

Terms of Reference for the review of REAs and EROs

The following are the agreed terms of reference:

1. The review will take account of:

- The shared employment maintenance and creation objectives, of the Government, employers and trade unions, both within the regulated sectors and in the wider economy; and the possible renewal of the Private Sector Protocol by IBEC and ICTU.
- The common desire to see the continued orderly conduct of industrial relations across the economy and the relevant sectors; the continued protection of employee rights and interests;
- The current levels of domestic competition and international competitiveness of the sectors covered by EROs and REAs; price and wage movements in the economy and in major trading partners; and the impact of EROs and REAs on labour market flexibility and sustainable employment across the economy.
- Independent external economic and labour market evidence.
- The views of Members of the Houses of the Oireachtas and of stakeholders including IBEC, ICTU and the CIF, and of all of the parties directly involved in the current mechanisms in the context of evolving private sector pay policy.

2. The review shall provide an assessment on the following points:

- The continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements, and in particular:
 - Whether and to what extent the function played by EROs in ensuring protection of minimum wages and conditions overlaps with that of the statutory national minimum wage system introduced in 2000; whether minimum wages and working conditions more stringent and over and above those guaranteed by the national minimum wage for the worker categories covered by EROs are justified on the grounds of fairness;
 - the economic function played by REAs in the collective bargaining framework of Ireland and their legal status, including in relation to the definition of designation of REAs as “collective agreements or arbitration awards which have been declared universally applicable” under Article 3 of Directive 96/71/EC on the Posting of Workers and the public policy obligations underpinning the statutory framework for REAs having regard to EU Treaties and, in particular, Article 28 of the Charter of Fundamental Rights of the European Union, the Solemn Declaration on Workers’ Rights, Social Policy and Other *Issues*, and relevant ILO conventions
 - whether and to what extent EROs and REAs contribute to nominal wage rigidity in the covered sectors and occupations, with potentially relevant effects on employment during weak economic conditions and on the adjustment of labour markets across sectors, occupations, and geographical areas.

- the adequacy of the process for the registration of ERO proposals, in particular with reference to the constitution of Joint Labour Committees, their operation and governance, and their role played in the process.
- the appropriateness of the process and criteria applied by the Labour Court for the acceptance of REA proposals for registration;

3. Make recommendations on the following issues:

- The continued relevance, fairness and efficiency of the current ERO and REA mechanisms and of individual Orders and Agreements;
- Possible legislative amendments to the existing framework for the regulation of terms and conditions of employment to ensure that the framework is fit-for-purpose in the current economic climate, including to remove anomalies and obsolete provisions, and to move to a more streamlined, transparent and flexible wage setting model. Without prejudice to any findings in relation to the above, and after assessing compliance with international conventions and EU labour directives, recommendations for reforms may include:
 - The introduction of derogations to EROs and REAs in case of financial difficulties of employers and with a view to protect employment;
 - The introduction of more flexible and responsive variation mechanisms in the pay conditions established by EROs and REAs;
 - The conditions for registration, enforcement, amendment and cancellation of EROs and REAs;
 - Simplification of compliance requirements for employers covered by EROs and REAs;
 - The penalties in case of breach of obligations relating to EROs and REAs.

4. The Review will be conducted jointly by Kevin Duffy and Frank Walsh having regard to the need for the Review to draw both on (a) particular knowledge of the operation of wage setting mechanisms and (b) independent economic expertise.

5. The Government is committed to taking urgent action, including making any legislative provision which may be necessary, following its consideration of the recommendations from the review.

February 2011