



**IFA SUBMISSION TO THE INDEPENDENT REVIEW OF ERO AND
REA WAGE SETTING MECHANISMS**

25 February 2011

Executive Summary and Recommendations

IFA welcomes the review of the ERO and REA wage setting mechanisms, and believes that reform is required of the JLC structure and processes. The primary agriculture sector is governed by the terms of the Agricultural Workers Employment Regulation Order.

Agriculture and the agri-food sector have a key role to play in Ireland's export-led economic recovery. Labour costs are a significant component of overall input costs for agriculture, particularly in the labour intensive horticulture, pigmeat and poultry sectors. These sectors are competing on the domestic and export markets with the UK in particular, whose minimum agricultural wage rates are set between 15-20% below the Irish rate.

IFA's proposals for reform are set out below:

National Minimum Wage

IFA believes that it is important to find the right balance between the socially desirable objective of providing a floor for the earnings of people in low paid employment and ensuring that we do not damage the competitiveness of our goods and service industries.

IFA proposes therefore that any further changes to the National Minimum Wage must be undertaken transparently, using objective economic criteria, and taking into account the wage rates of our main trading competitors.

Agricultural Workers Joint Labour Committee – Wage Setting

IFA believes that there is no remaining economic or social argument to maintain different sectoral rates of pay. IFA proposes that the statutory basic employment rights and rates of pay (National Minimum Wage) should be the baseline for agricultural workers.

At a minimum, any variations in the national minimum wage rate must be automatically reflected in a proportionate change to the agricultural minimum wage.

Agricultural Workers Joint Labour Committee – Flexibilities

IFA proposes that the Agricultural Workers JLC retains the authority to agree flexibilities in the terms and conditions of employment for agricultural workers appropriate to the specific needs of the agriculture sector.

Agricultural Workers Joint Labour Committee – Procedural issues

IFA proposes significant reform of the JLC structures and processes, including:

- Appointment of independent chairpersons to the JLCs, to give greater balance between employee and employer representatives;
- Review of appointment mechanism to membership of JLCs;
- Introduction of a shorter timeframe to apply for variations in EROs, particularly in response to changing economic circumstances;
- Introduction of a more efficient process for ratification and publication of committee-approved EROs; and
- More effective communication with employers and open publication of notices and changes to EROs.

Regulation and enforcement - NERA

IFA believes that the regulation and employment compliance procedures for small businesses must be reformed, with the objective of avoiding imposing additional costs and reducing the bureaucratic burden on employers.

IFA proposes:

- Consolidation and simplification of employment law, which would make compliance, particularly for small employers, an attainable objective; and
- Total reform of NERA to provide greater guidance and support for employers in order to facilitate, rather than enforce, compliance.

Introduction

IFA welcomes the independent review of the ERO and REA wage setting mechanisms, and believes that reform is required of the Joint Labour Committee structure and processes. The review body has been asked to provide an assessment of the continued relevance, fairness and efficiency of the current ERO and REA mechanisms, and of individual Orders and Agreements, taking into account the potential overlap between the EROs and National Minimum Wage, the potential effects on employment of the EROs, and the operation and governance of the Joint Labour Committees.

The following is the IFA submission to the Independent Review of ERO and REA wage setting mechanisms, setting out IFA's proposals for reform. Chapter 1 and 2 set the context for the required reform, by outlining the role of agriculture in the Irish economy and identifying wage competitiveness issues between the Irish agriculture sector and its main competitor, the UK.

Chapter 3 outlines IFA's specific proposals for reform of the ERO and REA wage setting mechanisms, including the setting of the National Minimum Wage, the link between the Agricultural Workers ERO and National Minimum Wage, the retention of sector specific flexibilities in the ERO, reform of the JLC procedures and processes, and reform of the employment Regulation and Enforcement process.

Chapter 1: Agriculture and the economy

1.1 Overview of Sector

Ireland's agri-food industry is the largest Irish owned productive sector, accounting for over 60% of exports from Irish-owned manufacturing. In 2010, farm output increased by over €500m, pushing up the value of food and drink exports by €800m, to €8 bn.

