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**Report**

of

**Independent Review of Employment Regulation Orders**

and

**Registered Employment Agreement Wage Setting  
Mechanisms**

April 2011

# Executive Summary

## Main Conclusions

- We have concluded that the basic framework of the current JLC / REA regulatory system should be retained. We are, however, satisfied that the system requires radical overhaul so as to make it fairer and more responsive to changing economic circumstances and labour market conditions. The overriding purpose of the recommendations which we have set out in Section 13 of this Report is to create a framework within which greater efficiencies and necessary adjustments in payroll costs can be achieved in the affected sectors.
- We have concluded that lowering the basic JLC rates to the level of the minimum wage rate is unlikely to have a substantial effect on employment. We have investigated the size of the wage differential in some detail and do not find evidence of substantial wage premiums. Even if we err on the side of the strand of the literature that finds the largest negative effects from minimum wages on employment, we should note that the results imply that cutting minimum wages lowers total earnings of low wage workers and has potentially important distributional consequences.
- Those who advocated abolition of the current system pointed to the significant body of employment rights legislation now in force as providing adequate legal protection for employee rights and interests. However, for reasons which are discussed at **Sections 6 and 8** of this Report, we conclude that it is not accurate to suggest that the body of primary employment rights legislation currently in force adequately covers matters dealt with by EROs and REAs.
- Most of the EROs provide for overtime payments and premium payments to those required to work on Sundays. These provisions are a source of significant concern to employers in sectors which normally trade on Sundays. They contend that the cost of employing staff on Sundays is now prohibitive. Independently of the JLCs, the obligation to provide additional compensation for Sunday working is derived primarily from Section 14 of the Organisation of Working Time Act 1997. We believe, however, that the mode of compliance with that provision should be addressed so as to ensure uniform and fairer arrangements across the affected sectors.
- We believe that there are potentially substantial competitive gains that could be realised in some of the affected sectors by reforming the structure

of decision making in JLCs so that the system is more flexible and responsive to the needs of particular sectors. Competitiveness can also be enhanced by simplifying the system in a way that reduces the burden of supervision and compliance and by providing a degree of coordination and oversight over the system that ensures that arrangements across sectors are reasonable and proportionate.

- The main justification for the JLC system lies in the absence of any other fair system of determining pay and conditions of employment, beyond statutory minima, within the sectors concerned. In the case of wage rates there is a clear relationship between the national minimum rate and the JLC rates in that most of them were fixed at various times by application of s.7(2) of the National Minimum Wage Act 2000. In so far as there was drift from the minimum rates in many of the larger JLCs it was mainly attributable to the compounding effect of applying wage agreement increases together with increases in the minimum wage and to the timing of those increases.
- In our view, a well designed framework where collective bargaining in its full sense can take place would potentially provide a better, more responsive and fairer means of determining pay and conditions and should be encouraged as an alternative to the present JLC system.
- In relation to the REA system we found that there is still broad support for the retention of a mechanism by which collective agreements can be made universally applicable across sectors. The current system is, however in need of significant reform.
- Our terms of reference do not mandate us to propose specific changes to the terms of either EROs or REAs. That is the primary responsibility of the stakeholders in the relevant sectors. Our recommendations are intended to provide an effective mechanism by which they can attain necessary change through agreement or, in default of agreement, by independent adjudication. Our recommendations are intended to provide a composite package of measures each element of which should be regarded as an essential component in achieving the flexibility through which necessary adjustments and efficiencies can be achieved in the affected sectors.

## **Recommendations**

Our recommendations are set out in Section 13 of this Report. They address the following matters: -

### **Recommendation 1**

#### *Scope of Individual Establishment Orders*

We recommend that the Labour Court should undertake or commission a report into the scope of all remaining JLCs so as to ensure that the range of establishments to which they apply remains appropriate and that any necessary amendments be made to the establishment orders by which they were created.

### **Recommendation 2**

#### *Geographical JLCs*

We do not believe that there is any continued justification for maintaining geographically based JLCs. We recommend that the two Catering JLCs be amalgamated and that the future regulatory arrangements in other sectors in respect of which geographically based JLCs currently operate be considered.

### **Recommendation 3.**

#### *Abolition of Certain JLCs*

As shown in Table 4.1 there are a number of JLCs which relate to sectors which have now become so small in terms of numbers employed, or which have effectively ceased to function, that should be abolished. We recommend that the following JLCs be abolished:

- Aerated Waters and Wholesale Bottling
- Provender Milling
- Clothing

### **Recommendation 4**

#### *Primacy of Collective Bargaining*

We recommend that, subject to certain conditions, the Labour Court should be authorised to exclude an undertaking to which a collective agreement applies from the scope of a JLC.

## **Recommendation 5**

### ***Replacement of JLCs in Certain Sectors***

We make specific recommendations for the replacement of the Contract Cleaning JLC with an REA.

## **Recommendation 6**

### ***Mechanisms for Fixing Pay***

We recommend the provision in law of principles and policies, in line with those proposed in the Industrial Relations (Amendment) Bill 2009, to which JLCs and the Labour Court must have regard in fixing the terms of an ERO.

We also recommend that, in the absence of a national agreement, the Labour Court may provide general guidelines to JLCs on appropriate pay increases based on the criteria referred to above.

We further recommend that in the event of national wage agreements being concluded in the future the parties to the agreement should make specific provision for the mode of application of increases provided for in the case of JLCs vis-à-vis increases in the national minimum wage.

## **Recommendation 7**

### ***Relationship between ERO rates and National Minimum Wage***

We recommend that if the national minimum wage is adjusted downwards in the future the JLCs should be required to consider revising the rates prescribed by EROs within a defined timeframe after the adjustment in the minimum wage becomes effective.

## **Recommendation 8**

### ***Standardisation of Conditions of Employment***

We make recommendations directed at ensuring that, as far as possible, conditions of employment regarding overtime payments, including the conditions under which they become payable, and Sunday premium should be standardised across the various JLCs.

## **Recommendation 9**

### *Procedures of Joint Labour Committees*

We make recommendations on revised decision making procedures for JLCs and on the circumstances in which the Chair of a JLC can exercise a casting vote.

## **Recommendation 10**

### *Use of Clear Language in EROs*

We recommend that the language in which EROs are drafted be reviewed so as to provide greater clarity as to their intended meaning and scope.

## **Recommendation 11**

### *Definition of Substantially Representative Parties*

We recommend that, in the case of REAs, the 1946 Act be amended so as to make it clear that the extent to which parties are to be regarded as representative should be measured by the degree to which they will be affected by the agreement if registered.

## **Recommendation 12**

### *Requirement that parties remain substantially representative*

We recommend that the registration of an REA could be cancelled where either the trade union(s) or employer parties have ceased to be substantially representative of workers or employers in the sector to which the agreement relates.

## **Recommendation 13**

### *Variation of REAs*

We recommend new procedures by which a party to an REA can seek to have the Agreement varied and to provide that in exceptional circumstances the Court can make a variation order in the absence of full agreement on the proposed changes.

## **Recommendation 14**

### *Duration of REAs and their Cancellation*

We recommend more streamlined procedures by which the Labour Court could cancel the Registration of an REA where the circumstances of the

industry or employment to which it relates have so altered as to make the continued registration of the Agreement undesirable.

## **Recommendation 15**

### *Electrical Contracting REA*

We make specific recommendations on the need for the parties to the REA for the parties to the Electrical Contracting Industry to implement the recommendations of a report prepared on that industry by Mr Peter Cassells and Mr Finbarr Flood.

## **Recommendation 16**

### *Industrial Relations (Amendment) Bill 2009*

We recommend that the provisions proposed in the Industrial Relations (Amendment) Bill 2009, in so far as they relate to matters within our terms of reference, be enacted.

## **Recommendation 17**

### *Derogation on Economic Grounds*

We recommend that statutory provision be made so as to allow for derogation from the terms of either an ERO or an REA on economic grounds.

## **Recommendation 18**

### *Simplification of compliance requirements*

We make recommendations directed on simplifying the compliance requirements on employers covered by Eros and REAs.

## **Recommendation 19**

### *Penalties and Enforcement*

We recommend that the enforcement mechanisms for EROs be streamlined and brought into line with those currently available in the case of REAs.

# Section I

## Introduction

- 1.1 The National Recovery Plan, 2011 to 2014, published by the Government on 24th November, 2010, commits to a range of structural reforms to the labour market aimed at removing barriers to employment creation and disincentives to work; and at re-orientating activation measures. In this context, the Government committed to legislate for a reduction in the hourly rate of the National Minimum Wage. It also made a commitment to review the framework of ERO and REA wage-setting mechanisms within a period of 3 months.
- 1.2 On 28th November 2010, in the context of its announcement of the joint EU-IMF programme for Ireland, the Government reiterated its commitment to this review, stating that the terms of reference would be agreed with the European Commission Services.
- 1.3 The following terms of reference were issued in February 2011:

## Terms of Reference

The following are the agreed terms of reference:

1. The review will take account of:-
  - The shared employment maintenance and creation objectives, of the Government, employers and trade unions, both within the regulated sectors and in the wider economy; and the possible renewal of the Private Sector Protocol by IBEC and ICTU.
  - The common desire to see the continued orderly conduct of industrial relations across the economy and the relevant sectors; the continued protection of employee rights and interests;
  - The current levels of domestic competition and international competitiveness of the sectors covered by EROs and REAs; price and wage movements in the economy and in major trading partners; and the impact of EROs and REAs on labour market flexibility and sustainable employment across the economy.
  - Independent external economic and labour market evidence.

- **The views of Members of the Houses of the Oireachtas and of stakeholders including IBEC, ICTU and the CIF, and of all of the parties directly involved in the current mechanisms in the context of evolving private sector pay policy.**
- 2. The review shall provide an assessment on the following points**
- **The continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements, and in particular:**
    - **Whether and to what extent the function played by EROs in ensuring protection of minimum wages and conditions overlaps with that of the statutory national minimum wage system introduced in 2000; whether minimum wages and working conditions more stringent and over and above those guaranteed by the national minimum wage for the worker categories covered by EROs are justified on the grounds of fairness;**
    - **the economic function played by REAs in the collective bargaining framework of Ireland and their legal status, including in relation to the definition of designation of REAs "collective agreements or arbitration awards which have been declared universally applicable" under Article 3 of Directive 96/71/EC on the Posting of Workers and the public policy obligations underpinning the statutory framework for REAs having regard to EU Treaties and, in particular, Article 28 of the Charter of Fundamental Rights of the European Union, the Solemn Declaration on Workers' Rights, Social Policy and other issues, and relevant ILO conventions;**
    - **whether and to what extent EROs and REAs contribute to nominal wage rigidity in the covered sectors and occupations, with potentially relevant effects on employment during weak economic conditions and on the adjustment of labour markets across sectors, occupations, and geographical areas.**

- **the adequacy of the process for the registration of ERO proposals, in particular with reference to the constitution of Joint Labour Committees, their operation and governance, and their role played in the process.**
- **the appropriateness of the process and criteria applied by the Labour Court for the acceptance of REA proposals for registration;**

**3. Make recommendations on the following issues:**

- **The continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements;**
- **Possible legislative amendments to the existing framework for the regulation of terms and conditions of employment to ensure that the framework is fit-for-purpose in the current economic climate, including to remove anomalies and obsolete provisions, and to move to a more streamlined, transparent and flexible wage setting model. Without prejudice to any findings in relation to the above, and after assessing compliance with international conventions and EU labour directives, recommendations for reforms may include:**
- **The introduction of derogations to EROs and REAs in case of financial difficulties of employers and with a view to protect employment;**
- **The introduction of more flexible and responsive variation mechanisms in the pay conditions established by EROs and REAs;**
- **The conditions for registration, enforcement, amendment and cancellation of EROs and REAs;**
- **Simplification of compliance requirements for employers covered by EROs and REAs;**
- **The penalties in case of breach of obligations relating to EROs and REAs.**

**4. The Review will be conducted jointly by Kevin Duffy and Dr Frank Walsh having regard to the need for the Review to draw both on (a) particular knowledge of the operation of wage setting mechanisms and (b) independent economic expertise.**

**5. The government is committed to taking urgent action, including making any legislative provision which may be necessary, following its consideration of the recommendations of the review.**

## Section 2

### Methodology

- 2.1 Interested parties were invited to make written submission to the review. The closing date for submissions was 25<sup>th</sup> February 2011. By that date 360 submissions were received from a variety of bodies and individuals. Some submissions were received after the closing date. Given the time scale within which we were expected to report it was not possible to provide all those who made submissions with an opportunity to meet with us and make verbal representations.
- 2.2 A number of bodies asked to meet the review group. We met with the main representative bodies that requested a meeting on 7<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, and 14<sup>th</sup>, March and 1<sup>st</sup> April 2011.
- 2.3 The list the submissions received is at **Appendix 1**. The list of bodies with whom we met is at **Appendix 2**
- 2.4 We have taken account of all the submissions made to the review and have conducted our own research of material relevant to our terms of reference.
- 2.5 A number of individuals and bodies made extensive submissions on the legal and constitutional validity of the system of pay determination under consideration. Such considerations do not come within our terms of reference and, accordingly, we have not addressed them in this report.

## Section 3

### Overview of the System

#### Joint Labour Committees

- 3.1 Joint Labour Committees (JLCs) are established pursuant to Part IV of the Industrial Relations Act 1946. However, they have their origin in the Trade Boards Act 1909 which provided for the establishment of boards for the purpose of fixing rates of pay in four specific trades. That Act was subsequently amended by the Trade Board Act 1918 so as to provide for the establishment of Trade Boards for the purpose of fixing wages in trades in which the existing machinery for the regulation of wages was inadequate.
- 3.2 This system of regulating wages was adapted by the Act of 1946 and extended to cover conditions of employment as well as pay. Section 35 of the Act gives the Labour Court the power to establish JLCs. The Court may establish a JLC in respect to any workers and their employers on the application of the Minister for Enterprise Jobs and Innovation, a trade union or any organisation or group of persons claiming to be representative of such workers or of such employers<sup>1</sup>. There are a number of statutory conditions which must be satisfied before the Labour Court can establish a JLC.
- 3.3 Where the application is made by a body claiming to be representative of workers or employers the Court must be satisfied that they are representative<sup>2</sup>. The Court must also be satisfied that either (i) there is substantial agreement between such workers and their employers to the establishment of a joint labour committee, or (ii) the existing machinery for effective regulation of remuneration and other conditions of employment of such workers is inadequate or is likely to cease or to cease to be adequate, or (iii) having regard to the existing rates of remuneration or conditions of employment of such workers or any of them, it is expedient that a joint labour committee should be established<sup>3</sup>

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1 Section 36

2 Where the application is made by a trade union this requirement does not apply.

3 Section 37

### ***Establishment Orders***

- 3.4 Having received an application to set up a JLC the Labour Court is obliged to consult with the parties likely to be affected. It then prepares a draft establishment order which specifies the scope of the proposed JLC including the category of workers to be covered and the type of employment to which it is to relate. The draft establishment order is then published together with a notice of the Court's intention to hold an inquiry into the proposal to establish the JLC. At the inquiry the Court must consider all objections received. The Court then decides whether or not to make an establishment order setting up a JLC<sup>4</sup>.

### ***Amending or Abolishing an Establishment Order***

- 3.5 The Labour Court may amend or abolish an establishment order on the application of the Minister, a trade union or any organisation or group which, in the opinion of the Court is representative of employers or workers. After consultation with such parties as it thinks fit the Court may prepare a draft amending or abolition order. The Court must then publish the draft and hold an inquiry between thirty and forty-five days from the date of publication. The Court can then decide whether to amend or abolish the establishment order<sup>5</sup>.

### ***Membership of a JLC***

- 3.6 Every JLC consists of an equal number of members representing employer interests and worker interests. The representative members are appointed by the Labour Court after consultation with such representative bodies as it considers appropriate. An independent Chairman is appointed by the Minister<sup>6</sup>. There is no statutory definition or guidance on what bodies are to be regarded as representative and this is a matter that is left to the discretion

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4 The process for the making of an Establishment order is set out at s.38 of the Industrial Relations Act 1946. Section 45 of the Industrial Relations Act 1990 makes further provisions relating to the timescale within which the Court must conduct this process. The statutory inquiry must be held not less than thirty days from the date of publication of the notice or later than sixty days from the receipt of the application made to the Court. The Court must then make its decision on the application within forty-two days after the close of the inquiry.

5 Section 40 of the Industrial Relations Act 1990

6 The constitution of JLCs is provided for by the Second schedule of the Industrial Relations Act 1946. Up to the enactment of the Industrial Relation Act 1990 there were three independent members, one of whom was the Chairman. The 1990 Act now provides for only one independent member who is the Chairman.

of the Labour Court. In practice representative members are appointed on the nomination of the principal social partners- ICTU and IBEC-although this nominating function is often delegated by those bodies to specific trade unions and employer associations representative of the sector to which the JLC relates.

### ***Making Employment Regulation Orders***

- 3.7 Once established a JLC is authorised to prepare a draft Employment Regulation Order (ERO) fixing the minimum pay and conditions of employment of workers to whom the JLC relates. The process is initiated by a member of the JLC submitting a motion for the making of an ERO and requesting a meeting of the JLC to discuss the motion<sup>7</sup>. A meeting of the JLC is then convened by the secretariat. Unless the motion is agreed, a process of negotiation takes place between employer and worker representatives. The Chairman seeks to conciliate and facilitate the parties to reach agreement. The Chairman may often adjourn a meeting so as to allow the parties to reflect on their respective positions. If final agreement is not reached the Chairman may exercise a casting vote on any outstanding question.
- 3.8 When proposals for an ERO are formulated by the JLC they are published and a period of twenty-one days is allowed during which representations may be made by interested parties. The JLC then meets to consider the representations received. Having done so the JLC then formulates final proposals, in the form of a draft ERO, for submission to the Labour Court. The Chairman of the JLC makes a report in writing to the Court setting out the circumstances surrounding the adoption of the proposals.
- 3.9 The proposals are then considered by the Labour Court. The Court may adopt the proposals and make an ERO in the terms proposed or refuse to make an ERO in the terms proposed. If the Court refuses to make an ERO in the terms proposed by the JLC it may formulate amended proposals, which if adopted by the JLC, it would be prepared to adopt. If the amended proposals are subsequently adopted by the JLC, and submitted to the Court, the Court then makes an ERO in the amended terms. If the amendments proposed are not adopted by the JLC, and the original proposals are resubmitted the Court may either make an ERO in those terms or refuse to make an ERO.

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<sup>7</sup> In practice motions are submitted by either the employer or trade union side rather than by individuals

- 3.10 A proposal to amend or revoke an ERO may not be made to the Court until the lapse of six-months since the ERO was made<sup>8</sup>

***Legal Effect of EROs***

- 3.11 The terms of an ERO are incorporated in the individual contract of employment of every worker to which it relates. Where an individual contract of employment provides for remuneration which is less than that prescribed by the ERO, or for conditions of employment which are less favourable than those provided for in the ERO, the contractual term is amended by operation of law so as to comply with the ERO<sup>9</sup>.
- 3.12 An employer who fails to comply with the terms of an ERO is guilty of a criminal offence punishable by a fine not exceeding €952.28 in respect of a failure to pay the minimum rates prescribed. The Court by which the employer is convicted may also order the payment of arrears of wages accruing to the workers concerned in respect of the previous six years. A failure provide the minimum conditions is punishable on summary conviction by a similar fine.
- 3.13 Employers are obliged to maintain records showing compliance with any ERO by which they are bound.
- 3.14 A list of JLCs and EROs currently in being are at **Appendix 3**
- 3.15 The terms and conditions contained in EROs are at **Appendix 4**

**Registered Employment Agreements**

- 3.16 Registered Employment Agreements (REAs) are collective agreements made between employers or their organisations and trade unions. They are freely negotiated between the parties thereto. In the Irish system of industrial relations collective agreements are not normally binding in law and there is a presumption that the parties to an employment agreement do not intend to enter into legal relations. Moreover, normally collective agreements do not have normative effect and they are binding, in honour only, on those who subscribe to the agreement but not on others.

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8 Section 42(3) of the Industrial Relations Act 1946.

9 Section 44 of the Industrial Relations Act 1946

- 3.17 Section 27 of the Industrial Relations Act 1946 allows the parties to a collective agreement (referred to in the Act as an “employment agreement”) to register their agreement with the Labour Court. If registered the agreement is given legal effect and is binding not only on the parties to the agreement but on all workers and employers of a type or category to which the agreement is expressed to relate. Hence the effect of registration is twofold. Firstly, it renders the terms of the agreement enforceable in law and the Act sets down a mechanism for their enforcement<sup>10</sup>. Secondly, the agreement is given normative effect and the terms of the agreement become the minimum terms and conditions under which a worker to which the agreement relates can lawfully be employed.
- 3.18 There are currently 73 agreements registered with the Labour Court which are listed at **Appendix 5**. The majority of these agreements are specific to individual employments and were registered because the parties wished them to be binding in law. Agreements in this category bind only the parties to the agreement. There are other agreements which are industry or sectoral agreements negotiated with employer bodies representative of an industry and the trade unions representing workers in the sector. The principal agreements in this category, and the only ones on which we received representation in the course of this review, are those relating to the Construction Industry and Electrical Contracting.
- 3.19 Before an agreement can be registered by the Labour Court six conditions must be fulfilled, which are set out at Section 27(3) of the Act, as follows: -
- (a) that, in the case of an agreement to which there are two parties only, both parties consent to its registration and, in the case of an agreement to which there are more than two parties, there is substantial agreement amongst the parties representing the interests of workers and employers, respectively, that it should be registered,*
  - (b) that the agreement is expressed to apply to all workers of a particular class, type or group and their employers where the Court*

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<sup>10</sup> Section 32 of the Industrial Relations Act 1946 allows a trade union which is party to an REA to complain to the Labour Court that an employer to whom the agreement relates has failed to comply with the terms of the agreement. If the Court considers the complaint to be well founded it may order the employer to comply with the REA. Section 10 of the Industrial Relations Act 1969 makes similar provision for an employer’s organisation to complain that an employer is in contravention of an REA. An Employer or an employer’s organisation may also complain to the Court if a trade union is supporting a strike in contravention of the agreement for terms and conditions of employment in excess of the terms prescribed by the REA

*is satisfied that it is a normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group,*

- (c) that the parties to the agreement are substantially representative of such workers and employers,*
- (d) that the agreement is not intended to restrict unduly employment generally or the employment of workers of a particular class, type or group or to ensure or protect the retention in use of inefficient or unduly costly machinery or methods of working,*
- (e) that the agreement provides that if a trade dispute occurs between workers to whom the agreement relates and their employers a strike or lock-out shall not take place until the dispute has been submitted for settlement by negotiation in the manner specified in the agreement, and*
- (f) that the agreement is in a form suitable for registration*

3.20 Where an application to register an agreement is made it is dealt with in accordance with s.27(4) and (5) of the 1946 Act. These subsection provides: -

*(4) Where an application is made to the Court to register an employment agreement, the Court shall direct such parties thereto as the Court shall specify to publish specified particulars of the agreement in such manner as, in the opinion of the Court, is best calculated to bring the application to the notice of all persons concerned.*

*(5)(a) The Court shall not register an employment agreement until the lapse of fourteen days after publication of particulars of the agreement in accordance with subsection (4) of this section.*

*(b) If within that period the Court receives notice of an objection to the agreement being registered, the Court shall, unless it considers the objection frivolous, consider the objection and shall hear all parties appearing to the Court to be interested and desiring to be heard, and if, after such consideration, the Court is satisfied that the agreement does not comply with the requirements specified in subsection (3) of this section, the Court shall refuse to register the agreement.*

- 3.21 Where an application is received in respect to an individual employment the only persons entitled to object would, in practice, be individual workers who may be dissatisfied with the terms of the agreement. Where the agreement relates to an industry or sector the matter is more problematic. In practice these agreements are made between the main employer body representing employers in the sector and all of the trade unions representing workers in the industry. But the Act does not provide any definition or guidance on the criteria against which the representative nature of a body is to be judged.
- 3.22 In the case of the Construction Industry Agreement the parties are the Construction Industry Federation and various trade unions represented by the Construction Industrial Committee of the Irish Congress of Trade Unions. That Agreement was registered in 1967 on the joint application of the CIF and ICTU. The Electrical Industry Agreement was made between trade unions which have since amalgamated to form TEEU and ECA (an affiliate of CIF) and AECl. It was registered in 1990.

