

Minimum Labour Standards in a Social Partnership System - the Persistence of the Irish Variant of Wages Councils

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Abstract

This article examines the Irish variant of the Wages Councils; Joint Labour Committees, which set legally binding minimum pay and conditions for low paid workers in some sectors. We trace the reasons for the continued existence of the JLC system even after the introduction of a National Minimum Wage in 2000. We also examine its contemporary relevance and the prospects for its retention in the future, particularly in light of growing employer opposition to them.

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Introduction

A recent High Court case in Ireland by the Irish Hotels Federation against the system of Joint Labour Committees (JLCs) has brought renewed attention to minimum wage setting. Joint Labour Committees consist of trade union and employer representatives and independent members. They set legally binding minimum pay and conditions for low paid workers in some sectors and exist in addition to the National Minimum Wage (NMW). They are part of the contemporary Irish industrial relations regulatory framework and have the same origins as the UK Wages Councils system. Unlike the Wages Councils, which were abolished in 1993², Irish JLCs have persisted. This paper seeks to examine why has the JLC system been retained? In addition, based on a survey of JLC members, we examine the relevance of the JLC system particularly in context of a NMW and the prospects for the retention of JLCs in the future. We conclude that the growth in service employment, the role of Irish social partnership, the Irish party political set-up and the views of employer bodies are seen as the key factors which insulated the JLC system from any serious challenge until recently. We find that trade union representatives on the JLCs support the retention of the system. While a majority of employer representatives on JLCs believe they are unnecessary and irrelevant, there is less consensus amongst them than trade unions. While employer organisations have in recent years sought the abolition of JLCs, they have engaged with government and trade unions through the social partnership process to achieve changes to the procedures JLCs use to set minimum pay and conditions, rather than pushing for abolition of the JLC system.

² With the exception of the Agricultural Wages Board.

What are Joint Labour Committees?

Irish JLCs are statutory bodies which set minimum pay and conditions of employment in low paid employments where collective bargaining is poorly developed. Individual JLCs are composed of employer and worker representatives (usually from employer organisations and trade unions) and an independent chair. The system covers certain defined employments which, with the exception of agricultural employees, are at a subsectoral level. The Irish institutional framework operates on the basis of a voluntarist tradition, meaning minimum intervention by the law or third parties (including the State) in the employer-employee relationship. However, the terms and conditions set by JLCs are legally binding and apply equally to both union and non-union employments. JLCs propose a set of minimum pay and conditions, which are drafted into an Employment Regulation Order (ERO) by the Labour Court, and this becomes law when promulgated by the Minister for Enterprise, Trade and Employment. Enforcement is not through the State's industrial relations machinery but through the labour inspectorate of the Department of Enterprise, Trade and Employment and employers may be prosecuted in the civil courts for breaches of an ERO.

Until 2000, the JLC system had been the only statutory minimum wage system in Ireland but, as part of the 1997 general election campaign, the small neo-liberal Progressive Democrat party proposed the introduction of a national minimum wage. This proposal was included in the programme for government, after the Progressive Democrats and Ireland's largest party, Fianna Fáil, were successful in that election. The resulting coalition Government quickly acted to set up a National Minimum Wage Commission to study the issues around the introduction of a NMW. The

Commission (1998:36) considered that “a radical assessment of the role and function of the JLC system will have to take place in the light of the Commission’s recommendation to introduce a national minimum wage”. However, no such review was undertaken by the Government and, when the NMW was introduced, the JLC system was retained unchanged.

Origins and Trajectories of JLCs and Wages Councils

Both the JLC and the former UK Wages Council systems owe their origin to the Trades Boards, which were introduced under the Trade Boards Act 1909. The Trades Boards were themselves products of a late nineteenth century debate on the effects of sweated labour. In 1894 the Royal Commission on Labour concluded that the “evils” [Commission’s term] of sweated working conditions arose from two factors: small employers undercutting larger ones due to intense competition and no trade union organisation of workers (British Royal Commission on Labour, 1894). Thus the Trades Boards were explicitly introduced to abolish the practice of ‘sweating’. Most famously, Winston Churchill declared at the time,

“it is a serious national evil that any class of His Majesty’s subjects should receive less than a living wage in return for their utmost exertions. It was formerly supposed that the working of the laws of supply and demand would naturally regulate or eliminate that evil ... but where you have no organisation, no parity of bargaining, the good employer is undercut by the bad, and the bad employer is undercut by the worst ...

(The United Kingdom Parliament, 1909: col388)

This well-known quote sets out the fundamental arguments for regulation; namely that regulation is desirable where there is an absence of organisational representation

[chiefly trade unions] leading to an imbalance in the bargaining power between employers and workers. Regulation is seen as necessary to prevent the undermining of good employers, as much as to protect employees, and the free market laws of supply and demand are not considered adequate to provide this protection.

In the UK, the Churchillian view of the need for regulation, which had been accepted for some 70 years, came under sustained attack in relation to the labour market generally, and Wages Councils in particular, following the election of the Conservative party in 1979. This attack lasted into the 1990s and the new philosophy was encapsulated in comments made by Michael Forsyth, former Minister of State for Employment (1992-1994);

“Wages Councils are a barrier to employment, their abolition would improve job prospects for women. The biggest source of poverty is not low pay; it is having no job. Wages Councils destroy employment. It is better to have low pay than no jobs” (The United Kingdom Parliament, 1992).

