

Public pay deal backed: sectoral bargaining & 'hours' centre stage

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Welcoming the new public service agreement, the Minister for Public Expenditure & Reform, Michael McGrath, said that in a time of great uncertainty, the €906m deal offers “stability for both public servants and the public who rely on the vital services they provide”.

The Minister said the agreement provides for “affordable pay adjustments” commencing later this year, which are “progressive with those on lower incomes receiving proportionally greater pay increases”.

It also paves the way for “certainty on pay and industrial relations over the next two challenging years”.

Previous deals secured a measure of peace – until they didn't

However, talks on a follow-on agreement, which usually commence around six months before the expiry of these national-level public service pacts, can be expected to start sometime around May of next year. The unions have never made any secret of the fact that they regard Building Momentum as a sort of “bridging” or “holding” agreement.

However, while it is formally the shortest of these type of government-public service deals negotiated during the financial crash, more often than not, one side or other seeks to roll them over before they expire, albeit for very different reasons. The PSSA was an exception to this rule, running its full course with talks on the new Building Momentum agreement only finalised just ahead of the expiry of the PSSA. Without the Covid-19 crisis, the deal would have almost certainly been negotiated much earlier.

BEYOND FEMPI

Minister McGrath, putting the “collective agreement” in a historical context, said that it moves the public service beyond the FEMPI era and “provides a new basis for managing public pay and employment terms in a sustainable and balanced way”.

Commenting on the novel ‘Sectoral Bargaining’ element, the Minister said this represents an “innovative approach to dealing with outstanding issues surrounding pay and conditions in the public service”.

In addition, he also welcomed the setting up of an “Independent Body to examine the Haddington Road additional working hours for public servants”. This has been a long standing goal of the trade unions, despite widely held opinion – including those of some union leaders – that this change was “here to stay”. But membership pressure ensured that the issue landed on the in-trays of union leaders, and it stayed there.

LIMIT TO CHANGE - KING

Minister McGrath also pointed to the agreement's "reform agenda that embeds the flexibility and innovation demonstrated during the COVID-19 crisis into enhanced public service delivery in the future".

However, the Minister and his department have been put on notice by SIPTU deputy general secretary, John King, who commented at a briefing given by the key union negotiators, that the government side can't expect the same level of cooperation given by workers during the pandemic to apply during "normal times".

Meanwhile, the Department of Public Expenditure & Reform (DPER) said the two year agreement is worth the equivalent of under 4% of the 2021 public service pay bill spread over three Budget Years.

There are two general round increases of €500 or 1%, whichever is greater, on October 1, 2021 and October 1, 2022.

The sectoral bargaining fund is being created equivalent to 1% of basic salaries, with a payment date of February 1, 2022.

An independent body will be established to examine the additional hours worked by public servants under the HRA agreement. A fund of €150m is being established to cover any "operational costs" that will arise as a result of the recommendations during the lifetime of the deal.

Restoration of overtime and premium payments to pre-2013 levels are also significant long sought after concessions.

"13 UNIONS"

Public service unions affiliated to the ICTU said they had endorsed the agreement "after 13 out of 17 unions" in the sector backed it.

Thus represented the "overwhelming majority of Ireland's public servants". While unions provided their own voting stats, ICTU didn't – on this occasion – provide a breakdown of what the delegate breakdown was for each union. IRN was told that no delegate vote was taken this time.

Outside of the terms that relate directly to pay and conditions, the unions pointed to the retention of "strong protections against the privatisation and outsourcing of public services".

Fórsa general secretary Kevin Callinan, who chairs ICTU's Public Services Committee – and led the talks for the first time - said ICTU-affiliated unions were committed to the full implementation of the agreement.

SIPTU's John King said there was a demand to try and find a way to deal with "grade-related" pressure points, "without undermining a collective agreement". INTO general secretary, John Boyle, said the inclusion of the sectoral bargaining element was vital "to allow unions to address a range of long-standing claims by next February".

For INMO general secretary, Phil Ni Sheaghdha, it was clear that the main issues for members were “restoration of hours to pre-2013 levels, safe staffing, and funds to deal with nursing management outstanding claims”. (This was the first time that her strategically important union formed part of the ‘top four’ negotiating team, the room for the INMO seat created by the merger of three unions to form Fórsa in 2018).

SECTORAL BARGAINING

The purpose of the new Sectoral Bargaining Fund process is “to deal with outstanding adjudications, commitments, recommendations, awards and claims within the terms of the Fund and within the Exchequer funding limit in place”.

A quantum of cost to be expressed as 1% of basic pay will be allocated to the fund. “Grade or sector based pay claims and outstanding adjudications and awards will have to be resolved within this process”.

Each Bargaining Unit or union/representative association will have the option of using “some or all” of the fund to address claims appropriate to the process “or ... elect for the funds involved to be used as a sectoral pay round”.

Sectoral management and unions, in consultation with the DPER and the officers of the ICTU PSC, will agree and identify the Sectoral Bargaining Units, to be “signed off” by end February 2021. It is acknowledged that this deadline has been missed, but union leaders are confident that the overall time lines can be met.

IRN was also told the various bargaining units would be made publicly available.

Overall, the work on proposals by the parties must be completed by end-June 2021, then submitted to DPER for verification. The date for payment is February 1, 2022.

WORKING HOURS

The independent body on the additional working hours issue will be established by end-March 2021 and make recommendations “to be applied equitably” across all affected grades, groups, categories and sectors.

It is to report by end-2021. It will consider issues such as the context for the pay and productivity measures within the HRA, verification of the additional hours worked and associated costs (such as rostering changes, productivity measures, recruitment, overtime/premia payments, agency staffing).

The body’s recommendations are to be rolled out and “initiated within the lifetime” of the agreement.

