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4th August 2017

Notice of Intention to Conduct an Examination into Terms and Conditions in the Mechanical Engineering and Building Services Sector (the "Notice")

Dear Sirs

We, the Trustee of the Construction Workers Pension Scheme (the "Scheme"), are writing in response to the Notice issued by you on 12 July 2017. We wish to make representations in support of the making of a Sectoral Employment Order to specify minimum requirements for pension and sick pay benefits in the Mechanical Engineering and Building Services sector.

Our representations are set out in three parts:

1. Firstly, this letter, which explains the background to the Scheme and our view of the rationale for the making of such a Sectoral Employment Order ("SEO");
2. Secondly, a set of recommended framework terms which we believe should apply to the pension, death and sick pay benefits which would be required under the SEO.
3. Thirdly, an explanatory commentary on why we believe those terms should apply.

Background to the Scheme

The Construction Workers Pension Scheme is an industry-wide occupational pension scheme providing for the retirement savings of over 304,000 members in total, which includes over 21,000 active members and in excess of 2,000 active employers in the construction industry. A significant number of the scheme's active members are from the Mechanical Engineering and Building Services Sector, as are many of the employers in the sector. These employers and their employees currently participate in the Scheme on a voluntary basis as the 2006 Registered Employment Agreement ("2006 REA") is no longer in force. The pension contributions being paid by employers and their employees are however in line with the rates which had applied under the 2006 REA. The Scheme has been in existence for just over fifty years providing pensions and death in service protection for construction workers and is tailored to meet the specific needs of a mobile construction sector workforce. The Scheme operates on a not for profit basis providing a low cost service to members.

Background to the Construction Workers Sick Pay Scheme

This scheme is an industry wide scheme for the payment of sick pay benefits to workers in the construction and Mechanical Engineering & Building Services Sectors who become sick or cannot work due to injury. It is established separately from the Scheme, but administered in close cooperation with it. The membership is co-extensive.

Rationale for a Sectoral Employment Order covering pension and sick pay benefits for the Mechanical Engineering and Building Services Sector.

We strongly believe that the Court should recommend to the Minister that an SEO be made covering pension and sick pay benefits in the Mechanical Engineering and Building Services Sector of the construction industry.

While it is beyond our remit to comment on industrial policy, we can confirm that the Scheme operated very successfully as a mandatory scheme for almost thirty years under the old Registered Employment Agreement system and has continued to do so on a voluntary basis since the end of the 2006 REA. We believe that the existence of separate terms and conditions relating to pensions and sick pay for workers in the Mechanical Engineering and Building Services sector is a long established and desirable practice, which should be maintained and reinforced by the making of an SEO in this area by the Minister.

We also believe that the existence of mandatory terms and conditions for pension and sick pay benefits at the level proposed in our recommended framework terms will promote harmonious relations between workers in this sector and their employers, and be broadly beneficial.

The levels of contribution currently payable under the Scheme, being 4.2% of the average industrial wage for employers and 2.8% of the average industrial wage for employees, are very moderate and could not be seen as having a detrimental impact on competitiveness or employment levels in the sector.

A very significant number of employers currently participate in the Scheme on a voluntary basis, as indicated by the current active membership of 21,000.

In relation to sick pay benefits the levels of contribution required to run such a scheme, if it is run efficiently on an industry wide basis, are extremely low – 0.3% of the average basic Mechanical Engineering and Building Services Sector wage and could not be seen as having a negative impact on competitiveness or employment levels in the sector.

The benefits being proposed in our representation are basic benefits and will ensure that, in the area of pension and sick pay benefits, fair and sustainable contribution rates are payable in the Mechanical Engineering and Building Services sector. They will provide a minimum safety net for workers who fall sick, assisting them to re-enter the workforce, and for workers who retire, providing some level of income in addition to the State pension on their retirement. An SEO for pension would be in line with Government Policy which is to increase the numbers participating in pension schemes and so reduce their dependence solely on the state pension.

We would welcome very much the opportunity to appear before the Labour Court in order to answer any questions which the Court may have in respect of these representations or in respect of the Scheme more generally.

We look forward to your response.

Yours faithfully

p.p. Anne Keogh

Andy O'Gorman
Chairman Construction Workers' Pension Scheme

Recommended Terms for the Proposed Sectoral Employment Order (“SEO”) covering pension and sick pay benefits

Every employer to whom the SEO applies shall participate in an SEO pension scheme that meets the pensions requirements of the SEO.

