



Irish Congress Trade Unions

**Response to Request for Submission from the
Joint Committee on Jobs, Enterprise and Innovation
On the Heads of Bill
Registered Employment Agreements (REAs) and Registered
Employment Orders (REOs)**

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Introduction

The Irish Congress of Trade Unions (ICTU) thanks the Joint Committee on Jobs, Enterprise and Innovation for the opportunity to make a written submission on the Heads of the Industrial Relations (Amendment) Bill 2014. The ICTU is the representative body for workers and their unions on the island of Ireland. The ICTU is a federation of 47 trade unions operating in Ireland with a total membership of 768,991 (of which 206,303 are in Northern Ireland). Congress affiliates represent tens of thousands of workers in sectors that for decades, benefited from Registered Employment Agreements and who stand to benefit from this proposed legislation.

The experience of trade unions is that many workers have experienced a worsening of their situation as a consequence of the ruling of the Supreme Court in *McGowan*. This is because Registered Employment Agreements no longer have any application beyond the subscribing parties and as a consequence employers previously abiding by those collective agreements are now refusing to do so. It has created an unsustainable race to the bottom based on unfair competition, with tenders for work based on bids that provide wages, terms and conditions below the REA rate, threatening the livelihoods of workers and standards in the industries affected.

Congress welcomes the Heads of Bill as a significant step towards restoring the balance. The legislation, once enacted will provide a legal underpinning for the operation of single company and group of companies Registered Employment Agreements (REAs. It will also put in place a system for sectoral Registered Employment Orders.

Congress supports the overall legislative approach and we wish to draw the Committee attention to a number of key observations and recommendations for amendment on the Heads of Bill.

Congress' main messages

- **The Bill does not provide adequate safeguards for workers from reprisals or threats of reprisals from their employers, for example, when the worker seeks to negotiate or secure a Registered Employment Agreement or when they report breaches of the Act. Critically there can be no rowing back on the whistleblowing protections afforded under the Protected Disclosures Act 2014;**
- **The situation of agency workers needs to be confirmed, i.e that agency workers are entitled to equal treatment and equal pay and conditions i.e. those established in the REA and the REO, in line with the EU Directive;**

- **The Heads do not make provision for a minimum pension contribution rate from employers, only employees, an amendment should be brought forward to provide for an employers' contribution;**
- **There is no provision for access for trade unions to members to discuss compliance with the REA and REO, is the intention to provide for this in the Work Place Relations Bill? Access to members is currently a feature of a number of REAs and ideally this legislation would make provision for access for unions to members and for protection for workers to discuss compliance with the legislation with their union. In addition enforcement provisions need to provide for Joint and Several Liability in respect of sub-contracting chains;**
- **Assurances are sought about the phrase 'workers of any class, type or group, it is essential that the meaning of this is that an REO can set 3 rates of pay in respect of each category of worker coming from the various classes, groups and types in the sector. Assurances are also sought that the phrase 'conditions of employment' is sufficiently wide to cover all of the matters that the parties may wish to incorporate in a collective agreement;**
- **Technical amendments are also needed, for example the wording needs to be amended to allow groups of employers to be party to a Registered Employment Agreement without the necessity to form a trade union of employers. Provision also needs to be made to allow an employer(s) to sign up to an REA subsequent to its Registration.**

The proposed legislation is unquestionably a major step forward however, Congress notes that the new framework does not address the deficit whereby Ireland, unlike most EU countries does not have a system by which collective agreements can be concluded at a sectoral level and be made universally applicable for that sector. This places employers and workers at a disadvantage compared with their EU counterparts.

It is regrettable that the Supreme Court in *McGowan*, did not comment on the Constitutionality of the REA provisions in the IR (Amendment) Act 2012. That Act provided for employment agreements, made between trade unions and employer representatives, to be given general application by being registered by the Labour Court and by Statutory Order made by the Minister confirming the registration of the agreement. It is worth noting that the EU Charter of Fundamental Rights and the European Convention on Human Rights, require that collective bargaining should take place at the 'level' where it is 'effective'. For many sectors, because of the nature of employment in that sector, effective collective bargaining can only take place at sectoral level, this was a key point made in the Duffy/

Walsh report. The consequence of the *McGowan* ruling means that there is still no framework for collective agreements to be concluded at sectoral level, and this is the subject of a reference, by the ICTU and our affiliate the TEEU (Technical, Electrical and Engineering Union), to the European Court of Human Rights.

Finally, Congress stresses that it is urgent and critical that legislative progress to give effect to the right to collective bargaining in line with the commitment in the Programme for Government is made.

We set out below observations and recommendations according to the order of the relevant Head below. The suggested text for *amendment is in blue text.*

Congress Observations and Recommendations on Amendment on relevant Head of Bill

Part II Registered Employment Agreements

Head 3 Definitions for the purposes of Part II

The wording of the definition of a ‘collective agreement’ does not allow a group of employers to be party to an REA unless they are a trade union of employers. Congress supports the provision but is seeking an amendment to allow a group of employers who are not a trade union of employers to be a party to the REA. A possible amendment could be

the expression “employment agreement” means an agreement relating to the remuneration or the conditions of employment of workers of any class, type or group made between a trade union, or trade unions, of workers and an employer, *a group of employers*, or a trade union of employers that are binding only on the parties to the agreement.