#### ***Variation of REAs***

- 3.23 Any party to an REA may apply to the Labour Court to vary the agreement. Where an application to vary an agreement is received a public notice of the application is given and the Court holds a public hearing to consider the application. Any person who has an interest in the agreement may appear before the Court and make submissions in relation to the application. Having considered such submissions the Court may vary the agreement or refuse to do so. A variation order can only take effect from a current date.
- 3.24 The relevant statutory provisions do not expressly require agreement between the parties before an REA can be varied by the Court although the Court has never varied an agreement without the consent of all parties thereto.<sup>11</sup>

#### ***Cancellation of REAs***

- 3.25 It is a matter for the parties to an employment agreement to decide if their agreement is to remain in force for a specific period or if it is to be of indefinite duration. An agreement in either category can be registered.

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<sup>11</sup> Section 28 of the 1946 Act. This merely provides that the Court shall consider the application and hear all persons interested and desiring to be heard and then decide whether or not to make a variation order.

- 3.26 The registration of an agreement, whether for a fixed term or an indefinite duration, may be cancelled by the Court where: -
- (a) All of the parties apply to the Court to cancel the registration of the agreement provided the Court is satisfied that the consent of all parties to its cancellation has been given voluntarily
  - (b) The Court is satisfied that there has been such substantial change in the circumstances of the trade or business to which it relates since the agreement was registered that it is undesirable to maintain registration
- 3.27 Where an agreement is of indefinite duration the Court may cancel the registration of the agreement, after it has been in force for a period of twelve months, if all of the employer parties or all of the worker parties give six months notice of termination.
- 3.28 Where an REA is expressed to be for a fixed-term its registration does not automatically cease at the end of the fixed-term. The registration of the agreement continues unless a party thereto gives three months notice of termination and all parties representative of either employers or workers consent to its cancellation.
- 3.29 Where a registered employment agreement provides a mechanism by which it can be terminated by a party thereto, and the agreement is terminated in accordance with that term, the court must cancel the registration of the agreement on being notified of its termination<sup>12</sup>

***Enforcement of EROs and REAs***

- 3.30 The National Employment Rights Authority (NERA) is responsible for enforcing EROs and REAs<sup>13</sup>. That body is authorised to conduct inspections for that purpose. NERA is also authorised to bring criminal proceedings against non-compliant employers. In the case of REAs either a trade union or an employer organisation which is party to the REA may bring proceedings before the Labour Court in cases of non compliance.

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12. Section 29 of the Industrial Relations Act 1946. In Decision REP091, in a application to cancel the registration of the REA for the Electrical Contracting Industry, the Labour Court extensively considered the principles to be applied in considering if the continued registration of an REA is undesirable on grounds of substantial change in the industry to which it relates. The Decision of the Court was subsequently upheld by the High Court The decision of the High Court is now under appeal to the Supreme Court.

<sup>13</sup> NERA is not yet formally established by law. Pending its formal establishment it acts as a agent of the Minister for Enterprise, Jobs and Innovation in exercising the enforcement powers vested in the Minister by the Industrial Relations Acts 1946 to 2004.

## Section 4

### Economic background and coverage of JLC/REA

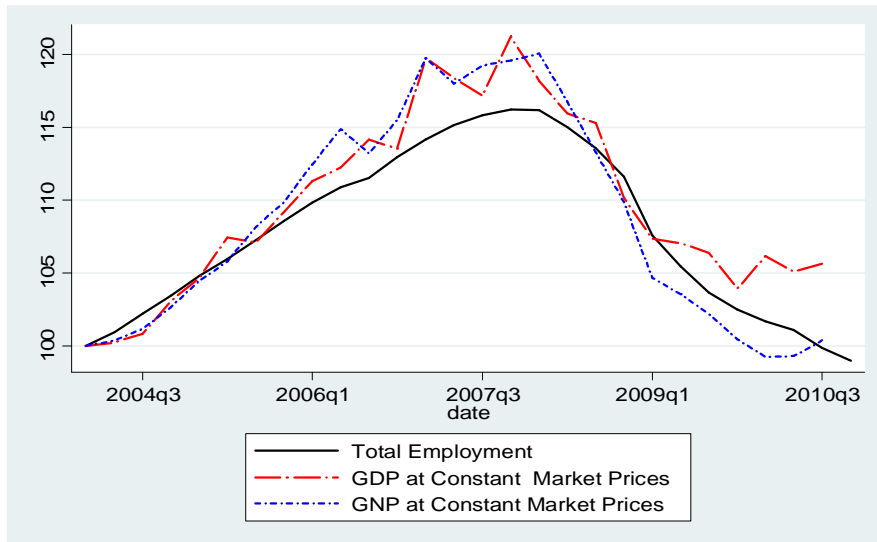
- 4.1 This review is taking place at a time of stark deterioration in labour market conditions in Ireland. Many of the submissions received from employer bodies outlined compelling evidence of the deterioration in trading conditions for their particular sectors over the last number of years. This section summarises this change in economic conditions giving a brief outline of trends in employment and output. While it is difficult to estimate the number of workers covered by the JLC/REA system we make an estimate with the data available and compare summary statistics on wages and other worker characteristics of workers in these sectors compared to others.
- 4.2 Figure 4.1 below shows a seasonally adjusted index of quarterly employment, GNP and GDP (both at constant prices) from 2004 to 2010. We see the rapid increase in employment from 2004 until the peak in the first quarter of 2008, followed by an equally dramatic collapse. Employment tracks output closely. The coverage of the ERO/REA system is not comprehensive but in Figure 4.2 we look at the pattern of employment growth in sectors where these wage setting mechanisms might be most important. We see the extraordinary growth in Construction employment followed by an equally dramatic collapse, a pattern of long term decline in Agricultural employment accelerated somewhat by the recent recession, while employment in Wholesale and Retail trades and Accommodation and Food services follows the trend in overall employment and output<sup>14</sup>. While it is interesting to look at the relative performance of each sector it would be useful to have some sense of the relative importance of each sector in total employment. Figure 4.3 shows the fall in employment from the peak (Quarter one 2008) to the last period (Quarter four 2010). We see that the number employed fell by about three hundred thousand. Almost half of this can be accounted for by the fall in Construction employment, while Wholesale and Retail trades, Agriculture and Industry are the other biggest contributors.

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<sup>14</sup> Graphs for employment in the remaining sectors are given in Appendix 6.

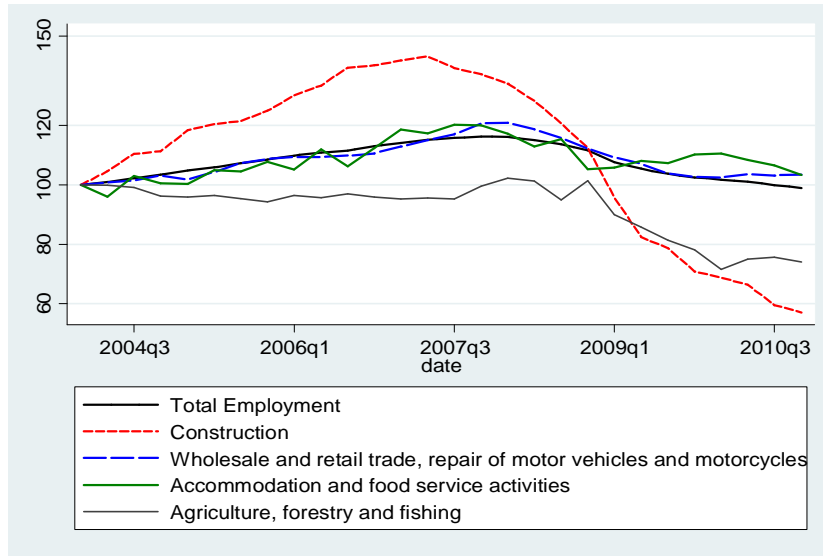
4.3 The 2009 international financial crisis, the collapse in banking and difficulties accessing credit, the deteriorating domestic fiscal position and increasing need for fiscal retrenchment after 2008, as well as the consequences of a dramatic fall in construction activity as property prices fell were all important determinants of the fall in output and employment post 2008. Given these factors and the extent to which employment in some sectors tracks output changes, it seems clear that declining demand conditions have played an important role in the decline in employment illustrated in Figure 4.1/4.2. In section 7 we will discuss trends in competitiveness over recent years and the level of wages in JLC/REA sectors relative to the rest of the economy.

**Figure 4.1: Employment, GDP and GNP 2004Q1-2010Q3**



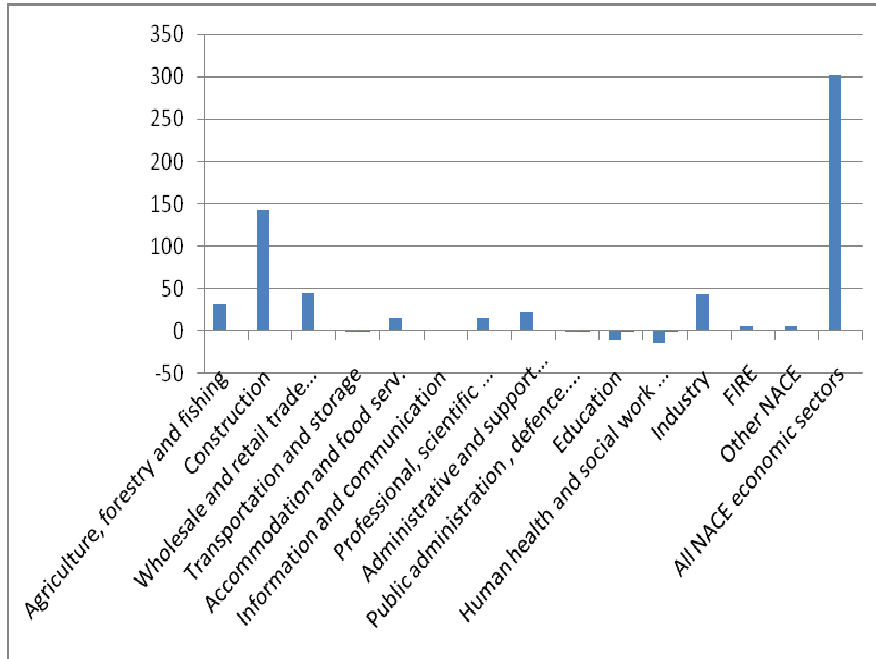
Source: Employment is from the Quarterly National Household Survey, GDP and GNP from the National accounts. All are available at [www.cso.ie](http://www.cso.ie). All series are seasonally adjusted.

**Figure 4.2: Employment by sector 2004Q1-2010Q3**



Source: Employment is from the Quarterly National Household Survey

**Figure 4.3: Decomposition of fall in employment 2008Q1-2010Q4 by sector**



4.4 We estimate the numbers in the various JLCs and REAs using data from the Survey of Income and Living Conditions (SILC)<sup>15</sup>. A detailed description of the data and methodology underlying the employment estimates is in **Appendix 7**. Before discussing the employment estimates we emphasise the difficulties in estimating employment numbers. We proceed making our best estimate given the data available to us. In particular we note that the SILC data is primarily designed for estimating income rather than employment. Given this we would put a serious health warning over the estimates for employment in individual sectors in particular. Having said this we do have a reasonably large sample of workers and even if the employment weights of different groups in the sample are out of line with the overall population we are confident that our categorisation of employees into JLC, REA or non JLC/REA is reasonably accurate, so that the analysis in later sections which compares labour market outcomes for these three groups of workers should be reasonably accurate. Given these qualifications, Table 4.1 below estimates the share of private sector employees in each of the JLCs/REAs between 2007 and 2009 pooling the three years data<sup>16</sup>. While the Joint Labour Committees account for just over 15% of private sector employees, Retail Grocery and Catering account for over half of this. Agriculture, Cleaning, Hotels, Security and Law Clerks also account for significant groups of workers, but Hairdressing in Dublin, Aerated Waters and the amalgamated clothing JLCs together account for less than half of one percent of private sector employees. Registered Employment Agreements account for just under 8% of private sector employees with the bulk of this accounted for by the Construction and Electrical REAs<sup>17</sup>.

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<sup>15</sup> We are grateful to the CSO for granting us access to the SILC micro data. In particular we acknowledge the assistance of Marion McCann with variable definitions etc. Of course we take full responsible for the results contained in this review.

<sup>16</sup> Many individuals are followed for more than one year at a time but when we pool the three years we only count each individual once. This along with excluding public sector, community employment schemes and family workers explains why the sample size is less than the sum of observations from each of the years.

<sup>17</sup> Weights are attached to each observation to make the sample look more like the overall population. As a very basic check on how the weighting is working for the overall sample of employees we compared the total number of employees in 2009 with quarter four of the quarterly national household survey. The QNHS has 1,551 thousand employees while the 2009 SILC estimates the number of employees at 1,380 thousand employees. Apart from sampling this discrepancy may come from the fact that the SILC calculates employment status using a more subjective measure than the QNHS which uses the ILO definition. We will adjust our employment estimates to allow for this discrepancy in Table 4.2.

**Table 4.1: Share of private sector employees in JLC's /REAs using 2007-2009 SILC data**

	Unweighted Number observations	Weighted Employment
<b>Employees not in JLC/REA</b>	4,000	77.1%
Retail grocery & allied trades	200	3.9%
Agriculture	88	1.6%
Catering Dublin	56	1.2%
Catering National	153	3.1%
Contract cleaning	104	1.7%
Hairdressing etc., Dublin	14	0.2%
Hotels (Excluding Dublin)	65	1.8%
Law clerks	39	0.7%
Security	54	1.0%
Shirtmaking, tailoring, women's clothing,	7	0.1%
Aerated waters	4	0.1%
<b>JLC Total</b>	<b>780</b>	<b>15.3%</b>
Construction REA	261	6.0%
Electrical REA	43	0.9%
Wholesale & retail clothing & footwear (Dublin) REA	30	0.5%
Printing (Dublin) REA	11	0.2%
<b>REA Total</b>	<b>345</b>	<b>7.6%</b>
<b>All Employees</b>	<b>5,129</b>	

Note : All workers who declared that they were self employed, work in the public sector, for their family or in community employment schemes are excluded as discussed in Appendix B. We note that we exclude Hairdressers in Cork who have a separate JLC but could not be identified in the data.

4.5 As noted in footnote 16, Table 4.1 pools the data over three years to maximise the sample size used to estimate employment shares. Table 4.2 estimates the number employed in a single year. Since this table is based on a smaller sample than Table 4.1, these can be seen as very rough estimates that give a sense of the relative importance of different sectoral agreements in terms of the number of employees. The estimates imply total employment of between 150,000 and 205,000 in the JLC sectors in 2009. This is considerably lower than previous estimates, for example the National Minimum Wage commission estimated that 162,000 were covered by the JLC system in 1998 which had a much lower level of overall

employment<sup>18</sup>. On the other hand, while not explicitly dealing with JLCs, Nolan et al. conducted a survey of Irish firms paying at or below the national minimum wage in 2005. While about 5% of private sector employees are reported to be paid at or below the minimum, about 8% are paid between the minimum and 11% above the minimum which would possibly capture most JLC basic rates from Table 8.1 below<sup>19</sup>. We will see in section 8 below that this is on the higher side of the estimated average wage differential between JLC minimum rates and the national minimum wage. Firms report across sectors that only 8% of employees fall within this range of wages. Perhaps the exclusion of public sector workers explains some of this. Finally we note that the estimates of the number of employees made by some employers groups in their submissions were significantly higher than those given in the table above. Given all the caveats it is worth reemphasising that that the main body of the analysis below depends more on having a reasonable sample size and a reasonably accurate way of categorising workers into JLC, REA and non JLC/REA rather than that the sample represents each segment of the population of employees proportionately

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<sup>18</sup> “Report of the National Minimum Wage Commission”, April 1998, Department of Enterprise Trade and Employment (p29). The “Review of the Joint Labour Committee System” submitted to the labour relations commission by Michelle O’Sullivan and Joseph Wallace in 2005 contains a series of estimates on employment in the JLC system since 1926 constructed from various sources (p19).

<sup>19</sup> Nolan Brian and Sylvia Blackwell “The minimum wage and Irish firms in 2005”, Economic and Social research institute

**Table 4.2: Estimates of number of private sector employees in JLCs  
REAs using 2009 SILC data**

	Number employed 2009 (low estimate)*	Number employed 2009 (high estimate)	Underlying number of observations
<b>Employees not in JLC/REA</b>	723,032	919,258	1,836
Retail grocery & allied trades	36,005	57,834	91
Agriculture	16,344	20,780	38
Catering Dublin	11,633	14,790	27
Catering National	25,011	31,799	56
Contract cleaning	19,862	25,252	55
Hairdressing etc., Dublin	981	1,247	7
Hotels (Excluding Dublin)	22,658	28,807	36
Law clerks	4,239	5,389	16
Security	12,583	15,998	28
Shirtmaking, tailoring, women's clothing,	1,687	2,145	6
Aerated waters	536	681	2
<b>Total JLC</b>	151,539	204,724	362
Construction REA	49,118	62,448	93
Electrical REA	9,924	12,617	18
Wholesale & retail clothing & footwear (Dublin) REA	2,554	3,247	11
Printing (Dublin) REA	335	426	2
<b>REA Total</b>	61,931	78,739	124
<b>All Employees</b>	936,502	1,202,720	2,342

\*Low estimate uses employment estimates directly from SILC, high estimates scale up the SILC employment estimates proportionately so that the number of private sector employees corresponds with the number of employees from the Quarterly national Household Survey less the CSO's estimate of public sector employment for 2009. For some observations in retail it was unclear whether they were covered by the Retail JLC, the low estimate excludes them and the high includes them. It is difficult to find official statistics for employment that tally with most of the JLC/REA categories but the CSO quarterly survey on earnings and employment estimates the number of "production, craft and other manual workers" employed in construction. The average quarterly figure for 2009 is 61,225 which is reasonably close to the higher figure above.

- 4.6 Since the number of observations in many of the JLCs/REAs is often small we continue by looking at the characteristics and wage distributions of workers in three broad groups: private sector JLC employees, private sector REA employees and other private sector employees. Table 4.3 shows that migrant and part-time workers are heavily concentrated in JLC sectors. We also note the impact of the recession taking hold in 2009 as the part-time share increases across all groups.
- 4.7 Tables 4.4/4.5 calculate the weekly and hourly wage distribution for all private sector workers by JLC/REA status where the wage is the usual gross weekly/hourly wage which incorporates tips, overtime, commissions piece rate payments, productivity payments bonuses and holiday pay. It is worth noting that the SILC data is primarily used for measuring trends in income and a great deal of care is taken in the construction of the income and earnings variables in this dataset. It seems clear that the JLC sectors are low wage sectors across the distribution whether we look at weekly or hourly wages.

**Table 4.3: Percentage of private sector employees who are Irish and percentage working part-time\***

	Year	% Born in Ireland	% part-time	Number Observations
JLC	2007	76%	46%	399
	2008	72%	47%	370
	2009	60%	51%	381
REA	2007	87%	6%	230
	2008	79%	12%	167
	2009	66%	14%	123
Non JLC/REA	2007	85%	22%	2,100
	2008	87%	22%	1,848
	2009	82%	27%	1,827

\*Part-time means usual weekly hours are less than thirty

**Table 4.4: Weekly wage distribution private sector employees by JLC/REA status**

	Year	Average	10th Percentile	Median	90th Percentile
JLC	2007	290	67	257	514
	2008	281	85	244	519
	2009	302	105	315	463
REA	2007	574	160	527	1,022
	2008	552	179	502	940
	2009	606	297	508	960
Non JLC/REA	2007	632	151	500	1,191
	2008	662	176	525	1,283
	2009	659	170	525	1,229

**Table 4.5: Hourly wage distribution private sector employees by JLC/REA status**

	employees	Average	10th Percentile	Median	90th Percentile
JLC	2007	10.4	4.7	9.0	14.6
	2008	10.7	5.3	10.0	16.0
	2009	12.2	6.3	10.8	17.3
REA	2007	15.1	7.6	14.0	24.6
	2008	14.9	6.9	13.3	23.8
	2009	16.1	7.7	13.0	27.8
Non JLC/REA	2007	17.7	7.5	14.0	29.4
	2008	18.5	7.7	14.4	32.5
	2009	19.3	8.2	15.5	33.5

## Section 5

### Considerations specified in the Terms of Reference

- 5.1 We are required to provide an assessment of a number of points referred to at paragraph 2 of our Terms of Reference. We consider each of these points in the following sections.

#### Employment maintenance and Private Sector protocol

**The shared employment maintenance and creation objectives, of the Government, employers and trade unions, both within the regulated sectors and in the wider economy; and the possible renewal of the Private Sector Protocol by IBEC and ICTU.**

- Employment maintenance and creation*
- 5.2 With regard to the first objective identified - the maintenance and creation of employment- many of those who advocated the abolition of the present system contend that it acts as a barrier to job creation and retention. For many years a consensus existed in the economics literature that wage floors reduced employment. Competitive labour market theory suggests that the wage will equal a workers marginal productivity and that when firms are forced to pay higher wages they will reduce employment of lower productivity workers. The consensus from the empirical literature was that a binding minimum wage would have a modest negative impact on employment<sup>20</sup>.
- 5.3 In recent decades imperfectly competitive models of the labour market have become more prominent in the economics literature. In these models the impact of minimum wages on employment is often ambiguous. For example Dickens, Machin and Manning (1999)<sup>21</sup> outline a simple model

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<sup>20</sup> Charles Brown reviews the literature on minimum wages in the 1999 handbook of Labour economics concluding that a ten percent increase in the minimum wage would typically reduce employment by between one and three percent. [Brown Charles "Minimum wages, employment and the distribution of income" *The Handbook of Labor Economics* Chapter 32, Volume 3b ed. Orley Ahenfelter and David Card, Elsevier 1999

that is reasonably representative of this literature where frictions such as search or turnover costs imply that in contrast to the competitive model, firms that pay higher wages attract more workers<sup>21</sup>. In such a model a modest minimum wage may lead to higher employment and may enhance efficiency. Of course if the minimum wage is set too high firms will be on the demand curve as in the competitive model and employment will fall. In addition of course if demand conditions worsen due to an economic downturn, the wage, below which a minimum wage will not have negative effects, will fall.

- 5.4 In line with developments in the theoretical literature, results from the more recent empirical literature are mixed. While many studies across a range of countries have continued to find modest negative effects of minimum wages on employment many well designed studies, perhaps the best known being the influential study by Card and Krueger<sup>22</sup> have found either no impact on employment or small positive employment effect resulting from minimum wages. For example the study by Dickens, Machin and Manning referred to above looked at variations in wages set by the U.K. wage councils over a period of Conservative rule where these wages were typically falling and found that wage increases associated with the wage councils had small positive effects. In a study of the impact of the National minimum wage on employment in Ireland, based on a survey of firms taken before and after the introduction of the Irish National Minimum Wage O'Neill et al.<sup>23</sup> found that “employment growth among firms with low-wage workers prior to the legislation was no different from that of firms not affected by the legislation”. Arguably in line with the above discussion that a minimum wage may have different affects on different firms O'Neill et al. also found small negative employment effects on firms that were most severely affected by the minimum wage<sup>24</sup>. Surveys of the literature also

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21 Strobl and Walsh (2011) show in a competitive labour market model that employment effects of a minimum wage are ambiguous when we allow firms adjust both the number of workers and hours per worker. [Eric Strobl and Frank Walsh “The ambiguous effect of minimum wages on hours “ Labour Economics, Vol. 18, No. 2 , pp 218-228.