Pension Scheme Structure

The pension scheme to which the SEO applies (“**SEO pension scheme**”) should include the following features and benefits:

1. An SEO pension scheme should be an Occupational Pension Scheme which is registered with and regulated by the Pensions Authority.
2. Recognising the flexible nature of employment across employers within the Mechanical Engineering and Building Services sector and related industries (the Sector), an SEO pension scheme should be established as a multi-employer scheme open to all employers in the Sector.
3. Whilst a member remains employed within the Sector, members should be able to have a single individual pension account within the SEO pension scheme thereby enabling successive employers of the member to contribute to the member’s account provided the employer has joined itself to the SEO pension scheme.
4. Where an employee member leaves service of an employer, the contributions which have been paid by the employee and the employer in respect of the member will be retained in full within the SEO pension scheme in the individual account of that member.
5. The rules of an SEO pension scheme should not permit a member to take a refund of their own contributions prior to reaching retirement age.
6. Bodies that are representative of both employers and unions involved in the Sector must appoint the members of the SEO pension scheme trustee. The constitution of the Trustee Board should also include representatives of both employers and employees in the Sector.
7. In addition to providing pension benefits, an SEO pension scheme must also provide an additional Death in Service benefit with members covered for this benefit upon joining the scheme.

8. An existing pension scheme at the time the SEO comes into force may qualify as an SEO pension scheme provided it complies with the terms of the SEO or is adapted to so comply.
9. An SEO pension scheme must disclose and publicise information about the pension scheme's charges and who bears them. There must be full transparency of charges and this information should be disclosed in the scheme's Trustee Annual Report as well as provided to each member when joining. The total annual charges borne by members should be disclosed and must include all administration costs, Trustee costs, distribution costs, fund management costs, actuarial, accounting, legal and auditing fees and all other charges incurred by the SEO pension scheme.

10. Scheme Design

The terms and conditions applying under an SEO pension scheme and benefits to be provided must be at least as great as that described below.

10.1. Eligibility

An SEO pension scheme must at least provide for an employee of a participating employer in the Sector to be eligible for membership of the scheme provided they have attained age 20 but not yet attained age 65.

10.2. Relevant Pension Contributions

Employers and their employees working in the Mechanical Engineering and Building Services Sector and related industries (the Sector) must contribute to an SEO pension scheme.

Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.

10.3. Pension Benefits

- a) Members' pension benefits within an SEO pension scheme should be based on the full value of their individual pension funds and there should be no deductions from the contributions paid or when the funds are drawn down.
- b) The Trustees of the Scheme will invest each member's pension contributions and these along with the investment returns declared, net of charges, will determine the value of the member's pension fund.

10.4. Retirement

Normal Retirement Age shall be age 65. However a member may be permitted to retire from age 60 (at the discretion of the scheme trustee). When a member retires, he or she should be able to choose from a range of options based on their entire fund value in line with applicable pension and tax legislation. One of the options which must be available is the provision of a pension for life for the member.

10.5. Death in Service Benefits

- a) Every employer to whom the SEO applies must participate in an SEO pension scheme that provides a death in service benefit for the deceased member's dependants. The death in service benefit should be in addition to the benefits provided for the dependants based on the full value of the member's pension fund.
- b) Provided the employee has completed a once-off initial qualifying contribution period, inclusion for death in service benefits shall be automatic on becoming a member of the SEO pension scheme, without medical underwriting or by reference to any previous medical conditions of the member. In the event of the member moving to another participating employer within the Sector, the member should not be required to complete any further qualifying period in order to be covered for death in service benefits.
- c) Death in Service Contributions will form part of the overall contribution rate of an SEO pension scheme with a portion payable by both the member and employer in addition to the pension contributions.
- d) Contributions should be remitted by employers to an SEO pension scheme in accordance with all relevant pension and other legislative requirements.
- e) If a member had met the requirements for the full lump sum death in service benefit, but then leaves service and dies within four weeks of doing so without being re-employed in the Sector, the SEO pension scheme should provide a modified lump sum benefit in addition to the value of their pension account.
- f) Death in Service benefits should be payable regardless of cause or timing of death, so long as the member meets the qualification conditions for inclusion for Death in Service benefits as set out above.

SICK PAY SCHEME

Every employer to whom the SEO applies must have in place a provision for Sick Pay benefits for each employee covered in the SEO.

Sick Pay Scheme Structure

The sick pay scheme to which the SEO applies ("**SEO Sick Pay Scheme**") should include the following features and benefits.

