

Towards 2016

Review & Transitional Agreement 2008 – 2009

September 2008

Towards 2016

Review and Transitional Agreement 2008-2009

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Review

Section 1. Introduction

Between April and September 2008 the Government and Social Partners reviewed progress under the *Towards 2016*, the 10-year Framework Social Partnership Agreement 2006 – 2015.

To inform the Review, a detailed Progress Report was prepared on progress since the commencement of the Agreement under each commitment. A copy of this Progress Report is available at <http://www.taoiseach.gov.ie/index.asp?locID=231&docID=3982>.

Each Social Partner Pillar was also invited to make their own submission with their assessment of progress during the first phase of the Agreement and these provided the basis for discussions at the Steering Group and bilaterally with relevant Departments.

Section 2. Strategic Framework

Progress under *Towards 2016* is being achieved through a range of complementary and mutually reinforcing policy frameworks and strategies which include:

- the National Development Plan 2007 – 2013
- the National Spatial Strategy
- the National Action Plan for Social Inclusion 2007-2016
- the National Skills Strategy
- the Strategy for Science, Technology and Innovation
- Delivering Homes, Sustaining Communities: Statement on Housing Policy
- the Rural Development Programme 2007-2013
- AgriVision 2015 Action Plan
- the National Women’s Strategy
- the National Children’s Strategy
- the National Strategy Report on Social Protection and Social Inclusion
- the National Reform Programme under the Lisbon Agenda and
- the National Climate Change Strategy

The Social Partners will continue to be involved in the evolution and implementation of these strategic frameworks in accordance with *Towards 2016*.

Section 3. Economic and Fiscal Outlook

The Review took place during a period of significant economic change and uncertainty and a deteriorating economic outlook, both internationally and domestically.

The Steering Group received presentations from the Department of Finance on the economic and fiscal outlook and considered the implications for implementation of *Towards 2016*.

The parties also considered the Report prepared by the National Economic and Social Council to coincide with the Review entitled “The Irish Economy in the Early 21st Century”.

This Report assesses the recent performance of the Irish economy – including over the first two and a half years of *Towards 2016* – and its prospects in the short and medium term.

The parties endorsed the broad conclusions from the NESC Report including the fact that “*a combination of factors in 2008 has created an exceptionally difficult policy context in which to manage the economy’s transition to the next phase of development.... The sharp*

contraction of the domestic construction sector, the global credit market squeeze, greatly increased energy and commodity prices, a strong euro and a major weakening of current tax revenue combine to make it difficult – and even risky or foolhardy in the opinion of some – to look too far ahead”.

The parties also recognised the implications of these developments, in particular higher energy and food prices, for the most vulnerable in society.

Section 4. Shared Analysis

Drawing on the NESC analysis and the review of progress to date under *Towards 2016*, the parties conclude:

- the Irish economy can be strong and dynamic again, provided the right decisions are taken during this difficult period,
- services, exports and employment can be further expanded, while manufacturing, including the export orientated food and drink processing sector, will continue to have a key role in Ireland’s economic development,
- people’s skills and capabilities are the core economic asset,
- Ireland’s continuing economic and social infrastructure deficit means that a high level of investment in infrastructure should be sustained,
- there is a need to fine tune some of the strategic investments in the National Development Plan and *Towards 2016*, elements of which need modification in the light of new information and understanding,
- social partnership, which has contributed to the economic and social progress of the last two decades, continues to have an important potential contribution in managing a difficult transition for the economy during what is an uncertain conjuncture.

Section 5. Commitment to the Vision and Goals of Towards 2016

The Government and Social Partners intend therefore to work together through the current period of economic transition and uncertainty to ensure that the Vision and Goals set down in *Towards 2016* can still be achieved.

This is a Vision of Ireland in the future based on:

- a dynamic, internationalised, and participatory society and economy ;
- a strong commitment to social justice and equality, where
- economic development is environmentally sustainable and is internationally competitive.