The economic downturn has clearly shown that it is the indigenous exporting sectors, of which the agriculture sector is a major component, which are driving the economic recovery. The agri-food sector has a number of characteristics of particular importance to the Irish economy:

1. It is an industry with majority Irish ownership, which results in low profit outflow from the country;
2. Import requirements for agri-food products are much lower than for goods produced in the non agri-food sector;
3. EU transfers to Ireland are almost entirely related to agriculture and rural development measures. These provide a vital source of net income for the Irish economy; and
4. The agricultural sector is widely dispersed throughout the country; thereby contributing to balanced regional development.

In other words, employment in agriculture and the agri-food sector in Ireland generates a greater proportion of income that stays within Ireland, than income generated in non-agri food companies.

1.2 Farm Income

After a horrendous two years for farm businesses in 2007-2009, during which time farm incomes fell by over 40%, 2010 saw a strong recovery in farm incomes, with price increases in almost all commodities, particularly the dairy, cereals and sheep sectors.

Overall, however, farm incomes remain low, with estimated Average Farm Income of €16,500 in 2010, and €33,000 for the top 30% of commercial farmers¹.

1.3 Effect on agricultural employment of economic downturn

Since mid-2008, there has been a dramatic fall in the numbers working in agriculture. In mid-2008 the numbers working in agriculture peaked at 115,000, falling to 89,500 by late-2010.

The majority of those who have lost their jobs in agriculture are self-employed farmers. At the same time, there has been a significant drop in the numbers employed as agricultural workers. In the year between mid 2008 and 2009, the number of agricultural employees fell by 4,700, from 20,900 to 16,200. However, by late 2010, the number of employees had increased to 18,200, most likely reflecting the recovery in demand for agricultural produce².

Chapter 2: International Competitiveness and Agricultural Wages

Over the last decade, as a result of both rising prices and an increase in value of the euro, the Irish economy lost competitiveness with its main trading partners. While competitiveness has improved significantly over the last two years, in 2010 our competitiveness remains 19% below the 2000 level³.

Agricultural outputs and food products compete on the global market, exporting 90% of our beef output and 80% of our dairy products annually. Over 40% of Irish agri-food exports go to the UK.

Labour costs are a significant component of overall input costs for agriculture, particularly in the labour intensive horticulture, pigmeat and poultry sectors.

As noted, our main export market is the UK, while Irish agricultural products compete on the domestic market mainly with imports from the UK. It is worthwhile therefore to compare the minimum agricultural wage rates between the UK and Ireland.

The Minimum Agricultural Wage in Ireland is currently €9.10. In Northern Ireland (which provides almost 25% of the liquid milk sold in the Irish economy) the Agricultural Minimum Wage (Grade 2, Standard Worker) is £6.25, or €7.30⁴. This is 20% below the Irish rate.

A separate agricultural minimum wage is set for England and Wales; at £6.58, or €7.70, this is 15% below the Irish rate. These differences are significant in the context of an export driven agri-food sector, which is competing internationally.

Reform of the agricultural wage setting mechanism has begun in the UK. In July 2010, it was announced that the Agricultural Wages Board and Agricultural Wages Committees of England and Wales would be abolished, with agricultural workers in England brought within the scope of the National Minimum Wages Act⁵.

¹ *IFA Farm Income Review 2010*, January 2011

² *CSO QNHS, 2008-2010*

³ Harmonised Competitiveness Index, *Benchmarking Ireland's Competitiveness 2010*, National Competitiveness Council

⁴ <http://www.dardni.gov.uk/index/fisheries-farming-and-food/enforcement-awb/enforcement-minimum-wage-rates-for-agricultural-workers-for-2010-2011.htm>

⁵ <http://ww2.defra.gov.uk/news/2010/07/22/arms-length-bodies/>

Chapter 3: Joint Labour Committees and the Agricultural Workers ERO

The Industrial Relations Act 1946 empowered the Labour Court to set up Joint Labour Committees (JLC) on the application of an organisation representing a group of workers or the Minister for Enterprise, Trade and Employment.

