the basis for collective bargaining in this sector and in the absence of a JLC the process of collective bargaining moved to a Registered Employment Agreement.

Conclusion:

- The submissions from the employer and worker representatives indicate that the fixing of statutory minimum remuneration and of statutory conditions of employment by the Joint Labour Committee has not been prejudicial to the

exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector.

- The requirement to have a joint labour committee established in the first instance which would provide for the opportunity to enter into a registered employment agreement as an alternative is an established conclusion from this analysis and including this subsection.

- It would appear that a revised establishment order is required in order to extend the range of employments covered where workers in the sector would be covered by the terms of any ERO. Clarification is also required regarding the extent of that amendment.

(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

As this JLC had national application this subsection is not applicable to this sector.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• SIPTU • Derrycourt		• IBEC[1] • Noonan[2]		[1] There is a technical amendment suggested by IBEC from *"companies engaged in whole or in part"* to *"cleaning of premises by undertakings (or parts of undertakings) engaged wholly or mainly"*. They also say that the scope of the JLC should be extended to cover the cleaning of airports, apartment buildings and the exterior of buildings to bring the JLC into line with the more recent Employment Agreement currently before the Labour Court for registration. 2 Noonans state that they wish to see the *"maintenance and possible amendment of the Contract Cleaning JLC"* – however they gave no specific proposals for amendments.

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

This is an option. However, as there is considerable agreement between the worker and employer representatives it would appear that option 3 would be the preferred option subject to clarification on the extent of any amendment.

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[17]

This option does not arise in this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

- One option is to amend to extend the range of premises encompassed by the Establishment Order.
- A second option is in addition to the first option and would extend the scope of the Establishment Order to cover external cleaning.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

This is not an option favoured by any party, although it is noted that the preferred option on the trade union side is that of a registered employment agreement.

[17] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant. Subsection (8) of clause 11 is taken to apply in these circumstances.

10. Extracts from submissions received in response to requests for information/views

There was total consensus as between the unions and the employers in the submissions to the review regarding the need to retain a statutorily enforceable mechanism to provide for pay and conditions of employment within the sector.

The submission from employers proposed an extension of the Establishment Order.

In view of the level of consensus that existed and to ensure that there was no disagreement on this point ICTU was asked for their view of such a proposal.

The response was: *"SIPTU supports this view and have already included it as part of the case put forward in application for a registered employment agreement."*

IBEC

IBEC also responded on this point and stated:

> *"As far as I can see, the draft REA does not exclude "workers engaged on exterior structural cleaning".*
>
> *The draft REA operates in respect of "the internal and external cleaning of offices, shops etc." It appears from the text of the draft REA that the intention of the differing definition used in the REA is to achieve two objectives: (1) the express inclusion of apartment buildings, stations, airports and vehicles, in the types of places and things which are cleaned; and, (2) the inclusion of external cleaning, including exterior structural cleaning.*
>
> *However, it is not clear that this is what was really intended. I have been given to understand that the intention was to include exterior cleaning which is ancillary to interior cleaning but does not extend to exterior structural cleaning. That is to say, to include people who sweep the outside steps of a building but to exclude people who sandblast the walls or wash the fifth storey windows.*
>
> *If that is so, then the appropriate middle ground would be to use the expression "internal and external cleaning" in the main definition but to retain the exclusion of "exterior structural cleaning" which currently exists in the Establishment Order.*
>
> *I have asked for further clarification from our relevant members about what they were thinking when they agreed the terms of the draft REA. I do not yet have a clear answer but will contact you when I receive one."*

There was no further communication received from IBEC on this matter of the definition.

11. Overall Conclusions leading to Recommendations

This JLC should be retained with an amended Establishment Order.

The economic justification for this JLC has been set out to this review by the employer and trade union representatives and is accepted. In addition to the points made to the review, the workers in this sector are mainly female, part-time, and increasingly, migrant workers. These workers would be heavily exposed to a lowering of well established rates of pay and conditions of employment if there were no enforceable statutory based agreements between unions and employers in the sector.

The recommendation as to who should be comprehended by the scope of the JLC is that set out in the most recent proposals for a registered agreement submitted to the Labour Court.

It is possible that the proposed registered agreement will be given statutory effect and, if this is the case and this becomes established practice before the next review of JLCs due in five years, this JLC may become redundant at that time.

12. Recommendations

Retain JLC – clarify the scope.

Amend the Establishment Order to read '*Workers in this JLC means workers employed by companies engaged in whole or in part on the provision of cleaning and janitorial services in, or on the exterior of establishments including hospitals, offices, shops, stores, factories, apartment buildings, hotels, airports and similar establishments.*'

The wording of this amendment brings the wording of the Establishment Order into line with that agreed between the unions and the employers in a recently proposed registered agreement for the sector.

It is recommended that the provisions of the Act of 2012 should be applied to these amendments which clarify the establishments and workers covered by the Establishment Order.

Hairdressing

Joint Labour Committee

1. Name

Hairdressing Joint Labour Committee

2. Establishment Order

S.I. No. 45/2009 – Hairdressing Joint Labour Committee Establishment Order, 1976.

Date: 10th February, 2009.

3. Activity

(i) Date of Most Recent ERO

Dublin – 7th July, 2008.
Cork – 4th May, 2008.

Note: The merged JLC (2009) has issued no ERO to replace those issued in 2008.

(ii) Date of Last Meeting

15th January, 2009.

(iii) Rate(s) of Pay as per ERO

Dublin Hairdressing €9.13 guaranteed (minimum including commission) plus service pay
Apprentice €8.65 (over 18 at end of Year 1 including commission)
Year 4 €9.13
Plus rates for Trainee/Beauticians and Manicurists

Cork Hairdressing €9.98 (minimum including commission) plus service pay
Apprentice €7.49 (over 18 Year 1)
Year 4 €9.98
Plus rates for Manicurists/Trainees and Receptionists

4. Scope

"(*a*) workers employed in Dublin, Dún Laoghaire or Bray in a hairdressing undertaking including hairdressers, apprentice or learner hairdressers, trichologists, physiotherapists, beauticians, chiropodists, manicurists, wigmakers, compounders, perfumers, receptionists, cashiers, clerks, typists, shop assistants and porters, and

(*b*) workers employed in Cork in a hairdressing undertaking including hairdressers, apprentice or learner hairdressers, and manicurists.

2. In this Schedule

"Bray" means the area known until 1st January, 2002 as the Urban District of Bray;

"Cork" means the area known until 1st January, 2002 as the County Borough of Cork;

"Dublin" means the area known until 1st January, 1994 as the County and County Borough of Dublin;

"Dún Laoghaire" means the area known until 1st January, 1994 as the Borough of Dún Laoghaire;

"hairdressing undertaking" means an undertaking or any part of an undertaking which is wholly or mainly engaged in hairdressing including operations incidental or ancillary thereto.

"hairdressing" includes the following operations performed on hair growing on the head, face or neck of a male or female person, that is to say, lathering, shaving, cutting, singeing, shampooing, waving, setting, dressing, tinting, dyeing, bleaching or similar operations."

NOTE:

The JLCs for Cork and Dublin Dun Laoghaire and Bray were amalgamated under one Establishment Order in 2009. However, as can be seen under scope, they continue to apply to different classes of workers in each geographical area covered by the previous JLCs. The rates of pay in the separate JLCs also continue to apply as per their previous respective EROs, up to and including the final increase due in 2010. The ERO for Dublin provides rates of pay for hairdressers, beauticians and manicurists from the extensive list set out in the scope of the Establishment Order.

5. Number of Responses to Public Notice

6.

6. List of Responding Bodies

1. IBEC
2. SIPTU
3. Irish Hairdressers Federation (IHF)
4. Peninsula
5. Peter Mark
6. UNITE

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

There were no conclusions or recommendations specific to this Joint Labour Committee in the most recent review conducted for the Labour Relations Commission (University of Limerick 2005) or in any of the reviews which preceded it in the 1990s.

Conclusion:

- There is nothing by way of a section 39 report to have regard to in this section.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"
The amalgamated JLC was established in 2009.

UNITE

"• Overall employment has fallen by 8%, with fulltime employment falling by 22% and the number of part-time employment has been rising, relative

to overall employment. It has risen from 27% in 2001 (a figure that remained stable until 2007) to over 44% in 2010. This is, of course, a function of the recession and the resulting falling demand in the sector.

- *These employees would be, in the majority, young and female. Trade union density is low as per small service businesses with high levels of part-time workers. This puts particular emphasis on protection of these employees as they have little bargaining power given the fragmentation and high penetration of part-time employment."*

IBEC

"The four-year apprenticeship process for hairdressers involves a significant commitment of time and money (by employers) and of time (by workers). The application of the National Minimum Wage Act 2000 produces a situation whereby apprentice hairdressers in Ireland are already (in the absence of an applicable ERO) paid a rate which is at the limit of affordability for employers and is well in excess of rates paid to apprentice hairdressers in other countries."

and

"Hairdressers with significant periods of post-qualification experience are sought-after workers. During the period when EROs applied to this sector, such hairdressers earned amounts significantly in excess of ERO rates. They earned (and continue to earn) up to €40,000 - €50,000 per annum, arising from base pay and commission earnings. These higher rates of pay were driven by individually-negotiated agreements in respect of pay and (especially) commission. The fate of the JLC is unlikely to have any impact on such workers irrespective of which of the four statutory options is chosen.

The foregoing is not to suggest that experienced hairdressers should be excluded from the operation of the JLC – they should not. It merely recognises that the likely impact of any new ERO is likely to be limited in respect of this category."

and

"Noting the foregoing – that maintaining the JLC in its current form is inimical to the interests of apprentices and irrelevant to the interests of most hairdressers with significant experience – the group in respect of which the JLC is of most relevance is that comprised of recently qualified hairdressers. These are a group who, during the currency of the ERO system, relied on the ERO to provide a floor on their earnings. Many could expect to exceed ERO rates, but it was important that they knew that there was a floor of earnings which they could rely on earning."

Summary:

- The figures from UNITE up to 2010 suggest a fragmentation of fulltime employment in this sector.

- The information supplied by IBEC suggests that the groups of workers in the hairdressing sector to whom the JLC is most relevant are those at the earlier stages of their career, i.e. trainees and newly qualified hairdressers. The issue of the trainees is addressed elsewhere.

Conclusion:

The information provided by Unite in this section and elsewhere indicates a Sector in on-going difficulty for workers as well as employers and the employer in this instance is pointing to need to maintain minimum wage rates for newly qualified hairdressers. Above the minimum wage so as to provide certainty for those entering the sector and retaining trained staff post qualification.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

UNITE

"As a highly discretionary expenditure sector, hairdressing has been hit hard by the recession between 2008 and 2011.

- *Turnover has fallen by 15%*

- *Overall employment has fallen by 8%, with fulltime employment falling by 22%*

However, the number of hairdressing businesses has increased over this period while the proportion of non-employee engaged has also increased. This indicates a growing level of self-employment relative to employees. Sector wide profit, however, was still in decline in 2010."

SIPTU

"SIPTU contends that there have been no changes to the trade or business in the sector in which the hairdressing JLC applies since it was established or since the last review undertaken by the Labour Court (as part of Towards 2016 in 2008) that would justify non-retention of this JLC."

and

"The type of enterprises to which a JLC should apply for industry are as follows (a) a hairdressing undertaking (b) an establishment where hairdressing is undertaken (c) an establishment where duties of a Beautician (a worker who is wholly or mainly engaged in the process of beauty culture), or a manicurist (a worker who is wholly or mainly engaged in manicuring)."

and

"The hairdressing industry in Ireland is dominated by one major player and a large number of small enterprises. Operators provide a range of differentiated, individualised personal services and as such hairdressing enterprises by and large maintain price setting power. While prices did decline by over 5% in the 12 months to June 2011, the industry passed on just over half the reduction in the rate of VAT to 9% in the month after its introduction in July 2011. Since then prices have climbed by 1% during 2012."

and

"With the onset of the economic recession in 2008, the Irish hairdressing industry experienced a decline in sales along with an in increase in the number of those operating in the black economy."

Peter Mark

"The hairdressing JLC has included enterprises not traditionally included under the umbrella term hairdressing e.g. beauty, physiotherapy. We believe that any future hairdressing JLC should include hairdressing and associated businesses only."

Summary:

- It is the trade unions who have provided any detail of how this sector has fared since the Joint Committee was established in 2009. One of the changes which the sector has seen is the increase in the numbers becoming self-employed in this sector. The other information provided by the trade unions points to a sector still struggling in the downturn and the reduction in discretionary spend since 2009.

- Peter Mark are looking to exclude non-hairdressing establishments from the scope of any JLC, although the reasons for this are not stated.

- SIPTU are seeking to extend the scope of the Order to include establishments not currently encompassed by the Establishment Order and no reasons for this proposal are suggested.

Conclusion:

- It is for reasons related to the figures provided by the trade unions that Peter Mark appear to be seeking to remove trainees from the scope of the JLC – although this point is elaborated on somewhat elsewhere.

- At this point there is agreement between the largest hairdressing employer in the sector and the trade unions that there should be a JLC, however, there is a marked difference regarding the scope of the employees and the undertakings to be included.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

SIPTU

"SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of noncompliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional and has been the case with other forms of minimum statutory legislation since.

This all goes to suggest that noncompliance is about bad employer behaviour, and not because of the existence of a JLC establishing an ERO. It would be unjust to both workers and compliant employers not to maintain a JLC because of the behaviour of noncompliant unscrupulous employers. The abolition or dilution of a JLC would be tantamount to rewarding bad employer behaviour."

Peter Mark

"We feel the conditions outlined within the JLC have been efficiently monitored through the remit of inspections by NERA."

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009 Hairdressing Cork	*1*	*0*	*0%*	*Nil*
2009 Hairdressing Dublin	*27*	*5*	*19%*	*€9,510*
2010 Hairdressing Cork	*1*	*0*	*0%*	*Nil*
2010 Hairdressing Dublin	*13*	*6*	*46%*	*€13,557*
2011[1] Hairdressing Cork	*NA*	*NA*	*NA*	*NA*
2011[1] Hairdressing Dublin	*13*	*6*	*46%*	*€7,273*

[1] The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. Of the breaches recorded in 2011, 1 of the 6 in Dublin related to non-payment of basic pay and 6 related to record keeping. A similar breakdown of figures for 2009 and 2010 was not provided.

Conclusion:

- The noncompliance under the previous EROs occurred primarily in Dublin, and in terms of unpaid wages, only in Dublin. However, the sample of cases from Cork is so small as not to be indicative of any particular trend.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

SIPTU

"There has been no adjustment made to the statutory minimum remuneration and conditions of employment within this sector since July 2011 when the ability of the JLC to establish an ERO was declared unconstitutional by the High Court.

Since July 2011, workers' pay in this sector has been adjusted to the level of the national minimum wage. Prior to July 2011, the last ERO established by the Hairdressing JLCs was in July 2008."

Peter Mark

"The Hairdressing JLC should have no role in either the conditions of employment or rates of pay of apprentices. Current labour legislation provides substantial protection for the terms and conditions of apprentice employment and it is difficult to envisage where a JLC format could be beneficial on this issue.

Over the years the compounding of national pay agreements over National Minimum Wage Act rates on apprentice pay rates has resulted in successful demands for pay rates in excess of those set out in the National Minimum Wage Act 2000. This has had a very detrimental effect on the viability of a business and the availability of capital to invest in training apprentices."

IHF

"(The JLC/ERO process) removes members' ability to pay on the basis of qualification and experience and therefore makes the training and development of apprentices a financial impossibility thus depriving the industry of a key pipeline of quality assured staff."

and

"(The JLC/ERO process) is an aberration in the sector which exposes the general public to serious breaches of health and safety regulations perpetrated by rogue salons not compliant with the JLC/ERO process."

and

"Imposes prohibitive costs on training and lifelong learning. The cost of educating an apprentice in their first year under JLC/ERO type norms is €291.92 p/w but falls to €253.11 under the national minimum wage."

Summary:

- In this section the employers are all agreed that trainee rates should be excluded from the scope of an ERO (the IHF contended there should be no JLC for hairdressing).

- The rate of €291.92 is €7.49 per hour based on a 39 hour week. Using the figure of €253.11 would give a rate of €6.49 per hour in year 1 to an over 18 year old apprentice.

- The rates given apply to year 1 – it is not stated what the employers would envisage occurring in years 2 to 4 in the absence of a JLC and related EROs.

Conclusion:

- The rates cited require clarification-they seem to imply that the employers in this sector are proposing to use the minimum rates for Trainees as provided for in the Minimum Wage Act. This could be read as complying with the provisions of Section 12 (5) of the 2012 Act which sets out express conditions relating to trainees and young persons to be provided for in any proposed ERO. Therefore the question of excluding trainees from a JLC so as to allow employers to comply with the Minimum Wage Act might not arise. A discussion between employers and Trade Unions might be useful to clarify the understandings in relation to this matter.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

IHF

"The JLC/ERO system should not be maintained, amalgamated nor amended as it is legal and practical anachronism which is a direct impediment to the sustainability and growth of the Irish hairdressing sector. This is evidenced by the fact that since the JLC/ERO system has been in abeyance (July 2011) IHF members have been in a position to accept apprentices at the National Minimum Wage rate which has given rise to a 41% uplift in the number of apprentices retained within its membership cohort. The recruitment of new apprentices has allowed the IHF to develop EU recognised accreditation via a Master Craftsman Diploma and related certifications. This would have been prohibitively expensive for member salons under the wage impositions of the JLC/ERO.

It is the understanding of the IHF from member feedback that the reintroduction of a JLC structure in hairdressing will result in the reduction of apprentice registration, a substantial reduction in working hours and an increase in social welfare costs to the State. Such a move would also deprive apprentices of the opportunity to achieve accredited transferrable training in a professional regulated and sustainable employment sector."

and

"Any return to a JLC/ERO type payment structure word force the IHF to withdraw from its compliance with the Youth Opportunity Initiative of December 2011 and the Youth Employment Package of December 2011."

Peter Mark

"If past practise in setting apprenticeship rates is continued then employers will take on fewer apprentices and the investment in training will be substantially reduced. The current recession is already causing employers to cut back when the Government should be setting out conditions to bring more young people into the workforce."

Summary:

- The IHF give a specific figure for the increase in the number of apprentices engaged since July 2011, thus setting a specific figure for the impact on employment levels of the previous statutory minimum remuneration which were commenced at €8.65 per hour.

- The information from Peter Mark does not include any reference to an increase in recruitment of apprentices since 2011 in this the biggest hairdresser in the country. It is not clear which rate Peter Mark has applied to apprentices recruited since 2011, i.e. the rates quoted by the IHF, using the Minimum Wage Act, or those set out in the previous ERO.

Conclusion:

- The reduction in an hourly rate from €8.65 in Dublin to €6.49 per hour if the rate of €253.11 were to be used is of the order of 24%. No other sector has shown such a marked variation in the potential rates of pay for new entrants following on from the suspension of JLCs since July 2011. It is perfectly conceivable that a 24% reduction in pay rate for what are in effect new entrants would lead to an increase in employment levels at that entry grade.

- The fact that the rates of pay for new entrants would be considerably lower than the minimum rates for newly qualified hairdressers could support the view expressed by peter Mark that those in Apprenticeships would want the security of knowing the levels of pay that would apply post qualification.

"(g) Whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

IBEC

"As is described above, the key purpose of the JLC should be to provide a rate of pay and commission which allows for reasonable wage progression for newly qualified hairdressers. This raises the question of whether the current process for accreditation and recognition of qualifications is adequate. We respectfully submit that JLCs should continue to provide a mechanism for such matters, and that the records relating to such matters should be maintained either within the Labour Court premises or within the premises of an appropriate state body, such as Intreo. Record-keeping and other such responsibilities should be kept in the hands of appropriate State bodies.

An amended establishment order should be flexible enough to accommodate developments in accreditation - that is to say, it might preserve the current regime for the moment but permit changes to the accreditation mechanism over time."

and

Pointing to anomalies within the existing Establishment Order as between the scope of EROs in respect of Dublin and Cork, IBEC go on to state:

"Beauticians are an entirely different trade than hairdressers. Their training, skill-set and business model are entirely different. It is not appropriate to include beauticians within the scope of a "hairdressing" JLC.

The establishment order should be amended so that the JLC operates in respect of hairdressers and only hairdressers."

SIPTU

"The establishment of an ERO for this sector by a JLC fixing statutory minimum pay and conditions of employment for workers has not been (up to July 2011), and would not be, prejudicial to the exercise of collective bargaining in this industry as means by which the legitimate interests of workers and employers can be addressed. The reason being that in the absence of a JLC system workers have no opportunity to engage in collective bargaining as a means by which their legitimate interests can be achieved."

Peter Mark

"Under the 5 year review system and given consultation can occur at this stage we feel that the JLC fulfils its obligation so that the interests of employers and workers in this sector are met."

Summary:

- IBEC point to a purpose of the Joint Labour Committee being to provide a rate of pay and commission which allows for reasonable wage progression of newly qualified hairdressers. This suggests that the Hairdressing JLC is the forum for collective bargaining in respect of these matters within the sector together with the fact that the Joint Labour Committees provide the only mechanism for the accreditation and recognition of qualifications of apprentice hairdressers and that such a mechanism needs to be maintained.

Conclusion:

- The trade unions and Peter Mark are agreed that insofar as the JLC provides the only available forum for collective bargaining within this sector, the existence of a joint labour committee and the fixing of statutory minimum remuneration and statutory conditions of employment have not been prejudicial to the exercise of collective bargaining in the mutual interest of employers and workers. This conclusion would be contested by the IHF insofar as they are opposed to the retention of the Joint Labour Committee at all or in a revised form. In the absence of any alternative mechanism for collective bargaining in this sector, it follows that the abolition of the Joint Labour Committee would lead to wages in the sector being determined on an establishment by establishment basis in different geographical areas.

- In the event of it being determined that there would be no joint labour committee to comprehend hairdressing, then the matter of how the accreditation records would be maintained and by whom would require urgent attention as this is a unique service within the Labour Court provided only to the hairdressing sector in the context of there being a joint labour committee.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

IBEC

"The geographical extent of JLCs should not be extended further by the current review. The fact that there were parts of the country in relation to which no hairdressing JLC operated is evidence that the preservation of harmonious industrial relations did not require the establishment of a JLC in the first place. It is difficult to see how the extension of the jurisdiction of JLCs to workers and undertakings to which they never applied before could in any way promote harmonious industrial relations; it is likely only to undermine them. Had there ever been a need for hairdressers outside of Dublin and Cork to be governed by a JLC, someone would have applied to establish such a JLC."

UNITE

UNITE quote the National Employment Rights Authority as saying *"Outside of Dublin and Cork, where hairdressing is subject to EROs (Employment Regulation Orders), the sector is subject to the National Minimum Wage. Considerable non-compliance with National Minimum Wage was found in a number of hairdressing establishments... it is often lone employees, or those working in small numbers who most need NERA's services."*

and

"The advantages of amalgamating the JLCs covering hairdressing and extending it nationally is that workers everywhere would enjoy the protection of a wage and conditions floor and, so, increase their bargaining power in a market where labour is disadvantaged."

Peter Mark

"The geographical distinctions that exist under the current JLC are hard to justify in their current format."

SIPTU

"SIPTU submits there is a need for reform in this area and it should be amended to ensure national coverage for the workers in the sector."

Summary:

- There are differing views regarding the continuation of regional representation in this sector.

Conclusion:

- In general, the terms of subsection (h) require that the continuation of regional representation must be justified in respect of each joint labour committee where such regional distinctions currently exist. While the thrust of the question in this subsection might normally lead to a conclusion that the regional distinction should be eliminated, given that entire geographical areas of the country have never before been included in an Establishment Order or joint labour committee, it may be the case that the extension of such regional coverage beyond the areas of Dublin, Cork and Dun Laoghaire could be interpreted as establishing a new joint labour committee. This issue requires further examination.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
		• IBEC[1] • SIPTU[2] • Peter Mark[3] • UNITE[4]	• Peninsula • IHF	[1] IBEC's preferred option is the retention of the JLC with amendments. The amendments to exclude apprentices and to exclude non-hairdressers from the scope of the Establishment Order and to restrict the coverage of the Joint Labour Committee to Dublin and Cork. [2] SIPTU are seeking an amendment to ensure national coverage for the workers in the sector. The type of enterprises to be amended to *"a hairdressing undertaking; an establishment where hairdressing is undertaken; an establishment where duties of a beautician (a worker who is wholly or mainly engaged in the process of beauty culture), or a manicurist (a worker who is wholly or mainly engaged in manicuring)."* [3] Peter Mark's preferred option is the retention of the Hairdressing JLC with an amended scope to include hairdressing and associated businesses only and to remove the role of establishing rates of pay for apprentices. They say that *"the geographical distinctions that exist under the current JLC are hard to justify in their current format"*. [4] UNITE propose that the two JLCs, Dublin and Cork, be retained, amalgamated and extended nationally.

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

To adopt this option would be to retain the anomalies in the scope between the two formerly separate geographical locations contained in the existing Establishment Order and to retain classes of workers who have not been comprehended by an ERO in recent years (if ever in some cases).

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[18]

This is not an option in this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

The Establishment Order of 2009 could be amended in a number of ways:

1. To reduce the number of categories covered by the scope of the Establishment Order of 2009, and between the geographical areas – this would bring the scope into line with the categories covered in the most recent ERO. This would imply that the establishments to be covered would be primarily hairdressing establishments.
2. To follow 1 and also to exclude trainees and/or beauticians and manicurists.

[18] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant to subsection (8) of clause 11 is taken to apply in these circumstances.

3. To follow 1 and extend the coverage nationally. Although, as indicated earlier, this would require to be examined as to whether such an amendment might be tantamount to establishing a new joint labour committee in terms of extending the scope to workers and employers not previously comprehended by an establishment order, without following the process set out under the Act of 2012.

4. In addition to 1 or 2 and 3 above, to extend the range of establishments in which categories already covered by the Establishment Order to establishments which provide manicurist or beautician services and are not primarily hairdressing establishments. This option would require examination as to whether or not such a change would be tantamount to establishing a new establishment order and JLC in which case, a separate process under the Act of 2012 must apply. [

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

This remains an option to be considered.

10. Extracts from submissions received in response to requests for information/views

IBEC's position in relation to the retention of a Hairdressing JLC for the sector and also that of Peter Mark was that the JLC should be retained but that trainees/apprentices should be excluded. IBEC were asked to consider their position again in the context of section 12(5) of the Act of 2012. ICTU was asked the same question.

ICTU

"The issues raised are dealt with in the SIPTU submission chapter 9 pages 42, 44 and 45."

SIPTU submission, page 44

"For trainee hairdressers, reestablishment of a JLC would have no impact as the rates are less relative to the current level of the national minimum wage."

IBEC

In relation to the interpretation of section 12(5) of the Act of 2012 IBEC which provides for the percentage reductions to be applicable to young, inexperienced and trainee workers by reference to the National Minimum Wage Act 2000 and the relevant subsections, which may not have been clearly understood:

> *"It appears that these reductions are mandatory... therefore, it appears that all future EROs must provide reduced rates for such workers.*
>
> *However that provision would not address the concerns of employers in this sector in respect of apprentice hairdressers.*
>
> *The core training requirement for hairdressing is that the apprentices spend 4 years working in a hairdressing salon. No course of study is prescribed for apprentices. While it is the case that the larger hairdressing undertakings provide formal training to apprentices, these are not prescribed by any statutory instrument."*

Going on to state that the application of the National Minimum Wage definitions to such trainees would set the rates for the first two years, however:

> *"By definition, the third and fourth years of the apprenticeship period would not be affected by this provision. In many cases, the reductions would not apply to some or all of the first two years of the apprenticeship either. This is because the apprentices may have been employed prior to commencing their apprenticeship.*

The reduction to 75%, 80% and 90% applicable to "(at most) the first three years of a course of study or training would not be of assistance to employers for a number of reasons, including that, before this section has an effect, the course of study or training must be recognised by the Minister. The Minister has not recognised a hairdressing apprenticeship for the purposes of this section.

For the foregoing reasons, in order for apprentice hairdressers to be paid rates of pay which are sustainable, IBEC is still of the view that apprentice hairdressers should be excluded from the ambit of the Hairdressing JLC, notwithstanding the fact that any ERO made in future by the JLC would need to include provisions for reduced rates to young, inexperienced or trainee hairdressers."

11. Overall Conclusions leading to Recommendations

The recommendation is that this JLC should be retained with a reduced scope in terms of establishments covered and an expanded scope in terms of the geographical area to be covered.

The scope should be reduced to those workers in establishments which provide a hairdressing service.

The regional distribution distinction between Dublin, Cork and the rest of the country should be removed.

The economic justification for this JLC is that one way and another it is acknowledged by employers that the workers most affected by the terms of any ERO are young people. The sector increasingly employs part-time workers. There is no collective bargaining within the sector.

An added factor for this sector is that it is the Labour Court which continues to hold the apprentice/trainee records for the employees in the sector and provides that information as and when required to employers and workers in order to verify their completion of the various stages of apprenticeship and to extend them if necessary. The term apprentice is used here but work is not categorised within a scheme of recognised national apprenticeships.

The fact that it was agreed as recently as 2009 that the Dublin and Cork JLCs would be amalgamated and this together with the continued support from the largest employer in the sector, Peter Mark, who is also the largest provider of training in the sector does provide a degree of consensus to support the retention of a JLC for the sector. That support extends to accepting that there is no justification for the regional distinction that exists as between the rest of the country, Dublin and Cork. Peter Mark contends that the JLC should be confined to hairdressing.

The central point made by Peter Mark in terms of amending the Establishment Order is that trainees should be removed from its scope. The Irish Hairdressing Federation, who are entirely opposed to the retention of a JLC, also ground their opposition on the rates of pay for trainees and their capacity to reduce those rates since the JLC was suspended. Thus, the employers whether entirely opposed to the retention of a JLC or that it be retained in some form the key reason put forward for amending or abolishing the JLC relates to a desire to have lower rates of pay for trainees.

The problem with the economic justification put forward by employers in support of abolition or amendment is that it fails to recognise that the revised legislation at section 12 will allow for a reduction of the rates of pay of many trainees or to extend the period before they can attain the adult minimum wage. They also fail to say how the rates for those workers who have previous work experience or are in their third and fourth years would be established in the absence of an ERO covering these workers. In this situation rates of pay for those people who are in training in the same sector and who will ultimately attain the same qualification will vary from establishment to establishment and potentially between workers in the same establishment. While Peter Mark did express a desire at a meeting in phase 1 to have a rate for newly qualified hairdressers which would act as an incentive to those on the lower rates of pay during training, the IHF submission gave no indication how rates of pay for newly qualified hairdressers would be set.