The parties re-confirm their commitment to realising this overall goal by:

- nurturing the complementary relationship between social policy and economic prosperity;
- developing a vibrant, knowledge-based economy and stimulating enterprise and productivity;
- re-inventing and repositioning Ireland’s social policies;
- developing the all-island economy, and;

- deepening capabilities, achieving higher social and economic participation rates and more successfully handling diversity, including immigration.

They also confirm their commitment to work towards the long-term goals set down in *Towards 2016* for each stage of the Lifecycle (Children, People of Working Age, Older People and People with Disabilities) recognising that they pose major challenges in terms of availability of resources, building the necessary infrastructure, and integrated service delivery at both national and local level.

Section 6. Re-prioritising strategic investments

Towards 2016 provides that “if economic growth falls below the projected levels, it will be necessary to re-prioritise to make more gradual progress” in order to adhere to the key principles underlying macro-economic policy set out in the agreement while recognising the need to protect the most vulnerable people.

This re-prioritisation also needs to take account of the updated analysis presented by the NESC and the Review of progress during the first phase of *Towards 2016*.

The Government and Social Partners also acknowledge that Ireland faces a particularly difficult and uncertain point of transition which requires a re-prioritisation of public expenditure.

The Government and Social Partners agree that the re-prioritisation should take account of the following principles:

- maintaining a sound budgetary position that supports stable economic growth and ensures that the public finances will be in a position to meet future expenditure pressures, even in times of lower growth;
- recognising the complementarity of economic and social policy;
- continuing investment in physical, social and environmental infrastructure including education, research, training, housing, sport, health social and caring services are essential to underpin Ireland’s long-term prosperity, maintain a high level of employment and address social disadvantage;
- working to restore and improve Ireland’s competitiveness in all its dimensions and to achieve low inflation, including measures to support the small business sector;
- recognising the need for high quality and responsive education and training to support an innovation-driven economy, specifically the teaching of mathematics, science and engineering;
- continuing commitment to the sustainable development of a competitive farming and consumer-focused agri-food sector; and
- promoting sustainable growth and an environmentally friendly society.

The views of the Social Partners put forward during this Review and through the normal mechanisms under *Towards 2016* will be taken into account in this re-prioritisation process.

Section 7. Implementation

The Government and Social Partners will continue to work together to progress the commitments in the Agreement and to maintain progress towards the long-term goals, subject to the re-prioritisation process referred to above.

Regular progress reports on delivery of these commitments will continue to be published and presented to the Social Partners.

The Government will also engage with the Community and Voluntary Pillar on how to progress development of future frameworks to support deepening the partnership between statutory bodies and voluntary and community organisations.

The Review process did highlight a number of specific concerns in relation to progress on certain commitments. This suggests scope to learn from the first phase of *Towards 2016* in order to improve the implementation mechanisms set down in the Agreement.

The current period of economic transition also raises a number of specific areas where more intensive engagement by the Government and Social Partners will be required in order to manage emerging challenges.

It is agreed therefore that:

- the Office for Social Inclusion will develop proposals by July 2009, in conjunction with relevant Departments and Social Partners, for performance indicators in relation to the long-term goals for each stage of the lifecycle
- a High Level Group comprising Social Partners and key Government Departments will be established to address labour market and related issues, in particular increases in unemployment and the position of people outside the workforce
- a Manufacturing Forum will be established in line with recommendations of the High Level Group on Manufacturing
- a High Level Working Group involving representatives of the Social Partners will be established to consider, within overall Government economic and budgetary policy, measures for achieving more balanced regional development, including progress in implementation of the National Spatial Strategy, taking account of the analysis by the NESC, and report back to the *Towards 2016* Steering Group
- the Department of Education and Science will work together with education institutions and the Social Partners, with the support of the National Council for Curriculum and Assessment, the Expert Group on Future Skills Needs and the Discover Science and Engineering programme in ensuring that the education system continues to respond to the needs of an innovation-driven economy, including delivery of Project Maths
- the *Towards 2016* Steering Group will address the national health and well-being agenda as a matter of shared priority, placing an emphasis on its broad economic and social aspects. This initiative will identify areas where social partnership can provide leadership in public discourse to aid greater public understanding and instil wider confidence in relation to ongoing system change.