In effect, this neoclassical-based view reasserts the primacy of the laws of supply and demand and sees the free market as being preferable to regulation. Starting in 1980 the protection afforded to low paid workers was progressively withdrawn in the UK. Schedule 11 of the Employment Protection Act 1975 was repealed in 1980. This Schedule had allowed claims to be taken to the Central Arbitration Committee against employers for observing less favourable terms and conditions than the general or recognised terms and conditions. The 1946 Fair Wage Resolution, which set minimum standards for workers on government contracts, was revoked in 1983. Under the 1986 Wages Act, the coverage and powers of the Wages Councils were

reduced e.g. under 21 year olds were removed from their coverage. In addition, the number of inspectors who monitored and enforced the Wages Council rates was cut from 158 in 1979 to 54 in 1992 (Callaghan and Jones, 1993). Wages Councils were eventually abolished by John Major's Government under the terms of the Trade Union Reform and Employment Rights Act 1993. According to Lucas (1991) an estimated 2.5 million workers had been covered by Wages Councils and protection was removed from them. This action was, in part, reversed with the adoption of a general minimum wage in 1999.

Why have JLCs been retained in Ireland?

The Trades Boards in the UK and Ireland had similar trajectories for many years. Their names were changed in the 1940s, to Wages Councils and JLCs respectively. Their powers were also increased in the 1940s. The 1945 Wages Councils Act provided for the Councils to cover all aspects of pay and holidays (Callaghan and Jones, 1993). In Ireland, the Industrial Relations Act 1946 allowed JLCs to propose regulations on conditions of employment in addition to setting minimum pay. Irish JLCs attracted little controversy either in periods of economic recession (during the 1950s and 1980s), or periods of economic expansion (in the 1960s and the 1990s). Until the 1980s the Irish and British industrial relations systems shared common, mostly voluntarist features, however, since the advent of the Thatcher government in 1979 there has been substantial divergence. The retention of the JLC system in Ireland, while the British equivalent institutional structure was abolished, is one aspect of this divergence. The question arises as to why public policy on labour standards for vulnerable workers has differed in the two jurisdictions? Three factors stand out as central in the retention of JLCs in Ireland. These are the role of the

growth in the services sector, the importance of the political landscape in Ireland and the views of employers.

Growth of the Services Sector

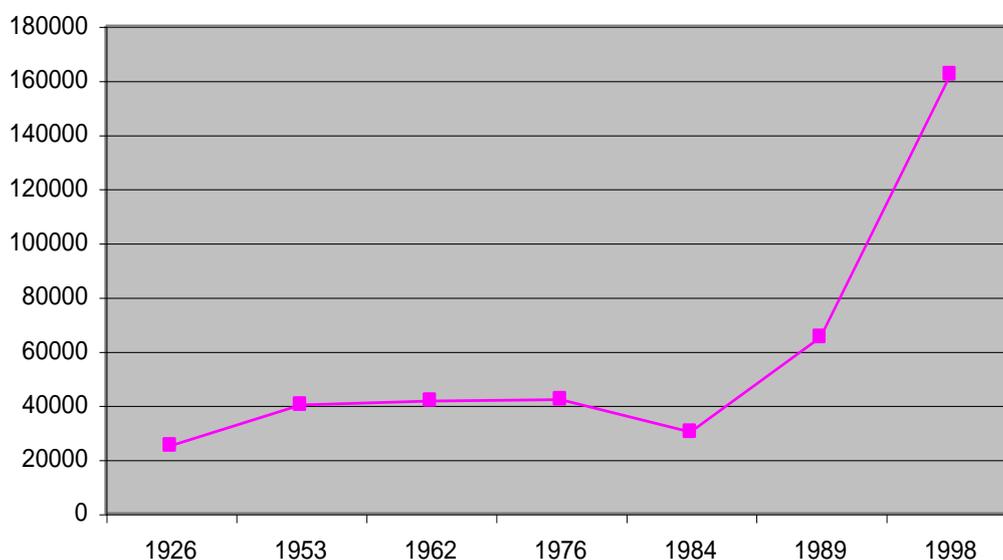
As with the Trades Boards, Irish JLCs were initially concentrated in low paid manufacturing employments characterised by weak trade union organisation. Examples were brush and broom manufacture, clothing, aerated waters, shirtmaking and women's clothing and millinery. The number of workers covered by JLCs was traditionally a small minority of workers in Ireland, hovering around an estimated 40,000 from the 1950s to the mid 1970s and declining to around 30,000 by the mid-1980s (Figure 1). Had antiquated manufacturing employments continued to be the preserve of JLCs, it is probable they would have faced gradual extinction, not from ideological considerations as in the UK, but due to their decreasing relevance. However, the growth in service sector employment in the 1980s and 1990s changed the situation. From 1988 to 1997 service sector employment grew by 33 percent and with this growth came a number of problems (Wallace et al., 2001). Research internationally has noted the expansion in service employment as being characterised by increases in both "high road" and "low road" service jobs and Ireland shares in this bimodal division (cf. Dølvik, 2001). The low road jobs are characterised in Ireland by a high proportion of female employees, part-time employment, lower levels of education, lower availability of in-company training and low trade union density (cf. Hughes et al., 2004; Sexton et al., 2002). These characteristics, which were present in the Irish service sector expansion, led to the need for regulation and the JLC system, based on joint employer-trade union involvement, appealed in the context of the Irish model of social partnership. The earliest service sector JLC was established in 1947

(the Law Clerks JLC) and some extension of the JLCs in the services sector occurred in the 1960s and 1970s but all the most recent JLCs have been created for services employments. In 1990, 43 percent of JLCs covered services employments; by 2006 this had risen to 58 percent (see Table 1).