The unions have proposed an extension of the establishments to be covered by the JLC to all providing beautician and manicurist services. However, no economic justification is put forward to support this proposal. On balance, the retention of a JLC as a hairdressing JLC is the recommendation which is put forward quite precisely because it is the only mechanism for setting the rates of pay of trainees and newly qualified hairdressers not all of whom can be employed on the minimum wage. A considerable added factor is the absence of an alternative means of maintaining and monitoring the apprenticeship records for the sector. It is unreasonable to suggest that if the Labour Court were to have no role in establishing or maintaining a joint labour committee for the hairdressing sector, that it would continue to maintain the apprenticeship records, a service unique to the hairdressing sector. If this issue of the apprenticeship records and monitoring and other related matters including the rates of pay for trainees could be addressed at national level and collectively with the worker representatives this JLC may become redundant at the time of the next review due in five years time.

The regional distinction is not justified in this sector. In practice, this allows for small businesses operating within close proximity to each other but separated by regional boundaries particularly in or around Dublin/Dun Laoghaire/Bray leads to inequitable competitiveness within the same sector. It also means that trainees throughout the sector are covered by different terms of employment and there is no economic justification for this situation.

12. Recommendations

Retain JLC – reduce the scope of the establishments covered. Commence a process of consultation to remove the regional distinction between Dublin, Dun Laoghaire, Bray, Cork and the rest of the country.

Amend the Establishment Order: 'hairdressers *employed in any undertaking where hairdressers are employed'*.

The effect of this amendment is to limit the scope of the JLC to those specifically engaged in hairdressing and to ensure that any persons employed as hairdressers in the geographical areas are covered by the terms of any ERO. This will have the effect of removing beauticians and manicurists in hairdressing establishments, which by its definition does not cover the many workers employed at the same in occupation, but not in hairdressing establishments. The current ERO provides that the range of establishments and workers covered in the Dublin area is greater than in Cork.

Without further amendment, this would leave large areas of the country providing exactly the same service outside of the scope of the JLC. This regional distinction is not considered to be justified. While such an amendment has merit in the context of this Review and the factors taken into account when making recommendations, such an amendment would bring within the Scope of a JLC, workers and employers who were not put on notice that such a possibility was under consideration. Such a recommendation, if adopted by the Labour Court or the Minister on foot of this review and without recourse to the relevant sections of the 1946 Act which provide for consultation with interested parties where an extension of the scope of a JLC is under consideration, could be viewed as being ultra vires the scope of this Review and certainly problematic.

It is recommended that the Minister should initiate proceedings under Section 40 of the Act of 1946 to allow for public consultation regarding a proposed amendment to the Hairdressing JLC so as to encompass workers and establishments providing hairdressing services in all parts of the State. This would in turn require the Labour Court to apply the terms of Sections 38 and 39 of the Act of 1946 of the same Act to such a request from the Minister.

Should the Minister decide not to adopt the recommendation to initiate proceedings under the terms of Section 40 of the Act in relation to the extension of the scope of Hairdressing JLC to other geographical areas, it is the view that the recommendation to reduce the scope of the current JLC in terms of establishments and categories should be implemented within the geographical areas currently encompassed.

Hotels

Joint Labour Committees

NOTE: The analysis of this sector is set out in respect of the Hotels sector as a whole and is not subdivided into regional distinctions. The approach adopted is more reflective of the contents of the various Submissions.

A1. Name

Hotels Joint Labour Committee (Outside Dublin, Cork and Dun Laoghaire)

A2. Establishment Order

S.I. No. 81/1965 – Hotels Joint Labour Committee Establishment Order, 1965.

Date: 23rd April, 1965.

A3. Activity

(i) Date of Most Recent ERO

11th September, 2009.

(ii) Date of Last Meeting

17th August, 2009.

(iii) Rate(s) of Pay as per ERO

Training Over 18 after Period 3 (each Period not exceeding 12 mths) €6.82 in Period 1 rising to €9.09 in Period 3.

Entry Grade €9.09 – House Assistant/General Worker Trained and Untrained with provision for board and lodgings to be deducted.

€9.09 is the starting point for all other grades, i.e. skilled workers defined by their category.

A4. Scope

[See also note on page 4, section (b)(4).]

"1. Workers employed in a hotel undertaking anywhere throughout the State except the County Boroughs of Dublin and Cork and the Borough of Dun Laoghaire by the person carrying on that undertaking and who are engaged on any of the following work, that is to say:—

(*a*) the preparation of food or drink;

(*b*) the service of food or drink;

(*c*) the provision of living accommodation;

(*d*) the retail sale of goods;

(*e*) work incidental to (*a*), (*b*), (*c*) or (*d*);

(*f*) work performed at any office or at any store or warehouse or similar place;

BUT EXCLUDING

(i) Managers, assistant managers and trainee managers, receptionists, head clerks, head storemen and housekeepers.

(ii) Workers affected by a Registered Employment Agreement.

2. In this Schedule "hotel" means:—

(a) a premises registered in the register of hotels under the provisions of the Tourist Traffic Acts, 1939 to 1957.

(b) a premises licenced under the Licensing Acts, 1833 to 1962 and having not less than 10 apartments normally available for the sleeping accommodation of travellers."

B1. Name

Hotel Joint Labour Committee (For the Areas Known Until 1st January, 1994 As the County Borough of Dublin and The Borough of Dun Laoghaire)

B2. Establishment Order

S.I. No. 174/1997 – Hotel Joint Labour Committee (For the Areas Known Until 1st January, 1994 As the County Borough of Dublin and The Borough of Dun Laoghaire), 1997.

Date: 1st May, 1997.

B3. Activity

(i) Date of Most Recent ERO

None.

(ii) Date of Last Meeting

None.

(iii) Rate(s) of Pay as per ERO

NA. There were no meetings of this Joint Labour Committee and therefore no Establishment Orders were issued for Hotels within the Dublin area, including Dun Laoghaire.

B4. Scope

"1. Workers employed in a Hotel establishment anywhere throughout **the areas known, until 1st January, 1994. as the County Borough of Dublin and the Borough of Dun Laoghaire** who are engaged on any of the following work, that is to say:

(*a*) the preparation of food or drink;

(*b*) the service of food or drink;

(*c*) the provision of living accommodation;

(*d*) the retail sale of goods;

(*e*) work incidental to (*a*), (*b*), (*c*) or (*d*);

(*f*) work performed at any office or at any store or warehouse or similar place;

BUT EXCLUDING

(i) Workers affected by any Employment Agreement, that is, "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made, at a meeting of a registered joint industrial council, between members of the council representative of workers and members of the council representative of employers." [Industrial Relations Act, 1946]

(ii) Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

2. In this Schedule "Hotel" means either:

(*a*) a premises registered in the register of hotels under the provisions of the Tourist Traffic Acts, 1939 to 1995

OR

(*b*) a premises licensed under the Licensing Acts, 1833 to 1995 and having not less than 10 apartments normally available for the sleeping accommodation of travellers."

NOTE:

1. Neither Establishment Order extends to Cork.
2. The scope of the JLC known as the National JLC excludes the following categories which are not excluded from the Establishment Order for the JLC for Dublin and Dun Laoghaire: (1) managers, assistant managers and trainee managers, receptionists, head clerks, head storemen and housekeepers.

5. Number of Responses to Public Notice

27.

6. List of Responding Bodies

1. IBEC
2. SIPTU
3. Peninsula Business Services
4. Aspect Hotel
5. The Doyle Collection Hotels
6. Waterford Marina Hotel
7. Dalata Hotel Group
8. Slieve Russell Hotel
9. Woodlands Hotel
10. Sandymount Hotel
11. Irish Hotels Federation
12. Riverside Park Hotel
13. Jurys Inns Hotels
14. Carlton Hotel Group
15. Talbot Hotel
16. Ferrycarrig - Hotel Kilkenny – Monart Hotels
17. Lee Hotels
18. Strand Hotel
19. Oranmore Lodge Hotel
20. Carlton Hotel Blanchardstown
21. Sligo Park
22. Glenroyal Hotel
23. A Worker – Dublin
24. A Worker – Clare
25. A Worker – Dublin
26. A Worker – Cork
27. A Worker – No address

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

The only reviews which were described exclusively as a section 39 reviews were those conducted in 1993 and 1998. These contain no issues or recommendations specific to the Hotels sector.

This sector was specifically considered in the 2005 review conducted by the University of Limerick as part of the Mid Term Review of Part 2 of Sustaining Progress – which report was prepared for the Labour Relations Commission. The Hotels and Catering sectors were two of three employer representative groups that met with the reviewers at that time (the third was the Law Society). The position of the IHF at that time was to abolish the JLCs covering the Hotels sector. Their view in relation to pay at that time was that the JLCs confirmed by and large the recommendations of the social partnership agreements which should be maintained through the minimum wage adjustments.

The report's recommendation regarding the amalgamation or extension of Joint Labour Committees and the related legislation required did not refer specifically to any sector including Hotels but merely recommended that legislation be clarified and strengthened to provide the Labour Court with flexibility to deal with these matters.

For the sake of completeness, reference should be made to a specific review of the Catering JLCs commissioned by the Labour Court under section 47 of the Industrial Relations Act 1946, which was completed in 1996. That report did recommend that the Catering JLCs should replicate as many of the Hotels (JLC) provisions as possible.

IHF

S 39. of the IR Act 1990 states as follows: *"The Commission shall carry out a periodic review with a view to ascertaining whether, in the opinion of the Commission, new Joint Labour Committees should be established or, as regards existing committees, whether any establishment order requires amendment or any committee should be abolished, and shall send a copy of the review to the Court and to the Minister."*

We have sought details from the LRC of the Reviews that may have been undertaken in relation to the JLC System – including Chubb 1993, Chadwick 1998 and UL 2005. Only the latter two are available to us at this point. These are general reviews of the operation of the entire JLC system (and not specifically of the Hotels

JLCs) and two of which pre-date the introduction of the National Minimum Wage. The UL Report appears to arise out of "the Mid Term Review of Part Two of Sustaining Progress."(see Introduction on Page 3). There is no reference in the document to section 39 of the Industrial Relations Act 1990.

Therefore we are not in a position to address any specific issues in these documents, as we believe that they do not properly relate to the current Review."

Summary/Conclusion:

- There are no reviews to have regard to under this subsection.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

Peninsula

"Antisocial hours and weekend work would be seen as an undeniable feature of the industry, and would be seen as the normal working week for those involved in catering."

and

"Antisocial hours and weekend work would be seen as an undeniable feature of the industry, and to put in place premiums for what is deemed to be the normal working week is placing an unfair burden on employers."

IHF

"Much has changed since JLCs were first established. The vast majority of Irish Hotels Federation members pay in excess of the minimum wage to ensure that they retain high calibre staff needed for their businesses. There is always a transient component to the labour force in the hotel sector but most importantly many of these staff will utilise the experience gained to secure employment in other sectors. Temporary staff enjoy significant protections via the minimum wage and protective employment legislation.

Staff involved in the Irish Hotels Federation Quality Employer Programme (QEP) report high levels of job satisfaction. The QEP is a defined voluntary code of practice with standards in all areas of employment, including recruitment, pay, training, personnel relations, rostering and the arrangement of work hours."

and

"Evidence of Employers Working to Enhance Qualifications and Skills Development

To address the issue of qualification and skills development, the Hotel Industry Forum was set up in late 2008. The members are the Irish Hotels Federation, the Services, Industrial Professional & Technical Union (SIPTU) and the Irish Business and Employers Confederation (IBEC). It is supported by Failte Ireland.

One of the aims of the forum is to develop strategies to promote skills development and progression within the hotel and guesthouse sector. As part of the Forum, analysis of the results from a Training Needs Analysis Questionnaire carried out by the Irish Hotels Federation in 2009 found there was a particular requirement for up- skilling in the restaurant and bar area. In response the Hotel Industry Forum ran free training programmes in food service and bar service in some regions of the country. The training was carried out by Failte Ireland trainers and took place onsite in individual hotels.

A further initiative to come out of the Hotel Industry Forum is the development of a European Qualification Skills Passport (QSP). A Skills Passport is an individual's verified record of all skills, qualifications and achievements an individual has accumulated throughout their career. Members of the Hotel Industry Forum have met with the social partners for the European hotel and restaurant sector, HOTREC and EFFAT in order to consider the development of such a Skills Passport across the European Union. The Irish Hotels Federation is committed to support its introduction when the necessary preparatory work is completed."

and

"There is no new class or classes of workers or fundamental changes in the industry."

and

"There is no new class or classes of workers or fundamental changes in the industry. The hotel sector provides early access to roles of responsibility that will be of enormous medium to long-term advantage to staff that demonstrate a strong work ethic, are flexible in terms of deployment and have an interest in career progression. The key issue is the entry-level rate that enables staff to quickly progress into roles and remuneration in excess of that provided for by any statutory minimum wage.

This also affords a key opportunity for young people to access employment which is a key national objective – setting entry rates in excess of the statutory minimum wage will create a barrier to entry and remove an important stepping stone into long term employment.

The distinctions or categorisation of workers or the potential demarcations created obtain to varying degrees across the sector and it is impossible to apply a one size fits all approach given the diversity of employment practices."

SIPTU

"What has not changed to any significant extent, save for one element, is that the workforce in this sector continues to be characterised by what was referred to by O'Sullivan and Wallace in their 2011 study on Minimum Labour Standards as "low road" jobs. "Low road" employments are characterised by a high percentage of female workers; a high percentage of part-time work; lower educational attainment; lower availability of in-house training and lower levels of trade union density.

The one element that has changed since the establishment of the JLCs for the hotels sector is that its workforce is increasingly migrant, a factor that is fully consistent with the characteristic of 'low road' jobs. In the third quarter of 2012, over 33% of workers in the sector were of non-Irish nationality."

Summary:

- The submissions do not indicate any specific change in the class or classes of workers other than the change in the profile of migrant workers referred to by SIPTU.

Conclusion:

- The submissions indicate that the previous Establishment Order comprehends the classes of workers in this sector, however, the anomaly as between the two Establishment Orders in terms of the workers which were comprehended by them should be noted.
- The increased number of migrant workers in this sector is notable.
- Within the contract cleaning sector, it is noted that services contracted into hotels have increased to the extent that the latest proposal to have an REA, and the submission by employers to this Review propose to extend the establishments covered to include hotels.
- The forum for qualification and skills development established by the trade unions and employer representatives is the only one of its kind that is referred to in any of the sectors under review and indicates a desire to explore strategies on a joint basis between worker and employer representatives to allow employers to retain employees and for such staff to then advance beyond the unskilled recruitment level in the sector and in so doing to advance to higher earnings.

"or

(ii) the last review under this section was carried out;"

IHF

"We have sought details from the LRC of the Reviews that may have been undertaken in relation to the JLC System – including Chubb 1993, Chadwick 1998 and UL 2005. Only the latter two are available to us at this point. These are general reviews of the operation of the entire JLC system (and not specifically the Hotel JLCs) and two of which pre-date the introduction of the national minimum wage. The UL report appears to arise out of "the Mid Term Review of Part Two of Sustaining Progress." (see Introduction on page 3). There is no reference in the document to section 39 of the Industrial Relations Act 1990.

Therefore we are not in a position to address any specific issues in these documents, as we believe that they do not properly relate to the current Review."

Summary:

- See also the note under (a) above.

Conclusion:

- There are no reviews to have regard to under this subsection.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

IBEC ("National Hotels")

"The loss of employment was most acutely felt in the hotels which closed. However, even in those hotels which remained open, there was a significant reduction in headcount and working hours. Hotels significantly curtailed services – such as by eliminating breakfast services and replacing them with buffet breakfasts. Some hotels curtailed opening hours on Sundays, or closed entirely on Sundays. As well as reducing workers' working hours, such service-reductions have had a significant impact on the customer experience which has a consequent impact on the business."

and

"The CSO figures provided at section 1.3 above demonstrate that there has been a significant recovery in wage levels in the "food and accommodation" sector, after an initial rebalancing which occurred immediately after the decisions of the High Court in the QSFA case. Hotels which are in a position to pay more may well be doing so. However, it is crucial that each hotel continues to be in a position to agree pay and conditions which are appropriate to its own conditions."

Peninsula

"Industry is at risk as according to the Irish Hotels Federation, 4 out of 5 hoteliers are concerned about the ability of their business to survive in the coming year. According to the IHF overall growth of 7% in visitor numbers in 2011 masked a near collapse of overseas visitors in 2010 due to the Icelandic ash cloud. 80% of hoteliers were concerned about their survival."

and

"In any updated JLC the premium rates employed for standard minimum, and Sunday, rates of pay should be removed as current legislation provides necessary protection for employees and as highlighted this places an undue burden on employers in an industry which has suffered severely in the economic downturn."

Aspect Hotel

"Our property is located on the outskirts of Dublin City with a number of hotels on our doorstep and as such the competition in this area is immense. As a direct result of an ongoing price war in the area the average room rate has been on a continual decline year on year since 2007 which has naturally negatively affected the hotels EBITDA."

Slieve Russell Hotel

"The business mix for the Slieve Russell and indeed, the hotel sector in general is extremely exposed and competing with competitive international markets. This is a concern for our continued growth and success.

As with many of our competitors, we are dependent significantly on the domestic market for our core customers, who now have a wider range of alternative holiday and weekend destinations.

Our accommodation rates currently charged are reflective of the rates achieved 20 years ago.

Over the last number of years, the hotel sector has experienced substantial negative competitiveness with increases through domestic inflation, larger local authority charges, increased energy costs and more significantly increases in labour costs."

Sandymount Hotel

"Sandymount Hotel (previously Mount Herbert) was founded in 1955 by my parents George and Rosaleen Loughrane. Starting with 4 bedrooms, they worked hard to build a business and raise 5 children. In the early days the family helped making beds, washing dishes etc. There were no family holidays and we lived in one room to make way for paying guests.

The hotel is now in its third generation and has 168 bedrooms and employs 60 staff. There has always been a close bond between family and staff. Many have long service including a receptionist in her 32nd year. Ex-employees regularly return to visit.

We have faced many challenges including the 1971 burning of the British Embassy, the 1974 Dublin bombings, Northern troubles, foot and mouth disease, bank strikes, ash cloud and recessions in 1950s and 1980s. There was little support for tourism as government IDA policy attracted multinationals and grants and tax relief. Most have come and gone, yet we remain.

Recently, tax breaks and easy bank money saw speculators develop hotels with no market demand. This destabilised our business and distorted normal trading conditions. Banks have now put in receivers and management companies simply to generate cash flow. It defies financial logic that room rates of €49 and €59 can be charged by hotels with tens, and in some cases hundreds, of millions in borrowings. Such rates are unsustainable for me."

and

"The 2012 "hotels.com" review shows, room rate among the lowest in Europe. Conversely, EC Eurostat minimum wage reviews show Ireland to have the third highest labour cost, with only Belgium and Luxemburg higher. It does not take a mathematician to work out that Irish hotels are already the least profitable in Europe."

IHF

"The economic recession has hit the hotel sector badly in Ireland. In the hotel sector for example, over 250 hotels were constructed between 2003 and 2008. By the end of 2008 Ireland had 60,609 hotel bedrooms forming part of 905 hotels. The Hotel Room Occupancy level in 2009, 2010 and 2011 at 56% was the lowest achieved since the depth of the recession and the troubles in Northern Ireland at the beginning of the 1980s. Notwithstanding a recovery to approximately 60% in 2012 driven mainly by Dublin, we are still well short of the 64%-65% level necessary to be a sustainable industry.
It should also be noted that most of the regional areas are still experiencing room occupancy levels close to those of the early 1980s. Due to weak demand both domestically and in international visitors the current occupancy rates are being achieved at the expense of major reductions in

room rates and a total erosion of profitability. Average room rate (ARR) was impacted significantly by heavy discounting across the sector to preserve volumes and attract business. (Horwath Bastow Charleton Hotel Industry Survey 2011.) According to CSO figures, employment levels have dropped by about 18,000 in the sector in the period from 2007 to 2010. With regard to the breakdown of the sector, according to Failte Ireland, in 2009, hotels employed 52,000 individuals."

and

"A key change in the industry is the dramatic increase in the number of hotel rooms available to customers in Ireland. There are increasing demands on hoteliers in terms of regulation (environment, health and safety, food production and presentation). Fuel & energy costs are increasing; visitors are spending less and are actively seeking lower-priced alternatives.

There is a high number of hotel businesses that are technically insolvent but remain open (at the behest of financial institutions) creating an unfair advantage vis a vis hotels struggling to survive without that support. Price competition is intense and we have increasing competition from hotels in the north of Ireland.

However our Northern Ireland counterparts operate under an entirely different cost regime with a statutory minimum rates as follows:

Year	***21 and over***	***18 to 20***	***Under 18***
2012 (current rate)	*£6.19*	*£4.98*	*£3.68*

The reintroduction of a JLC structure governing hotels will impact very negatively and significantly on the competitiveness, profitability, and ability of hotels to reinvest and sustain employment.

There are apartment complexes selling comparable accommodation (e.g. serviced apartments, self catering, and 'hotel suites', student accommodation let out during summer months etc) by the night or short term, that do not come under the hotels JLCs as they are not Failte Ireland registered (under the provisions of the Tourist Traffic Acts, 1939 to 2003) and as a result have a lower wage cost and place hotels at a competitive disadvantage."

SIPTU

"Over the past fifteen years there has been significant growth in the range of hospitality services available to domestic and overseas tourist customers in the Republic of Ireland. The pattern has been for growth both in the number of establishments and also a variation in the range of restaurants, hotels and bars. Now it is commonplace for bars and public houses to have full restaurant facilities as employers seek to ensure their establishment maintains market share. Changes in consumer drinking habits, the effects of the smoking ban and extended licensing hours have contributed to this pattern.

The inclusion of the bar trade within the scope of the establishments covered by a Hospitality JLC would ensure that there is a level playing pitch in terms of pay and conditions of employment across the competing market segments. These establishments employ the same categories of workers trained and skilled to the same level and undertaking the same core duties as chefs, bar staff, waiting staff and kitchen porter / general operative staff."

and

"The Hotels JLCs were established in 1965 (other excluding Cork) and 1997 (Dublin) respectively. Since the mid-1990s the sector has undergone a radical transformation in terms of a rapid expansion in the number of available rooms and re-orientation towards the leisure and business market segments. Concurrently, there has been major change in the ownership and management structure of Irish hotel operations. A significant number of the world's largest hotel chains now operate in the Irish market.

In terms of the service offering within the sector, there has also been significant expansion in the licensing hours of hotel bars and within the bar trade generally with many now opening past 2.00am (Thursday through Sunday) and no Sunday afternoon closing or early Sunday night closing. Consequently, workers are now engaged in working longer and more unsociable shift hours.

In the cities of Dublin and Cork there has been a discernible change in the manner in which workers' pay and conditions of employment are determined. Historically, these cities did not fall within the geographical scope of the JLC."

and

"Based on current industry trends, SIPTU believes that the hotel industry is well placed to agree to a new JLC for hotel workers. In the wake of the domestic and global downturn in 2008 and the severe fall-off in domestic and international tourism rates, the Irish hotel sector has undergone a radical process of rationalisation. In the 15 years prior to that, the industry had seen a major transformation with a near twofold increase in the number of hotel rooms buoyed on by a combination of increased consumer demand, generous tax breaks and rising room prices. Post 2008, due to a very large oversupply of hotel stock, market saturation gave rise to widespread below cost pricing in order to bolster occupancy rates. In turn, this eroded overall profitability levels.

The year 2011 marked a turning point for the industry with an increase in profit margins for the first time in four years. This was due to a combination of factors including increased operational efficiency, substantial changes to the cost base, reduction in the number of hotels operating in the market and an increase in overseas visitor numbers.

While the global hotel industry had seen a shift in consumer and business demand towards trading down to more budget friendly accommodation options, it appears that Ireland has bucked this trend with diversification into leisure and business services as well as increased occupancy in the higher end hotels.

Ireland's improved competitiveness within the international industry was reflected in a significant improvement in Ireland's ranking in the World Economic Forum's Travel and Tourism Competitiveness survey 2011. In a survey of room rates in first class branded hotels, Ireland were ranked 7th of the Eurozone countries in 2009, behind Estonia, Slovenia, Slovakia, Austria, Malta and Germany and was significantly ahead of the UK, US and France. This has generated increased profitability in the sector.

Irish industry analysts, Crowe Horwath, in their 2012 annual survey of hotels found that five star hotels registered the largest increase in profitability, with growth in the order of 65.4% in pre-tax profit per available room, followed by a significant increase in the four star sector.

In the first nine months of 2012, demand for hotels rooms in the Irish market was up 5% on the same period in the previous year and while there was a fall in UK tourist traffic, there was strong revival in the number of visitors from North America and Continental Europe. This marked recovery is borne out by data from the Central Statistics Office Service Index which shows a 9.3% increase in the value of hotel services in the larger hotels (100+ staff) provided over the 12 months of 2012.

RevPAR, or revenue per available room, is a performance metric in the hotel industry, which is calculated by multiplying a hotel's average daily room rate (ADR) by its occupancy rate. In terms of revenue generated by available room in the Irish market, there has been a recovery across all geographical regions.

Dublin outperformed other geographical regions in terms of revenue generated. It registered an annual increase of 16.2% in RevPAR to November, 2012. This overall pick up was confirmed by Failte Ireland's tourism barometer, which reported that 79% of hotel businesses reported profits staying still or increasing in 2012. Furthermore, the improvement in market conditions has been reflected in recent times by longer term leases being negotiated for some of Dublin's largest hotels, beyond the one year terms that were agreed during the worst years of the economic crisis.

Debt sustainability remains one of the chief concerns in the hotel sector. Crowe Horwath estimate that as many as 300 (40%) of hotels require refinancing and note that total loans attaching to the Irish hotels sector are something in the order of €6 to €6.7 billion.

As of July 2012, 121 hotels were under the control of NAMA and it is expected that the pace of insolvency in the industry is likely to accelerate over the coming months with the expiry of specific tax reliefs and schemes operating in the sector.

Given the scale of the debt overhang in the industry, it is clear that no amount of reduction to the cost base would be sufficient to meet the debt servicing needs of many hotels and a clear distinction must be made between longer term solvency issues relating to hotel businesses and the day to day operational liquidity and profitability. In 2011 net margins across all hotel classifications nationally averaged a healthy 12.9%. An increase is expected in 2013 based on last year's occupancy and pricing results. Furthermore, hotels have continued to generate positive EBIDTA (earnings before interest tax and depreciation). However, post boom time margins are wholly insufficient to cover debt servicing payments. Aherne reports that the average interest coverage ratio in hotels has fallen below 1 since 2009."

and

"The Irish hotel industry is made up of a number of chain operators who account for a quarter of the establishments but more than two-thirds of hotel sales. Independent operators account for the remainder of the establishments. With consolidation on-going in the industry, it is widely expected that the hotel market will become increasingly dominated by a small number of large chains. Increased market dominance in local labour markets, particularly in areas outside of Dublin, and at a time when there is a large excess labour supply will mean greater power for employers to suppress wages at the local level. Despite fierce price competition between competitors, the industry has largely proven itself to be a price setter. In the 12 months following the reduction in Value Added Tax (VAT) in June 2011, just under 22% of the effective 4.1% VAT reduction was passed onto consumer prices. Similarly, there was less than 1% of a reduction in room rates during the off-peak season between the last quarter of 2011 and the last quarter of 2012."

Summary:

- The submissions show a number of changes in the type of enterprises in the sector:
    - the addition of leisure and related services; and,
    - the increasing ownership of hotels in Ireland by chains rather than family owned hotels.
- The submissions tend to concentrate on the experience in the period of the last ten years when, during the period 2003 to 2005, there was a rapid expansion of hotels and hotel bedrooms onto the Irish market, followed by a severe reduction in prices, and a related reduction in headcount and working hours.

Conclusion:

- While there have been considerable changes in the size and ownership of the hotels sector in the last ten years and extensions to the services provided by some hotels, the core business remains the same, i.e. to provide accommodation, food and beverages including alcohol.

"or

(ii) the last review under this section was carried out;"

IHF

"We have sought details from the LRC of the Reviews that may have been undertaken in relation to the JLC System – including Chubb 1993, Chadwick 1998 and UL 2005. Only the latter two are available to us at this point. These are general reviews of the operation of the entire JLC system (and not specifically the Hotel JLCs) and two of which pre-date the introduction of the national minimum wage. The UL report appears to arise out of "the Mid Term Review of Part Two of Sustaining Progress." (see Introduction on page 3). There is no reference in the document to section 39 of the Industrial Relations Act 1990.

Therefore we are not in a position to address any specific issues in these documents, as we believe that they do not properly relate to the current Review."

Summary:

- See also the note under (a) above.

Conclusion:

- There are no reviews to have regard to under this subsection.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

IHF

"The Irish Hotels Federation does not support any employers who break the law. Much of the reported non-compliance, we believe, relates to complexity of interpretation and implementation. We would dispute certain interpretations of the legislation by NERA Inspectors. (e.g. in respect of Board and Lodgings) and much of non compliance has been of a technical nature. However, the JLC system was increasingly falling into disrepute and employers in all sectors were

experiencing difficulties in adhering to their various terms. This was compounded by the absence of an inability to pay provision."

SIPTU

"SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of noncompliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional and has been the case with other forms of minimum statutory legislation since.

This all goes to suggest that non-compliance is about bad employer behaviour and not because of the existence of a JLC establishing an ERO. It would be unjust to both workers and compliant employers not to maintain a JLC because of the behaviour of non-compliant unscrupulous employers. The abolition or dilution of a JLC would be tantamount to rewarding bad employer behaviour."

Peninsula

"• In 2011 out of 217 inspections NERA found a compliance rate of 26% with over €310,000 in recovered wages. 2010 saw similar statistics with 127 inspections yielding over €150,000 in recovered monies, and a compliance rate of 31%.

- *Work carried out would also encompass that carried out in the catering industry."*

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009 Hotels	*131*	*96*	*73%*	*€164,918*
2010 Hotels	*190*	*142*	*75%*	*€153,757*
2011[1] Hotels	*96*	*71*	*74%*	*€210,062*

[1] The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. Of the 2011 figures, 46 of the 96 cases investigated showed breaches of the standard minimum remuneration and 47 showed breaches of records. A similar breakdown of figures for 2009 and 2010 was not provided.

Summary:

- The figures indicate a very high level of breaches in total in hotels outside the Dublin area each year reviewed with the level of unpaid wages increasing significantly in 2011, when the figure of €210,062, being the largest in any year, was itself the figure for only six months of 2011. The figures for 2011 show a figure of just over 50% noncompliance with standard minimum remuneration and a similar figure for the breaches of records.

Conclusion:

- The records for the period covered show a significant level of noncompliance in this sector and an increasing level of noncompliance in respect of unpaid wages over the period.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

IBEC ("National Hotels")

"Employers in this sector believe that the former ERO, while in operation, set pay rates at unsustainable levels and was a significant factor in the dramatic loss of employment after the onset of current economic crisis.

The loss of employment was most acutely felt in the hotels which closed. However, even in those hotels which remained open, there was a significant reduction in headcount and working hours."

and

"Even during better economic times, the existence of the JLC had a significant negative impact on the hotel business. Unskilled general workers received a premium over the national minimum wage which was unsustainable. Wage costs amount to (on average) 42% of hotels' running costs, so high wages fed in to high charges for hotel rooms. This impacted on Ireland's affordability as a tourist destination and an (inaccurate) perception that customers were being "ripped off".