The Steering Group will meet over the period ahead to monitor progress on these issues and address other areas where implementation difficulties have arisen.

A next formal review of progress under *Towards 2016* will cover the period up to December 2009.

Section 8. North South Consultative Forum

The Government will make a formal proposal regarding the establishment of the North South Consultative Forum to the Northern Ireland Executive at the next plenary meeting of the North/South Ministerial Council. The proposed Forum would include representatives of the Social Partners and would consider social, economic and cultural issues with a cross-border dimension.

Section 9. Environmental Issues

The issue of environmental representation in social partnership was considered during the Review and, in the light of these discussions, the Department of the Taoiseach will present proposals to Government before the end of 2008.

These proposals will also take account of the need to ensure that structures for engagement by all Social Partners in the development of environmental policies, in particular in the area of Climate Change, are appropriate and sufficient.

Towards 2016

Transitional Agreement

Pay and the Workplace

Introduction

- 0.1 *Towards 2016* has as its overall goal the achievement of the National Economic and Social Council (NESC) vision of a dynamic, internationalised and participatory Irish society and economy, founded on a commitment to social justice and economic development that is both environmentally sustainable and internationally competitive. The Government and the Social Partners have agreed that realisation of this vision requires a long-term perspective which has been elaborated in the ten-year framework agreement *Towards 2016*.
- 0.2 *Towards 2016* includes provisions relating to pay and the workplace in respect of the first module (27 months) of this ten-year framework. Following expiry of this first module of *Towards 2016*, and building on the significant progress that has been made, the Government and the Social Partners have concluded a Transitional Agreement on pay and workplace issues which responds to a range of immediate challenges facing the economy which are well understood.
- 0.3 The choices being made by the parties reflect the inevitable transition that is underway, as described by NESC, from a period of exceptionally rapid growth towards a period of sustainable but slower growth. The parties are entering into this Transitional Agreement in recognition of the significant value of the Social Partnership process and the contribution it can make towards providing a degree of confidence and stability in the current uncertain economic environment.
- 0.4 The commitments set out in this Transitional Agreement have as their objectives:
 - the protection of living standards;
 - the protection of existing employment and the promotion of further job creation;
 - the further development of a balanced and effective employment rights framework;
 - the maintenance of industrial relations peace and stability;
 - the maintenance of Ireland's competitiveness in a globalised world and the enhancement of the country's productive capacity through greater innovation in the workplace;
 - enhancing the quality of the working environment; and
 - ensuring sustainable public finances.
- 0.5 In the context of the changed economic circumstances, and the acceptance by the Social Partners of the importance, in the national interest, of observation of pay moderation under this Transitional Agreement, employer bodies will, as a matter of policy, encourage their members to ensure that pay moderation is also observed in respect of executive pay.

Section 1: Private Sector Pay and Related Issues

Key Principles underpinning the Transitional Agreement

- 1.1 *Towards 2016* is a ten-year framework agreement and all parties will continue to observe the provisions contained in it. In particular, the provisions relating to industrial relations peace and stability and the procedures and processes contained in *Towards 2016* will continue to apply as further elaborated in this Transitional Agreement.

