



Irish Congress Trade Unions

Presentation to Joint Oireachtas Committee on the

**GENERAL SCHEME OF A NATIONAL MINIMUM WAGE (LOW PAY COMMISSION) BILL 2015**

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## **Introduction**

The Irish Congress of Trade Unions (ICTU) is the representative body for workers and their unions on the island of Ireland. Congress is a federation of 47 trade unions operating across the island of Ireland with a total membership of 770,569 (of which 206,716 are in Northern Ireland). Congress affiliates represent workers in all sectors of the economy - public and private - including low paid workers. The General Secretary of Congress, Ms Patricia King, is a member of the Low Pay Commission, as is Mr Gerry Light (Mandate) who is also a member of the Congress Executive Council.

The Irish Congress Trade Unions welcomes the opportunity to make some initial comments on the draft legislation establishing the Low Pay Commission, the 'National Minimum Wage (Low Pay Commission)' Heads of Bill.

## **Congress Observations and Recommendations for Amendment**

Our overall analysis is that raising the hourly rate of the national minimum wage is critically important. Congress supports the proposed provisions in Head 2 that: *"In discharging the functions assigned to it by section 12(1), the Commission shall make such recommendations to the Minister that are designed to set a minimum wage that, is fair and sustainable, and when appropriate, is adjusted incrementally, and that, over time, is **progressively increased** to assist as many low-paid workers as is reasonably practicable without creating significant adverse consequences for employment or competitiveness."*

However the hourly rate of pay is only part of the problem faced by low pay workers. Workers on low pay are more likely to be subject to a range of unfair employment practices, such as zero hour type arrangements in which they are vulnerable to having their hours reduced. Improving certainty

about hours of work is as essential as increasing the rate that the worker is entitled to be paid for the hours of work. The unfair practices do not stop there; workers on minimum wages are insufficiently protected from deductions from wages for example in respect of till shortages, the provision of uniforms and other work equipment. Recently I came across examples where the workers are being charged for their work ID card and keys. These practices operate to undermine the object and purpose of the National Minimum Wage because they reduce the amount of pay that the worker receives.

In the past, the Joint Labour Committee (JLC) system provided the means to address these and other unfair practices. By setting out in an Employment Regulation Order (ERO) the fair employment rules appropriate to the sector, that all employers were required, by law, to comply with. However employers in the Retail, Hotel and Catering Joint Labour Committees are refusing to cooperate and as a consequence the Committee is entirely frustrated in its work and cannot conclude an Employment Regulation Order in respect of those sectors. These are sectors comprised chiefly of low paid workers and it is unacceptable that the actions of the powerful are allowed to veto the Joint Labour Committee established by the Minister.

### **New Section to allow for referral of Employment Regulation Order to Labour Court**

In the absence of a properly operating JLC system there is a strong argument that the Minister should be able to refer the preparation of an Employment Regulation Order to the Workplace Relations Commission- Labour Court. A new section could be inserted into this legislation to amend the 2012 Industrial Relations Amendment Act to give the Minister the power to refer the preparation of an Employment Regulation Order, for the low paid sector in question, to the Labour Court. In line with recent Supreme Court rulings necessary policies and procedures can be set out and the Minister will make the final determination and Order. Ideally this Joint Oireachtas Committee would make such a recommendation.

### **Amending Heads of Bill**

The Heads of Bill as provided can also be amended to protect against unfair deductions. Head 2 provides that the Minister can establish a ceiling in respect of deductions for board and lodging. Specifically the Head provides as follows:

- (4) The national minimum hourly rate of pay declared by order under this section may include an allowance in respect of board and lodgings, board only or lodgings only at such rates as are specified in the order.

Congress is calling for an amendment to properly protect employees and to empower the Minister to restrict other deductions from wages and provide for fair hours of employment to address problems such as zero-hour contracts.

### **Proposed Amendment to Head 2: (Amendment of Part 3 of National Minimum Wage Act 2000 - section 13)**

Congress is calling for the Heads of Bill to be amended to provide as follows

#### **Section 13**

‘(4) The national minimum hourly rate of pay declared by order under this section may include;

- (a) an allowance in respect of board and lodgings, board only or lodgings only at such rates as are specified in the order

- (b) a prohibition or restriction on other charges or deductions;
- (c) fair hours of employment rules.

**‘Fair Hours of Employment Rules’** can be defined as including a right to banded hours and a right to request full time work or an increase in hours along with an obligation on the employer to seriously consider the request and only allow refusal in circumstances where they can objectively justify the refusal.