JLC wage setting in the hotel sector is not a zero-sum game. It is not a question of redistributing wealth between workers and employers. Unsustainable wages reduce the total earnings in the sector by discouraging both foreign and domestic guests from staying.

Not every hotel is in equally dire straits. After the decision in the QSFA case, the great majority did not seek to reduce terms and conditions of employment of workers. However a significant number did so by agreement with workers – and in doing so, saved many jobs which would otherwise have been gravely threatened. Entry level wages have, in many cases, been brought down to levels significantly below the rate set in the former ERO."

IBEC (Dublin and Dun Laoghaire)

"The hotel business in the Dublin has suffered a significant downturn at the start of the economic crisis. However, hotels in this region have fared better than hotels nationally and room occupancy is higher in this region than it is nationally. A significant part of the reason for this is that the lack of any applicable ERO, a fact which gave hotels more flexibility to respond to the crisis than that available to hotels in other parts of the country. In the event that this favourable situation

was undone, there would inevitably follow a negative impact on employment levels, especially at entry levels.

It needs to be noted that wages levels in many Dublin hotels are in excess of the national minimum wage. It is not the case that the absence of a JLC has created a situation where all workers in general grades are paid the statutory minimum.

The CSO figures provided at section 1.3 above demonstrate that there has been a significant recovery in wage levels in the "food and accommodation" sector, after an initial rebalancing in that sector (though not, of course in Dublin hotels) which occurred immediately after the decisions of the High Court in the QSFA case. Hotels which are in a position to pay more may well be doing so. However, it is crucial that each hotel continues to be in a position to agree pay and conditions which are appropriate to its own conditions as may b determined at enterprise level."

The Doyle Collection

"We own and operate hotels in Ireland abroad and employ 375 fulltime equivalent employees in Ireland. We have significant knowledge of the impact that non-competitive pay premium arrangements have on both employment and on competitiveness in the market places in which we operate."

and

"Any outcome that increases labour costs and limits flexibility damages the level of sustainable employment that the industry can offer. Many employees in this industry crave reliable, sustainable quality positions which allow them to build careers and provide for their families. What is not welcomed is doubt, short-time, forced seasonality, mandated part-time or uncertainty."

IHF

"The IHF experience of adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment was extremely negative. We found it impossible to get any effective consideration of the employer view in discussions at the JLC and have little confidence in any new system operating in a manner that is fair to employers.

JLCs operated with a certain relevance until the introduction of the National Minimum Wage (NMW) following which a series of aggressive NMW increases were duplicated and compounded by the JLC process which blindly implemented increases agreed as part of the ill conceived national understandings. The NMW was superimposed on JLC rates and the JLCs used the NMW to compound the increases despite strong opposition from employers. Employers' defence of exorbitant rate increases was disregarded by the JLC Chairs time after time."

and

"We support the position that all employers in all sectors should have to adhere to National Minimum pay and conditions of employment. There is no case for the hotel sector to be singled out for differential treatment compared to other

employers. The Hotels JLCs should be abolished as current legislation upholds all employee rights."

and

"This competitive position of hotels was exacerbated by the existence of the JLC system that further added to labour costs and regulations. It is unfortunate that there appears to be an impetus to re-establish the joint labour committee system, under a guise of consultation and independent review, notwithstanding it being deemed unconstitutional by the High Court. This does not in the view of the IHF augur well for the prospects of the Hotels JLCs being abolished under this 'Review'."

SIPTU

"There have been no adjustments made to the statutory minimum remuneration and statutory conditions of employment since July 2011.

There is evidence of employers seeking to drive down wage levels and withdraw conditions of employment that workers had achieved through the JLC system and which were enforceable through the ERO up to July 2011.

Since July 2011 the only statutory protection afforded to workers in the hotels sector is the minimum provided by way of primary statutory legislation. Of course, not all conditions of employment enjoyed by workers come from statutory legislation. In the absence of a JLC system where workers, through their trade unions, bargain collectively for a rate of pay and conditions of employment, bad employers will continue to drive down standards."

Summary:

- Many of the employer contributions refer to the inflexibility resulting from the requirement to maintain the JLC rates of pay and conditions during a crisis. A negative comparison is drawn with Dublin for which there were no JLC rates leaving employers free to negotiate reduced rates of pay to deal with the crisis.

Note

- There are no comparative rates of pay for Dublin hotels against which to judge the ERO rates of pay covering those Hotels outside Dublin-except Cork.

- The rate of pay in the JLC outside Dublin for unskilled workers was set in 2008. The differential at 5% over the minimum wage for an adult unskilled worker at the end of a training period. This is the starting point, i.e. €9.09 for recognised skilled and semi-skilled categories of porter, bar person, waiter, waitress and cook.

- The JLC did agree to defer any pay increase in 2009 and also to reduce the rate of Sunday premium to time and a third, which indicates a degree of flexibility available through the JLC mechanism during the crisis and prior to the High Court decision.

- The maximum rate of pay established by the JLC for waiter/waitress/head bar person at the top of the scale is of the order of 25 cent per hour more than the unskilled entrant rate in the catering sector. This suggests that there are anomalies within the totality of the hotels and catering sector even though many of the services would be similar in terms of the serving of food and drink. But at the entry levels these differences favour the hotels sector.

Conclusion

It is clear from the UL Report of 2005 that the entirely negative perspective of the IHF towards the JLC System is not a product of the more recent experiences of the years since 2008. Other Sector Employers tend to contextualise their experiences in the more recent and extremely difficult economic period and then since the High Court Decision of 2011. The IHF view has been consistent over a much longer period. The fact that the differential over the minimum wage rate is so slight, suggest a conclusion that the factors that inform the Hotel Sectors dissatisfaction with the system, based on their experiences stems from wider considerations. There is however no acknowledgment of the reductions in labour costs brought about through the JLC in 2009 and the deferral of a pay increase which was applied in other sectors by the relevant JLC.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

IBEC (Dublin and Dun Laoghaire)

"A less likely possibility is that the JLC would become active and start to set pay and conditions for hotels in the Dublin and Dun Laoghaire area. Having regard to extremely parlous state of the hotel business this would have a serious negative impact on employment levels at all grades."

IBEC ("National Hotels")

"Many hotels report increased employment levels (both in terms of number of workers and in terms of number of hours worked by workers) since the High Court decision. Some have been able to employ new staff under the Government's PRSI relief scheme. Those jobs are of the most marginal viability, and a return to JLC-regulation is likely to have a negative effect on the positive steps which the industry has made (evidenced by the CSO figures above) since the High Court decision."

Peninsula

"The industry provides valuable work experience to a large number of persons entering the workforce for the first time, or for those engaged in seasonal work."

Aspect Hotel
"The hotel sector has historically given young workers and students their first job. Returning to the JLC will have a direct negative impact on not only the calibre of person employed but also the number of employees; an already struggling hotel

can sustain which in turn will only negatively affect the already hugely burdened social welfare system."

Waterford Marina Hotel

"The Waterford Marina Hotel provides 30 plus jobs in Waterford City. Hotels by their nature are very labour intensive and wage costs are a very important element of hotel competitiveness. The higher rates and suggested payment of sick pay will have a direct impact on the level of staff retained by the Hotel. Another increase in labour costs will not only seriously hinder my ability to retain jobs but will almost certainly result in job losses."

and

"Should our wage rates be increased the only other alternative would be to reduce staff levels resulting in service and standards suffering and ultimately ruining years of hard work building a reputation for great staff giving great service."

Dalata

"We operate hotels across Ireland and with the exception of Dublin City Centre, hotels all over the country including Dublin suburbs are performing marginally. While we are able to keep our hotels open all year round at present, it is very likely that this will need to be re-considered and seasonality introduced should payroll costs rise. This would have a direct effect on employment levels.

Return of the JLC will create yet another barrier in efforts to take people off the live register. The hotel sector has historically given young workers and students their first job. Reintroduction of this outmoded system of setting rates will have a negative impact on our ability to employ this type of worker. Returning to the JLC will have a direct negative impact on the number of employees, an already struggling hotel sector can sustain.

Due to the JLC being abolished and our hotels reverting to National Minimum Wage rates for new starters, we were able to increase the number of 'fulltime equivalent' staff numbers in many of our hotels by 20% in 2011 (Year on year compared with 2010) and 50% in 2012. Should the business be faced with increased payroll costs again it is highly likely that employment numbers will be adversely affected.

Abolishing the JLC system could lead to the creation of 21,000 in hotels. The system was abolished in Britain in 1993! Even if it was abolished in Ireland now employees with premium payments would still be paid according to their contract of employment. Jobs creation would lead to increased consumer spend thus assisting the economic recovery."

Slieve Russell Hotel

"It is my personal belief that if the hotel sector is forced to return to the JLC system, that this will most definitely create another obstacle discouraging many businesses in taking people off the live register. A reintroduction of this

antiquated system of setting rates of pay will undoubtedly have a negative impact on the number of people we will employ in an already struggling sector."

Woodlands Hotel

"A return to the JLC rates of pay will create yet another barrier in efforts to take people off the live register. Our hotel has given many young workers and students their first job, helping them to get started in their careers. The reintroduction of JLC rates will have a negative impact on our ability to employ this type of worker."

Sandymount Hotel

"Should the introduction of a JLC increase my labour costs a number of outcomes may occur:

- *I will be forced to reduce staff numbers, resulting in poor customer service and undue pressure on staff remaining*
- *If length of service increases apply, existing staff will be let go and replaced against their and my wishes, to control costs and comply with legislation*
- *I will have to reduce Sunday service with staff receiving less weekly income*
- *I will go out of business if I cannot sustain greater than 42% labour cost*
- *Bank/NAMA hotels will remain as they do not operate commercially."*

IHF

"The hotel sector provides early access to roles of responsibility that will be of enormous medium to long-term advantage to staff that demonstrate a strong work ethic, are flexible in terms of deployment and have an interest in career progression. The key issue is the entry-level rate that enables staff to quickly progress into roles and remuneration in excess of that provided for by any statutory minimum wage.

This also affords a key opportunity for young people to access employment which is a key national objective – setting entry rates in excess of the statutory minimum wage will create a barrier to entry and remove an important stepping stone into long term employment.

The distinctions or categorisation of workers or the potential demarcations created obtain to varying degrees across the sector and it is impossible to apply a one size fits all approach given the diversity of employment practices."

and

"Setting a new minimum rate of pay for the hotel sector in excess of the statutory minimum wage will undoubtedly affect employment numbers at entry level. Since the abolition of the EROs in July 2011, the numbers employed in the accommodation and food services sector has increased as follows:

Quarter 2 2011 114,400

Quarter 2 2012 120,000
(This increased further to 123,100 in Q 3 2012.)

This is despite a reduction of c 25,000 in the total numbers employed nationally during this period. (Source CSO 2012). Therefore, the abolition of the ERO has undoubtedly had a positive impact on employment levels in the Sector.

The qualified revival of the hotel sector since July 2011 could be destroyed by the reintroduction of EROs. The period since the High Court decision of 2011 has seen a qualified revival within parts of the hotel sector. Employment levels and occupancy rates have improved. A number of significant factors have led to this improvement, some of which are unrelated to the abolition of the EROs. However, the ability of hotels to bring wage rates into line with market rates, rather than the artificial, Celtic Tiger era rates contained in the former EROs – has been an essential element of the partial recovery and remains a crucial pre-requisite for a sustained and meaningful recovery.

The reintroduction of EROs over some or all of the state would be a massive blow to the ability of affected hotels to sustain and create employment. In an IHF survey of members conducted in 2012, 89% of employers stated that the reintroduction of the JLC system would hinder their ability to take on additional staff over the next 12 months.

Much esoteric economic argument on the barriers to entry into employment fails to take into account the reality of decisions taken in businesses fighting for survival. The best interests of employees and those unemployed are absolutely prejudiced by high minimum rates that exclude them from employment. The choice of taking up employment at entry level is taken away from many first time workers and critically their opportunity to commence developing career skills."

MANDATE

"Furthermore and crucially, there has been no major increase in employment in the sectors that were covered by JLCs following the 2011 High Court ruling. This is despite anecdotal statements and polemics from employers asserting that employment in the covered sectors would rapidly increase as soon as the JLCs were abolished. MANDATE is firmly of the view that the debate needs to move on from the narrow focus on pay and the cost of labour to concentrate on the quality of jobs that are covered by the JLC system. Substandard terms and conditions should not be accepted in JLC sectors as an excuse to preserve jobs."

and

"In their seminal paper on the issue of employment and minimum wages Card and Krueger (1994) found no evidence in their study that a rise in the minimum wage in New Jersey reduced employment in fast-food restaurants in the region. There was also no negative effect on the number of outlets remaining open. Of particular relevance to the current review, research carried out in Britain following the weakening and eventual abolition of the Wages Councils, has found no evidence of an employment creation effect. Instead, studies conclude that the

weakening of Wage Councils has played an important part in a rise in wage inequality in Britain (Machin, 1997)."

SIPTU

"SIPTU contends that the impact on employment levels in the hotel sector from the introduction of a wage floor will be negligible. This will be influenced by a number of key Industry features:

a) The market structure which in turn determines the price setting power of any one operator
b) The share of labour costs as a percentage of total costs, the size of the proposed wage premium and the elasticity of labour demand in the industry
c) The importance of the service in the context of the total activities of the business."

and

"Impact on employment levels depends on the combination of the price elasticity of demand for the service provided and the percentage share of labour in total costs. Studies differ on the elasticity of the hotel and hospitality sector, but the evidence over the course of 2012 suggests that while room rates fell by less than 1% across the 12 months, occupancy increased by 5% over the first 9 months of the year. On the face of it, this suggests that the sector is highly price elastic. However, hotel room capacity contracted by 3% over the same period. Employment in the sector increased by 6,800 to 50,100 over the 12 months to quarter 3 of 2012 (non-seasonally adjusted).

Payroll relating to accommodation, food and beverage within the hotel sector accounts for 31.4% of total revenue. Within each department in a hotel, just over a third of the cost in food and beverages is attributable to labour costs, with the payroll accounting for just over a quarter of room costs. Standardisation of the sectoral minimum wage to apply to all hotels nationally implies an increase for some hotel workers in the order of 5% or just €0.44 per hour per employee, which in turn would account for just 1.5% of the value of total output in the sector (in basic prices). With net margins averaging 12.9% in 2011, the hotel sector would be well capable of absorbing a 1.5% increase in its cost base.

Sustained competitiveness in the sector depends on a well-trained, experienced, stable workforce. Deloitte report that research consistently shows that "high employee engagement is correlated with customer satisfaction, customer retention and corporate performance." Based on 2012 figures and relative to other sectors, the rate of job churn across the accommodation and food and beverage sector in Ireland is over 1.5 times the economy's average. The high rate of job churn is strongly correlated with the rate of pay and terms and conditions that prevail in the industry, which are typically at or close to the National Minimum Wage. Again Deloitte note the cost associated with high employee turnover and the negative impact on brand consistency.
The re-establishment of a JLC for the hotel sector or the establishment of a national hospitality JLC is likely to have little or no impact on entry level employment levels. Training rates will still form part of a JLC. Labour demand for

new entrants into a sector is largely determined by the rate of job churn and while the rate may have slowed over the course of the economic recession, the rate for the hotel sector remains well above the economy wide average. Furthermore, labour demand for new entrants is reflected in the number of vacancies in the sector and the 2012 Fás/EGFSN report on vacancies highlights demand for hospitality occupations with a sizable share of these requiring no minimum experience.

Payment of a wage set down by a JLC would act as an efficiency wage and as such have the potential to increase the supply of talented and high quality labour into the industry as opposed to lowering the employment level. By setting a JLC above the national minimum wage, employers in the sector incentivise staff loyalty and provision of higher quality services, improve staff retention, reduce staff turnover and staff search costs."

Summary:

- Figures supplied by SIPTU as well as individual employers and the IHF point to a growth in the number of people employed as between Quarter 2 2011 and Quarter 3 2012. Clearly, the employers relate that increase directly to the High Court decision and the removal of the requirement to pay rates above the minimum wage for unskilled new staff.

- IBEC does not give a figure for those employed under the Government's PRSI Relief Scheme and it is not clear how JLC regulation would impinge on this scheme.

Conclusion:

- Frankly it is difficult to see the level of increase of employment being influenced to any significant degree due to the abolition of an hourly rate of €9.09 versus a full adult of €8.65 under the minimum wage.

- One factor where wage costs was in the rates of pay for trainees and new workers in training where the minimum wage provides for lower rates of pay during these periods. Specific examples of this were given in the hairdressing sector where apprentices are certainly in some areas, now being engaged on the formula for pay set out in the Minimum Wage Act. If this is a factor in the hotels sector then it is worth noting the terms of section 12(5) of the Act of 2012, which would appear to stipulate that the formula set out in the Minimum Wage Act in respect of trainees and new entrants will apply to all JLCs and they will have no discretion in the matter. In other words, if this has been a factor in reducing costs and therefore increasing the number of employees since July 2011, the same conditions would prevail in any JLC in the future.

- Another probable labour cost reduction area has been in Sunday premium. Sunday premium rates will no longer be determined by the JLC itself but by reference to a code of practice which has yet to be finalised. Nonetheless, the requirement to pay Sunday premium remains regardless of whether there is or is not a JLC. The rate of Sunday premium set out in the ERO for this sector as of 2009 (outside the Dublin area) was time and a third.

- There is scope for any employer to plead inability to pay in a manner not available under the previous legislation.

- In summary, some additional flexibility, not available to employers as they experienced it within the JLC for the hotels sector is now available under the JLC system as set out in the Act of 2012. Whatever about the other factors in the total labour cost it is unlikely that the specific minimum rate of pay established by the JLC and the elimination of same has contributed significantly to the increase in jobs between 2011 and 2012, although it is accepted that the elimination of some of the other factors and labour costs within that JLC taken as a whole with the minimum rate, may have contributed to the job creation cited by employers and unions in their submissions.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

Dalata

"A number of our employees are members of a union. There has not been industrial unrest in any of our hotels since the absence of the JLC. Our staff members have showed an appreciation for the difficult economic circumstances that our hotels have found themselves in. Many of the hotels that we operate are properties in receivership and our employees have demonstrated a strong work ethic. As such employees are interested in maintaining a steady income and employment and see our country recover, rather than in personal short-term gains. The reintroduction of a new ERO will undermine this relationship and put significant pressure on payroll costs."

Slieve Russell Hotel

"Since 2011 I would like to express the high regard I have for the staff in my hotel, each staff member showed an appreciation for the economic circumstances that local Irish businesses found themselves in. They demonstrated a strong work ethic and were more interested in securing the opportunity to work and develop their skills than increasing their own terms and conditions of employment, they have all worked collectively to sustain the future of the Slieve Russell Hotel. It is my belief that the reintroduction of a new ERO would no doubt undermine this strong relationship."

Woodlands Hotel

"Since 2011 I would like to express the high regard I have for the staff in my hotel, each staff member showed an appreciation for the economic circumstances that local Irish businesses found themselves in. They demonstrated a strong work ethic and were more interested in securing the opportunity to work and develop their skills than increasing their own terms and conditions of employment, they have all worked collectively to sustain the future

of the Slieve Russell Hotel. It is my belief that the reintroduction of a new ERO would no doubt undermine this strong relationship."

IHF

"There are examples where employers and workers and / or employers & trade unions undertake collective bargaining on issues of common concern across the sector. There is evidence that some employers in the sector have introduced short time working or other measures to reduce costs by agreement. In unionised employments such arrangements have been introduced by agreement with trade unions in a number of hotels.

However, if a JLC sets rates of pay that are in excess of the statutory minimum wage it will act in a manner that is prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector. The JLC effectively becomes another forum for pay determination that will (in combination with the minimum wage) inevitably narrow the opportunity for collective bargaining in the sector. There would be up to three tiers of pay determination:

1. *The statutory minimum wage and protective employment legislation*
2. *The JLC system*
3. *Collective bargaining between employers and workers and / or employers & trade unions*

In this context, the scope for collective bargaining will effectively be narrowed by the combination of a statutory minimum wage and the content of any ERO. The alternative is to allow collective bargaining to operate at a level above the statutory minimum wage rather than create a further zone without collective bargaining between the statutory minimum wage and an ERO."

and

"Clearly this document represents a submission made in accordance with subsection (2)(b) and we would expect evidence of a full consideration of the full range of arguments as set out in this document.

Furthermore, the Court may only recommend that a JLC be retained (either in its existing form or in an amended of amalgamated form) if it is satisfied that 'to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest.'

IHF Comment

This is a key test (with two distinct elements to be addressed) that is required by the legislation in determining whether a JLC should be retained. We can understand that when legislation on JLCs was first enacted in 1946 that there were concerns about promoting harmonious relations between workers and employers and avoiding industrial unrest.

This position no longer obtains in relation to 'industrial unrest' in the hotel sector specifically. Industrial unrest implies a state of ongoing discord and industrial action rather than a single isolated event. There is no evidence of 'industrial unrest' in the hotel sector in the past 20 years nor can any be reasonably anticipated. CSO figures on person days lost due to industrial action simply confirm this.

In fact the Irish Hotels Federation strongly believes that the IR pressures that would arise from any re-introduction of a JLC and ERO would create significant cost pressures and tensions that could damage current harmonious relations and contribute to possible industrial unrest.

Many employers in the sector have strong HR policies and practices with high retention and low absenteeism rates. They are increasingly implementing good HR practices in such areas as recruitment, induction, performance management and development, training and development and communications. The Irish Hotels Federation and individual employers in the sector are working very hard to promote harmonious relations and we have no doubt that the re-introduction of JLCs in the sector will compromise these efforts especially in the current climate.

The Irish Hotels Federation will be particularly interested to examine any evidence base that will be used by the Labour Court to satisfy the requirements of this section of the legislation."

and

"The Anomalous Position of Hotels Under the JLC Structure

The position of hotels under the JLC structure has, for a number of years been anomalous. Prior to the decision of the High Court in July 2011, the State had been divided into three jurisdictions for the purposes of setting the rates of pay and conditions of employment of workers employed in hotels.

1. *The city of Cork had no JLC and no ERO ever applied to it. Conditions of employment were negotiated individually or collectively within hotels and the statutory minimum rate of pay was the national minimum wage.*

2. *The area comprising the city of Dublin and the former Borough of Dun Laoghaire was subject to a JLC. However, that JLC has never proposed an ERO to the Labour Court. Therefore, while the area comprising Dublin and Dun Laoghaire has in theory been subject to a JLC, it has in practice been more comparable to the city of Cork. Conditions of employment were negotiated individually or collectively within hotels and the statutory minimum rate of pay was the national minimum wage.*

3. *Hotels in the rest of the country have been subject to a JLC. That JLC proposed a number of EROs and these were accepted by the Labour Court.*

The statutory minimum rates of pay under these EROs were significantly greater than the rates that applied under the national minimum wage.

The High Court brought an end to the arbitrary and unfair distinctions that had arisen under the JLC system. While other sectors are concerned about the reintroduction of EROs that previously applied to them, no other sector contains businesses which never before were subject to EROs but which could potentially become subject to them. Therefore, it is Irish Hotel Federation's view that the Labour Court should abolish both existing Hotels JLCs."

SIPTU

"Due to higher than average levels of union density, employers and unions engaged in collective bargaining to set and influence the pay and conditions of employment of hotel workers in these cities. However, over the past two decades, the employers in these locations have significantly de-unionised the sector and have ceased to engage in collective bargaining. This has resulted in a situation where the pay and conditions of employment for workers in these locations has been eroded to the level of the National Minimum Wage. There is no longer an effective mechanism to enable these workers to collectively bargain in order to advance their legitimate interest for reasonable pay and conditions of employment. In the absence of collective bargaining, hotel workers in these locations require a JLC to determine pay and conditions of employment beyond statutory minima."

and

"SIPTU contends that within the hotel sector there is no prevalence of collective bargaining between workers and their employers at any level and that the JLC system is the only means by which workers can bargain to achieve any legitimate interests and rights above the mere National Minimum Wage."

and

"In conclusion, the fixing of statutory minimum remuneration and of statutory conditions of employment is not, and will not be, prejudicial to the exercise of collective bargaining. In fact, fixing such remuneration and statutory conditions through a JLC for the industry is the only means by which collective bargaining will take place."

Summary:

- In areas outside Dublin where previously an ERO applied, there are suggestions which imply that with the suspension of the JLC system as it operated under the 1946 Act, there followed some local discussions which implicitly, resulting in reducing the terms and conditions of employment below those which applied under the most recent ERO. Whether these discussions could be defined as collective bargaining as it is understood under the various Industrial Relations Acts, i.e. through the representation of the employees by recognised representative bodies, is not clear.

Conclusion:

- The hotels sector in Dublin did have a very strong level of collective bargaining for many years, as did some hotels outside the Dublin area (Great

Southern Hotels and Hotels in Killarney for example). These hotels in Dublin and outside of Dublin were known to have collective agreements which provided for rates of pay and terms and conditions of employment set out in the EROs for the area outside Dublin. Therefore, it is reasonable to conclude that within the normal meaning attributed to collective bargaining in industrial relations legislation there was nothing in the establishment of statutory minimum rates of pay and terms and conditions of employment which was prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the trade union organised sector, where collective bargaining existed, be they inside or outside of Dublin.

- Clearly the changes in the ownership of hotels from hoteliers to developers in the early part of the last decade and then the collapse of the construction/developer element of the economy in or around 2008, followed by significant changes in the ownership profile of the hotels sector into chains, has changed the historical nature of collective bargaining in those hotels in and outside Dublin where collective bargaining traditionally occurred. The extent of the strength of collective bargaining arrangements in the Dublin area which existed for many decades may explain why there was no impetus on the workers' side to initiate activity under that JLC.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

IBEC (Dublin and Dun Laoghaire)

"Furthermore, the notion of "amalgamation" in the context of this JLC is a misnomer. Because the JLC never proposed any ERO, it never had any effect on Dublin hotels. The "amalgamation" of this JLC with any other JLC would in reality be the extension of that other JLC to a region which was never (in any real sense) governed by a JLC. The only relevance of the existing JLC is to demonstrate the irrelevancy and undesirability of any JLC operating in respect of Dublin hotels.

Given the start and unanimous opposition of employers in this sector to being governed by any JLC, the consequences of amalgamating this JLC with any other JLC (National Hotel or otherwise) would be a dramatic deterioration in relations between workers and employers in this sector."

and

"If the JLC were to be maintained, there is no reason to believe that it would be any more active in the future than it was in the past. The most likely outcome is that a redundant JLC would continue in existence. Wage rates would be set by individual or collective negotiation, as the case may be, and hotels in this region would be in a position to continue the long slow process of recovery."

and

"It needs to be noted that many of those Dublin hotels which recognise trade unions have negotiated reductions in pay and conditions in order to enable the hotels to survive the economic crisis. Such workplace-specific solutions would not have been possible had an applicable ERO existed.

The opposition on the part of employers to any JLC actually operating in respect of Dublin hotels is stark and unanimous. There is no doubt that one of the consequences of maintaining this JLC would be a dramatic deterioration in relations between workers and employers in this sector."

IBEC ("National Hotels")

"The arbitrary geographical distinction which applied between the hotels in respect of which the JLC operates and hotels in Dublin and Cork was entirely unjustified."

and

"There is no amalgamation with another JLC which would render the JLC suitable for maintenance. Amalgamation of this JLC with the Dublin Hotels JLC would have the effect of bringing all the negative elements of this JLC to the Dublin region which (in effect, though not in form) has never been governed by any JLC.

Amalgamation would also leave in place an arbitrary distinction between hotels in Cork and all other hotels in Ireland. The alternative to this – extension of a JLC to Cork – would be an even worse alternative. Cork hotels have, for good reason, never been governed by any JLC."

and

"In the absence of a JLC, hotels will continue to negotiate, individually or collectively as the case, rates of pay and conditions of employment which are sustainable for each hotel."

Peninsula

"It is unlikely for the JLC covering persons in this line of work to be removed, as it accounts for a significant proportion of all inspections and recovery of monies. The hotel JLC as it stands should be abolished and one singular hospitality and catering JLC provided as all engaged in similar work.

Summary:

- In the event of the JLC for the hotels sector being retained there are proposals for the creation of hospitality sector combining catering and hotels and or in the alternative a national hotels sector JLC.

- Aside from the opposition to the retention of a JLC for hotels, there is opposition on the employers' side to the amalgamation of the JLC for the

Dublin area, which has never functioned, into a JLC which has functioned outside of Dublin but not in Cork.

Conclusion:

- There is no agreement between employers on the elimination of the regional distinctions.
- The justification for not amalgamating those comprehended by the separate Establishment Orders, put forward by the hotels sector in Dublin requires further examination.
- The proposal by SIPTU to extend any amalgamated body to include hotels in Cork who have previously not been encompassed within any Establishment Order of JLC and pubs in Dublin (in the case of the hospitality sector) who have not previously been covered by a JLC also requires further examination.
- If either of the two options put forward under amalgamation were being considered then the question of whether any or all of these changes fall into the category of establishing or extending scope in a manner which would require a different process to be adopted under the Act requires careful consideration.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
	• SIPTU[2]	• SIPTU[2] • MANDATE[4]	• IBEC[1] • Peninsula[3] • Aspect Hotel • The Doyle Collection • The Waterford Marina Hotel • Dalata Hotel Group • Slieve Russell Hotel • Woodlands Hotel • Sandymount Hotel • Irish Hotels Federation • Riverside Park Hotel • Jurys Inns Hotels • Carlton Hotel Group • Talbot Hotel Carlow • Ferrycarrig Kilkenny and Monart Hotels	[1] IBEC's preferred option is the abolition of both JLCs. [2] SIPTU's preferred option is to merge the Hotel and Catering JLCs into a single national JLC for the hospitality sector, the scope of which would include all workers involved in (a) the preparation of food and drink, (b) the service of food and drink, (c) the provision of and the upkeep of the living accommodation, (d) the retail sale of goods, (e) work incidental to the above, (f) work performed at any office, or at any store or warehouse or similar place, (g) work involved in the delivery of hotel leisure activities, (h) work involved in front-of-house/reception duties, (i) work incidental or support to any of the above functions. Workers employed in hotels, restaurants, cafes and bars and contract catering companies all to be covered by the JLC. In the absence of a single national JLC for the hospitality sector, SIPTU's preferred option would be to merge the two Hotel JLCs into one national JLC for hotels. [3] Peninsula contend that the JLCs for Hotels should

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
			• Lee Hotels • Strand Hotel Limerick • Oranmore Lodge Hotel • Carlton Hotel Blanchardstown • Sligo Park Hotel • Glenroyal Hotel	**Cont...** be abolished. However, *"as it accounts for a significant proportion of all inspections and recovery of monies"* they state that it is unlikely that the JLC will be removed and therefore propose one singular hospitality and catering JLC. [4] MANDATE: *"Furthermore a separate class of worker – workers employed in the bar or pub trade – must be covered by an expanded hospitality JLC."*

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

- Retention in its present form would mean retaining Establishment Orders with two separate categories of workers albeit this could be resolved through an amendment to one of the Establishment Orders either to reduce the scope of one JLC or to extend the scope of the other.