22 In “Myth and Measurement: The new economics of the minimum wage”, Princeton, N.J.: Princeton University Press, 1995 David Card and Alan B. Krueger look at the impact of a substantial increase in the minimum wage on fast food employment in the U.S. State of New Jersey relative to a neighbouring state where the minimum wage remained unchanged and found small positive employment effects from the minimum wage.

23 Donal O'Neill, Brian Nolan and James Williams “Evaluating the Introduction of a National Minimum Wage: Evidence from a New Survey of Firms in Ireland” LABOUR 20 (1) 63–90 (2006)

24 The Irish minimum wage was introduced at a time of strong economic growth when wages were increasing, reducing the impact of the minimum wage on many firms.

differ in their conclusions. Neumark and Wascher (2007)<sup>25</sup> in a survey of the more recent literature conclude that most studies find small negative effects, while Doucouliagos, Hristos and Stanley (2009)<sup>26</sup> present evidence of publication bias from a meta analysis of minimum wage studies. That is their evidence suggests that studies which presented evidence more in line with the consensus of negative employment effects were more likely to be published, and that when this bias was corrected there is little support remaining for such negative employment effects.

- 5.5 We conclude from this review of the literature that lowering the basic JLC rates to the level of the minimum wage rate is unlikely to have a substantial effect on employment. We investigate the size of the wage differential in some detail in section 7 below and do not find evidence of substantial wage premiums. Even if we err on the side of the strand of the literature that finds the largest negative effects from minimum wages on employment, we should note that the results imply that cutting minimum wages lowers total earnings of low wage workers and has potentially important distributional consequences. Purely for illustrative purposes it is useful to consider what would happen if the wage premium was 5%: thus if the wage bill equals wages times employment and a five percent wage cut increased employment by one and a half percent this would imply a decrease in earnings of about three and a half percent. Leaving hours per worker fixed, for every two hundred workers employed at the minimum wage there would be three new workers who would get a minimum wage job but each of the two hundred workers would have a five percent reduction in earnings. Given that as Tables 4.4-4.5 illustrate, wage levels for JLC workers are significantly below other groups at all levels of the wage distribution, we feel that it is important from a welfare point of view that in the event that a change in the JLC system were to reduce wages, and if this were to lead to employment gains, that such gains would be weighed up against the welfare losses to existing employees.

***Private Sector Protocol by IBEC and ICTU***

- 5.6 At the time of writing the Private Sector Protocol by IBEC and ICTU has been renewed for 2011. While its dominant purpose is to promote the retention and expansion of employment, a key objective of the Protocol is to preserve stability in the conduct of industrial relations.

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<sup>25</sup> Neumark, David and William L. Wascher (2007) "Minimum Wage and Employment" *Foundations and trends in Microeconomics*, Vol. 3, No. 1-2 pp1-182.

<sup>26</sup> Doucouliagos, Hristos and Stanley, T. D , "Publication Selection Bias in Minimum-Wage Research? A Meta-Regression Analysis" *British journal of Industrial Relations* Vol. 47, No. 2 2009

- 5.7 It is recognised that an essential component in the achievement of this objective is a commitment by employers and trade unions to adhere to existing collective agreements unless they are voluntarily altered.
- 5.8 Registered Employment Agreements are collective agreements and come within the ambit of the Protocol. Employment Regulation Orders are not collective agreements, properly so called, but they do have an equivalent effect in providing stability in the determination of pay and conditions of employment within the sectors to which they apply.
- 5.9 Trade Unions and other bodies representing worker interests in the affected sectors have indicated their trenchant opposition to the abolition of the current system. In these circumstances a decision to abolish the current system, without agreement, would appear inconsistent with the objectives purposed by the protocol, unless it could be demonstrated that abolition would result in proportionate benefits in terms of employment.

## Section 6

### The Orderly Conduct of Industrial Relations and Protection of Employment Rights

**The common desire to see the continued orderly conduct of industrial relations across the economy and the relevant sectors; the continued protection of employee rights and interests.**

#### *Orderly Conduct of Industrial Relations*

- 6.1 To some extent this consideration overlaps with that referred to above. Registered Employment Agreements are seen as providing stability in the conduct of industrial relations in the sectors to which they relate, although employers covered by them have pointed to difficulties in altering their terms to reflect changing circumstances. There is cogency in this argument and our recommendations are intended to address this point. Joint Labour Committees provide a forum in which social partners can negotiate on employment related matters and reach agreement on terms and conditions of employment of workers. The sectors covered by the JLCs are characterised by a large number of small employments in which there is no tradition of local level collective bargaining.
- 6.2 The Irish Congress of Trade Unions, in particular, indicated that they would not be prepared to accept unilateral retrenchment in pay and conditions of employment in the affected sectors and that its affiliated unions would resist any forced diminution in the pay and conditions of employment of workers in consequence of abolition of the current regulatory arrangements.
- 6.3 For their part, employer bodies told us that they would not seek to unilaterally change contractual rates of pay or other conditions of existing staff in the event of the JLC system being abolished. They did, however, indicate that employers would seek to change the conditions of current employees by agreement. A proposal was put forward by IBEC whereby transitional statutory protection could be provided against unilateral alterations in the existing conditions of employment of current employees. While this proposal has merit, in separate submissions to the review, the representatives of employers in three of the major sectors affected by EROs indicated that they would be unwilling to engage in collective bargaining with trade unions. They told us that they would deal directly with their

staff, either individually or collectively, with a view to seeking agreement on reduced terms subject to statutory minima.

- 6.4 Given the likely diminution in the pay and conditions of low paid and vulnerable workers that would result from total deregulation, coupled with attempts to obtain agreement with individuals or groups of workers who could not avail of independent representation in negotiations with their employers, deregulation would provide the potential, at least, for significant industrial relations instability.

***The Protection of Employee Rights and Benefits***

- 6.5 All of those who advocated abolition of the current system pointed to the significant body of employment rights legislation now in force as providing adequate legal protection for employee rights and interests. There is validity in this line of argument. Workers now have a broad range of statutory rights in both domestic and European law that were unheard of when the JLC / REA system was devised. This body of law affords extensive protection against the type of exploitation that the JLC system was designed to prevent.

- 6.6 However, it is not accurate to suggest, as many of those advocating abolition of the system contend, that the body of primary employment rights legislation currently in force adequately covers matters dealt with by EROs and REAs. EROs typically set down standard weekly working hours for workers, usually at 39 hours per week, in line with the norm in industry generally. While the Organisation of Working Time Act 1997 sets down maximum working hours, at 48 per week, it does not limit an employer's capacity to require workers to work up to that statutory limit as their standard or contractual hours. EROs typically provide for overtime rates, again in line with the general norms. In some sectors they provide for sick pay entitlements, pensions and higher rates for workers having particular skills. These are matters which are not covered by primary legislation.

- 6.7 Most of the EROs also provide for premium payments to those required to work on Sundays. These provisions are a source of significant concern to employers, particularly in the hospitality sector who contend that the cost of employing staff on Sundays is prohibitive. But the obligation to provide additional compensation for Sunday working is derived primarily from Section 14 of the Organisation of Working Time Act 1997. That Section provides, in effect, that unless the obligation to work on Sunday is otherwise taken into account in determining the worker's pay, they are entitled to either an additional amount in their rate of pay, a premium

payment on the Sunday or appropriate time off for having worked on a Sunday, as is reasonable in the circumstances. In the absence of a stipulation on how Sunday working is to be compensated for in an ERO, individual employees could apply to a Rights Commissioner to fix the appropriate rate for Sunday working. This would likely lead to a massive increase in the volume of cases being referred to Rights Commissioners, and the Labour Court under the Act, which those bodies may not be in a position to handle.

- 6.8 There is, however, validity in the argument that the current arrangements with regard to Sunday working are unduly burdensome, particularly in sectors in which Sunday is a normal working day. There is also a need for greater consistency across sectors in relation to such matters as overtime rates and Sunday premium.
- 6.9 We address these matters in our recommendations.

## Section 7

### Competitiveness and Labour Market Flexibility

**The current levels of domestic competition and international competitiveness of the sectors covered by EROs and REAs; price and wage movements in the economy and in major trading partners; and the impact of EROs and REAs on labour market flexibility and sustainable employment across the economy.**

- 7.1 For a small open economy such as Ireland the ability to sell our goods at a competitive price is clearly crucial. Higher costs will lead to higher prices and a lower volume of exports or lower margins for exporters<sup>27</sup>. While many of the sectors affected by JLCs and REAs are non traded, employers groups in some sectors such as the Hotel and retail sectors emphasised the competition some of their members face from across border as well as the international nature of competition in the tourism sector. Also higher costs and prices in the non-traded sector feed into higher input costs and wage costs for all sectors. The importance of controlling domestic costs is arguably increased by Ireland's membership of the Euro which removes devaluation of the currency as an option in the face of a loss of competitiveness. Figure 7.1 below graphs two indicators of competitiveness calculated by the Irish Central Bank. These are essentially based on a trade weighted exchange rate adjusted for changes in the domestic price level where one index uses the GDP deflator as the price index and the other perhaps more relevant for the issues that concern us here, uses unit labour costs to construct the price deflator<sup>28</sup>. While a detailed review of the overall competitive position of the Irish Economy would include a range of measures, the indicators in Figure 7.1 do give a useful summary of the overall trend<sup>29</sup>. The competitive position of the Irish

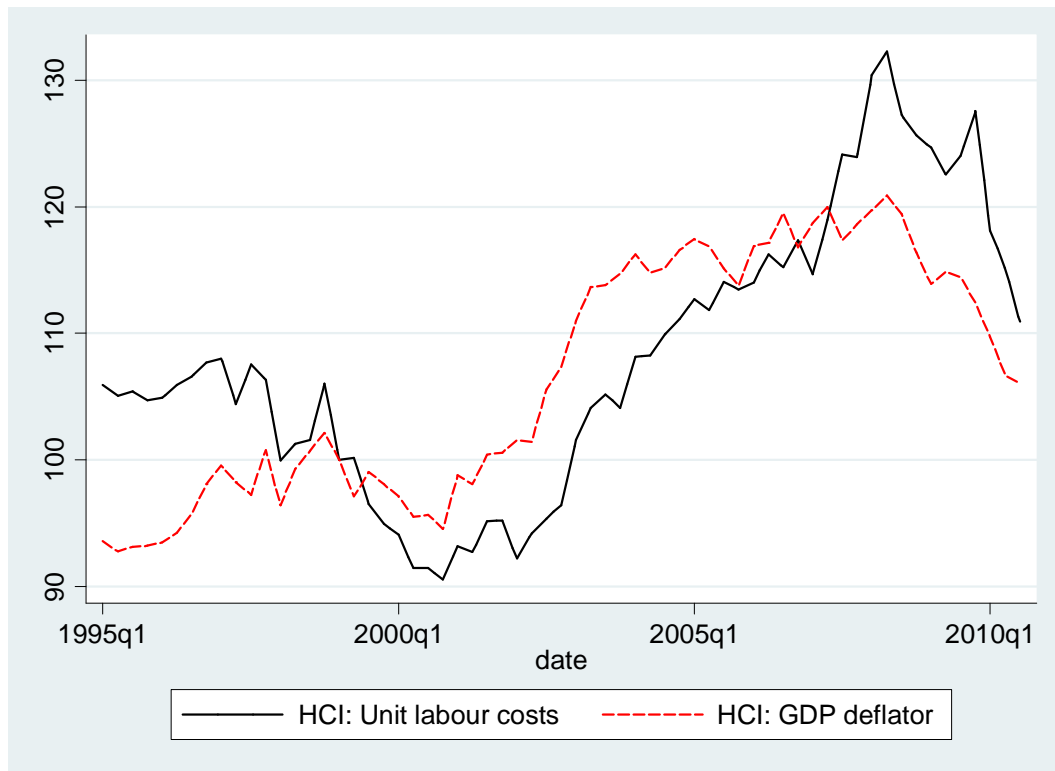
<sup>27</sup> For example Keeney et al. show that over 40% of Irish export firms price as a markup on costs while one third said their price followed that of their closest competitors : Mary Keeney, Martina Lawless and Alan Murphy "How Do Firms Set Prices? Survey Evidence from Ireland" Central Bank and Financial Services Authority of Ireland Research technical paper no. 10 (2010)

<sup>28</sup> Source Central Bank of Ireland , available at <http://www.centralbank.ie>. See "Measuring Ireland's price and labour cost competitiveness" by Derry O'Brien in the Central Bank Quarterly Bulletin no. 1 2010 for a detailed discussion of these measures.

<sup>29</sup> For example Forfas have a recent detailed discussion in their "Review of labour cost competitiveness" October 2010 while the National competitiveness council outline a series of competitiveness priorities in

economy declined significantly during the boom years and the competitiveness indicators peak around the end of 2008. While we see a substantial improvement in recent years, given the serious challenges facing the economy and the decline in employment, maintaining a focus on structural reforms that may improve our competitive position is clearly important.

**Figure 7.1 Harmonised competitiveness index for Ireland  
1999q1=100**



“Statement on competitiveness priorities” March 2011. Both available at [www.forfas.ie](http://www.forfas.ie)

7.2 Our main concern in this section is to try and understand the extent to which the JLC/REA system affects labour costs and competitiveness. While sections 8.26 and 8.27 below discuss the theoretical literature on different forms of bargaining and the cross country evidence on how these structures affect labour market outcomes, there has been some work on how differing bargaining regimes affect labour costs in Ireland. McGuinness et al.<sup>30</sup> use data from the 2003 national employment survey to analyse the impact of the bargaining regime on wage costs<sup>31</sup>. The survey asked a large sample of representative Irish firms what fraction of their employees were covered by national, industry, business level or individual bargaining along with a wide range of firm and worker characteristics. They present some evidence that, controlling for worker and firm characteristics, labour costs were higher and wage dispersion lower in firms implementing individual or firm level bargaining relative to firms adopting the national wage agreement or industry level agreements. While the question in the survey did not elaborate on what constituted an industry level agreement (whether JLCs were included or just REAs), from the summary statistics this appears to be mostly REAs, while the fact that 8% of private sector employees were covered by these agreements is broadly in line with our estimates for REAs from Table 4.1.

7.3 While Tables 4.4/4.5 give us a picture of the wage distribution in the JLC/REA sectors compared to other sectors, they do not control for worker and job characteristics. That is we would like to know how much more or less a worker with given skills and experience might expect to be paid for doing a similar job in a sector/occupation that is covered by a JLC or a REA. As we saw in section 4, these wage regulations are far from universal. This means that, in principle, we can compare the wage costs of workers affected by these wage setting mechanisms with similar workers who work in uncovered sectors. To this end we analyse the data from the Survey of Income and Living Conditions described in section 4. From this data we have controls for education, experience, tenure on the job, two digit sector, one digit occupation, gender, marital status, firm size, nationality,

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<sup>30</sup> McGuinness, Seamus, Eilish Kelly and Philip J. O'Connell (2010) "The impact of wage bargaining regime on firm level competitiveness and wage inequality: the case of Ireland" *Industrial Relations*, Vol. 49, No. 4.

<sup>31</sup> There is an international literature that looks at this issue and often but not always finds that industry level agreements reduce wage levels and dispersion in different countries the results sometimes depend on the particular institutional framework within the country (sectoral wage levels may be the minimum for firm level bargaining etc.). See the paper by McGuinness et al. in footnote 29 or Plasman, Robert, Michael Rusinek and Francois Rycx (2007) "Wages and bargaining regime under multi-level bargaining: Belgium, Denmark and Spain" *European Journal of Industrial Relations*, 13(2) for a discussion of this literature.

whether the worker pays union dues, region and living in an urban area. Using linear regression analysis, we estimate the relationship between the log of the weekly wage and an indicator for whether the worker is covered by a JLC or an REA controlling for the above job and worker characteristics. We note that, as in section 5, the wage includes all tips, overtime, weekend premiums, piece rate payments and other bonuses. We can then interpret the coefficient on say, JLC as the effect on the weekly wage of being in a JLC having controlled for hours worked, education experience and so on. In particular, we will have controlled for two digit industry and occupation. For example, a barman not covered by a JLC would fall into the same broad industry and occupation category as a barman in a hotel or bar/restaurant that is covered by a JLC. The industry controls will capture the average effect of working in the broad sector while the occupation control will capture the broad skill level of the type of job. The coefficient on JLC will capture any additional effect on wages from being in narrow sector/occupation that is covered by a JLC. Using this approach we can estimate the impact of JLCs/REAs on the average wage using linear regression or on different quantiles of the wage (the median, the 10<sup>th</sup> percentile and the 90<sup>th</sup> percentile) using quantile regression analysis. The results are in tables 7.1/7.2 below.

- 7.4 Before discussing the results in tables 7.1/7.2 we will briefly discuss the background for this type of regression analysis. If we believe that labour markets are competitive we would expect that once we control for the skill level of the worker, the difficulty of the job and any other compensating differentials, then wages would be equalised across workers. If this were so and our regression was well specified we could interpret the regression coefficient as the impact of JLC/REA regulation on wages. There is of course a very large literature documenting that even when very extensive controls for worker and job characteristics are included, there are large wage differentials which remain unexplained<sup>32</sup>. These may be due to factors such as the sector that the worker is in, firm size, profitability of the firm, search or turnover costs or contracting problems associated with

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<sup>32</sup> While there is a much older literature documenting these unexplained wage differentials Krueger Alan B. And Lawrence Summers (1988) "Efficiency wages and the inter-industry wage structure", *Econometrica* 56, p259 spawned a voluminous literature across many countries including for Ireland: B. Nolan, with B. Gannon (2004) 'Inter-industry Wage Differentials in Ireland'. *Economic and Social Review*, 35 (2):157-182 and . B. Gannon, Robert Plasman, Francois Rycx and Ilan Tojerow "Inter-Industry Wage Differentials and the Gender Wage Gap: Evidence from European Countries" *The Economic and Social Review*, Vol. 38, No. 1, Spring, 2007, pp. 135-155. In particular the more recent literature documents such wage differentials for large panels of worker firm data that can track individual firms and their workers over time, see John M. Abowd & Francis Kramarz & David N. Margolis, 1999. "High Wage Workers and High Wage Firms," *Econometrica*, Econometric Society, vol. 67(2), pages 251-334, March..

imperfect or asymmetric information and so on. That is in our view the evidence is more consistent with imperfectly competitive models of the labour market where there are wage differentials between similar workers doing similar jobs. As discussed in section 5.3, modest minimum wages have an ambiguous affect on employment and efficiency in such models.

- 7.5 The type of wage variation discussed in sections 7.4 and 5.3 above provide the rational for regulation of wages. The object of regulation is to ensure that particular groups of workers will not suffer because they are in “low wage” sectors. That is that their wages would be lower or working conditions poorer than workers with similar skills doing similar jobs in other sectors. If regulation is setting wages and working conditions appropriately it should reduce the unexplained differences in wages and conditions for workers in these sectors relative to similar workers with similar jobs in other sectors. While modest regulation can enhance efficiency, if the burden of regulation is excessive this will cause competitive problems and a loss of employment. In particular we could argue that if workers in regulated sectors have wage premiums relative to similar uncovered workers, this would indicate excessive regulation.
- 7.6 Given the weight of evidence that there is substantial wage dispersion across sectors and the discussion above, it would be unreasonable to interpret the coefficients in tables 7.1/7.2 as estimates of the impact of JLC/REA regulation on wages. The coefficient on JLC in regression two of -7% indicates that controlling for hours, experience tenure, education, the broad occupation and industry, etc. workers in JLC sectors typically earn weekly wages 7% less than other workers not covered by a JLC/REA. While the coefficient is not statistically significant in some specifications, indicating that we cannot identify any stable effect on wages the coefficients are always negative. We could not reasonably interpret the coefficient in these regressions as measuring how much wages are higher or lower than other workers wages because these sectors are regulated by JLCs, indeed it would be implausible to do so since the JLCs /REAs set wage floors . Rather the coefficients indicate that these are low wage sectors and presumably would be even lower wage sectors were it not for the regulations. The fact that the coefficients are always negative (although often not statistically significant) for both JLCs and REAs, for the mean regressions as well as the quantile regressions at different levels of the wage distribution, make it difficult to believe that workers covered by these agreements earn substantial premiums over similar workers in uncovered jobs. The full results are given in **Appendix 8** and the regressions seem to be well specified. Well educated workers earn more as do more

experienced workers, workers with more tenure, unionised workers, workers in larger firms, etc.

- 7.7 The regression results do not provide evidence that there are positive wage premiums for JLC workers. There are three main sources for such potential premiums arising from regulation: high minimum wage rates, high overtime rates or high Sunday premiums. We can look at these in turn. The terms of reference require us to look at the minimum rates relative to the national minimum wage and this is done in section 8.2 below. The difference between the employment weighted average of the JLC minimum wages and the national minimum wage suggests a positive differential of about 10% for the average JLC rates. Of course this is an upper bound for the differential in that many JLC workers may have market wages above the national minimum wage indeed the JLC rates may not have any influence on the rates paid to some high skill/ability workers.
- 7.8 The second possible source of a wage premium is overtime payments. That is, do JLC workers earn more in overtime than similar workers in similar jobs across other sectors? We have two measures of overtime from the SILC data. The first from a question that asked workers “*Did your last wage/ salary payment include Overtime payment?*” is an indicator of whether workers were paid for overtime while the second simply categorises workers on whether they usually worked more than 40 hours in a week. We included the same set of control variables as in the wage regressions detailed in Table 7.1 excluding hours worked (and its square) and did a probit analysis on whether the likelihood of being paid for or working overtime was increased by being in a JLC/REA. The results are given in Table A8.4 in **Appendix 8**. The coefficients on JLC are very small and statistically insignificant while there is a small negative coefficient for REA workers. That is we do not find any indication that there are differences in the likelihood that JLC/REA workers will be paid overtime after controlling for a wide array of worker and job characteristics.
- 7.9 Finally the JLC may set the Sunday premium. We do not have any specific evidence on Sunday premiums although they would be included in our weekly wage measure. As we note in section 6.7 the Sunday premium arises from a statutory entitlement that is independent of the JLC system.
- 7.10 To summarise, the regressions do not provide any evidence to support large wage differentials. Given the minimum wage rates outlined in Table 8.1

below, the fact that JLC/REA workers are as likely to receive overtime payments as non JLC/REA workers and that the Sunday premium arises from a legislative provision that is independent of JLC/REA status and that the purpose of regulation is to ensure that workers in JLC sectors in particular are paid reasonable market rates, we think this result is plausible

- 7.11 While the above analysis fails to identify any large wage premiums, many employers group expressed concern at particular aspects of wage setting as has been discussed elsewhere in the review. Issues such as the setting of the Sunday premium at an appropriate rate in a timely fashion as the nature of Sunday trading changed, or the need to make particular arrangements that suited the seasonal nature of business in some sectors. The view was expressed that the system is inflexible in addressing these issues.
- 7.12 We believe that there are potentially substantial competitive gains that could be realised in some of these sectors by reforming the structure of decision making so that the system is more flexible and responsive to the needs of particular sectors, simplifying the system in a way that reduces the burden of supervision and compliance with the regulations and providing a degree of coordination and oversight over the system that ensures that arrangements across sectors are reasonable and proportionate. We address how these objectives might be achieved in our recommendations.
- 7.13 The issue of how flexible wage rates for covered workers are in response to changing economic circumstances is an important issue that many employers representatives raised given the difficult current economic climate. We will address this issue in section 10.

