



**Submission by the Services Industrial
Professional Technical Union to the
Review of Joint Labour Committees**

March 2013

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1. Introduction

This is the written submission of the Services Industrial Professional Technical Union (SIPTU) to the Labour Court Review of the Joint Labour Committees which is being undertaken in accordance with the provisions of Section 11 of the Industrial Relations (Amendment) Act 2012.

SIPTU is a primary stakeholder in this review. SIPTU represents the interest of workers, their families and their communities across a broad range of industrial sectors. We are the largest trade union on the island of Ireland comprising some 200,000 members.

We are the workers' representatives, in accordance with section 37 of the Industrial Relations Act 1946, on each of the Joint Labour Committees under review.

SIPTU's position is that the Joint Labour Committee system should be retained -and in some cases reformed- in the following sectors:

- Hotels
- Catering
- Contract cleaning
- Security
- Agricultural Workers
- Hairdressing
- Law Clerks
- Retail, Grocery and Allied Trades

In respect of each of the aforementioned, our submission will make the case for why the system should be maintained in the sector. We devote a separate chapter to each sector in which we detail the specific case for retention of the system in that sector. Each chapter follows the same format; it responds to the particulars required of such a review as set out in the Industrial Relations (Amendment) Act 2012 Section 11 (b) to (g).

In the case of the Hotels and the Catering sectors we argue for a single amalgamated national Hospitality JLC or, failing that, the amalgamation of the existing two JLCs in each sector into one JLC with national coverage. In the case of both the Contract Cleaning and Security sectors we advise of the industry stakeholders' intention to register Registered Employment Agreements with the Labour Court and set forth the consensus view that JLCs should be established in the event that REAs cannot be registered or are cancelled. In respect of the Hairdressing JLC we contend that a single national JLC should be established. It is our view that the Agricultural Workers JLC, Law Clerks JLC and Retail, Grocery and Allied Trades JLC should be retained.

2. Key arguments for the retention of Joint Labour Committees

The primary justification for the retention of the JLC system is the absence of any other fair system of determining pay and conditions over and above the statutory minimum for the workers concerned.

Historically, the role of the JLC system, established under the Industrial Relations Act (1946), was to provide protection for workers employed in precarious sectors of the economy with a particular propensity for exploitation due to both the nature of the sector and low levels of trade union organisation.

Presently, there is no significant level of trade union density in the sectors under review. The prevalence of collective bargaining at enterprise level is extremely limited. In the absence of a JLC, workers employed in these sectors will not have an opportunity to engage in collective bargaining. There is no other industrial relations machinery in the State that can provide the mechanism by which workers and employers can engage in bargaining so as to set pay and conditions of employment.

Given the low levels of trade union membership and the unwillingness of the employers in sectors covered by JLCs to concede collective bargaining rights at enterprise level, the review should not consider abolition of JLCs until there is a change on the part of employers with a view to the issue of union recognition and collective bargaining rights in such industries and firms.

The JLC mechanism affords workers and employers the opportunity to collectively bargain on matters that pertain to an industry at a given point in time and to amend or remove provisions that are no longer relevant in a fair and efficient manner.

The JLC system is fair and efficient insofar as it allows workers to have their rights enforced as opposed to drawing down individual legislative rights with the knock-on effects for industrial harmony and on the cost and capacity of the State's industrial relations machinery to process such claims. JLCs are a good way for collectively vindicating worker's rights. In the absence of this measure, a heavy workload (possibly unmanageable), would soon come before the State's other industrial relations disputes settling machinery as workers would be required to enforce and establish their rights and entitlements on an individual basis, in industries and employments where there are no collectively established norms.

In accordance with the provisions of the European Social Charter and the norms of a developed and civilised society, workers in industries covered by JLCs have a right to the following:

- a wage level such as will give them and their families a decent standard of living;
- increased remuneration for overtime work;
- equal pay for work of equal value;
- just conditions of work in respect of working hours, annual leave and public holidays
- the right to bargain collectively

In 2013 the factors that gave rise to the establishment of JLCs in the first place remain prevalent. Workers in precarious employments in certain sectors continue to be exploited and abused, the vast majority are not covered by collective agreement at individual employment level and do not work in employments where a trade union is recognised for the purposes of collective bargaining.

Apart from the material conditions of wages and other matters in the areas vulnerable to sweated labour, the core issue addressed by statutory regulation of the labour market is the inequality of bargaining power between a worker and their employer. Despite the enactment of legislation to deal with worker protection, the inequality of bargaining power remains the enduring feature of our industrial landscape. In the precarious and low paid sectors which are the targets of such regulation, this inequality is even more accentuated.

Tony Wedderburn QC, a renowned labour lawyer, summarised the inherent inequality of bargaining power in the employment relationship as follows:

“for the common law assumes it is dealing with a contract made between equals, but in reality, save in exceptional circumstances, the individual worker brings no equality of bargaining power to the labour market and to this transaction central to his life whereby the employer buys his labour power.”¹

Absent the countervailing influence of independent trade unions and collective bargaining, the only other bulwark against the inequality of bargaining power in the workplace is the role of the State in statutory regulation of the protection of its citizens.

The majority of workers in the industries covered by JLCs are women. Women measurably outnumber men in the contract cleaning, hospitality and retail sectors. The mushroom sector of the agriculture industry almost exclusively employs women the majority of whom are also migrants. Any mechanism that would result in a lowering of income levels for women in industries covered by JLCs would be in direct contravention of Ireland’s

¹ Lord Wedderburn (1986). *The Worker and the Law*.

² Mason G. and Salverda W. (2010). “Low Pay: Living Standards and Employment” in Gautie J and J. Schmitt

obligations to reduce income inequality between women and men in accordance with European Social Policy.

Mason and Salverda's multivariate analysis, based on US and EU household panel data, found that the probability of being in low paid employment is greater for women relative to men, workers up to the age of 30, low skilled workers relative to the higher skilled and for migrants compared to those born in the country in question.²

SIPTU's experience over decades of organising and representing the interests of women in the Irish labour market shows that JLCs play a pivotal role in addressing overall wage equality between men and women. The latest figures from the EU Commission show that the gender pay gap in Ireland is 13.9% - in other words women in Ireland are paid almost 14% less than men.³ Any diminution in the labour market coverage of JLCs will certainly have the effect of widening the gender pay gap. Erosion in conditions of employment, say for instance in working hours or premia payment for unsocial hours, which would have been the subject matter of EROs would disproportionately affect working women.

The majority of migrant workers in the Irish labour market work in industries covered by JLCs (e.g. contract cleaning, catering, hotels, agriculture) and in industries covered by employment levels REAs (mushroom). Migrant workers are particularly vulnerable to exploitation due to their immigration status, lack of knowledge of their employment rights, language barriers and in extreme (but an increasing number of cases in Ireland) forced labour. There is evidence of very high levels of exploitation of migrant workers in particular industries. In its study of the restaurant industry in Ireland, the Migrant Rights Centre Ireland found staggering levels of worker exploitation. 53% of workers earned less than the minimum hourly rate, 45% worked 9 or more hours a day, 44% did not get rest breaks and 51% did not receive a pay slip.⁴ Lowering labour standards to bring about an increase in compliance by bad employers is not an acceptable response to workplace exploitation of vulnerable workers. The dismantlement, undermining or abolition of a JLC may very well improve the figures in respect of compliance in a particular sector (because very quickly the bar would be set so low) but it will do nothing to protect vulnerable workers from exploitation, the very reason that JLCs were set up and remain relevant today.

Labour market regulation is not the cause of unlawful behaviour by employers. Employers who act unlawfully should not be rewarded by changing the statutory mechanism to make their denial of workers' rights legal.

² Mason G. and Salverda W. (2010). "Low Pay: Living Standards and Employment" in Gautie J and J. Schmitt (eds). Low Wage Work in the Wealthy World.

³ Eurofound (2010). Addressing the Gender Pay Gap: Government and Social Partner Actions.

⁴ Migrant Rights Centre Ireland (2008). Exploitation in Ireland's Restaurant Industry.

SIPTU contends that the JLC/ERO mechanism remains as relevant as ever and that it continues to be transparently fair, in that it places the same obligations on all employers in a given industry or sector. This has the effect of taking wages out of competition and giving protection by providing a level playing pitch to those employers who want to give good employment, train and develop their staff and pay reasonably good rates of pay. However, it is this Union's considered view that an abolition or undermining of JLCs will disproportionately affect those employers that seek to afford their workers a reasonable rate of pay and conditions of employment, respecting their worker's rights, including their right to be a member of a trade union and to enjoy forms of collective bargaining even if it is delivered through the JLC system. The 2011 Independent Review dealt with this matter. The authors commented,

*"having regard to internal competition within 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."*⁵

The introduction of wages and conditions of employment as a competitive factor will, in the medium to long term, undermine industrial harmony and could lead to an increase in industrial disputes and days lost through industrial action. This point is well elucidated in the 2011 Independent Review of JLCs,

*"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."*⁶

This review should not be used as a means of removing the protections traditionally afforded by JLCs as part of a wage deflationary race to the bottom, rather it should be used as an opportunity to protect these low-paid workers, whilst at the same time reforming the mechanisms to put in place well designed measures to deal with the needs and requirements of any individual sector or industry.

Maintenance of JLCs in the sectors under review will act as an efficiency wage and as such has the potential to increase and not lower total employment levels in the industry.⁷ By

⁵ Report of the Independent Review of ERO and REA Wage Setting Mechanisms (2011), p. 48.

⁶ Report of the Independent Review of ERO and REA Wage Setting Mechanisms (2011), p. 35.

⁷ Taylor and Rebitzer (1995) find evidence to suggest that efficiency wages can lead to higher employment levels due to increasing returns to scale from lower supervisory costs. Georgiadis (2008). Efficiency wages and the economic effects of the minimum wage: evidence from a low wage labour market. Centre for Economic Performance Discussion paper no. 857 February 2008. In the paper, the

setting a JLC pay rate above the national minimum wage, employers incentivise staff loyalty and higher quality output thereby reducing supervisory costs particularly in industries that depend on workers operating in small atomised units or where workers are crucial in the delivery of consistent and quality brand experiences. Furthermore, efficiency wages improve staff retention, reduce staff turnover⁸ and they significantly reduce staff search and related industrial relations costs. Any differential between the JLC and the national minimum wage is offset over the medium term by lower labour turnover and recruitment costs.

For workers, the effective functioning of a JLC is very important given the different “time preferences” as reflected in the bargaining power of low wage workers relative to the employers. Binsmore, Rubinsten and Wolinsky’s⁹ work on time preference elucidates the power imbalance that exists where workers with low earnings by necessity spend all they earn and have little or no financial backstop in order to bargain or threaten withdrawal of labour.

Labour market demand is derived from the demand for a firm’s goods and services and the labour share of the producer’s price is an important feature in determining the impact of a change in wages. With the exception of contract cleaning, hairdressing and security services, each of the sectors under review have labour share less than 35% of their total costs.

The JLC system is an integral part of Ireland’s industrial relations framework and it has undoubtedly played a pivotal role in the maintenance of industrial peace in those industries over the decades. SIPTU contends that the JLC system, in providing the architecture for the orderly conduct of industrial relations and collective bargaining across a broad range of industries, has made a significant contribution to the promotion of industrial harmony across the labour market.

SIPTU contends that previous reviews of JLCs have demonstrated the willingness of the employee side to address the concern of the employers, on an across the board basis and at an individual JLC level, delivering changes that have been to the benefit of the industry, to the employers equally and to the sector in its entirety.

The JLC system demonstrated itself to be agile and responsive to the needs of the economic and trading circumstances of particular industries at a given point. Recent changes to the Agricultural Workers ERO in respect of working hours and premium payments; changes to the Catering ERO in respect of wage rates and overtime and changes to the Hotels ERO in respect of Sunday payment are all cases in point.

author assesses the efficiency wage hypothesis in a case study of the low paid residential care home sector in the UK and finds evidence to suggest a non-negative employment effect in the sector of a minimum wage.

⁸ Akerlof and Yellen (1990). Efficiency wage models in the Labor Market. New Jersey, CUP.

⁹ Binsmore K., Rubinsten A., and Wolinsky A (1986). “The Nash bargaining solution in economic modelling” in The Rand Journal of Economics, 17, 176-188.

One of the arguments put forward by the opponents of the JLC system is that the existence of employment legislation and a national minimum wage makes the JLC mechanism unnecessary. However, the body of primary employment rights legislation currently in force does not adequately cover all matters which were dealt with in Employment Regulation Orders e.g. start and finish times, sick pay schemes, overtime and premium rates, board and lodgings. As the 2011 Independent Review clearly found, “these are matters which are not covered by primary legislation.”¹⁰ The report went on to say,

“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 hours, shift premiums and overtime payments including the circumstances in which they should apply.”

The impact on employment levels of sectoral minimum wages is at best ambiguous and there is no clear evidence to suggest the demand for labour declines as sectoral wages increase and studies that focus on specific sectoral minimum wages find no negative effect on employment.¹¹ There is, however, evidence that statutory minimum wages have zero or positive effects on employment and can actually enhance economic efficiency. For instance, the Low Pay Commission in Britain found that the minimum wage had no impact on numbers employed.¹²

The Report of the Independent Review of EROs and REAs undertook an extensive review of the literature on the impact on employment levels of wage setting mechanisms. They concluded that, “lowering the basic JLC rates to the level of the minimum wage is unlikely to have a substantial effect on employment.”¹³

Labour market deregulation and further reductions in workers’ incomes would have a deflationary effect by lowering demand. Low wage workers have a high propensity to consume. They spend a high percentage of their income. In fact, low wage workers are often forced to borrow to spend. Even a small cut in the income of workers covered by JLCs, which account for up to a quarter of all workers, will have a measurable effect on demand in the domestic economy which accounts for about 70% of Gross Domestic Product.

¹⁰ Report of the Independent Review of ERO and REA Wage Setting Mechanisms (2011), p. 35.

¹¹ Böckerman, P., & Uusitalo, R. (2009). Minimum Wages and Youth Employment: Evidence from the Finnish Retail Trade Sector. *British Journal of Industrial Relations*, 47(2), 388-405. Dickens, R., Machin, S., & Manning, A. (1999). The effects of minimum wages on employment: Theory and evidence from Britain. *Journal of Labor Economics*, 17(1), 1-22.

¹² Kaufmann, B. (2009). Promoting Labour Market Efficiency and Fairness through a Legal Minimum Wage: The Webbs and Social Cost of Labour. *British journal of Industrial Relations*, 47 (2). Metcalf, D. (2007). Why has the British National Minimum Wage Had Little or No Impact on Employment. <http://ideas.repc.org>

¹³ Report of the Independent Review of ERO and REA Wage Setting Mechanisms. 2011, p. 32.

The cost to the Exchequer of financing additional social welfare payments e.g. Family Income Supplement for workers and their families who would be eligible by means of a reduction in household income would be considerable. Wage rates in industries covered by EROs are not high relative to other EU member states and major trading partners. In fact, the independent think tank TASC has pointed out, using EU Klems data, that wage rates in the hospitality sector in Ireland are the third lowest in the EU15.¹⁴

The system of industrial relations in the Republic of Ireland is voluntarist, and steered toward the maintenance of industrial peace and the promotion of harmonious relations between workers and their employers, and the state plays its role by providing mechanisms to assist both sides achieve this objective, such as The Rights Commissioner Service, The LRC and The Labour Court of which the JLC is a significant component.

Whilst the JLC system is an exception to the normal voluntarist system in that it can set legally enforceable pay and conditions by way of an ERO, it is beyond doubt that the JLC system has played a very significant role in the achievement of these objectives. This has been acknowledged by the Labour Court and its Annual Report of 2008 it states-

“The legal provisions underlying both REAs and EROs have, for over 60 years, performed a very important function within our national industrial relations framework by providing a mechanism for the negotiation of terms and conditions of employment in the sectors concerned. In the case of EROs in particular, the system provides a mechanism for regulation at the lower-paid end of the labour market. The State apparatus for employee protection has, of course, changed considerably in the intervening period since REA’s and EROs first came into being. It is noteworthy that the arrangements which they provide are still supported by employers and workers in a wide range of sectors”.