- Retention in its present form would mean that Cork would continue to be excluded from the scope of any joint labour committee for the hotels sector.

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[19]

- Amalgamation would be required to provide for a national hotels sector JLC or to provide for a hospitality sector JLC comprising the previous hotels and catering sectors.

- Either of the options proposed for consideration raise the question of whether extending the scope of a JLC to Cork would result in a "new" Establishment Order/JLC for workers in that geographical area which would require a separate process to be followed in compliance with the Act of 2012.

- If either of the amalgamation options were to be followed, in addition to the point made in respect of expanding the scope to include Cork, requiring a joint labour committee which has not functioned since it was established 16 years ago to be merged with another JLC/JLCs is an appropriate legal or other interpretation of the scope of this review is a question to be considered.

[19] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant to subsection (8) of clause 11 is taken to apply in these circumstances.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

- The points for consideration under this heading are covered under the first two points in this section.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

- This remains an option for consideration in respect of either or both of the previously established JLCs.

10. Extracts from submissions received in response to requests for information/views

NERA
"Wholly or mainly" or "primarily" with no criteria specified to determine.

And when used in the definition related to an employer's business, it was argued that the test could be carried out by reference to the relative annual turnover, relative annual sales, relative profit margins of products (mentioned in an ERO to overall), time spent by employees on that part of the work relative to the other activities in the establishment, the number of staff assigned relative to the number assigned to other activities or any of the above. This was especially problematic with mixed undertakings.

"Incidental activities connected to" or *"work incidental to"*

and

"Generally, how far from the original activity does "incidental activities connected to" extend?
and

"Were leisure centre staff/concession shop staff in hotels covered by the Hotels ERO?"

"What about staff tending the hotel grounds or are they covered by the Agricultural ERO?"

11. Overall Conclusions leading to Recommendations

One recommendation is that the Hotels JLC for the Dublin area be abolished.

A second recommendation is that the Hotels JLC for outside of Dublin be retained and that the Establishment Order should be amended to clarify the classes of workers covered.

The economic justification for the retention of a Hotels JLC is that relating to the type of worker operating within this competitive sector, i.e. many are young, part-time, female, and particularly noting the increased proportion of migrant workers employed in the sector. There is real competition within the Hotels sector, nationally as well as locally. Competitive elements within the sector include the provision of ancillary services mainly related to leisure, health and beauty. The use of the term incidental in the current Establishment Order does not adequately clarify the position of workers employed in those ancillary services and this lack of clarity should be addressed.

In other circumstances, the continued regional distinction as between hotels outside of Dublin and Cork would not be justified. Indeed, in a nationally competitive sector such regional distinctions are not desirable. However, the facts are that to all intents and purposes there has never been a JLC for hotels in Dublin or Cork. Prior to 2011 when the existing JLCs were suspended there were no meetings of the JLC for hotels in Dublin. This is in spite of the fact that the normal practice in JLCs was that the worker representatives would seek a meeting to review pay and conditions of employment. Thus, it has to be taken that for 14 years there was no demand for a JLC for Dublin or related employment regulation orders to provide protection for workers in hotels in the Dublin area. Similarly, in Cork there never was a JLC before July 2011, and there is no known record of any application by workers in Cork to establish one before that July 2011. Again, it must be taken that there was no perceived need to provide protection for workers in hotels in the Cork area.

Whatever about proposing extensions to Establishment Orders within previously active Joint Labour Committees or where there is consensus to have Joint Labour Committees and then to adapt those JLCs to market conditions including the profile of the workers, to retain a JLC that was never activated is not a sustainable position within this review. If one regional distinction is to be retained, i.e. Dublin, there is no particular or apparent justification for abolishing the other one, i.e. Cork.

12. Recommendations

Abolish the JLC for Hotels in Dublin.

Retain the JLC outside Dublin and clarify the scope of workers and services covered.

Amend the Establishment Order to remove section (e) of those engaged in the following work: *'work incidental to (a), (b), (c) or (d).*

Amend the Establishment Order to insert a new (e): *'work in leisure facilities and employees of the establishment or a related business, engaged in the provision of personal services such as health, and beautician services provided on the premises to customers of the hotel'.*

Amend the Establishment Order at (f) to include outdoor grounds workers

Amend the Establishment Order to insert a new clause (g) *'those workers who are employed by a third party from whom their services are provided on a contract basis, shall have their terms of employment determined by the terms of employment set by the relevant JLC, if such be the case, or in the absence of a JLC, in the employment from whom the service is contracted.'*

The effect of these amendments is to bring clarity exactly who is covered by a JLC for any part of the Hotels Sector. The removal of incidental work and the replacement with leisure and other facilities will bring the scope more up to date with the range of services provided by many hotels and which otherwise would continue to be comprehended only by the word *'incidental'*.

The effect of these amendments is to recognise that services in a number of hotels are contracted out to third parties and to clarify how rates of pay are to be determined for such employees.

It is recommended that these amendments, which clarify the classes of workers covered by the Establishment Order should be implemented by application of the provisions of the Act of 2012.

Abolish the Dublin Hotels JLC by application of the provisions of the Act of 2012.

This recommendation has the effect of abolishing a JLC which did not meet between 1997, when it was established, and July 2011 when all JLCs were suspended following the decision of the High Court in Grace and others-a period of 14 years. This recommendation will give effect to the de facto position in respect of this JLC - that it has never functioned.

Law Clerks

Joint Labour Committee

1. Name

Law Clerks Joint Labour Committee

2. Establishment Order

S.I. No. 308/1947 – Law Clerks Joint Labour Committee Establishment Order, 1947.

Date: 6th November, 1947.

3. Activity

(i) Date of Most Recent ERO

16th June, 2009.

(ii) Date of Last Meeting

26th June, 2009.

(iii) Rate(s) of Pay as per ERO

There are three categories comprehended by the ERO, each of which could be deemed to be the recruitment grade for their particular stream or, alternatively, the office assistant may be deemed to be the recruitment grade. This is difficult to assess in the absence of any submission from/or meeting with the recognised representative body for the legal profession, i.e. the Law Society.

Law Clerks €11.52 – plus two service pay rates
Legal Secretary €9.72 – plus five service pay rates
Office Assistant €9.74 – plus one service pay rate.

4. Scope

"Clerical workers and Messengers whether whole time or part time employed by Solicitors in connection with their professional work and by bodies corporate in their law departments under the direction of their law agents including managing clerks, general law clerks, court-clerks, costs-clerks, typists, stenographers and book-keepers but excluding Solicitors' Apprentices and Solicitors."

5. Number of Responses to Public Notice

5.

6. List of Responding Bodies

1. Peninsula Business Services
2. IBEC
3. SIPTU
4. Chair of the Law Clerks JLC
5. MANDATE

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;

Specific reference was made to the Law Society views in the review of the Joint Labour Committee system conducted for the Labour Relations Commission in 2005 by the University of Limerick. The view of the Law Society at that time was that the Law Clerks JLC should be abolished on the basis that the need for the JLC had been *"overtaken by events in which market forces are such that employees have opportunities to move employments in response to market forces."*

This is the only review by the LRC since 1990 that makes specific reference to the Law Clerks JLC.[20]

Summary/Conclusion:

- There was no review for this sector conducted by the LRC under section 39 of the Industrial Relations Act.

[20] Page 43 of 2005 Report from the University of Limerick entitled Review of Joint Labour Committee System under the heading JLC Relevance.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

SIPTU

"SIPTU submits that the JLC should provide coverage to workers employed as office managers, law clerks, bookkeepers, legal secretaries and office assistants.

The legal industry in Ireland is dominated by 5 major players and a large number of small and medium sized enterprises. Firms provide a range of differentiated professional services. As such the pricing structure of enterprises is not directly comparable and by and large enterprises maintain price setting power.

Labour demand for law clerks is derived from the demand for legal professionals and as such a marginal change to the wage rate will have a negligible impact on vacancies in the sector. With regard to law clerks' share of total labour cost, a wide dispersion exists between wage levels for professional and associate professional workers relative to support staff at the firm level within the industry. In effect, payment of a wage premium marginally above the national minimum wage would have little effect on overall staff costs."

Summary:

- Noting the comments from the Law Society in the Report of 2005 – it is not known if the market forces described at the time are still a feature in determining wage levels in the grades comprehended by the ERO or to what extent and in what geographical areas.

- The SIPTU submission suggests that the rates established by a JLC are more likely to apply to small and perhaps medium enterprises rather than the major players (who operate from Dublin), although the terms and conditions of employment may have application in the larger firms also.

- SIPTU's submission proposes that the classes of workers to be comprehended by any Establishment Order would be those contained in the most recent ERO, i.e. Office Manager, Law Clerk/Bookkeeper, Legal Secretary and Office Assistants. This would delete Cost Clerks, Court Clerks, Typists, Stenographers and Bookkeepers from the scope of the previous Establishment Order and change the title of Managing Clerks to Office Managers. It is reasonable to conclude that the categories proposed for deletion are no longer employed in modern law offices.

Conclusion:

- Any Establishment Order for law offices should be revised from the existing scope to be relevant to the categories of workers now in employed.

"Or

(ii) The last review under this section was carried out;"

The extract from the 2005 report which relates to the Law Clerks JLC makes no reference to the class or classes of workers.

Summary:

- There is no reference to the classes of workers in this sector in any review by the LRC under section 39 of the Act of 1990.

Conclusion:

- There is nothing in any review under the Industrial Relations Act or in the University of Limerick Review of 2005 to have regarded to under this section.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—"

(I) the committee was established,"

SIPTU

"SIPTU submits that a JLC for this sector should apply to enterprises such as solicitors, law firms, and law departments in corporate bodies."

Summary:

- The submission my SIPTU taken with earlier points about the 5 major players in this sector indicates some change in the type of enterprises now providing solicitor services. However, there is no detail which would suggest that such firms (or law firms or law departments in corporate bodies) are paying rates at the minimum rates set out in the EROs issued prior to July 2011.

Conclusion:

- There is insufficient detail as to the impact of the changes in establishments which would justify an amended Establishment Order with the redefined scope suggested by SIPTU. Further discussion might be helpful in this regard.

"or

(ii) the last review under this section was carried out;"

The submission by the Law Society to the review of 2005 makes no reference to the type or types of enterprises to which the Joint Labour Committee applies. However, in the absence of a submission from, or meeting with (requested), the Law Society it has not been possible to obtain any information as to whether *"market forces are such that employees have opportunities to move employments in response to market forces."*

Summary:

- There is no reference to the type or types of enterprises in this sector in any review by the LRC under section 39 of the Act of 1990.

Conclusion:

- There is nothing in any review under the Industrial Relations Act or in the University of Limerick Review of 2005 to have regard to under this section.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

SIPTU

"Our view is that the establishment of NERA and the increase in capacity of the inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. Whilst we may not have seen any significant reduction in the levels of employer noncompliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that going forward the JLC wage setting mechanism will require an Inspectorate resource to at least the equivalent levels as were in as of July 2011."

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009	*45*	*4*	*9%*	*€685*
2010	*14*	*7*	*50%*	*€2,225*
2011[1]	*2*	*2*	*100%*	*Nil*

[1] *The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. The figures for 2011 are broken down under a number of headings and in respect of the standard minimum remuneration, the number of breaches was nil, and in relation to the records kept the number of breaches was 2. A similar breakdown of figures for 2009 and 2010 was not provided."*

Summary:

- The figures for this sector show varying degrees of compliance in terms of pay – but the level of cases examined reduced considerably between 2009 and 2010, and the figure of 2 in the first half of 2011 is very small. It is noted that in that small case study in 2011, there were no breaches in terms of SMR (standard minimum remuneration).

Conclusion:

- Given the falling level of cases examined year on year, there is nothing particularly significant to be concluded from the figures provided by NERA in terms of compliance in this sector.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

SIPTU

"The last ERO set by the JLC for this sector was in June 2009, and since July 2011 workers have only been entitled to receive the national minimum wage and other statutory entitlements set forth in primary employment legislation.

SIPTU is of the view that evidence is emerging of employers driving down the wage levels and withdrawing the other conditions of employment that workers achieved through collective bargaining in the JLC system."

Summary:

- The submission from SIPTU represents a view in terms of employers driving down wage levels – no evidence of this statement is provided.

Conclusion:

- The extent to which the view expressed by SIPTU could be valid would depend on turnover within the sector and the exercise of market forces as previously cited by the Law Society with regard to particular grades especially those who are required to have skills and experience in the areas of Office Managers and Law Clerks. It is quite possible that for an inexperienced Office Assistant, previous rates of €20,367 annually might be in excess of some local rates for administrative workers without experience – but there is no evidence to support even this speculation.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

SIPTU

"The impact on employment levels of law clerks in the legal services industry due to the reintroduction of the sectoral minimum is likely to be negligible. This is due to a number of key industry features: (a) the market structure which in turn determines the price setting power of any one operator (b) the share of labour costs as a percentage of total costs and the size of the proposed wage premium. Labour demand for law clerks is derived from the demand for legal professionals and as such a marginal change to the wage rate will have a negligible impact on vacancies in the sector. With regard to law clerks' share of total labour cost, there exists a wide dispersion between wage levels for professional and associate professional workers relative to support staff at the firm level within the industry. In effect, payment of a wage premium marginally above the national minimum wage would have little effect on overall costs."

D Nolan, Chairman, Law Clerks JLC

"I believe that this Committee has proved to be an efficient and cost effective forum for both law clerks and solicitors in negotiating and agreeing rates of pay in this profession.

Over the past number of years this Committee has assisted and facilitated the restructuring and tidying up of a number of grades in the legal profession, office profession thereby ensuring a clear and well defined work structure to act with."

Summary:

- Neither of the submissions point to any evidence of the established rates of pay as set out in EROs, impacting on employment levels at entry level in this sector.

- The comment from the Chair of the Joint Labour Committee reflects a level of agreement in this JLC achieved between the employer and worker representatives which has been of benefit to employers as well as workers.

- The rates of pay for this sector were last adjusted in June 2009, which suggests that unless market forces determine otherwise in certain employments that rates of pay will not have increased in this sector for four years in June 2013.

Conclusion:

- There is no historical or projected information provided to the review which could lead to a conclusion that the rates of pay set out in the EROs in the past have or would impact on employment levels, especially at entry levels. This conclusion takes account of the fact that there has been a pay freeze in this sector in terms of enforceable rates of pay for almost four years.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

D Nolan, Chairman, Law Clerks JLC

"It is very important that parties to a process have confidence in the working and independence of that particular committee, it is my experience that in the case of the Joint Labour Committee on law clerks that both sides have indeed embraced the work of the Committee thereby ensuring its continued success. Over the years the JLC has supported both employers and law clerks in reaching agreements on salary rates and I believe it would be a serious step backwards if the Committee was to be disbanded."

SIPTU

"SIPTU submits that given the circumstances that prevail in this sector with regard to trade union density and the nonexistence of the practice of collective bargaining between workers and employers other than at the level of the JLC, the JLC in this sector establishing an ERO has not been prejudicial and will continue not to be prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of worker and employers in this sector. The reason for this is because a JLC for this sector is the only means by which such legitimate interests can be achieved as there is no other existing industrial relations machinery that can provide collective bargaining for workers in this sector to enable them bargain for fair wages and conditions of employment."

Summary:

- The submissions indicate that there is no collective bargaining in this sector. The comments from the Chair of the Joint Labour Committee indicate that the Law Clerks JLC is in effect the forum for collective bargaining in this sector.

Conclusion:

- The submissions to the review suggest that rather than being prejudicial to collective bargaining in this sector, the Law Clerks JLC has provided an opportunity for such collective bargaining to take place, and no other forum for collective bargaining exists within the sector.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

As this JLC had national application this subsection is not applicable to this sector.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• Chair of JLC • MANDATE		• SIPTU[2]	• Peninsula	[1] IBEC – no view is expressed regarding this JLC. [2] SIPTU submits that the JLC should provide coverage to workers employed as Office Managers, Law Clerks, Bookkeepers, Legal Secretaries and Office Assistants. SIPTU submits that a JLC for this sector should apply to enterprises such as solicitors, law firms and law departments in corporate bodies.

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

There is a strong case for revision of the scope of this JLC to ensure that it is relevant to the nature of the work performed in law offices.

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[21]

This does not arise in this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

The suggestions for amending the scope of the JLC to provide only for the three categories set out in the most ERO, would bring the scope into line with current practice in the sector in terms of classes of worker.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

No case has been made by any organisation representative within the sector for the abolition of the JLC – which is the only established form for collective bargaining for the grades encompassed and proposed to be encompassed by the Establishment Order.

[21] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant to subsection (8) of clause 11 is taken to apply in these circumstances.

10. Extracts from submissions received in response to requests for information/views

As previously stated, the Law Society was invited to a meeting during phase 1 of the review and there was no response to the offer of a meeting. However, during phase 2 and before meeting with the Labour Court the Society contacted the review and apologised for not taking up the offer sooner and requesting a meeting. The Society also stated that the failure to make a submission in response to the public notice was an oversight.

A meeting with representatives of the Law Society took place on the 27th March and there was a discussion about the numbers employed, the relative rates of pay and changes in the profile of workers and employers in the sector in recent years. The Society made a submission on the 3rd April 2013, and the following are extracts from their position.

> *"The Law Society of Ireland welcomes the statutory based review presently being undertaken for the Labour Court on the future of joint labour committees. One of the 13 joint labour committees, originally established under the Industrial Relations Act, 1946, relates to "Law Clerks".*
>
> *The Law Society recognises the role played in the past by the joint labour committees as statutory bodies established under the Industrial Relations Acts 1946 and 1990 to provide machinery for the fixing of minimum rates of remuneration together with the regulation of conditions of employment."*

and

> *"It has long been the objective of the Law Society that the joint labour committee system insofar as it relates to firms of solicitors as employers, should be abolished as a relic of a bygone age. This has been all the more strongly the view of the Society since the introduction of the National Minimum Wage Act 2000.*
>
> *Where pay rates have been set by the JLC in the past, the Law Society has been of the view that such rates were probably considerably below the actual market rates paid to employees in law firms, certainly in Dublin and probably in every other part of the country also.*
>
> *It is the Law Society's view that such structures no longer have application to the legal business models as presently operating throughout Ireland."*

and

"It may be useful to survey the legal practice environment in Ireland. There are roughly 2,200 solicitors' firms practising throughout the Republic of Ireland. The Law Society has no data on the numbers employed in those offices as it is not part of our function to solicit such information.

The Society is certain that the ratio of support staff to professional staff in law firms has been falling for many years. This has been partly as a consequence of technological advancement and a pronounced tendency for most younger solicitors to do their own production of documents. However, this is also most especially as a result of the recession in which upwards of 1,000 solicitors are currently unemployed and a great many support staff very regrettably have been made redundant."

and

"The report of the independent review of Employment Regulation Orders ("the Duffy-Walsh Report") postulated that the numbers employed in the legal sector covered by an ERO was in 2009 somewhere between 4,239 and 5,389 persons and as a percentage of the overall workforce covered by the joint labour committees this number represented no more than 0.7% of the overall total of circa 152,000 workers.

As previously indicated, the Law Society has no evidence, empirical or otherwise, to either vouch or discount this information. However, if this information was reliable for the relevant year of 2009 then we would confidently assert that the numbers employed have substantially reduced since then. This is a consequence of the economic tsunami which has engulfed the legal profession in the interim. Unemployment of solicitors alone is in excess of 1,000 with approximately 8,800 solicitors currently holding practising certificates.

The Society views the joint labour committee system as typically encompassing categories of employees who are to a large extent unskilled, perhaps migrant, sometimes not having proficient English and vulnerable. None of these factors have any relevance or applicability to those presently covered by the JLCs from the legal sector. We note that the Duffy-Walsh Report recommended the abolition of certain JLCs which have now become so small in terms of numbers employed, or which have effectively ceased to function and this has led subsequently to the abolition of certain categories of JLCs.

The Society believes that through the circa 2,200 firms throughout the country who employ "law clerks" (this term has become rather old fashioned) as covered by the ERO, that their employees enjoy conditions which comfortably exceed the terms of the former ERO both as to remuneration and conditions of employment. Employees of legal offices predominantly work a five day working week and are

not required to work at weekends or on a Sunday so that those provisions of the ERO as affecting Sunday work would generally not have any application whatever to the legal sector.

In the Society's view the continued application of the JLC to the legal sector is itself an impediment to employment as certain firms are prevented from employing staff in a free economy, willing to take up positions offered at statutory minimum rates of pay or beyond, but below the relevant ERO.

On balance, therefore, the Law Society favours the abolition (or "non-revival") of the Law Clerks Joint Labour Committee for the reasons outlined above and that the persons presently covered by the legislation are relatively insignificant in number, are well educated and informed and enjoy conditions of employment generally in excess of that stipulated in the "Law Clerks" EROs."

11. Overall Conclusions leading to Recommendations

It is recommended that this JLC be abolished.

An economic justification for the retention of this JLC consistent with the rationale adopted elsewhere in this report has not been established to this review in respect of this sector.

This is a sector which does not comprise a large body of workers who are migrants with poor English language or literacy skills. There was no evidence presented to the review which suggests that this is a sector dominated by young or part-time workers. The workers have at the time of their employment or attain during their employment skills and experience necessary to be mobile within a broad range of administrative posts which generally pay well above the minimum wage.

A JLC for this sector would no longer be able to provide for service pay to the extent provided for in previous EROs the levels of which place the rates of pay well above those which apply in other sectors which have and which it is recommended should continue to have joint labour committees. This position, i.e. the reduction in the capacity of a JLC to establish service rates above the third point of the scale applies to one of the three categories set out in the most recent ERO issued in 2009. For that category, i.e. Legal Secretary, the top rate set by the JLC in 2009 was 36.8% above the full minimum wage multiplied by a 38 hour week. In the case of the Law Clerk/Bookkeeper, the margin above the minimum wage was 46%. These margins reinforce the general conclusion that of all of the sectors which are currently comprehended by a joint labour committee this one has the least relativity with the minimum wage. There is little or no requirement for premium payments outside of core hours.

There are no compelling competitive economic reasons from a worker perspective similar to those in contract cleaning and contract security which would support its retention. One of the subdivisions of workers covered by the current JLC does have a relativity with the minimum wage, i.e. the Office Assistant – however, the retention of an entire JLC to protect one small section of employees is not considered justified.

There is no consensus on the retention of this JLC as between worker and employer representative bodies. There is no alternative collective bargaining structure for these workers within the sector, however, this is no different than the situation for many administrative workers across the financial and services sectors.

The decision to recommend the abolition of this JLC is based mainly on the absence of any economic justification for the retention of a JLC for the administration workers in the sector as a whole, compared with the economic justification which is provided for other sectors where it is recommended that a JLC be retained.

12. Recommendations

Abolish JLC.

This recommendation has the effect of abolishing a JLC which is not considered relevant to the sector as a whole, or a sufficient part thereof, in determining rates of pay which have any relativity with the National Minimum Wage, nor is it required to set unsocial hours premium. The classes of workers it represents are not exposed to the same type of competition as other sectors, and there is no substantial number of migrant workers with the attendant economic vulnerability.

The provisions of the 2012 Act should be applied to the abolition of this JLC.

Retail Grocery and Allied Trades

Joint Labour Committee

1. Name

Retail Grocery and Allied Trades Joint Labour Committee

2. Establishment Order

S.I. No. 58/1991 – Retail Grocery and Allied Trades Joint Labour Committee Establishment Order, 1991.

Date: 2nd April, 1991.

3. Activity

(i) Date of Most Recent ERO

13th May, 2011.

(ii) Date of Last Meeting

12th April, 2011.

(iii) Rate(s) of Pay as per ERO

Sales Assistant/Clerical Worker (1 June 2011)
Under 18 - €6.72
Over 18, First Year - €7.58
Over 18, Second Year - €8.54
Adult Entry - €9.48 plus two service rates (Sales Assistant and Clerical Worker)
Ancillary - €9.48 no service rates.

4. Scope

"Workers to whom this schedule applies

1. All workers employed anywhere throughout the State in any undertaking or any branch or department of an undertaking being an undertaking, branch or department engaged wholly or mainly in the retail grocery and allied trades and who are engaged on any of the following duties, that is to say:

(a) operations in or about the shop or other place where the sale by retail aforesaid is carried on being operations for the purpose of such sale or otherwise in connection with such sale;

(*b*) clerical or other office work carried on in conjunction with the sale by retail aforesaid and relating to such sale or to any of the operations in (*a*) of this sub-paragraph,

BUT EXCLUDING

(1) independent off-licences and shops exclusively for the sale of bread and flour confectionery;

(2) beef butchers and apprentice beef butchers;

(3) workers to whom another Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies;

(4) workers affected by an Employment Agreement, that is, an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made at a meeting of a registered Joint Industrial Council between members of the Council representative of workers and members of the Council representative of employers, provided that the remuneration and conditions of employment are not less favourable than those set out in the Employment Regulation Order made as a result of proposals received from the Joint Labour Committee for the Retail Grocery and Allied Trades;

(5) workers to whom a negotiated employment agreement applies provided that the remuneration and conditions of employment provided for in the registered employment agreement are not less favourable than those provided for in the regulation order made as a result of proposals received from the Joint Labour Committee for the Retail Grocery and Allied Trades;
(6) Managers, Assistant Managers and Trainee Managers;

2. For the purposes of this schedule "the retail grocery and allied trades" consist of the sale by retail of:

(*a*) bacon, ham, pressed beef, sausage, or meat so treated as to be fit for human consumption without further preparation or cooking but does not include the sale by retail of other meat;

(*b*) all other food (including bread or flour confectionery, articles of sugar confectionery and chocolate confectionery and ice cream) or drink for human consumption other than for immediate consumption on the premises at which the sale is effected;

(*c*) tobacco, cigars, cigarettes, snuff and smokers' requisites.

3. For the purpose of this schedule:—

(*a*) in determining the extent to which an undertaking or branch or department of an undertaking is engaged in a trade or group of trades, regard shall be had to the time spent in the undertaking, branch or department on work in those trades;

(*b*) an undertaking or branch or department of an undertaking which is engaged in any operation in a trade or group of trades shall be treated as engaged in those trades."

5. Number of Responses to Public Notice

16.

6. List of Responding Bodies

1. Peninsula Business Services
2. RGDATA
3. Topaz
4. IBEC
5. SIPTU
6. M. Meagher (Employer)
7. F. Ormston (Employer)
8. O'Callaghans (Employer)
9. CSNA
10. Doherty (Employer)
11. Retail Excellence Ireland

12. O'Brien Power (Employer)
13. Applegreen
14. BWG
15. Triode Newhill Management Services Limited
16. MANDATE.

7. Summary of Responses in Relation to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

Summary:

- There is no specific conclusion or recommendation in the 1993, 1998 (or 2005) reports commissioned by the Labour Relations Commission in respect of this JLC.

Conclusion:

- There is nothing in the previous reviews under this subsection to have regard to in this sector.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

Peninsula

"As discussed unsocial hours are an occupational hazard of retail and any workers entering into such a role would be aware of the requirement to work these hours so to pay higher premiums on these hours effectively penalises employers involved in retail. Additional protection is already afforded through S.I. 57/1998 in respect of rest breaks for this category of worker."

and

"There is additional protection afforded to retail workers under S.I. 57/1998 which is over and above the minimum rest periods afforded to workers under the Organisation of Working Time Act, 1997."

and
"Large number of entry level or inexperienced workers trying to gain experience in the workforce and a large number of seasonal workers taken on at peak times throughout the year."

RGDATA

"In 1946 workers had few statutory rights. There were no rights to a national minimum wage, nor any specific provisions around hours of work. There were few protections for minors and no independent enforcement or arbitration processes to assist aggrieved workers. In addition employees had no protection around tenure of employment. That position has now changed radically and employees have a significant number of guaranteed and implied rights under statute, with access to effective enforcement and conciliation processes in the event that there aggrieved".

and

"The rigidities in employment practices that the JLC regime copper fastened prior to the Feeney judgement in July 2011 were not reflected in the trade or merchandising activities of retailers on a daily basis. Nor were they reflected in the work practices of people in those shops, or consumers shopping in those shops. For example on a high street or in a shopping centre the JLC regime ensured that different shops competing with each other on a range of products were effectively subject to different levels of statutory minimum wage. People working in a florist, bookseller, boutique, chemist, hardware, draper, fishmonger, butcher or delicatessen were all subject to the National Minimum Wage and general employment law provisions and rates of pay, whereas retailers selling flowers, books, clothing, homeware, newspapers, fish, meat or sandwiches were subject to higher basic employment costs and additional terms and conditions that did not apply to his or her competitor."

SIPTU

"SIPTU submits that the class or classes of worker to whom the JLC applies should continue to give coverage to the grades as at July 2011. We are also of the view that the maintenance of the JLC will provide the opportunity for the parties to engage on matters relating to the scope of workers with a view to addressing any anomalies the parties may consider to exist."

Retail Excellence Ireland

"Ireland is well known to have one of the highest minimum wage rates in the world. It is therefore attracting an inordinate number of first time workers from outside the state. In 2012 there were over 73,000 PPS numbers issued to non-nationals (83,000 to Irish nationals). As well as security, manufacturing and retail, the catering/restaurant/coffee/food service industries are the traditional providers of first time work. Increasing the minimum rates of pay in these sectors will have some unintended

consequences. Rather than reduce the dole queues it will increase the inflow of non-national workers. This will in turn increase the amount of money being sent abroad by immigrant workers (€1.8 billion in 2011)."

BWG

"There is now a situation, where employees employed under an ERO have additional legislative rights over other employees. In the UK when the NMW act was introduced, the comparable regulation orders were abolished as they were regarded as anachronistic. In support of this, based on the information contained in the "Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms", April 2011 Retail Grocery and Catering JLC's apply to approximately 7.5% of private sector employees (being over half of the 15% of employees covered by JLC's in the entire private sector). It is therefore apparent, with 85% of private sector workers afforded the protection of the National Minimum Wage and other employment legislation, this provides sufficient protection to all private sector employees equally including those in the aforementioned sectors."

CSNA

"2.5 In response to Parliamentary Question tabled on 25th April 1991 by Mr. Byrne, the Minister for Labour Mr. B Ahern estimated that there were 28,000 workers employed in the sectors covered by the new JLC. Mr. Ahern had provided the 1988 census of services as the source for the numbers of workers to be covered, and that it would "take in all the areas".