In 1984, an estimated 30,000 employees were covered by JLCs (Figure 1). By 1989 this figure had risen to almost 65,000 (IRN, 1984; McMahon, 1991) and a decade later coverage had grown to an estimated 162,000 (National Minimum Wage Commission, 1998:29). This is the last official estimate on the number of workers covered by the JLCs. Using data from a variety of sources, we estimate that there are between 156,700 and 461,600 workers covered by the JLC system³. These figures, respectively, represent 9 and 25 percent of total employment in Ireland. The wide disparity in these figures is reflective of the unsatisfactory situation that precise data are not available on the current number of workers covered by the JLC system and no one has responsibility for providing coverage data.

³ Extensive efforts were made to compile estimates from publications of the Central Statistics Office (CSO), the International Labour Organisation (ILO), Retail Monitor International, the Economic and Social Research Institute (ESRI) and Fáilte Ireland as well as estimates of trade unions, employer organisations and the secretariat of the JLCs.

Figure 1 Estimate of Number of Workers Covered by JLC System, 1926-1998



Source: Harris, 1930; Labour Court, 1954; Ireland, 1962; Ireland, 1976; IRN, 1984; McMahon, 1991; NMWC, 1998

Table 1 Joint Labour Committees, 2008

Year Established	Joint Labour Committee ⁴	Sector
1914	Shirtmaking	Industry
1919	Brush & Broom	Industry
1920	Tailoring	Industry
1920	Women's Clothing & Millinery	Industry
1920	Aerated Waters & Wholesale Bottlers	Industry
1935	Handkerchief & Household Piece Goods	Industry
1947	Law Clerks	Services
1960	Provender Milling	Industry
1964	Hairdressing (Dublin)	Services
1965	Hotels (excl. Dublin & Cork)	Services

⁴ A number of JLCs are for Dublin only; this has allowed different minimum pay rates to be set which take into account the higher cost of living in Dublin.

1976	Agricultural Workers	Agriculture
1976	Catering (excl. County Dublin)	Services
1976	Hairdressing (Cork)	Services
1984	Contract Cleaning (City & County Dublin)	Services
1991	Retail Grocery & Allied Trades	Services
1993	Catering (County Dublin)	Services
1997	Hotels (Dublin)	Services
1998	Security	Services
1999	Contract Cleaning (excl. Dublin)	Services

Source: Labour Court Annual Reports and Dáil (Parliament) Debates, various years

Political Context

The growth in low road jobs in the services sector provides a structural explanation for the growth in JLC coverage; however, as the service sector has also expanded in UK, it does not explain the reason for the persistence of the JLC system given the abolition of Wages Councils. A major contributor to the retention of the JLC system in Ireland has been the difference in the political framework in both countries. Wages Councils were rescinded and abolished during an era of Conservative party governments, which had a particularly strong neo-liberal ideology. This neo-liberal influence, which has not been unique to the UK, has led to varying degrees of dilution of employment regulation since the 1970s (cf. Farber and Western, 2002; Frege and Kelly, 2003; Kitson et al., 2000; O'Brien, 2000; Towers, 1989). In contrast, neo-liberal political opposition to labour market regulation in Ireland has been muted and, in relation to JLCs, has been largely absent. The lack of political opposition to labour market regulation in Ireland can be ascribed to the make-up of the Irish multi-party political system.

In Ireland there are two major political parties, Fianna Fáil and Fine Gael. Both are centrist parties which have their origins in the nationalist divisions over the Anglo-Irish Treaty of 1921. Fianna Fáil is the larger of the two parties and, since 1932, is the only party that has been able to form a government on its own. Fine Gael has only held power as part of a coalition, which has always involved the smaller Labour Party, the third largest party. Until their disbandment in 2008, the Progressive Democrats was a small neo-liberal party, which enjoyed considerable influence as part of coalition governments with Fianna Fáil from 1989-1992 and from 1997-2008.

In the absence of a large social democratic or labour party, Fianna Fáil has long had links with the labour movement and has actively promoted corporatist labour market policies or, as they are referred to in Ireland, partnership approaches. As such it has not been in its electoral interest to engage in neo-liberal policies, which would have been seen to directly undermine workers' interests. Thus, abolishing JLCs would make little sense for a Fianna Fáil led government. This is not to argue that Fianna Fáil has been opposed to neo-liberally inspired policies. They have, on their own and in government with the Progressive Democrats, embraced low personal and corporate tax rates, selective privatisation and other neo-liberal policies. However, unlike in the UK, labour market deregulation has not formed part of this agenda. While Fine Gael has not had similarly strong links with trade unions, it has only been in government as part of a coalition and, in most of these administrations, Labour has had responsibility for the government department handling industrial relations. As a result, coalitions involving Labour and Fine Gael effectively exclude the pursuit of an anti-regulation agenda based on neo-liberalism. There has been only one Fianna Fáil-Labour

coalition Government, from 1992 to 1994, and obviously it would have been in neither party's interest to pursue aggressive neo-liberal labour market deregulation.