¹⁴ Tasc (2011). A Square Deal? The Real Cost of Making a Meal in the Restaurant Sector. See appendix 1.

3. Hospitality

This chapter relates to the following four JLCs which come within the remit of the current review:

- Hotels (Dublin and Dun Laoghaire) JLC - established 1997
- Hotels (Other excluding Cork) JLC - established 1965
- Catering (Dublin and Dun Laoghaire) JLC - established 197
- Catering (Other) JLC - established 1993

Consistent with the main conclusions of the 2011 Report of the Independent Review of EROs and REA Wage Setting Mechanisms, SIPTU believes that the JLC system should be maintained in the aforementioned sectors and that the reform agenda envisaged in that Review could best be achieved by means of the consolidation of the four JLCs into a single national JLC for the hospitality sector.

SIPTU accepts the finding of the 2011 Report that reform of the JLC framework would potentially provide all stakeholders with a better, more responsive mechanism for determining the pay and conditions of workers in these sectors.

Moreover, we accept Recommendation 2 of the 2011 Review which states that,

“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.”¹⁵

In our view, the mechanism that would best meet the reform agenda articulated in the 2011 Report of a *“well designed framework”* that is *“more flexible and responsive to the needs of particular sectors”*¹⁶ is the establishment of a new Hospitality JLC that would bring the existing four JLCs listed above within the scope of a single national JLC. We would contend that reform by way of removal of the geographical distinction between the two existing Catering JLCs as well as the two existing Hotels JLCs and their consolidation into a combined Hospitality JLC would provide a better and more responsive framework for the entire sector.

¹⁵ Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms (2011), page 4.

¹⁶ Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms (2011), page 3.

SIPTU contends that the establishment of a Hospitality JLC would provide for equality of treatment and equality of access for workers involved in the same work albeit in different establishments to engage in collective bargaining so as to deliver enforceable statutory minima in respect of pay rates and conditions of employment.

We believe that one national Hospitality JLC would also address another conclusion of the 2011 Report that,

“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.”¹⁷

The establishment of a Hospitality JLC would assist in the creation and maintenance of a level playing pitch between hospitality market segments that are in direct competition for business in the catering, bar and hotel sectors.

Therefore, we would argue that the scope of a new national Hospitality JLC should include all workers involved in:

- a) The preparation of food and drink
- b) The service of food and drink
- c) The provision of and the upkeep of the living accommodation
- d) The retail sale of goods
- e) Work incidental to the above
- f) Work performed at any office, or at any store or warehouse or similar place
- g) Work involved in the delivery of hotel leisure activities
- h) Work involved in front of house / reception duties
- i) Work incidental or support to any of the above functions.

The scope of a Hospitality JLC should cover workers employed in hotels, restaurants, cafes and bars and contract catering companies.

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

¹⁷ Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms (2011), page 3.

The inclusion of the bar trade within the scope of the establishments covered by a Hospitality JLC would ensure that there is a level playing pitch in terms of pay and conditions of employment across the competing market segments. These establishments employ the same categories of workers trained and skilled to the same level and undertaking the same core duties as chefs, bar staff, waiting staff and kitchen porter / general operative staff.

In conclusion, SIPTU is in favour of the establishment of a new national Hospitality JLC which would encompass the hotels sector and the catering sector (including restaurants, cafes, bars and the contract market segments).

However, in the event that the Labour Court Review does not concur, SIPTU contends that a JLC should be maintained in the hotels sector and a JLC should be maintained in the catering sector. In chapters 3 and 4 of this submission we set forth the reasons why it is imperative that the JLC mechanism is retained in these sectors.

4. Hotels

This chapter relates to the Hotels JLCs. Currently there are two Hotels Joint Labour Committees as follows:

- Hotels (Dublin and Dun Laoghaire) JLC - established 1997
- Hotels (Other excluding Cork) JLC - established 1965

In the event that the Review does not call for the establishment of a national Hospitality JLCs as outlined in the previous chapter, SIPTU contends that reform by way of removal of the geographical distinction between the two existing Hotels JLCs would provide a better and more responsive framework for this sector. A single national Hotels JLC is preferable to the current situation whereby there are two JLCs covering different geographical areas.

The most recent Employment Regulation Order agreed for this sector was established by order in September 2009 by the Hotels JLC (other excluding Cork) and both this JLC and the Hotel JLC (Dublin and Dun Laoghaire) were reviewed by the Labour Court as part of the Towards 2016 - Modernisation of Joint Labour Committee System.

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

- (i) the Committee was established***
- or***
- (ii) The last review under this Section was carried out***

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

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

In the cities of Dublin and Cork there has been a discernible change in the manner in which workers' pay and conditions of employment are determined. Historically, these cities did

not fall within the geographical scope of the JLC. Due to higher than average levels of union density, employers and unions engaged in collective bargaining to set and influence the pay and conditions of employment of hotel workers in these cities. However, over the past two decades, the employers in these locations have significantly de-unionised the sector and have ceased to engage in collective bargaining. This has resulted in a situation where the pay and conditions of employment for workers in these locations has been eroded to the level of the National Minimum Wage. There is no longer an effective mechanism to enable these workers to collectively bargain in order to advance their legitimate interest for reasonable pay and conditions of employment. In the absence of collective bargaining, hotel workers in these locations require a JLC to determine pay and conditions of employment beyond statutory minima.

In order to ensure equality of treatment and access to the pay and conditions contained in any future Hotels Employment Regulation Order, SIPTU contends that what is warranted going forward is a JLC mechanism for hotel workers which is national in its geographical scope.

What has not changed to any significant extent, save for one element, is that the workforce in this sector continues to be characterised by what was referred to by O’Sullivan and Wallace in their 2011 study on Minimum Labour Standards as “low road” jobs.¹⁸ “Low road” employments are characterised by a high percentage of female workers; a high percentage of part-time work; lower educational attainment; lower availability of in-house training and lower levels of trade union density.

The one element that has changed since the establishment of the JLCs for the hotels sector is that its workforce is increasingly migrant, a factor that is fully consistent with the characteristic of ‘low road’ jobs. In the third quarter of 2012, over 33% of workers in the sector were of non-Irish nationality.¹⁹

What remains constant is the need to include all workers involved in the core activities of hotel services within the scope of the JLC. SIPTU contends that the scope of a Hotels JLC should provide coverage for all workers in the following categories:

- a) The preparation of food & drink
- b) The service of food & drink
- c) The provision of and the upkeep of the living accommodation
- d) The retail sale of goods
- e) Work incidental to the above
- f) Work performed at any office, or at any store or warehouse or similar place
- g) Work involved in the delivery of hotel leisure activities

¹⁸ O’Sullivan, M. and Wallace, J. (2011) Minimum Labour Standards in a Social Partnership System - the Persistence of the Irish Variant of Wages Councils, *Industrial Relations Journal*, Vol. 42, No. 1: 18-35

¹⁹ Central Statistics Office (2012) Quarterly National Household Survey. Quarter 3 2012.

- h) Work involved in front of house / reception duties
- i) Work incidental to any of the above functions.

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

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

While the global hotel industry had seen a shift in consumer and business demand towards trading down to more budget friendly accommodation options,²⁰ it appears that Ireland has bucked this trend with diversification into leisure and business services as well as increased occupancy in the higher end hotels.

Ireland's improved competitiveness within the international industry was reflected in a significant improvement in Ireland's ranking in the World Economic Forum's Travel and Tourism Competitiveness survey 2011. In a survey of room rates in first class branded hotels, Ireland were ranked 7th of the Eurozone countries in 2009, behind Estonia, Slovenia, Slovakia, Austria, Malta and Germany and was significantly ahead of the UK, US and France.²¹ This has generated increased profitability in the sector.

Irish industry analysts, Crowe Horwath, in their 2012 annual survey of hotels found that five star hotels registered the largest increase in profitability, with growth in the order of 65.4% in pre-tax profit per available room, followed by a significant increase in the four star sector.²²

²⁰ Deloitte (2011). Hospitality 2015. Game Changers or Spectators.

²¹

World Economic Forum (2011). Travel and Tourism Competitiveness Survey.

²² Crowe Horwath (2012). Ireland and Northern Ireland Industry Survey.

In the first nine months of 2012, demand for hotels rooms in the Irish market was up 5% on the same period in the previous year²³ and while there was a fall in UK tourist traffic, there was strong revival in the number of visitors from North America and Continental Europe. This marked recovery is borne out by data from the Central Statistics Office Service Index which shows a 9.3% increase in the value of hotel services in the larger hotels (100+ staff) provided over the 12 months of 2012.²⁴

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

Dublin outperformed other geographical regions in terms of revenue generated. It registered an annual increase of 16.2% in RevPAR to November, 2012.²⁵ This overall pick up was confirmed by Failte Ireland's tourism barometer, which reported that 79% of hotel businesses reported profits staying still or increasing in 2012.²⁶ Furthermore, the improvement in market conditions has been reflected in recent times by longer term leases being negotiated for some of Dublin's largest hotels, beyond the one year terms that were agreed during the worst years of the economic crisis.

Debt sustainability remains one of the chief concerns in the hotel sector. Crowe Horwath²⁷ estimate that as many as 300 (40%) of hotels require refinancing and note that total loans attaching to the Irish hotels sector are something in the order of €6 to €6.7 billion.

As of July 2012, 121 hotels were under the control of NAMA and it is expected that the pace of insolvency in the industry is likely to accelerate over the coming months with the expiry of specific tax reliefs and schemes operating in the sector.²⁸

Given the scale of the debt overhang in the industry, it is clear that no amount of reduction to the cost base would be sufficient to meet the debt servicing needs of many hotels and a clear distinction must be made between longer term solvency issues relating to hotel businesses and the day to day operational liquidity and profitability. In 2011 net margins across all hotel classifications nationally averaged a healthy 12.9%. An increase is expected in 2013 based on last year's occupancy and pricing results.²⁹ Furthermore, hotels have continued to generate positive EBIDTA (earnings before interest tax and depreciation).

²³ Failte Ireland (2012). Occupancy Statistics January to September, 2012.

²⁴ Central Statistics Office (2012). Monthly Services Index.

²⁵ STR Global (2012). Europe Results for November. December 2012. <http://www.hotelnewsnow.com>

²⁶ Fáilte Ireland (2012). Tourism Barometer, December 2012.

²⁷ Crowe Horwath (2012). Ireland and Northern Ireland Industry Survey, July 2012.

²⁸ Crowe Horwath (2013). Hotel, Tourism and Leisure Review Q1 2013.

²⁹ Crowe Horwath (2012). Ireland and Northern Ireland Industry Survey, July 2012.

However, post boom time margins are wholly insufficient to cover debt servicing payments. Aherne reports that the average interest coverage ratio in hotels has fallen below 1 since 2009.³⁰

Section 11 3 (c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

- (i) The Committee was established***
- or***
- (ii) The last review under this Section was carried out***

SIPTU contends that the enterprises to which a JLC for the hotel sector should apply are:

- a) Any premises registered as a hotel
- b) Licenced premises providing accommodation, normally available for sleeping – accommodation for travellers, of greater than ten

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of non-compliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional³¹ and has been the case with other forms of minimum statutory legislation since.

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

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. Whilst we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a

³⁰ Aherne A. (2012). Proposals to restore financial sustainability in the Irish Hotel Industry - report for the Irish Hotels Federation.

³¹ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

more extensive enforcement system. SIPTU contends that going forward the JLC wage setting mechanism will require an Inspectorate resourced to at least the equivalent levels as were in as of July 2011.

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

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

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

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

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

SIPTU contends that the impact on employment levels in the hotel sector from the introduction of a wage floor will be negligible. This will be influenced by a number of key industry features:

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

The Irish hotel industry is made up of a number of chain operators who account for a quarter of the establishments but more than two-thirds of hotel sales.³² Independent operators account for the remainder of the establishments. With consolidation on-going in the industry, it is widely expected that the hotel market will become increasingly dominated by a small number of large chains. Increased market dominance in local labour markets, particularly in areas outside of Dublin, and at a time when there is a large excess labour supply will mean greater power for employers to suppress wages at the local level. Despite fierce price competition between competitors, the industry has largely proven itself to be a

³² Bord Bia (2010) Channel Opportunities in Irish Food Service Sector.

price setter. In the 12 months following the reduction in Value Added Tax (VAT) in June 2011, just under 22% of the effective 4.1% VAT reduction was passed onto consumer prices. Similarly, there was less than 1% of a reduction in room rates during the off-peak season between the last quarter of 2011 and the last quarter of 2012.

Impact on employment levels depends on the combination of the price elasticity of demand for the service provided and the percentage share of labour in total costs. Studies differ on the elasticity of the hotel and hospitality sector, but the evidence over the course of 2012 suggests that while room rates fell by less than 1% across the 12 months, occupancy increased by 5% over the first 9 months of the year.³³ On the face of it, this suggests that the sector is highly price elastic. However, hotel room capacity contracted by 3% over the same period.³⁴ Employment in the sector increased by 6,800 to 50,100 over the 12 months to quarter 3 of 2012 (non-seasonally adjusted).

Payroll relating to accommodation, food and beverage within the hotel sector accounts for 31.4% of total revenue.³⁵ Within each department in a hotel, just over a third of the cost in food and beverages is attributable to labour costs, with the payroll accounting for just over a quarter of room costs. Standardisation of the sectoral minimum wage to apply to all hotels nationally implies an increase for some hotel workers in the order of 5% or just €0.44 per hour per employee, which in turn would account for just 1.5% of the value of total output in the sector (in basic prices). With net margins averaging 12.9% in 2011, the hotel sector would be well capable of absorbing a 1.5% increase in its cost base.

Sustained competitiveness in the sector depends on a well-trained, experienced, stable workforce. Deloitte report that research consistently shows that “high employee engagement is correlated with customer satisfaction, customer retention and corporate performance.”³⁶ Based on 2012 figures and relative to other sectors, the rate of job churn across the accommodation and food and beverage sector in Ireland is over 1.5 times the economy’s average.³⁷ The high rate of job churn is strongly correlated with the rate of pay and terms and conditions that prevail in the industry, which are typically at or close to the National Minimum Wage. Again Deloitte note the cost associated with high employee turnover and the negative impact on brand consistency.³⁸

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

³³ Fáilte Ireland (2012). Accommodation Occupancy Statistics Jan. to Sept. 2012.

³⁴ *ibid.*

³⁵ Crowe Horwath (2012). Ireland and Northern Ireland Industry Survey, July 2012.

³⁶ Deloitte (2010), Deloitte (2011), Hospitality 2015. Game Changers or Spectators.

³⁷ CENTRAL STATISTICS OFFICE Business demography data, 2010.

³⁸ Deloitte (2010), Deloitte (2011). Hospitality 2015. Game Changers or Spectators.

rates will still form part of a JLC. Labour demand for new entrants into a sector is largely determined by the rate of job churn and while the rate may have slowed over the course of the economic recession, the rate for the hotel sector remains well above the economy wide average. Furthermore, labour demand for new entrants is reflected in the number of vacancies in the sector and the 2012 Fás/EGFSN report on vacancies highlights demand for hospitality occupations with a sizable share of these requiring no minimum experience.³⁹

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

Section 11 3 (g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

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

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

The purpose of the JLC system is to give protection to low-paid vulnerable workers in sectors of the economy where there are low levels of trade union density and where they cannot enjoy the benefits of the protections afforded to workers in other sectors of the economy where trade unions and employers engage in collective bargaining. SIPTU believes that in the hotels sector the circumstances that gave rise to the establishment of a JLC in the first place continue to prevail today.