2.6 The 1988 census of services, CSO provided the following figures

	Full-Time	Part-Time	Total
Food, Drink & Tobacco	29,020	16,737	45,757
Supermarket	10,480	7,094	17,574
Other Grocery/Public House/Off Licence	16,816	8,527	25,343 (-18,010 = 7,333)
Tobacco, Sweets & Newspapers	1,724	1,116	2,840
Clothing & Footwear	7,468	2,724	10,192
Vehicles	10,959	1,643	12,602
Chemist	2,751	539	3,290
Hardware/Electrical /Furniture	5,373	723	6,096
Department Store	2,733	744	3,507
All other Non-Food	6,807	1,429	8,236
Total	**65,111**	**24,569**	**89,680**

As the CSO also provided the statistics that there were a total of 126,800 employed in the retail sector, there are a total of 37,120 employees not listed in the above subsector breakdown. (Labour Force Survey 1988-1995 CSO). These were the 38,200 that are listed as "proprietors and family members".

2.7 The 28,000 workers to be covered by the newly established JLC were therefore only to come from within the "Supermarket", "Other Grocery/Public House/Off Licence" and "Tobacco, Sweets and Newspaper" subsector of the Food, Drink and Tobacco sector, as their combined employment figure was 27,747.

To be excluded were 1,197 grocery with public house, 12,659 public house, 222 off licence, 2,888 fresh meat and 1,044 bread/flour. Included were 298 delicatessens, 702 dairy, 214 fish and poultry, 403 fruity and vegetable, 400 country shops."

and

"It is our view that regarding the class or classes of workers and with respect to the types of enterprises covered by the Establishment Order, the entire retail environment has changed so fundamentally that to use any type of product for retail either to include or exclude ""admission" into a JLC is a nonsense."

MANDATE

"In the retail sector, female employment increased by over 50% in the 10 years to 2008 (Eurofound, 2011). Furthermore, research carried out on the retail sector by Indecon consultants (2002) found a substantially lower proportion of females in managerial/ administrative positions as compared to men (12.9% as compared to 30.3%). It was found that 67.8% of female workers in the sector were concentrated in lower paid sales assistant jobs, with just 37.1% of males in these jobs. The study also found that 59% of women in the sector earned less than €18,000, compared to 35% of men and just one in ten women in the sector earned over €24,000, compared to 30% of men."

and

"In the retail sector in particular, women make up the majority of low-paid and part-time workers in the sector. Furthermore, a significant effect of abolishing the JLC rates will be to increase the gender pay gap."

and

"Furthermore, abolition of the JLC will lead to a potential reduction of sectoral minimum wage rates to such a degree that this may reduce the incentive to work and creates a 'welfare trap'. This is particularly relevant in low paid, female dominated sectors such as retail and office administration, in which the cost of childcare has a significant impact on

whether it is worthwhile for a worker to continue in their job. The Indecon research found that 80% of women in the sector had children and one-fifth of women in retail were single mothers, a group particularly at risk of falling into the 'welfare trap' (Indecon, 2002). According to Forfás (2010), a replacement rate - the ratio of unemployment benefits to take home pay - of over 70% is considered excessive i.e. if an individual can receive more than 70% in unemployment benefits of their take home pay from work, they will demand a higher wage to retain a monetary incentive to work. Low income earners – particularly families with children – may already have replacement rates in excess of 70% (Forfás, 2010). Low paid earners have also been brought into the tax net and have been hit by the Universal Social Charge (USC), resulting in about a 15% reduction in their take home pay."

and

"In 2009, approximately 15% of workers in the wholesale and retail sector were non-Irish nationals (Eurofound, 2012). However, the findings of the 2011 Review of Employment Regulation Orders indicate that a disproportionate number of the non-Irish nationals in the sector are covered by the Retail JLC. The Review found that in 2009, across the JLC sectors, 40% of workers covered by the JLCS were from outside Ireland (Duffy & Walsh, 2011). The Review also found that over half of workers covered by JLCs were employed on a part-time basis.

Therefore, from an examination of the classes of workers covered by both the Law Clerks JLC and the Retail JLC, it is clear to see that retention of the JLC will most benefit and protect female workers and other vulnerable workers such as young people and immigrants."

Summary:

- There is nothing in the foregoing extracts that indicates a change in the class or classes of work as they were in the Establishment Order of 1991.

Conclusion:

- While there is nothing in the submissions to suggest a change in the class or classes of workers in this particular sector of retail, the changes in the range of services provided in many of the establishments comprehended by the original Establishment Order does impinge on consideration of the class or classes of workers to be comprehended by any Establishment Order or JLC should it be decided to maintain a JLC for this sector.

"or

(ii) the last review under this section was carried out;"

Summary:

- There is no specific conclusion or recommendation in the 1993, 1998 (or 2005) reports commissioned by the Labour Relations Commission in respect of this JLC.

Conclusion:

- There is nothing in the previous reviews under this subsection to have regard to in this sector.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

Peninsula

"The retail sector has increased marginally however this industry is still very much reeling from the severe decline currently being experienced."

RGDATA

"RGDATA includes over 4,000 family grocers in the State who run shops, convenience stores, forecourt stores and supermarkets in every town, county and community throughout the State. The aim and objective of RGDATA is to provide support for independent family grocers while encouraging and developing a high standard of retailing, equal to best European practice and competitor standards. The members of RGDATA are all family owned and operated retail grocery outlets – some operate as part of a national symbol group, while others are non-aligned and trade directly under their own names."

and

"As a sector the independent retail grocery sector has borne the brunt of the economic downturn. Independent economic analysis has demonstrated that the retail grocery sector has seen sales decline by 25% since 2008. The sector has also seen significant contraction with a large number of independent retailers ceasing to trade due to difficult economic conditions."

and

"In addition to reduced consumer demand, as a sector, independent retailers have faced particular difficulty accessing funding from the banks, either through a reduction in existing facilities afforded to banks, or an outright refusal to provide additional finance."

and

"The trade is now comprised of a small number of Irish and international large multiple retailers (Aldi, Dunne's Stores, Lidl, Superquinn, Tesco) who collectively have over 66% of the retail grocery market nationally, while the independent retail grocery sector (those operating in association with a symbol ie Centra, Costcutter, Gala, Londis, Mace, Spar, SuperValu and non aligned retailers) collectively hold a 34% market share. The multiples are located mainly in urban areas with a significant market share in the east and south of the country.

The sector has seen significant changes in recent years with the rapid expansion of Aldi, Lidl and Tesco, the extension of opening hours and seven day retailing the norm. In addition there has been a move to larger sized units by the multiples and independents and a push towards centralised distribution and delivery to stores. There has also been the advent of internet food shopping and home deliveries. The larger multiple retailers have developed smaller format stores to trade at a scale which was traditionally the main operating size adopted by the independent sector.

The trade has also seen high levels of competition, with a challenging operating environment. As a sector, 2012 was the fifth successive year in which there was a decline in retail food sales. The decline in consumer spending is a factor of the general economic conditions including unemployment, reductions in salaries, cutbacks in government spending and higher taxes. The prognosis for 2013, particularly in light of the measures introduced in Budget 2013, and the advert of the Property Tax in mid-2013 is for a further reduction in consumer spending and a reduction in the level of retail sales.

The sector is also a significant employer in the national economy, with over a quarter of a million people employed in the retail and wholesale trade generally. This sector has also seen the biggest increase in unemployment with nearly 25,000 people losing their jobs in the retail sector in 2009 alone, with a further 17,700 losing their jobs since then. The Retail Grocery sector as a significant component of the retail sector has seen numbers employed in the sector reduce considerably.

Wage and staff costs form a significant percentage of the operating costs of retailers. Some retail formats use less staff and their labour costs are reduced accordingly – Aldi and Lidl operate with less staff than a full service super market (with about a quarter of the staff that a supermarket of equivalent size would command). It is estimated that in the retail grocery

sector staff costs account for up to 54% of operating costs depending on the specific format.

Despite the efforts of retailers to adapt and survive, there has regrettably been an increase in the numbers of shops that are closing."

and

"The independent retail grocery sector is a key part of the retail grocery sector in Ireland and makes a significant contribution on both a regional and national level.

Economist Jim Power carried out an assessment on the economic and financial significance of the sector in late 2010 and his report provides a useful snapshot of the economic contribution made by independent retailers to the national economy.

In his analysis Power notes that local shops make a major contribution to local labour market conditions; "They provide steady employment, they typically source their staff locally, they tend to provide longevity of employment and also provide variety and choice in working hours in terms of part time and full time working arrangements".

He estimated that independent retail grocery outlets accounted for 95,620 full time equivalent jobs in the economy. He calculated that the net wages paid by the independent retail grocery sector was in excess of €2 billion with a multiplier effect for assessing national economic impact of €4 billion which is equivalent to approximately 3% of GMP.

In his analysis Power noted that for independent retailers, wage costs are one of the most significant operating costs as the business is essentially customer focused and consequently labour intensive. He also noted that under the terms of the JLC arrangements, employers in the retail grocery sector were obliged to pay a wage rate that was between 8% and 14% above the minimum wage and could in some cases be up to 25% higher depending on the pay scale of the employee concerned.

He also noted some of the ancillary pay provisions in the JLC that applied to employees on Sundays and public holidays and commented "There is no public policy justification for adopting a different minimum wage structure for the retail grocery sector than applies generally. It would be appropriate to abolish the JLC structure and allow the national minimum wage to be the sole determining minimum wage level".
In his report carried out in 2010, Power noted that although retailers in the grocery sector were subject to the JLC structure, even if the national minimum wage applied at that time, wage rates would be 22% higher in the Republic of Ireland than in the UK. It is important to keep sight of the cost differential in labour costs, given that a significant number of independent retailers compete with retailers from Northern Ireland on a daily basis. In this context it is important to ensure that retailers operating in border areas

are not at a disadvantage as a consequence of a State imposed legal stipulation on the amount of money they must pay their staff in excess of the National Minimum Wage.

RGDATA as a member of a number of European bodies, in particular UGAL, the European Federation of Independent Retailers, recognises that the arrangement that applied in Ireland in relation to a separate sector specific statutory national minimum wage for the retail grocery is unique. Throughout other member states the only mandatory stipulation on any rates of pay to those in retail grocery shops is the national minimum wage, where this exists. In the United Kingdom for example the joint labour committees were abolished in 1993, they have not been replaced. Instead retailers in the UK are subject to the national minimum wage which has universal application across the UK.

Introducing a regulatory system for wage rates in the retail grocery sector which links the minimum wage required in the retail grocery sector to the national minimum wage would bring Ireland's labour cost structures in line with the regulatory arrangements in other European countries and in particular in our nearest neighbour. This would be a significant advance, particularly for those competing with retailers in Northern Ireland who are benefiting from lower labour costs.

By virtue of the scale of stores and the high dependence on personal service, the independent retail grocery sector tends to be a more labour-intensive employer, with higher associated operating costs then either discount retailers or multiple store owners. Stores operating in these latter categories leverage off existing economies of scale and are dependent on lower employee numbers as a key factor in their operating model. This is particularly the case for discount retailers, which RGDATA estimates employ approximately a quarter of the staff per square foot in store size than a traditional independent retail grocery outlet.

Accordingly maintaining a strong vibrant and successful independent retail grocery sector is a core element in maintaining significant employment levels across a core part of the service economy."

and

"The retail grocery sector has changed beyond all recognition from the trade that existed when the JLC structure was first established in 1946, as indicated by the following;

a) *In 1946 there were circa 13,000 retail grocery outlets in Ireland. The number now is circa 5,000.*

b) *In 1946 there was no such thing as self-service in a retail grocery outlet – all trade was conducted by the grocer or his or her articled assistants.*

c) *The trade was solely comprised of small sized domestic retailers, all operating in the domestic market.*

d) *There are no multiples in 1946 with each store independently owned and operated, usually by an individual grocer.*

e) *In 1946 a scheme of apprenticeship to become a grocer was the norm and individuals served their time before qualifying. The rigidities in employment practices are less pronounced now. A job in retailing now no longer restricts an employee to a particular format retailer, but equips them to change between different formats and types of retailers as the market and the employee requires.*

f) *In 1946 trade was much more segmented. A grocer stocked a defined number of products and lines and acted as a distributor within local communities of goods that were either hard to acquire or more difficult to store in homes. In addition there was less competition in local markets as different retail formats stuck rigidly to predefined categories of merchandise. The modern-day phenomenon where a retail grocery outlet sells a multitude of products that were traditionally available from defined retailers such as butchers, bakers, off-licences, drapers and newsagents was unheard of, let alone the possibility of a retailer in 1946 preparing food for consumption either on or off the premises. In this context it was easier to delineate specific types of retail activity and to treat them separately from an employment perspective.*

g) *In 1946 the retail grocery trade was more intensively regulated in relation to hours of opening and even the categories of products that could be sold. Shops opened at a set time, usually closed for lunch and never traded in the evenings or at weekends. This contrasts sharply with the current trading hours for retail grocery outlets, let alone the 24/7 actual and online trading hours that currently apply."*

and

"As indicated above the retail grocery trade in Ireland has changed beyond recognition from that which applied in 1946. The trade is now diverse, with the significant presence of large national and multinational multiple retailers. In addition the traditional boundaries between retail formats have been blurred to an extent that defies the maintenance of a precise employment arrangement linked to a retail format which is much more diverse than that which applied when the JLC regime was initially established in post war Ireland."

and

"The boundaries between retail formats have become blurred to an extent that a differential based around historical retailing structures and formats stemming from the late 1940s is no longer relevant or appropriate from an

economic perspective. Creating and maintaining differential employment arrangements between businesses that compete with each other and in every other respect face the same or similar costs and challenges, creates distortions in the market and inflexibilities in operations which have presented significant challenges to the retail grocery sector in particular.

In addition, the retail grocery market is far more diverse than in 1946. While the independent retail grocery market is still dominated by forward thinking and progressive independent retailers, occasionally owning more than one shop, the sector is also dominated by large national and international multiples retailers operating at a different scale and level than their independent counterparts. Typically these retailers operate with fewer staff per square foot than an independent retailer and where unionised, have resorted to Registered Employment Agreements to set their terms and conditions.

Larger retailers operate at a scale and level which sets their employment arrangements at variance from the more direct relationship that exists between retailers in the independent retail grocery sector. Making a retailer operating in a rural town with a significant amount of operating pressures and challenges subject to the same employment wage fixing mechanisms as Tesco, Dunnes, Aldi, or Lidl, takes no account of their different operating formats, practices or priorities.

8. The role of a JLC for the retail grocery sector in the future
RGDATA does not believe that there is a case for the maintenance of a Retail Grocery and Allied Trades JLC in the future. The development of employment protection legislation and agencies, together with changes in the format and type of retailing in Ireland has meant that the JLC is no longer required or justified in the current market. If anything, a "retail grocery and allied trades" specific JLC merely serves to restrict the capacity of these stores to compete in a market where their competitors either operate to a far larger scale and as such can absorb higher labour unit costs, or operate in markets which are not subject to JLC controls. While RGDATA believes that there is no public policy justification for the reintroduction of the JLC to cover the sector specifically, if a new JLC is to be applied, it should cover the entire retail sector, given that retailers in different formats compete with each other right across a wide range of goods, categories and formats and their employees are largely interchangeable. In other words any new JLC should not be just retail grocery specific. RGDATA reiterates that it does not see a case for the introduction of the JLC whether for the sector or for retailing generally."

Topaz

"The JLC's are long outdated, don't allow for local conditions which vary all over the country, are aimed at multiples such as Tesco, Dunnes etc and certainly don't cater for locally based Convenience Stores of much smaller size allied with Forecourt and fuel retailing."

IBEC

"This JLC was established at a time when the "retail grocery trade" (if there really is such a "trade") was significantly different to the business which exists today. Even at the time of its establishment, the business really constituted a number of different businesses – ranging from small newsagents to large supermarkets. In the meantime, it has developed into a multi-faceted suite of business models containing a range of components which bear little resemblance to each other, except that they all sell some groceries. Petrol stations; branded medium-sized stores; foreign-owned discount stores and other business models have all grown from modest significance (at the date of establishment) to great significance (now).

Another significant development has been a significant increase in cross-border grocery shopping."

and

"The establishment order contains a number of arbitrary definitions. For example, off-licences are excluded from the operation of the JLC. A large number of retail grocery establishments rely on off-licence sales. Their main competitors in an area may include off-licences, in respect of which no JLC operates.

However, it does not appear that any amendment could resolve the fundamental problem with this JLC – which is that it creates a mechanism within which unskilled shop assistants would be entitle to receive a premium over the national minimum wage. For that reason, the JLC should be abolished."

SIPTU

"SIPTU submits that the types of enterprises to which a Retail, Grocery and Allied Trades JLC should apply should continue to cover the establishments as at July 2011. SIPTU further submits that the maintenance of the JLC will provide the opportunity for the parties to engage on matters relating to the scope of establishments with a view to addressing any anomalies that the parties consider to exist."

M.J. Maher - Employer

"I have a small grocery business and in a small village and employ 9 part-time staff. In recent times our business has decreased by a considerable amount due to the downturn and more people more emigrating each week."

O'Callaghan - Employer

"I own and run a provincial Centra supermarket in Ferbane, County Offaly. I employ approximately 34 people some of whom are part-time and I compete with all the large multiples (Tesco, Dunnes, Aldi and Lidl) in the neighbouring towns of Athlone, Tullamore, Birr, Ballinasloe. And I have had

some very tough trading experiences in Ferbane and there were times when my business almost did not make it. The years 2004 to 2008 were very lean years and several years of trading losses."

Applegreen

"As a forecourt retailer our main activity is the sale of fuel and fuel related products. These products account for 80% of our overall sales, therefore we are not engaged in the Retail Grocery and Allied Trade Act and don't come under the scope of the JLC."

and

"Over 50% of our shop sales are associated with Lotto, tobacco and phone cards. These categories are all sub 10% gross margin and we cannot afford any type of wage increase."

BWG

"With reference to the applicability of the Catering ERO to our retail stores, we have no representation on the Catering JLC and to date, our views as representative employers within this sector have not been taken into consideration. This risk continues into the future as our industry continues to change thus creating further ambiguity and lack of representation in such mechanisms."

Triode Newhill

"The decimation of the Retail Sector in Ireland over the last 5 years as referenced in the 'Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms' has been amplified in the convenience grocery business.

Through a combination of declining year-on-year sales and increased costs, regrettably a significant number of TNMS franchise stores in communities across Ireland have been forced to cease trading. Consequently and regrettably, this has both direct and indirect effects on employment in these areas and further uncontrollable cost pressures from the retention of the JLC will force additional store closures. TNMS has a policy of actively supporting local indigenous suppliers who may not get the same opportunity in large multi- nationals or discounters. Unfortunately these local businesses will also feel the impact of further store closures."

and

"The stores that TNMS have been required to take over are small community businesses which have been severely affected by declining year-on-year sales. A significant challenge for these stores has been the aggressive tactics of large multi-nationals, whose profits are repatriated outside of the Republic of Ireland. These stores would be closed if TNMS was not in a position to engage in consultation and collective bargaining with employees. It would be anti-competitive and ultimately fatal for these

marginal convenience stores to be required to apply inflated terms and monetary rewards comparable to large, profitable and expanding multi-nationals whose higher base rates may prove beneficial in their endeavours to eliminate smaller competitors.

The challenge facing our business and the convenience sector generally is illustrated in the attached article from the Industrial Relations News. Despite having almost a quarter of the market share in the Republic of Ireland, it is necessary for Tesco to seek lower rates of pay within their Tesco Express convenience store model. As you can appreciate, in a business model such as ours, wage pressures would exacerbate this even further than in the Tesco model which can rely on the profits of larger retail stores as a buffer."

CSNA

"In 1988, there were the following numbers of outlets covered by the RGAT ERO.

		Employees
Supermarket	433	17,574
Delicatessen	134	298
Other Grocery	5,176	5,316
Dairy	772	702
Fish / Poultry	111	214
Fruit / Vegetable	327	403
Country General Shop	79	400
Tobacco, Sweets & Newspaper	1,689	2,840
Total	**8,721**	**27,747**

Source 1988 CSO Census of Service

2.14 In 2006, there were approximately 6,400 stores in the State selling grocery goods.

Of these 337 were owned by vertically-integrated retailers (Dunnes, Tesco, Aldi, Lidl, Superquinn and Marks and Spencer).

A further 2,569 were owned by affiliated (Symbol Group) retailers and a further 3,498 were owned by independent retailers (AC Nielsen, Retail Market Report 2007).
2.15 Independents are independent grocery retail outlet and small affiliated retailers (e.g. Gala, Costcutter, and Day Today). CTN's/Garages are confectioners, tobacconists – newsagents for whom more than 50% of revenue comes from the sale of sweets, tobacco and newspapers."

and

"2.16 In the Competition Authority publication (March 2008) "Grocery Monitor-Report No 1", "Grocery" was defined as "food and drink sold for human consumption and household necessaries".

The Authority classified grocery goods according to seven categories

Fresh fruit and vegetables
Meat and fish which had not been cooked or cured
Dairy products and eggs
Household necessaries (non-durables)
Other food products
Alcoholic drinks
Non-alcoholic beverages

2.17 The definition excluded items such as newspapers, cigarettes, durable goods and clothes that are sold in some retail grocery outlets.

2.18 According to the Report (2.21, p13), the definition of grocery goods found in the 1987 Groceries Order (ban on below cost selling) "has not been employed, as that definition does not include fresh produce such as fruit, vegetables, meat and fish. As these were 1,690 fresh meat outlets, 772 Diary products outlets, 111 Fish and Poultry outlets and 327 Fruit and Vegetable outlets rerecorded in the 1988 Services Report, we must wonder whether these 2,900 outlets were considered by the RGAT JLC to have come under their remit as purveyors of "food" in 1992.

2.19 In addition to re-defining grocery to include previously excluded food items, the report also includes, for the sake of providing a wider frame of inclusion of products to be considered "grocery" items a "household necessaries" such as toothbrushes, shampoo and washing-up liquid. The rationale was that they "are normally considered to be grocery goods by final consumers".

2.20 The Definition of Grocery Goods (Grocers Report Table 1, p14)

Category Number	
1	*Fresh Fruit and Vegetables*
2	*Meat and Fish – not cooked or cured*
3	*Dairy Products and Bread* *Bread* *Breakfast Cereals* *Dairy Products (Milk, Cheese etc.) and eggs* *Butter, Margarine and other oils*
4	*Household necessaries (non-durables)*

Category Number	
	Automatic Washing Power / Liquid *Dishwasher Detergent, Washing-Up Liquid* *Household Cleaning Cream / Liquid* *Other Cleaning Materials* *Toilet Paper, Soap* *Shower Gel, Toothpaste* *Shampoo, Shaving Foam, Deodorant* *Baby Powder, Disposable Nappies* *Sanitary Towels, Tissues*
5	*Other Food Products* *Meat and Fish – cooked, cured and frozen* *Flour* *Biscuits and Cakes* *Sugars, Sweeteners and preserves* *Sweets and chocolate, Deserts and Ice Cream* *Condiments and Sauces, Soups and miscellaneous items*
6	*Alcoholic Drinks (consumed at home)*
7	*Non-Alcoholic Drinks*

2.21 In a further refining of the above, the Report gives a more detailed breakdown of their 7 category range (Table D1).

Within the meat section, Beef, Lamb, Pork, Poultry and other meat products are listed, Beef butchers and beef apprentice butchers were excluded in the original Establishment Order.

2.22 In the Household Necessaries section (non-durables), the Report adds Disinfectant, Air-Freshener, Dental Floss, Mouthwash, Sun Tan Oil / Cream, Cleansing Cream / Lotion, Lipstick, Perfume, Aftershave, hand cream, moisturiser, make-up, mascara, tampons, cotton wool, Toothbrushes and Razor Blades.

None of these items were considered food products or came within the ambit of the Establishment Order.

2.23 The Category Alcoholic Drinks (consumed at home) is also seen as being part of a grocery undertaking. We have previously noted the exclusion of independent off-licences from the RGAT JLC and cannot find their inclusion in the Catering JLC which limits the workforce selling alcohol to barmen/barmaids selling alcohol and other beverage for consumption on the premises.

2.24 Many of the products considered to be an integral part of a grocery undertaking listed above as house necessaries would no doubt have been

considered to be either wholly or partially to be the preserve of pharmacies and chemist.

Indeed, some of the products such as make up, mascara, perfume and aftershave would have been obtained by many consumer in the early 1990's and 80's in a Department Store.

There is no inclusion for retail assistants of pharmacies or department stores in any JLC.

2.25 The inclusion of certain named items, and the exclusion of styles of businesses may have made some sense in the retail environment of 1992, but we would submit, is a nonsense in the current (and foreseeable) retail landscape.

2.26 The name of the JLC is the Retail Grocery and Allied trades JLC. We should seek to consider what is meant by retail grocery nowadays, and also to tease out the additional "Allied Trades" particle. By allied trades, we can only presume it means allied to the retail grocery sector. By what (and to what extent) is this alliance. Is it the sale of a retail product that is complimentary to a grocery item or is it the products sold in a style of shop that may also be found within the confines of a retail grocery outlet?

2.27 The Grocery Monitor Report declared that it was excluding certain products sold in retail grocery outlets from the definition of "grocery". In doing so, it was an acknowledgement that these products were to be found within grocery outlets. The list of excluded items is quite short but includes newspapers, cigarettes, durable goods and clothes.

2.28 These products newspapers (and magazines), clothes and durable goods are not the only products stocked and sold in retail grocery outlets. A more complete list would include books, stationery, gifts, toys, flowers, DVD's and music CD's, telephone top-ups, footwear, hardware, electrical goods, batteries and novelties.

2.29 Although the above list is not exhaustive, it is a better picture of what may define an Allied Trade to the retail grocery market. We must question why our CSNA members have been obliged to honour statutory pay terms and conditions for our staff members whilst bookstores, stationers, gift shops, toyshops, florists, music shops, video rental outlets, mobile telephone shops, and economy ("Poundshops") stores are seemingly not obligated to pay to their workforce any remuneration above the National Minimum Wage?"

and

"2.35 It is our view that the provision of a retail service should always have been the sole qualifying criteria for inclusion into the RGAT JLC, and that it should have either covered all workers and undertakings involved in retail, or none.

2.36 We fail to accept why one sector of retail, that is, those engaged in the sale of food, smokers requisites and confectionery should be obliged to pay rates that are above the NMW whilst other retailers can meet all legal and statutory wages obligations by conforming to NMW regulations."

and

"The nature of our business have changed. Some of our members supply hot food for consumption on the premises, others have a take-away facility as well as "eat-in", others have other parts of their business that may have the agriculture or hairdressing JLC. It must be possible to ensure that all workers operating in a "JLC" business have a simple rate applied to their employment, allowing flexibility and reduce administrative burden."

and

"The CSNA believes that is has demonstrated that the references to the type of products sold, rather than a service provided is a fundamental failure in the RGAT JLC.

The terms "Retail Grocery" and "Allied Trades" is very different in its range of products today than when our JLC was established.

The types of businesses affected by the RGAT JLC are very different in ownership and composition to those contemplated in 1992."

and

"As the Competition Authority has defined "grocery" in a substantially different and more modern view than the narrow restrictions of the Groceries Order, we must return to our conclusion that applying a selection criteria based upon products would include pharmacists, news vendors, department stores, beauty counters, music stores and a raft of (currently) non "captured" retailers."

Summary:

- The submission by RGDATA is very instructive in describing the manner in which the retail grocery market nationally now operates under the banner of multiple retailers and an independently owned retail grocery sector but most of whom now operating under the symbol of national and international suppliers and distributors. While no comparison is given with the figures that applied in 1991, by observation the market would have changed in terms of the market share between the retailers themselves, new entrants to the market and the decline in the independent retail sector not operating under symbol distributors.

- The attachment of convenience stores to fuel retailing and vice versa particularly under the symbol heading is a change in the mix of enterprises.

- The desegregation of grocery sales from other aspects of retail, i.e. the combination of goods sold in the retail sector, is not as clearly defined as between groceries and other products as it was in 1991.However it is the grocery shop that now sells items that in 1991 would not have been an integral part of the business such as hardware and clothes, and not the other way around to any extent. Dunnes and Marks and Spencer's were unusual in that were both selling drapery and grocery goods in 1991 but mainly in separate parts of the same premises.

- The extent to which alcohol forms part of the sales of convenience stores as well as the multiples and the growth in the off-licence trade is a considerable change since 1991.

- The growth of hot and cold prepared foods within multiples and within convenience stores marks a significant change in the range of services provided compared to 1991.

- The CSNA contribution points to a change in the definition that might be applied to the term grocery compared to the 1987 Groceries Order which is taken to have been in existence in 1991. The definition of grocery goods in the seven subcategories described in Table 2.20 and 2.21 of the CSNA submission if applied to any Establishment Order resulting from this review would considerably extend the scope of the JLC. Some of the extended scope would bring in retail outlets not included in the Establishment Order in 1991,e.g. bread/cake shops and off licences, whether they be attached to a public house or what is the larger part of this retail market-off licences.

Conclusion:

- The considerable change in the structure of the retail grocery market in terms of the makeup of that market, the range of services provided, the more modern definition of groceries provided by the CSNA and the competition that exists for the sector from other retail outlets selling precisely the same products to a substantial degree, for example, alcohol do pose challenges in having in place a JLC which is reflective of current market conditions and does not seek to coral one group of establishments into a regulated system while having direct competitors free to employ at the basic minimum terms of employment, and labour costs outside of that system I would suggest that this was never an objective in establishing any JLC-but rather to ensure an even playing pitch for employers and workers alike in terms of labour costs-at least at the entry level.

- In the context of the Retail Grocery Sector as it is now, the suggestion by SIPTU that the parties to a JLC engaging on matters relating to the scope of workers with a view to addressing any anomalies the parties may consider to exist, does not appear to be an appropriate starting point in consideration of the scope of any joint labour committee comprehending this sector. The JLC does not have within its remit a role for defining the classes of enterprises it covers-this is a function of

the Establishment Order. The problems in this sector in terms of scope stem from the fact that the clarity that existed in 1992 about the clear distinction between the Drapery and Grocery Trade and other parts of the retail sector now, such as catering no longer exists to anything like the same extent.

- Since Mandate has submitted that the larger multiples who, according to RGDATA have 66% of the market share already pay in excess of the previous ERO rate, then it follows that, in terms of an ERO the problems of definition fall mainly within the 33% share of the markets,i.e. the smaller employers when assessed on an individual basis. That third of the market is the one whose representative bodies are arguing that the minimum wage and the minimum standards of employment conditions are sufficient for their share of the sector for which the collective bargaining structure since 1991 was the JLC, which while it has not matched the conditions of the employers in the 66% market share it was above the minimum wage and some of the minimum statutory conditions of employment.

- It could be concluded that the effect of removing a JLC from this sector in its entirety will create a level of market distortion which, for all the difficulties in terms of scope and definitions, did not exist within the sector as defined in the Establishment Order from 1991 to 2011.

"or

(ii) the last review under this section was carried out;"

Summary:

- There is no specific conclusion or recommendation in the 1993, 1998 (or 2005) reports commissioned by the Labour Relations Commission in respect of this JLC.