**Table 7.1 Linear regression log weekly wage**

	Regression one	Regression two
Variable name	Coefficient ( p value in parenthesis )	Coefficient ( p value in parenthesis)
JLC employees	-0.045 (0.073)	-0.069 (0.009)**
REA employees	-0.051 (0.199)	-0.029 (0.484)
Observations	4,908	3,867
R-squared	0.639	0.684

\* Significant at 5%; \*\* significant at 1%. Regression one includes controls for one digit occupation, two digit industry, eight regions, living in urban area, year, age and age squared, hours worked, hours worked squared, born in Ireland, gender, twelve education categories and marital status. Regression two additionally includes a control for paying union dues, five firm size categories, experience, experience squared, tenure and tenure squared

**Table 7.2** Quantile regressions log weekly wage

Variable name	Median	10 <sup>th</sup> Percentile	90 <sup>th</sup> Percentile
JLC employees	-0.045 (0.086)	-0.084 (0.047)*	-0.084 (0.025)*
REA employees	0.003 (0.944)	-0.125 (0.065)	-0.029 (0.592)
Observations	3,867	3,867	3,867

## Section 8

### Relevance, Fairness and Efficiency of the System

- 8.1 Section 2 of the Terms of Reference require us to reach conclusions on the continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements, by reference to four particular considerations set out in that section:

**Whether and to what extent the function played by EROs in ensuring protection of minimum wages and conditions overlaps with that of the statutory national minimum wage system introduced in 2000; whether minimum wages and working conditions more stringent and over and above those guaranteed by the national minimum wage for the worker categories covered by EROs are justified on the grounds of fairness;**

- Overlap with National Minimum*
- 8.2 Historically, the rates prescribed by many of the current EROs were influenced by minimum wage rates. The current basic hourly rates are given in Table 8.1 below alongside an index of the rates relative to the national minimum wage which is set to 100. Using the employment levels estimated in Table 4.2 the employment weighted average minimum wage across the JLCs is just under 10% above the national minimum wage. Of course this figure is an upper bound. In the absence of a JLC we would not expect to see the wage of many covered workers fall to the minimum wage, particularly those in semiskilled occupations (where the rate quoted is for a fully trained worker) or indeed workers in unskilled jobs with higher ability or experience. To the extent that the market wage for these workers is higher than the minimum wage the true wage premium might well be substantially less than 10%. The evidence from section 7 would suggest that this is the case.

**Table 8.1: Minimum wage rates for adult workers across a sample of JLCs/REAs \***

<b>Occupation</b>	<b>JLC/REA</b>	<b>Wage</b>	<b>Index of wage rates</b>
NMW Worker	National minimum wage	€8.65	100
Sales Assistant/Ancillary worker	Retail, Grocery & Allied ERO	€9.78/ €9.48	113/110
Agricultural	Agriculture ERO	€9.10	105
Waiter/Waitress/barperson (Trained)-Restaurant	Catering ERO	€9.31	108
Cleaner	Contract Cleaning ERO	€9.50	110
Hairdresser-Dublin, Dun Laoghaire & Bray	Hairdressing Dublin, etc ERO	€9.83	114
Hairdresser-Cork	Hairdressing Cork ERO	€9.98	115
Waiter/Waitress-Hotel (outside Dublin or Cork) **	Hotels (excl Dublin & Cork) ERO	€9.09	105
Law Clerk/Office assistant ***	Law Clerks ERO	€12.59/ €10.31	146/119
Miller	Provender Milling ERO	€8.84	102
Security Officer	Security ERO	€10.75	124
Shirtmaking Worker	Shirtmaking ERO	€8.69	100
Tailor	Tailoring ERO	€8.69	100
Women's Clothing Worker	Women's Clothing ERO	€8.69	100
Handkerchief Worker	Handkerchief & Household Goods ERO	€8.69	100
Bottling Plant Worker	Aerated Waters & Wholesale Bottling ERO	€8.82	102
<b>REA</b>			
Construction Worker	Construction REA	€ 13.77	159
Electrician	Electrical REA	€ 21.49	248

\*We are grateful to Michael Greene from the department of Enterprise, Trade and Employment for a spreadsheet that was useful in the construction of this table. Many JLCs /REAs cover several occupations and often have apprenticeship rates and rates for workers that are inexperienced or under 18 that are proportional to the full adult rate typically broadly in line with the proportions given in the National minimum wage legislation

\*\*This is also the rate for experienced adult cook, barperson house assistant and porters

\*\*\* Standard week is 38 hours (typically 39 on other sectors).

- 8.3 At the time statutory minimum pay was introduced in 2000 many of the then current ERO rates were below the new statutory minimum. Appendix 9 gives April 2000 JLC minimum wages as a fraction of the National minimum wage for a range of occupations and JLCs. These rates were adjusted upwards by operation of s.7(2) of the National Minimum Wage Act 2000 which provides: -

*“(2) A contract or agreement or an enactment in force immediately before the commencement of this section that provides for the entitlement to pay for an employee less favourable than that to be provided in accordance with this Act is hereby modified to the extent necessary to provide that the employee's entitlement after the commencement of this section shall be not less favourable than that to be provided in accordance with this Act.”*

- 8.4 ERO rates were further increased above the minimum rates by application of the increases provided for in the pay agreements associated with successive national partnership agreements.
- 8.5 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.
- 8.6 We address this point in our recommendations
- 8.7 However, as discussed at **Section 6** of this Report, the ERO system regulates more than minimum rates of basic pay in the sectors to which it applies. EROs’ in many sectors fix differential rates for occupations requiring particular skills, experience or training. They also fix rates for overtime and Sunday work and provide for additional employment benefits such as sick-pay entitlements, procedures for resolving disputes and grievance procedures. These are matters that are typically provided for in collective agreements or in individual contracts of employment. They are not covered by minimum wage legislation and do not, therefore, overlap with that legislation.

#### ***Fairness and Efficiency of the System***

- 8.8 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. For unskilled workers in a large European labour market with free mobility of labour it is unlikely that the market mechanism will provide these workers with adequate protection. In many of the sectors covered by JLCs there is no effective alternative mechanism by which employees and employers can engage in collective bargaining at local level on equal terms. 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. On the other hand, because EROs and REAs are binding for all firms at the sectoral level we might worry that limiting internal competition within the sector will lead to pressure on costs and competitiveness. This issue is addressed below.

- 8.9 Employers argue that the JLC system is unfair in that it deprives them of the opportunity to fix pay and conditions of employment which reflect the economic reality of their business. They also say that there is no justification for subjecting them to an additional regulatory regime over and above that to which all other employers are subjected. We were told of anecdotal evidence suggesting that many workers are prepared to accept rates of pay and conditions of employment less favourable than those prescribed by EROs so as to safeguard their employment but that employers are prevented by law from accepting these offers. We were also told that, apart from the direct costs of complying with EROs they impose a costly and burdensome requirement for record keeping to demonstrate compliance.
- 8.10 Those seeking the abolition of the JLC system pointed to many anomalies within the current arrangements arising from geographically based EROs and what they regard as an arbitrary and illogical distinction between businesses in the scope of EROs<sup>33</sup>
- 8.11 Employers also say that the system is inflexible in that there is no provision whereby individual enterprises can plead inability to pay the rates set down and that the system is incapable of responding to changes in the commercial and economic circumstances of the sectors concerned. They say that the use of a casting vote by the chairman of a JLC means that, unlike all other

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33 For example, the Hotels ERO does not operate in Dublin. This is largely because, historically, hotels in Dublin unlike the rest of the county were unionised and pay and conditions were determined by collective bargaining. In the pub trade premises that sell hot food are designated as catering establishments and are covered by the Catering ERO. Pubs that only sell drink are not covered by any JLC.

- employers, they can be subjected to terms and conditions of employment, in excess of statutory minima, to which they are opposed.
- 8.12 Trade unions and bodies representing the interest of workers contend that in the absence of any statutory framework in which collective bargaining, properly so called, can take place, JLCs provide the only mechanism by which the interests of workers can be protected and advanced in the sectors concerned. They say that the rates and conditions prescribed by EROs reflect what is regarded as reasonable in employments at the lower end of the labour market in which collective bargaining takes place. They say that the openness of our labour market makes this form of regulation particularly necessary and relevant. The unions also pointed out that many downward adjustments in rates and conditions of employment have been agreed in many JLCs, including deferral of increases in pay, adjustments in Sunday prima and lower starting rates.
- 8.13 Trade unions say that the terms of the EROs are, in reality, agreed and the chairman's casting vote is rarely used. They nonetheless contend that the retention of a casting vote is essential in ensuring the effectiveness of the system.
- 8.14 Many organisations that support the retention of the current system contend that there is no sustainable economic argument in favour of abolition. They say that removing the protections which the current system provides would have a profound social affect on many thousands of already low paid workers. They also say that having regard to the profile of workers in these sectors the effects of deregulation would disproportionately impact on migrant workers and women.
- 8.15 Proponents of the system do not accept that adequate safeguards could be put in place to protect the terms and conditions of those currently in employment. They contend that those currently in employment would be pressurised into accepting lower pay and conditions or would simply be displaced by new employees on reduced terms.

***Justification for maintaining the JLC System***

- 8.16 Over time the JLCs have gone significantly beyond merely combating the worst excesses of exploitative employers. That is now the function of employment rights legislation. JLCs are in reality a forum for *de facto* collective bargaining and EROs now prescribe terms and conditions which are typically found in collective agreements. However the system lacks three defining characteristics of collective bargaining. Firstly, not all of the

- terms are agreed between the participants in the process because the chairman can exercise a casting vote thus imposing terms with which one side or the other disagrees. Secondly, unlike collective bargaining, the outcome of the process is not subject to ratification by those on whose behalf the negotiations are conducted. Thirdly, there is no requirement for the parties who make up a JLC to be substantially representative of either workers or employers in the sectors to which they relate.
- 8.17 In our view the main justification for the JLC system lies in the absence of any other fair system of determining pay and conditions of employment, beyond statutory minima, within the sectors concerned. In the case of wage rates there is a clear relationship between the national minimum rate and the JLC rates in that most of them were fixed at various times by application of s.7(2) of the National Minimum Wage Act 2000.
- 8.18 In so far as there was drift from the minimum rates in many of the larger JLCs it was mainly attributable to the compounding effect of applying wage agreement increases together with increases in the minimum wage and to the timing of those increases
- 8.19 In the case of working conditions, in the absence of JLCs employees in the sectors covered would have no effective mechanism for determining such matters as standard working hours, shift premiums and overtime payments including the circumstances in which they should apply. Nor would there be any effective arrangements for dealing with other matters typically covered such as the appropriate payments for Sunday working, so as to meet the requirements of s.14 of the Organisation of Working Time Act 1997 and sick pay entitlements. A further consideration in favour of the present system is that the conditions of employment prescribed by an ERO are enforceable as a matter of public law.
- 8.20 The provisions of the Organisation of Working Time Act 1997, in common with most employment rights statutes, create rights vested in employees which are essentially private law rights. Hence it is a matter for individual employees to seek redress for any contravention of those rights by bringing proceedings under the Act to a Rights Commissioner and on appeal to the Labour Court. There is no obligation on employers to inform employees of their rights under that Act nor is NERA authorised to enforce those rights on behalf of an individual. Many employees in the sectors affected by JLCs are migrant workers and would not be aware of their statutory employment rights and would be unfamiliar with the enforcement mechanisms provided for under the Act. This would lead to an uneven application of the law and

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.

- 8.21 The sectors covered by JLCs continue to be characterised by low levels of trade union organisation, relatively high numbers of migrant workers, young people and part-time and casual workers. They are in every sense vulnerable and have little individual bargaining power. The importance of JLCs for such workers is illustrated by the conditions of employment for which they typically provide such as overtime, standard working hours (as distinct from maximum working hours set by the Organisation of Working Time Act 1997), certain levels of overtime payments and sick pay. As previously pointed out, these are entitlements that are not provided for in primary legislation
- 8.22 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. In the case of statutory employment rights such as those prescribed by the Organisation of Working Time Act 1997, including entitlements to breaks, rest periods, maximum working hours, Sunday premium and paid holidays, it would be a matter for individuals to pursue individual claims through the procedures provided under the Act.

***Collective Bargaining as an Alternative***

- 8.23 However, in our view, a well designed framework where collective bargaining in its full sense can take place would potentially provide a better, more responsive and fairer means of determining pay and conditions and should be encouraged as an alternative to the present JLC system. Arguably the best and fairest way of determining wages and conditions of employment is by agreement between employers and workers and their representatives, subject to such statutory minimum conditions as are in place. In that regard a distinction can be drawn between EROs and REAs. REAs are, primarily, collective agreements negotiated between willing parties. There is also a statutory requirement for the parties to be substantially representative of those for whom they purport to act<sup>34</sup>. As we

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34 The issue of representativeness will be discussed in the recommendations.

discuss below as long as there is adequate regulation to ensure coordination and oversight of the sectoral wage mechanism there are convincing reasons for retaining a system by which such agreements can be made universally applicable across the sectors to which they relate. Where it is possible to do so the regulation of pay and conditions of employment in sectors and employments currently covered by JLC should, more appropriately, be regulated by REAs within a reformed system. We consider possible reforms of that system elsewhere in this report.

- 8.24 Many countries have different approaches to collective bargaining. Even within Europe there is considerable variation. The U.K. has a system of mostly localised firm level bargaining, many continental countries have some type of sectoral bargaining, while Scandinavian countries tend to have layered bargaining with sectoral bargaining growing in importance relative to central bargaining over recent decades<sup>35</sup>. These countries tend to have mechanisms in place to coordinate bargaining across sectors and where local bargaining may also take place. The Irish system is somewhat of a hybrid with elements of central bargaining, local bargaining and sectoral bargaining. This variation in bargaining regimes has led to a substantial literature that examines the implications of different bargaining regimes. Calmfors and Driffil (1988)<sup>36</sup> outline a model where there is a hump shaped relationship between unemployment and the degree to which bargaining is centralised. With decentralised bargaining, competition ensures wages are low and employment is high, with centralised bargaining coordination across sectors prevents excessive wage demands in any sector, while sectoral level bargaining limits competition at the sectoral level and leads to a high wage high unemployment outcome<sup>37</sup>. While the more recent literature questions the importance of the hump shaped relationship for several reasons<sup>38</sup>, this framework does capture the worry that sectoral

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35 While this trend towards decentralisation has continued there has not been a major reduction in collective bargaining across Europe in recent years according to Maarten Keune “Wage flexibilisation and the minimum wage” Chapter 4 in *Industrial Relations in Europe* (2010), European Commission.

36 Calmfors, L. and Driffill, J., “Bargaining structure, corporatism, and macroeconomic performance”, *Economic Policy*, No. 6, 1988.

37 Danthine and Hunt show the hump shaped relationship will be hump shaped in an open economy [Danthine, Jean-Pierre and Jennifer Hunt (1994), *Wage Bargaining Structure, Employment and Economic Integration*, *The Economic Journal*, Vol. 104, No. 424. (May), pp. 528-541] while Cahuc (1995) shows that the relationship between wages and bargaining will be monotonic if there is a unique equilibrium at each level of centralisation [Cahuc, Pierre (1995) “Macroeconomic Performance and Wage Setting level in Symmetric Non-Cooperative Games” *Economics letters*, 48, pp427-32]

38 Danthine, Jean-Pierre and Jennifer Hunt (1994), *Wage Bargaining Structure, Employment and Economic Integration*, *The Economic Journal*, Vol. 104, No. 424. (May), pp. 528-541)

bargaining may drive up wage costs excessively within each sector possibly increasing output and or input prices to workers and firms in other sectors . This is the rationale for some form of coordination mechanism that prevents these types of externalities spilling across sectors and limits any potential monopoly power that may accrue to unions from limiting competition.<sup>39</sup>

- 8.25 Flanagan (2003)<sup>40</sup> summarises the cross country empirical literature on collective bargaining and macroeconomic performance. There is of course a health warning attached to this type of analysis because it can be difficult to distinguish meaningful relationships from country effects when we look at correlations across countries and Flanagan stresses the lack of robustness of some of these results. Nevertheless he notes that “There is some evidence that coordination of bargaining produces greater cyclical wage flexibility as well as the real wage moderation discussed above” (p181). Flanagan suggests that the fragility in this empirical relationship in recent years may be associated with changes in the institutional structure such as declines in rates of union membership and trade liberalisation. Calmfors et. al. (2001)<sup>41</sup> also review this literature and conclude that “The estimates seem to suggest that the employment performance of an economy with both high bargaining coordination and high unionization is, *ceteris paribus*, superior to that of an economy with low coordination and low unionization” they note that the results are more ambiguous for countries with intermediate levels of coordination and unionisation and list several caveats to do with the difficulty in measuring these correlations.
- 8.26 We conclude from this discussion that while there are serious measurement issues associated with comparing macroeconomic performance across countries with different bargaining regimes, what evidence there is suggests that when there are effective coordination mechanisms across sectors to limit any potential monopoly power that unions may have, macroeconomic

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<sup>39</sup> A useful case Sweden where centralised bargaining which was a purely voluntary system came under increasing pressure in the decades leading up to the nineteen nineties as sectoral agreements grew in importance. This trend was associated with growing unemployment and wage costs and devaluations of the currency until government regulation imposed coordination mechanisms across sectors. See “Wage formation in Sweden” by Kent Friberg of the The Monetary Policy Department, Sveriges Riksbank available at <http://www.riksbank.com/> for a discussion on this.

<sup>40</sup> Flanagan, Robert J. “Collective bargaining and Macroeconomic performance” in *The International handbook of Trade Unions* , ed. John T. Addison and Claus Schnabel , Edward Elgar 2003

<sup>41</sup> Lars Calmfors, Alison Booth, Michael Burda, Daniele Checchi, Robin Naylor and Jelle Visser “The future of collective bargaining in Europe” in *The role of unions in the twenty-first century*, ed. Tito Boeri, Agar Brugiavini and Lars Calmfors, Oxford University Press

performance will be better than in a decentralised system. Finally we note that the theoretical literature tends to look at models where firms in a sector are identical and all firms are either unionised or not unionised. Of course as the Industrial Organisation literature, and indeed casual observation across most sectors suggests, there is typically a distribution of small and large firms within a sector. Large (possibly high productivity) firms are more likely to be unionised in the absence of a sectoral agreement while small firms tend not to be unionised<sup>42</sup>. While it may be argued that creating a binding sectoral agreement creates a distortion by limiting competition, free collective bargaining would replace this with another distortion where larger firms - perhaps more productive firms with a higher surplus - would be unionised and would have a higher cost base than smaller less productive firms.

8.27 We will address these matters in our recommendations.

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<sup>42</sup> Strobl and Walsh (2009) look at union density in Ireland for example and show this but of course the same is true in most countries. Strobl, Eric and Frank Walsh “Recent trends in Trade Union membership in Ireland” , *Economic and Social Review*, Vol. 40, No. 1 , 2009

## Section 9

### Registered Employment Agreements

**The economic function played by REAs in the collective bargaining framework of Ireland and their legal status, including in relation to the definition of designation of REAs "collective agreements or arbitration awards which have been declared universally applicable" under Article 3 of Directive 96/71/EC on the Posting of Workers and the public policy obligations underpinning the statutory framework for REAs having regard to EU Treaties and, in particular, Article 28 of the Charter of Fundamental Rights of the European Union, the Solemn Declaration on Workers' Rights, Social Policy and other issues, and relevant ILO conventions;**

- 9.1 The principal argument advanced in favour of the maintaining REAs is that they provide for stable industrial relation in the sectors to which they relate; that they provide a “level playing field” as between employers in these sectors and, latterly, that they are agreements which are “universally applicable” within the meaning of Article 1 of Directive 96/71/EC on the Posting of Workers. In some instances agreements are registered so as to avail of the derogation from the scope of an ERO provided for by s.46 of the Industrial Relations Act 1990. This is the rationale for registering agreements relating to the Mushroom Growing Industry, which would otherwise be encompassed by the Agriculture ERO.
- 9.2 The main sectors in which active REAs apply-Construction and Electrical Contracting – are characterised by a large number of employers of various size, and a highly mobile workforce. They are also sectors which have had a relatively high level of trade union density. Both sectors are labour intensive and labour costs account for a high proportion of overall costs. Given the diversity of the industry it would be difficult if not impossible for normal collective bargaining to take place at the level of each enterprise.
- 9.3 All employers in these sectors compete with each other for available contracts which are normally awarded by competitive tendering. In tendering for work employers need to know, with a high degree of certainty, what their labour costs will be over the currency of the contract. Moreover, since all employers nominally have the same employment costs competition is focused on cost efficiency, including efficiency in the

utilisation of labour, rather than on the actual wages and conditions of employment to which individual contractors are committed. Thus, if the wages and conditions of employment of workers were fixed by collective agreement with some contractors but not all, those covered by agreements would be placed at a competitive disadvantage relative to those who are not. For these reasons employers and unions in the affected sectors have traditionally conducted industrial relations and collective bargaining as if the industries were a single employment with a single workforce. Collective bargaining in both Construction and Electrical contracting are conducted through Joint Industrial Councils<sup>43</sup>.

- 9.4 The REAs also provide industrial relations stability in the affected sectors. As a condition precedent to registration, agreements must contain a dispute resolution procedure that must be utilised and exhausted before a strike or lock out can take place. That usually requires the parties to jointly refer any dispute to the LRC in the first instance and if unresolved to the Labour Court for investigation. Furthermore, s.32(2) of the 1946 Act, in effect, prohibits workers or their trade unions from engaging in a strike in pursuance of a demand for wages and conditions of employment in excess of those prescribed by the Agreement. There is a considerable body of legal authority for the proposition that the immunities for liability in tort provided by Part 11 of the Industrial Relations Act 1990 do not protect a strike or other industrial action engaged in contravention of an REA. There have been many instances in which employers have obtained injunctions to restrain strike action in contravention of an REA.

### ***The Posting Directive***

- 9.5 Article 1 of Directive 96/71/EC of the European Parliament and of the Council of 16 December 1996 concerning the posting of workers in the framework of the provision of services provides as follows: -

#### **Article 1**

*Member States shall ensure that, whatever the law applicable to the employment relationship, the undertakings referred to in Article 1 (1) guarantee workers posted to their territory the terms and conditions of employment covering the following matters which, in the Member State where the work is carried out, are laid down:*

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<sup>43</sup> These are permanent negotiating bodies provided for by the Industrial Relations Act 1946. They are chaired by an Industrial Relations Officer of the LRC

- *by law, regulation or administrative provision, and/or*
- *by collective agreements or arbitration awards which have been declared universally applicable within the meaning of paragraph 8, insofar as they concern the activities referred to in the Annex:*

9.6 Paragraph 8 of the Article provides: -

*'Collective agreements or arbitration awards which have been declared universally applicable` means collective agreements or arbitration awards which must be observed by all undertakings in the geographical area and in the profession or industry concerned.*

*In the absence of a system for declaring collective agreements or arbitration awards to be of universal application within the meaning of the first subparagraph, Member States may, if they so decide, base themselves on: -*

- *collective agreements or arbitration awards which are generally applicable to all similar undertakings in the geographical area and in the profession or industry concerned, and/or*
- *collective agreements which have been concluded by the most representative employers' and labour organizations at national level and which are applied throughout national territory,*

*provided that their application to the undertakings referred to in Article 1 (1) ensures equality of treatment on matters listed in the first subparagraph of paragraph 1 of this Article between those undertakings and the other undertakings referred to in this subparagraph which are in a similar position.*

9.7 In a Decision (REP091) delivered in February 2009 on an application to cancel the registration of the REA for the Electrical Contracting Industry, the Labour Court considered the effect of the REA vis-à-vis Directive 96/71/EC. The Court held that the REA was a universally applicable agreement within the meaning of Article 1 of the Directive and was

enforceable against employers operating in Ireland who are based outside the jurisdiction by virtue of s.20 of the Protection of Employees (Part-Time Work) Act 2001 (by which the Directive is transposed in domestic law). On the Authority of the CJEU<sup>44</sup> in Case C-341/05, *Laval un Partneri Ltd v Svenska Byggnadsarbetareförbundet*<sup>45</sup> the Court held that in the absence of an REA contractors from other EU Member States could tender for contracts in Ireland, based on rates and conditions applicable in their country of origin subject only to the statutory minima in this jurisdiction, and use posted workers to undertake the work involved. In subsequent Judicial Review proceedings involving the Court's refusal to cancel the registration of the agreement<sup>46</sup> Hedigan J. held that the Labour Court's conclusions on this point were correct.

