



**An Bille Caidrimh Thionscail (Orduithe Fostaíochta
Earnála a Dhaingniú), 2020**
**Industrial Relations (Sectoral Employment Orders
Confirmation) Bill 2020**

Meabhrán Míitheach
Explanatory Memorandum



**AN BILLE CAIDRIMH THIONSCAIL (ORDUITHE
FOSTAÍOCHTA EARNÁLA A DHAINGNIÚ), 2020
INDUSTRIAL RELATIONS (SECTORAL EMPLOYMENT
ORDERS CONFIRMATION) BILL 2020**

EXPLANATORY MEMORANDUM

Purpose of Bill

A recent judgment of the High Court has struck down the sectoral employment order for the electrical contracting sector, and also the statutory framework for such orders set out in the Industrial Relations (Amendment) Act 2015.

The striking down of that part of the Act means that two further sectoral employment orders also fall, and that the entitlements of tens of thousands of workers in relation to pay, sick pay and pension are now in doubt.

The case and the judgment involve very significant matters of public policy and public interest and have, potentially, very serious implications both for these workers and for businesses across the State. It may be the case that the judgment will be appealed.

The judgment has broader implications, not just for SEOs but for other aspects of the machinery for fixing pay and conditions by law. Such machinery has been part of our legal system since 1909. Since that time, we have had, in some form or other, a system to fix by law minimum pay and conditions in certain sectors. The clear purpose has been to improve terms of employment in ‘sweated’ industries, where pay was chronically low and union representation either inadequate or non-existent.

While the policy preference has always been for a healthy system of free and collective bargaining, the statutory alternative provides for bargaining bodies in low wage sectors where the industrial actors do not exist or are inadequately organised. And industry-wide enforcement, to prevent undercutting, has been an essential feature of the legislation.

The purpose of this Bill is to make a legislative intervention in order to ensure that the State has a continuing role in establishing and maintaining a mechanism for setting pay in sectors which are not susceptible to conventional trade union organisation.

This is not the first case in which the courts have taken issue with the constitutionality of legislation that seeks to protect low paid workers. The essence of this finding is that the Minister and the Labour Court are exercising the legislative power of the State, by making “laws” without being the Oireachtas. This Bill seek to remedy this immediate defect, by giving statutory effect to the recommendations of the Labour Court that gave rise to three purported sectoral employment orders. The Bill is without prejudice to the right of an appellate court to decide the constitutional issue.

Depending on how the issues are decided in a higher court, if the case is appealed, it may be that further legislative solutions are necessary. The purpose of this Bill is confined to dealing with the immediate issue of the status of the three sectoral employment orders already made, by conferring upon the recommendations that gave rise to them legal confirmation and effect.

Provisions of Bill

The Bill is by its long title entitled an Act to give statutory effect to recommendations of the Labour Court in relation to pay and conditions in certain sectors of the economy; and to provide for connected matters.

Section 1 of the Bill provides that it applies to three recommendations made or purported to have been made by the Labour Court which are set out in Schedules to certain statutory orders made by the Minister of State at the Department of Business, Enterprise and Innovation. These are—

- the Sectoral Employment Order (Mechanical Engineering Building Services Contracting Sector) 2018 (S.I. No. 59 of 2018),
- the Sectoral Employment Order (Construction Sector) 2019 (S.I. No. 234 of 2019), and
- the Sectoral Employment Order (Electrical Contracting Sector) 2019 (S.I. No. 251 of 2019).

The section goes on to provide that the terms of those recommendations are confirmed by law. Accordingly, from the passing of the Bill—

- each recommendation applies to every worker of the class, type or group in the economic sector to which it is expressed to apply, and to his or her employer,
- if a contract between a worker to which a recommendation applies and his or her employer provides for the payment of remuneration at a rate less than the rate provided by the recommendation for that worker, the contract has effect as if the recommended rate were substituted for the contract rate,
- if a contract between a worker to which a recommendation applies and his or her employer provides for conditions in relation to a pension scheme or a sick pay scheme less favourable than the conditions fixed by the recommendation and applicable to the worker, the contract has effect as if the recommended conditions were substituted for the contract conditions.

This affords to the recommendations the same effect in law as if they had been validly confirmed by sectoral employment orders.

The section, finally, provides that its provisions are without prejudice to the power of a court to determine whether a recommendation to which this section applies has been confirmed and has effect otherwise than under this Act.

Section 2 makes provision in the usual way for the short title and the collective citation and construction of the Act.

Ged Nash, TD, Aodhán Ó Riordáin, TD, Duncan Smith, TD, Kíil, 2020.