Conclusion:

- There is nothing in the previous reviews under this subsection to have regard to in this sector.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

RGDATA

"There had been substantial unease at the excessive enforcement by NERA of the previous JLC regime. The experience since the Feeney judgement in July 2011 reinforces the consistent argument of RGDATA that the bulk of retailers in Ireland are reasonable, responsible and compliant business operations. They do not conform to the stereotypical characterisation of some in the retail trade as manipulative and Dickensian employers anxious to undermine their employees'

rights. The reality is that most retailers, particularly in the current difficult climate, are working extremely hard to maintain existing employment levels within their businesses and to retain the services and loyalty of long-term employees."

Topaz

"Topaz has been running Forecourt Service Stations since the early 1990's and we have always been informed by Labour Inspectors that the Retail JLC did not apply to the Forecourt Business. We had our first inspection from NERA, in our Navan Forecourt Station, on 6th May 2009 and as per previous Labour Inspectors he found that the Retail JLC did not apply to our business.

Subsequently, in July 2009, NERA visited our Forecourt Station in Kilcoole and this inspector stated that the Retail JLC did apply to our business. This decision seemed to be based on the "observations" of an inspector. When we sought clarification from NERA on their methodology and rationale we were not given a satisfactory response to explain this."

and

"Topaz is not an undertaking engaged wholly or mainly in the retail or grocery allied trades. The great majority of the turnover of Topaz Carlow derives from the sale of fuel and fuel related products. The sales figures for Year to Date for Ard Services show that in 2010, the percentage of turnover derived from the sale of RGAT ERO products was a mere 16.6%, compared with 83.4% from Fuel and other products not covered by the RGAT ERO."

and

"The Labour Court determined on 8th October 2010 that the Retail Grocery and Allied Trades Joint Labour Committee (JLC) and the Employment Regulation Order (ERO)(SI374 of 2009) applied to workers in Ard Services Limited's site in Carlow (and therefore by extension to all our other retail sites). The Labour Court determined that the Topaz Carlow site was a department of an undertaking engaged wholly or mainly in the retail grocery and allied trades and that the employees came within the scope of the JLC Committee and were therefore subject to the provisions of the ERO.

Topaz disagrees with this decision and has issued High Court proceedings in relation to the unconstitutionality of the JLC's/ERO's."

SIPTU

"SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of noncompliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional and has been the case with other forms of minimum statutory legislation since.

This all goes to suggest that non-compliance is about bad employer behaviour, and not because of the existence of a JLC establishing an ERO. It would be unjust to both workers and compliant employers not to maintain a JLC because of the behaviour of non-compliant unscrupulous employers. The abolition or dilution of a JLC would be tantamount to rewarding bad employer behaviour.

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. While we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that the JLC wage setting mechanism will require an Inspectorate resourced to levels at least equivalent to those that were in place as of July 2011."

Canny - Employer

"Any re-enactment of the current structure will not be good for our business. Sunday should be part of the working week. It is not affordable to give Sunday premiums."

BWG

"Uncertainty prevails regarding the class or classes of workers to which Employment Regulation Orders applies. Similarly, ambiguity prevails regarding the type or types of enterprises. The landscape of our retail estate has changed dramatically over the last number of years and this is likely to continue in our sector and our retail estate alike. The mere existence of the Employment Regulation Orders creates ambiguity regarding the terms and conditions applicable to employees within the stores we represent and this will likely continue and become more complex into the future. To suggest that terms and conditions of employment of all employees be amended upon the introduction of a new department is unworkable and leaves businesses at a competitive disadvantage (e.g. according to previous NERA guidance the introduction of a seating area for the consumption of food would require the application of the relevant Catering JLC). However, on the contrary, we refer to the Topaz/Ard Services V National Employment Rights Authority (Decision No. DEC106) whereby the Labour Court found that the RGAT ERO applied to service stations as the retail unit was wholly or mainly engaged in the retail grocery and allied trades. Where enforcement bodies are unable to identify and/or apply a consistent measure of the applicability of class or classes of workers/type or types of enterprises, it would be unreasonable to expect sole traders understand the application of such mechanisms. This ambiguity is likely to be compounded with on-going changes within our, and others, sectors."

and

We note from NERA reviews the low level of compliance within the retail sector from 2009 to 2011 and note the considerable improvements of compliance within both catering and retail grocery sectors (as is demonstrated in the Quarterly Update, Issue 3 2012). This demonstrates the burden that had been placed on

employers in respect of the escalated terms and conditions of employment that were provided for in ERO's."

Triode Newhill

"TNMS submit that a further difficulty of re-introducing the JLC is the uncertainty with their application to an enterprise or enterprises and the types of worker or workers to which it would apply. To illustrate the ambiguity and contrasting interpretations and enforcement in mixed undertakings, I have enclosed correspondence from NERA following a meeting we attended in this regard and relevant Labour Court Recommendations (DEC 952 & DEC106}. It is very concerning that enforcement bodies themselves have previously demonstrated inconsistency in application.

Within our business, there are a combination of forecourt/retail and catering/retail undertakings. Rather than having equitable and sustainable terms and conditions achieved through collective bargaining, the retention of the JLC system would leave the business faced with the prospect of employees in the same store being covered by different JLC's, namely Retail and Catering (which the business is not represented on), with other employees in the business governed by national employment legislation. Such ambiguity in application would be exacerbated as the industry evolves on an on-going basis to consumer requirements and the need for efficient work practices.

The lack of clarity with interpretation and enforcement risks fostering uncertainty and confusion for employees and potentially triggering industrial relations issues within and across our stores. For example, if a department was to be introduced in a store that was to become the main focus of that enterprise, under the JLC system, all employees' terms and conditions would potentially have to be revised. In our view, with such a mechanism, there is limited opportunity to create the clarity and flexibility required within our business."

CSNA

"2.30 There have been a number of seemingly contradictory Determinations by the Labour Court in response to queries sent to it regarding as to whether certain workers were covered by the Retail Grocery and Allied Trades JLC. Some of these were sent to the Court by the Department and more by NERA.

2.31 Whilst File No CD9522, DAGGE Case No. DEC 952, Section 5.57(1) recommended that the workers employed did not come within the scope of the RGAT JLC, due to the acceptance by the Court that only 24.72% of the company's' turnover was derived from the sale of goods of the type specified in the ERO, a contrary view was taken by the Court in Topaz (CD/09/902) DEC 106, Section 57(1).

2.32 The Court found that "time spent in the undertaking, branch or department" should be viewed in the context of availability to deal with customers (whether or not there were customers present). The Court suggested that "availability appears to be an ever-present feature of work in the retail unit".

2.33 There is, we might suggest, an element of getting the incorrect decision through a flaw in logic, if the turnover/sales by value argument is to be applied. The evidence given was that 78% of all sales were non-ERO/Fuel. There does not seem to have been any attempt by the Court to apply the non sales time in the same ration – effectively availability to serve non ERO/Fuel, availability to serve ERO products. It seems that the entire "available" time has been apportioned to the ERO goods. We note that the NERA solicitor submitted that turnover was an arbitrary criterion for determining the matter and was "no more meritorious" than floor space, profit margin, contributions to overheads or any other metric". He urged the Court to ignore the evidence submitted in this regard as "irrelevant and inappropriate".

The Evidence was constricted in precisely the same fashion as that provided to the Court in DAGGE, yet it chose to ignore the very reasons given in that case to deliver a diametrically opposite Determination, adding to the criteria the "availability" context, but without any proportionality of determination."

and

"2.56 The nature of our business has changed. Some of our members supply hot food for consumption on the premises, others have a take-away facility as well as "eat-in", and others have other parts of their business that may have the agriculture or hairdressing JLC. It must be possible to ensure that all workers operating in a "JLC" business have a simple rate applied to their employment, allowing flexibility and reduce administrative burden.

2.57 We have seen and reviewed far too many "turf-wars" between competing employer/employee/department andNERA points of view not to be of the mind to alert the Labour Court to the need to obviate this very real problem."

and

"The very different and contradictory Determinations of the Labour Court in who was/was not covered under our RGAT JLC and the continuous battles with interpretation of which (if any) JLC a worker should be covered by is inimitable to harmonious worker relations."

and

"We do not believe that any JLC should be limited or referenced by the place of business, any more than it should be referenced by the product sold."

and

"We compete with off-licences and cannot understand the rationale for excluding their employees from inclusion in a JLC whilst a public house selling alcohol for consumption off the premises will have their employee covered by the Catering JLC."

MANDATE

"Mandate is extremely concerned about the low compliance levels with employment legislation in the retail sector. The 2011 National Employment Rights Authority (NERA) annual review, found a compliance rate of just 29% was in the Retail sector and €392,088 was recovered in unpaid wages from an inspection of just 273 employments. This indicates that over 70% of retail employers are not complying with their legal obligations with regard to the employment of their staff. Furthermore, inspections of two employers in the 'law clerks' sector found breaches by both employers.

The NERA figures – and Mandate's experience - show that the mere existence of statutory protective legislation in itself does not guarantee effective delivery and compliance levels. As such, despite the existence of individual rights legislation, such as the Organisation of Working Time Act, the JLC system continues to be extremely valuable. "Moreover, having regard to the profile of employment in these sectors many workers would have difficulty in understanding their rights in employment and would have further difficulty in individually asserting those rights. Under the JLC system enforcement of the terms which they prescribe are in the public law domain and are enforceable by NERA. In the absence of the system the attainment of reasonable non-statutory employment standards would be left to the individual bargaining power of individuals" (Duffy & Walsh, 2011: 51). However, as already stated the workers covered by JLCs "are in every sense vulnerable and have little individual bargaining power" (Duffy and Walsh, 2011: 51). Removing the systems which inform workers of their right and ensure penalties for breaches of legislation would significantly worsen the situation of workers in sectors which have already proved to be less than compliant. Furthermore, in a situation, "where employees, for whatever reason, did not seek to enforce their statutory rights in respect to working hours or Sunday premium their employers would have a commercial advantage over those who did observe their statutory obligations" (Duffy & Walsh, 2011: 51).

Legislation depends on the appropriate means to highlight awareness of its existence, adequately resourced enforcement structures, and appropriate penalties for non compliance. Mandate believes that the JLC systems must be suitably resourced and policed with enforceable penalties. In particular, the continued involvement of NERA is vital not only for workers but also to act as a deterrent against unfair competition from unscrupulous employers."

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009	*284*	*204*	*72%*	*€356,742*
2010	*210*	*165*	*79%*	*€295,245*
2011[1]	*112*	*81*	*72%*	*€234,476*

[1] *The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. The figures for 2011 are broken down under a number of headings. Of the 112 cases, 65 were found to be in breach of the*

SMR and 48 were found to be in breach of the requirement to keep records. A similar breakdown of figures for 2009 and 2010 was not provided."

Summary:

- The most extensive submissions from employers in relation to this matter of enforcement were within this JLC of the ten JLCs examined.
- The submissions fall under two aspects:
  - (i) compliance with the JLC based on JLC EROs which emanated from the JLCs; and
  - (ii) the interpretation to be given to the scope of application of the Establishment Order and the related EROs.

Conclusions:

- In terms of compliance, from a discussion with NERA in relation to this sector, they stated that breaches were being encountered in the smaller employers. It is understood that the multiples as in Tesco, Dunnes, Lidl and Aldi pay above the wage structure set out in the EROs. The proportions emerging in terms of breaches of statutory minimum remuneration in particular suggest that in the 33% of the retail sector comprehended by the current JLC the level of noncompliance is very high taken in the context of the sector as a whole, where 66% of the retail grocery market nationally comprises the five multiples. (RGDATA figures)
- This further suggests that in terms of rates of pay as well as compliance this is a case of two sectors in respect of employment conditions. The rationale or logical demarcation between sectors and subsectors previously covered by one or more JLCs was raised by the Labour Court as a matter of concern in both of the meetings in Phase 1 of the review.
- Certainly the definition of grocery, the interpretation of that definition and the type of establishment to which it applies and in what circumstances have all caused difficulties in terms of enforcement and therefore what is meant by compliance by reference to the Establishment Order.
- One area of doubt is that of premises which have garage forecourts. Another is those where part of the establishment has employees engaged in the preparation and sale of food, hot and cold, and to complicate matters further, whether there is seating provided or not (reference to the provisions of the Catering JLC).
- A person described as a sales assistant may be engaging in the sale of all of these classes of goods, and in smaller garage outlets in particular, may also be engaged in the preparation and serving of food for some of their working hours. This brings the term "wholly or mainly" in the schedule of this Establishment Order into focus with all the attendant problems of applying this

to a sector where the goods or the value of the goods sold in many outlets far exceed the range provided for in the current Grocery Establishment Order.

- If it was difficult to apply the various definitions and demarcations when there was a JLC for catering, the absence of a JLC for catering while retaining the existing definitions in the Establishment Order related to the type of food and excluding the serving of hot food could reduce compliance and the enforcement of compliance in a significant proportion of the retail market to the level of farce.

  There really are some serious issues to be addressed in respect of this sector in any consideration of whether or not to recommend a JLC and if so, to cover who and what in terms of workers and establishments.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

RGDATA

"Economist Jim Power carried out an assessment on the economic and financial significance of the sector in late 2010 and his report provides a useful snapshot of the economic contribution made by independent retailers to the national economy.

In his analysis Power notes that local shops make a major contribution to local labour market conditions; "They provide steady employment, they typically source their staff locally, they tend to provide longevity of employment and also provide variety and choice in working hours in terms of part time and full time working arrangements".

He estimated that independent retail grocery outlets accounted for 95,620 full time equivalent jobs in the economy. He calculated that the net wages paid by the independent retail grocery sector was in excess of €2 billion with a multiplier effect for assessing national economic impact of €4 billion which is equivalent to approximately 3% of GMP.

In his analysis Power noted that for independent retailers, wage costs are one of the most significant operating costs as the business is essentially customer focused and consequently labour intensive. He also noted that under the terms of the JLC arrangements, employers in the retail grocery sector were obliged to pay a wage rate that was between 8% and 14% above the minimum wage and could in some cases be up to 25% higher depending on the pay scale of the employee concerned.
He also noted some of the ancillary pay provisions in the JLC that applied to employees on Sundays and public holidays and commented "There is no public policy justification for adopting a different minimum wage structure for the retail grocery sector than applies generally. It would be appropriate to abolish the JLC structure and allow the national minimum wage to be the sole determining minimum wage level".

In his report carried out in 2010, Power noted that although retailers in the grocery sector were subject to the JLC structure, even if the national minimum wage applied at that time, wage rates would be 22% higher in the Republic of Ireland than in the UK. It is important to keep sight of the cost differential in labour costs, given that a significant number of independent retailers compete with retailers from Northern Ireland on a daily basis. In this context it is important to ensure that retailers operating in border areas are not at a disadvantage as a consequence of a State imposed legal stipulation on the amount of money they must pay their staff in excess of the National Minimum Wage.

RGDATA as a member of a number of European bodies, in particular UGAL, the European Federation of Independent Retailers, recognises that the arrangement that applied in Ireland in relation to a separate sector specific statutory national minimum wage for the retail grocery is unique. Throughout other member states the only mandatory stipulation on any rates of pay to those in retail grocery shops is the national minimum wage, where this exists. In the United Kingdom for example the joint labour committees were abolished in 1993, they have not been replaced. Instead retailers in the UK are subject to the national minimum wage which has universal application across the UK."

and

"Despite the worst economic crisis that Ireland has faced in the last 40 years the JLC system seemed incapable of reversing previously sanctioned salary increases which were completely inappropriate in a declining market. Despite rapidly deteriorating economic conditions in 2011, the RGAT JLC rejected a proposal that future recruits to the retail grocery trade be paid at the national minimum wage and that rates be pegged to the national minimum wage level. The proposal was voted down by the RGAT JLC on February 16th 2011, with the Chairperson voting with the Unions at that meeting. In addition, a proposal that instead of a fixed rate for Sunday for nonovertime working the provisions of Section 14 of the Organisation Working Time Act should apply, was defeated on the casting vote of the Chairman of the RGAT JLC.The system was inflexible."

Topaz

"The JLC rates and terms are uncompetitive, unrealistic and unsustainable for retailers. Topaz believe the current system is at odds with the economic needs of the country and should be abolished."

and

"It is inequitable that premium rates of pay currently apply to unskilled workers, while other labour markets apply the National Minimum Wage. The continued existence of JLC's in effect makes the National Minimum Wage rates redundant, as non JLC afflicted employers must offer a significant premium above the National Minimum Wage to compete with JLC afflicted jobs.

***Overtime Rates -** For overtime worked up to midnight from Monday to Saturday, employees are entitled to time-and-a-half and to double time from midnight to*

7.00am. For Sunday overtime and work on a public holiday as overtime, employees are entitled to double time.

***Topaz Position –** Retailers operate their business 7 days a week. We do not charge our customers more on a Sunday or a Bank Holiday. It is uncompetitive to pay double time overtime on these days and this serves no purpose in our business. Our Customers expect us to be open Sunday in the same way as any other day.*

***Unsocial Hours -** Employees are entitled to an unsocial hours premium of time-and-one-quarter for work from midnight to 7.00am and of time-and-one-third on Sundays.*

***Topaz Position -** Most Forecourt Retailers open at 6am as normal business practice and employees have no difficulty starting at this hour. It is unrealistic and uncompetitive to expect a premium to be paid from 6am to 7am and a burden our business cannot afford.*

***Rest Periods -** Employees whose hours of work include the hours from 11.30am to 2.30pm are entitled to a break of at least one hour, where they are required by their employer to work for a period of 6 hours or more.*

***Topaz Position –** Staff would have to be forced to take a 1 hour lunch break between the hours from 11.30am to 2.30pm. This is the busiest time of day in our Retail station and our employees are happy with their current 15 minute paid break within 4.5 hours and subsequent 30 minute break after 6 hours. If we force them to take an hour at the busiest time of the day, we will either have to make them stay later or shorten all shifts so no one works a shift through 11.30 am to 2.30pm. This will not work in our business and there will be significant push back from our employees if we try to implement this. It is another example where the JLC system is out of date and not in touch with the reality of the retail industry."*

and

"Topaz is not represented in the JLC system and we have no say on matters in the JLC. We are the largest forecourt brand in Ireland and we have no say on issues that greatly affect our business. This is not acceptable and is something that we will continue to contest."

IBEC

"In the absence of a JLC in this sector, undertakings would be free to negotiate (individually or collectively) rates of pay appropriate to their circumstances. Having regard to the fact that significant elements of the retail grocery sector historically paid rates of pay which were higher than the rates provided in the former EROs, employers will continue to pay competitive rates of pay. It is likely that different elements of the sector will tend towards different rates of pay according to their market segment. For example, corner shops may well pay less than huge international multiples – but that is reasonable and appropriate having regard to the radically different businesses which those examples represent.

Note that the CSO data reported at section 1.3 above indicates that wages in the "retail and wholesale" sector, of which retail grocery is an important subset, have remained stable. There is no evidence of any "race to the bottom" in respect of wages."

SIPTU

"There is some evidence of employers seeking to drive down wage levels and withdraw conditions of employment that workers had achieved through the JLC system and which were enforceable through the ERO up to July 2011. However, Central Statistics Office data does not show evidence of major pay cuts.

The union submits that this JLC, as with other JLCs, have proven themselves to be flexible and responsive to the needs of industry. This was demonstrated most recently by the decision to defer in October 2009 an agreed pay increase of 2.5% under the fourth and final round due under Towards 2016, to take account of deteriorating economic conditions."

Retail Excellence Ireland

"We believe that the JLC system operated in its previous guise significantly above the national minimum wage and far more than comparable minimum rates in jurisdictions such as the UK and Northern Ireland. The current national minimum wage of €8.65 was reached in 2007 at the height of the boom which is too high for current circumstances. The Irish JLC rate set for a retail grocery worker was €9.60 per hour compared to the minimum rate of circa €5.70 per hour for the UK and Northern Ireland."

and

"JLC's are antiquated and bureaucratic. They place significant financial administrative burden on business and lack flexibility. The reintroduction of JLC's will add another layer of regulation on businesses, another cost and another reason for employers not to expand and increase employment. It will create a new floor of minimum wage in the economy off which all comparatives will be based and bring about an upward momentum which will negatively impact on competitiveness, the cost of services and labour relations."

and

"Pay rates were pulled out of the air with no supporting documentation and enforced by the Labour Court which was controlled by appointees with union backgrounds."

O'Callaghan - Employer

"During these years [2004 to 2008] the JLC just kept on increasing rates of pay without due regard for my ability to pay. I did make a number of representations to the JLC but my protestations were ignored. And from my viewpoint the JLC is a "burden" and cost generator I can do without."

O'Brien Power - Employer

"While we were structured under the JLC it was so difficult to continue in business as we could not afford to keep up with the increase in rates. We are a forecourt Mace Store, and our margins are so small I would have been closed by now if these rates were still in force."

Applegreen

"We believe that the JLC system operated in its previous role significantly above the national minimum wage and far more than comparable minimum rates in areas like the UK and Northern Ireland. The current national minimum wage of €8.65 was reached in 2007 at the height of the Celtic tiger, which we believe is now too high in the current climate we are operating in."

and

"Since the abolition of JLCs in 2011, we have added additional fulltime positions with terms and conditions respected and accepted by those recruited. We have plans for future growth; however the reintroduction of JLCs which contribute to such high labour costs will pay a huge role in determining whether it is cost effective to open future stations and may have a reverse effect that we will have to close 24 hour operations and food areas in our smaller sites. This could lead to the loss of 50 jobs at least."

and

"Our company believes that JLCs are irrelevant and act as a barrier to employment and have no place in a modern labour market. If this Government is serious about the creation of jobs being their number one priority they cannot re-introduce a system weighted towards union preferences that will again make it too expensive to employ workers."

BWG

"The Employment Regulation Order Mechanism is anti-competitive. Those operating within our retail estate are being placed under constant threat from multi-national employers. Such local employers, whose profits remain in this country, should be provided with a fair opportunity to compete. It is anti-competitive to assume an independent retailer with 4 employees can afford to provide the same rates of pay and/or monetary rewards as a large multi-national. Furthermore, pressures on independent employers may be compounded by the very nature of the Joint Labour Committee structure. This mechanism provides opportunity for exploitation of smaller employers where competing organisations have influence over the fate each other (e.g. Tesco may take a strategic decision to vote for a higher base rate to the detriment of stores such as ours). It is in the interest of the economy to protect local Irish employers whose profits are recirculated within the Republic of Ireland."

and

"This should be further considered in the context of an increase that was due to be applied to the RGAT ERO effective in 2011, a time when the Government recognised the need to reduce the national minimum wage by (1.00. This demonstrates the insular approach of ERO's in general and their failure to consider national economic matters."

and

"We would question the validity of the report "Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms", April 2011. Noting point 8.5 of this report states:

> *"Where ERO rates were adjusted upwards by operation of s. 7(2) of the National Minimum Wage Act 2000, and the rate to which they were adjusted is subsequently reduced, employers would be entitled, in equity, to seek a pro rata reduction through the JLC. We are not aware of any such proposals having been brought before any JLC."*

Notwithstanding, based on minutes if the RGAT JLC dated 16th February 2011 the initial proposals from the employers was:

> *"the National Minimum Wage has been reduced ...and that the rates of pay in the JLC should reflect this reduction ..."*

This proposal from the employer side was altered having regard to contents of discussion that occurred within side sessions."

Triode Newhill

"To further illustrate that the JLC is not fit for purpose in the modern workplace, the last RGAT JLC Employment Regulation Order prior to the High Court ruling in July 2011 imposed pay increases in a sector haemorrhaging job losses. The starting rate imposed for an experienced adult worker in July 2011 under the RGAT JLC was €9.48. In contrast, the Government at the time deemed it appropriate to reduce the National Minimum Wage by almost 12% from €8.65 to €7.65. Furthermore, wage increases under the Towards 2016 Social Partnership Agreement were in the main, abandoned. The rigidness of the RGAT JLC does not and cannot reflect the economic and commercial circumstances of a rapidly changing sector.

Ultimately all employees in the Retail and Catering Sectors should be covered by the same legislation as other employees in unsheltered sectors. This includes a minimum wage that is the second highest in Europe and which is significantly higher than competitors in Northern Ireland (£6.19/€7.17)."

CSNA

"2.37 As the sole criteria for any newly-constructed JLC is to determine wage rates, we are fearful that a Sector such as the grocery sector, with very large undertakings such as Tesco, Dunnes, Aldi, Lidl etc should have <u>any</u> input into developing or creating a rate of pay that is, putting it mildly, nothing to do with

them. All of the aforementioned have negotiated Employment Agreements with the employees, the majority of which have been concluded with Trade Unions on behalf of workers. We do not believe that these undertakings should have any representation on the JLC if they have concluded pay rates that are superior to those to be struck by the JLC. We find it to be profoundly anti-competitive to engage with undertakings that have an economic interest in creating additional costs to their competitors.

2.38 The 2009 CSO "Supply and Use of Input-Output Tables Ireland 2005", based upon the total consumption of goods and services at purchasers prices' plus compensation of employees" quite clearly shows that wholesale and retail expend 60% of their total input on labour costs. In the same survey, the national average was 26%. We note that the agriculture (9%), hotels/restaurants (25%) and other business services (33%) which all have their own JLC do not have such a high proportion of their costs devoted to pay.

2.39 The Labour Court may wish to be informed by an existing member of a JLC the attitude of that employer's representative on the composition of the "sides" (worker/employer).
At the moment, the workers representatives are made up (in the RGAT JLC) exclusively of full-time Trade Union officials. We have found each and every one of these nominees to be extremely professional and diligent in their remit to forward the workers' case, but must confess that, due in no small part to their ignorance of the very small economic units that form the majority of our members businesses, are unable to see that our ability to pay and our need to contain labour cost in what is an extremely challenging retail environment may require different negotiating strategies than those "ordinarily" employed when dealing with large unionised undertakings. We believe sincerely that a number of positions on any JLC should be reserved for a workers' representative that actually works in one of the undertakings.

2.40 We also feel that the workers' representatives are currently under no obligation to meet, discuss and listen to any of the thousands of non-unionised workers that they have been given the privilege of representing.

2.41 A worker in a large, successful, well funded grocery undertaking has a much different outlook on the position of their employer within the community than that of the worker in a family-run enterprise. For many of our members, these workers are part of our lives, part of our family and are very much aware of the success/lack of success of the enterprise. We would like to believe that this voice should and must be heard at JLC level.

2.42 It is approaching arrogance to believe that Trade Union officials can look into the hearts and minds of people with whom they have had no professional contact and consider a solution that may not be in the best interest of the worker and their colleagues.
2.43 We have mentioned in passing our observation to the presence at JLC level of employer representatives that pay rates that are superior those set by a JLC. IBEC are considered to be the "senior" employer member from the point of view of administration and initial contact by the RGAT JLC. We find merit in there

being a central body willing to carry out some of the administrative, research and logistical planning for our JLC but would like to ensure that IBEC, as well as every other representative grouping on the employers side makes it quite clear exactly which companies or undertakings they represent at our JLC and that there is not a "duality" of representation on the employers side.

2.44 Both Musgrave and BWG are members of IBEC, they also sit on the JLC as employers representatives, representing the wishes and viewpoint of those stores that are their retail partners.

2.45 BWG and Musgrave are also employers of substantial numbers of staff in administration, sales, marketing and distribution in Ireland

We can imagine scenarios where an IBEC line on collective bargaining, national pay agreements, attitudes to public service pay, disagreements with Government/Trade Union sector may flow through into an attitude to a particular JLC.

2.46 We represent employers in our sector, we expect all other people sitting on the employer side to do that and nothing else while they are deliberating upon a JLC wage rate. We would wish to see a clear distinction between IBEC and any of its members that are sitting on a JLC and seek to request that the Labour Court request from IBEC that they will provide a list to the Court of the members being represented by them on a JLC and ensure 1) that none of their members are precluded due to the presence of an Employment Agreement that sets rates superior to that of the one set by the JLC, and 2) that the member is not already represented on the employer side."

and

"It is fundamentally improper to levy additional costs upon one section of the retail community and ignore the tens of thousands of workers engaged in comparable retail activities."

and

"We do not believe that the manner by which the workers or employers "sides" are currently constituted are in the best interest of either the worker, employer or society."

MANDATE

"In Ireland, research by the Equality Authority and the ESRI (2009) found "centralised wage bargaining that standardise pay both within and across companies and sectors" benefited women in both full-time and part-time employment."

and

"The JLC system has proven itself flexible and responsive to economic conditions. The systems are versatile and can be altered through agreement.

Should employers wish to change / reduce / dilute terms of EROs there are procedures available to do so. With regard to the Retail JLC, a pay increase of 2.5% was due to be added to the JLC wage rates from October 2009. The increase represented the fourth and final instalment due to workers under the Towards 2016 Agreement. This increase was previously paid to workers in unionised employments across the economy but due to a time delay in applying increases under the JLC had not been paid to workers covered by the JLC in the retail sector. Due to deteriorating economic conditions, agreement was reached between unions and employers on the JLC to defer the increase. Crucially, the agreement on deferral was reached in August 2009. This was some months prior to IBEC's withdrawal from the social partnership process in December and despite the fact that some companies were continuing to pay the terms of the Transitional Agreement. This demonstrates the responsiveness and flexibility of the JLC system. The union and employer representatives, experts in their sector, recognised the deteriorating economic conditions and the effect on their sector, and were able to respond more quickly than those at national level. Crucially, the Independent Review also concluded that there was no "substantial difference in the degree of inflexibility" of wage changes when comparing workers covered by JLCs with workers not covered by the JLC system (Duffy & Walsh, 2011)."

and

"The wage rates set down by the last ERO, under Retail JLC, are based on a short, modern, efficient pay scale - moving from induction to familiarity and proficiency - which is appropriate to the industry. The ERO also set down reduced rates for younger workers. As noted by Duffy and Walsh (2011) "the fixing of pay levels by reference to skills, experience and training is a common feature of pay determination systems in Ireland and elsewhere. It is commonly provided for in collective agreements and in other pay determination systems" (Duffy & Walsh, 2011: 47-48). The Retail JLC rates are not excessive. They are not uncompetitive and did not deter new entrants into the market. In fact, the newest entrants to the grocery sector, ALDI and LIDL, pay rates which are in excess of the JLC rates. An experienced adult worker on the top point of scale, set down by the last ERO under the Retail JLC, earns €9.66 per hour (JLC rate as at October 2010). CSO data shows that the average hourly rate earned in the sector in Q3 2010 was €16.30. Therefore the highest JLC rate for an experienced sales assistant or clerical worker is just 59% of the current average wage in the sector. The rate is also less than half (45%) of the average hourly earnings in Q3 2010 of €21.47 for the economy as a whole. A worker on the top point of the Retail JLC scale, working a 35 hour week will earn just €17,500 per year."

and

"According to Forfás, the observed wage decreases are in fact "relatively modest". In the retail sector, between Q4 2008 and Q4 2012, average hourly earnings in the sector have stayed fairly constant at about €16.80. The biggest decrease was between Q4 2008 and Q4 2009 when hourly earnings fell from €16.87 to €16.44. But crucially, wages in the sector have shown some signs of recovery, rising to €17.04 in Q4 2011."

and

"Mandate believes the rates and conditions secured for workers under both the Retail JLC and the Law Clerks JLC must be maintained. During periods of economic boom the minimum pay rates and terms and conditions set down under the JLCs acted as an effective ceiling to wage progression and prevented a 'free for all'. During times of less favourable economic activity, these rates must be maintained to act as a protective floor to ensure that workers are afforded basic rights in order to keep them from falling into poverty traps or in some cases exploitation."

and

"Importantly, it should be pointed out that the results of a Neumark and Wascher (2007) study cited by Forfás in a 2010 review of Irish labour market competitiveness, to indicate the negative employment effects of a minimum wage are not statistically significant. This was acknowledged by Forfás. In its examination of labour market competitiveness, Forfás accepted that inference cannot be drawn that current job losses in a sector covered by a minimum wage are as a direct result of the minimum wage being too high. "In the short term, the lack of demand in many sectors may be of more significance", the report concludes (Forfás, 2010). This is backed up by research in Britain, on four sectors of the retail trade – carried out for the Department of Employment – which found it was "unlikely that lower wages could induce a significant increase in employment in the absence of any recovery in the level of trading". Few of the retail firms surveyed were of the view that the level of pay on its own was an important determinant of their employment policy (Craig & Wilkinson, 1986)."