- 9.8 In these circumstances the absence of industry wide agreement having universal application in sectors such as construction and electrical contracting would undermine collective bargaining at either a national or local level as employers who concluded collective agreements providing terms in excess of statutory minimum terms would be seriously disadvantaged in the face of external competition in particular.
- 9.9 The retention of REAs is strongly supported by the ICTU. IBEC also support the system by which collective agreements concluded between substantially representative parties can be made universally applicable. They believe, however, that the current system is in need of significant reform. IBEC also believe that the JLC /ERO system should be abolished and replaced by REAs in those sectors where employers and organisations substantially representative of workers wish to retain a system of universally applicable regulation of pay and conditions of employment. CIF also support the current system but with reservation relating to the content of the current construction industry REA and the procedures for varying the agreement. Certain bodies representing electrical contractors are opposed to the notion of Registered Agreements on a variety of legal, constitutional and economic grounds.
- 9.10 We address possible reforms in the current system in our recommendations.

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<sup>44</sup> Formally the ECJ

<sup>45</sup> [2008] IRLR 160

<sup>46</sup> *McGowan and Others v Labour Court and Others, Minister for Enterprise Trade and Employment v Camlin Ltd; Bunclody Electrical Contracting Ltd and Others v Labour Court and Others*, Unreported, High Court Hedigan J 30th June 2010.

***Article 28 of the Charter of Fundamental Rights of the European Union, the Solemn Declaration on Workers' Rights, Social Policy and other issues, and relevant ILO conventions***

9.11 Article 28 of the Charter of Fundamental Rights of the European Union provides: -

*“Workers and employers, or their respective organisations, have, in accordance with community law and practice, the right to negotiate and conclude collective agreements at the appropriate levels and, in cases of conflict of interest, to take collective action to defend their interests, including strike action”*

9.12 The Solemn Declaration on Workers’ Rights, Social Policy and Other Issues does not directly address matters relating to collective bargaining or universally applicable agreements. It does, however, provide that the Union recognises and promotes the role of the social partners at the level of the European Union, and facilitates dialogue between them, taking account of the diversity of national systems and respecting the autonomy of social partners. It also obliges the Union, when defining and implementing its policies and activities, to take into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health.

9.13 We are required by our terms of reference to take account of this Solemn Declaration and we have done so in formulating our recommendations.

9.14 There are three ILO Conventions which are of particular relevance in relation to collective bargaining. They are **C98 - Right to Organise and Collective Bargaining Rights Convention 1949**, and **C154 Collective Bargaining Convention 1981**. The **ILO Collective Bargaining Recommendation of 1951 (No 91)** is also relevant.

9.15 Article 4 of ILO Convention C98 provides: -

*Measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilisation of machinery for voluntary negotiation between employers or employers' organisations and workers' organisations,*

*with a view to the regulation of terms and conditions of employment by means of collective agreements.*

9.16 Article 2 of Convention C154 provides: -

*For the purpose of this Convention the term **collective bargaining** extends to all negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more workers' organisations, on the other, for—*

*(a) determining working conditions and terms of employment;  
and/or*

*(b) regulating relations between employers and workers; and/or*

*(c) regulating relations between employers or their organisations  
and a workers' organisation or workers' organisations.*

9.17 Article 5 of Convention C154 provides: -

*1. Measures adapted to national conditions shall be taken to promote collective bargaining.*

*2. The aims of the measures referred to in paragraph 1 of this Article shall be the following:*

*(a) collective bargaining should be made possible for all employers and all groups of workers in the branches of activity covered by this Convention;*

*(b) collective bargaining should be progressively extended to all matters covered by subparagraphs (a), (b) and (c) of Article 2 of this Convention;*

*(c) the establishment of rules of procedure agreed between employers' and workers' organisations should be encouraged;*

*(d) collective bargaining should not be hampered by the absence of rules governing the procedure to be used or by the inadequacy or inappropriateness of such rules;*

*(e) bodies and procedures for the settlement of labour disputes should be so conceived as to contribute to the promotion of collective bargaining.*

9.18 Clause 2 of ILO Recommendation 91 of 1951 provides the following definition of Collective Bargaining.

*(1) For the purpose of this Recommendation, the term **collective agreements** means all agreements in writing regarding working conditions and terms of employment concluded between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more representative workers' organisations, or, in the absence of such organisations, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other.*

*(2) Nothing in the present definition should be interpreted as implying the recognition of any association of workers established, dominated or financed by employers or their representatives.*

9.19 Clause 5 of this Recommendation is particularly apposite to the question of REAs. It provides: -

*(1) Where appropriate, having regard to established collective bargaining practice, measures, to be determined by national laws or regulations and suited to the conditions of each country, should be taken to extend the application of all or certain stipulations of a collective agreement to all the employers and workers included within the industrial and territorial scope of the agreement.*

*(2) National laws or regulations may make the extension of a collective agreement subject to the following, among other, conditions;*

*(a) that the collective agreement already covers a number of the employers and workers concerned which is, in the opinion of the competent authority, sufficiently representative;*

*(b) that, as a general rule, the request for extension of the agreement shall be made by one or more organisations of workers or employers who are parties to the agreement;*

*(c) that, prior to the extension of the agreement, the employers and workers to whom the agreement would be made applicable by its extension should be given an opportunity to submit their observations.*

9.20 There are a number of issues arising from these provisions that are relevant in considering the role of REAs in our system of collective bargaining. The Charter of Fundamental Rights recognises the right of workers to negotiate and conclude collective agreements at the appropriate level. In the case of the main sectors currently covered by REAs, for practical reasons already referred to relating to the structure of the sectors covered, the appropriate level can only be the sector or industry concerned. Collective bargaining is defined in terms of negotiations between workers organisations and employers or employer's organisations which are independent in the sense that one is not under the control or dominance of the other. Hence negotiations between employers and individual employees or with *ad hoc* groups of workers would not come within the notion of collective bargaining envisaged by the ILO Conventions.

9.21 ILO Recommendation 91 of 1951 clearly provides for the conclusion of collective agreements having normative effect within an industry or sector. The conditions referred to at Clause 5(2) of the Recommendation appear to be entirely concordant with the requirements for registration prescribed by s.27 of the Industrial Relations Act 1946. Furthermore, s.25 of the Act of 1946 defines "an employment agreement" which is capable of registration as; -

*"[A]n 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 a trade union of employers ...."*

9.22 This is also consistent with the requirements of the Conventions for independent representation of workers' interests in the conduct of collective bargaining. Many of those who made submissions to the review indicated a willingness to negotiate with their own employees either individually or collectively, but not with a trade union, as an alternative to the current arrangements. However, such negotiations would not accord with the notion of collective bargaining as envisaged by the ILO Conventions.

## Section 10

### Nominal Wage Rigidity

**Whether and to what extent EROs and REAs contribute to nominal wage rigidity in the covered sectors and occupations, with potentially relevant effects on employment during weak economic conditions and on the adjustment of labour markets across sectors, occupations, and geographical areas.**

- 10.1 In the textbook competitive model of the labour market, where frictions such as search and turnover costs or problems of imperfect and asymmetric information are not important, we would expect wages to adjust rapidly to changes in economic conditions over the business cycle<sup>47</sup>. In fact there is a considerable body of evidence that wages will adjust more slowly than employment over the business cycle<sup>48</sup>. In terms of wage adjustment Altonji and Devereux (2000) looking at data from the U.S panel study of income dynamics note that “*The data overwhelmingly rejects a model of flexible wage changes and provides some evidence against a model of perfect downward rigidity in favor of a more general model*”<sup>49</sup>. Dickens et al.<sup>50</sup> Surveys the evidence from the “International wage flexibility project, which evaluates real and nominal wage rigidity by examining wage changes of workers within jobs across thirteen countries (including Ireland) and using thirty one datasets from the mid nineteen eighties to the mid nineties. Interestingly they find significant nominal wage rigidity across countries such as the U.S. Sweden, Portugal and the Netherlands. That is across countries with very different labour market institutions<sup>51</sup>. The

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<sup>47</sup> As we noted in section 7 there is a large body of evidence that there is considerable wage dispersion for similar workers doing similar jobs and this wage dispersion is consistent with imperfectly competitive wage setting.

<sup>48</sup> Economists as far back as John Maynard Keynes have argued that wages may adjust slowly over the business cycle. See Abraham Katharine G. and John C. Haltiwanger “Real Wages and the Business Cycle” *Journal of Economic Literature*, Vol. 33, No. 3 (Sep., 1995), pp. 1215-1264 for a discussion on the older literature

<sup>49</sup> Altonji, J. and Devereux, P (2000) ‘The Extent and Consequences of Downward Nominal Wage Rigidity’. *Research in labour economics*, 19 :383-431.

<sup>50</sup> Dickens, William T., Lorenz Goette, Erica L Groshen, Steinar Holden, Julian Messina, Mark E. Schweitzer, Jarkko Turunen and Melanie E. Ward (2007) “How wages change: Micro evidence from the international wage flexibility project”, *Journal of Economic Perspectives*, Vol. 21, No. 2 pp 195-214.

<sup>51</sup> They did find some evidence that real wage rigidity was correlated with union density.

evidence from Ireland suggested a much higher degree of wage flexibility than other countries although they expressed concern about potentially serious measurement error in the Irish data. A more recent study of wage setting in Ireland by Keeney and Lawless<sup>52</sup> presents evidence from a survey of 1,000 Irish firms in Manufacturing, Construction and Services conducted during 2007-2008. They find that Irish firms rarely impose wage cuts or wage freezes even by comparison with firms in other countries (the survey was part of a wider European project). When asked why they avoided wage cuts, the main reasons firms listed were to do with factors such as maintaining worker effort and morale, the reputation of the firm and retaining the better workers. Interestingly being “Impeded by labour regulation/ collective agreements” scored very low as a reason for avoiding wage cuts, both relative to the other reasons given and relative to survey responses from other European countries.

- 10.2 While the discussion above summarises some of the International and domestic literature on the overall degree of wage flexibility our main concern here is whether the JLC/REA mechanisms contribute to wage rigidity. The SILC data described earlier contains some information on wage adjustment. Workers were asked whether they had a pay increase in the previous twelve months and in a separate question whether they had moved jobs. Similarly (in 2009 only) workers were asked whether they had had a pay cut in the previous twelve months. Tables 10.1/10.2 tabulate the workers responses. We see that in 2007 and 2008 a considerably higher percentage of workers in the non JLC/REA sectors report receiving pay increases compared to workers in the JLC/REA sectors. This difference narrows considerably in 2009. We are reluctant to read too much into these results in terms of the levels since we are comparing very different groups of workers. For example average job tenure in 2009 is 5.6 years for JLC workers in the tables below, 7.7 years for REA workers and 8.8 years for non JLC/REA workers possibly reflecting the fact that JLC worker will have higher turnover and labour mobility compared to REA workers who will be more mobile than other workers. Focussing on the workers who do not move may give a distorted picture. Having said this we can look at the trend in the percentage of workers who receive wage increases over time. The fact that the percentage of workers receiving increases decreases

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<sup>52</sup> Keeney, Mary and Martina Lawless “Wage setting and wage flexibility in Ireland: results from a firm level survey” Working paper 1181 April 2010 European Central Bank

dramatically across all groups in 2009 seems to suggest that whatever about downward wage adjustment, wage growth seems to have slowed fairly sharply for all groups of worker with the onset of the recession. For the same reasons discussed above we are reluctant to make too much of the percentages reported in Table 10.2 although according to the numbers, JLC workers are almost as likely to take wage cuts as non JLC workers (the sample of REA workers is too small to make any reasonable inference). What is arguably more interesting in Table 10.2 is how low the response rates are compared to Table 10.1. The same workers are asked a question on wage increases and a separate question on wage decreases in the same survey and yet the response rate is almost one hundred percent for the question on wage increases but less than half that for the question on wage decreases. Arguably the fact that so many workers would not engage with the question is suggestive of downward nominal wage rigidity in that workers often do not respond to questions which they see as being not relevant to their situation.

**Table 10.1: Percent of private sector employees who had pay increases**

		Received Pay increase		
		JLC	REA	Non JLC/REA
2007	yes	38.9%	38.7%	52.7%
	no	61.1%	61.3%	47.3%
	Number observations	321	184	1699
	Response rate	98.5%	94.8%	97.1%
2008	yes	37.6%	38.2%	56.6%
	no	62.4%	61.8%	43.4%
	Number observations	285	130	1509
	Response rate	97.3%	95.6%	97.9%
2009	yes	19.2%	25.3%	28.9%
	no	80.8%	74.7%	71.1%
	Number observations	323	114	1599
	Response rate	98.8%	99.1%	99.3%

**Table 10.2: Percent of private sector employees who had pay cuts in 2009**

	Received pay cut		
	JLC	REA	Non JLC/REA
yes	17.7%	58.7%	21.0%
no	82.3%	41.3%	79.0%
Number observations	143	55	679
Response rate	43.7%	47.8%	42.2%
	327	115	1610

10.3 We conclude from the discussion above that the international and domestic literature suggests that there is considerable downward nominal wage rigidity across countries with different labour market institutions, while recent evidence suggests this is also true in Ireland. While the specific evidence we have on wage changes for JLC/REA workers compared to others is no more than suggestive, it does not indicate any substantial difference in the degree of inflexibility across the different groups. Having said this, many employers groups indicated frustration with the mechanisms for adjusting wages arguing that they were slow and difficult to achieve in some sectors and citing particular instances where this is so. As outlined in section 7, maintaining our competitive position is important for an economy as open as Ireland while flexibility is particularly important given our membership of the single currency. Reforming the mechanisms for changing pay and conditions such that they are more responsive to changes in economic conditions and so that there is more coordination across sectors should be of some benefit in this regard. We address how this can be done in our recommendations.

## Section 11

### Adequacy of Process for Making EROs and the Constitution of JLCs

**The adequacy of the process for the registration of ERO proposals, in particular with reference to the constitution of Joint Labour Committees, their operation and governance, and their role played in the process.**

#### *Adequacy of the Current System*

- 11.1 Many organisations who made submissions to the review pointed to possible legal and Constitutional frailties in the current system arising from the absence of adequate parliamentary control in the making of EROs and from inadequate statutory guidance as to the criteria to be taken into account in making Orders. It is not within the competence of this review to offer any view on the validity of the points made from a legal perspective. Moreover, at the time of writing these issues are the subject of litigation before the High Court in which, *inter alia*, the Constitutionality of the statutory provision under which EROs are made is impugned<sup>53</sup>.
- 11.2 In 2009 a Bill was published to amend the Industrial Relations Act 1946 so as to provide for new procedures for the making of EROs and the registration of agreements<sup>54</sup>. The Bill was introduced in pursuance of a commitment to strengthen the JLC system contained in the National Partnership Agreement, Towards 2016. That Bill proposed that the Minister and the Oireachtas would be given a role in the process which is currently exercised exclusively by JLCs and the Labour Court. The Bill also provided for expanded principles and policies governing the making of Orders.
- 11.3 The Bill, if enacted, would have brought the statutory framework for making EROs more into line with the process for fixing a statutory minimum wage under the National Minimum Wage Act 2000. Regardless of any legal imperatives which may exist for changing the current arrangements (about which we express no view) the changes proposed in

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53 In proceedings entitled John Grace Fried Chicken, John Grace and Quick Service Food Alliance Limited v The Catering Joint Labour Committee, The Labour Court, Ireland and the Attorney General, Record Number 2008/10663 P

54 The Industrial Relations Amendment Bill 2009

the 2009 Bill would have made the system more transparent, more responsive to modern requirements and more consistent with the process for fixing the generally applicable minimum wage.

- 11.4 There is no express provision by which an affected party can make an objection directly to the Labour Court before it makes an ERO. Nor is there an obligation on a chairman of the JLC to include details of the objections made in his or her report to the Court. There have been occasions on which objections were made directly to the Court and on some of those occasions the Court met with the objectors and the representatives of the JLC to consider the objections. However, they were *ad hoc* arrangements and there is no obligation in the statute requiring the Court to conduct a hearing in the case of objections. The 2009 Bill provided that the chairman of a JLC must furnish the Court with all of the material considered by the JLC in formulating the proposed ERO, including submissions received from interested parties<sup>55</sup>. It also provided that the Court could hear all interested parties before making a decision on the proposals. That provision addressed a significant weakness in the current system.

#### ***Constitution, Operation and Governance of JLCs***

- 11.5 JLCs are constituted by establishment orders made by the Labour Court. The scope of the JLC is determined by the establishment order by which it is created. Many of those who made submissions to the review were critical of language used in some of these establishment orders, which they say is opaque, and leads to the unintended inclusion of many types of establishment which should not be covered. It is also said that the structure of many business has changed since the establishment orders were made making their continued application problematical. Many businesses now provide a multiplicity of services, some of which come within the ambit of a JLC and others do not; or different services provided at the same establishment come within the scope of different JLCs. This leads to confusion in enforcement, burdensome recordkeeping and inflexibility in the deployment of staff.
- 11.6 Section 57 of the Industrial Relations Act 1946 allows the Labour Court to determine questions concerning the applicability of a JLC. An application under that section can be brought by any person, or a court of law can seek a determination by the Labour Court on such a question. Establishment orders and EROs are in the nature of secondary legislation and must be interpreted according to the rules applicable to statutory construction.

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<sup>55</sup> Section 11 of the Bill

Hence primacy must be given to the language used in the instrument being interpreted. EROs may not be written with the precision normally associated with legal drafting. But the Court must nonetheless take the instrument as it finds it and give effect to the language used as best it can. There is no provision by which the decision of the Labour Court on a question of interpretation can be appealed to a Court of law although a decision of the Court can be judicially reviewed.

- 11.7 As previously pointed out in this report an establishment order may be amended by the Labour Court on the application of the Minister, a trade union or an organisation representing employers. Where it is contended that an activity or a business was unintentionally included in an establishment order and the consequent ERO, or where it is suggested that a particular activity should cease to be included, an application could be made under this provision. No such application has been made in recent times. However, if the system is to be retained a valid argument could be made for a general review of the scope of many establishment orders.
- 11.8 A further criticism of the system relates to the number of JLCs which relate to sectors which have diminished in significance. In 2007 a review of the number of EROs was undertaken by the Labour Court as part of a modernisation process provided for under the Towards 2016 National Partnership Agreement. That review resulted in an application by the Minister to abolish some JLCs and amalgamate others. Nevertheless there is a case for a further reduction in the number of JLCs and we address that question in our recommendations.
- 11.9 Almost all of those opposed to the present system are critical of the provision allowing the chairman of a JLC to exercise a casting vote. They say that this has the effect of forcing change on employers to which they are opposed. While it is acknowledged that the casting vote is rarely formally resorted to it is said that chairs frequently threaten to use it to force agreement on an issue in contention.
- 11.10 Trade unions believe that the retention of a casting vote is essential if the JLC are to function as effective decision making bodies. They say that if the casting vote were to be abolished the JLC would become talking shops which would achieve little.
- 11.11 At present JLCs are chaired by persons appointed by the Minister. At present they are Industrial Relations Officers of the Labour Relations Commission or retired IROs or persons having particular experience or

expertise in the sector concerned. In one case a retired Rights Commissioner acts as chairman. They are chosen on the basis of their independence and experience in the facilitation of parties in reaching industrial relations agreement. We do not believe that there is any valid basis upon which their objectivity and impartiality can be impugned.

11.12 Nevertheless, we believe that the circumstances in which the chairman should exercise a casting vote could usefully be reconsidered and we address that and other issues referred to in this section in our recommendations.

## Section 12

### Appropriateness of Procedures for Registration of Agreements

**The appropriateness of the process and criteria applied by the Labour Court for the acceptance of REA proposals for registration;**

- 12.1 This part of our terms of reference requires us to consider matters relating to the registration of agreements. However, serious issues have been referred to in the course of the review relating to the continuance of certain REAs and the circumstances in which their registration could be cancelled. We are also required to make recommendations on those questions.
- 21.2 For the sake of completeness, as well as assessing the appropriateness of the process for registering agreements, we also address questions relating to their variation and cancellation in this section of our report.

#### *Registration of REA*

- 12.3 Section 27(4) of the Industrial Relations Act 1946 set down the statutory conditions which must be fulfilled before the Labour Court can register an employment agreement. In recent times the only agreements registered by the Court were specific to single employments. No issue arises in relation to this category of agreement since they are only intended to bind willing parties.
- 12.3 In the case of sectoral or industry wide agreements a number of issues arise which have been referred to in submissions made to the review. Firstly, the Court must be satisfied that the parties to the agreement are truly representative of either employers or workers to whom the agreement is expressed to relate. There is no statutory definition of “substantially representative” nor does the Act provide any guidance as to how it is to be measured. That question is currently highly contentious in the electrical contracting industry in particular.
- 12.4 In that Industry a group who described themselves as comprising “employers, former employers, and potential employers” and a newly formed group of electrical contractors have been engaged in a campaign to

have the REA for that industry cancelled. They claim, *inter alia*, that the employer parties to the agreement are not representative of employers in the industry. In terms of the number of firms operating in the industry it is claimed that those outside the employer bodies who are party to the agreement outnumber those who make up the subscribing bodies. The trade union that is party to the REA contend that the opposing groups have few employees whereas the bulk of workers in the sector are employed by a small number of large employers who are associated with the employer organisations who are party to the REA. This matter was the subject of an application to the Labour Court<sup>56</sup> previously referred to and is the subject of continuing litigation in the Superior Courts.

- 12.5 In the proceedings before it the Labour Court found it unnecessary to make any definitive findings on how the notion of “substantially representative” is to be judged. It did however suggest that it should be measured by reference to the numbers employed by the firms in the industry. The Court said: -

*It was submitted that the number of contractors now operating in the sector demonstrates that the employer parties to the REA are not substantially representative of the industry. The Court notes that separate proceedings are in being in which an Order quashing the original decision to register the REA is being sought in the High Court. That application is grounded, inter alia, on an assertion that at the time of its registration the parties to the REA were not substantially representative of the industry.*

*In addressing that ground it will be necessary to consider the point at which particular employer groupings can be regarded as representative of the industry. In particular it will fall to be decided if the number of employees engaged by a particular employer or group of employers is a relevant consideration in determining questions of representativeness. In these circumstances it would be inappropriate for the Court to express a concluded view on that question. **It would appear, however, that in a sector, such as electrical contracting, where employment tends to be concentrated within a relatively small number of large firms the number of workers for whom the relevant employer groups are responsible is a relevant consideration. That, however, is a matter, which will***

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56 REP091

*fall to be determined in the judicial review proceedings.*<sup>57</sup>  
[emphasis added]

- 12.6 In the subsequent Judicial Review proceedings the High Court also found it unnecessary to address this question<sup>58</sup>. Consequently, the question of how the representative nature of parties to an agreement is to be measured for the purpose of s.27(4) of the Act of 1946 remains open.
- 12.7 It is highly desirable that this question should be resolved by legislation for the purpose of future applications to register an agreement. In that regard it seems logical that the extent to which an enterprise should be regarded as representative should be judged by reference to the extent to which it will be affected by the agreement if registered. That in turn requires that the number of workers normally employed by the firm, which reflects the extent of its involvement in the industry, should be a relevant factor.
- 12.8 We address this point in our recommendations

***Variation of REAs***

- 12.9 Section 28(1) of the Industrial Relations Act 1946 set out the process by which an REA can be varied. It provides three conditions which must be satisfied: -
- (a ) the Court shall consider the application and shall hear all persons appearing to the Court to be interested and desiring to be heard;*
- (b ) after such consideration, the Court may, as it thinks fit, refuse the application or make an order varying the agreement in such manner as it thinks proper;*
- (c) if the Court makes an order varying the agreement, the agreement shall, as from such date not being earlier than the date of the order as the Court specifies in the order, have effect as so varied.*

- 12.10 Some employer bodies that made submissions to the review also referred to what they regard as difficulties in obtaining agreement on changes in the

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<sup>57</sup> Paragraph 17.1, 17.2

<sup>58</sup> The High Court found that the challenge to the original registration of the agreement, to which the question of the representative nature of the parties related, was inadmissible on grounds of delay.

terms of REA to reflect changed economic circumstances. They pointed out that there is no effective mechanism by which an REA can be varied in the absence of agreement with the trade unions concerned. The CIF, representing construction industry employers, referred to what they regard as inordinate delay in obtaining agreement on necessary changes although they did acknowledge that the construction unions recently agreed to a 7.5% reduction in basis rates which has since been registered with the Court. They claim, however, that those reductions do not go far enough to reflect the current circumstances of the industry. The employers concerned indicated to us that while they do not wish to have the agreement cancelled they may be left with no other options if they cannot obtain the changes which they consider necessary.