Congress is seeking clarification that the phrase ‘*conditions of employment*’ will be construed under this Act to include the terms and conditions of employment for example, it is essential that the REA can deal with the matters normally contained in a collective agreement, such as ‘normal working hours’ notice of work schedules, selection for tasks, place of work, access to paid leave for training, payment by the employer for insurance, licences etc, income continuance schemes, monitoring arrangements, copyright, information and consultation arrangements, facilities to be provided to the trade union(s), paternity leave and family friendly working arrangements, and any other matters that may be agreed between the parties that form the basis for the collective agreement. It is important to recall that Registered Employment Agreements can, under many EU Directives

be used to adapt the provisions of the Directive and the transposing legislation, such as the Organisation of Working Time.

Head 5 Registration of employment agreements

Congress is seeking clarification that the proposed wording is sufficiently precise and that it allows an REA (and REOs) to apply to classes, types and groups of workers, i.e. that an REA is not restricted to one single class, type or group of workers. Currently the proposed wording is as follows:

‘that the agreement is expressed to apply to all workers of a particular class, type or group and their employer where the Court is satisfied that it is a normal and desirable practice or that it is expedient to have a separate agreement for that class, type or group’

The expression ‘class, type or group’ is frequently used throughout the heads, both for the REA and the REO, in this respect it may be desirable, for the avoidance of any confusion, to include in the definitions section, a provision that makes it clear that references to class, type and group refers to classes, types and groups. A possible amendment is as follows:

In this part, references to ‘class, type and group’ refers to ‘classes, types and groups’.

Head 6 Variation of registered employment agreements

Congress is calling for a simple procedure to allow an employer(s) who were not party to the REA when it was originally registered to be able to subsequently sign up and be a party to the REA, i.e after its registration. Our proposed amendment

New (5)
An employer can join an existing registered employment agreement by applying to the Court;

Head 7 Cancellation of a registration

Congress is seeking an amendment to provide that adequate notice must be given to the trade union(s) by the Labour Court of its intention to cancel the registration of an REA, including on the basis that the trade union is no longer substantially representative of the workers concerned. In line with other notice periods in the Heads, we are recommending that this notice period should be no less than 6 months. In addition we are requesting that the union(s) involved should have the right to make their case, if they so wish.

A possible amendment is as follows:

(5) The Court may cancel the registration of an employment agreement if it is satisfied, having regard to section 4(a) of Head 5 above, that the trade union of workers, or trade unions of workers, who were party to the agreement are no longer substantially representative of the workers concerned. *The Court shall give the trade union(s) concerned 6 months notice of its intention and shall give the trade unions(s) the opportunity to be heard.*

This provision highlights an obvious need to provide protection for workers from employers actions aimed at threatening or inducing the workers to give up the registered employment agreement and we make recommendations on appropriate safeguards under Head 29 Prohibition on Penalisation.

Head 8 Adaptation of contracts of service consequential upon registration of employment agreement

Congress is seeking an amendment to confirm the position that agency workers are entitled to the provisions of the Registered Employment Agreement. Our concern is that without such a provision some confusion may develop due to the wording in the Protection of (Agency Workers) Act 2012 contrary to the purpose of the EU Directive 2008/104/EC on Temporary Agency Work.

Proposed amendment

A registered employment agreement shall, so long as it continues to be registered, apply, for the purposes of this section, to every worker of the class, type or group to which it is expressed to apply, and his/her employer, *including agency workers*

Part II Registered Employment Orders

Head 12 Definitions for the purpose of Part III

As previously outlined, Congress is concerned about the meaning of the expression 'class, type or group'. This expression is frequently used and it may be desirable, for the avoidance of any doubt, to include a definition to make it clear that references to 'class, type and group' refers to classes, types and groups. It is particularly important as the REO will need to set three rates of pay for a number of different types of workers according to the sector it will cover.

In this part references to 'class, type and group' refers to 'classes, types and groups'.

Congress recommends that 'subsistence' be included in the definitions, 'subsistence' is a feature of existing agreements

Remuneration means—

(a) basic pay, and

(b) may include any pay in excess of basic pay in respect of—

(i) shift work,

(ii) piece work,

(iii) overtime,

(iv) unsocial hours worked,

(v) hours worked on a Sunday, or

(vi) travelling time (when working away from base)

(vii) subsistence

Head 14 Submission of Request

Terms and Conditions relating to Remuneration

Congress is seeking the following technical amendment to clarify the meaning,

(1) Any organisation, *being a trade union of workers*, which the Labour Court is satisfied is substantially representative of workers of a particular class, type or group, may separately or jointly with any organisation, which the Labour Court is satisfied is substantially representative of employers of such workers, request the Labour Court to examine the terms and conditions relating to the remuneration of workers of that particular class, type or group and request the Court to make an appropriate recommendation to the Minister that the Minister make an Order setting terms and conditions as provide for under Head 24.