SIPTU believes that the 2011 Report of the Independent Review of ERO and REA Wage Setting Mechanisms (p.3) provides the hotels sector stakeholders with a roadmap on how to proceed when it states that,

³⁹ EGFSN/Fás(2012) Vacancies Overview 2012. It records that 5% of all vacancies reported to the Dept. of Social Protection/Fás in 2012 were for kitchen and catering assistant occupations. Within the demand for elementary occupations across all sectors, some 13% of vacancies required no minimum experience.

“Our recommendations are intended to provide an effective mechanism by which they {the industry stakeholders} can attain necessary change through agreement or, in default of agreement, by independent adjudication.”

We would advocate that the parties to a Hotels JLC are best placed in that forum to address by way of collective bargaining their respective legitimate interests. This point is noted by Michelle O’Sullivan and Joseph Wallace in their 2011 study on Minimum Labour Standards, when they refer to employer dissatisfaction with operational issues relating to the JLC system as opposed to dissatisfaction with retention of the JLC system in principle. They further report that the Irish Hotels Federation suggested that the JLC system was “the most appropriate system for setting minimum wages and suggest its extension, if needed.”⁴⁰

Some commentators have advocated for the abolition of the JLC system on the basis that workers’ rights and interests are sufficiently protected by the body of employment legislation that is now on the Statute Book. However, it is not correct to argue that primary employment legislation adequately covers issues in respect of pay and conditions which were dealt with by EROs.

A critical justification for the retention of a JLC for the hotels sector, and indeed its extension to have national coverage, is that the Hotels JLC allowed the parties to engage and bargain collectively on matters over and above pay rates, such as: working hours, overtime, starting and finishing time and sick pay.

It needs to be borne in mind that the JLC system has played a significant role in the development and maintenance of a peaceful and stable industrial relations environment in the sector concerned. By providing the architecture for the orderly conduct of industrial relations, the JLC enables employers and unions to settle disputes of interest. Without a JLC system for this industry, wages and conditions of employment will likely become a competitive factor for employers, and this in turn will lead to industrial unrest as workers will no doubt have to agitate to achieve the right to engage in collective bargaining in order to try and have some influence over the conditions under which they will be forced to work. Such a scenario would not be consistent with a desire to maintain harmonious industrial relations in the hotels sector.

In conclusion, the fixing of statutory minimum remuneration and of statutory conditions of employment is not, and will not be, prejudicial to the exercise of collective bargaining. In fact, fixing such remuneration and statutory conditions through a JLC for the industry is the only means by which collective bargaining will take place.

⁴⁰ O’Sullivan, M. and Wallace, J. (2011) Minimum Labour Standards in a Social Partnership System - the Persistence of the Irish Variant of Wages Councils, *Industrial Relations Journal*, Vol. 42, No. 1: 18-35

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

As stated previously, SIPTU believes that there is a need for reform in this area, and there should be one national JLC thereby negating the need for geographical segregation.

5. Catering

This chapter related to the Catering JLCs. Currently there are two Catering Joint Labour Committees as follows:

- Catering (Dublin and Dun Laoghaire) JLC - established 1976
- Catering (Other) JLC - established 1993

In the event that the Review does not call for the establishment of a national Hospitality JLC as outlined in chapter 3, SIPTU contends that reform by way of removal of the geographical distinction between the two existing Catering JLCs would provide a better and more responsive framework for this sector. A single national Catering JLC is preferable to the current situation whereby there are two JLCs covering different geographical areas. This is wholly consistent with Recommendation 2 of the Independent Report on EROs and REAs.⁴¹

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

- (i) the Committee was established***
- or***
- (ii) The last review under this Section was carried out***

The most recent Employment Regulation Order for the catering sector was established in June 2009.

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

⁴¹ Report of the Independent Review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms (2011), page 4.

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

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

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

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

SIPTU submits that the scope of a retained JLC for the catering sector should be extended to include all workers involved in the activities listed above in the establishments identified including in the industrial contract catering segment of the sector.⁴²

SIPTU contends that extending the scope of the JLC to give coverage to the industrial catering sector will give protection to a vulnerable group of workers who also meet the essential criteria of needing a JLC insofar as:

- a) There are no significant levels of trade union density across this segment of the sector
- b) There is no industry-wide prevalence of collective bargaining that has the effect of regulating minimum wage rates and conditions of employment
- c) This is a segment of the catering sector where contracts are secured by way of competitive tender. All too often employers compete on the basis of undercutting pay rates and other conditions of employment including working hours.

Crucially, also, extending coverage to this segment of the sector will ensure protection is afforded to both the employers and workers from the risks associated with the implementation of the Posted Workers Directive

Over the past decade, growth in the catering / food service sector outpaced the rise in Irish GDP with a very significant increase in the number of establishments and operators across all components of the industry. 22% increase in total sales between 2003 and 2008 was

⁴² Industrial catering is sometimes referred to as 'institutional catering.'

reversed between 2008 and 2011.⁴³ However since then the food service industry recorded a return to growth with a 6.8% increase in the value of sales in 2012 compared to the same 12 months in 2011.⁴⁴

Recovery has been driven in part by rationalisation within the industry. Increased consolidation through the acquisition of businesses by a number of multinationals has meant a move towards larger operations, particularly in the industrial/institutional contract catering sector (hereafter this segment will be referred to as 'contract catering'). Based on 2009 data, this sector accounted for 12% of total turnover in the industry but this share is expected to grow in future years.⁴⁵ The three largest players in that part of the industry now account for 90% of the value of sales in that area.⁴⁶ There is a strong correlation between general economic conditions and the performance of the contract catering sector. Throughout the second half of 2012, there has been a significant pick up in the performance of a number of market services to the industry. Further improvement in the profitability of these customers is expected which will further drive demand for contract catering in future years.

Based on 2009 figures, the commercial/restaurant segment accounts for the remainder of the sector's revenues. The economic downturn resulted in a shift in the composition of demand within this sector away from the middle market (which was considered to be expensive) towards quick service restaurants, on the go food and beverages and take aways. A small number of chains dominate this part of the market. This sector experienced a relatively small decline of just over 3% between 2008 and 2011. It has responded by diversifying their locations to leisure, retail and travel sites and it is expected to be the best performing of all sectors within the food service industry over the coming years.

The conventional restaurant accounts for 15% of the value of the sector and has had to undergo significant rationalisation. In their report for Bord Bia, food service industry experts Pro Intal note that that restaurant sector was traditionally heavily dependent on business custom, on strong tourism numbers and was increasingly dependent on growing consumer expenditures to sustain business. As a result, the sector was very ill-equipped to deal with the downturn when it occurred. However, Bord Bia's assessment is that this sector has now stabilised and will grow, albeit at a marginal pace out to 2015.⁴⁷

The reduction in the PRSI/tax wedge and the rate of VAT chargeable on food services supplied by the industry has also contributed to this recovery. Less than 30% of the

⁴³ Bord Bia (2012), Irish Foodservice Market Directory, 2012.

⁴⁴ Central Statistics Office, Monthly Services index, 2012

⁴⁵ Bord Bia (2010) Channel Opportunities in Irish Food Service Sector.

⁴⁶ Ibid.

⁴⁷ Bord Bia (2012), Irish Foodservice Market Directory, 2012.

effective 4.1% VAT reduction introduced in July 2011 has been passed on to consumer prices in restaurants, cafes, fast food and take-aways. This, of course, has helped bolster profitability in the sector.⁴⁸ The halving of PRSI for employees earning under €356 per week in 2011 has also ensured a reduction in the pay bill of most companies and there is evidence to suggest that some displacement of hours has taken place in response to this PRSI change and is reflected in a significant shift towards part-time work in the sector. While there was a net increase of 2,000 jobs across the accommodation, food and beverage sector between quarter 3 of 2011 and quarter 3 of 2012, this masked a drop of 3,800 full-time jobs across the hospitality industry and an increase of 5,800 part-time positions.⁴⁹ Within the food and beverage service part of this industry, on-going rationalisation is reflected in the overall drop in employment of 4,800 down to 73,000 between quarter 3 of 2011 and quarter 3 of 2012.⁵⁰

Feedback from consultation with the leading players in the food service industry cites commodity price increases as one of the main challenges facing the industry.⁵¹ Beef alone accounts for 36% of the typical total produce bill.⁵² The consumer price index is a useful proxy for wholesale food service prices and over the course of 2012, beef prices increased by 7.5%. Furthermore, the industry faces on-going problems with upward only rent reviews plus the continued increase in commercial rates in almost two thirds of local authorities over recent years.

Section 11 3 (c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

- (i) The Committee was established***
- or***
- (ii) The last review under this Section was carried out***

SIPTU contends that enterprises to which a retained JLC for the catering sector should apply are all establishments in the State where workers are employed in:

- a) The preparation of food and drink
- b) The service of food and drink
- c) Work incidental to the above and performed in any establishment.

⁴⁸ Based on comparison June 2011 to Jan. 2013. Source: Central Statistics Office (2013) Consumer Price Index.

⁴⁹ Central Statistics Office (2012), Quarterly National Household Survey.

⁵⁰ Central Statistics Office (2012) Quarterly National Household Survey (non-seasonally adjusted).

⁵¹ Bord Bia (2012). Irish Foodservice Market Industry Feedback. (James Burke and Associates).

⁵² Bord Bia (2010) Channel Opportunities in Irish Food Service Sector. June 2010.

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of non-compliance by employers with EROs and other statutory legislation.⁵³ Research undertaken by the Migrant Rights Centre Ireland and Tasc provides further evidence of non-compliance as does the volume of rights-based cases taken by SIPTU advocates in the sector.⁵⁴

However, there was employer non-compliance prior to the High Court decision of July 2011 declaring EROs unconstitutional⁵⁵ and has been the case with other forms of minimum statutory legislation since.

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

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. Whilst we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that going forward the JLC wage setting mechanism will require an Inspectorate resourced to at least the equivalent levels as were in as of July 2011.

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

There have been no adjustments made to the statutory minimum remuneration and statutory conditions of employment since July 2011. This is because the Catering JLC cannot establish an ERO, the existing one is not enforceable and the only statutory provisions giving protection to the workers in this sector are those covered by primary legislation.

⁵³ National Employment Rights Authority (2011) Review of 2011. National Employment Rights Authority (2012). Review of 2012.

⁵⁴ Tasc (2011). A Square Deal? The real cost of making a meal in the restaurant sector. See appendix 1. Migrant Rights Centre Ireland (2008). Exploitation in Ireland's Restaurant Industry.

⁵⁵ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

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

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

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

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

Operators within the catering industry are by and large price setters. As has been stated above, less than 30% of the VAT rate reduction introduced in 2011 was passed on to consumers by the food service industry made up of restaurants, cafes, fast food and take away establishments. Contract catering companies have actually increased prices by 1.8% during this period.⁵⁶

While restaurants and bars are made up of a large number of independent establishments, they retain oligopolistic price setting power as they provide differentiated services to the market. Quick service restaurants are dominated by chain operators which account for two thirds of all turnover in that particular sector. Similarly, the contract catering sector is dominated by a small number of very large players, with the three largest operators accounting for 90% of total market turnover.⁵⁷

Impact on employment levels depends on the combination of the price elasticity of demand for the service provided and the percentage share of labour in total costs. Various studies differ on the elasticity of the catering sector, but the evidence between July 2011 and December 2012 suggests that while prices fell by 0.9% over the period, the value of services purchased grew by 6.8%. On the face of it, this suggests that the sector is highly price elastic, however this masks a recovery in the value of sales from a very low base. On-going restructuring of the sector has meant that it continues to experience job cuts while demand for services has improved.

⁵⁶ Central Statistics Office (2012) Consumer Price Index.

⁵⁷ Bord Bia (2012), Channel Opportunities in Irish Food service sector.

Compensation per employee across the accommodation, food and beverage sector accounts for just 31.6% of the value of total output in producer prices in the industry.⁵⁸ A rise in the sectoral minimum wage to previous JLC levels implies an increase in the order of 7.6% or just €0.66 per hour per employee, which in turn would mean an increase of just 2.4% of total costs.

Sustained competitiveness in the sector depends on a trained, experienced workforce and this is a point recently highlighted by an employer body in the Industry. “Professionalism of the service giver is a major factor in the quality of the service. Personnel who know how to do their job have self-confidence which translates into good interpersonal relations between the service provider and the service receiver.”⁵⁹ Relative to other sectors, the rate of job churn across the accommodation and food and beverage sector is over 1.5 times the economy’s average based on 2010 figures.⁶⁰ The high rate of job churn is strongly correlated with the rate of pay and terms and conditions that prevail in the industry, which are typically at or close to the National Minimum Wage.

A re-established Catering JLC or newly established Hospitality JLC is likely to have little or no impact on entry level employment levels. Training rates will still form part of a JLC. Labour demand for new entrants into a sector is largely determined by the rate of job churn and while the rate may have slowed over the course of the economic recession, the rate for the hotel and catering sector remains well above the economy wide average. Furthermore, labour demand for new entrants is reflected in the number of vacancies in the sector and the 2012 Fás/EGFSN report on vacancies highlights demand for hospitality occupations with a sizable share of these requiring no minimum experience.⁶¹

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

Section 11 3 (g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

SIPTU contends that within this sector there is no prevalence of collective bargaining between workers and their employers at any level and the JLC system is the only means by

⁵⁸ Central Statistics Office (2008) Supply and Use Tables.

⁵⁹ Restaurants Association of Ireland (2012). Pre Budget Submission 2013.

⁶⁰ Central Statistics Office (2010) Business Demography Data.

⁶¹ EGFSN/Fás(2012) Vacancies Overview 2012. It records that 5% of all vacancies reported to the Dept. of Social Protection/Fás in 2012 were for kitchen and catering assistant occupations. Within the demand for elementary occupations across all sectors, some 13% of vacancies required no minimum experience.

which workers can bargain to achieve any legitimate interests and rights above the mere National Minimum Wage.

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

The purpose of the JLC system was to give protection to low-paid vulnerable workers in sectors of the economy where there are low levels of trade union density and where workers are not going to enjoy the benefits of the protections afforded to workers in other sectors where trade unions and employers engaged in collective bargaining. It is our view that the circumstances that gave rise to the establishment of a Catering JLC in the first place continue to exist today.

SIPTU advocates that the parties to a Catering JLC would be best placed in that forum to address by way of collective bargaining their respective legitimate interests. The retention of this JLC and its extension to have national coverage is justifiable on the grounds of fairness and relevance as the JLC allows the parties to engage and bargain collectively on matters other than the National Minimum Wage or other minimum statutory provisions such as: working hours, overtime, starting and finishing time and sick pay.

It needs to be borne in mind that the JLC system has played a significant role in the development and maintenance of a peaceful and stable industrial relations environment in the catering sector by providing the architecture for the orderly conduct of industrial relations by enabling employers and unions collectively bargain at the level of the JLC to settle disputes of interest.

Without a JLC system for this industry, wages and conditions of employment will likely become a competitive factor for workers, and this will lead to industrial unrest as workers will no doubt have to agitate to achieve the right to engage in collective bargaining in order to try to have some influence over the conditions under which they will be forced to live and work.

Such a scenario would not be consistent with a desire to maintain harmonious industrial relations in the catering sector.

In conclusion, SIPTU states that the fixing of statutory minimum remuneration and of statutory conditions of employment is not, and will not be, prejudicial to the exercise of collective bargaining. In fact fixing such remuneration and statutory conditions through a JLC for the industry is the means by which collective bargaining will take place.

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

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

6. Contract Cleaning

The employers and trade unions in the contract cleaning sector have recently concluded a collective agreement. The intention of the parties to the agreement is to have it registered with the Labour Court as a Registered Employment Agreement pursuant to Section 27 of the Industrial Relations Act 1946.

Appendix 1 is a copy of the Contract Cleaning Joint Industrial Council submission to the Labour Court dealing with the matters for registration of an REA required by the Industrial Relations (Amendment) Act, 2012 Part 2 Section 5, 3(a) and 3(b) subsections (a) to (k), which are broadly similar to the requirements of the Act in relation to Review of JLCs as required by Section 11.