- 1.2 Modernisation of work practices and ongoing change and flexibility are necessary and continuing requirements for a high-performing public and private sector; a competitive economy; greater productivity; more employment; job security; enhanced quality of the working environment; and equal opportunities. The provisions of *Towards 2016* in this regard will continue to apply.
- 1.3 It is also accepted that the rapid pace of change in the business environment demands ongoing adaptation and the parties are committed to full cooperation with normal ongoing change and the need for continued adaptation and flexibility to maintain and improve competitiveness and to increase productivity and employment. The implementation of this Transitional Agreement at enterprise or industry level will take full account of the implications for competitiveness and employment and of the need for flexibility and change, compatible with modern organisation, design, efficiency and business processes. It will also take account of the need to develop a first class work environment which facilitates employee advancement, improves job security, promotes equal opportunities, increases training, productivity, flexibility and good working conditions which benefits everyone involved in the work process. In the current period of economic uncertainty, it is accepted that some employers are experiencing particular competitive difficulties in addressing market challenges and global competition. This Transitional Agreement recognises the need to ensure that manufacturing continues to play a central role in the Irish economy.
- 1.4 The parties are agreed on the importance of confidence in regard to wage developments. Specifically, employers expect unions to adhere to the terms agreed and unions expect the terms to be applied to their members.
- 1.5 This Transitional Agreement:
- Provides that no cost-increasing claims by trade unions or employees for improvements in pay or conditions of employment, other than those provided in Sections 1.7 and 2.1 will be made or processed during the currency of this Transitional Agreement;
 - Commits employers, trade unions and employees to promoting industrial harmony; and
 - Precludes strikes or other forms of industrial action by trade unions, employees or employers in respect of any matters covered by this Transitional Agreement, where the employer or trade union concerned is acting in accordance with the provisions of this Transitional Agreement.

Date of Implementation and Duration

- 1.6 Except where otherwise agreed at local level, this Transitional Agreement should come into force on the expiry of the first module of *Towards 2016* in each individual employment or industry and shall last for 21 months. It is recognised by the parties to this Transitional Agreement, while reaffirming the agreement set out at 1.3 above, that, given the current uncertainty in domestic and international economic conditions and the need for stability, there will be some employers for whom it may not be possible to apply the increases provided for under this Transitional Agreement. Where this arises, these circumstances are catered for under Section 1.11 below.

Pay Terms

- 1.7 It is agreed by the parties that the following basic pay terms shall apply in the Private Sector:
- A Pay Pause of 3 months from the expiry of the last phase of the first module under *Towards 2016*;
 - An increase of 3.5% for the next 6 months of the Transitional Agreement as it applies in each particular employment or industry; and
 - An increase of 2.5% for the next 12 months of the Transitional Agreement – except for those employees on an hourly basic rate of €1 per hour or less on commencement of the second phase where a 3% increase will apply.
- 1.8 Section 1.7 shall be negotiated between employers and unions through normal industrial relations machinery, due regard being had to the economic, commercial and employment circumstances of the particular firm, employment or industry, whether arising from exchange rate movements or otherwise, and having regard to the principles at Section 1.3 above. The need for cooperation with normal ongoing change and for continued adaptation and flexibility, may include necessary measures to sustain competitiveness and employment on the implementation of Section 1.7. An employer may claim that it is not possible to pay the terms of the Transitional Agreement in full or in part and / or may seek some cost offsetting measures or may claim inability to pay the terms of the Transitional Agreement in circumstances where this would result in serious loss of competitiveness and employment. These claims will be processed in accordance with Section 1.11 below dealing with sustainability and competitiveness.
- 1.9 The parties are agreed that engagement at local level in relation to issues in dispute must be meaningful and undertaken in a spirit of making every effort to reach agreement at the earliest possible stage.