While these differences between the three largest Irish parties are important, arguably the main political influence has been the approach adopted by the small Progressive Democrat party. This party, and Fianna Fáil, formed a coalition from 1989 to 1992 and from 1997 to 2007. Post the May 2007 elections they were again part of a coalition, this time in conjunction with Fianna Fáil, the Green Party and a number of independents. However, their electoral performance in that election was dismal and the party subsequently voted to disband on the 10th November 2008. The Progressive Democrat Party was the most right wing and pro-business political party in Ireland and the influence of Thatcher's economic policies on the party has been noted (Raines, 1987). Given this categorisation it might be expected to have opposed labour market regulation, in general, and regulation by JLCs in particular. The party also held the Enterprise, Trade and Employment portfolio, including responsibility for industrial relations and JLCs from 1997 to 2004 and would have been in a position to advance any policies to decrease labour market regulation. However, in spite of the Progressive Democrats espousal of deregulating in commercial markets and their promotion of greater competition, they showed little sign of pursuing *doctrinaire* neo-liberal policies when it comes to labour market regulation. They preferred instead to embrace the outcomes of the partnership negotiations. Indeed, there was a substantial increase in employment regulation and enforcement during the two earlier periods the Progressive Democrats were in government with Fianna Fáil (cf. Wallace and O'Sullivan, 2004).

While this approach by the Progressive Democrats might be ascribed to the compromises necessary to maintain power with the centrist Fianna Fáil party, this view is not supported by the facts. Not only has the Progressive Democrat party readily embraced the outputs of national social partnership negotiations on labour market regulation but, as indicated earlier, it was that party that advanced a proposal for a NMW as part of the 1997 election. The Progressive Democrat's leader, Mary Harney, when announcing the establishment of the National Minimum Wage Commission in 1997, stated "the Government is determined to stamp out exploitation of workers – that has no place in the Irish workplace..." (Sheehan, 1997:14). Subsequently she said that the NMW was a key priority for the Government so that those sectors of the labour force on low pay, especially women and young people, would get a better share of the fruits of economic growth (Irish Times, 2000). The tone of these statements contrasts with those of Michael Forsyth in 1993 and indicates a distinct difference in hue between the neo-liberalism of the Progressive Democrats and that of the UK Conservative party under both Margaret Thatcher and John Major.

Employer Attitudes

The third major factor favouring the retention of JLCs has been the attitude of employer organisations. For much of the life of JLCs, employers adopted a generally benign attitude to them, with expressions of dissatisfaction generally centred on operational issues. In fact, at various times when a national minimum wage was mooted, employers opposed its introduction and pointed to the JLCs as meeting the needs for protection of vulnerable workers. This approach is most notable in the submissions made by employer bodies to the National Minimum Wage Commission. The main Irish employer organisation, the Irish Business and Employer Confederation

(IBEC), opposed the introduction of a national minimum wage and claimed that the JLC system had proved its worth (NMWC, 1998; Sheehan, 1998). The Irish Small and Medium Sized Enterprises (ISME) – a body generally opposed to regulation and national partnership agreements – opted for the retention of the JLC system which could “review sector by sector and establish minimum terms of conditions appropriate to each” (Yeates, 1997:17). Smaller sectoral employer bodies echoed this approach. The Irish Retail Newsagents Association argued that the JLC system had “ensured acceptable statutory wage rates by negotiation between employee and employer representatives” (NMWC, 1998:35). The Irish Hotels Federation suggested that the JLC system was “the most appropriate” system for setting minimum wages and suggested its extension, if needed (NMWC, 1998:35).

Thus far, we have identified the growth of the services sector, the particular political landscape and the supportive/benign attitudes of employers as contributory factors to the retention of the JLCs. Their retention does not *a priori* mean that they are relevant. The relevance of JLCs has been a particularly pertinent issue since the introduction of a NMW. If a NMW already exists, are JLCs relevant anymore? We examine this question in the next section through a survey of JLC members.

Research Methodology

The research design took the form of a survey of JLC members conducted between November 2004 and March 2005. JLCs are composed of between six and 15 representative employer members and equal numbers of representative worker members and a smaller number of independent members. The larger the number of unions or employer organisations in an industry, the greater the number of worker and employer members on the JLC. Most of the worker representatives were trade union

officials and shop stewards affiliated with Ireland's largest trade union, SIPTU, and some with MANDATE (the union for retail, bar and administrative workers) and the UK based union, the Amalgamated Transport and General Workers Union (ATGWU)⁵. On the employer side, most representatives are officials with IBEC. Other employer organisations represent specific sectoral employers. For example, the Irish Hotels Federation is represented on the Catering and Hotels JLCs, the Irish Farmers Association is represented on the Agricultural JLC and Law Society of Ireland is on the Law Clerks JLC. The Minister for Enterprise, Trade and Employment appoints independent members of JLCs. Most JLCs have one independent member – the chairperson – while some have a second. The selection process of independent members is a low profile one with little or no consultation with trade unions or employer bodies. Most chairpersons of JLCs are Industrial Relations Officers from the Labour Relations Commission⁶. Other sources for chairperson are former members of the Labour Relations Commission, senior officers of the Irish Congress of Trade Unions (ICTU), IBEC and the Labour Court. Chairpersons, appointed before the establishment of the Labour Relations Commission in 1991, generally do not have specific industrial relations backgrounds, for example, one chairperson at the time of the survey was a university lecturer. Chairpersons have a potentially critical role on JLCs because they have a casting vote where employer and trade union representatives cannot agree on proposed minimum pay and conditions.