Summary:

- The extracts from the employers relate to the terms of the EROs as being excessive in this sector. Clearly, the views of MANDATE are substantially different. The figures submitted by MANDATE also suggest that the JLC rate as per the previous ERO was some way off other hourly rates in the sector. However, It is not clear if the rates in the sector are confined only to the grades of shop assistant and ancillary worker or are a combination of all of the grades and categories within the retail sector incorporating a wide range of employments, including what are known as department stores.

  NOTE: MANDATE: The normal hours of work for this sector are 39 hours per week and not 35 as suggested by the calculation contained in the extract.

Conclusion:

- There is no common ground among the employers and unions in this sector in terms of the experience of the adjustments to the rates of statutory minimum remuneration and statutory conditions of employment, with the unions contending that the rates are not excessive and the employers maintaining that the rates and related conditions are indeed excessive.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

Peninsula

"Large number of entry level or inexperienced workers trying to gain experience in the workforce and a large number of seasonal workers taken on at peak times throughout the year."

RGDATA

"RGDATA believes that the JLCs are;

- *obsolete as a consequence of developments in commerce, changes in employment practices and due to subsequent legislative developments impacting on terms and conditions of employment, including wage levels*
- *rigid and restrictive in their operation and not suited to deal with the complex and challenging economic climate facing Ireland in 2013 and*
- *harmful to competitiveness, employment retention job creation and economic recovery."*

and

- *"62% of retailer respondents have taken on new staff since the Feeney Judgement in July 2011 totalling 920 new positions.*
- *25% of retailers have paid new staff at the former JLC rates, while 75% have hired new staff at the National Minimum Wage levels.*
- *84% of retailers have not changed the pay and other terms and conditions of employment of existing staff employed before July 2011 and have kept their pay at JLC rates. 16% of retailers have reduced their pay rates by agreement".*

and

"The absence of the JLC regime since July 2011 has afforded retailers additional flexibility in the recruitment of employees during difficult market conditions. The 2012 RGDATA survey of members has indicated that while 31% employed no new staff since July 2011, 22% employed new staff on the former JLC rates, while 46.5% have employed staff at the National Minimum Wage rate. The non-application of the JLC regime since July 2011 has afforded retailers the flexibility to undertake new recruitment, both for new positions and full replacement roles and allows them to adjust their cost inputs by reference to current market conditions, while retaining the flexibility to hire staff at the National Minimum Wage or at an increased rate of pay. RGDATA members are conscious that the

market for employees is not just confined to the retail grocery sector, and terms and conditions of employment to work in an independent retail store must be on a par with the terms that apply in larger competitors' stores and in other retail outlets in different sectors."

Topaz

"JLC's are no longer relevant and act as a barrier to employment and if Topaz is forced to implement will only cause significant reduction in employment in our sector."

and

"Topaz strongly believes that JLC's do not apply to its business and in addition we believe that they should be abolished. They contribute to unemployment, act as a barrier to new employment and have no place in a modern labour market."

IBEC

"The other change of enormous significance which has occurred has been the impact of the economic crisis, which has devastated the sector. While the decline in employment levels has abated, even under benign circumstances (including the continued absence of an ERO) there is little scope for any early improvement in employment levels. The maintenance of the JLC – and a consequent introduction of an ERO – would have a significant negative impact on the ability of employers to take advantage of any possible upturn in economic activity by recruiting more workers."

SIPTU

"The impact on employment levels in the retail sector due to the re-introduction of sectoral minimum wages is likely to be negligible. This is due to a number of key industry features:

a) The market structure which in turn determines the price setting power of any one operator.
b) The share of labour costs as a percentage of total costs and the size of the proposed wage premium.

In the retail sector, as JLC wage rates rose during the 2000's so too did employment levels in the sector. This demonstrates that in the main employment levels in the sector are driven by product demand and trading levels and not minimum sectoral wage rates or other conditions of employment."

Retail Excellence Ireland

"Since the abolition of JLCs in 2011, many of our members have added additional full time positions with terms and conditions respected and accepted by those recruited. In the current climate, our members do have plans for future growth; however the re-introduction of JLCs which contribute to such high labour costs will play a critical role in determining whether it is cost effective to open

future stores thus having a direct impact on creating considerable additional employment in Ireland."

and

"Unemployment in Ireland remains above 14% of the workforce with over 300,000 jobs lost since 2008. In the retail sector alone, this figure stands at 70,000. Many people who have lost their jobs in recent years were in sectors which had, until July 2011, been governed by the JLC system."

M.J. Maher - Employer

"If we were to have an increase in wages I would have no option other than to put most of my staff on short-time, which would lead them to register on the unemployment list and seek benefits, adding to the already growing number of people on the live register."

F. Ormston - Employer

"We are a supermarket in Donegal with a staff of 30 people. We are struggling very badly with wages and costs in this recession and if there is an increase in the JLC rates we will be closing our doors with the loss of all jobs. We have had to cut staff rosters already this month and we are only hanging on to try and survive."

O'Callaghan - Employer

"Over last few years I have been able to recruit new staff at a lower cost (€8.65/hour) and my shop overheads are now getting more competitive. The business is now operating more satisfactorily with a lower cost base and I can take on extra staff without worrying about the financial implications."

and

"The JLC does not serve any useful purpose as regards my business."

O'Brien Power - Employer

"The minimum wage rate allowed me to take on more people and run my business better. If the rates are reversed, a lot of us small people will end up unemployed. And a lot more people will join the dole queue."

Applegreen

"Unemployment in Ireland remains above 14% of the workforce with over 300,000 jobs lost since 2008. Many of those people who have lost their jobs in recent years were in sectors which had, until July 2011, been governed by the JLC system. JLCs created a system of premiums which contributed to high labour costs and had a significant impact on the sustainability of jobs and damaged competitiveness."

BWG

"We would assert that the application of any increasing costs to our retail estate would have a negative impact on employment levels within our estate. Any increases would not serve to increase overall earnings of employees as employers will have no option but to reduce their wage bill either by reduction in overall staffing levels or reduction in hours, thereby having a detrimental impact to standards within our stores and our competitiveness overall. This may then have the impact of store closures within our estate, thus resulting in further job losses. It is clear the view of the unions that has been adopted within the RGAT JLC does not represent the views of a number of employees in our retail estate who understand the realities of our competitive landscape and wish to protect their employment within the store."

Triode Newhill

"In response to TNMS franchisees being forced to abandon their businesses and to stem closures of these stores, TNMS have developed a business model to take over the operating of distressed shops which are in severe economic difficulty. The intention is to keep these stores trading, secure employment and protect our brands.

While trying to grow sales is our primary strategy to achieve these objectives, the unprecedented recessionary climate has proved especially challenging. In circumstances where sales are in decline, the only other option for store survival is managing business costs.

TNMS have complied with our legislative obligations under the transfer of undertakings regulation and respected the fact that employees have contractual rights in regards to existing terms and conditions. The business has fully appreciated that employee terms and conditions cannot be changed unless and until they freely agree otherwise. In consultation with our staff who wish to protect their employment in these very marginal stores, following agreement, TNMS has been able to structure pay that reflects the commercial reality of the economy and industry in a manner which is fair, sustainable and maintains current employment. Furthermore, not being constrained by inflated, bureaucratic and anachronistic JLC requirements has been a conduit to hire new employees."

and

"TNMS submit that it is not appropriate or fair to prescribe terms and conditions and legislative rights to our sector which are above the existing legal parameters that govern the 85% of workers in the private sector. Furthermore, TNMS contend that the JLC system is prejudicial to the voluntarist approach to collective bargaining as a means of achieving the legitimate interests of the business and our employees. It is anti-competitive for an employer with small convenience shops on the verge of closing to be unable to engage in collective bargaining with employees and control costs to reflect economic realities."

and

"TNMS submit that the points raised substantiate our assertion that the anachronistic and inequitable JLC system should be abolished as it is no longer relevant to our business, is anti- competitive and will damage employment. In the UK, when the NMW Act was introduced in 1998, the comparable regulation orders were abolished. There are now over 40 pieces of Irish legislation to protect employees and this applies to 85% of the private sector workforce. It is our contention that the existing legislation provides for an equitable employment environment rather than dual employment legislation in a sector which least can afford it. Ultimately, any unilateral increases imposed on our industry will not increase employee earnings in our stores as we will be forced to reduce hours and staff numbers."

CSNA

"Unemployment in Ireland is currently at a very high level of 14% of the workforce. Unfortunately, many of the unemployed were previously employed in our (and other) JLC settings."

and

"There is, we would believe, considerable evidence that some employers operating within JLC undertakings have been able to employ staff since the striking down of the ERO's. Whether these staff are working in the hotel, catering, retail grocery, hairdressing, public houses or agricultural sector it is far better for both the employee, employer, society and their workplace colleagues that the position was created rather than attempting to get by with substandard service and an even greater burdened exchequer."

and

"We believe that employment levels can increase if the JLC structure is not imposed on our sub-sector of retail."

MANDATE

"British research on the abolition of six wage councils found that abolition had a disproportionate affect on particular groups who suffered from low pay. While women fared worst of all, underpayment was also found to be a problem, among ethnic minorities, young people and part-time workers. Crucially, the authors reported that withdrawal of statutory protection for some of the most vulnerable workers led to a worsening in their pay but no employment gain for the sector (Craig et al., 1982)."

and

"As happened in Britain following the abolition of Wages Councils, (Institute of Personnel Management, 1991) the abolition of the JLC will lead to worse conditions of employment across the covered sectors but will not increase employment in the retail sector."

and

"In the retail sector, as JLC rates rose over the past decade, so too did employment levels in the sector. This clearly demonstrates that in the main, it is product/service demand and trading levels that determine employment levels and not minimum sectoral wage rates or conditions of employment. Furthermore and crucially, there has been no major increase in employment in the sectors that were covered by JLCs following the 2011 High Court ruling. This is despite anecdotal statements and polemics from employers asserting that employment in the covered sectors would rapidly increase as soon as the JLCs were abolished."

and

"Furthermore and crucially, there has been no major increase in employment in the sectors that were covered by JLCs following the 2011 High Court ruling. This is despite anecdotal statements and polemics from employers asserting that employment in the covered sectors would rapidly increase as soon as the JLCs were abolished. MANDATE is firmly of the view that the debate needs to move on from the narrow focus on pay and the cost of labour to concentrate on the quality of jobs that are covered by the JLC system. Substandard terms and conditions should not be accepted in JLC sectors as an excuse to preserve jobs."

and

"In their seminal paper on the issue of employment and minimum wages Card and Krueger (1994) found no evidence in their study that a rise in the minimum wage in New Jersey reduced employment in fast-food restaurants in the region. There was also no negative effect on the number of outlets remaining open. Of particular relevance to the current review, research carried out in Britain following the weakening and eventual abolition of the Wages Councils, has found no evidence of an employment creation effect. Instead, studies conclude that the weakening of Wage Councils has played an important part in a rise in wage inequality in Britain (Machin, 1997)."

Summary:

- The submission from RGDATA refers to new staff employed, is 920 new positions suggests that an average of position in a third of that part of the sector which RGDATA represents (this is based on a 62% return from over 4,000 employers).The creation of jobs in Ireland is to be welcomed.

Conclusion

- While the change to the lower rates provided for in the Minimum Wage would have to be gradual related to staff turnover and business expansions, the reality is that the differential at the first point of the adult scale is of the order of 10% and rising-one of the biggest differential across the sectors under review. This does not take account of the opportunity to reduce premium earnings-so it is more likely than not that some of the 920 jobs created in the

Independent Retail Sector are related to the fact that these employers no longer have to pay the JLC rates.

- From the information provided by MANDATE in respect of new entrants into the market paying above the JLC rates, and have created jobs in the sector as a whole, the JLC rates of pay can be said not to have adversely impacted on employment levels, especially at entry level. The independent retail operating in the "symbol" category also expanded for many years under the JLC EROs. However, within this sector independent retailers are very clearly of the view that their sector was adversely affected in terms of new entrants by the maintenance of statutory minimum conditions set by the JLCs,even when the number of symbol outlets was expanding.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of employers and workers in the sector;"

SIPTU

"There are very low levels of Trade Union Density in this Sector O'Connell et al (2010) found that 21.6% of retail workers in 2009 were members of a trade union and that, the employers in the main are hostile to unionisation and will be unlikely to concede recognition to a trade union for the purposes of engaging in collective bargaining, particularly (but not exclusively) in smaller retail establishments.

There are some employers in this industry who do recognise trade unions and, who do engage in collective bargaining. They tend to be the big market players who seek to establish market lead in all aspects and do so in isolation of each other and regardless as to where the rest of the industry is at.

This means that the effect of this collective bargaining is not intended to, and does not, set the pay and conditions of employment norms in the Sector. Equally, the existence of the JLC does not impinge on the collective bargaining that takes place with these employers.

SIPTU therefore submits that the existence of a JLC system for the Retail Sector of the economy is the means by which the vast majority of workers and their employers engage in collective bargaining on matters of legitimate interests so as to reach agreement on pay, terms and conditions of employment.

Through this JLC, workers have been able to collectively bargain and reach agreement with their employers on a broad range of employment conditions other that those provided by way so statutory employment legislation such as:

a) Minimum weekly rates of pay
b) Hourly rates of pay
c) Overtime
d) Working hours
e) Sick pay scheme

In conclusion, SIPTU submits that given the circumstances that prevail in this Sector, with regard to trade union density and the very low level of the practice of collective bargaining between workers and employers other than at the level of the JLC, the JLC in this Sector establishing an ERO has not been prejudicial and will continue not to be prejudicial to the exercise of Collective Bargaining as a means of achieving the legitimate interests of workers and employers in this Sector."

BWG

"The mere existence of JLC's is wholly prejudicial to the collective bargaining process (in the interests of both employers and workers) whereby independent retailers are unable to pay rates reflective of their economic enterprise. To establish a base rate in line with the minimum wage where employers can negotiate terms and conditions applicable to their operation will allow them to operate in a competitive model. Scope should be given to employers to take a strategic approach towards monetary and non-monetary rewards for their employees. This includes, but is should not be limited to rewarding employees within their store for performance and/or flexibility rather than service which may not provide competitive advantage. Employers should be free to compete on all aspects of business strategy with the freedom to control their own costs based on their individual business model and in line with standard collective bargaining processes."

CSNA

"2.51 If the Labour Court did abolish the JLC for our sector, we know from our members that they would continue to honour the existing rates being paid to our staff and that only new employees would be engaged at a locally-determined pay rate. We will not pretend that all existing workers will receive incremental rates as was the case within the JLC structure but must suggest that this is a matter much better left to local bargaining rather than imposed rates.

2.52 The presence of the NMW provides a minimum statutory level below which an adult worker cannot be paid. We have found that the "gap" between the JLC rates and the NMW has quite frequently been used by workers to evaluate their worth to the employer and would consequently suggest that most existing employees would be reticent to reduce their basic rate to NMW levels. They would also have an expectation that if all when the NMW is adjusted, that their "differential" would be maintained."

MANDATE

"Crucially, pay increases and the first tentative signs of a pay round began in the unionised retail grocery sector in 2012 and 2013. Mandate has secured pay increases for members employed in Tesco and Marks and Spencer, and workers in Dunnes Stores have also been awarded a pay increase. As wage rates begin to recover in the sector, the absence of a Retail JLC, will mean that the pay rates of non-unionised workers will be left behind. It will also enable some employers to compete on the basis of labour cost and will mean that fair employers are undercut by the less scrupulous."

and

"Research by O'Connell et al. (2010) found that 21.6% of wholesale/retail employees were trade union members in 2009. This figure is down from 28.8% in 2003. It follows therefore that collective bargaining coverage in the retail sector is low. However, the Retail JLC is not the cause of the low levels of collective bargaining coverage in retail nor has it been prejudicial to the exercise of collective bargaining in the sector. It should be noted that the Retail JLC covers only the retail grocery sub-sector of the wider retail sector. But, there is no differential in collective bargaining coverage between this sub-sector and the wider sector. It follows therefore, that the JLC has not impacted on the exercise of collective bargaining in the sector. Mandate contends that the low level of collective bargaining coverage and the low rates of union density are as a result of the absence of a statutory framework for collective bargaining. It is also a result of employer opposition to trade union recognition in the sector, particularly among smaller retailers and the difficulties involved in organising certain groups of workers and of organising in small and regionally spread employments.

The collectively bargained wage rates and terms and conditions in the covered sectors are some way above the JLC rates and terms and conditions."

and

"Moreover, having regard to internal competition within the sectors concerned, it is difficult to see how individual local level bargaining could take place without putting those who are prepared to participate in the process in good faith at a commercial disadvantage relative to those who are not" (Duffy & Walsh, 2011: 48)."

Summary:

- Employers and unions agree that there is a system of collective bargaining in Tesco and Superquinn and this appears to influence the rates of pay that emerge in Dunnes. The disparate nature of the independent retailers albeit under symbol brands did not result in any significant level of collective bargaining outside of the JLCs.

Conclusion:

There is no evidence that the fixing of statutory minimum remuneration and of statutory conditions of employment by the Joint Labour Committee has been prejudicial to the exercise of collective bargaining in this sector.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

Conclusion:

- As this is a national JLC the question of regional representation does not arise.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• SIPTU • MANDATE			• Peninsula[1] • RGDATA[2] • Topaz • IBEC[3] • M. Meagher (Employer) • F. Ormston (Employer) • O'Callaghans (Employer) • CSNA[4] • Doherty (Employer) • Retail Excellence Ireland • O'Brien Power (Employer) • Applegreen • BWG[5] • Triode Newhill Management Services Limited[7]	[1] Peninsula contends that there is no basis for a continued JLC for this sector but that *"as the sector accounted for €392,000,088 in unpaid wages in 2011 it is unlikely that the JLC will be removed. However the JLC should be scaled back from its original format."* This appears to be a reference to the removal of any unsocial hours premium. [2] RGDATA are opposed to the reintroduction of a JLC but say that if it is to be reintroduced then it should apply to all retail outlets that compete for the same customers across the same or similar range of goods. [3] IBEC's preferred option is for abolition. However, they do refer in their submission to competing with off-licences who are not covered by the Establishment Order. [4] The position is for abolition, but if a JLC is retained it should be extended to pharmacists, news vendors, department stores, beauty counters, music stores and a graft of *"currently"* non *"captured"* retailers. *"It must be applied to every retailer in the country as the fundamental works carried out by our respective staff are basically the same, only the product and sales techniques vary."* [5] Same comments apply to Catering JLC. [6] Same comments apply to Catering JLC. [7] Triode Newhill are opposed to the reintroduction of a JLC, but say that if it is to be reintroduced **[??]**

9. Options for consideration under Section 11 (4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

- To retain this JLC in its current form would be to retain the description of this sector of the retail trade in a form which does not describe the more modern definition of groceries and in the manner in which that has developed since 1991.
- To retain this JLC in its present form will not resolve the issues of enforcement and application on a premises providing a range of retail options including petrol and/or hot food.
- To retain this JLC in its current form will be to maintain a division between grocery and other statements of the retail trade.

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[22]

- This option does not arise in this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

- One option is the elimination of all demarcation in the retail sector through the establishment of one national retail sector. The question will arise as to whether this would be in effect creating a new JLC for a wide range of employments not covered by the grocery JLC and therefore a different process would be required under the 2012 Act.

[22] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant to subsection (8) of clause 11 is taken to apply in these circumstances.

- A second option is to redefine the term grocery, perhaps in line with the 2008 definition provided. This would still leave the difficulty of a mixed purpose premises engaging in the sale of a revised list of grocery items but also petrol and providing a catering service as defined under the catering JLC sometimes by the same employee. This extension would bring off-licences within the scope of a JLC and also employees in the meat section. Again this raises the question of whether the inclusion of a new category of establishment in this case off licences and bread /cake shops would represent a new JLC for this sub sector. This requires further examination.

- Any option to amend an Establishment Order should involve an examination of the definition of the worker as well as the establishment covered because of these considerable difficulties in the simple enforcement of the EROs in parts of this sector.

- One of the key underlying justifications for the establishment of any JLC in the past was, that it provided for the same rates of pay, at least, between for those working in the sector, but also, as a minimum it provided for the same rates of pay between competitors and those providing employment in the same type of establishment. The application of this key justification to the consideration of any JLC/Establishment Order for this Sector might assist in resolving the very real anomalies that stem from the Order of 1991.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

- This remains an option to be considered in respect of this sector.

10. Extracts from submissions received in response to requests for information/views

NERA

"Wholly or mainly" or "primarily" with no criteria specified to determine.

and

"And when used in the definition related to an employer's business, it was argued that the test could be carried out by reference to the relative annual turnover, relative annual sales, relative profit margins of products (mentioned in an ERO to overall), time spent by employees on that part of the work relative to the other activities in the establishment, the number of staff assigned relative to the number assigned to other activities or any of the above. This was especially problematic with mixed undertakings."

and

"Incidental activities connected to" or *"work incidental to"*

and

"And generally, how far from the original activity does "incidental activities connected to" extend?"

ICTU and IBEC were asked could they provide information as to how many of the large multiples actually paid rates in excess of the ERO rates where ERO rates existed.

IBEC

"It has been difficult to get precise information on this question. As far as we can establish, the majority of the large multiples paid rates which were in excess of the ERO rates, when EROs existed. As far as we can establish, a significant number of smaller and medium size multiples also paid rates which were in excess of ERO rates when ERO rates existed."

ICTU

"Rates of pay in the unionised retail sector vary between €10 to €14 per hour depending on length of service and grade. Please note that all collective agreements contain additional agreed conditions such as working hours, premium rates, bonuses, allowances, pensions, sick pay, rosters etc."

11. Overall Conclusions leading to Recommendations

The recommendation is that this JLC should be retained with a reduced scope in terms of redefining the competitive sector to which the JLC will apply. The recommendations will also have the effect of redefining the type of work which will be comprehended in any establishment and to reduce as far as possible potentially inflexible and unjustified distinctions between workers in the same establishment who are performing duties which were previously covered by a catering JLC.

One economic justification for the retention of a JLC for this sector applies to the classes of workers it covers. The retail sector is dominated by female workers, many of them young and also migrant workers with a significant number of part-time workers. The proportion of part-time workers is known to have risen over the years since the JLC was established due in part at least to the extension of trading hours across the sector.

A second and important economic justification relates to competitiveness within the sector. What is presented by some employers to this review is a grocery sector which is a combination of multiples and independent operators. This is not accepted as a correct profile of the majority share of the sector. The market is dominated by multiples and symbol operators. The latter group, symbol operators, are in effect franchise operators allied to distributors with large purchasing power. Increasingly symbol and multiple traders compete on the range of goods and services they provide, and on price.

The only really independent operator or shop owner is one who operates neither under the banner of a multiple or a symbol. These form a small and diminishing proportion of the market.

Some of the non-symbol operators have shops attached to forecourt garages. These tend to be small in scale and are not regarded by this review as part of the main competitive market in the grocery trade, as it was called as a distinct part of the retail trade for many years.

For the sake of completeness and in order to deal with a point made at some meetings and in submissions, the extension of a JLC for the entire retail trade is not justified for economic reasons on the basis of competitiveness. It is not accepted that all shops are in the same competitive marketplace even though grocery shops do also sell some goods stocked in non-grocery shops.

The recommendation from this review is to confine the scope of the retained JLC to those establishments which are defined as multiples and symbol operators within the market, terms which are well known to employers and unions active in the sector. It is important to clarify further the economic reasoning behind this recommendation as it

relates to the potential impact to do otherwise on the employees of multiples and symbol operators in the short and medium term.

Generally speaking, as evidenced by the union and not contradicted by the employers (both in responses to questions asked of them at the end of phase 2), the multiple operator whether unionised or not pays rates of pay above the JLC established rates. These rates appear to be a combination of collective agreements and some tracking of those agreed higher rates as well as the JLC rates. The rates within the symbol operators on the other hand are more likely to be those established by an ERO. It is from elements within this portion of the retail sector that there is the greatest proportion of submissions from representative organisations and independent symbol operators opposing the retention of a JLC for the sector. Within this cohort there is evidence presented of employers driving down wages to the minimum wage rate since the JLC was suspended.

While employers are perfectly entitled to fall back towards the minimum wage rate, the economic effect is entirely against the workers and if it continues indefinitely, it is reasonable to conclude that it will inevitably distort the market in terms of wages both between symbols and between symbols and multiples. The differential that previously existed between ERO rates and multiple rates, the latter being the higher rates, will inevitably come under pressure and it is very likely then that the established rates of pay in multiples, operating as they do in a highly competitive market, will come under pressure to be reduced. The same can be said for the symbol operators where those who have maintained the ERO rates of pay will find themselves at a competitive disadvantage versus those who have taken the opportunity presented by the suspension of the JLC to reduce their rates of pay and conditions of employment. It is important to emphasise that within the retail trade wages are set not only by reference to the minimum and maximum rates of pay but also by the addition of premium payments to cover what are known as unsocial hours. Thus, the abolition of the JLC has the potential to create a very significant gap in wages as between those who would pay the minimum wage and only the minimum wage, those who would pay a higher basic rate and those who would pay a higher basic rate plus premium payments.

Difficulties were identified in terms of the natural or logical demarcation within the retail sector as covered and between that sector and catering in terms of the preparation and sale of hot and cold food. The recommendations in this regard endeavour to remove that demarcation and the related inflexibility and additional costs of record keeping from the employers. The matter of the appropriate rate of pay will be a matter for the Joint Labour Committee. At the same time, those franchise operators within multiple or symbol operators who provide catering services will be comprehended by the Catering Joint Labour Committee as a separate employment.

Other recommendations would see the removal of incidental activities and the type of workers who would be comprehended by the JLC would be those directly engaged in preparing goods for sale whether cooked or uncooked or selling those goods.

There is no consensus between the employer and union representatives in this sector on the retention or abolition of a JLC. While recommending the retention of the JLC the recommendations are designed to go some way towards addressing the subsidiary issues addressed to the review by representatives on both sides of the debate.

Collective bargaining does exist within the sector but is confined mainly to the multiples.

For the sake of clarity, it is not intended that independent grocery shops, garage shops that do not have symbol shops attached, shops that are fish shops or butchers or cake and bread shops or vegetable shops would be comprehended by this JLC. It is proposed elsewhere that extensions to the Catering JLC would include off-licences because of the relationship between off-licences and public houses.

For the sake of clarity, a franchise or contract catering operator providing a food service within a multiple or symbol or attached to a garage forecourt will be covered by the Catering Joint Labour Committee as a separate business.

The net effect of changing the scope in the ways recommended is intended to reduce the overall size of the JLC to more closely match the majority share of the competitive grocery market; to extend the scope to cover all of the relevant employees that fall within the remit of the JLC and to make it more flexible and simpler to follow and to enforce. While some shops that are currently covered by the JLC will be excluded, these are not considered to be a significant proportion of the main competitive market of the sector as a whole.

12. Recommendations

Retain JLC and rename - Retail Sector - Grocery - Multiple and Symbol Outlets – Scope clarified and reduced.

Amend Establishment Order to reduce the scope of establishments covered by the JLC.

Amend Establishment Order to exclude clerical and incidental work.

Amend the Establishment Order so as to comprehend and confine the application to, establishments owned, or operated by, or working under franchise to, an entity within the Retail Sector trading as a provider of groceries and other goods for sale to the public, including the sale of all food whether it is prepared or consumed on or off the premises and which establishment operates under the title of a multiple or a symbol as recognised in the sector.

Amend the Establishment Order to provide that all workers directly engaged in the preparation for and sale of goods and employed by an establishment which is a multiple or operates under a symbol, are covered by the scope of the Establishment Order to be covered by the terms of any ERO issued by the JLC (except the work of butchers and apprentice butchers).

Amend the Establishment Order to provide that any worker employed by an employer in an establishment on the same premises as an establishment covered by the Establishment Order, but who is employed by an unrelated employer and who is providing a service other than the sale of groceries, would be comprehended by the terms and conditions applicable to any JLC for that other sector, if such be the case, or that employment as the case may be.The effect of these amendments is to confine the work covered to those engaged directly in the sale and preparation for sale of goods from the establishment covered by the scope of the JLC (except butchers and apprentice butchers).

The effect of these amendments is to continue to provide for a level of competition in terms of rates of pay as between the outlets which comprise the overwhelming majority of the market share in this sector and which compete with each other in terms of the goods and services provided, and on price.

The effect of these amendments is to remove from the scope of this, or any other JLC, those small number of retail grocery outlets who truly are independent and therefore do not operate to the same scale and/or through the same pricing differentials as those who operate as multiples, or those who operate under symbols.

The effect of these amendments is to remove from the scope of the JLC those outlets who do sell some items which are groceries as defined in the Groceries Order, but for whom the sale of such items is an incidental part of their business, e.g. garage forecourts where the attached outlet sells some groceries and food, but which is not trading under a symbol or multiple and therefore is not competing to any significant

extent with those entities in respect of the sale of groceries or the catering sector. Including these entities would only reopen the various demarcations which this review regards as unjustified and has sought to eliminate as far as possible.

However those parts of garage forecourts which do not have a symbol store attached, and where there is a franchise or contracted operator preparing and selling food will be comprehended by the Catering JLC in respect of those catering franchises. Similarly, other services contracted onto a garage forecourt, for example cleaning or security will be comprehended by the enforceable terms for those sectors.

The effect of these amendments is to provide that those who are employed by a symbol or multiple operator, but are engaged on a full or part time basis in preparing or serving hot or cold food for sale by that establishment are covered by this JLC and not a catering JLC. This is intended to address the potential inflexibility, the needless calculation of proportions of time spent and difficulties with enforcement posed by the previous application of different EROs for employees who are engaged by the same employer in similar and sometimes overlapping tasks.

It is recommended that the provisions of the Act of 2012 should apply to these amendments which reduce and clarify the scope of the existing JLC without bring in new establishments.