Sustainability and Competitiveness

- 1.10 Where the parties cannot reach agreement through negotiations on any matters covered by this Transitional Agreement after local discussion, these will be referred to the Labour Relations Commission (LRC) and, if unresolved, shall jointly be referred to the Labour Court or, where appropriate, to other agreed machinery.
- 1.11 The process will be as follows for separate categories of dispute which the parties envisage could potentially arise:
- (i) If a dispute arises as what constitutes a breach of the Transitional Agreement, after local discussion, the matter will be referred to the LRC and, if unresolved, it shall jointly be referred to the Labour Court under Section 20(2) of the Industrial Relations Act, 1969, and the parties will accept the outcome.
 - (ii) If a dispute arises out of a claim of inability to pay by an employer, the onus will be on the employer to convince the union of the case and provide supporting arguments and full disclosure of information to the union. At LRC stage, assessors may be appointed from a pool, agreed with the employers and the unions, to examine the economic, commercial and employment circumstances of the employment involved and the LRC may also draw on

the assistance of IBEC/CIF and ICTU representatives, where appropriate. The parties commit to full cooperation with the assessors and the employers commit to full disclosure of information to the assessors. In the event of no agreement being reached, the matter will be referred to the Labour Court under Section 20(2) of the Industrial Relations Act, 1969, and the confidential report of the assessor will form part of the report of the LRC to the Court and will be given serious weight by the Court. The onus will be on the employer to convince the Court of their case. The Court will issue findings only in respect of whether the employer can or cannot pay the terms of the Transitional Agreement at all and the parties will comply with the findings. All information disclosed as part of this process shall be treated on a confidential basis by all parties in receipt of such information.

- (iii) Should a dispute arise out of a claim by an employer that it is not possible to pay the terms of the Transitional Agreement in full or in part and/or that some cost offsetting measures are necessary to do so, the parties will proceed as in paragraph (ii) above except that the Court will issue its recommendation to the parties under Section 26(1) of the Industrial Relations Act, 1990. Where a decision is taken to reject the Labour Court recommendation, a three week cooling off period will apply during which every effort shall be made by the parties to resolve the issues. No strike or other forms of industrial action will be threatened, sanctioned or taken by trade unions or employees during the cooling off period and until appropriate ballots have taken place and due notice given to the employers. Reference can be made during such a period to the National Implementation Body (NIB).
- (iv) Where there is disagreement as to what constitutes normal ongoing change, after local discussion, the matter will be referred to the LRC and, if unresolved, it shall jointly be referred to the Labour Court for adjudication under Section 20(2) of the Industrial Relations Act, 1969, and the parties will accept the outcome.

Dispute Resolution at Local Level

- 1.12 Where there is disagreement on change issues (other than in respect of normal ongoing change which is dealt with under 1.11(iv) or obligations already covered by Sections 1.3, 1.5 or 1.7 of this Transitional Agreement) it is the view of the parties to this Transitional Agreement that greater encouragement should be given to employers, employees and trade unions to avail of arbitration on a voluntary basis.
- 1.13 The provisions of this voluntary arbitration clause may only be invoked, or issues processed under this clause, where this is agreed by all parties to the discussions.
 - (i) The following options for arbitration shall be open to the parties:
 - (a) An agreed Arbitration Tribunal acting in an ad-hoc capacity, and the parties will accept the outcome. Where collective bargaining exists, the Tribunal will consist of an equal number of trade union representatives, and of management representatives nominated by the employer, and an independent chairman, who will be appointed from a panel appointed by the Labour Court following consultation with IBEC and ICTU, and the parties will accept the outcome. Where there is more than one union involved, the nominee shall be as agreed by the union(s). OR

- (b) The Labour Court under Section 20(2) of the Industrial Relations Act 1969 and the parties will accept the outcome. OR
 - (c) With the consent of the parties by the Labour Court under Section 70 of the Industrial Relations Act, 1946.
- (ii) The parties may also draw on the assistance of IBEC and ICTU representatives, where appropriate.