There are 164 JLC members, of which 106 (76 employer members, 67 worker members and 21 independent members) responded to the questionnaire, giving a

⁵ The Irish branch of the TGWU was the ATGWU, it is now part of Unite.

⁶ The Labour Relations Commission is a State dispute resolution body. Its primary service is conciliation and this is staffed by Industrial Relations Officers.

response rate of 65 percent. Over two-thirds of all employer members responded (68%), 60 percent of all worker members responded and 67 percent of independent members responded. Attitudinal questions were asked on the necessity and relevance of JLCs, the reasons for members' opinions and their views on the future of JLCs.

Perceived Necessity and Relevance of JLCs

Two thirds of respondents considered that JLCs were still necessary, in addition to the NMW, while a third thought that they were not necessary (Table 2). The overwhelming majority of trade union and independent members believed JLCs were necessary. Unsurprisingly, employer members were most likely to hold the view that JLCs were no longer necessary; however, there was not a consensus amongst them. A substantial minority of one-third of employer respondents believed JLCs were necessary. To ascertain the reasons for these employers' view that JLCs are necessary, respondents were provided with a Likert scale. The reasons with the strongest employer support were that 'JLCs are necessary because they tailor minimum pay and conditions to the specific industry/employment covered' (33% of employers) and that 'JLCs are necessary because they try to prevent employer undercutting' (33% of employers) – a reason reminiscent of Winston Churchill's comments. Other well supported reasons were that 'JLCs provide a negotiating forum for generally non-unionised workers' (27% of employers); that 'JLCs set more minimum conditions of employment than provided in employment legislation' (25% of employers) and that 'JLCs help workers out of low pay' (25% of employers).

**Table 2 Views on JLC Necessity in addition to the National Minimum Wage
Categorised by JLC Member Group (n=106) (%)**

Relevance	Trade union (n=40)	Employer (n=52)	Independent (n=14)
Necessary	97.5	34.6	85.7
Not necessary	2.5	65.4	14.3
Total	100	100	100

There is a difference in conception between whether JLCs are necessary and whether they are relevant. In general, the difference in views on the necessity and relevance of JLCs between employer respondents and others was retained. Interestingly, a higher percentage of trade union members believed JLCs were irrelevant compared to the percentage that considered them unnecessary (Tables 2 and 3). These results, while informed by the experience of the JLC members, are subjective and do not give a view of the actual impact of JLCs on pay and terms and conditions of employment. The next section analyses the difference between JLC rates of pay and the NMW. We also examine the minimum conditions of employment set by JLCs.

**Table 3 Views on the Relevance of JLCs in light of the NMW Categorised by
JLC Member Group (n=102) (%)**

Relevance	Trade union (n=38)	Employer (n=50)	Independent (n=14)
Highly relevant/ Somewhat relevant	79	22	78.5
Neither relevant nor irrelevant	5.3	18	7.1
Somewhat/now irrelevant	15.8	60	14.3
Total	100	100	100

Minimum Rates of Pay

In order to examine the actual impact of JLC regulation, we compared the difference between a sample of JLC minimum rates of pay and NMW rates between April 2000 and December 2008 (Table 4). The difference between the NMW and the JLC rates gives an indication of the order of magnitude of the impact. Thirty-four percent of rates were between 5% and 10% above the NMW, eleven percent were between 10% and 15% and thirteen percent were in excess of 15% above the NMW (Table 4). It can be seen from the differences between the respective JLC rates and NMW rates analysed, that the JLC system has a greater impact on minimum wage rates in some JLC employments than others. Overall, 70 percent of the JLC rates were less than 10 percent in excess of the NMW and 36 percent were less than five percent over the NMW (Table 5).

Table 4 JLC Rates Compared with NMW, 2000-2008

NMW Rate	Date NMW Introduced and Increased	Number of JLC Rates analysed against NMW
£4.40	April 2000	26
£4.70	July 2001	24
€6.35	October 2002 (I)	30
€6.35	October 2002 (II)	27
€7	February 2004	34
€7.65	May 2005	34
€8.65 ⁷	July 2007	33 ⁸

Source: Derived from EROs

⁷ There was an additional increase in the NMW to €8.30 but it only existed between January and June 2007.

⁸ The JLC rates analysed are the rates set as of December 2008.

Table 5 Number of JLC Rates by difference with NMW, 2000-2008

NMW Rate	Less than NMW	0-4.9% over NMW	5-9.9% over NMW	10-14.9% over NMW	15% & over NMW
£4.40	1	12	7	3	3
£4.70	0	8	6	5	5
€6.35 ⁹	0	13	9	4	4
€6.35	0	0	16	5	6
€7	1	21	5	4	3
€7.65 ¹⁰	13	12	5	1	3
€8.65	0	8	23	0	2
Totals	15	74	71	22	26

Note: Most JLCs set minimum weekly wages so the hourly rate was derived by dividing the weekly minimum by 39 hours.