12.11 As noted earlier in this report, Section 28 of the Act does not expressly require the consent of all parties before the Labour Court can vary the terms of an REA, although in practice the Court normally requires such consent. There may, however be circumstances in which it would be appropriate for the Court to vary an agreement on the unilateral application of one party without the consent of the other. While it is not possible to set out exhaustively what those circumstances may be, they should, in general, relate to the economic circumstances of the industry or employment and the imperative of maintaining employment.

12.12 We address this point in our recommendations.

### *Cancellation of REAs*

12.13 There is an apparent weakness in the current statutory criteria against which the Labour Court can cancel an REA. It makes no provision for cancellation where either an employer body or a trade union which is party to the agreement has ceased to be representative of employers or workers, as the case may be. If such a state of affairs were to come about in a sector covered by a REA it would appear unfair to maintain the registration of the agreement if those who are substantially representative no longer wish it to apply. Subject to a clear a definition of what constitutes substantial representative parties, s.27 should be amended so as to address this apparent lacuna in the law.

12.14 There is also an apparent weakness in the current provision at Section 29(2) of the Act which allows for the cancellation of an REA where, in consequence of changed circumstances, it is undesirable to maintain the registration of an REA. Questions have arisen as to who can make an application pursuant to that provision and on the procedures to be adopted

by the Court in considering an application under the provision. In the only case that came before the Labour Court under that provision the Court considered it necessary to conduct a formal hearing extending over 11 days and to examine 24 witnesses. We believe that a less complex process for deciding questions arising under this subsection should be put in place.

12.15 We address these points in our recommendations.

***The Electrical Contracting Industry***

12.16 There are particular problems in relation to the REA for the Electrical Contracting Industry, which we consider appropriate to address in this report. These problems were addressed in the extended hearing before the Court which resulted in Decision REP091, previously referred to, and in the subsequent Judicial Review proceedings. Those problems were also the subject of a general review of industrial relations issues in the industry undertaken on behalf of the Minister for Enterprise Trade and Employment by Mr Peter Cassells and Mr Finbarr Flood in 2009. That report made a number of recommendations on how the issues identified should be addressed. We do not consider it appropriate to reassess the issues dealt with in that report which we regard as eminently sensible. It is noted, however, that these proposals have not yet been implemented although it is understood that discussions are continuing with the assistance of the LRC on their implementation. It is our view that the continued viability of the REA for the Electrical Contracting industry is dependent on the implementation of those recommendations without further delay

## Section 13

### Recommendations

13.1 Part 3 of our terms of reference require us to make recommendations under a number of headings: -

- The continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements;
- Possible legislative amendments to the existing framework for the regulation of terms and conditions of employment to ensure that the framework is fit-for-purpose in the current economic climate, including to remove anomalies and obsolete provisions, and to move to a more streamlined, transparent and flexible wage setting model. Without prejudice to any findings in relation to the above, and after assessing compliance with international conventions and EU labour directives, recommendations for reforms may include:
  - The introduction of derogations to EROs and REAs in case of financial difficulties of employers and with a view to protect employment;
  - The introduction of more flexible and responsive variation mechanisms in the pay conditions established by EROs and REAs;
  - The conditions for registration, enforcement, amendment and cancellation of EROs and REAs;
  - Simplification of compliance requirements for employers covered by EROs and REAs;
  - The penalties in case of breach of obligations relating to EROs and REAs

## General

- 13.2 In Section 8 of this report we set out our views on the relevance, fairness and efficiency of the JLC system. In Section 9 we set out our views on the same topic in relation to REAs. For the reasons referred to in those Sections we believe that the continued maintenance of the current system is necessary and justified. In the case of JLCs the overriding rationale for that conclusion lies in the need to provide some mechanism for the maintenance of reasonable employment standards for unorganised vulnerable workers in the sectors concerned and in the absence of any viable alternative arrangements by which that objective can be achieved. We are also strongly influenced by our conclusion that abolition of the system would not positively impact to a proportionate extent on employment in the effected sectors. In the case of REAs, we believe that there is a need for a system by which collective agreements concluded between substantially representative parties can be made universally applicable and given legal effect.
- 13.3 We have, however, concluded that the system requires radical overhaul so as to make it fairer and more responsive to changing economic circumstances and labour market conditions. The overriding purpose of the recommendations which follow is to create a framework within which greater efficiencies and necessary adjustments in payroll costs can be achieved in the affected sectors. We are confident that if accepted and implemented in full these recommendations can achieve that objective within an accelerated timeframe.
- 13.4 Our terms of reference do not mandate us to propose specific changes to the terms of either EROs or REAs. That is the primary responsibility of the stakeholders in the relevant sectors. Our recommendations are intended to provide an effective mechanism by which they can attain necessary change through agreement or, in default of agreement, by independent adjudication.
- 13.5 Our recommendations are intended to provide a composite package of measures each element of which should be regarded as an essential component in achieving the flexibility through which the necessary adjustments and efficiencies can be achieved. In particular the attainment of that goal can be advanced by: -

- The standardisation of benefits in the nature of pay across sectors by way of a nationally agreed protocol or by way of a statutory Code of practice,
- Linkage between ERO basic rates and National Minimum Wage rates,
- The provision of clear principles and policies to be taken into account by JLCs in pay determination,
- The facility to derogate from the terms of EROs in cases of financial difficulty and, where appropriate, by collective bargaining,
- Changes in the decision making process of JLCs,
- Continuing review of the scope of JLCs,
- Changes in the arrangements and criteria for the registration, variation and cancellation of REAs

## **JLCs**

### **Recommendation 1**

#### ***Scope of Individual Establishment Orders***

Section 47 of the Industrial Relations Act 1990 provides a statutory mechanism for the periodic review of the sectors covered by individual JLCs, and the position of their workforce, having regard to the purpose for which they were established. This section provides a means by which the scope of individual orders can be reviewed so as to ensure that the range of activities to which they relate remains relevant. We recommend that the Labour Court should undertake or commission a report into the scope of all remaining JLCs and that appropriate amendments be made to the establishment orders by which they were created based on the findings of that report. All interested parties should be consulted in the course of that review. In that review we recommend also that consideration should be given to limiting the JLC system to regulating the pay and conditions of unskilled workers

We further recommend that section 47 of the Act of 1990 be amended so as to require the Court to undertake or commission such a review at five

yearly intervals so as to ensure that the establishment orders remain relevant.

## **Recommendation 2**

### *Geographical JLCs*

We do not believe that there is any continued justification for maintaining geographically based JLCs. There are currently three sectors which are regulated on a geographical basis- Catering, Hotels and Hairdressing.

We believe that the two Catering JLCs should now be amalgamated and a single ERO made for the entire sector. In the case of the Hotels particular problems exist relating to the inactivity of the JLC for the Dublin area. We recommend that discussions should be held between the parties represented on the Hotels JLCs so as to explore the possibility of bringing about the conditions in which unified regulatory arrangements can be put in place<sup>59</sup>. The continuance of the two JLCs for the Hairdressing sector is considered in **Recommendation 3**

## **Recommendation 3.**

### *Abolition of Certain JLCs*

As shown in Table 4.1 there are a number of JLCs which relate to sectors which have now become so small in terms of numbers employed, or which have effectively ceased to function, that should be abolished. We recommend that the following JLCs be abolished:

- Aerated Waters and Wholesale Bottling
- Provender Milling
- Clothing<sup>60</sup>

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<sup>59</sup> The JLC for Hotels in Dublin has not met since its establishment and there is no ERO currently in force in respect to Hotels in Dublin. The reason given for this is that historically many hotels in Dublin were covered by collective agreements although we doubt that this is still the case. If the present situation were to continue, in the absence of agreement on uniform regulatory arrangements, consideration should be given to the abolition of the Dublin JLC in the light of Recommendation 3.

<sup>60</sup> This JLC in was formed as an amalgamation of four former JLCs- Handkerchief, Shirtmaking, Tailoring and Women's Clothing

We have considered the current position in relation to the two Hairdressing JLCs currently in being which operate in respect of Dublin and Cork. Apart from regulating pay and conditions of employment in the sector in the areas concerned these JLCs also have a function in the registration of apprentices and they provide certification for qualified personnel in the trade. Having regard to the limited geographical application of the EROs we feel that a strong case could be made for their abolition. However before that can occur the registration function which they perform would have to be transferred to another appropriate body. Moreover, we do not have reliable data concerning the numbers of establishments or workers affected by the current EROs relative to those who are not covered.

## **Recommendation 4**

### ***Primacy of Collective Bargaining***

We have previously expressed our opinion that the JLC system should only operate where, for whatever reason, collective bargaining does not take place. This principle is already recognised by the provision at Section 46 of the Industrial Relations Act 1990 which provides that the Labour Court may exclude from the scope of a JLC an employment to which an REA applies. That section goes on to provide that such exclusion can only apply where the remuneration and conditions of employment provided for by the REA are not less favourable than those provided for by the relevant ERO. This qualification limits the capacity of parties to conclude agreements which may be more suited to the circumstances of individual employments but which may be regarded as less favourable than the ERO in some particulars.

We recommend that this provision be amended so as to provide that the Court may exclude an undertaking to which a collective agreement applies from the scope of a JLC where the Court is satisfied that: -

- (a) The agreement was concluded by a process of collective bargaining within the meaning of Article 28 of the Charter of Fundamental Rights of the European Union and of the ILO conventions to which we have referred in **Section 9** of this report
- (b) The agreement is registered with the Court pursuant to Section 27 of the Act of 1946

We recommend that a similar provision be made so as to allow for the conclusion and registration of a collective agreement in respect of a group of employments, or a sub-sector of an industry covered by a JLC, which

would have the effect of taking the workers and their employers to which the agreement relates outside the ambit of a JLC. This would require a consequential amendment to subsection (2) of Section 46.

## **Recommendation 5**

### ***Replacement of JLCs in Certain Sectors***

In the course of this review representatives of employers in the Contract Cleaning sector told us that conditions now exist in which a sector collective agreement could be concluded between representative employers and trade unions in that sector which could be registered with the Labour Court.

We recommend that the representative employer bodies and trade unions should have discussions with a view to concluding a collective agreement for that sector and that the agreement be registered with the Labour Court pursuant to Section 27 of the Industrial Relations Act 1946. On the agreement being registered the JLCs for that sector should be abolished.

We further recommend that if the REA is subsequently cancelled the Court should consider the reestablishment of a JLC for the sector concerned.

In the case of the Security Industry the organisations representing employers told us that they wish to retain the JLC system for their industry. In their opinion the system is beneficial to both employers and workers in the sector. The specifically told us that they do not favour the replacement of their JLC by an REA..

In these circumstances we recommend the retention of the Security JLC.

## **Recommendation 6**

### ***Mechanisms for Fixing Pay***

In the Industrial Relations (Amendment) Bill 2009 provision was made for an amendment of Section 42 of the Industrial relations Act 1946 so as to insert a new subsection 2A setting out the principles which a JLC would be obliged to take into account in formulating proposals for the making of an ERO. The proposed new section provided as follows: -

*“ when formulating proposals to submit to the Court pursuant to subsections (1) or (2), a joint labour committee shall have regard to the following –*

- (a) *The legitimate interests of the workers*
- (b) *The legitimate interests of the employers*
- (c) *The prevailing economic circumstances*
- (d) *The prevailing employment circumstances of the workers*
- (e) *The prevailing commercial circumstances of the employers*
- (f) *The terms of any national agreement relating to pay and conditions for the time in force*

We recommend that the Act should be amended in line with that proposal<sup>61</sup>. We also recommend that, in the absence of a national agreement and having consulted such representatives of employers and workers as it thinks fit, the Labour Court may provide general guidelines on appropriate pay increases based on the criteria referred to above.

We further recommend that in the event of national wage agreements being concluded in the future the parties to the agreement should make specific provision for the mode of application of increases provided for in the case of JLCs vis-à-vis increases in the national minimum wage.

## **Recommendation 7**

### ***Relationship between ERO rates and National Minimum Wage***

Section 7(2) of the National Minimum Wage Act 2000 provides, in effect, that where the rates provided for in an instrument including an ERO are below the minimum wage prescribed by the Act the rates in the instrument are increased to the minimum wage by operation of law. There is no corresponding provision in the case of a downward adjustment in the minimum wage.

There is a strong case in equity for a corresponding provision where the minimum wage is adjusted downwards

We recommend that if the national minimum wage is adjusted downwards the JLCs should be required to consider revising the rates prescribed by

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<sup>61</sup> At Recommendation 16 we also propose that all other provisions of that Bill be enacted.

EROs within a defined timeframe after the adjustment in the minimum wage becomes effective. If agreement is not reached by the JLC on that question the matter should be processed through the procedure recommended at **Recommendation 9**

## **Recommendation 8**

### ***Standardisation of Conditions of Employment***

We believe that as far as possible conditions of employment regarding overtime payments, including the conditions under which they become payable, and Sunday premium should be standardised across the various EROs under which they apply.

We recommend that guidance be provided to JLCs in these matters by way of a protocol agreed between the Social Partners or in the absence of an agreed protocol by way of a Code of Practice made under Section 42 of the Industrial Relations Act 1990. These guidelines should be taken into account by JLCs in formulating proposals for an ERO. Furthermore, the Labour Court should ensure adherence to these guidelines by exercising its power under Section 48 of the Industrial Relations Act 1990, not to adopt proposals which are not in conformity with the guidelines.

### ***Overtime***

The proposed guidelines should address the range of appropriate rates for overtime and the conditions under which they should become payable, including the number of hours worked before an entitlement to overtime payments would arise.

### ***Sunday Premium***

Many individual employers and their organisations that made submissions to the review were highly critical of the requirement to pay premium rates for Sunday working. It was pointed out that in many sectors to which the JLCs relate Sunday is a normal working day and in some cases the day of greatest demand for the services which they provide.

As was pointed out elsewhere in this report the obligation to make special provision for Sunday working in the pay of those who work on that day is derived from Section 14 of the Organisation of Working Time Act 1997 and exists independently of any provision in an ERO. We also pointed out that in many cases JLCs agreed to reduce the Sunday Premium prescribed from double time to time plus one third.

Some organisations urged us to recommend the repeal of Section 14 of the Act of 1997. We do not believe that our terms of reference allow us to consider the appropriateness of primary legislation of general application. Accordingly, our recommendations are directed at how the obligation prescribed by Section 14 of the Act of 1997 should be given effect by JLCs. For reasons already stated we do not consider it either practical or desirable for this matter to be left for determination by workers in the effected sectors pursuing individual claims under the 1997 Act.

Section 14 of the Organisation of Working Time Act 1997 provides three modes of compliance where the requirement to work on Sunday has not otherwise been taken into account in determining the workers pay. We recommend that the protocol /Code of Practice to which we have referred should give guidance to JLCs on the most appropriate of these options in the case of employments regulated by JLCs.

## **Recommendation 9**

### ***Procedures of Joint Labour Committees***

We recommend that the procedures of a JLC for the making of proposals for an ERO be amended as follows; -

- (a) The Chairperson of the JLC shall facilitate the parties in seeking to reach agreement and for that purpose he or she may adjourn a meeting
- (b) If at the resumed meeting agreement is not reached and the Chairperson is of the opinion that no further efforts on his or her part will advance the resolution of the difference between the parties, he or she shall, if requested by either the employer or workers representatives, refer the outstanding matters to the Labour Court
- (c) The Labour Court shall hear the parties represented on the JLC and shall issue a recommendation. The court will take account of the codes of practice for working conditions outlined in Recommendation 8 and the guidelines on pay increases outlined in Recommendation 7
- (d) The Labour Court shall hold a hearing within three weeks of the matter having been referred to it and shall issue a recommendation within a further two weeks after the close of the hearing

- (e) The JLC shall meet within two weeks of the date on which the Court's recommendation is issued to consider the recommendation
- (f) If agreement is not reached the issues in dispute will be put to a vote of the members of the JLC and if the votes are tied the Chairperson shall exercise a casting vote having regard to the recommendation of the Court

## **Recommendation 10**

### ***Use of Clear Language in EROs***

Some bodies who made submissions to the review consider the language in which some EROs are drafted as unduly loose and uncertain. EROs are Statutory Instruments and must be interpreted by the rules normally applied in the construction of legislation. This requires that the intention of the framers of the legislation be ascertained from the language used in the Instrument.

We believe that great care should be taken in drafting EROs so as to avoid the use of ambiguous language and the possibility of the ERO being given an unintended meaning. EROs should be drafted with precision but in language that can easily be understood by employers and workers to whom they are primarily addressed. Hence, the use of opaque or technical language should be avoided.

We believe that this matter could best be addressed by providing at Section 48 of the Industrial Relations Act 1990, that the Labour Court should not adopt proposals for an ERO unless it is satisfied that the proposals are in a form suitable for adoption. In giving effect to such a proposal the Court should consider if the plain intention of the JLC is readily ascertainable from the language used in the proposal and that the entitlements and obligations provided for are clearly and plainly expressed.

## **REAs**

## **Recommendation 11**

### ***Definition of Substantially Representative Parties***

Section 27(3)(b) of the Industrial Relation Act 1946 provided that before an employment agreement can be registered the Labour Court is satisfied that the parties to the agreement are substantially representative of the workers to whom the agreement is intended to relate and their employers. There is considerable uncertainty as to how this requirement is to be applied in practice. In the case of trade unions the degree to which they are representative of workers to whom the agreement relates should be measured by reference to the union's membership in the employment or sector concerned. In the case of employers or employer organisation the extent to which they could be regarded as representative should be weighted by size, measured by the number of employees normally employed. Where necessary this could be ascertained from the records which employers are required to maintain for tax and other purposes. In our view such a provision would ensure that the weighting to be given to parties in considering whether or not to register an agreement should be determined by the extent to which those parties will be affected by the outcome.

We believe that in applying to have an agreement registered it should be necessary for the parties to an agreement to set out in such manner as the Court thinks fit the basis upon which they claim to be substantially representative of either workers or employers.

We recommend that a suitable amendment be made to s.27 of the Act of 1946.

## **Recommendation 12**

### ***Requirement that parties remain substantially representative***

While there is a statutory requirement that the parties to an REA are substantially representative of the industry to which it relates at the time of registration there is no requirement that they remain representative.

This appears to be an anomaly in the law and a situation could arise in which an employment agreement could remain registered although either the trade union or the employer parties represent the interests of a small minority.

We recommend that Section 29 of the Industrial Relations Act 1946 be amended so as to provide that the Court may cancel the registration of an REA where it is satisfied that either the trade union(s) or employer parties

have ceased to be substantially representative of workers or employers in the sector to which the agreement relates, within the meaning that we have suggested in Recommendation 11.

However, in order to avoid frivolous or repeated applications to the Court on this question, we further recommend that where a person affected by an REA claims that the agreement ought to be cancelled because the parties thereto are no longer substantially representative of either employers or workers the onus of proving the facts grounding the claim should be on the applicant. We also recommend that where the Court concludes that the parties to an REA remain substantially representative of either employers or workers a further application on that question cannot be entertained until the expiration of a defined period. An exception to this requirement could be provided where the Court is satisfied that there are substantial grounds for believing that the parties have ceased to be substantially representative since the last application.

## **Recommendation 13**

### ***Variation of REAs***

While the Labour Court's power to vary an REA is not expressly limited to situations in which all parties consent to the proposed variation, in practice the Court has not been prepared to do so in the face of opposition by one side or the other. That approach is dictated by fact that an REA is, fundamentally, a collective agreement the validity of which is dependant on the consent of the parties thereto.

In the course of this review we were told that the process of obtaining necessary change to the terms of an REA can be unduly protracted and incompatible with the requirement to respond quickly to changed economic and commercial circumstances. At present either the employer or trade union parties to an REA may apply to the Court to cancel the registration of the REA where they cannot obtain agreement on what they consider to be necessary change, However that course of action may not be in the interests of either party and it is desirable that an alternative approach should be available.

In order to address this concern we recommend that as a condition of registration an REA should contain a provision that it can be varied in the following circumstances: -

- (a) The proposed alteration in the terms of the agreement should be discussed by the parties using the dispute resolution procedures specified in the agreement, including referral of the dispute to the LRC.
- (b) If agreement is not reached the dispute should be referred by the LRC to the Labour Court for investigation
- (c) Having heard all parties to the dispute the Court should issue a recommendation setting out the terms on which the dispute should be resolved.
- (d) If, following the lapse of a period of not less than six weeks from the date of the recommendation, the dispute remains unresolved, a party to the REA should be entitled to apply to the Court to vary the agreement in the terms of the Court's recommendation.
- (e) If, following a further hearing in the matter in accordance with Section 28 of the 1946 Act, the Court is satisfied that it is undesirable in the circumstances of the sector concerned to maintain the registration of the agreement unaltered, the Court may vary the agreement in such terms as it thinks fit.

To achieve coordination in wage setting across sectors and prevent any adverse effects from a reduction in competition within sectors we recommend that in the event that the above mechanism being activated by either party that the court would take account of the guidelines on pay emanating from the mechanism outlined in recommendation 6 and the guidelines on other conditions of employment resulting from the codes of practice suggested in Recommendation 9.

We also recommend that, as a matter of practice, a hearing in accordance with paragraph (e) above should be before a differently constituted division of the Court to that by which the recommendation was issued in accordance with paragraph (c) above.

## **Recommendation 14**

### ***Duration of REAs and their Cancellation***

We were urged to recommend that only agreements of fixed duration should be registered. Having considered that proposal we believe that the duration of an agreement is a matter for the parties thereto and we do not

accept that a convincing case exists for precluding the registration of agreements of indefinite duration.

We do believe that clearer and more streamlined provisions should be made for the cancellation of REAs. Section 29(2) of the 1946 Act provides, in effect, for the cancellation of an REA where as a result of substantial change in the sector to which it relates the continued registration of the agreement is undesirable. This provision was only invoked on one occasion and in practice it involved a time-consuming, adversarial and costly process. We believe that this provision should be retained but, as an alternative to conducting a formal hearing, the Court should be authorised to arrange for a report on the circumstances of the sector concerned. Regard could then be had to the findings in the report in deciding whether there has been significant change in the sector and if the continued registration of the agreement is desirable.

We also believe that there should be greater clarity on the circumstances in which the process provided for by Section 29 (2) of the 1946 Act can be invoked.