The negotiation of a collective agreement by the industry stakeholders followed on from the High Court Decision of July 2011 declaring unconstitutional the ability of JLCs to establish an ERO.⁶²

This approach is consistent with Recommendation 5 of the Report of the Independent Review of ERO and REA Wage Setting Mechanisms (2011: 5) wherein the authors recommended the replacement of the Contract Cleaning JLC with an REA.

There is very substantial consensus in this sector for a system of centralised collective bargaining at industry level that enables the parties to engage on matters relevant to that sector and to apply minimum enforceable pay and conditions of employment.

In the event that the application to the Labour Court for the above REA is approved the Labour Court can, at that stage, give consideration to abolishing the existing JLC for this sector. However, in the event that the agreement is not successfully registered, it is SIPTU's view that a JLC for the sector should be retained. This view is supported by the employer side and is consistent with the Independent Report on EROs and REAs.

In addition, in the event that the REA is subsequently cancelled, SIPTU requests that the Labour Court Review acknowledges the consensus of the parties in the sector for regulation to ensure that there is a legally enforceable mechanism that delivers minimum pay and conditions of employment and notes the necessity that a JLC for the industry would be re-established. Such regulation is considered to be beneficial to the industry, and workers employed in it, by both trade unions and employers.

⁶² John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

Since the mid-1980s, employers and trade unions in this sector have engaged in collective bargaining via the Contract Cleaning JLC. Undoubtedly this has been a significant factor in maintaining industrial peace in the sector and in facilitating the promotion of harmonious industrial relations between workers and employers. This is one of the main factors generating the level of consensus between employers and the union in the sector for a system of collective bargaining at industry level to enable a fair process to take place that determines workers' pay and conditions of employment.

It is SIPTU's contention that workers in this sector are the subject of intensive competition by way of tender. The contract cleaning sector requires robust and enforceable regulation to ensure fair competition as well as ensuring that contracts are not won and lost on the basis of unscrupulous employers tendering at below established wage rates on a downward spiral in a race to the bottom.

It should also be noted that the maintenance of such regulatory measures in this sector will protect these workers and the employers and ensure fair competition remains in this sector of the economy from the risks associated with the Posted Workers Directive.

This industry is one of the sectors most affected by contract for tender arrangements. In the main, the industry voluntarily applies the Transfer of Undertakings (Protection of Employment Regulations) and where TUPE is not applied by rogue or unscrupulous employers it can lead to industrial unrest as workers have to agitate to protect their interests.

Non-regulation of pay and conditions of employment enforceable by way of an REA or a JLC would result in TUPE regulations not being honoured in a race to the bottom by rogue employers in an attempt to increase their market share at the expense of compliant employers. In this scenario, compliant employers would, in the short to medium term, be forced out of business resulting in job displacement, job losses and potential industrial unrest.

In conclusion, SIPTU's view is that the collective agreement in Contract Cleaning should be registered as a REA. In the event that the agreement is not registered or is cancelled, the worker and employer representative's consensus is that there should be a Contract Cleaning JLC.

7. Security

The employers and trade unions in the security sector have recently concluded a collective agreement. The intention of the parties to the agreement is to have it registered with the Labour Court as a Registered Employment Agreement pursuant to Section 27 of the Industrial Relations Act 1946.

Attached in Appendix 2 is a **draft** copy of the Security Industry Joint Industrial Council submission to be submitted to the Labour Court dealing with the matters for registration of an REA required by the Industrial Relations (Amendment) Act, 2012 Part 2 Section 5, 3(a) and 3(b) subsections (a) to (k), which are broadly similar to the requirements of the Act in relation to Review of JLC's as required by Section 11.

The negotiation of a collective agreement by the industry stakeholders followed on from the High Court Decision of July 2011 declaring unconstitutional the ability of JLC's to establish an ERO.⁶³

This approach is consistent with Recommendation 5 of the Report of the Independent Review of ERO and REA Wage Setting Mechanisms wherein the authors recommended the replacement of the Contract Cleaning JLC with an REA.⁶⁴

There is very substantial consensus in this sector for a system of centralised collective bargaining at industry level that enables the parties to engage on matters relevant to that sector and to apply minimum enforceable pay and conditions of employment.

In the event that the application to the Labour Court for the above REA is approved the Labour Court can, at that stage, give consideration to abolishing the existing JLC for this sector. However, in the event that the agreement is not successfully registered, it is SIPTU's view that a JLC for the sector should be retained. This view is supported by the employer side and is consistent with the Independent Report on EROs and REA Wage Setting Mechanisms.⁶⁵

In addition, in the event that the REA is subsequently cancelled, SIPTU requests that the Labour Court Review would acknowledge the consensus of the parties in the sector for regulation to ensure that there is a legally enforceable mechanism that delivers minimum pay and conditions of employment. In addition, we request that the Review would note

⁶³ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

⁶⁴ Report of the Independent Review of ERO and REA Wage Setting Mechanisms (2011), p. 5.

⁶⁵ Ibid, p.81

that in the event that the REA is subsequently cancelled that it is imperative that a JLC for the industry would be re-established. Such regulation is considered to be beneficial to the industry and the workers employed in it by both trade unions and employers.

Since the late-1990s the employers and the unions in this sector have engaged in collective bargaining at the level of the JLC. Undoubtedly, this has been a significant factor in maintaining industrial peace in the sector and in facilitating the promotion of harmonious industrial relations between workers and employers.

This is one of the main factors behind why there is such a degree of consensus between the employers and the unions for a system of collective bargaining at industry level to enable a fair process take place that determines workers' pay and conditions of employment.

It is our view that workers in the security industry are employed in a sector which is the subject of intensive competition by way of tender and which requires robust and enforceable regulation in order to ensure fair competition and that contracts are not won and lost by virtue of unscrupulous employers tendering on the basis of undercutting the established pay rates and conditions in a downward race to the bottom. Also, it should be noted that the maintenance of such regulatory measures in this industry will protect these workers and the employers and ensure that fair competition remains in this sector of the economy from the risks associated with the Posted Workers Directive.

This industry is one of the most affected by contract for tender arrangements, and in the main voluntarily applies Transfer of Undertakings (Protection of Employment) Regulations and where TUPE is not applied by rogue or unscrupulous employers it can lead to industrial unrest as workers are forced to agitate to protect their interests.

Non-regulation of pay and conditions of employment enforceable by way of an REA or a JLC will result in the TUPE Regulations not being honoured in a race to the bottom by these rogue and unscrupulous employers as they attempt to increase their market share at the expense of compliant employers who, in the short to medium term, will be forced out of business thus resulting in job displacement, job losses and industrial unrest.

8. Agricultural Workers

The Agricultural Workers Joint Labour Committee was established in 1976 to cover all workers in the agriculture industry.

SIPTU's position is that the Agricultural Workers JLC should be maintained.

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

(i) the Committee was established

or

(ii) The last review under this Section was carried out

A new Employment Regulation Order for agricultural workers was agreed between worker and employer representatives in 2010 which completely updated the provisions of the previous ERO.

The following category of workers and employments were dealt with under the scope and definitions of that Joint Labour Committee:

- a) *'Agricultural Employer' means a person who employs other persons as Agricultural Workers*
- b) *'Agricultural Worker' means a person employed under a contract of service or apprenticeship does work under the contract is or includes work in agriculture, but does not mean a person whose work under such contract is mainly domestic service.*
- c) *'Agriculture' means horticulture, the production of any consumable produce, which is grown for sale or for consumption or other use, dairy farming, poultry farming, the use of land as grazing, meadow or pasture land or orchard or osier land or woodland, or for market gardens, private gardens, nursery grounds or sports grounds, the caring for or the rearing or training of animals and any other incidental activities connected with agriculture.*

Previous JLCs provided for the parties to agree that certain sectors/industries could establish a Registered Employment Agreement and this would preclude the application of the provisions of an ERO. SIPTU contends that this provision should be included in the ERO for the agriculture sector.

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

Approximately 80% of employers and employees are covered by employment level REAs. Currently, the Joint Industrial Council is investigating the possibility of establishing a national Registered Employment Agreement for the entire industry. In the meantime, SIPTU contends that a JLC should cover the industry -with the exception of employment REAs- until such time as this process has been completed.

Irish agricultural output has experienced two years of robust consecutive growth in 2011 and 2012. This came after a difficult earlier period, particularly for the horticultural sector in 2010.

Despite bad weather conditions, the value of total agricultural output in 2012 was up 3.6%. This followed a very significant increase of 17% in the previous year. The pace of the increase of non-live food exports slowed from 12.8% in 2011 to just under 3% in 2012.⁶⁶

Overall producer prices rose by approximately 7% over the 11 months of 2012 compared to an average 9% increase across the EU 27.⁶⁷ Despite concerns about overall price fall in 2012⁶⁸ vegetable prices held up throughout 2012, beef prices climbed and milk prices dipped from elevated levels at the earlier part of the year but recovered to early 2011 levels.⁶⁹

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

With regard to the mushroom segment of the agricultural industry, EU supply was expected to tighten in 2012 affording Irish producers increased exporting opportunity.⁷⁰ In addition, demand in the UK is expected to hold up off the back of an EU/industry co-funded mushroom promotion campaign which commenced in 2011.

Similarly, the thoroughbred industry has managed to record a recovery after a dip in stallion, foal and mare sales in 2009 and 2010. While sales volumes have continued to fall in 2011, the value of sales has increased.

⁶⁶ Central Statistics Office (2012). Goods Exports and Imports Data.

⁶⁷ Eurostat (2012) Food Supply Chain Price Indices. Data to November 2012.

⁶⁸ Department of Agriculture, Food and the Marine (2012). Annual Review and Outlook for Irish Agriculture.

⁶⁹ Ibid.

⁷⁰ Ibid.

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

The Agricultural Workers JLC had national application. SIPTU contends that the replacement JLC should do likewise.

Section 11 3(c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

(i) The Committee was established

or

(ii) The last review under this Section was carried out

The employer organisations represented on the previous Joint Labour Committee were as follows:

| | | |
|-------------------------------|-------------------|----------------------|
| IBEC | Mushroom Industry | ICMSA |
| Vegetable Growers Association | IFA | Keelings Fruit & Veg |
| Horse Breeders Association | | |

The workers representatives on the previous Joint Labour Committee were as follows:

| | |
|-------|---------------------------------------|
| SIPTU | Migrants Rights Ireland Centre (MRCI) |
|-------|---------------------------------------|

Given the fact that the last ERO had been relatively recently agreed between employers and workers representatives, SIPTU contends that this addresses the requirements under Section 11 3 (c).

The latest employment figures for the sector show that there were 19,000 employees in the agriculture forestry and fishing industry as of quarter 3 2012, of which approximately 4,300 were employed as stable staff and jockeys in the horse racing and thoroughbred industry.⁷¹ The majority of the direct employees are now migrant workers. Migrant workers are particularly prevalent on farms and agriculture generally, mushroom farming and horticulture, including fruit and vegetable harvesting. There are a significant number of female workers employed in the sector particularly in the mushrooms and horticulture segments.

The majority of migrant workers in this industry lack basic English language which makes them more vulnerable to exploitation by unscrupulous employers. Significant numbers of

⁷¹ Indecon (2012). "Review of Certain Aspects of the Irish Horse Racing Industry."

employees in this sector have made complaints to the National Employment Rights Authority under all of the provisions covering terms and conditions in the previous ERO. This sector of industry also has a high reliance on 'piece rate work' particularly amongst the mushroom and horticultural industry. Farm labourers are usually employed on an individual basis or in small numbers in rural areas leading to isolation and a lack of opportunity for collective representation by trade unions.

SIPTU contends that the factors required to justify the establishment of a JLC for the Agriculture Sector are as follows:

- a) There is no significant level of trade union density in the sector and there is limited, if any, prevalence of collective bargaining at the level of the employment (with the exception of the mushroom industry where Registered Employment Agreements operate)
- b) In the absence of a JLC system, these workers will not have an opportunity to engage in collective bargaining due to the low levels of trade union density and the fact that the employers are openly hostile to unionisation, and they therefore will not concede collective bargaining rights
- c) In addition to these factors, there is no other industrial relations machinery that can provide the mechanism by which workers and employers can engage in bargaining so as to set pay and conditions of employment
- d) Given that the only protection afforded to these workers at present is the National Minimum Wage and other statutory legislation, it is necessary that a JLC be maintained so as to enable the parties engage through collective bargaining on matters respective to their legitimate interests
- e) There is a high level of exploitation of workers in this sector due to the nature of the industry and the significant number of migrant workers involved
- f) A lack of basic English language is a serious impediment to employees knowing their entitlements and understanding basic industrial relations processes and procedures.

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

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

SIPTU contends that this behaviour by employers in this sector with regard to non-compliance does not stem from the fact that there is a JLC / ERO issued. These non-compliant employers do not want to comply with any statutory provisions. As stated earlier, the fact that the majority of employees are migrant workers with little basic English allows for significant exploitation by unscrupulous employers.

It would be unjust to both workers and compliant employers not to maintain a JLC because of bad behaviour of non-compliance by unscrupulous employers because such rogue employers will abuse and exploit their workers regardless of whether there is a JLC system or not.

Such a scenario being used to justify not retaining a JLC in this sector is tantamount to awarding bad behaviour.

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

There have been no adjustments made to the statutory minimum remuneration and statutory conditions of employment since 2010. This is because the JLC cannot establish an ERO, the existing one is not enforceable and the only statutory provisions giving protection to the workers in this sector are those covered by primary legislation.

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

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

The negligible impact on employment levels in the agricultural sector from the introduction of a wage floor will be influenced by a number of key industry features;

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

Those operating in the agricultural sector are by and large price takers and sell into a monopsonistic market made up by a small number of very large retailers. However compensation per employee across the agricultural sector accounts for an average 7% of the value of total output in producer prices in the industry and as such any marginal change in the rates of pay would have a minimal impact on the business.⁷²

As the Agricultural Workers JLC was negotiated and agreed as recently as 2010 with the €9.33 rate of pay taking effect at the start of July 2011, agreement to the re-establishment

⁷² Central Statistics Office (2011). Agricultural Output Data.

of this JLC would not imply an increase in JLC wage rate for workplaces adhering to the agreement. For those workplaces that did not maintain the rate for new entrants after July 2011, a rise to €9.33 from the National Minimum Wage would imply an increase of 7.8% or €0.68 per hour. However, in the context of total costs of production the wage increase would mean just a 0.5% increase in overall costs. The agricultural sector remains a critically important industry for Ireland and its future performance depends much on maintaining high standards in the production, cultivation and processing of food and in the maintenance and care of thoroughbred horses. The industry depends on workers engaged in these activities to maintain such standards and as such payment of JLC agreed wages would act as an efficiency wage.

Section 11 3(g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

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

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

The JLC system was created to give protection to low-paid vulnerable workers in sectors of the economy where there are low levels of trade union density and where therefore the workers are not going to enjoy the benefits and protections offered to workers in other sectors of the economy where trade unions and employers engaged in collective bargaining.

It needs to be borne in mind that the JLC system has played a significant role in the development and maintenance of a peaceful and stable industrial relations environment in the sector concerned, by providing the architecture for the orderly conduct of industrial relations and enabling employers and unions to collectively bargain at the level of the JLC to settle disputes of interest.

SIPTU contends that the fixing of statutory minimum remuneration and of statutory conditions of employment is not, and will not be, prejudicial to the exercise of collective bargaining. In fact, fixing such remuneration and statutory conditions through a JLC for the industry is the only means by which collective bargaining will take place in this sector.

Finally, SIPTU contends that the provisions of the previous ERO should be retained with appropriate amendments to take into consideration the provisions of the Industrial Relations (Amendments) Act 2012.

9. Hairdressing

This chapter relates to the Hairdressing Joint Labour Committee.

SIPTU's position in respect of the Hairdressing Joint Labour Committee is that the JLC should be maintained.