The purpose of the JLC is to regulate rates of pay and conditions of employment for workers in a particular activity or sector. Joint Labour Committees comprise employer and employee representatives.

Traditionally, JLCs operated in low-wage sectors. There are JLCs regulating retailing, hairdressers, law clerks, contract cleaning, hotel and catering and agriculture. It is estimated that between 170,000 - 300,000 workers⁶ are regulated in this way.

JLCs issue Employment Regulation Orders (ERO), which set out minimum rates of pay and conditions of employment for an industry or sector. The terms of the ERO are automatically incorporated into the contract of employment for a worker in that sector.

Many of the functions of Joint Labour Committees have been superseded by the introduction of primary legislation to protect employee rights and guarantee fair terms and conditions of work.

Major legislative changes included the introduction of:

- **The Organisation of Working Time Act 1997 (OWT Act)** - The Organisation of Working Time Act 1997 is designed as a health and safety measure which puts the onus on employers to control how the worker spends the working day, by establishing statutory limits for hours of work and specifying rest periods and holiday entitlements; and
- **The National Minimum Wage** - The National Minimum Wage Act 2000 imposes a statutory obligation on all employers to pay workers at minimum hourly rate of pay.

In summary, the basic statutory employment rights today include: statement of terms of employment; minimum wage rates; working hours and rest periods; annual leave and protective leave; equality of opportunity and reward; and health and safety in the workplace.

3.1 Setting the National Minimum Wage

The national Minimum Wage was introduced in a period of rapid growth and was pushed ahead of the general increase in wages (represented by the national wage agreements). In 2007, the jump from €7.65 to €8.65 represented a 13.0% increase in the NMW (recently reversed).

The National Minimum Wage Act 2000 puts responsibility on the Minister of Enterprise Trade and Innovation to determine the hourly rate of pay:

Section 11 (1) of the Order states that *“the Minister shall, by order, after taking into account the impact of the proposal rate may have on employment, the overall economic conditions in the state and national competitiveness, declare a national minimum hourly rate of pay for the purposes of this Act”*.

⁶ <http://www.deti.ie/press/2010/20101214.htm>

Section 11 (1), not only places responsibility on the Minister to 'declare a national minimum hourly rate of pay' but also instructs him to take into account:

- Impact on employment;
- Economic conditions; and
- National competitiveness.

Section 12 (2) of the Act gives the Minister the power to 'vary' the NMW hourly rate; he can reduce as well as increase the rate to reflect current economic conditions.

In practice, responsibility has passed to the Labour Court to make a recommendation to the Minister on the appropriate Minimum Wage rate.

IFA believes that it is important to find the right balance between the socially desirable objective of providing a floor for the earnings of people in low paid employment and ensuring that we do not damage the competitiveness of our goods and service industries.

IFA proposes therefore that any further changes to the National Minimum Wage must be undertaken transparently, using objective economic criteria, and taking into account the wage rates of our main trading competitors.

3.2 Agricultural Workers Joint Labour Committee – Wage Setting

The AW JLC was established under the Industrial Relations Act 1976, which repealed the Agricultural Wages Act 1936 –1969.

The AW JLC is composed of employer and employee representatives of the agricultural sector. On the employers' side, there are representatives from IFA, IBEC and the ICMSA. The main employee representative is SIPTU.

The AW JLC is responsible for establishing rates of pay and terms of employment for workers in the Agricultural Industry. The rates of pay are higher than the national minimum wage and the conditions of employment include statutory provision for overtime and sick pay schemes.

Similar to other Joint Labour Committees, the AW JLC was established prior to any statutory legislation establishing employee rights and minimum terms and conditions.