Security Industry

Joint Labour Committee

1. Name

Security Industry Joint Labour Committee

2. Establishment Order

S.I. No. 377/1998 – Security Industry Joint Labour Committee Establishment Order, 1976.

Date: 16th October, 1998.

3. Activity

(i) Date of Most Recent ERO

1st January, 2007.

(ii) Date of Last Meeting

2nd November, 2009.

(iii) Rate(s) of Pay as per ERO

As per 2007 ERO, €10.01 plus service rates.
A proposal for a REA for this sector was recently submitted to the Labour Court by the Joint Industrial Council.
The rate of pay proposed by the JIC is €10.75.

4. Scope

"Workers to whom this Schedule applies

Security operatives, namely persons employed to provide a security service as described hereunder for contract clients of their employer, and performing one or more of the functions set out hereunder.

Meaning of 'security service':

A service of a security or surveillance nature, the purpose of which is to protect persons and property.

Primary functions of security operatives:

(i) The prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, bonds, stocks, notes or other valuables.

(ii) The prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass on private property either by physical, electronic or mechanical means.

(iii) The enforcement of rules, regulations and policies related to crime reduction.

BUT EXCLUDING

(i) Workers affected by an Employment Agreement, that is "an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union of workers and an employer or trade union of employers or made at a meeting of a registered joint industrial council between members of the council representative of workers and members of the council representative of employers." [Industrial Relations Act, 1946 , Section 25].

(ii) Workers to whom an Employment Regulation Order made as a result of proposals received from another Joint Labour Committee applies.

(iii) Managers, assistant managers and trainee managers."

5. Number of Responses to Public Notice

6.

6. List of Responding Bodies

1. Peninsula Business Services
2. IBEC
3. Irish Security Industry Association (ISIA)
4. GuardEx
5. Noonans
6. SIPTU

7. Analysis of Reports/Submissions as they relate to Section 11(3)

"(a) a review by the Labour Relations Commission made under section 39 of the Industrial Relations Act 1990 in respect of the joint labour committee concerned;"

The most recent review of JLCs conducted by the Labour Relations Commission was that submitted by the University of Limerick in 2005 under the Mid-Term Review of Sustaining Progress. There is no specific reference to this JLC in that report or in previous reviews conducted by the LRC in 1993 and 1998.

Summary/Conclusion:

- There is nothing to have regard to arising from this subsection.

"(b) the class or classes of workers to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

Peninsula

"• Due to the nature of the work there is call to retain the Death in Service benefit and the Personal Attack benefit for employees.

- *Similar to the Agricultural JLC where there is a higher likelihood on employees receiving injuries in the role the non-contributory sick pay scheme could also be argued to be retained."*

IBEC

"The experience in the business since the establishment of the JLC has been positive. The business has become more professional, including by means of the requirement for professional accreditation of security operatives. This has significantly reduced the number of inappropriate individuals acting as security operatives. The greater professionalization of the business has an attendant cost – namely the payment under the former ERO of a significant premium over the national minimum wage – but there have been significant efficiency gains arising from the improvement in quality of security operatives. The existence of the JLC is therefore economically justified."

ISIA

"The integrity of our people and the quality of service are the foundations of our industry. Private security is an industry whereby the service is intrinsically linked with the quality of its people and the standards they work to. Having set standards of pay through an ERO or REA allows the industry to attract the right calibre of people, justify the training level required for licensing and not allow for standards to be depleted."

GuardEx

"The argument that security staff must be on higher than the minimum wage because they are licensed and certified is not valid. Most security officers in the industry have completed just 2 days training to qualify for the PSA licence. Shop workers must complete manual handling courses, HACCP, etc. etc., yet their industry does not impose unrealistic wage costs on those businesses."

Summary:

- The submissions from the employers represent entirely different perspectives.
- One perspective creates the image of a well trained cohort of staff with the higher rates of pay (above the minimum wage) essential to attracting the "right" calibre of people.
- The alternative perspective is that training for security staff is very limited and that the level of training does not justify rates of pay higher than the minimum wage, or other service sector workers.

Conclusion:

- This matter of the different perspectives as to the justification or otherwise of a legally enforceable wage mechanism which provides for

wages and conditions higher than the basic pay and minimum statutory legislative requirements, runs through the submissions from the employers. It could be reasonably concluded that it is this dissenting voice among smaller security service providers which has fuelled the opposition to previously proposed legally enforceable wage setting mechanisms.

"or

(ii) the last review under this section was carried out;"

As this sector was not the subject of any previous review this subsection is not applicable.

Summary/Conclusion:

- There is nothing to have regard to arising from this subsection.

"(c) the type or types of enterprises to which the joint labour committee applies, and the Court shall have particular regard to changes in the trade or business to which the joint labour committee applies, since—

(i) the committee was established,"

IBEC

"Unlike sectors such as the hotels, catering and retail grocery sectors, the threat of job losses because of cross-border competition in this sector is (by comparison) more limited."

ISIA

"The security industry is a critical frontline service, and essential in the Safety and Security of Personnel, Assets and Information worth millions to multinationals, retailers, semi-State bodies and "blue chip" companies nationwide. The licensable portion of the Security Industry employs an estimated 20,000 of which security guards (static and DSP) make up just over 16,000."

and

"The regulated portion of the industry has a turnover of over €562,000,000 and over €320,000,000 relates to security guarding services (static and DSP)."

SIPTU

"It is our view that workers in the security industry are employed in a sector which is the subject of intensive competition by way of tender and which requires robust and enforceable regulation in order to ensure fair competition and that contracts are not won and lost by virtue of unscrupulous employers tendering on the basis of undercutting the established pay rates and conditions in a downward race to the bottom. Also, it should be noted that the maintenance of such regulatory measures in this industry will protect these workers and the employers and ensure that fair competition remains in this sector of the economy from the risks associated with the Posted Workers Directive."

GuardEx

"Guarding services have been reduced substantially in some sectors, such as retail where it is cheaper for a shop to employ an extra sales assistant, (who has the right to arrest shoplifters) on the minimum wage, which is substantially cheaper than obtaining a proper security person on the Old ERO rates of pay.

The adage that security staff on minimum wages, are a liability while minding cash depots and transporting large amounts of cash is a total misrepresentation of the situation.

Companies with high net worth plants and equipment, or cash depots, should pay more for their security as there is higher risk, than say a small boutique in the main street. This opens up all markets to competition and opens all employers to compete with the appropriate staff."

and

"Contrary to popular belief and myth, the type of failures that damage the economy and deprive the citizens of taxes are not small to medium size companies, but the larger companies, who drive down pricing and distort the marketplace. BDS Security Management and Federal Security are two examples of companies with 500 plus employees who went out of business owing the Revenue Commissioners millions. Chubb Guarding closed operations in the same time."

Summary:

- From the submissions this is a competitive industry primarily providing two different types of services, i.e. static and DSP on the one hand, and cash in transit.

- The submission from GuardEx suggests that in recent years many clients, particularly in the retail sector, have cut back on static guard services, but that large security companies have also left the market.

- The ISIA submission suggests that in spite of the cutbacks described by GuardEx, the sector still has a high gross income and that static and DSP services account for over 60% of turnover in the sector.

- SIPTU points to the potential problems of the Posted Workers Directive in this Sector.

Conclusion:

- The GuardEx submissions quoted in this section could be interpreted as meaning that there should be different rates of pay for different segments/roles associated with the services provided. This is not the case within the wage setting mechanisms under the REA/JLC.

- There is similarity here with the contract cleaning sector and the comments therein, where the tendering process exposes employers to regular tendering, leading to the attendant problems of TUPE and, according to SIPTU, the Posted Workers Directive. This latter Directive may have some relevance in terms of the larger type of contract which exists within the industry and which is mainly provided by the larger operators. In the event that there is no legally enforceable wage setting mechanism including the attendant conditions of employment, then the employer (and employees) would become exposed to the difficulties expressed in contract cleaning in relation to the basis on which the competition would then take place. It is possible to envisage a situation where those employers who do not have conditions of employment akin to those proposed in an ERA or indeed previously existed as far back as 2007 under the ERO having difficulty competing for business.

"or

(ii) the last review under this section was carried out;"

Summary/Conclusion:

- As this sector was not the subject of any previous review this subsection is not applicable.

"(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the sector;"

Peninsula

"Of all the JLC Industries the Security Industry has some of the highest rates of compliance and lowest recovery of unpaid wages."

Noonans

"As a company we always endeavour to be fully compliant with relevant legislation. We believe that the removal of the wage setting mechanisms would facilitate less scrupulous employers applying due process. We have a positive working relationship with the union, however, at the same time if wage setting mechanisms were not in place we believe the unions would target the larger companies in the first instance where any changes are applied and resist these changes."

NERA

Year	*Cases*	*Number in Breach*	*Incidents of Breach*	*Unpaid Wages*
2009	*48*	*26*	*54%*	*€285,112*
2010	*23*	*14*	*61%*	*€55,253*
2011[1]	*27*	*14*	*52%*	*€42,515*

[1] *The figures in 2011 are from January to the end of June prior to the decision of the High Court in the case of John Grace 2008 No.10663P. The figures for 2011 are broken down under a number of headings and in respect of the standard minimum remuneration, the number of breaches was 6, and in relation to the records kept the number of breaches was 11. A similar breakdown of figures for 2009 and 2010 was not provided."*

Summary:

- The overall levels of noncompliance remain fairly constant in this sector in the period reviewed. While the level of noncompliance in terms of records remained proportionately high (79%) the level of wages recovery fell significantly over the period, and improved year on year.

Conclusion:

- While record keeping continues to be an issue in this sector, compliance with the wage elements improved significantly over the period reviewed.

"(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment;"

GuardEx

"In Ireland today, clients are not willing to pay the prices that justify the ERO rates of pay. When they can employ workers in their own sectors on substantially reduced rates of pay. The HSE (a government body) indeed refused to meet increases due under the last ERO which was highlighted in the case of secure-way security, which can be elaborated on if necessary."

and

"Not surprisingly, the larger companies in the industry are mostly unionised and are now stuck with union agreements based on the Old ERO terms and conditions. They are unable to reduce their pay-rates for new starts and they want the rest of the industry (SME's) to be crippled with the same agreements. The SME's however do not have access to funding from overseas offices to "ride out the storm". Large multinationals that recently received monies from their overseas offices include two of the largest security providers in the world. Is this funding being used to artificially reduce the bidding price to gain more clients and put small companies out of business? Typically, employment costs are in the region of 80% for security guarding companies. The JLC and ERO therefore promote uncompetitive behaviour in 80% of guarding companies activities."

Summary:

- The submissions under this section do not indicate any issue with legally enforceable wage rates and conditions above the statutory minimum prior to the High Court Decision in 2011 – but rather the difficulty in maintaining those rates in the absence of a legally enforceable wage mechanism.

Conclusion:

- The summary clearly implies that, when there is no legally enforceable wage setting mechanism to provide for wages and conditions above the minimum provided for in the national minimum wage and relevant legislation in respect of other conditions of employment, the adjustments previously agreed by the representatives of employer and workers, simply cannot be maintained in the face of competition based mainly on the price of labour (80% of the total cost as suggested).

- I cannot comment on the statements made in relation to large operators within the sector, but the statement itself does indicate the potential for disharmony within the sector as between employers and between employers and workers in the event that the current situation continues in respect of the difficulty in arriving at a legally enforceable Registered Employment Agreement or Employment Regulation Order.

"(f) the impact on employment levels, especially at entry level, of fixing statutory minimum remuneration and statutory conditions of employment;"

Noonans

"• *The abolition of the JLC structure will not create employment. While it may reduce labour costs, it will increase the following:*
  - *people who previously had no dependency on social welfare will be forced into the social welfare net*
  - *people who had minimal dependency will now have a greater entitlement to benefits due to a drop in earnings*

- *there will a drop in returns by Noonan to the Exchequer as our returns will reduce*

- *the number of employees losing their jobs will increase. We believe that this will happen as non adherence to TUPE will increase and Noonan will find it difficult to apply with some competitors. We have already seen the negative impact of this and while we firmly believe TUPE should have applied, we ended in redundancy situations as suitable alternative employment could not be sourced. This situation arises because an incoming contractor has priced the employee's rate of pay at €8.65 and on notification of TUPE details finds the rates are higher. This refusal of TUPE allows the noncompliant company to appoint their own staff."*

GuardEx

"Guarding services have been reduced substantially in some sectors, such as retail where it is cheaper for a shop to employ an extra sales assistant, (who has the right to arrest shoplifters) on the minimum wage, which is substantially cheaper than obtaining a proper security person on the Old ERO rates of pay."

Summary:

- The GuardEx Submission implies that there has been a significant reduction in the level of guarding services and related jobs in some sectors and particularly retail, leading a loss of jobs.

- The Noonans submission suggests that rather than creating jobs, the effect of fixing statutory minimum remuneration and statutory conditions of employment specific to the sector will be that individuals will lose their jobs or be forced out of their employment and will be replaced by others on lower rates of pay.

- As with contract cleaning, the employer points to a sense of frustration with the interpretation of the TUPE Regulations.

Conclusion:

- These submissions are not contradictory but rather do suggest that the fixing of statutory minimum remuneration and statutory conditions of employment above the minimum specific to the sector has cost some jobs in the sector to date and that correspondingly the reduction of pay and conditions of employment to the national statutory minimum levels of compliance will lead to job displacement more than job creation.

"(g) whether the fixing of statutory minimum remuneration and of statutory conditions of employment by the joint labour committee has been prejudicial to the exercise of collective bargaining as a means of

achieving the legitimate interests of employers and workers in the sector;"

IBEC

"The experience in the business since the establishment of the JLC has been positive. The business has become more professional, including by means of the requirement for professional accreditation of security operatives. This has significantly reduced the number of inappropriate individuals acting as security operatives. The greater professionalization of the business has an attendant cost – namely the payment under the former ERO of a significant premium over the national minimum wage – but there have been significant efficiency gains arising from the improvement in quality of security operatives. The existence of the JLC is therefore economically justified."

SIPTU

"Since the late – 1990s the employers and the unions in this sector have engaged in collective bargaining at the level of the JLC. Undoubtedly this has been a significant factor in maintaining industrial peace in the sector and in facilitating the promotion of harmonious industrial relations between workers and employers."

and

"This industry is one of the most affected by contract for tender arrangements, and in the main voluntarily applies Transfer of Undertakings (Protection of Employment) Regulations and where TUPE is not applied by rogue or unscrupulous employers it can lead to industrial unrest as workers are forced to agitate to protect their interests."

ISIA

"Wage regulation is important to the security industry for a number of critical reasons and in the absence of an ERO the Security Industry Employers and Unions met to form a Joint Industrial Committee (JIC) and negotiated a subsequent Registered Employment Agreement (REA). This REA has been submitted to the Labour Court for approval.

GuardEx

"Large multinationals and large domestic companies are manipulating the industry by flooding their people into the Representative bodies such as the ISIA, NUSE and IBEC. One company have people on all of these committees and seek to artificially keep wages high in an attempt to gain monopoly on the marketplace, by stifling competition. Two of the large Multinationals have been operating at a loss in Ireland over the past few years and recent articles in the business papers highlight their dependence on a stream of funds from their overseas head offices.

The "representative bodies" are only representative of their members who are a small percentage of the security companies in operation. It costs money to join any of them and again, they are dominated by larger companies who direct them in their voting."

Summary:

- With the exception of GuardEx, worker and employer representatives who made submissions to this review are unanimously of the view that the Joint Labour Committee has provided the basis for collective bargaining in this sector. The preferred option is that of a Registered Employment Agreement which appears to be based on a requirement to take account of a wide range of issues which apply within the sector which are no longer expressly provided for in the role of a joint labour committee and in particular the premium payments for Sundays and Public Holidays.

- Clearly there is/was a voice within IBEC which feels that the views of IBEC and the ISIA are not reflective of the small and medium service providers within this sector.

Conclusion:

- The Joint Industrial Council and the Joint Labour Committees have used the respective structures for collective bargaining for this sector. The maintenance of industrial peace in any sector in terms of harmonious industrial relations is a factor to be considered by the Labour Court under section 11(4) of the Act of 2012. Where the disharmony occurs is as between the employers themselves. However, no alternative forum for collective bargaining is suggested in the submissions to this review, but rather that there should be no legally enforceable collective bargaining arrangements. This scenario would be a reversal of long established arrangements within the sector. Nonetheless, it is clear that there are those within the security industry who believe that the exercise of collective bargaining has been prejudicial to the interests of employers and workers.

"(h) in the case of a joint labour committee that represents workers and employers in a particular region in the State, whether the basis for the continuation of such regional representation is justified;"

As this JLC had national application this subsection is not applicable to this sector.

8. Responses Applicable to Section 11(4)

(a)(i) Current Form	(a)(ii) Amalgamated	(a)(iii) Amended E.O.	(b) Abolished	Comments
• ISIA • SIPTU		• IBEC[2]	• Peninsula[1] • GuardEx	[1] Peninsula's recommendation for abolition is based on an anticipation that *"the industry is soon to be covered by a mutually agreed REA"*. [2] IBEC's preferred option is for maintenance of the JLC at this time with modest amendments. The suggested amendment is that *"in this schedule "security undertaking" means an undertaking or a part of an undertaking engaged wholly or mainly in the provision of security services on a contract basis"*.

9. Options for Consideration related to Section 11(4)

"(4) Following a review under subsection (1)–

(a) where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that–

(i) the joint labour committee is retained in its current form,"

This is an option, however, there is a technical amendment suggested by IBEC which if accepted could lead to the exercise of option number (iii).

"(ii) the joint labour committee is amalgamated with another joint labour committee,"[23]

This is not an option for this sector.

"or

(iii) the establishment order pursuant to which the joint labour committee was established is amended,"

The only submission to amend the Establishment Order is to provide for a technical amendment as proposed by IBEC.

"or

(b) where the Court is satisfied it is no longer appropriate maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."

This is an option. In the event that this Joint Labour Committee is abolished, the only mechanism available for legally enforceable pay and conditions to be achieved through collective bargaining would be through the conclusion of a Registered Employment Agreement.

[23] The insertion of "or" at the end of option (ii) does not appear to take account of the fact that any decision to amalgamate JLCs would automatically require an amendment to an establishment order(s), and this review has taken this requirement into account, where relevant. Subsection (8) of clause 11 is taken to apply in these circumstances.

10. Extracts from submissions received in response to requests for information/views

With the exception of one employer there was consensus between the union and employers that there is a requirement for legally enforceable statutory pay and conditions of employment in the sector. The proposal from employers suggested that the wording of the Establishment Order should read: *"security undertaking means an undertaking or part of an undertaking engaged wholly or mainly in the provision of security services on a contract basis"*. In view of the level of consensus that existed between employers and the union ICTU was asked their view of the proposal.

ICTU

Security JLC: *"We do not accept the proposition as stated."*

11. Overall Conclusions leading to Recommendations

This JLC should be maintained with an amended Establishment Order.

The economic justification for this JLC has been set out in this review by agreement between all but one employer and the worker representatives. It is this consensus that provides the basis of the recommendation that the JLC be retained. This sector is more unionised than many of those under review and the workforce is predominantly male, many are not young workers and there is a considerable amount of fulltime work. The ethnic culture is mixed. However, these workers would be heavily exposed to a lowering of their established rates of pay and conditions of employment if there were no continuing statutory basis to support those terms.

The recommendation as to how the Establishment Order should be amended is that the scope of the JLC should be that set out in the most recent proposals for a registered agreement submitted to the Labour Court.

It is possible that a recent collective agreement would be given statutory effect and if this is the case and this becomes established practice before the next review of JLCs due in five years, then this JLC may become redundant at that time.

12. Recommendations

Retain JLC - amend the Establishment Order to clarify.

Amend the Establishment Order to define the type of establishment covered - by defining the meaning of a security firm and the meaning of a security service and the primary functions of security operatives.

Meaning of "Security Firm"

A Security firm is an employer who employs persons, hereinafter referred to as Security Operatives, to provide a security service as described hereunder for contract clients of their employer, and performing one or more of the functions set out hereunder:

Meaning of "security service":

A service of a security or surveillance nature, the purpose of which is to protect persons and property.

Primary functions of security operatives:

(v) The prevention or detection of theft, loss, embezzlement, misappropriation or concealment of merchandise, money, bonds, stocks, notes or other valuables.

(vi) The prevention or detection of intrusion, unauthorised entry or activity, vandalism or trespass, on private property either by physical, electronic or mechanical means.

(vii) The enforcement of rules, regulations and policies related to crime reduction.

(viii) The protection of individuals from bodily harm.

The effect of these amendments is to redefine all of the relevant terms covering workers and employers in the same terms as the most up to date definitions of these terms set out in the proposal for a Registered Agreement submitted by employer and worker representative organisations to the Labour Court in 2012.

It is recommended that the provisions of the 2012 Act should be applied to these amendments which clarify the scope and meaning to be given to the various descriptors of establishments and workers within the sector.

Appendices

Extracts from submissions which refer to "harmonious" (section 11(4))

CSNA [Review of Joint Labour Committees (JLC) Submission to the Labour Court]

"The very different and contradictory Determinations of the Labour Court in who was/was not covered under our RGAT JLC and the continuous battles with interpretation of which (if any) JLC a worker should be covered by is inimitable to harmonious worker relations."

RGDATA

"92.5% of retailers do not accept that the JLC structure leads to harmonious industrial relations between employers and workers 7.5% believe that the structure does."

"I have a very harmonious relationship with my staff and they were happy to take a cut in hours because the feeling was that they would rather be down €20 a week than have no income at all."

IBEC

"However, it is of the utmost urgency that certain other JLCs are abolished. Their revival under the provisions of the Act of 2012 would be inimical to the best interests of workers, employers and Irish society at large. Those are the JLCs which previously operated in respect of sectors which are most exposed to the current economic conditions, which are of almost unprecedented severity. The revival of JLCs in those sectors would threaten the ability of employers to create and maintain employment, and would damage harmonious relations between workers and employers."

"It is acknowledged that, in the absence of a JLC, pay negotiations would proceed within individual undertakings between parties who are not always well equipped to conduct those negotiations, having regard to the unusual nature of agricultural undertakings. This may have a negative impact on the harmonious relations between workers and employers."

"In relation to pay: centralised pay-negotiation in this sector, rather than pay negotiation at the level of the workplace, has until recent years, promoted harmonious relations between workers and employers. In some sectors of the agriculture sector, employers and workers live and work in such close proximity that arms-length pay setting may have been a better option than any alternatives."

"If the JLC is maintained and proceeds to make EROs, there is a strong likelihood of a significant negative impact on employment levels, especially at entry levels. There is a near-certainty of serious damage being done to harmonious relations between workers and employers."

"The operation of the JLC has tended to promote harmonious relations between workers and employers both in unionised and non-unionised employers."

and

"Another issue arises in respect of the Transfer of Undertakings regulations. Cleaning contracts regularly transfer between operators. The existence of the former ERO gave employers a degree of certainty (when bidding for contracts) about what wage levels would be. In the absence of an ERO or REA, that certainty would be lost; some employers would continue to pay the former rates, others would move to the national minimum wage. Employers might win a contract based on an assumption that transferring workers would be paid the national minimum wage only to learn that the workers are paid more than that. Such an employer may well have no choice but to reduce costs somehow, inevitably leading to legal difficulties and negative effects on harmonious relations between employers and workers."

"The fact that employers in this sector have identified merit in having a JLC operate in respect of hairdressers is significant evidence that doing so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest."

"The geographical extent of JLCs should not be extended further by the current review. The fact that there were parts of the country in relation to which no hairdressing JLC operated is evidence that the preservation of harmonious industrial relations did not require the establishment of a JLC in the first place. It is difficult to see how the extension of the jurisdiction of JLCs to workers and undertakings to which they never applied before could in any way promote harmonious industrial relations; it is likely only to undermine them."

"The operation of the JLC has tended to promote harmonious relations between workers and employers both in unionised and non-unionised employers."

and

"It may be the case that abolition will not have any negative consequence; the recent employment agreement may be registered and may render the JLC redundant. However, in the absence of a satisfactory REA, significant negative consequences could arise, including in relation to maintaining harmonious industrial relations."

IFA

"Following the review, where the Court is satisfied that to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest, the Court may recommend that:

- *(i) the joint labour committee is maintained in its current form;*
- *(ii) the joint labour committee is amalgamated with another joint labour committee; or*
- *(iii) the establishment order pursuant to which the joint labour committee was established is amended; or*
- *(iv) where the Court is satisfied that it is no longer appropriate to maintain a joint labour committee the Court may recommend that the joint labour committee is abolished."*

IHF

"The JLC legislation in its current format was established just after the Second World War. The purpose of the 1946 Act, passed on 2nd August 1946 was set out in its long title. It was 'to

make further and better provision for promoting harmonious relations between workers and their employers and for this purpose to establish machinery for regulating rates of remuneration and conditions of employment and for the prevention and settlement of trade disputes ....'"

"Furthermore, the Court may only recommend that a JLC be retained (either in its existing form or in an amended of amalgamated form) if it is satisfied that 'to do so would promote harmonious relations between workers and employers and assist in the avoidance of industrial unrest.'"

and

"We can understand that when legislation on JLCs was first enacted in 1946 that there were concerns about promoting harmonious relations between workers and employers and avoiding industrial unrest."

and

"In fact the Irish Hotels Federation strongly believes that the IR pressures that would arise from any re-introduction of a JLC and ERO would create significant cost pressures and tensions that could damage current harmonious relations and contribute to possible industrial unrest."

and

"The Irish Hotels Federation and individual employers in the sector are working very hard to promote harmonious relations and we have no doubt that the re-introduction of JLCs in the sector will compromise these efforts especially in the current climate."

SIPTU [Hospitality Sub]

"It needs to be borne in mind that the JLC system has played a significant role in the development and maintenance of a peaceful and stable industrial relations environment in the sector concerned. By providing the architecture for the orderly conduct of industrial relations, the JLC enables employers and unions to settle disputes of interest. Without a JLC system for this industry, wages and conditions of employment will likely become a competitive factor for employers, and this in turn will lead to industrial unrest as workers will no doubt have to agitate to achieve the right to engage in collective bargaining in order to try and have some influence over the conditions under which they will be forced to work. Such a scenario would not be consistent with a desire to maintain harmonious industrial relations in the hotels sector."

"Without a JLC system for this industry, wages and conditions of employment will likely become a competitive factor for workers, and this will lead to industrial unrest as workers will no doubt have to agitate to achieve the right to engage in collective bargaining in order to try to have some influence over the conditions under which they will be forced to live and work.

Such a scenario would not be consistent with a desire to maintain harmonious industrial relations in the catering sector."

Extracts from submissions brought to the attention of the Labour Court at the conclusion of Phase 2

Irish Hotels Federation (IHF)

"The Irish Hotels Federation is the national representative body of the hotel and guesthouse sector in Ireland. The Irish Hotels Federation is the only representative organisation that can justifiably claim that it represents the views of a sector that employs in excess of 50,000 people.

The Irish Hotels Federation has taken a decision to participate, on behalf of its members, in this 'Review' process. While our fundamental position is one of outright opposition to the reintroduction of a JLC system, which has already been deemed to be unconstitutional, we are taking this opportunity to participate in the 'Review' process entirely without prejudice to any legal action we may wish to take on this matter at any point in the future.

We have little confidence in the outcome of a 'Review' that has been commissioned by the Labour Court who themselves have been a key architect of the JLC system since 1946 and a key contributor to the Report of the Independent Review of EROs and REAs Wage Setting Mechanism (April 2011). The Irish Hotels Federation also understands that Ms Janet Hughes has been appointed by the Court to assist in carrying out this review.

The Irish Hotels Federation firmly believes that the focus of any truly independent review of a JLC system should, particularly in the current economic environment, be to support and foster job creation particularly in sectors such as hotels which are labour intensive and where excessive regulations/labour costs are barriers to maintaining existing and creating further employment. If that focus was maintained we have little doubt as to the outcome of an Independent Review.

However, the history of much of the current industrial relations and employment regulation process has demonstrated a bias towards increasing the cost of employment for employers and thereby contributing to the erosion of the competitiveness of Ireland. The fact that Ireland has the fourth highest national minimum wage rate in the EU is in itself a major anti-competitive factor. (See Appendix 1) In addition, all employees are protected by over 40 pieces of employment legislation. The Irish Hotels Federation does not believe that the workers in the hotel sector are vulnerable and need any special protection over and above the national minimum wage and the extensive range of employment law protections.

This competitive position of hotels was exacerbated by the existence of the JLC system that further added to labour costs and regulations. It is unfortunate that there appears to be an impetus to re-establish the joint labour committee system, under a guise of consultation and independent review, notwithstanding it being deemed unconstitutional by the High Court. This does not in the view of the IHF augur well for the prospects of the Hotels JLCs being abolished under this 'Review'."

Supermacs

"There are a number of factors surrounding the current "review" process that we find concerning to say the least. Having the Court conduct this "review" given their ongoing involvement in the JLC system since 1946 seems flawed, and will do [sic] doubt lead to a legal challenge at a later stage. This is something which we hope you will consider and

perhaps review independently taking account of external factors in the economy and employment in particular.

It seems incredible to us that this "Review" was agreed, given the current economic climate when there is such a need for action to support the creation of new jobs and assistance to current employers in the retail and catering sector who are struggling to survive and maintain the employment of their current workforce."

QSFA

"We have prepared this submission to make clear our opposition to the re-introduction of the JLC system. We believe this system should be abolished, and were the plaintiff who successfully challenged the constitutionality of this system in the past."

and

"We are surprised to find that this "review" is not being independently conducted, and inevitably will be concerned with the independence of the findings, given the participation of the Labour Court in the JLC to date.

We had anticipated that this "review would be undertaken by a body which would evaluate the Irish system versus other JLC equivalent systems in competing countries in Europe, together with factor relating to the Irish economic climate at present and what is needed to ensure continued employment and creation of new jobs."

ICTU

Extract from an e-mail of the 12th March, 2013, related to the convening of further consultative meetings in Phase 3:

"Some employers and their representative organisations have opposed the Joint Labour Committee system for decades. It has always been the case, for these employers, that it is very difficult to agree to discuss the Joint Labour Committee until the decision has been made that the JLC in question will be retained, amended or amalgamated. You will be aware that consensus is not required, nor has it been a feature of the establishment of Joint Labour Committees."

IBEC

In response to an e-mail from the DJEI clarifying the basis of the Minister's statements that he envisaged six joint labour committees:

"We would see the current review as being a statutory process which is not in any way fettered by the report of the Independent Review [Duffy-Walsh Report] or any political comments made afterwards. The terms of reference of the two processes are different; there have been dramatic changes in the underlying circumstances; and the current review has the opportunity of assessing the situation in light of a counterfactual scenario which the Independent Review could only speculate about – namely the absence of EROs for almost two years.

I think this view is implicit in our submission, in which we make clear that we believe the Court should make different recommendations than some of [the] recommendations contained in the report of the Independent Review, but we are happy to make our view explicit."