The most recent ERO agreed for this sector was in June 2008 to cover the period up to the end of 2010.

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

- (i) the Committee was established***
- or***
- (ii) The last review under this Section was carried out***

SIPTU contends that there have been no changes to the trade or business in the sector to which the Hairdressing JLC applied since it was established or since the last review undertaken by the Labour Court (as part of Towards 2016 in 2008) that would justify the non-retention of this JLC.

As part of the 2008 Review, it was agreed that the two JLC's for this sector would amalgamate.

SIPTU submits that there is a need for reform in this area and it should be amended to ensure national coverage for the workers in the sector.

It is acknowledged in the report of the Independent Review on ERO and REA Wage Setting Mechanisms (2011) that a Hairdressing JLC has a function in the provision of the registration of apprentices and certification of qualified personnel. This is an additional function to the primacy of the JLC to establish pay rates and conditions.

With the onset of the economic recession in 2008, the Irish hairdressing industry experienced a decline in sales along with an increase in the number of those operating in the black economy.

What has not changed in the sector is that the industry continues to have low levels of trade union density, the workers are low-paid and they do not, in the absence of a JLC, have any means by which they can engage in collective bargaining with their employers as equals with the intent of securing reasonable reward for the value of their work.

SIPTU submits that in the absence of a JLC system the workers in the industry will be unfairly disadvantaged as there is no other existing machinery in the State that can provide for the means by which these workers can achieve pay and conditions of employment other than the statutory minimum provided by way of primary legislation.

SIPTU contends that the scope of workers to whom a Hairdressing JLC should apply is as per the scope outlined in the ERO at July 2011.

Section 11 3 (c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

***(i) The Committee was established
or***

(ii) The last review under this Section was carried out

The type of enterprises to which a JLC should apply for industry are as follows:

- a) A hairdressing undertaking
- b) An establishment where hairdressing is undertaken
- c) An establishment where duties of a Beautician (a worker who is wholly or mainly engaged in the process of beauty culture), or a Manicurist (a worker who is wholly or mainly engaged in manicuring).

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of non-compliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional⁷³ and has been the case with other forms of minimum statutory legislation since.

⁷³ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

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

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. While we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that the JLC wage setting mechanism will require an Inspectorate resourced to levels at least equivalent to those that were in place as of July 2011.

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

There has been no adjustment made to the statutory minimum remuneration and conditions of employment within this sector since July 2011 when the ability of the JLC to establish an ERO was declared unconstitutional by the High Court.

Since July 2011, workers pay in this sector has been adjusted to the level of the National Minimum Wage. Prior to July 2011, the last ERO established by the Hairdressing JLC's was in July 2008.

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

The impact on employment levels in the professional hairdressing service industry due to the re-introduction of sectoral minimum wages is likely to be negligible. This is due to a number of key industry features:

- a) The market structure which in turn determines the price setting power of any one operator.
- b) The share of labour costs as a percentage of total costs and the size of the proposed wage premium.

The hairdressing industry in Ireland is dominated by one major player and a large number of small enterprises. Operators provide a range of differentiated, individualised personal services and as such hairdressing enterprises by and large maintain price setting power. While prices did decline by over 5% in the 24 months to June 2011, the industry passed on just over half the reduction in the rate of Vat to 9% in the month after its introduction in July 2011. Since then prices have climbed by 1% during 2012.

The impact on employment levels of a sectoral minimum wage depends on the percentage share of labour in total costs. At the firm level within the industry, there exists a wide dispersion between wage levels for senior and junior hairdressing staff. Re-establishment of a JLC would primarily affect newly qualified staff and as such would have little impact on the total wage bill.

For trainee hairdressers, re-establishments of a JLC would have no impact as the rates are less relative to the current level of the National Minimum Wage.

Section 11 3 (g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

The establishment of an ERO for this sector by a JLC fixing statutory minimum pay and conditions of employment for workers has not been (up to July 2011), and would not be, prejudicial to the exercise of collective bargaining in this industry as means by which the legitimate interests of workers and employers can be addressed. The reason being that in the absence of a JLC system, workers have no opportunity to engage in collective bargaining as a means by which their legitimate interests can be achieved.

There is very low level trade union density in this sector. No collective bargaining takes place at local individual firm level or at any other level in the industry. To deny these workers the retention of a JLC will lead to them being further disadvantaged as they will not enjoy any of the benefits of collective bargaining.

We are also of the view that there is no other existing machinery in the State that can adequately deal with the legitimate interests of the workers to achieve reasonable pay and conditions of employment commensurate with the value of their efforts.

SIPTU contends that all of the reasons identified as necessary for the establishment of a JLC for this industry in the first place, remain to be as prevalent today.

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

SIPTU submits that there should be one JLC giving coverage on a national basis and there is no need for regional representation.

10. Law Clerks

This chapter relates to the Law Clerks Joint Labour Committee which was established in 1947.

SIPTU's position is that the Law Clerks JLC should be maintained.

The Law Clerks JLC was reviewed by the Labour Court as part of the Towards 2016 Modernisation of Joint Labour Committee System in 2008.

The most recent ERO was agreed between worker and employer representatives in the sector in June 2009.

The prevailing circumstances giving rise to the need for a JLC for Law Clerks to be established in the first place still continue to prevail in the sectors as follows:

- a) There are low levels of trade union density and there is no evidence of any trade recognition given for collective bargaining purposes
- b) There is no prevalence of collective bargaining taking place at any individual firm level
- c) In the absence of a JLC system where workers can engage in collective bargaining with the employers to seek to influence conditions under which they are employed, workers will be disadvantaged
- d) In the absence of a JLC system there is no other existing industrial relations mechanisms that can provide for the effective regulation of pay and conditions of employment

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

(i) the Committee was established

or

(ii) The last review under this Section was carried out

SIPTU submits that the JLC should provide coverage to workers employed as Office Managers, Law Clerks, Bookkeepers, Legal Secretaries and Office Assistants.

The legal industry in Ireland is dominated by five major players and a large number of small and medium sized enterprises. Firms provide a range of differentiated professional services. As such the pricing structure of enterprises is not directly comparable and by and large enterprises maintain price setting power.

Labour demand for Law Clerks is derived from the demand for legal professionals and as such a marginal change to the wage rate will have a negligible impact on vacancies in the sector. With regard to Law Clerks' share of total labour cost, a wide dispersion exists between wage levels for professional and associate professional workers relative to support staff at the firm level within the industry. In effect, payment of a wage premium marginally above the National Minimum Wage would have little effect on overall staff costs.

Section 11 3 (c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

- (i) The Committee was established***
- or***
- (ii) The last review under this Section was carried out***

SIPTU submits that a JLC for this Sector should apply to enterprises such as solicitors, law firms, and law departments in corporate bodies.

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of non-compliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional⁷⁴ and has been the case with other forms of minimum statutory legislation since.

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

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. Whilst we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that going forward the JLC wage setting mechanism will require an Inspectorate resourced to at least the equivalent levels as were in as of July 2011.

⁷⁴ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

There has been no adjustments made to the statutory minimum remuneration and statutory conditions of employment since July 2011 when, as a result of the High Court ruling, the terms of the ERO became unenforceable and JLCs could not establish new or amend existing EROs.

The last ERO set by the JLC for this sector was in June 2009, and since July 2011 workers have only been entitled to receive the National Minimum Wage and other statutory entitlements set forth in primary employment legislation.

SIPTU is of the view that evidence is emerging of employers driving down the wage levels and withdrawing the other conditions of employment that workers has achieved through collective bargaining in the JLC system.

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

The impact on employment levels of Law Clerks in the legal services industry due to the re-introduction of the sectoral minimum is likely to be negligible. This is due to a number of key industry features:

- a) The market structure which in turn determines the price setting power of any one operator
- b) The share of labour costs as a percentage of total costs and the size of the proposed wage premium.

The Legal industry in Ireland is dominated by five major players and a large number of small and medium sized enterprises. Firms provide a range of differentiated professional services. As such the pricing structure of enterprises is not directly comparable and by and large enterprises maintain price setting power.

Labour demand for law clerks is derived from the demand for legal professionals and as such a marginal change to the wage rate will have a negligible impact on vacancies in the sector. With regard to Law Clerks share of total labour cost, there exists a wide dispersion between wage levels for professional and associate professional workers relative to support staff at the firm level within the industry. In effect, payment of a wage premium marginally above the national minimum wage would have little effect on overall staff costs.

Section 11 3 (g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

SIPTU submits that within this sector of the economy there is no prevalence of collective bargaining between workers and the employers at any level other than the JLC, and that this has been the case since a JLC was first established for Law Clerks in 1947.

There is a long tradition between worker and employer representatives in the sector of collective bargaining via the JLC mechanism. This, SIPTU contends, is evidence of the acceptance by both sides to this JLC that the mechanism worked has through good times and bad times over the decades as the means by which minimum pay and conditions of employment would be set for the sector in a fair and effective manner, thereby preventing a free for all in good times and ensuring a protective floor existed to provide minimum protections for workers in times of economic downturn.

Through this JLC workers have been able to collectively bargain and reach agreement with their employers in the legal sector, on a broad range of employment conditions other than those provided by way of statutory employment legislation such as: minimum weekly rates of pay, hourly rates of pay, overtime, working hours, a sick pay scheme, bullying and harassment procedures and grievance and disciplinary procedures.

SIPTU submits that in the absence of a JLC system workers will lose the possibility of engaging in collective bargaining with their employers and that this will result in the situation where they will only be covered by minimum statutory provisions set by primary legislation and the above conditions secured by bargaining through the JLC will be lost.

In conclusion, SIPTU submits that given the circumstances that prevail in this sector, with regard to trade union density and the non-existence of the practice of collective bargaining between workers and employers other than at the level of the JLC, the JLC in this sector establishing an ERO has not been prejudicial and will continue to not be prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in this sector. The reason for this is because a JLC for this sector is the only means by which such legitimate interests can be achieved as there is no other existing industrial relations machinery that can provide collective bargaining for workers in this sector to enable them bargain for fair wages and conditions of employment.

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

A JLC for this sector should retain its national coverage.

11. Retail, Grocery and Allied Trades JLC

This chapter deals with the Retail, Grocery and Allied Trades Joint Labour Committee.

SIPTU's position is that the Retail, Grocery and Allied Trades JLC should be maintained.

Section 11 3(b) the class or classes of workers to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or business to which the Joint Labour Committee applies, since

(iii) the Committee was established

or

(iv) The last review under this Section was carried out

SIPTU submits that the class or classes of worker to whom the JLC applies should continue to give coverage to the grades as at July 2011. We are also of the view that the maintenance of the JLC will provide the opportunity for the parties to engage on matters relating to the scope of workers with a view to addressing any anomalies the parties may consider to exist.

Section 11 3 (c) The types of enterprises to which the Joint Labour Committee applies and the Court shall have particular regard to changes in the trade or businesses to which the Joint Labour Committee applies since

(iii) The Committee was established

or

(iv) The last review under this Section was carried out

SIPTU submits that the types of enterprises to which a Retail, Grocery and Allied Trades JLC should apply should continue to cover the establishments as at July 2011. SIPTU further submits that the maintenance of the JLC will provide the opportunity for the parties to engage on matters relating to the scope of establishments with a view to addressing any anomalies that the parties consider to exist.

Section 11 3(d) the experience of the enforcement of statutory minimum remuneration and statutory conditions of employment within the Sector.

SIPTU believes that the experience of enforcement has been a mixed one. There is significant evidence from the National Employment Rights Authority (NERA) of non-compliance by employers with EROs and other statutory legislation. However, this was the case prior to the High Court decision of July 2011 declaring EROs unconstitutional⁷⁵ and has been the case with other forms of minimum statutory legislation since.

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

Our view is that the establishment of NERA and the increase in capacity of the Inspectorate greatly assisted with the inspection of workplaces covered by EROs which in turn led to higher levels of enforcement of EROs. While we may not have seen any significant reduction in the levels of employer non-compliance, workers did enjoy the benefits of a more extensive enforcement system. SIPTU contends that the JLC wage setting mechanism will require an Inspectorate resourced to levels at least equivalent to those that were in place as of July 2011.

Section 11 3(e) the experience of any adjustments made to the rates of statutory minimum remuneration and statutory conditions of employment.

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

There is some evidence of employers seeking to drive down wage levels and withdraw conditions of employment that workers had achieved through the JLC system and which were enforceable through the ERO up to July 2011. However, Central Statistics Office data does not show evidence of major pay cuts.

The union submits that this JLC, as with other JLCs, have proven themselves to be flexible and responsive to the needs of industry. This was demonstrated most recently by the decision to defer in October 2009 an agreed pay increase of 2.5% under the fourth and final round due under Towards 2016, to take account of deteriorating economic conditions.

Since July 2011 the only statutory protection afforded to workers in the retail sector is the national minimum wage and the statutory primary legislation. In the absence of a JLC system where workers through their trade unions bargain collectively for a rate of pay and

⁷⁵ John Grace Fried Chicken Ltd v. Catering Joint Labour Committee [2011] IEHC 277 (High Court, Feeney J, 7 July, 2011)

conditions of employment, unscrupulous and rogue employers will continue to drive down standards of pay and conditions of employment.

Section 11 3 (f) the impact on employment levels, especially at entry level of fixing statutory minimum remuneration and statutory conditions of employment.

The impact on employment levels in the retail sector due to the re-introduction of sectoral minimum wages is likely to be negligible. This is due to a number of key industry features:

- a) The market structure which in turn determines the price setting power of any one operator.
- b) The share of labour costs as a percentage of total costs and the size of the proposed wage premium.

In the retail sector, as JLC wage rates rose during the 2000's so too did employment levels in the sector. This demonstrates that in the main employment levels in the sector are driven by product demand and trading levels and not minimum sectoral wage rates or other conditions of employment.

Section 11 3 (g) the fixing of statutory minimum remuneration and of conditions of employment has been prejudicial to the exercise of collective bargaining as a means of achieving the legitimate interests of workers and employers in the Sector.

SIPTU contends that the fixing of Statutory Minimum Pay and Conditions of employment has not been prejudicial to the exercise of collective bargaining as a means of workers and employers engaging on matters of their legitimate interests.

The reason being that in the absence of a JLC system, the vast majority of workers employed in the vast majority of establishments covered by the Retail JLC do not engage in collective bargaining as a means by which any of their legitimate interests can be achieved.

There are very low levels of Trade Union Density in this Sector O'Connell et al (2010) found that 21.6% of retail workers in 2009 were members of a trade union and that, the employers in the main are hostile to unionisation and will be unlikely to concede recognition to a trade union for the purposes of engaging in collective bargaining, particularly (but not exclusively) in smaller retail establishments.⁷⁶

⁷⁶ Nulty, E (1995). 'Casualisation and Zero Hours contracts in the Irish Retail Sector.' O'Connell, P et al (2010) 'The Changing Workplace; A Survey of Employers' Views and Experiences'. ESRI and NESDO.

There are some employers in this industry who do recognise trade unions and, who do engage in collective bargaining. They tend to be the big market players who seek to establish market lead in all aspects and do so in isolation of each other and regardless as to where the rest of the industry is at.

This means that the effect of this collective bargaining is not intended to, and does not, set the pay and conditions of employment norms in the Sector. Equally, the existence of the JLC does not impinge on the collective bargaining that takes place with these employers.

SIPTU therefore submits that the existence of a JLC system for the Retail Sector of the economy is the means by which the vast majority of workers and their employers engage in collective bargaining on matters of legitimate interests so as to reach agreement on pay, terms and conditions of employment.

Through this JLC, workers have been able to collectively bargain and reach agreement with their employers on a broad range of employment conditions other than those provided by way so statutory employment legislation such as:

- a) Minimum weekly rates of pay
- b) Hourly rates of pay
- c) Overtime
- d) Working hours
- e) Sick pay scheme

In conclusion, SIPTU submits that given the circumstances that prevail in this Sector, with regard to trade union density and the very low level of the practice of collective bargaining between workers and employers other than at the level of the JLC, the JLC in this Sector establishing an ERO has not been prejudicial and will continue not to be prejudicial to the exercise of Collective Bargaining as a means of achieving the legitimate interests of workers and employers in this Sector.