We recommend that Section 29(2) be modified to provide as follows: -

- (a) That the Court may, from time-to-time, on its own initiative, at the request of the Minister or on application in writing to it by an interested person conduct a review of the circumstances of an industry to which an REA applies and consider if the continued registration of the agreement undesirable.
- (b) For the purpose of such a review the Court may arrange for a report on the circumstances of the industry and the Court shall have regard to the findings of the report in reaching its decision.
- (c) The Court should have discretion to conduct a hearing for the purpose of considering any matter arising under the subsection or to rely on the findings of the report and any written submissions made by interested persons.

It would, however, be impractical to require the Court to undertake a review in every case in which it is requested to do so by an interested person. It should retain discretion on whether or not to undertake such a review and in the case of an application by an interested person should only

do so where an application in writing discloses reasonable grounds for believing that it is undesirable to maintain the registration of the REA.

Where, in accordance with the subsection, the Court concludes that the continued registration of an REA is undesirable it should be authorised to cancel its registration from a date determined by the Court. The Court should, however, be authorised to make recommendations on amendments to the agreement which, if adopted by the parties, would result in the registration of the agreement being maintained.

We further recommend that in line with recommendation 12, where it is established that either the trade union or employer parties, who wish to continue to be party to the REA, are no longer substantially representative of such workers or employers in the sector to which the agreement relates, the Court should be required to cancel the registration of the agreement.

## **Recommendation 15**

### ***Electrical Contracting REA***

At paragraph 11.17 of this report we addressed matters specific to the REA to the Electrical Contracting Industry. In that paragraph we referred to the report produced for the Minister by Mr Peter Cassells and Mr Finbarr Flood and the necessity to implement the recommendations contained in that report.

We believe that many of the recommendations contained in this report, particularly those relating to the criterion by which a body's representative nature should be assessed, will assist in giving effect to the Cassells / Flood report. We recommend that the recommendations of that report be implemented without further delay.

## **General Provisions**

## **Recommendation 16**

### ***Industrial Relations (Amendment) Bill 2009***

The Industrial Relations (Amendment) Bill 2009 has now lapsed. We have made specific reference at Recommendation 6, to the proposed amendment to Section 42 of the Act of 1946. We have examined the other provisions of that Bill, in so far as they relate to our terms of reference. We believe that

the effectiveness of the system would be greatly enhanced by the changes envisaged in that Bill.

We recommend that all of the changes in the legislative framework within which the ERO / REA system operates proposed by the Industrial Relations (Amendment) Bill 2009, modified where necessary to reflect the recommendations contained in this report, be enacted.

## **Recommendation 17**

### *Derogation on Economic Grounds*

We are obligated by our terms of reference to consider if, and under what circumstances, employers should be enabled to derogate for the terms of either an ERO or an REA in cases of economic difficulty so as to protect employment. The protection of employment must be a paramount consideration and, in principle, where the likely effect of strict adherence to the terms of an ERO or an REA would be the loss of employment a derogation should be available. However, in certain types of employment the effect of allowing a derogation in one case may provide the recipient of the derogation with a competitive advantage over those who remain bound by the strict terms of the instrument. This could have the effect of displacing employment elsewhere.

On balance we believe that there is convincing case for allowing an employer to derogate from the terms of an ERO / REA where it is established that the effect of strict compliance would result in a substantial loss of employment in the enterprise concerned.

We recommend that a provision similar to that contained at Section 41 of the National Minimum Wage Act 2000, allowing for an exemption on economic grounds from the provisions of that Act for up to one year be made in respect to EROs and REAs. We believe, however, that an additional criterion be provided to the effect that a derogation cannot be granted if it would have the effect of distorting competition in the sector concerned or lead to displacement of workers elsewhere.

## **Recommendation 18**

### *Simplification of compliance requirements*

We believe that **Recommendation 8**, on standardisation of working conditions, should, if implemented, have the effect of reducing the

complexity of record keeping requirements on employers. The current record keeping requirements relating to matters such as standard overtime, Saturday overtime, Sunday overtime, travel time, and subsistence/country money, have been incorporated within the text of successive EROs and REAs and stipulate that employers maintain records for a period of three years. These requirements diverge significantly from the basic statutory requirements that must be observed by employers not covered by JLCs / REAs and that employers must satisfy under the National Minimum Wage legislation. We recommend that the proposed guidelines on the standardisation of conditions of employment [see **Recommendation 8**] should have regard to how the record-keeping burden on employers can be minimised. The proposed guidelines should set out only what is required to meet the statutory requirements as to record keeping. These requirements should then be consistently applied by all labour inspectors.

We further recommend that the requirement at Section 49 of the Industrial Relations Act 1946 for the posting of notices (which does not apply in the case of agricultural employees) should be replaced by a requirement that the statement which an employer is obliged to give to an employee under Section 2 of the Terms of Employment (Information) Act 1994 should contain details of any applicable ERO.

## **Recommendation 19**

### *Penalties and Enforcement*

At present an REA can be enforced by way of a complaint to the Labour Court pursuant to either Section 32 of the Industrial Relations Act 1946, or Section 10 of the Industrial Relations Act 1969 alleging a contravention of an REA.<sup>62</sup> Having heard the complaint the Labour Court can order the employer to comply with the agreement. A failure to comply with the order of the Labour Court amounts to a criminal offence. A complaint can only be made under these provision by either a trade union or an employer organisation which is a party to the REA.

A failure to pay remuneration or observe the conditions of employment prescribed by an ERO is a criminal offence and enforcement is only by way of a prosecution before the District Court<sup>63</sup>. The Court by which a person is

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<sup>62</sup> Section 32 of the 1946 Act provides that a trade union of workers affected by an REA may complain that an employer to which the agreement relates has contravened its terms. Section 10 of the 1969 Act makes similar provision for a complaint by an employers' organisation.

<sup>63</sup> Section 45 of the Industrial Relations Act 1946. The maximum penalty for an offence under that section is a fine of €952.28.

convicted may order the payment to the worker concerned of the difference between the remuneration prescribed by the ERO and the amount actually paid. The amount of arrears which can be ordered is limited to that which accrued over the previous six-years<sup>64</sup>.

We recommend that the mechanism for enforcing EROs be brought into line with that for REAs and that, as an alternative to a criminal prosecution, a complaint could be brought before the Labour Court. We recommend that NERA be authorised to bring such a complaint in respect to either an REA or an ERO.

We further recommend that NERA be authorised to serve a compliance notice on an employer where a contravention of either an REA or an ERO is detected in the course of an inspection and that only where the compliance notice is complied with no further proceedings should be taken.

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<sup>64</sup> This limit is not prescribed by the Act but arises for the Statute of Limitation Act 1957

**Appendix 1**  
**List of Submissions Received from Companies**

A.Kelly Electrical Contractor & EPCAMS Estimating and Training Services	Café Sol Bistro	Construction Workers Pension Scheme
Abbeyleen Castle Hotel	Cairde	Convenience Stores Newsagents Association
Adare Manor	Castle Durrow	Corn Store
Amatino Partners	Castleknock Hotel	Corribhaven Guest House
Aran Security Ltd	Chambers Ireland	Costcutter
Ardilaun Hotel	Chameleon Restaurant	Croquets on the Quay
Ashford House	Cherry Tree Restaurant	Cross Care
Association of Electrical Contractors (Ireland)	Civil Public Services Union	Cruzzo Restaurant
Ballymaloe House	ClareGalway Hotel	D.B. Electrical Ltd.
Bang Restaurant	Clelands Supermarkets	Dept. of Enterprise, Trade & Innovation
Bar One	Commercial Mushroom Producers Co-operative Society	Derry Court Cleaning
Barista Café	Community Platform	Dooley's Hotel
Barry Group	Community Workers' Co-operative	Dromoland Castle Hotel
Beaufield Mews	Connemara	Ely Wine Bar
Bella Italia	Gateway Hotel	Enersol
Bistro Martello	Construction Industry Federation	Equality Rights Alliance
Bits & Pizzas Restaurant	Construction Workers Alliance of Ireland	ESA Consultants
Bodega Restaurant		European Anti Poverty Network Ireland
Brandon Hotel		
Bridge Bar and Grill		
Bush Hotel		

Eviston House  
Hotel  
Failte Ireland  
Fallons of  
Kilcullen  
Faythe Guesthouse  
Feminist Open  
Forum  
Fitzers Holdings  
Ltd  
Fitzgerald's  
Vienna Woods  
Hotel  
Flannerys Bar  
FORFAS  
G4S Secure  
Solutions Ireland  
Gallagher's Boxty  
House  
Galway Bakery  
Company  
Gilberts Restaurant  
Griffen Group  
Gleneagle Hotel  
Glenlo Abbey  
Hotel  
Granville Hotel,  
Hamlet Court  
Hotel  
Harbour Hotel  
Harvey's Point  
Hotel  
Headfort Arms  
Hotel  
Hotel Clybaun  
Hotel Minella  
Hugo's Restaurant  
IBEC  
ICMSA  
Il Posto  
Immigrant Council  
of Ireland

IMPACT  
Independent  
Workers Union  
International Union  
of Food  
Irish Congress of  
Trade Unions  
Irish Contract  
Cleaning  
Association  
Irish Farmers  
Association  
Irish Hairdressers  
Federation  
Irish Hotels  
Federation  
Irish National  
Organisation of the  
Unemployed  
Irish Nightclub  
Industry  
Association  
Irish Racehorse  
Trainers  
Association  
Irish Security  
Industry  
Association  
Irish Small and  
Medium  
Enterprises  
Irish Thoroughbred  
Breeders  
Association  
Irish Tourist  
Industry  
Confederation  
ITSA  
Jurys Inn  
KC Peaches  
Kilford Arms  
Hotel/Glendine Inn

Kilkenny Ormonde  
Hotel  
Kitty Kelly's  
Restaurant  
Kylemore Pass  
Hotel  
L'Ecrivain  
Restaurant  
LaCave Wine-Bar  
and Restaurant  
Licensed Vintners  
Association  
Maldron Hotel  
Mandate Trade  
Union  
Manguard Plus Ltd  
Migrant Rights  
Centre Ireland  
Momentum  
Support  
Morgan McManus  
Solicitors  
Moriarty Group  
Murfind Ltd  
Musgrave Retail  
Partners Ireland  
National Builders  
Council Ireland  
National Electrical  
Contractors Ireland  
National  
Employment  
Rights Authority  
National Union  
Security  
Employers  
National Women's  
Council of Ireland  
Newpark Hotel Ltd  
Nightpark Nursery  
Noonan Services  
Group Ltd.

Nuremore Hotel  
O'Connells  
Restaurant  
O'Dowds Seafood  
Bar & Restaurant  
Old Ground Hotel  
OPEN  
Oranmore Lodge  
Hotel  
Over the Moon  
Paris Texas Café  
Bar  
Peninsula Business  
Services (Ire) Ltd.  
Petrogas Ireland  
Pillo Hotel  
Pinocchio  
Restaurant  
Prism Management  
Services Ltd  
Radisson Blu Hotel  
Galway  
Restaurants  
Association of  
Ireland  
Retail Excellence  
Ireland  
Retail Grocery  
Dairy & Allied  
Trades Association  
Retail Ireland  
Riverbank House  
Hotel  
Rowan Tree Café  
Bar  
Saba Restaurant  
Seamus Byrne  
Electrical Ltd.  
Security Institute  
of Ireland  
Seven Oaks Hotel

Shanks Mare  
Sheehan Ryan &  
Company  
SIPTU  
Sirocco's Italian  
Restaurant  
Slieve Russell  
Hotel  
Society of St.  
Vincent de Paul  
Sol Rio Restaurant  
Spice Indian  
Restaurant  
Strand Hotel  
Strand House  
Talbot Hotel  
TASC  
Teach Dolmain  
Pub & Restaurant  
Technical,  
Engineering &  
Electrical Union  
The Cleaners  
Forum, SIPTU  
**(Petition 1,432  
signatures)**  
The Galway Plate  
The King Sitric  
The Mustard Seed  
The National  
Youth Council of  
Ireland  
The Peppermill  
The Riverside Park  
Hotel & Leisure  
Club  
The Tankard  
The Twelve Hotel  
The Vincentian  
Partnership For  
Social Justice

The Westwood  
Hotel  
The Wheel  
Toner Electrical  
Services Ltd  
Topaz Energy  
Limited  
Tower Hotel  
(Waterford)  
Town Bar and Grill  
Treacys Hotel  
Ukiyo Bar  
UNI Global Union  
Unite the Union  
Vintners'  
Federation of  
Ireland  
Wagamama  
Waterford Marina  
Hotel  
Weirs Bar &  
Restaurant  
West Waterford  
Golf and Country  
Club  
Wineport Lodge  
Woodlands House  
Hotel  
Woodstock Café  
and Moloughney's  
of Clontarf  
Yeats Tavern  
Young Christian  
Workers  
Zest Café

**In addition 200 submissions were received from interested members of the public**

## **Appendix 2**

### **List of Organisations who met with the Review Group.**

1. C.I.F.
2. Commercial Mushroom Producers
3. Dept. of Enterprise, Trade & Innovation
4. FORFAS
5. I.B.E.C.
6. I.C.T.U.
7. SIPTU
8. Irish Farmers Association
9. Irish Hotels Federation
10. Irish Racehorse Trainers Association
11. Irish Thoroughbred Breeders Association
12. Licensed Vintners Association
13. Momentum Support
14. N.E.R.A.
15. N.U.S.E.
16. Restaurants Association of Ireland

17. R.G.D.A.T.A.

18. The Vintners Federation of Ireland

19 Irish Contract Cleaning Association / Noonan TM (Representing the Contract cleaning industry)

Irish Contract Cleaning Association / Noonan TM (Representing the Contract cleaning industry)

### **Appendix 3**

#### **Joint Labour Committees in Being as of April 2011.**

1. Aerated Waters and Wholesale Bottling Joint Labour Committee
2. Agricultural Workers Joint Labour Committee
3. Catering Joint Labour Committee (County Borough of Dublin and Borough of Dún Laoghaire)
4. Catering Joint Labour Committee (excluding Borough of Dublin and Borough of Dún Laoghaire)
5. Contract Cleaning Joint Labour Committee
6. Clothing Sector Joint Labour Committee
7. Hairdressing (Dublin, Dún Laoghaire and Urban District of Bray and Cork City) Joint Labour Committee)
8. Hotels (Dublin) Joint Labour Committee
9. Hotels (other than County Borough of Dublin and Cork) Joint Labour Committee
10. Law Clerks Joint Labour Committee
11. Provender Milling Joint Labour Committee
12. Retail Grocery and Allied Trades Joint Labour Committee
13. Security Industry Joint Labour Committee

## Appendix 4 Rates and Conditions Prescribed by EROs

Committee	Date of Order	Hours	Adult Rate	Under 18	O/T Rate	Sunday Rate	Pension	Sick Pay
Aerated Waters	14/11/06	39	€344.29	€241.02	X 1.5	X 2	Yes	YES
Agriculture	31/12/10	30-40	€354.90	€248.04	X 1.3	X1.3	No	YES
Catering x 2	29/06/09	39	€363.28	€253.30	X 1.5	X 1.3/2	No	Yes
Contract Cleaning	29/6/07	39	€370.50	None	X 1.5	X 2 as o/t	No	Yes
Hairdressing (Dublin)	11/7/08	39	€303.59	€268.07	X 1.5	X 2	No	No
Hairdressing (Cork)	6/6/08	39	€301.57	€272.46	X 1.5	N/a	No	No
Handkerchief	10/10/06	39	€338.97	None	X 1.5	X 2	Yes	Yes
Hotels (other than Dublin & Cork)	16/9/09	39	€354.43	€248.31	X 1.5	X 1.3/1.5	No	No
Law Clerks	22/6/09	38	€391.68	None	X 1.5	X 2	No	No
Provender Milling	14/11/06	39	€344.29	€241.02	X1.5	X 2	Yes	Yes
Retail Grocery	25/10/10	39	€381.42	€258.96	X 1.5/2	X 2	No	No
Security	01/01/07	39	€419.25	None	X 1.5	X 2	No	No
Shirtmaking	10/10/06	39	€338.97	None	X 1.5/2	X 2	No	No
Tailoring	10/10/06	39	€338.91	None	X 1.5/2	X2	No	No
Women's Clothing	10/10/06	39	€338.97	None	X 1.5/2	X 2	No	No

Notes: In 2008 the JLCs for Shirtmaking, Tailoring, Women's Clothing and Handkerchief Making were abolished and replaced with a single JLC for the Clothing sector. That JLC has not met since its establishment and no ERO was made for the sector. Consequently the EROs made by the abolished committees remain in force

In the Case of the Hairdressing EROs commission is also payable.

**Appendix 5**  
**Agreement Currently Registered With the Labour Court**

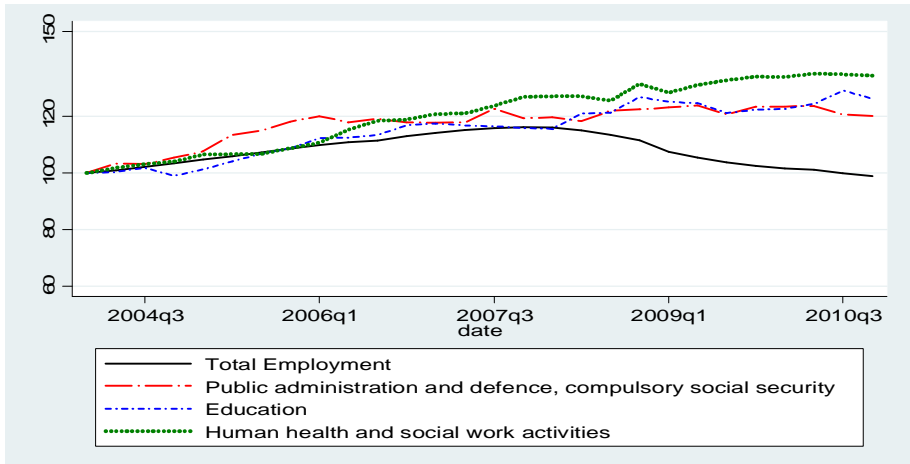
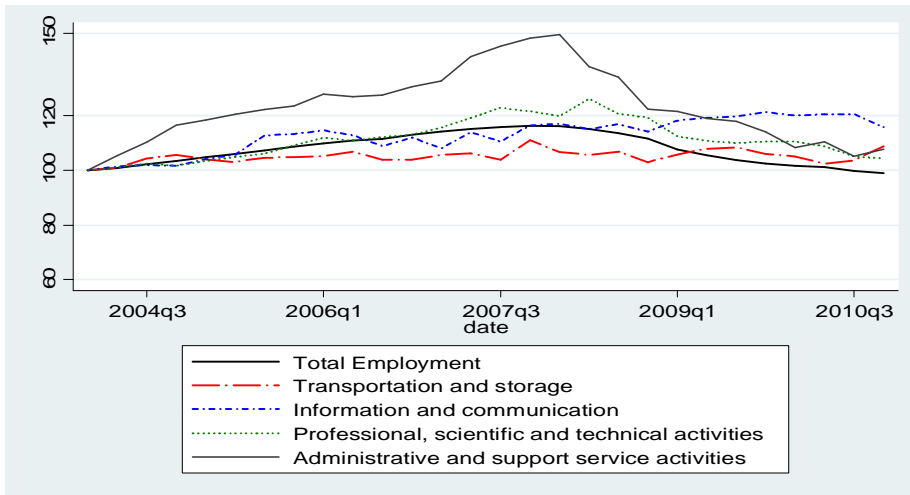
Name

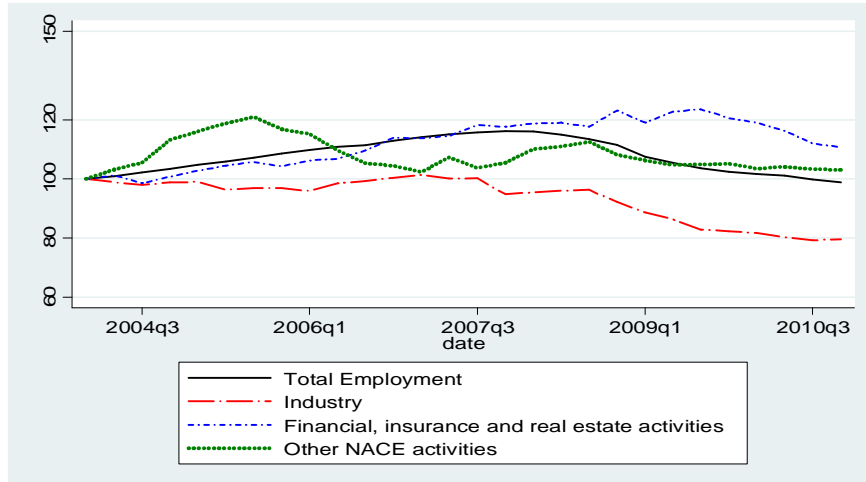
1. FUE\EEU Structured Steel Industry
2. Dungarvan Grocery
3. Scalemakers
4. Boot and Shoe Industry
5. Clonmel Grocery & Provision Trade
6. Carlow Grocery & Provision Trade
7. Wexford Grocery & Provision Trade
8. Dublin & Dun Laoghaire Grocery & Provision Trade (Clerical)
9. Dublin & Dun Laoghaire Grocery & Provision Trade (Apprentices + Junior Assistants)
10. Cleaning and Dyeing (County/Borough of Dublin+Bray District)
11. Clonmel Drapery Footwear & Allied Trades (Shop + Clerical Assistants)
12. Cork Grocery and Provisions Trade
13. Limerick Motor Trade
14. Kilkenny Motor Trade
15. Cork Motor Trade
16. Drogheda Grocery & Provisions Trade
17. Road Haulage (Dublin area)
18. Dublin Wholesale Fruit & Veg Trade
19. Borden Co. Ltd.
20. Construction Industry (Wages & Conditions)
21. Irish Life Assurance Company Limited – Certain clerical workers, trainee workers and services staff
22. Construction Industry (Pensions, Sickness & Mortality Benefits)
23. Irish Life Assurance Company Ltd (Branch Inspectors)
24. Irish Life Assurance Company Ltd (District Inspectors)
25. Top Quality Products Ltd, Gorey

26. Midland Growers Ltd
27. Drummin Growers Ltd
28. C.J.M. Growers Ltd
29. Batchelors Ltd
30. Kayfoam Woolfson Ltd
31. Unidare Ltd
32. Auginish Aluminium Ltd
33. Rowntree Mackintosh (I) Ltd
34. United Drugs Limited Limerick
35. Palmgrove Ltd
36. Dublin Cargo Handling Ltd
37. Batchelors Ltd (Maintenance Craftsmen)
38. Irish Printing Federation & Printing Trades Group of Unions
39. Electrical Contracting Industry
40. Reilly Medical & Surgical Supplies Ltd
41. Barlo Heating Ltd
42. B&I Line Ltd
43. Dublin & Dun Laoghaire Footwear Drapery & Allied Trades
44. Bishopstown Credit Union
45. Airport Police Fire Service Aer Rianta
46. Drimbawn Mushrooms Ltd
47. Cappagh Mushrooms Ltd
48. Lakeside Mushrooms Ltd
49. Kildorough Mushrooms Ltd
50. Sheelin Mushrooms Ltd
51. ADT Fire & Security Ltd
52. Enda Quinn Mushrooms
53. Golden Mushrooms Ltd
54. Greenfield Ltd
55. Littlefield Mushrooms Ltd
56. Highline Mushrooms Ltd
57. Donegal Mushrooms
58. James Quinn Mushrooms
59. Peadar Sherry Mushrooms
60. Tiernaneill Mushrooms Ltd
61. Tom Sweeney Mushrooms
62. Clunedarby Mushrooms
63. Brian O'Reilly Mushrooms
64. ICTS (UK) Ltd
65. Inishowen Mushroom Ltd
66. Schiele and McDonald Mushrooms Ltd
67. Donal and Lavinia Walsh

- 68. Ballyleague Mushrooms Limited
- 69. Linen Supply of Ireland Limited
- 70. Aer Lingus
- 71. Dairygold Co-operative Society
- 72. Heimbach Ireland Ltd
- 73. Veolia Transport Dublin Light Rail Ltd

**Appendix 6: Graphs on Employment by sector**





## Appendix 7: Description of Survey of Income and Living Conditions (SILC) data

The CSO website [www.cso.ie](http://www.cso.ie) gives the following description of the SILC data:

*“The Survey on Income and Living Conditions (SILC) is an annual survey conducted by the Central Statistics Office (CSO) to obtain information on the income and living conditions of different types of households. The survey also collects information on poverty and social exclusion. A representative random sample of households throughout the country is approached to provide the required information. The survey is voluntary from a respondents perspective; nobody can be compelled to co-operate. The 2003 survey, the first in the series, commenced on June 16th 2003.*

*This survey will be conducted throughout the European Union as the European Council and the Commission has given high priority to fight against poverty and social exclusion. The European Union requires comparable and timely statistics to monitor this process.*

*Data is required in both cross-sectional (pertaining to a given time in a certain time period) and longitudinal (pertaining to individual-level changes over time) dimensions. Therefore certain households will be surveyed on an annual basis.”*

We use data from the 2007, 2008 and 2009 waves of the SILC data. There are 13,729, 12,590 and 12,683 observations in each wave respectively. We limit the sample to private sector employees over 15. That is we exclude the self employed, those who work in the public sector, workers in community employment schemes and workers assisting relatives leaving 4,056, 3,594 and 3,447 observations respectively. Each individual in the SILC data is weighted to correct for differences between the characteristics of the sample and the overall population.