Sick Pay Scheme Structure

1. An SEO Sick Pay Scheme should be a funded arrangement with contributions held in Trust and independently administered and managed. An SEO Sick Pay Scheme should facilitate participation by multiple employers to reflect the flexible nature of employment within the Sector.
2. The main purpose of an SEO Sick Pay Scheme is the provision of benefits for every worker for periods of illness or injury while in the employment of employers to whom this SEO applies.
3. The Sick Pay Benefit should be paid to each employee without the need for underwriting or reference to previous medical conditions. Entitlement to Sick Pay Benefits should be unaffected and uninterrupted as employees transfer from one employer to another within the Sector.
4. The Sick Pay Benefits provided by an SEO Sick Pay Scheme should be in addition to any sickness, illness or invalidity benefits payable by the State through the social insurance system.

Sick Pay Conditions & Benefits

5. Eligibility
Inclusion for Sick Pay Benefits will be automatic on becoming a member of an SEO Sick Pay Scheme. No charges should be incurred by either employers or members for Sick Pay benefit provision, other than the relevant contributions required to provide the benefits.

6. Sick Pay Contributions

- a) An SEO Sick Pay Scheme should be a contributory sick pay scheme with contributions payable by both employers and employees.
- b) A member shall not lose accrued Sick Pay Benefit rights or entitlements as a result of changing employment within the Sector as accrued service will transfer to the next employer to whom the SEO applies.
- c) Employers who fail or neglect to make the authorised deduction shall be liable for the total contribution required to ensure that the worker's Sick Pay Benefits are maintained in full for the period of service with them.

7. Relevant Benefits

- a) An SEO Sick Pay Scheme shall provide for the payment of a standard Sick Pay Benefit for a specified duration and the benefit and duration should be disclosed to participating employers and members.
- b) An SEO Sick Pay Scheme may include a waiting period during which a member would not be entitled to any benefit from the scheme whilst initially absent due to illness or injury. This waiting period should not exceed the first five working days of disability.
- c) An SEO Sick Pay Scheme should facilitate continuity of Sick Pay Benefit from the Scheme from the first working day of disability where a claimant has returned to work for a period of two working days or less. This is provided that the sick pay entitlement from the scheme has not been exhausted by reference to the duration limitations referenced earlier.
- d) An SEO Sick Pay Scheme should facilitate provision of a Supplementary Sick Pay Benefit if the claimant has no entitlement to Social Welfare benefit due to inadequate number of Social Welfare contributions.
- e) An SEO Sick Pay Scheme may set appropriate limitations on the maximum duration for which a Sick Pay Benefit may be payable. These must be clearly documented and disclosed to participating employers and members. The maximum duration under an SEO Sick Pay Scheme should not be any lower than a period of 10 weeks in any calendar year, whether for a single claim or in aggregate in a scheme year.

Commentary on the Recommended Terms for the Proposed Sectoral Employment Order (“SEO”)

PENSION SCHEME STRUCTURE

– Paragraph 1

Requiring the legal structure of a SEO pension scheme to be an Occupational Pension Scheme brings with it the safeguard of a well-established regulatory oversight regime operated by the Pensions Authority and requires the governance of a trustee board on a not for profit basis with a primary fiduciary duty of managing the scheme in the best interests of the beneficiaries.

– Paragraph 2

Specifying that a SEO pension scheme should be open to all employers in the Sector and operate on a multi-employer basis will enable all employers in the Sector to operate in a consistent and cost effective manner.

It will also enable employees to maintain a single pensions account that will travel with them from employer to employer and job to job within the Sector without resulting in cost, complexity or loss of value to the employee. This will be particularly important for employees who may be employed in a succession of shorter term employments or projects.

– Paragraph 3

Facilitating members having a single pension account within the SEO pension scheme will ensure that a member builds up their pension benefits within the Sector in a cost effective and transparent manner.

Such an approach also avoids the need for employees to transfer funds from one employer’s arrangement to another as they move from job to job and reduces the costs and complexity involved.

– Paragraph 4

This provision will enable employees to build up their pension benefits in a single account over their working lives without loss of value in the event of moving from one employer to another within the Sector.

– Paragraph 5

This provision has been included as the primary purpose of the SEO pension scheme should be to support the build-up of pension benefits for those employed within the Sector. A scheme which permits a refund of a member’s contributions will result in the

member also losing all entitlement to the contributions which have been paid by the employers over the same period.

– Paragraph 6

The make-up of the trustee board should consist of representatives of both sponsoring employers and employees to ensure the perspectives of all stakeholders are considered in the governance of the scheme.

– Paragraph 7

The provision of benefits for a member's dependants in the event of death is a valuable benefit which should be provided without any overly restrictive conditions or medical underwriting requirements

– Paragraph 9

Costs should be clear, transparent and publicly disclosed to ensure that members and employers can understand the costs they will incur and to promote competitive overall charges. Charges should be kept to a minimum, with no entry chares or bid/offer spread, no explicit or implicit deductions for commission and no minimum monetary charges in order to maximise member outcomes.