Section 11 3(h) in the case of a Joint Labour Committee that represents workers and employers in a particular region in the State, whether the basis of such Regional Representation is justified.

SIPTU's view is that the Retail, Grocery and Allied trades JLC should be national in its coverage.

12. Conclusion

SIPTU's position is that the ten JLCs which are currently under review should be retained. We have set out the reasons why this is both necessary and justified in the foregoing chapters. We have outlined aspects of the JLC system in particular sectors which would benefit from reform by way of amalgamation and the elimination of geographical distinctions, while this has the affect of maintaining existing coverage while dealing with Minister Brutons reform proposals to reduce the number of JLCs.

Fundamentally, we hold the view that Joint Labour Committees must be retained in these sectors as in the absence of an ERO determining pay and conditions of employment beyond the statutory minima, workers will be left without the balancing mechanism of collective bargaining to achieve fair pay and conditions.

The evidence demonstrates, not least in the 2011 Review, that the abolition of the JLC system in these industries will not positively impact to a proportionate extent on employment levels in the sector. SIPTU strongly believes that no cogent argument will be advanced for the abolition of any of these Joint Labour Committees

The overriding rationale for the retention of the ten Joint Labour Committees which come under the remit of this review is the need to provide a functional mechanism for the maintenance of reasonable employment standards for vulnerable largely non-union workers.

A Square Deal?

The Real Cost of Making a Meal in the Restaurant Sector

APPENDIX 1

TASC has prepared this briefing in response to the current difficulties being experienced in the restaurant sector. In the last number of months there has been much focus on the state of this sector which has come under serious pressure due to the recession. The Restaurant Association of Ireland (RAI) appeared in February before the Oireachtas Joint Committee on Enterprise, Trade and Employment to present its analysis.

TASC agrees with the RAI that action needs to be taken to sustain employment and activity in this sector. However, many of the proposals put forward by the RAI are based on a flawed analysis and miss the wider problems that the restaurant sector and the wider economy face – in particular, its call for a reduction in the Joint Labour Committee (JLC) pay scale.

In this briefing, TASC presents evidence to demonstrate that wage rates in the restaurant sector are competitive and that a focus on cutting wages will not address the current problems being experienced by the sector. On the basis of our analysis, TASC identifies a number of issues that require further investigation and if addressed, could support the sector in these difficult times. These issues include the need to think creatively about how to boost demand and address high primary costs issues, such as commercial rents and input costs.

TASC would like to thank a number of people who have contributed to this briefing and who are also members of the TASC Economists' Network:

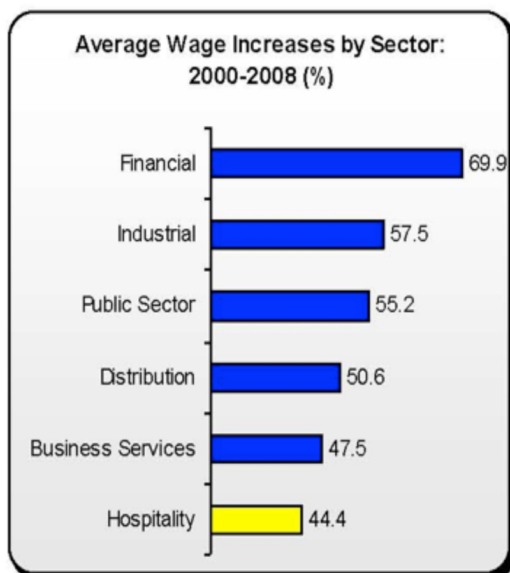
David Jacobson
Rory O'Farrell
Michael Taft
Marie Sherlock
Paul Sweeney

1. WAGES AND LABOUR COSTS

On the basis of TASC's analysis, the proposal by the RAI to cut the minimum wage and JLC pay scales will not have the desired results that the RAI and other employers seek and it will serve to deepen income inequality.

(a) Living Standards of Low-Paid Workers

Hotel and restaurant workers are the lowest paid of any sector. The latest CSO¹ data shows that the average weekly pay in this sector was €351, or just half of the national average of €698. Research undertaken by the Vincentian Partnership found that in 2009 a family (two parents and two children), with one parent working, needed an income of €525 per week to have a minimum essential standard of living.²



This means that the average weekly pay in the hospitality sector represents 67 per cent of the income required for a basic standard of living.

Hospitality workers did not experience the same level of pay rises that workers in other sectors obtained during the boom years. In comparison with other sectors, hospitality workers received the lowest pay increases since 2000.³ The gap between low paid workers and high paid workers widened during the boom and the magnitude of this gap is reflected in the OECD's comparative research into international levels of earnings inequality.⁴ In 2008, the OECD ranked Ireland top of its list – for earnings inequality – in the original 15 EU member states.

Ireland's income gap was also graphically illustrated in the H.E.A.P. Report produced by TASC and ICTU towards the end of 2009, which showed certain occupational groups – including many restaurant workers – clumped towards the bottom of the income distribution.⁵

Not only did hospitality workers receive the lowest average wage increases during the boom years, but they have also suffered disproportionately more during this recession. In 2009 (the first six months – the latest data available), average hourly pay was reduced across all sectors

¹ CSO, Earnings and Labour Costs, December 2009.

<http://www.cso.ie/releasespublications/documents/earnings/current/earnlabcosts.pdf>

² Vincentian Partnership for Social Justice, 2009 Expenditure Guidelines for Six Households www.budgeting.ie

³ CSO, Earnings Data for 2000-2008.

⁴ OECD, Growing Unequal? Income Distribution and Poverty in OECD Countries, 2008.

⁵ TASC / ICTU, The Heap Chart – Hierarchy of Earnings, Attributes and Privilege Analysis, 2009

by 1.1 per cent⁶. However, in the hospitality sector, the reduction was nearly twice the national average – at two per cent.

The Joint Oireachtas Committee on Enterprise, Trade and Employment, when considering proposals for this sector, should consider the fact that workers in this sector are already the lowest paid in the economy, received the least benefit during the boom years and are now experiencing wage cuts more severe than in other sectors.

It should also be noted that the hospitality sector suffers from one of the highest levels of breaches of employment law. The National Employment Rights Authority⁷ Inspectorate found that between 70 per cent and 80 per cent of businesses investigated in the catering and hotel sector were in breach of employment laws. In 2008 and 2009, NERA have found workers in the sectors receiving as little as €3 to €5 per hour and over this two year period NERA recovered nearly €2 million in wage arrears.

The living standards of workers in this sector are already precarious – the sector is made up predominantly of women, young people and new communities. Were the JLC rates to be abolished with a resulting fall in wages to the statutory minimum, this would result in an annual wage cut of over €1,250 for general catering workers. This would increase the level of income inequality in Irish society and would, through a reduction in consumption, be economically damaging. It is clearly in the public interest to protect the living standards of the economically weakest during a recession, not undermine them.

(b) International Comparisons



One of the rationales used by those calling for reductions in both the minimum wage and JLC pay scales is the contention that the minimum wage is higher than in peer group EU economies.⁸ However, this fails to take account of labour costs – in particular, wages plus employers' social security contributions.⁹ When account is taken of employers' payroll taxes (in Ireland, employers' PRSI), Irish labour costs fall down the table.

A more accurate comparison of labour costs is provided by the EU KLEMS database¹⁰. In 2007, Irish labour costs in the hospitality sector were one of the lowest in the EU-15 – ranking lower than all other countries save for Greece and Portugal. Irish labour costs are 17.5 per cent

⁶ CSO, Earnings and Labour Costs, December 2009.

⁷ National Employment Rights Authority Annual Reports, 2008 and 2009.

⁸ Eurostat, Statistics in Focus, Minimum Wages, 2009.

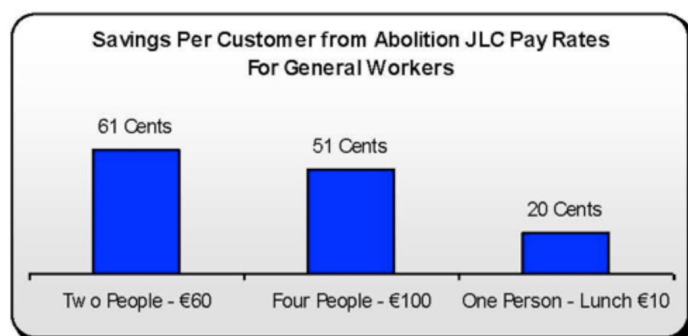
⁹ OECD, Tax Database, 2008.

¹⁰ EU Klems Database, November 2009.

below the EU-15 average. When compared with our peer group in the EU-15¹¹, Irish labour costs are 25 per cent below average.

Even comparisons with the UK can be misleading, as they fail to take account of currency depreciation. In 2007, before the slide in Sterling, UK labour costs in the hospitality sector were significantly higher. Any closing of the gap in subsequent years was largely driven by currency depreciation, not wage increases in Ireland.

(c) Labour Costs as a Percentage of Input



A second rationale for reducing enforceable pay scales in the restaurant sector is that it will allow for a reduction in prices which will increase customer levels. However, the recent consultants' report commissioned by Fáilte Ireland¹² shows that a reduction of JLC pay scales¹³ to the statutory minimum wage (a wage cut of seven per cent) would facilitate little price reduction. Abolishing JLC pay scales for general workers would mean a reduction of 61 cents per customer for a meal costing €60 for two; for a meal costing €100 for four people, the reduction would be 51 cents per customer. For a lunchtime meal of €10, the savings would be 20 cents. For restaurants seating fewer than 100 customers – the savings would be even less. It is doubtful that these minimal price reductions would increase customer demand.

(d) The Economic and Fiscal Damage of Wage Cuts

Cutting wages will undermine public finances and reduce consumer demand – which may end up harming the restaurant sector further.

Firstly, abolishing JLC pay scales and cutting wages to the statutory minimum will reduce tax revenue: receipts from income tax and the income levy, employees' and employers' PRSI.

¹¹ These are referred to as the 'non-Med' countries; excluding the poorer Mediterranean countries of Portugal, Spain, Greece and Italy.

¹² Fáilte Ireland, Study to Evaluate the Cost of Food Preparation and Service Activities in the Hospitality Sector – May 2009.

¹³ Through this report, we use a reduction of the JLC rate for Assistant/Waiter/Barperson/Clerical/General Worker/Cleaner/Wash Up – categories that make up most workers in the catering sector - to the statutory minimum wage. This current JLC rate is €9.27 per hour.

✓ **TASC estimates that the Exchequer would lose approximately €1,143 for every full-time general worker whose wage was reduced to the statutory minimum.**¹⁴

This does not take into account reduced VAT revenue from loss of spending power. With over 120,000 employees in the accommodation and food service activities sector¹⁵ the loss to the Exchequer would potentially be significant at a time when the government's fiscal position is already dangerously weak.

Secondly, it will increase government expenditure: for example, reductions in wages for those on Family Income Supplement (FIS) will be made up by higher social welfare payments.

✓ **TASC estimates that FIS for a lone parent with one child would rise by €357 per year if general wages were reduced to the statutory minimum.**¹⁶

Thirdly, it will reduce overall consumer spending: enterprises (including restaurants) will suffer from the reduced spending power of employees whose wages have been cut.

✓ **TASC estimates that an across-the-board cut of 8 per cent cut in wages in the hospitality sector will reduce consumer spending by approximately €170 million.**¹⁷

Reducing wages – wages of the lowest paid workers in the economy – will not increase demand in the restaurant sector. In addition, there will be substantial losses to the Exchequer in terms of revenue lost and increased social welfare payments, along with losses in consumer spending which will put more enterprises (including restaurants) under increased pressure.

Cutting wages does not address the real problems in the restaurant sector – it will only exacerbate these problems.

¹⁴ Deloitte Tax Calculator (<http://www.deloitte.ie/tc/>). This calculates a loss of €613 in employee pay, the remainder coming from a reduction in employers' PRSI.

¹⁵ CSO, Quarterly National Household Survey, Quarter 4, 2009.

¹⁶ Department of Social and Family Affairs, Family Income Supplement.

¹⁷ Based on extrapolations from the ESRI's simulation of cutting public sector wage: ESRI, The Behaviour of the Irish Economy: Insights from the HERMES macro-economic model, April 2009.

2. THE PROBLEMS IN THE RESTAURANT SECTOR

The restaurant sector suffers from real problems that need to be prioritised to prevent further job losses and enterprise closures.

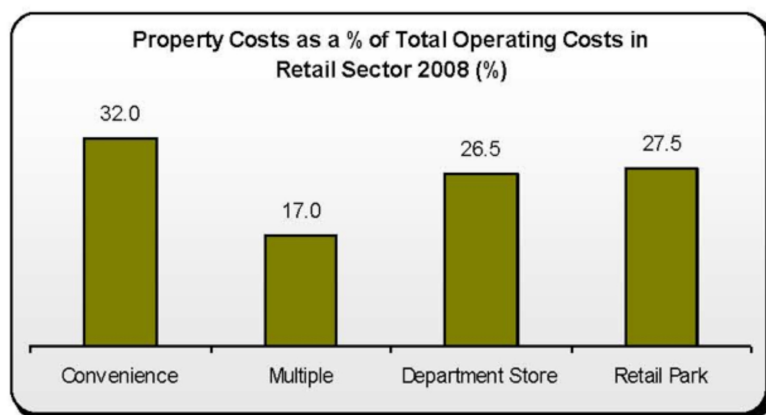
(a) Fall in Consumer Spending

The fall in consumer spending in Ireland has been more severe than in almost any other EU country. Between 2008 and 2010, Irish consumer spending is estimated to fall by 10 per cent whereas the average Euro zone fall is estimated to be less than one per cent. This fall in domestic demand has been the driving force behind the domestic recession and, therefore, a factor in the reduced turnover in the restaurant sector.¹⁸

(b) Rents

There is considerable anecdotal evidence that high levels of rents are undermining sectors reliant upon discretionary spending; restaurants are no exception.¹⁹ Unfortunately, the Fáilte Ireland report did not separately survey rent costs (and the limited number of restaurants in the sample – 26 – may have reduced the reliability of the data in any event).

However, Forfás produced data on rents in the retail enterprise sector²⁰ – data that may be indicative of the problems faced in the restaurant sector. While we stress this refers to retail outlets, we should not expect rent levels for the restaurant sector to be qualitatively different.



Retail Ireland has stated²¹ that average Irish commercial rents were ‘almost 10 per cent of sales’ compared to ‘about 5.5 per cent, the global average’. While we should be cautious about this assertion – as the fall in sales may be contributing to this gap – it is potentially one more indication of high rent levels.

The level of commercial rents, which appears to operate outside normal supply-demand relationships, may be imposing an unnecessary burden on the restaurant sector.

¹⁸ Department of Finance, Stability Programme Update 2010 and EU Commission, European Economic

Forecast - Autumn 2009.

¹⁹ As evidenced by the temporary closure of Carlucci’s Restaurant, Dawson Street, Dublin – which was only re-opened after a renegotiation of its commercial rent.

²⁰ Forfás, The Cost of Running Retail Operations in Ireland, December 2008. Figures also include maintenance and service charges.

²¹ Sunday Business Post, February 14th, 2010.

(c) Input Price Levels

TASC supports the RAI's concerns over food and beverage price levels. Eurostat²² indicates that our price levels are seriously out of alignment with EU-15 levels.

While some commentators have suggested that high prices have been fuelled by wage increases, the data does not support this simplistic approach. In 2002 Irish costs were nearly as much out of alignment as in 2008²³. High costs had already become embedded in the economy in the early part of last decade.

Unfortunately, there is no satisfactory set of explanations to suggest why these costs are so out of alignment with our European counterparts.