Source: Derived from analysis of EROs

The Minimum Conditions Function

The fact that JLCs set minimum conditions of employment increases the complexity of the debate on JLC relevance beyond merely minimum wage setting. An examination of EROs in operation in 2008 indicates that a significant array of minimum conditions is set by JLCs (Table 6). There are three ‘types’ of minimum conditions in EROs. The first are those which merely duplicate provisions already in existence – for example there already is a legislative obligation on employers to provide written statements of terms of employment to employees (Table 6). The second type is those minimum conditions which build on legislative provisions in place, for example, rest breaks. The third type, and the most common type of minimum condition, is those unregulated by legislation. These include overtime pay, service pay and sick pay schemes and are likely to be of substantial concern to

⁹ Two sets of comparisons were undertaken for one NMW rate (€6.35). This is because a substantial number of JLCs increased their rates in 2003 during the term of the €6.35 NMW.

¹⁰ 13 JLC rates analysed were below the NMW of €7.65. This is because NMW increases often do not occur at the same time as JLC rate increases. A number of JLCs had not agreed a new ERO in time before the NMW was increased but did so shortly after.

employees (Table 6). An additional advantage of JLCs, as noted earlier, is that the minimum conditions can be tailored to the particular industry covered; something which Government-set legislation is unable to do. For example, the Security JLC provides a benefit to those workers who are attacked in the course of their work.

Table 6 Number of JLCs with Minimum Conditions of Employment, 2008

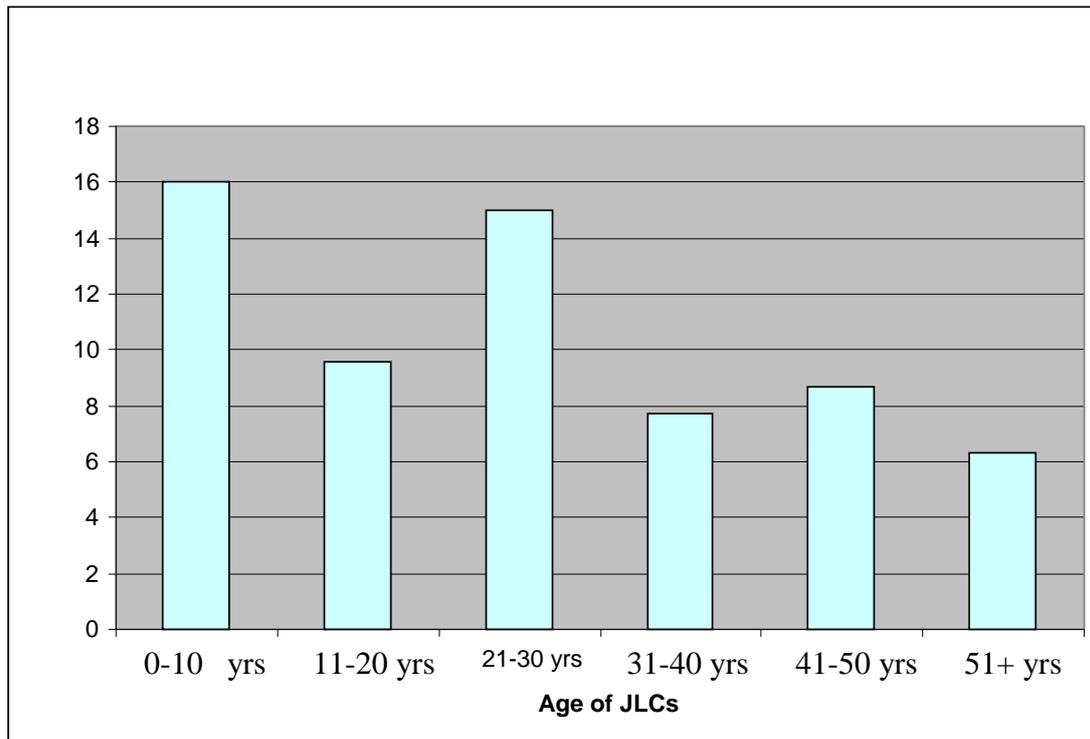
Minimum Condition	No. of JLCs	Minimum Condition	No. of JLCs
Overtime pay	16	Board & lodgings	2
Working hours	15	Terms of employment statement	2
Annual leave	15	Negotiation rights	2
Introduction of bullying/ harassment /grievance/ disciplinary procedures	12	Protection of employment	2
Specific dismissal procedures	11	Disclosure of information	2
Sick pay	10	Union dues	2
Service pay	8	Training	2
Breaks	6	Change of address information to employee	2
Conditions of apprenticeship/learnership	6	Revenue Commissioner contribution information	2
Certificate of service	5	Shift pay	2
Pension	3	Compassionate leave	1
Spreadover duty	3	Service charge	1
Continuity of employment	3	Facilities	1
Death in service benefit	3	Personal attack benefit	1
Waiting time	3	Maternity	1
Minimum notice	3		

Source: Derived from EROs

The number and range of minimum conditions established by different JLCs varies significantly. For instance, the Law Clerks ERO has only three minimum conditions of employment, while the Contract Cleaning ERO (excluding Dublin) have 16 minimum conditions. The reason for the variation appears, with some exceptions, to be closely related to the age of the JLC. The general tendency is that newer JLCs have more conditions set by them than older ones (Figure 2). These newer JLCs also cover the expanding services sector and therefore the greatest proportion of workers covered

by EROs. Taken together, both the number and variety of additional conditions set by JLCs and their customised nature indicates that there is a significant supplementary function fulfilled by JLCs which is not met by legislation.