Dispute Resolution at National Level

- 1.14 The National Implementation Body, representing Government, IBEC/CIF and ICTU will continue to meet as required to ensure delivery of the stability and peace provisions of this Transitional Agreement within *Towards 2016*. The parties have agreed that a protocol on the operation of the NIB will be devised on ratification of the Transitional Agreement. Where particular difficulties arise or are anticipated, the NIB may be convened at short notice. Where particular problems emerge, the NIB may make recommendations to the Social Partners by way of further procedural changes necessary to ensure the effective delivery of the spirit and intent of the Transitional Agreement.
- 1.15 The parties, their officials and members accept as essential, adherence to the spirit and intent of the Transitional Agreement and will communicate these commitments, obligations and responsibilities in good faith.
- 1.16 As part of a shared commitment to work together for compliance in respect of employment rights generally, the parties are equally committed under the terms of the wider Transitional Agreement to promoting industrial harmony, the avoidance of industrial action and the adherence to agreed dispute resolution procedures by employers and trade unions and as an integral feature of the wider focus on compliance under this Transitional Agreement.

Section 2: Pension and Sick Pay Schemes

- 2.1 Unions are not precluded by Section 1.5 from making claims for the introduction of pension or sick pay schemes where none exist or from making claims for the improvement of such schemes where these are substantially out of line with appropriate standards in comparable employments.
- 2.2 Having regard to the cost and other implications of pension and sick pay schemes, negotiations on these matters shall be governed by the capacity of the enterprise to absorb the cost involved and, additionally, in the case of sick pay schemes, the implications for attendance.
- 2.3 Agreements under Sections 2.1 and 2.2 may therefore include appropriate phasing and other arrangements (which may exceed the timescale of this Transitional Agreement) to take account of these considerations.

Section 3: Tackling Inflation

- 3.1 The parties are agreed on the critical importance of tackling inflation and ensuring that inflation rates are maintained at or below the Eurozone average in order to secure jobs and protect living standards. Public policy, both at central and local Government level, and the actions of employers and trade unions, will be framed with this

inflation target in mind and its progressive achievement over the period of this Transitional Agreement. The parties also agree to demonstrate their strong commitment to achieving this goal by promoting and communicating it in order to influence the behaviour of business, consumers and employees in moving towards lower inflation.

- 3.2 It has been agreed that trade unions and employers will respect the terms of the pay agreement, having particular regard to the common objectives of improving competitiveness and living standards by bringing inflation under control. The Government, for its part, will seek to minimise the effect of the public service pay agreement on inflation by actively pursuing the agreed modernisation programme to achieve better value for money in public service delivery.
- 3.3 The parties are also agreed that the Anti-Inflation Group, established under *Sustaining Progress* and reconstituted under *Towards 2016*, will continue to provide an effective forum for cooperation and coordination in combating inflation. Accordingly, they have agreed to reconstitute the Group with the same membership and mandate as before.
- 3.4 In particular, the Government and the Social Partners are agreed that bringing about a sustained reduction in inflation will mean ensuring that the full benefits of exchange rate movements (including, for example, Sterling) and other developments are passed on to consumers at the earliest possible date. In this regard, the Government is committed to vigilant monitoring of prices for household goods and services and the prioritisation of appropriate policy measures in the absence of progress in this area.

Workplace Relations

Section 4: The Management of Change and Innovation

Introduction

- 4.1 Recognising the importance of innovation and the management of change to ensuring Ireland's competitiveness going forward, the parties agreed to a range of measures to bolster and champion the change effort at sectoral and enterprise level, and within the public sector. These measures include a refinement of institutional support for the change effort as set out below.

Supporting the Change Effort

- 4.2 The parties agreed that it would be important to build on the range of institutional supports available for facilitating workplace change including, *inter alia*, mediation, conciliation, facilitation and advisory services. This endeavour would encompass any necessary structural, organisational or policy developments to support this objective over time (for example, as at 4.4 below). The parties have agreed that the National Implementation Body would be requested to look at the operational implications of securing more effective engagement by the Social Partners with, and support for, the proactive management of change.

Standards and Best Practice in Change Management

- 4.3 The parties agreed that the National Centre for Partnership and Performance (NCPP) will devise and promote, in close cooperation with the Social Partners, standards and best practice in the management of change aimed for use at enterprise level.