²² Eurostat Dataset: Relative price level indices of food products, December 2009

²³ The Irish food price indices were already 116.6 per cent while alcoholic beverages were 165 per cent.

3. PROPOSALS FOR CONSIDERATION

TASC is proposing that a number of areas be investigated when considering the best way forward.

(a) Boost consumer demand

This year (2010) is probably going to be another difficult year for the restaurant sector. Unemployment and emigration is projected to continue rising; public sector wage and social welfare cuts, along with pressure on private sector wages, will reduce disposable income and, so discretionary spending.

Apart from general demand policies (generating employment, protecting those on low-pay through wage agreements, etc.), there are specific policies that could be targeted to the restaurant sector which would also benefit other sectors.

1) **Temporarily Reduce VAT and Excise taxes:** A temporary reduction in VAT and excise taxes for restaurants – in much the same way as France has done – could facilitate a reduction in prices and encourage higher customer numbers. While this would have gross cost implications for the Exchequer, much of this would be recovered through higher sales, the maintenance of employment / enterprise openings and greater levels of in-sourcing which would benefit supplier firms. This would mean a lower net cost to the Exchequer.

2) **Consumer Vouchers:** The Government could issue time-limited consumer vouchers to all adults to be redeemed at restaurants. This would ensure that any expenditure arising from this Government investment would be directed exclusively to the sector – and the level of spend would be dependent on the level of redemption and increased customer traffic.

3) **Tourism Boost:** boosting tourism will not only assist the wider economy but the restaurant sector in particular. One minor proposal would be to target senior citizens in other countries with a new provision for comprehensive free public transport; a start has already been made with Irish Rail's Golden Trekker Ticket. This would only mean an extension of domestic policy and it would have few cost implications. Fáilte Ireland could use this as a major selling point in its marketing strategy.

(b) Renegotiate Rents

While the banning of upward-only rent reviews is welcomed, this has no impact on the current high levels of commercial rent. The Dáil Committee should consider a new legislative framework, even on a temporary basis, to allow for tenants and landlords to enter into negotiations over current rent levels, with a binding arbitration panel to rule on a new rent if the parties cannot agree a 'fair rent'. Another option worth considering is the introduction of turnover-based rents, which are popular in Europe. This alternative rental arrangement operates on the basis of a base rent plus a percentage of the retailer's turnover. A new

legislative framework and alternative rental arrangements could significantly reduce rental costs for the restaurant and other tenant-sectors.

(c) Price Investigation

For over a decade, Ireland has experienced high food, alcohol and non-alcoholic beverage costs, yet few conclusions can still be drawn as to why this should be so (given that costs were ten to 70 per cent higher than the EU-15 index in 1999, high costs in this sector cannot be historically attributed to wage or property-price increases).

Unfortunately, we lack crucial data in many areas which hinders the identification of the factors that contribute to high prices. For example, many companies are not required to file relevant information on the level of gross operating surplus and gross/net margins. Nor do we have an adequate structural analysis of the restaurant sector (e.g. size, location, family-owned, etc.) and the varying price impacts.

TASC will be proposing that the Joint Oireachtas Committee on Enterprise, Trade and Employment consider launching such a comprehensive investigation. While we accept that this is a medium-term project, the very existence of such an investigation may result in downward pressure on prices as companies / sectors seek to re-align pricing practices in a fairer, more sustainable manner – and so avoid any negative findings.

4. CONCLUSION

TASC has long argued that Ireland is a deeply unequal society. Hospitality workers are among those bearing the brunt of that inequality: as mentioned at the outset, their average weekly pay is €351 (just half of the national average), which represents 67 per cent of weekly income needed for a basic standard of living. Further reducing the wages of restaurant workers would therefore exacerbate Ireland's already high levels of income inequality.

In addition, however, TASC argues that such wage cuts would fail in their own terms: they would have a minimal impact on stimulating demand which is the driving force behind the economic activity in the sector. Nor would they address other primary cost issues, such as the high cost of food and commercial rents.

We have demonstrated above that, by taking more money out of employees' pockets, wage cuts would further undermine the public finances by depressing consumer demand (which impacts on the restaurant sector, among others), reducing income tax and VAT take, and also increasing direct Exchequer expenditure (such as, for example, increased FIS expenditure).

TASC therefore recommends an alternative strategy, focusing primarily on boosting consumer demand and addressing those factors (such as commercial rents and input prices) which have a demonstrable impact on profitability in the restaurant sector.

APPENDIX 2

Submission to the Labour Court on behalf of the Contract Cleaning Joint Industrial Council in pursuance of the Registration of an agreement made between the parties on the minimum terms and conditions in the Contract Cleaning Industry under Part 2 of the Industrial Relations Act 2012

Prepared by the Contract Cleaning JIC

Chairperson members of the Court, the Contract Cleaning Joint Industrial Council is seeking that the Labour Court agree to proceed with the registration process of the attached collective agreement negotiated by the JIC regarding minimum terms of employment within the contract cleaning industry in the ROI.

This submission deals with and addresses issues as per Part 2, section 5, (3A) and (3B) subsection (a) to (k).

- ***Substantially representative*** – Our JIC advocate that the parties to this agreement namely, the Irish Contract Cleaning Association, IBEC and SIPTU are indeed substantially

representative as per Part 2, section 5, (3A), (a) (i) and (ii). The ICCA represents 30 employers engaged in contract cleaning, encompassing both family-run indigenous Irish firms as well as multinational firms operating in the ROI.

According to the ICCA submission to the Duffy Walsh review body in 2011 the organisations' members companies employ nearly 80% of all contract cleaners working in the industry in ROI. Indeed the Eurofound study for the EU Commission on the representativeness of the social partners in Contract Cleaning across the EU similarly corroborates with this information in that it states that the ICCA represent 75% of the industry citing approx. 25,000 workers in the industry engaged in private contract cleaning in 2010.

SIPTU has been for many years the union which has represented and collectively bargained on behalf of private contract cleaners across the industry. SIPTU, like the ICCA and IBEC was involved in the JLC for the industry as the worker reps. SIPTU organises approx. 5,800 contract cleaners in the ROI and collectively bargains across the majority of ICCA member companies. Whilst we estimate union density according to the Eurofound figures stands at approx. 27% the JIC points out that the majority of workers employed by ICCA member companies are covered by collective bargaining as their employers engage in forms of collective bargaining with SIPTU therefore, union reach and representative capacity is much greater than union density.

- ***Harmonious relations between workers and employers and the avoidance of industrial unrest*** – We believe the registration of this agreement negotiated at the JIC will further develop progressive and harmonious relations between workers, their union and employers and assist in the avoidance of disputes.

This industry prior to the collapse of ERO's in July 2011 has come under the wage and minimum conditions setting mechanisms for many years. Indeed in the REA proposed there is a clear and fair dispute resolution process which deals with general matters through the established IR procedures before any action can even be considered by either party and the proposal also facilitates the dealing of an IR matter between individual employers and workers and their union in the first instance and then by agreement, by the JIC, if the parties so wish. Also the agreement facilitates clear binding arbitration in the event of a dispute over matters of interpretation regarding the agreement therefore reducing the prospect of industrial unrest and promoting the use of best practice.

We also cite the fact that there has not been any official industrial action in this industry for many years, we believe this is significantly and largely due to the fact that the

industry has come under the JLC/ERO process and also that the industry and the social partners agreed to a 6 month REA from February 2012 to August 2012 post the collapse of the ERO system.

(a) *The agreement will be binding on all workers and employers in the sector*- Yes it will.

The Contract Cleaning industry is labour intensive with the overwhelming cost apportioned to labour costs. If the agreement were not binding on all workers and employers this would create an imbalance in the market and would facilitate unfair competition.

(b) *The desirability of maintaining established arrangements for collective bargaining* –

The social partners in the industry have for some years been engaged in collective bargaining at sector level through the previous JLC system and more recently through the JIC system with the establishment of a 6 month REA cited above for the purpose of defining minimum terms. We also cite the executive summary of the Duffy Walsh review body which was established by government to review the ERO and REA system where the report stated, ***“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.”*** The fact that the industry social partners agreed a 6 month REA cited above from February 2012 to August 2012 and that fact that the same parties have agreed to changes in the terms of that agreement and are seeking a sustainable and more flexible agreement demonstrates the maturity of the social partners concerned and is consistent with the point made in the Duffy Walsh report.

(c) *The benefits of consultation between worker and employer representatives at enterprise and sector level* –

We believe that the registering of this agreement could facilitate more coherent and consistent engagement and consultation between both worker and employer reps at both enterprise and sector level in that the agreement provides a framework for such engagement and a context for such engagement. The JIC/REA process also facilitates a forum whereby wider industry issues of common interest and concern can be discussed over time.

(d) *The experience of registration and the variation of employment agreements in the sector in question* –

As stated above the sector has been subject to a JLC/ERO process for many years. Indeed the Duffy/Walsh report recommended that an REA should be established for the contract cleaning industry. When the ERO system collapsed in July 2011 the industry social partners agreed to a 6 month interim REA from February 2012 to August 2012 to prevent a disorderly collapse of conditions of employment and ensuing industrial unrest. As can be seen from the text of this employment agreement

before the Court the parties to the agreement have negotiated some additional changes reflecting the current climate that the industry is operating in. In short the experience of registration has been a positive one and the fact that the parties have agreed to negotiate new terms for this proposed REA compared to the previous REA vindicates this position.

(e) The potential impact on employment levels in the sector in question of registering employment agreement;

The potential impact on labour demand and employment levels from the introduction of a wage floor in a particular sector is likely to be influenced by a number of key industry features;

- i) The composition of the market- whether there is a large or small numbers of sellers and the extent to which they co-operate in a trade association.
- ii) The market power of any one firm- whether they trade with a niche or generic good or service and whether firms are price takers or price setters.
- iii) The degree to which there exists barriers to entry into the market.
- iv) The location of the service/product type along the supply value chain- whether it is an input into a production process or a final product. If it is an input into a production process, the degree to which the input determines the quality of the final product.
- v) The staff retention rate of the existing workforce in the industry.

The introduction of a registered employment agreement agreed between employers and employee representatives in the industry is highly unlikely to impact on employment levels in the industry for the following reasons;

- 1) The contract cleaning industry in the Republic of Ireland is predominantly characterised by a relatively small number of medium and large sized employers who account for over 80% of the total numbers employed in the industry. The remaining 20% of the market is highly fragmented, is characterised by very small scale and single person operations and a number of who have been found to operate at the margins of employment and wage law. Overall compliance levels with employment and wage law across the industry were at 51% in 2011.⁷⁷

The Irish Contract Cleaning Association represents 30 companies who employ 80% of those employed in the market and as such they are very representative of the total number of employers operating in the market⁷⁸.

⁷⁷ NERA (2011). *Review of 2011*

⁷⁸ ICCA (2011). Submission to Independent review committee of ERO and REA wage setting mechanisms.

- 2) Firms operate in a highly labour intensive, low margin market where labour accounts for a very high share of total costs and there is little or no differentiation in the services offered. Sellers generally set prices as a mark up above the statutory sectoral minimum wage.

Despite intense levels of competition between companies, no employment losses are expected from the introduction of a REA. The REA sets down a level playing field in terms of labour costs, so companies will only compete on mark-up and other indirect costs.

The awarding of contracts typically tends to be for periods up to 3 years and there exists a high degree of turnover in the awarding of contracts between different companies. Thus, it is typical for workers to be employed by a number of employers on the same site over a period of years.

- 3) Contract cleaning can be classified as an ancillary support service. The degree of integration with the final good or service produce varies across the industry. The introduction of a REA is not likely to impose a higher barrier to market entry. The new rate of €9.50 per hour is equal to the previous JLC hourly rate which prevailed up to August 2012 with responsible employers retaining terms and conditions in expectation of a new REA being agreed.
- 4) Lastly, it is argued by both the employers and employee representatives that the new REA will act as an efficiency wage and as such has the potential to increase and not lower total employment levels in the industry.⁷⁹ By setting the REA above the national minimum wage, employers incentivise staff loyalty and higher quality output, minimise shirking and thereby reduce supervisory costs particularly in an industry that depends on workers operating in small atomised units, improve staff retention, reduce staff turnover and staff search costs. Any differential between the REA and the national minimum wage is offset over the medium term by lower labour turnover and recruitment costs.⁸⁰ The ICCA highlight that retention rates have improved and that these rates continue to improve in the context of the economic recession.

⁷⁹ Taylor and Rebitzer (1995) find evidence to suggest that efficiency wages can lead to higher employment levels due to increasing returns to scale from lower supervisory costs.

Georgiadis (2008). Efficiency wages and the economic effects of the minimum wage: evidence from a low wage labour market. Centre for Economic Performance Discussion paper no. 857 February 2008. In the paper, the author assesses the efficiency wage hypothesis in a case study of the low paid residential care home sector in the UK and finds evidence to suggest a non-negative employment effect in the sector of a minimum wage.

⁸⁰ Gregg Paul (2000). The use of wage floors as policy tools. OECD economic studies no. 31 2000/11.

(f) *The desirability of agreeing and maintaining fair and sustainable rates of remuneration in question* – It is the JICs’ view that this proposed REA will be a critical and key piece of infrastructure to maintain fair and sustainable rates of remuneration and a sustainable industry for all stakeholders i.e. clients who procure the service, contractors who provide the service and workers who deliver the service. In the absence of the proposed REA contractors will be forced to tender for business on minimum wage conditions of employment as most clients tender on the lowest cost principle. This will result in potential cuts of at least 8% in the hourly rate of pay for workers in what is a relatively low pay and labour intensive industry and could lead to some industrial unrest, disruption of service and increasing non-compliance with TUPE. Not having fair and sustainable rates of remuneration as per the proposed REA will lead to a more unstable and less sustainable industry in the short to medium term.

(g) *The desirability of maintaining competitiveness in the sector in question* – We believe that unless you have a mechanism such as an REA you cannot in actual fact seek to ensure fair competition in this industry. Given the fact that this is an extremely labour intensive industry with the cost of labour accounting for up to 85% of the cost of the contract, unless you have some level playing pitch when accounting for the cost of labour as part of the contract competition will be uneven and imbalanced. As stated elsewhere in this submission as the barriers to entry to the market in general are relatively low having an REA which is responsive to the needs of the industry such as the one recently negotiated is, facilitates a fair, balanced and more sustainable competitive market. Also having an REA has an additional cost benefit for employers in that they will largely have to deal with one contract, the given REA, rather than 100’s of variations on contracts in the absence of an agreed and sustainable REA.

(h) *The levels of employment and unemployment in the sector in question;*

i.) Sectoral Employment

The most recent CSO estimates for workers classified as cleaners and domestics (CSO SOC code 958) relates to quarter four 2010, where some 35,300 were in employment. This covers both contract cleaners and those directly employed and as such is a very broad categorisation of workers who work as little as one hour per week⁸¹ to those in full time employment.

The numbers employed in the contract cleaning industry is estimated by the ICCA to be close to 20,000 and this approximates well to the numbers employed in the CSO’s NACE 2 digit sectoral classification of “services to buildings and landscape activities” and to

⁸¹ Minimum requirement for classification of “in employment”, Source: QNHS Central Statistics Office.

Eurofound's 2010 estimates of 25,000 in the sector⁸². There were 22,800 in employment in this sector in the second quarter of 2012.

ii.) Sectoral Unemployment- Effect of a new sectoral minimum wage on labour supply.

Unemployment in a particular sector arises when the demand for particular skills dries up or when the rate of pay is set at such a level that more people are willing to supply their labour in that sector than is currently demanded (reservation wage) or when workers temporarily find themselves between contracts. There is no evidence to suggest the presence of unemployment in the contract cleaning sector.