For example if retired people are more likely to participate in a survey than others their weight will reflect this. Fortunately we have a verbal description of the occupation and industry of the worker where the worker typically describes where and what they work at very specifically. So for example very often those who list their occupation as barman will give an additional description such as “Barman in public house” as against “barman in hotel” or “barman in restaurant”. The first would be uncovered, the second covered by the catering JLC and the third by the hotel JLC as long as they work outside Dublin. Where they do not give this level of detail in the occupation code the detailed verbal description of the industry usually gives a description such as “pub trade”, “hotel” or “restaurant”. Inevitably there will be some errors here and in particular distinguishing workers in the retail and allied grocery JLC from those who were not was difficult for a significant group who might claim to being a “sales assistant” in a “department store”. We excluded these from the narrow definition of JLC/REA employment in Table 4.2 and included them in the broad definition. Using these descriptions of occupation and industry along with the regional variable which allowed us distinguish workers in Dublin from other parts of the country (this is relevant for coverage of some of the JLCs/REAs) we coded workers into the various JLCs/REAs using the definition of the workers covered from the notices of these agreements.

**Appendix 8:  
Summary statistics & regression results**

**Table A5.1: Summary statistics private sector employees SILC data**

	Mean	Standard deviation	Mean	Mean	Standard deviation
Gross weekly wage	673.69	682.99	Mid-West	0.08	0.28
JLC employees	0.14	0.35	South-East	0.09	0.29
REA employees	0.06	0.25	South-West	0.17	0.38
Legislators, senior officials, managers	0.18	0.39	2007	0.29	0.45
Professionals	0.12	0.32	2008	0.24	0.43
Technicians, associate professionals	0.07	0.25	2009	0.47	0.50
Clerks	0.15	0.36	Urban Area	0.72	0.45
Service worker and shop and market sales workers	0.17	0.38	Age	39.96	12.38
Skilled agricultural and fishery workers	0.00	0.06	Usual weekly hours worked	35.01	11.34
Craft and related	0.11	0.32	Born in Ireland	0.82	0.38
Plant and machine operators and assemblers	0.07	0.25	Male	0.53	0.50
Elementary occupations	0.12	0.32	No formal education	0.00	0.04
Agriculture,	0.02	0.13	Primary ed.	0.09	0.29

hunting and forestry					
Mining and quarrying	0.00	0.07	Secondary ed1. (Group, inter. and junior certs. etc)	0.17	0.37
Manufacturing	0.18	0.38	Transition year ed.	0.00	0.06
Electricity, gas & water supply	0.00	0.07	Secondary ed2. (Leaving etc.)	0.28	0.45
Construction	0.10	0.30	Technical/Vocational ed.	0.10	0.30
Wholesale trade	0.07	0.26	Higher education Cert. Diploma	0.10	0.30
Retail trade	0.13	0.33	Primary degree	0.10	0.30
Hotels and restaurants	0.07	0.26	Professional degree	0.05	0.21
Transport, storage and communication	0.06	0.24	Postgraduate cert./dipl	0.04	0.20
Financial intermediation	0.08	0.28	Postgrad degree	0.04	0.19
Real estate, renting and business activities	0.13	0.34	Doctorate	0.01	0.12
Public administration	0.01	0.10	Other	0.02	0.13
Education	0.02	0.14	Married	0.54	0.50
Health and social work	0.06	0.24	Pay union dues	0.18	0.39
Other community, social and personal service activities	0.05	0.22	5 or less workers	0.18	0.38
Private households with employed persons	0.00	0.06	5-10 workers	0.13	0.34
Border	0.08	0.27	11-19 workers	0.11	0.32
Midlands	0.04	0.20	20-49 workers	0.17	0.38
West	0.06	0.24	over 50 workers	0.40	0.49
Dublin	0.34	0.47	Years experience		12.50
Mid-East	0.12	0.33	Job tenure years	9.04	9.24
Observations	3,867				

**Table A8.2 Linear regression log weekly wage**

Variable Name	Coefficient ( p value in parenthesis below)	Coefficient ( p value in parenthesis below)
JLC employees	-0.045 (0.073)	-0.069 (0.009)**
REA employees	-0.051 (0.199)	-0.029 (0.484)
Professionals	-0.026 (0.355)	-0.022 (0.441)
Technicians, associate professionals	-0.180 (0.000)**	-0.148 (0.000)**
Clerks	-0.249 (0.000)**	-0.213 (0.000)**
Service workers and shop and market sales workers	-0.280 (0.000)**	-0.233 (0.000)**
Skilled agricultural and fishery workers	-0.130 (0.267)	-0.085 (0.473)
Craft and related	-0.228 (0.000)**	-0.206 (0.000)**
Plant and machine operators and assemblers	-0.318 (0.000)**	-0.291 (0.000)**
Elementary occupations	-0.334 (0.000)**	-0.308 (0.000)**
Mining and quarrying	0.526 (0.000)**	0.580 (0.000)**
Manufacturing	0.342 (0.000)**	0.248 (0.000)**
Electricity, gas & water supply	0.447 (0.000)**	0.279 (0.020)*
Construction	0.348	0.345

	(0.000)**	(0.000)**
Wholesale trade	0.214	0.159
	(0.001)**	(0.014)*
Retail trade	0.181	0.165
	(0.004)**	(0.009)**
Hotels and restaurants	0.079	0.049
	(0.212)	(0.444)
Transport, storage and communication	0.268	0.223
	(0.000)**	(0.001)**
Financial intermediation	0.486	0.417
	(0.000)**	(0.000)**
Real estate, renting and business activities	0.257	0.291
	(0.000)**	(0.000)**
Public administration	0.225	0.234
	(0.016)*	(0.014)*
Education	0.065	0.055
	(0.402)	(0.478)
Health and social work	0.201	0.228
	(0.003)**	(0.001)**
Other community, social and personal service activities	0.093	0.104
	(0.156)	(0.114)
Private households with employed persons	-0.261	-0.171
	(0.050)	(0.197)
Midlands	0.044	0.073
	(0.319)	(0.100)
West	-0.010	-0.001
	(0.795)	(0.975)
Dublin	0.219	0.204
	(0.000)**	(0.000)**
Mid-East	0.205	0.196
	(0.000)**	(0.000)**
Mid-West	0.068	0.060
	(0.050)	(0.099)
South-East	0.052	0.034
	(0.129)	(0.344)
South-West	0.079	0.067
	(0.010)**	(0.036)*
2008	0.052	0.034
	(0.009)**	(0.100)
2009	0.115	0.086
	(0.000)**	(0.000)**
urb	0.037	0.020
	(0.047)*	(0.293)
Age	0.065	0.023
	(0.000)**	(0.001)**
Age squared	-0.001	-0.000
	(0.000)**	(0.000)**

Usual number hours worked main job (eurostat)	0.066	0.063
	(0.000)**	(0.000)**
usual hours worked squared	-0.000	-0.000
	(0.000)**	(0.000)**
born in Ireland	0.104	0.040
	(0.000)**	(0.053)
male	0.161	0.144
	(0.000)**	(0.000)**
Primary ed.	-0.176	-0.577
	(0.279)	(0.005)**
Secondary ed1. (Group, inter. and junior certs. etc)	-0.121	-0.571
	(0.452)	(0.006)**
Transition year ed.	0.092	-0.478
	(0.618)	(0.048)*
Secondary ed.2 (Leaving cert.etc)	-0.052	-0.509
	(0.746)	(0.014)*
Technical/Vocational ed.	-0.011	-0.445
	(0.947)	(0.032)*
Higher education Cert. Diploma	0.056	-0.343
	(0.731)	(0.098)
Primary degree	0.077	-0.292
	(0.632)	(0.159)
Professional degree	0.167	-0.203
	(0.307)	(0.332)
Postgraduate cert./dipl	0.111	-0.252
	(0.499)	(0.228)
Postgrad degree	0.192	-0.133
	(0.246)	(0.527)
Doctorate	0.103	-0.273
	(0.551)	(0.206)
Other	-0.156	-0.523
	(0.356)	(0.015)*
currently married	0.117	0.098
	(0.000)**	(0.000)**
union		0.104
		(0.000)**
5-10 workers		0.081
		(0.003)**
11-19 workers		0.126
		(0.000)**
20-49 workers		0.164
		(0.000)**
over 50 workers		0.210
		(0.000)**
Experience		0.023
		(0.000)**
Experience squared		-0.000
		(0.000)**
tenure years		0.021

		(0.000)**
tenure squared		-0.000
		(0.000)**
Constant	2.649	3.761
	(0.000)**	(0.000)**
Observations	4,908	3,867
R-squared	0.639	0.684

p values in parentheses, \* significant at 5%; \*\* significant at 1% The following are the excluded categories. Year: 2007, Region: Border, Education: No formal education, Industry: Agriculture, forestry & hunting, Occupation: Legislators, senior officials & managers and firm size: five or less workers in the firm

**Table A8.3: Quantile regressions log weekly wage**

Variable	Median	10 <sup>th</sup> Percentile	90 <sup>th</sup> Percentile
JLC employees	-0.045	-0.084	-0.084
	(0.086)	(0.047)*	(0.025)*
REA employees	0.003	-0.125	-0.029
	(0.944)	(0.065)	(0.592)
Professionals	0.005	-0.026	0.006
	(0.864)	(0.567)	(0.891)
Technicians, associate professionals	-0.092	-0.125	-0.147
	(0.005)**	(0.016)*	(0.002)**
Clerks	-0.191	-0.134	-0.322
	(0.000)**	(0.003)**	(0.000)**
Service workers and shop and market sales workers	-0.220	-0.201	-0.295
	(0.000)**	(0.000)**	(0.000)**
Skilled agricultural and fishery workers	-0.141	0.306	-0.347
	(0.218)	(0.057)	(0.022)*
Craft and related	-0.178	-0.148	-0.270
	(0.000)**	(0.004)**	(0.000)**
Plant and machine operators and assemblers	-0.240	-0.270	-0.366
	(0.000)**	(0.000)**	(0.000)**
Elementary occupations	-0.267	-0.226	-0.344
	(0.000)**	(0.000)**	(0.000)**
Mining and quarrying	0.542	0.531	0.559
	(0.000)**	(0.002)**	(0.000)**
Manufacturing	0.211	0.177	0.156
	(0.001)**	(0.060)	(0.061)
Electricity, gas & water supply	0.352	0.404	0.316

	(0.003)**	(0.011)*	(0.032)*
Construction	0.283	0.362	0.227
	(0.000)**	(0.000)**	(0.011)*
Wholesale trade	0.106	0.122	0.039
	(0.098)	(0.230)	(0.659)
Retail trade	0.096	0.178	0.012
	(0.121)	(0.068)	(0.887)
Hotels and restaurants	0.015	0.015	-0.029
	(0.812)	(0.880)	(0.747)
Transport, storage and communication	0.161	0.195	0.126
	(0.014)*	(0.057)	(0.171)
Financial intermediation	0.381	0.387	0.365
	(0.000)**	(0.000)**	(0.000)**
Real estate, renting and business activities	0.242	0.228	0.220
	(0.000)**	(0.018)*	(0.008)**
Public administration	0.192	0.187	0.120
	(0.040)*	(0.192)	(0.354)
Education	0.011	-0.202	0.087
	(0.891)	(0.089)	(0.432)
Health and social work	0.185	0.226	0.081
	(0.005)**	(0.030)*	(0.382)
Other community, social and personal service activities	0.109	0.026	0.012
	(0.093)	(0.799)	(0.894)
Private households with employed persons	-0.128	-0.649	0.006
	(0.318)	(0.000)**	(0.956)
Midlands	0.031	0.169	0.040
	(0.488)	(0.013)*	(0.524)
West	-0.026	0.106	0.017
	(0.512)	(0.085)	(0.768)
Dublin	0.165	0.323	0.209
	(0.000)**	(0.000)**	(0.000)**
Mid-East	0.144	0.380	0.204
	(0.000)**	(0.000)**	(0.000)**
Mid-West	0.029	0.196	0.059
	(0.430)	(0.000)**	(0.270)
South-East	-0.015	0.147	0.040
	(0.666)	(0.007)**	(0.428)
South-West	0.028	0.188	0.043
	(0.378)	(0.000)**	(0.345)
2008	0.017	0.073	0.010
	(0.414)	(0.024)*	(0.752)
2009	0.058	0.096	0.087
	(0.001)**	(0.001)**	(0.001)**
urb	-0.010	0.051	0.020
	(0.571)	(0.070)	(0.458)
Age	0.025	0.022	0.021
	(0.000)**	(0.052)	(0.057)

Age squared	-0.000	-0.000	-0.000
	(0.000)**	(0.015)*	(0.011)*
Usual number hours worked main job (eurostat)	0.071	0.088	0.020
	(0.000)**	(0.000)**	(0.000)**
usual hours worked squared	-0.001	-0.001	0.000
	(0.000)**	(0.000)**	(0.079)
born in Ireland	0.043	0.075	0.060
	(0.039)*	(0.022)*	(0.056)
male	0.118	0.098	0.192
	(0.000)**	(0.001)**	(0.000)**
Primary ed.	-0.272	-0.465	-1.491
	(0.143)	(0.000)**	(0.000)**
Secondary ed.	-0.277	-0.484	-1.365
	(0.134)	(0.000)**	(0.000)**
Transition year ed.	-0.199	-0.255	-1.411
	(0.367)	(0.230)	(0.000)**
Secondary ed.	-0.195	-0.460	-1.437
	(0.291)	(0.000)**	(0.000)**
Technical/Vocational ed.	-0.151	-0.330	-1.274
	(0.415)	(0.006)**	(0.000)**
Higher education Cert. Diploma	-0.022	-0.311	-1.234
	(0.906)	(0.010)*	(0.000)**
Primary degree	-0.005	-0.214	-1.147
	(0.978)	(0.082)	(0.000)**
Professional degree	0.088	-0.217	-1.011
	(0.640)	(0.095)	(0.000)**
Postgraduate cert./dipl	0.056	-0.220	-1.181
	(0.764)	(0.089)	(0.000)**
Postgrad degree	0.198	-0.079	-0.940
	(0.295)	(0.556)	(0.000)**
Doctorate	0.073	-0.494	-0.877
	(0.709)	(0.001)**	(0.000)**
Other	-0.217	-0.305	-1.419
	(0.261)	(0.032)*	(0.000)**
currently married	0.092	0.087	0.093
	(0.000)**	(0.002)**	(0.000)**
union	0.102	0.074	0.062
	(0.000)**	(0.025)*	(0.056)
5-10 workers	0.052	0.101	0.092
	(0.051)	(0.017)*	(0.021)*
11-19 workers	0.076	0.167	0.061
	(0.007)**	(0.000)**	(0.143)
20-49 workers	0.119	0.281	0.116
	(0.000)**	(0.000)**	(0.003)**
over 50 workers	0.153	0.297	0.176
	(0.000)**	(0.000)**	(0.000)**
Experience	0.014	0.036	0.021
	(0.000)**	(0.000)**	(0.001)**
Experience squared	-0.000	-0.001	-0.000
	(0.020)*	(0.000)**	(0.054)

tenure years	0.019	0.028	0.015
	(0.000)**	(0.000)**	(0.000)**
tenure squared	-0.000	-0.001	-0.000
	(0.001)**	(0.000)**	(0.099)
Constant	3.457	2.438	6.081
	(0.000)**	(0.000)**	(0.000)**
Observations	3,867	3,867	3,867

p values in parentheses, \* significant at 5%; \*\* significant at 1%. The following are the excluded categories. Year: 2004, Region: Border, Education: No formal education, Industry: Agriculture, forestry & hunting, Occupation: Legislators, senior officials & managers and firm size: five or less workers in the firm

**Table A8.4: Probit regressions overtime status**

Variable	Last pay included paid overtime	Usually work more than 40 hours
JLC employees	-0.009	-0.009
	(0.479)	(0.700)
REA employees	-0.033	-0.044
	(0.022)*	(0.074)
Professionals	-0.009	-0.058
	(0.544)	(0.000)**
Technicians, associate	0.035	-0.052
	(0.051)	(0.003)**
Clerks	0.029	-0.107
	(0.059)	(0.000)**
Service worker and shop a andmarket sales workers	0.022	-0.065
	(0.183)	(0.000)**
Skilled agricultural and fishery	0.053	
	(0.493)	
Craft and related	0.052	-0.082
	(0.005)**	(0.000)**
Plant and machine operators	0.069	-0.042
	(0.001)**	(0.041)*
Elementary occupations	0.011	-0.084
	(0.464)	(0.000)**
Mining and quarrying	0.189	-0.049
	(0.056)	(0.433)
Manufacturing	0.054	-0.114
	(0.231)	(0.000)**
Electricity, gas & water supply	0.035	-0.099
	(0.600)	(0.022)*

Construction	0.035	-0.075
	(0.447)	(0.023)*
Wholesale trade	0.019	-0.100
	(0.647)	(0.000)**
Retail trade	0.044	-0.112
	(0.335)	(0.000)**
Hotels and restaurants	0.014	-0.094
	(0.730)	(0.001)**
Transport, storage and	0.007	-0.094
	(0.861)	(0.001)**
Financial intermediation	0.037	-0.103
	(0.416)	(0.000)**
Real estate, renting and	0.020	-0.114
	(0.631)	(0.000)**
Health and social work	0.049	-0.095
	(0.333)	(0.002)**
Other community, social and	0.057	-0.081
	(0.262)	(0.009)**
Private households with	0.195	
	(0.122)	
Midlands	0.023	0.087
	(0.334)	(0.046)*
West	0.009	0.055
	(0.651)	(0.148)
Dublin	0.010	0.148
	(0.508)	(0.000)**
Mid-East	0.027	0.131
	(0.149)	(0.000)**
Mid-West	0.001	0.094
	(0.976)	(0.010)*
South-East	0.015	0.065
	(0.425)	(0.064)
South-West	0.021	0.114
	(0.217)	(0.000)**
2008	-0.010	0.014
	(0.235)	(0.338)
2009	-0.034	-0.036
	(0.000)**	(0.005)**
urb	0.005	0.002
	(0.536)	(0.873)
Age	0.000	0.009
	(0.917)	(0.149)
Age squared	-0.000	-0.000
	(0.574)	(0.042)*
born in Ireland	0.023	0.008

	(0.032)*	(0.611)
male	0.033	0.147
	(0.000)**	(0.000)**
Primary ed.	0.969	0.936
	(0.000)**	(0.000)**
Secondary ed1. (Group, inter. and junior certs. etc)	0.962	0.960
	(0.000)**	(0.000)**
Transition year ed.	0.945	
	(0.000)**	
Secondary ed2. (Leaving etc.)	0.915	0.963
	(0.000)**	(0.000)**
Technical/Vocational ed.	0.968	0.945
	(0.000)**	(0.000)**
Higher education Cert. Diploma	0.968	0.950
	(0.000)**	(0.000)**
Primary degree	0.955	0.950
	(0.000)**	(0.000)**
Professional degree	0.951	0.925
	(0.000)**	(0.000)**
Postgraduate cert./dipl	0.956	0.918
	(0.000)**	(0.000)**
Postgrad degree	0.951	0.917
	(0.000)**	(0.000)**
Doctorate	0.946	0.899
	(0.000)**	(0.000)**
Other	0.947	0.900
	(0.000)**	(0.000)**
currently married	0.008	-0.020
	(0.337)	(0.123)
union	0.064	-0.035
	(0.000)**	(0.013)*
5-10 workers	0.014	-0.008
	(0.404)	(0.705)
11-19 workers	-0.002	-0.005
	(0.916)	(0.817)
20-49 workers	0.081	-0.007
	(0.000)**	(0.696)
over 50 workers	0.055	0.024
	(0.000)**	(0.170)
Experience	0.002	0.007
	(0.343)	(0.031)*
Experience squared	-0.000	-0.000
	(0.707)	(0.439)

tenure years	-0.002	0.005
	(0.065)	(0.010)*
tenure squared	0.000	-0.000
	(0.109)	(0.023)*
Public administration		-0.099
		(0.011)*
Education		-0.091
		(0.008)**
Observations	3744	3799

P values in parentheses

\* significant at 5%; \*\* significant at 1%

### Appendix 9: JLC/REA wage rate as percentage of national minimum wage in April 2000 (Various occupations)\*

<b>Catering ERO (Dublin)</b>	<b>Hotels (excl Dublin &amp; Cork) ERO</b>	<b>Law Clerks ERO</b>	<b>Retail, Grocery &amp; Allied ERO</b>
<i>Cook</i>	<i>Cook</i>	<i>Managing clerk</i>	<i>General sales assistant and clerical worker</i>
108.0%	100.5%	158.6%	104.1%
<i>Short order cook</i>	<i>General worker over 20</i>	<i>Conveyancing clerk</i>	<i>Ancillary worker 18 or over</i>
97.1%	91.0%	141%	54.5%
<i>Counter assistant</i>	<i>House assistant</i>	<i>General law clerk 4 years</i>	
97.1%	84.6%	98.5%	
<i>Waiter/Waitress</i>	<i>Waiter/Waitress</i>	<i>Shorthand typist 4th year</i>	
85.3%	95.1%	95.7%	
<i>Barman</i>	<i>Barman/Barmaid</i>	<i>Messenger</i>	
90.8%	96.1%	87.8%	
<i>Clerical worker</i>	<i>Porter</i>		
82.9%	95.1%		
<i>General worker</i>	<i>Page</i>		
97.1%	67.2%		
<i>Cleaner/Wash up</i>			
90.8%			

\*Some of the JLCs currently in existence had not been formed at this date while others active at the time are no longer active so this is a sample of JLC/REA rates that were available in 2001 and are still in existence.

**JLC/REA wage rate as percentage of national minimum wage in April 2000  
(continued)**

*(Sectors with only one rate)*

<b>Agriculture ERO</b>	<i>19 and over</i>	94.1%
<b>Contract Cleaning Dublin</b>		95.9%
<b>Hairdressing Dublin ERO</b>	<i>Also get 10% commission</i>	87.1%
<b>Provender Milling ERO</b>		101.4%
<b>Security ERO</b>		105.7%
<b>Aerated Waters &amp; Wholesale Bottling ERO</b>	<i>Worker over 18</i>	99.8%
<b>Electrical REA</b>	<i>Trained 1st year</i>	217.7%