We would propose that the overall aggregate level of charge should not exceed 1% of a member's fund each year. This is similar to the maximum fund charge specified under legislation for other pension arrangements.

– Paragraph 10.2

The combined employer and employee contributions payable to CWPS as the industry wide pension scheme in the Sector equals 7% of the average wage. The base figure for the average wage to be used is set annually by the industry and the Trustee would recommend that any new SEO should ensure that the pension contributions are set at a level at least equal to this prevailing rate.

Contributions should be deducted on a weekly basis for each employee This approach ensures that employees working within the industry built up pension benefits for each week that they are employed in the Sector, even if they were employed for only part of a week. As a practical matter, where an employee changes employer during a week, the scheme rules can regulate which employer pays the weekly contribution.

– Paragraph 10.5(a)

As a multi-employer industry wide pension scheme, an SEO pension scheme would be capable of providing more extensive and more cost effective life assurance cover for members.

CWPS as the industry-wide scheme operating in the Sector, through the pooling of risks and due to its size and scale, provides a death in service benefit of €100,000 by reference to the €2.22 p.w. death in service contribution payable.

The Trustees would propose that any SEO pension scheme should be encouraged to provide at least this level of death in service benefit.

- Paragraph 10.5(e)

As regards the modified lump sum benefit which might be provided on death shortly after leaving employment in the Sector, the Trustee would propose that this should equal half of the normal lump sum benefit provided by the SEO pension scheme.

SICK PAY SCHEME

The Trustees firmly believe that the introduction of a SEO sick pay scheme should not result in a diminution of the quality of benefits currently provided by employers and sick pay schemes in the Sector.

This section of the draft Submission on an SEO sets out aspects of the benefits levels which previously applied under the 2006 REA and the Trustees would recommend that any new SEO should ensure that the sick pay benefits are set at a level at least equal to the prevailing terms.

– Paragraph 6

(contributions payable) The 2006 REA specified the maximum weekly contribution per member of 0.30% of the Average Basic Construction Wage set annually by the industry.

An employer to whom the SEO applies, should ensure the continued payment of contributions required under the terms of the SEO for each category of employee to which the SEO applies.

No contributions should be payable by or in respect of a member during periods of illness.

– Paragraph 6

(qualifying contributions) Under the existing Sick Pay scheme in operation in the Sector, in order to be eligible for Sick Pay Benefits a member must have at least 13 weekly sick pay contributions paid on his/her account in the 6 months immediately preceding the initial date of illness/injury. In addition, they must be employed by a participating employer immediately prior to the initial date of claim.

No member shall be entitled to benefit for a period of illness/injury or for a part of a period of illness/injury during which he/she is unemployed or has ceased to be employed by a participating employer.

The Trustee believes that qualifying criteria such as the above are important components to ensure the equitable management of risk within a sick pay scheme.

– Paragraph 7 (a) and (b) Relevant benefits

The Trustees are of the opinion that the standard Sick Pay Benefit should be set at an appropriate level relative to weekly pay.

The sick pay schemes currently operating in the Sector were designed to meet the provisions of the 2006 REA and the current daily rate of sick pay benefit in the Sector is €38.11 per day (30% of the Average Basic Construction wage, calculated at a daily rate).

Payment are made on a 5 day week basis with proportionate amounts being paid if members are ill or injured for part of a week.

So as to provide benefits at least as great as that currently provided, we would propose that the standard Sick Pay Benefit should be payable for a period of not less than 10 weeks (whether continuous or otherwise) in any calendar year in the case of any claimant.

- Paragraph 7(c)

This provision has been included as it reflects the current established practice in the Sector.

- Paragraph 7(d)

In the circumstances where an employee has no entitlement to a Social Welfare illness benefit based on clearly documented and disclosed criteria, the Trustee believes that the Sick Pay scheme should facilitate the payment of a Supplementary Sick Pay Benefit.

The sick pay scheme currently in operation within the Sector provides for such a Supplementary Sick Pay Benefit. The amount of benefit is based on the Social Welfare flat rate disability benefit applicable to an insured person of a similar status with 39 Social Welfare contributions registered (paid or credited) for the appropriate contribution year.

- Paragraph 7(e)

This provision has been included as it reflects the current established practice in the Sector.

The inclusion of an upper limit on the level of sick pay benefits which can be claimed in a single calendar year is an important aspect in the risk management of a short term sick pay scheme.