- 1) Employment contracts in the contract cleaning industry are typically permanent and the demand for work is regular. The high volume of service contract turnover in the sector where contracts are awarded and lost over a medium term period means that a Transfer of Undertakings occurs frequently. In practise, many contract cleaning workers will work for a number of different successive employers on the same site, over the lifetime of their employment in the sector.
- 2) Contract cleaning is considered a labour market entry occupation which attracts migrants new to the Labour market and Irish nationals persons entering or re-entering the Labour force after a period spent outside of it. It is an industry where training is provided at entry level. In this regard, the sector is comparable to other labour market entry occupations such as the hospitality or retail sectors.
- 3) While contract cleaning is a labour market entry occupation and official unemployment in the Republic of Ireland currently standing at 14.7%, it does not follow that lowering the sectoral wage rate will increase labour demand in the sector. Employers compete on price and on the quality of service. The industry stakeholders see the benefit and importance of having an REA in delivering a quality service while maintaining and increasing the sustainability of the industry for all stakeholders.
- 4) Despite tighter profit margins and a slowing down in the number of contracts being offered for tender over the course of the economic crisis in the Republic of Ireland, the number of redundancies in the sector has been low over recent years. This arises due to natural loss from staff turnover and the exiting of a number of very small operations from the sector. The absence of an REA is likely to lead to an increase in redundancies.

(i) The terms of any relevant national agreement relating to pay and conditions for the time being in existence – There is no such agreement in operation at present, but the

⁸² Eurofound, (2012). Representativeness of the European social partner organisations; Cleaning activities industry.

ICCA companies have sought to maintain the previous REA rates where possible in the knowledge that this negotiation had taken place.

(j) The general level of wages in comparable sectors - When classified as a low knowledge intensive sector the conditions for entry into the contract cleaning sector can be said to be comparable to the hospitality or retail sectors as entry level training is provided. The rate of pay for a waitress in the hospitality sector outside of Dublin is €9.09 based on a 39 hour week. For a retail worker with experience aged 18 year and over on point one of a three year scale, the rate is €9.60 per hour.

(k) where enterprises in the sector in question are in competition with enterprises in another Member State, the general level of wages in the enterprises in that other Member State taking into account the cost of living in the Member State concerned.

Contract cleaning is a non-traded, domestically provided service. At present, firms with headquarters located within and outside the Republic of Ireland compete for contract cleaning service contracts in the country. Firms located in the UK and in Northern Ireland make up the bulk of the external competition. However, the very nature of the service means that service provision has to take place within the country in question and as such companies are bound by the wage and employment law that pertains to the sector in the country and not that of any other member state of the European Union.

By way of completion, the table below details the wage rates where available, that prevail in a number of other EU member states, the labour cost based on those wage rates, and the purchasing power parity of that wage.

| 2011/2012 rates | Wage € | Wage in PPP ⁸³ (2011 values) | Labour cost (based on 30 hour week) |
|--------------------------------------|--------|--|---|
| Ireland | 9.5 | 9.50 | €297.11 |
| Great Britain and Northern Ireland £ | 6.19 | 8.14 | €241.18 ⁸⁴ |
| | | | |
| Belgium | 12.12 | 12.70 | |
| Sweden (krona) | 115.7 | 11.79 | |
| Luxembourg ⁸⁵ | 10.99 | 10.40 | |
| Germany ⁸⁶ | 8.82 | 9.95 | |
| Netherlands | 9 | 9.68 | |
| Austria | 7.79 | 8.52 | |

⁸³ Based on PPP for household final consumption expenditure.

⁸⁴ Based on 3month average of sterling/euro exchange rate 21st. Jan. 2012.

⁸⁵ Luxembourg: rate applicable 01/10/2012.

⁸⁶ West German rate

| | | | |
|-------|------|------|--|
| Italy | 7.15 | 7.96 | |
|-------|------|------|--|

Source: UNI europa, Eurostat.

APPENDIX 3

DRAFT

Submission to the Labour Court on behalf of the Static Security Joint Industrial Council in pursuance of the Registration of an agreement made between the parties on the minimum terms and conditions in the Contract Cleaning Industry under Part 2 of the Industrial Relations Act 2012

Prepared by the Security Man Guarding JIC

Chairperson members of the Court, the Security (man guarding) Joint Industrial Council are seeking that the Labour Court agree to proceed with the registration process of the attached collective agreement negotiated by the JIC regarding minimum terms of employment within the static/man guarding security industry in the ROI.

This submission deals with and addresses issues as per Part 2, section 5, (3A) and (3B) subsection (a) to (k).

- **Substantially representative** – Our JIC advocates that the parties to this agreement namely the Irish Security Industry Association, the National Union of Security Employers, the Security Institute of Ireland, IBEC, SIPTU and UNITE the union are indeed substantially representative as per Part 2, section 5, (3A), (a) (i) and (ii). The employer bodies engaged in static security represent approximately 80% of the industry, (i.e. covering approximately 80% of the number of workers employed in the industry) encompassing both family-run indigenous Irish firms as well as multinational firms operating in the ROI. The PSA annual report of 2010 estimated that there was a total of 15,473 employees in the man guarding security industry in 2010 which was lower than previous years and the same report attributes this to a level of contraction of employment in the industry due to the economic downturn. We are to understand that the 2011 draft PSA report puts the figure of those working in the industry 2 years ago at 14,485 and given this decline we estimate that the numbers employed in the industry today in 2013 is somewhat less than this figure of 2010 and 2011.

SIPTU and to a lesser extent Unite have been for many years the union(s) which have represented and collectively bargained on behalf of private security officers (man guarding) across the industry. SIPTU and UNITE, like the ISIA, NUSE and IBEC was involved in the JLC for the industry as the worker reps. SIPTU organises approx. 5,500 security officers (man guarding) in the ROI and collectively bargains across the with members companies of both ISIA and indeed NUSE/SCI. Whilst we estimate union density according to the Eurofound figures stands at approx. 45% the JIC points out that the majority of workers employed by both NUSE/SCI and ISIA member companies are covered by collective bargaining as their employers engage in forms of collective bargaining with SIPTU and also UNITE therefore, union reach and representative capacity is much greater than union density. In fact the trade union and employer associations' party to this REA are recognised by the regulator the PSA, as key industry representatives through their collective involvement in PSA organised stakeholder forums.

- **Harmonious relations between workers and employers and the avoidance of industrial unrest** – We believe the registration of this agreement negotiated at the JIC will further

develop progressive and harmonious relations between workers, their union and employers and assist in the avoidance of disputes.

This industry prior to the collapse of ERO's in July 2011 has come under the wage and minimum conditions setting mechanisms for many years. Indeed in the REA proposed there is a clear and fair dispute resolution process which deals with general matters through the established IR procedures before any action can even be considered by either party and the proposal also facilitates the dealing of an IR matter between individual employers and workers and their union in the first instance and then by agreement, by the JIC, if the parties so wish. Also the agreement facilitates clear binding arbitration in the event of a dispute over matters of interpretation regarding the agreement therefore reducing the prospect of industrial unrest and promoting the use of best practice.

We also cite the fact that there has not been any official industrial action in this industry for many years, we believe this is significantly and largely due to the fact that the industry has come under the JLC/ERO process.

(f) The agreement will be binding on all workers and employers in the sector- Yes it will. The man guarding security industry is labour intensive with the single majority cost apportioned to labour costs. If the agreement were not binding on all workers and employers this would create an imbalance in the market and would facilitate unfair competition.

(g) The desirability of maintaining established arrangements for collective bargaining – The social partners in the industry have for many years been engaged in collective bargaining at sector level through the previous JLC system and more recently through the JIC system with which has resulted in the negotiation of this proposed REA. We also cite the executive summary of the Duffy Walsh review body which was established by government to review the ERO and REA system where the report stated, ***“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.”*** The fact that the industry social partners have negotiated and agreed a new agreement which is both sustainable and more flexible than the previous ERO demonstrates the maturity of the social partners concerned and is consistent with the point made in the Duffy Walsh report.

(h) The benefits of consultation between worker and employer representatives at enterprise and sector level – We believe that the registering of this agreement could

facilitate more coherent and consistent engagement and consultation between both worker and employer reps at both enterprise and sector level in that the agreement provides a framework for such engagement and a context for such engagement. The JIC/REA process also facilitates a forum whereby wider industry issues of common interest and concern can be discussed over time.

(i) *The experience of registration and the variation of employment agreements in the sector in question* – As stated above the sector has been subject to a JLC/ERO process for many years. Since the collapse of the ERO process in July 2011 the parties have engaged in discussions with a view to reaching a more sustainable agreement in the current challenging climate. As can be seen from the text of this employment agreement before the Court the parties to the agreement have negotiated some additional changes reflecting this current climate that the industry is operating in. Whilst this industry has not had a previous REA but operating very efficiently in the ERO system of wage bargaining the fact that the parties have been able to agree this proposed REA through collective bargaining without any industrial unrest bodes well for both the future of a sustainable industry and having an REA ratified.

(j) *The potential impact on employment levels in the sector in question of registering employment agreement;*

The potential impact on labour demand and employment levels from the introduction of a wage floor in a particular sector is likely to be influenced by a number of key industry features;

- vi) The composition of the market- whether there is a large or small numbers of sellers and the extent to which they co-operate in a trade association.
- vii) The market power of any one firm- whether they trade with a niche or generic good or service and whether firms are price takers or price setters.
- viii) The degree to which there exists barriers to entry into the market.
- ix) The location of the service/product type along the supply value chain- whether it is an input into a production process or a final product. If it is an input into a production process, the degree to which the input determines the quality of the final product.
- x) The staff retention rate of the existing workforce in the industry.

The introduction of a registered employment agreement agreed between employers and employee representatives in the industry is highly unlikely to impact negatively on employment levels in the industry for the following reasons;

- 5) The manguarding security industry industry in the Republic of Ireland had a yearly turnover in 2010 of in excess of €300m. Whilst according to the Private Security

Authority annual report of 2010 there where 234 licensed companies operating in the ROI the 3 largest companies in the market have 40% of the market, (according to CoESS the European private security employer body “facts and figures” survey 2011) Therefore, there a small number of companies who have well in excess of 50% of the market with the overwhelming majority of the 234 licensed firms are highly fragmented being very small family run and/or single person operators. Overall compliance levels with employment and wage law across the industry were at 47% in 2011.⁸⁷

- 6) Firms operate in a highly labour intensive, low margin market where labour accounts for a very high share of total costs and there is little or no differentiation in the services offered. Sellers generally set prices as a mark-up above the statutory sectoral minimum wage.

Despite intense levels of competition between companies, no employment losses are expected from the introduction of a REA. The REA sets down a level playing field in terms of labour costs, so companies will only compete on mark-up and other indirect costs.

The awarding of contracts typically tends to be for periods up to a maximum of 3 years and there exists a high degree of turnover in the awarding of contracts between different companies. Thus, it is typical for workers to be employed by a number of employers on the same site over a period of years.

- 7) The implementation of the proposed REA creates no additional barriers to entry. The private security industry is regulated by law, The Private Security Act 2004. The Private Security Authority acts as the competent regulator. Both man guarding security officers and security companies providing the service are licensed by the PSA and subject to on-going inspections and a training/qualification regime prior to becoming operational. These requirements are uniform across the industry for all officers and providers. As can be seen the proposed REA sets minimum conditions of employment for the industry. When comparing the proposed REA with the previous ERO which was in force until July 2011, it is clear that the terms of the new REA actually facilitate new entrants and competition for new entrants into the market as the overall cost of the minimum terms for the provision of employment for new entrants is less than the previous ERO.
- 8) Lastly, it is argued by both the employers and employee representatives that the new REA will act as an efficiency wage and as such has the potential to increase and not

⁸⁷ NERA (2011). *Review of 2011*

lower total employment levels in the industry.⁸⁸ By setting the REA above the national minimum wage, employers incentivise staff loyalty and higher quality output, minimise shirking and thereby reduce supervisory costs particularly in an industry that depends on workers operating in small atomised units, improve staff retention, reduce staff turnover and staff search costs. Any differential between the REA and the national minimum wage is offset over the medium term by lower labour turnover and recruitment costs.⁸⁹ The employer industry bodies party to this proposed REA highlight that retention rates have improved and that these rates continue to improve in the context of the economic recession and this is also reflected in the fact that employee training is required prior to the commencement of employment.

- i.) *The desirability of agreeing and maintaining fair and sustainable rates of remuneration in question*** – It is the JICs' view that this proposed REA will be a critical and key piece of infrastructure to maintain fair and sustainable rates of remuneration and a sustainable industry for all stakeholders i.e. clients who procure the service, contractors who provide the service and workers who deliver the service. In the absence of the proposed REA contractors will be forced to tender for business on minimum wage conditions of employment as most clients tender on the lowest cost principle. This will result in potential cuts of at least 13.6% in the hourly rate of pay for workers in what is a relatively low pay and labour intensive industry and would lead to some industrial unrest, disruption of service and increasing non-compliance with TUPE. Not having fair and sustainable rates of remuneration as per the proposed REA will lead to a more unstable and less sustainable industry in the short to medium term. The industry will not be able to develop along lines of European norms and standards if the workforce becomes more transient.
- ii.) *The desirability of maintaining competitiveness in the sector in question*** – We believe that unless you have a mechanism such as an REA you cannot in actual fact seek to ensure fair competition in this industry. Given the fact that this is an extremely labour intensive industry with the cost of labour accounting for up to 85% of the cost of the contract, unless you have some level playing pitch when accounting for the cost of labour as part of the contract competition will be uneven and imbalanced. As stated elsewhere in this submission as the barriers to

⁸⁸ Taylor and Rebitzer (1995) find evidence to suggest that efficiency wages can lead to higher employment levels due to increasing returns to scale from lower supervisory costs.

Georgiadis (2008). Efficiency wages and the economic effects of the minimum wage: evidence from a low wage labour market. Centre for Economic Performance Discussion paper no. 857 February 2008. In the paper, the author assesses the efficiency wage hypothesis in a case study of the low paid residential care home sector in the UK and finds evidence to suggest a non-negative employment effect in the sector of a minimum wage.

⁸⁹ Gregg Paul (2000). The use of wage floors as policy tools. OECD economic studies no. 31 2000/11.

entry to the market in general are relatively low and are uniform across the board i.e. licensing and accredited training, having an REA which is responsive to the needs of the industry such as the one recently negotiated is, facilitates a fair, balanced and more sustainable competitive market. Also having an REA has an additional cost benefit for employers in that they will largely have to deal with one contract, the given REA, rather than 100's of variations on contracts in the absence of an agreed and sustainable REA.

(h) The levels of employment and unemployment in the sector in question;

i) Sectoral Employment

ii) Sectoral Unemployment - Effect of a new sectoral minimum wage on labour supply.

(l) The terms of any relevant national agreement relating to pay and conditions for the time being in existence – There is no such agreement in operation at present, but the majority of the industry associations member companies have sought to maintain the previous ERO rates where possible in the knowledge that this negotiation had taken place.

(m) The general level of wages in comparable sectors – Whilst the man guarding security industry may be classified as a somewhat low knowledge entry employment sector, as stated previously in this submission with the development of regulation, the introduction of licensing and accredited entry training at FETAC level 4 the industry has become more mature and settled whereby a significant proportion of the industry employees have become career security officers. It is our view that the difference in the terms of this more responsive and flexible REA with an minimum hourly rate of pay at €10.75 is appropriate and proportionate when considered with other labour intensive service sector industries and indeed the minimum wage when one considers the actual functions of a security officer, i.e. to protect persons and assets and also the unique level of regulation, licensing and training vis a vis other service industries such as retail and contract cleaning.

(n) where enterprises in the sector in question are in competition with enterprises in another Member State, the general level of wages in the enterprises in that other Member State taking into account the cost of living in the Member State concerned.

Man guarding security is a non-traded, domestically provided service. At present, firms with headquarters located within and outside the Republic of Ireland compete for man guarding security service contracts in the country. The very nature of the service means that service provision has to take place within the country in question and as such

companies are bound by the wage and employment law that pertains to the sector in the country and not that of any other member state of the European Union.