Employee Financial Involvement

- 4.4 The Social Partners have agreed that the NCPP will continue to promote an active programme of education and communication for employees, management and trade unions on the role of employee financial involvement in accordance with previous Social Partnership agreements in light of the revised guidelines on employee financial involvement entitled *Improving Performance, Sharing the Gains* which have been published.

National Workplace Data

- 4.5 In line with the commitment contained in *Towards 2016*, the NCPP have now initiated the second of a series of 5-yearly major research projects into experience, behaviours and attitudes to workplace change amongst employees and employers in the public and private sectors. It is intended that this research project will benchmark attitudes towards change, innovation and employee participation. It will also serve to enhance the range of workplace data available; provide unique insights into how the workplace is being transformed; and enable the Social Partners to better measure and manage workplace change.

Workplace Innovation Fund

- 4.6 The parties noted that the Workplace Innovation Fund, launched in 2007 to provide financial assistance to companies seeking to boost productivity and performance through increased levels of employee participation and involvement, is being delivered across three strands over the period 2007-2009.
- 4.7 Under Strand 1 of the Fund, the NCPP will work closely with the parties and Enterprise Ireland to:
- Expand the number and range of companies availing of the Workplace Innovation Fund;
 - Engage in dissemination and promotional activities, including joint seminars with business organisations, trade unions and company networks; and
 - Develop networks and sectoral case studies as templates for wider involvement.
- 4.8 Under Strand 2 of the Fund, the NCPP will work closely with the Social Partners in planning and delivering joint programmes and activities to promote the key objectives of the National Workplace Strategy, in particular, in relation to partnership-led change in Ireland's workplaces.

Section 5: Workplace Learning and Upskilling

Introduction

- 5.1 The Government, IBEC/CIF and ICTU are agreed on the need for a concerted effort to increase the levels of workplace learning and upskilling, building on progress already achieved, in order to sustain and improve employability and competitiveness into the future.

National Skills Strategy Implementation Plan

- 5.2 The Department of Enterprise, Trade and Employment and other relevant Government Departments will engage in consultations with the Social Partners on the Implementation Plan for the National Skills Strategy which was published in March 2007. The Expert Group on Future Skills Needs will, over time, report on progress made in implementing the Strategy.

Review of Workplace Learning and Upskilling Programmes

- 5.3 The parties noted that the Department of Enterprise, Trade and Employment is currently undertaking a value-for-money review of the Competency Development Programme delivered by FÁS and it is expected that this review will be finalised by autumn 2008. The outcome of this review will inform the implementation of the National Skills Strategy. In addition the parties noted that Ireland will participate in an OECD review of vocational education and training interventions. The key objectives of this review will be to determine how such programmes equip participants for employment and to identify effective international approaches to vocational education and training.
- 5.4 The parties are agreed on the importance of training at all levels within SMEs. The Management Development Council, tasked with assessing the state of management expertise in SMEs and the adequacy of development supports, is expected to finalise its work and submit its report by the end of 2008.
- 5.5 The parties have noted that the FÁS Board approved funding of €10 million will be made available over the next 2 years to provide training for SME managers/supervisors under the Strategic Alliance Programme.
- 5.6 In the context of its ongoing dialogue with the Social Partners in relation to workplace learning and upskilling, the Department of Enterprise, Trade and Employment will continue to convene the Upskilling Consultation Group of public training bodies periodically in order to:
- (1) provide a forum for information-exchange on developments concerning the training of workers at all levels;
 - (2) address impediments that may be impacting on training and employment programmes or on labour mobility; and
 - (3) underpin a coherent approach to the training of workers amongst the different public agencies involved.
- 5.7 The parties have agreed that Skillnets – the Training Networks Programme – will continue to be supported and developed, consistent with national policy frameworks, in line with its agreed mandate. The sustainability of networks whose current

activities may cease at the end of 2008 will be explored, subject to budgetary constraints and acceptable performance criteria.