Figure 2 Average Number of Conditions of Employment by Age of JLCs, 2008



Source: Derived from EROs

Views on the Future of JLCs: Survey Responses

Three quarters of survey respondents indicated that the JLC system should be retained in some form, while a quarter felt it should be abolished. The figure opting for retention is higher than the proportion of respondents who considered JLCs to be necessary. As expected, the vast majority of trade union and independent members believed that the JLC system should be retained in some form. Relatively equal percentages of employer respondents believed the JLC system should be retained or

abolished. This is somewhat surprising given that two-thirds of employer respondents had previously indicated that JLCs were not necessary.

Table 7 Views on the Future of JLCs Categorised by JLC Group (n=106) (%)

Future of JLCs	Worker (n=40)	Employer (n=52)	Independent (n=14)
Retained in current form	22.5	11.5	23.1
Retained & extended	62.5	9.6	46.2
Retained but some amalgamated/abolished	12.5	30.7	23.1
Abolished	2.5	48.1	7.7
Total	100	100	100

Growing Opposition to JLCs and Social Partnership

Ireland has had a system of national social partnership in place since 1987, in which Government, trade unions, employer organisations as well as the representatives of the farming and voluntary sectors have negotiated on pay increases and economic and social policy. Following the introduction of the NMW in 2000, the generally supportive/benign attitude of employer organisations towards JLCs changed somewhat when IBEC sought a review of the operation of JLCs under the social partnership process. The Labour Relations Commission was given the responsibility for commissioning the review and the authors of this paper conducted the review in 2005. Unsurprisingly, IBEC argued in the review that the JLC system should be abolished given the existence of the NMW and employment legislation (see Dobbins, 2005). However, IBEC also noted that if the system were retained, it wanted to see the introduction of more employer-friendly provisions such as inability-to-pay claims. As expected, the ICTU argued for JLCs' retention and believed "there is a zone where JLCs are effective; they are above minimum rates and they are below unionised

rates.... The whole collective nature of the JLC is a very good way for collectively vindicating worker rights” (Dobbins, 2005). Of particular significance though was the fact that State bodies had expressed their support for JLCs in the review. The Labour Court stated that

“JLCs provide protection in areas that workers wouldn’t otherwise have, such as overtime, shift allowances, pensions, sick pay. The National Minimum Wage and legislation has partly replaced the JLCs. However, given the ‘package’ of protection they provide on other issues, it is difficult to see them being replaced in the short run”. (Dobbins, 2005)

In addition, the Labour Court noted that “even where [JLC rates] are just 10 or 15 cents above the NMW level, workers would expect to retain that. In the security industry rates are 10%-20% higher” (Dobbins, 2005). The Department of Enterprise, Trade and Employment/Labour Inspectorate believed that JLCs

“are relevant in particular sectors. They cover those areas of employment where the natural structure of them means that the people employed in establishments are not quite in the same negotiating position, same strength of relationship (with their employer) that people in large factories for example would have. There would be a question as to how those workers would be represented if JLCs were discontinued?” (Dobbins, 2005).

The review concluded that the JLC system should be retained based on a strong majority view amongst interested stakeholders but that reforms should be introduced to allow for mergers and the abolition of older JLCs which were no longer relevant. Events outside the JLC system also decreased any possibility that it would be abolished. By the time the review of JLCs was conducted in 2005, trade unions had

launched a campaign against what was termed “the race to the bottom”, sparked by two high profile disputes in GAMA Construction and Irish Ferries, involving breaches of labour standards. With negotiations on a new national partnership agreement looming, trade unions made the agreement on measures to uphold labour standards a pre-condition of any new agreement and also sought a major increase in the number of labour inspectors. As a result, the abolition of the JLCs was not an option if a new agreement were to be reached. Subsequently, the national partnership agreement, Towards 2016, agreed in 2006, provided for the retention of JLCs with some provisions for modernisation. In addition, there were undertakings to create a new labour rights body, the National Employment Rights Agency and to expand the number of labour inspectors from 31 to 90. Thus, despite employer protestations, JLCs were retained and employment rights enforcement was strengthened through agreement. Given the high profile disputes in GAMA and Irish Ferries, employers would have been aware that any dilution of worker protection was unrealistic, if an agreement were to be concluded.