To enable commencement of the recommendations during 2022, there is an “envelope of €150m”. In regard to the 2023 estimates, the parties are to engage proactively in relation “to such provisions as are necessary to roll out any remaining recommendations”.

NEW ENTRANT TEACHERS

It is agreed that in “final conclusion” to arrangements put in place in September 2018 as part of the PSSA, measures will be implemented “to resolve in full the remaining salary scale issues pertaining to new entrant teachers”.

Those recruited since 1 January 2011, after progressing to point 11 of the scale, will, on their next increment date, move to point 13. Those recruited since 1 January 2011, who have already reached point 12 or higher, will on their next increment date after the commencement of the agreement, move one point further than they would normally.

INDUSTRIAL PEACE

The oversight and industrial peace provisions are quite different to the system in place since the Croke Park Agreement in 2010. That system was underpinned by almost universal acceptance of binding decisions, for example, by an agreed adjudicator, the WRC or by the Labour Court. For almost a decade the system was largely successful in ensuring industrial peace.

There were a number of landmark decisions “swallowed” by one side or other that ensured the credibility of the system. The case of the HSE was instructive. Under former HR director, Barry O’Brien – also a key national-level negotiator – the HSE accepted all adjudications on matters relating to the agreement. Adjudication decisions were automatically accepted and funding sought if it didn’t have means to pay up.

This straightforward system has been replaced, in Building Momentum, by a series of steps, which in the case of issues of national level importance, could conceivably go through as many as eight different “rungs”.

The reason for this change can perhaps be put down to the successful strike by the Irish Nurses & Midwives Organisation in 2019. Essentially, the outcome of this strike provided the impetus for a new set of mechanisms.

If the goal of the new dispute resolution system is to corral a dispute by tying it down within a series of procedures, then it should work. But what it won’t do, and what no voluntarist agreement has ever done, is to tie down a group with enough muscle to breach an agreement.

The public service agreements from 2010 to today, like their private and public sector predecessors, the social partnership deals (1987-2009), secured a considerable measure of industrial peace – until they didn’t.

In Building Momentum, the parties say they are committed to ensuring that problems, where they arise, are dealt with in an effective and timely way and to participate in the dispute resolution procedures. **Below is a summary of these steps:**

1. Where disputes arise – a minimum 6 week period of initial **bilateral engagement** between the parties to the dispute.
2. If the mandatory exploratory process (1) does not resolve the matter, disputes will then be “considered by, or registered with”, the relevant **Sectoral Oversight Body** “or equivalent IR forum”.

These mechanisms should seek to resolve disputes at a local level “to the maximum

extent possible”.

3. Where the matter is not resolved, either party may refer it to the **Workplace Relations Commission (WRC)** or, where appropriate, to the **Conciliation & Arbitration** machinery, for conciliation (where appropriate).
4. Should the matter not be resolved at the conclusion of the WRC or Conciliation machinery’s work, it will progress to the **Public Service Agreement Group (PSAG)** where appropriate.

Where both parties agree that the matter “concerns the interpretation of the provisions of this Agreement”, it may proceed directly to the PSAG following the initial bilateral engagement. Where both agree it can be considered minor, it may be referred for arbitration elsewhere - this “will conclude the process”.

(The PSAG will comprise equal numbers of employee representatives nominated by the ICTU; representatives of public service employers nominated by DPER; and an independent Chair appointed by Government following consultation).

The Group will make a “determination on whether a dispute shall be determined” in accordance with the procedures laid out in the agreement. (It will) make a determination on any matter associated with the “correct operation of dispute resolution procedures”. (It will) adjudicate in the event of a dispute regarding compliance with the outsourcing provisions of the agreement.

The PSAG will consider matters referred by the parties in the first instance, following which it may:

“Make a recommendation to the parties in relation to the dispute, potentially including the need for further discussion through the resumption of conciliation.”

5. The PSAG can assign the matter to a **Joint Review Group (JRG)**, consisting of 2 employee representatives and 2 management representatives, including 1 representative from the relevant discipline on both sides.

The JRGs will assess the position of the parties and endeavour to assist within the agreement.

6. Following this, “the matter returns to the PSAG for consideration”.

Matters of “strategic or national importance, with significant implications for the Agreement”, can be referred to the Tripartite Implementation Body (TIB) for discussion and decision.

7. **The Tripartite Implementation Body:** The TIB shall consist of one employer representative, nominated on behalf of public service employers by the DPER; one employee representative, nominated by ICTU; and an independent Chair appointed by Government.

The TIB can make “a recommendation for resolution of the matter”.

The agreement notes at this point, that “all forms of industrial action are precluded in respect of any matters relating to remuneration or to any matter covered by this Agreement”.

8. Finally, the parties are agreed that, “notwithstanding their continuing right to access the **Labour Court/Conciliation and Arbitration Scheme**, this shall only be after the processes above are fully exhausted”.

“Where access to the Scheme is the appropriate mechanism the Scheme will be furnished with the view of the TIB.”

Where access to the Labour Court is the “appropriate mechanism”, the parties “shall return to conciliation at the WRC”. If a referral to the Court is required, “the Court shall be provided with the view of the TIB and any other material the Commission considers appropriate”.

Where the Labour Court or the Scheme has made a recommendation regarding the matter, the process “is concluded”.

SIGN-UP

The benefits of the agreement are to be confined to those employees represented by ICTU unions or other unions or representative associations, “which have notified the WRC of their intention to comply with the Agreement”

“Where such a union or association fails to adhere to the provisions of the Agreement, the benefits of the Agreement will not apply to the relevant staff cohort thereafter”, it cautions.

No cost increasing claims are allowed, and the parties affirm that public service pay and pensions and any related issues “shall not be revisited over the lifetime of this Agreement”, save where the assumptions underlying it need to be revisited.