IFA believes that there is no remaining economic or social argument to maintain different sectoral rates of pay. IFA proposes that the statutory basic employment rights and rates of pay (National Minimum Wage) should be the baseline for agricultural workers.

At a minimum, any variations in the national minimum wage rate must be automatically reflected in a proportionate change to the agricultural minimum wage.

3.3 Agricultural Workers Joint Labour Committee – Flexibilities

The Agricultural Workers ERO sets out the terms and conditions of employment for agricultural workers in a manner that is clear and understandable for both employees and employers.

The amendments to the Agricultural ERO (effective 3rd May 2010) introduced flexibility, eliminated overtime provisions and clarified key policy and procedures. It takes account of the seasonal and flexible nature of agricultural work, and is equally applicable to all groups within the agriculture sector, from the dairy sector to the soft-fruit and vegetable sectors

The Agricultural Workers Joint Labour Committee (AW JLC) structure allows for collective agreement of terms and conditions for workers, which reduces the requirement to undertake negotiations at farm level, where the capacity to undertake this may be limited.

IFA proposes that the Agricultural Workers JLC retains the authority to agree flexibilities in the terms and conditions of employment for agricultural workers appropriate to the specific needs of the agriculture sector.

3.4 Agricultural Workers Joint Labour Committee – Procedural issues

A review of the JLC structure undertaken on behalf of the Labour Court in 2005 identified the need to reform the structures and processes for the more effective functioning of the system.

IFA believe that the JLC structure at present, including the committee format, process of appointments, dissemination of information and ratification of decisions, is not fit for purpose, and requires substantial reform.

IFA proposes significant reform of the JLC structures and processes, including:

- **Appointment of independent chairpersons to the JLCs, to give greater balance between employee and employer representatives;**
- **Review of appointment mechanism to membership of JLCs;**
- **Introduction of a shorter timeframe to apply for variations in EROs, particularly in response to changing economic circumstances;**
- **Introduction of a more efficient process for ratification and publication of committee-approved EROs; and**
- **More effective communication with employers and open publication of notices and changes to EROs.**

3.5 Regulation and enforcement - NERA

The cost of compliance with employment law is high for small businesses in Ireland, with a wide range of employment legislation, which can prove complex and confusing for the employer. These include:

- Terms of Employment (Information) Act 1994;
- Payment of Wages Act 1991;
- Organisation of Working Time Act 1997;
- Unfair Dismissal Act 1977-2005;
- Employment Equality Act 1998; and
- Safety, Health & Welfare at Work Act 2005.

By comparison, under the Canadian system, there is a consolidated model of employment law. The Employment Standards Act 2000 (ESA) is a comprehensive piece of legislation, which covers a wide range of employment related topics including: minimum rates of pay, hours of work, overtime, vacation & public holidays, termination of employment, severance pay and continuity of employment. In Ireland there are 7 different pieces of legislation covering this range of topics.

The range of institutions that have been established to adjudicate and enforce employment law creates further complexity, delay and confusion, with the possibility of the same case being referred to the Rights Commissioners Service, the National Employment Rights Authority, the Employment Appeals Tribunal, the Health and Safety and the Equality Authority.

It is felt by many small employers that the National Employment Rights Authority (NERA) has been very heavy handed in the interpretation and enforcement of the ERO / REA measures. The burden of proof imposed by compliance procedures and inspections can be time consuming and expensive, and result in a great deal of stress for the employer. There is often the requirement to carry out a detailed review of 3 years working time and payroll records plus the cost of accounting and legal support and advice. The focus of NERA's work must be on encouraging compliance rather than the imposition of fines and penalties relating to the past.

IFA believes that the regulation and employment compliance procedures for small businesses must be reformed, with the objective of avoiding imposing additional costs and reducing the bureaucratic burden on employers.

IFA proposes:

- **Consolidation and simplification of employment law, which would make compliance, particularly for small employers, an attainable objective; and**
- **Total reform of NERA to provide greater guidance and support for employers in order to facilitate, rather than enforce, compliance.**