#### Example of Banded Hours

<b>Band A</b>	11.5 -14 hours per week
<b>Band B</b>	15-19 hours per week
<b>Band C</b>	20-24 hours per week
<b>Band D</b>	25-30 hours per week
<b>Band E</b>	31 -35 hours per week
<b>Band F</b>	36-37 hours per week

It worth recalling that worker demands for fair wages and conditions of employment are grounded in human rights guarantees that Ireland is committed to respect and promote including:

- **Universal Declaration of Human Rights** ‘just and favourable conditions of work’ ... ‘right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity and supplemented if necessary by other means of social protection’.
- **EU Charter of Fundamental Rights**, ‘fair and just working conditions’
- **European Social Charter** the ‘right to just and favourable conditions of work’ and ‘a right to fair remuneration sufficient for a standard of living for themselves and their families’.
- **International Covenant on Economic, Social and Cultural Rights (ICESCR)** ‘right to gain a living through work and a right to full and productive employment’ ... ‘right to fair wages, and the right to a ‘decent living’ for the worker and their family

#### Amendment Sought to Head 2 – Functions of the Commission

The function of the Commission is essentially to recommend to the Minister the level of the National Minimum Wage. For the avoidance of any doubt, Congress rejects any suggestion that the Commission should be empowered to recommend a reduction in social welfare.



Head 2 sets out the matters that the Commission are required to have regard to:

- (a) changes in earnings during the period since the most recent making of an order under section 13;*
- (b) changes in currency exchange rates during that period;*
- (c) changes in income distribution during that period;*
- (d) international comparisons, particularly with Great Britain and Northern Ireland;*
- (e) the need for job creation;*
- (f) whether during that period—*
  - (i) unemployment has been increasing or decreasing,*
  - (ii) employment has been increasing or decreasing, and*
  - (iii) productivity has been increasing or decreasing,**both generally and in the sectors most affected by the making of an order under section 13, whether directly or indirectly, and*
- (g) the likely effect that any proposed order will have on—*
  - (i) levels of employment and unemployment,*
  - (ii) the cost of living, and*
  - (iii) national competitiveness.*

It would be helpful if the legislation recognised that comparing levels of national minimum wages cross border is not a simple superficial comparison and that other factors must be taken into account, for example, the cost of a visit to a doctor, medicine and sick pay are very different when compared to 'Great Britain and Northern Ireland'.

This suggests an amendment to (d)

*d) international comparisons, particularly with Great Britain and Northern Ireland, **taking into account the standard of living, the general level of wages in the country concerned and the level of social protection afforded;***

It is also essential that the general level of wages in Ireland are taken into account, in particular the level of the median wage. It is worth recalling that when the National Minimum Wage was first introduced it was recommended that the rate would be set at 2/3rds of median earnings. This suggests an amendment to include a new subsection (b) as follows

***(new subsection b) the general level of wages, including the median wage***

In addition (g) (ii) can be amended to include the 'living wage' so that the Commission will consider

*(ii) the cost of living, **including the living wage***

Complying with human rights obligations requires the Commission to have regard for '*just and fair wages*' and it would be helpful if this was also explicitly included in the matters that the Commission is required to have regard to.

***(new sub section) 'Just and fair wages';***

These recommendations made by Congress are in line with the ILO Convention concerning Minimum Wage setting (No, 131).

The section as amended will be as follows

- (a) changes in earnings during the period since the most recent making of an order under section 13;
- (b) the general level of wages , including the median wage**
- (bb) changes in currency exchange rates during that period;
- (c) changes in income distribution during that period;
- (d) international comparisons, particularly with Great Britain and Northern Ireland; **taking into account the standard of living, the general level of wages in the country concerned and the level of social protection afforded;**
- (e) the need for job creation;
- (f) whether during that period—
  - (i) unemployment has been increasing or decreasing,
  - (ii) employment has been increasing or decreasing, and
  - (iii) productivity has been increasing or decreasing,both generally and in the sectors most affected by the making of an order under section 13, whether directly or indirectly, and
- (g) the likely effect that any proposed order will have on—
  - (i) levels of employment and unemployment,
  - (ii) the cost of living, **including the living wage'**
  - (iii) national competitiveness **and**
  - (iv) just and fair wages.**

#### **Amended to Resignation and Termination of Office**

The scheme sets out the reasons for termination of the Office of Commissioner. It would be unacceptable if a Commissioner had failed to pay their workers the National Minimum Wage. In this respect Congress is seeking an amended to allow the Minister to remove a Commissioner if they fail to comply with National Minimum Wage laws.

#### **Need to protect workers who give evidence to Low Pay Commission**

Finally Congress wishes to bring to the attention of the Committee the need for protection for workers who are invited to give statements to the Low Pay Commission. It is unacceptable that workers are under threat, for example of having their hours of work reduced when they give evidence regarding their own situation.

An amendment can be provided along the following lines:

*An employer shall not penalise or threaten penalisation against a worker, or cause or permit any other person to penalise or threaten penalisation against a worker for having made a statement to the Low Pay Commission or for giving evidence on their own experience through their representative organisation.*

**Ends**

**Esther Lynch, Irish Congress of Trade Unions  
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