Head 15 Labour Court Recommendation

The Heads intend to apply the NMW (National Minimum Wage) sub-minimum rates to the REO, this is not appropriate as the REO rates are set according to the class, type of group or at the various stages during an apprenticeship, regardless of age. There is no justification for paying a young person less. We are therefore calling for the deletion of this provision.

~~*(iii) minimum hourly rates of basic pay lower than that for an experienced adult worker in respect of young workers in accordance with the relevant percentages set out in the National Minimum Wage Act,*~~

Head 17 Labour Court Recommendation

Congress is seriously concerned that the proposed legislation does not provide for a contribution to the pension, mortality and sick scheme by the employer. The existing

agreements provide for a contribution by the employer. This omission is unacceptable and we are seeking the following amendment:

The Labour Court recommendation may provide for:

- (i) the requirements of a particular pension and mortality scheme or schemes for the class, type or group of workers, including a minimum daily rate of contribution to a scheme by workers and employers
- (ii) the requirements of a particular sick pay scheme for the class, type or group of workers and employers, and

Head 29 Prohibition on Penalisation

Congress is seeking an amendment to provide adequate protection for workers who are seeking to secure a Registered Employment Agreement. Providing protections for workers who seek a Registered Employment Agreement is essential as the legislation has no other trigger mechanism to promote the conclusion of a Registered Employment Agreement. In line with the rulings of the European court of Human Rights the legislation should prohibit the use of 'inducements' to encourage workers to give up a Registered Employment Agreement.

Workers who report breaches in respect of the REA and REO must be assured of adequate protection and importantly we are seeking a provision to ensure that there is no rowing back on the Protected Disclosure Act 2014. Workers should be protected from penalisation, victimisation (on foot of using the Act) and from dismissal importantly the worker should be protected from the first day of their employment. The requirement for one years' continuous service should not apply.

Suggested amendments

- (1) An employer shall not penalise or threaten penalisation, of a worker for—
 - (a) Seeking to negotiate or secure a Registered Employment Agreement
 - (a) invoking any right conferred on him or her by this Part,
 - (b) having in good faith opposed by lawful means an act that is unlawful under this Part,
 - (c) making a complaint to a member of the Garda Síochána or the Minister, or the Workplace Relations Service that a provision of this Part has been contravened,
 - (d) giving evidence in any proceedings under this Part, or
 - (e) giving notice of his or her intention to do any of the things referred to in the preceding paragraph
 - (d) discussing the operation of this Act with their trade union

If a penalisation of a worker, in contravention of *subsection (1)*, constitutes a dismissal of the worker within the meaning of the Unfair Dismissals Acts 1977 to 2007, relief may not be granted to the worker in respect of that penalisation both under *Schedule 2* and under those Acts)

If dismissal or penalisation of a worker, for making a protected disclosure about a breach of a legal obligation under this (Act) constitutes a contravention of the

Protected Disclosure Act 2014, relief may not be granted to the worker in respect of that Act and under this (Act).

- (a) suspension, lay-off or dismissal (including a dismissal within the meaning of the Unfair Dismissals Acts 1977 to 2007), or the threat of suspension, lay-off or dismissal,
- (b) demotion or loss of opportunity for promotion,
- (c) transfer of duties, change of location of place of work, reduction in wages or change in working hours,
- (d) imposition or the administering of any discipline, reprimand or other penalty (including a financial penalty), and
- (e) coercion or intimidation, *harassment*
- (f) offering an inducement or caring out other activity to encourage or coerce workers to give up or not to negotiate a Registered Employment Agreement.*

Inspection and Enforcement

Congress notes that the Heads anticipate the enforcement provisions to be in line with the Workplace Relations Bill 2014. Congress has a number of observations and recommendations on that Bill and many are relevant to the inspections and enforcement of this proposed legislation. In particular the protection for workers to discuss their situation in the context of the operation of the legislation with their trade union, the right to be represented and the ability and facilities to be afforded to the trade union to meet with members in respect of compliance with the REA and REO.

There are two additional key areas for concern, firstly the legislation needs to provide for 'joint and several liability' in respect of enforcement in a sub-contracting chain. There is increasing recognition of the problem of enforcement in sub-contracting chains and the EU has recently (2014) adopted a Directive on Public Procurement on that provides for 'joint and several liability in contracting chains.

A second problem arises in the context of informal insolvency whereby employers do not properly wind up the company. This leaves the workers in the unfortunate position that they fall outside the Department of Social Protection Insolvency Payments Scheme. It would be helpful if the Joint Oireachtas Committee could recommend that this deficit be addressed by the Minister for Social Protection as part of its consideration on this Bill.

Finally, Congress would welcome the opportunity for a trade union delegation to present our recommendations and experience to the Committee as part of their consideration.

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Ends

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