However, in 2008, a hotel employer and the Irish Hotels Federation together launched a legal attack on JLCs. They took a High Court case to challenge the Labour Court and Hotels JLC, with particular reference to an ERO made in 2007. The General Secretary of the Irish Congress of Trade Unions commented that “the objectives of the legal proceedings upon which the Hotels Federation has embarked is to eliminate the protection offered by the Labour Court to the largest body of migrant workers in the State” (Higgins, 2008a). This refers to the fact that large numbers of migrant workers work in JLC-covered sectors like hotels, catering and retail (CSO, 2006). In their challenge, the employers firstly argued that the powers of the Labour Court to issue an ERO were unconstitutional because it could set minimum wage laws without

legislative or parliamentary control. Secondly, employers' counsel argued that the procedures applied to the setting of a Hotels ERO in 2007 were not fair or transparent. When the JLC met in 2007 to set an ERO, different proposals were put forward by the employer and trade union representatives on the sequencing of two sets of pay rises – the NMW increase from July 2007 as well as any further wage increases as decided by the JLC (JLCs generally automatically apply the wage increases set in national partnership agreements). The trade union representatives proposed that the national minimum wage increase would apply first, followed by additional JLC increases. The employers' representatives proposed the opposite - that JLC increases would apply first, then the national minimum wage increase (Higgins, 2008b). The trade union representatives' proposal would be more costly for employers. The chairman of the JLC rejected the employers' proposal on the sequencing of the pay rises. In the High Court, the employers' counsel argued that the process of setting the ERO was unfair because the chairman had not informed the Labour Court of the employers' economic report on rising labour costs in the hotel sector.

In the event, the case was settled out of court. The Labour Court and the Hotels JLC paid the costs of the employer side and conceded that the correct procedures had not been followed regarding the Hotels ERO in question and it was quashed. Higgins (2008c) reports that a deal made between ICTU and IBEC on JLC reform could have addressed some of the Irish Hotels' Federation concerns prior to the settlement of the High Court case. An agreement was made on the sequencing of pay rises - that JLC pay increases would be applied before NMW increases. In return, employers agreed to a mechanism to review an ERO if there was a delay in introducing it. An ERO, which was not introduced to coincide with the ending of a previous one, had long been a

source of frustration for trade unions because it meant that new wage increases to employees were delayed. In addition to the ICTU/IBEC deal, the Government quickly moved to ensure the difficulties identified as part of the out-of-court settlement would be addressed. The Minister for Enterprise and Employment, Micheál Martin, said he was “not impressed” with the legal challenge and that “the Government will take whatever legislative steps are necessary to protect the existing legal mechanism ...” (Sheehan, 2008). A new national partnership agreement was signed in autumn 2008 (Towards 2016 - Transitional Agreement) and this continued the process of seeking to preserve the JLC system. The social partners committed to the introduction of legislation to strengthen the system of making EROs and to allow for consultation with the social partners on the appointment of chairmen for individual JLCs (Department of the Taoiseach, 2008). In addition, a working party consisting of IBEC, ICTU and the Labour Court has proposed to rationalize JLCs, which if implemented, would provide for a reduction of JLCs from 19 to 12 (IRN, 2008).

Conclusion: The Future of JLCs

After many years of being accepted as part of Ireland’s industrial relations regulatory framework, JLCs became the subject of controversy after the introduction of the NMW. Our survey shows that trade union representatives on JLCs overwhelmingly believe that they are necessary. In contrast, two-thirds of employer representatives on JLCs indicated that they are no longer necessary but over half supported their retention. While it was thought that JLCs’ future was secured under the national partnership agreement of 2006, the High Court challenge by the Irish Hotels Federation temporarily threw the system into a state of uncertainty. Higgins (2008c) notes that the settlement was a “clever tactical retreat” by the Labour Court and JLC

given that the constitutional issue “could have seriously undermined whole chunks of the employment rights machinery of the State if it had been upheld by the High Court”. Since the settlement, the Irish Hotels Federation has returned to the Hotels JLC to set another ERO. Its chief executive, John Power, said: “Our hope is that the Hotels JLC procedures will result in an enlightened and transparent process as a result of the significant outcome today” (Higgins, 2008c). These comments, the comments made by IBEC in the review of JLCs, the deal between the ICTU and IBEC and the provisions of the most recent national partnership agreement suggest that the employers’ real interest was not to abolish the JLC system but to ensure that JLCs took greater cognisance of employer concerns regarding procedural issues. Following the High Court case, the Minister for Enterprise, Trade and Employment provided reassurance to trade unions by commenting “we will certainly be at one with the trade union side in terms of making sure that this particular edifice is shored up in whatever way it takes.... We believe in common basic standards and will do whatever we have to” (Wall, 2008). The support of the Government for JLCs and importantly employer bodies to retain and strengthen JLCs again demonstrates the difference in political landscapes between Ireland and the UK.

Despite the political support for the JLC system, the possibility remains that any individual employer could take another case on constitutional principles and this could strike down the JLC system, irrespective of what the employers and unions agree. Paradoxically, the greater enforcement of EROs arising out of the strengthening of the labour inspectorate has led some employers to complain that the rates set by the JLCs do not match the new commercial realities. For instance, O’Brien’s Sandwich Bars claimed it is being forced to cut jobs because of greater

enforcement of the Sunday premiums set out in EROs (Higgins, 2008d). There is therefore continuing controversy at the operation of JLCs. Because the constitutional question of the limitations on the delegation of lawmaking powers was untested in the hotels High Court case, a challenge taken on these grounds cannot be ruled out. If successful, this could prove difficult for the Government and the social partners as any change to the Irish Constitution requires a referendum and governments are frequently reluctant to engage in such a course of action. For the short to medium term, the most recent social partnership agreement and the deal between ICTU and IBEC has satisfied employer concerns but the JLC system's long term future will depend on how the JLCs respond to employers' criticisms in practice.

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