- 5.8 The parties to this Transitional Agreement are committed to promoting access to higher levels of study for a diverse group of learners. The Government is committed to delivering ongoing improvements in the area of equity of access to higher education, as resources permit, and to ensuring that the substantial investments already being made at institutional, programme and individual levels deliver the greatest possible return, particularly for underrepresented groups. To that end, it will continue to work with the Social Partners and relevant agencies to achieve the objectives set out in the *National Plan for Equity of Access to Higher Education, 2008-2013*.
- 5.9 Increased participation in appropriately designed and delivered programmes of study at third level is critical to creating the conditions in which Ireland is able to compete in rapidly changing global markets. The Government is committed to working with the Social Partners and relevant agencies to actively encourage and support those at work, who have not previously pursued a third level qualification up to level 8 on the National Qualifications Framework, to take up part-time courses in publicly funded third level institutions, which will be selected on the basis of a competitive call for proposals. Those individuals targeted for support will be in employment and not in receipt of any employer support for their chosen course. The programme should seek to integrate with tax incentives already in place.
- 5.10 The parties recognise the need to ensure that the education and training needs of those with family, community and work commitments are adequately met and will continue to build on existing flexible arrangements in the delivery of education and training.
- 5.11 In the next phase of development of the national framework of qualifications, key priorities are to strengthen implementation among providers of the National Qualification Authority's access, transfer and progression policies, particularly in regard to the development of streamlined progression pathways, accreditation of prior and work-based learning particularly for homogeneous groups, more extensive use of minor, special purpose and supplemental awards, and implementation by providers of awards at Level 1 and 2 of the framework.

Workplace Initiatives

- 5.12 The Government, IBEC/CIF and ICTU will work with existing and future partnership initiatives with a view to progressing workplace learning and upskilling projects.
- 5.13 The parties noted that possibilities for providing a unified approach to career guidance and related services, particularly in relation to an integrated database of adult learning options and a national helpline service, are being examined by a committee convened by the National Qualifications Authority of Ireland, which will include the Social Partners. The parties agreed that this task should take account of the scope and quality of associated private and public services currently available and the need to avoid duplication and overlap.
- 5.14 The parties have noted the establishment by the Department of Justice, Equality and Law Reform of a Working Group to review the level of provision of maternity/paternity leave before the end of 2008, in accordance with the commitment given in *Towards 2016*. The parties have also noted that this Group will report before the end of 2008 and that its report will inform future policy development in this area.

- 5.15 The parties acknowledged the Knowledge Economy Skills Passport (KESP) as an innovative programme that blends the best of online and instructor-led learning which meets the needs of workers and employers by making them more valuable and competitive in the Knowledge Economy. The development of the KESP has now been completed, and it is currently being field-tested. The subsequent review and evaluation will inform the plan for mainstreaming of the KESP.
- 5.16 In relation to the pilot trade union-led learning network, FÁS has entered into contracts with ICTU and a number of trade union-related organisations for the support and training of people in employment, with particular emphasis on low skilled and vulnerable workers.

Apprenticeships

- 5.17 FÁS, in consultation with the CIF and relevant trade unions, will put in place a range of measures with a view to ensuring that apprentices are able to complete their apprenticeship programmes. Specifically, FÁS will implement short and medium term interventions for those affected by the increase in unemployment due to the construction slowdown. These interventions include:
- Providing training to augment the skills of construction workers in line with labour market needs;
 - Providing business training and mentoring for workers from larger enterprises opting for self-employment;
 - Developing measures to ensure continuity in the apprenticeship system; and
 - Promoting mobility to construction jobs elsewhere in the European Union.
- 5.18 FÁS will continue to explore the development of apprenticeships in new areas especially in sectors other than the construction sector and it will maintain a bursary scheme to encourage female apprentices.
- 5.19 The parties are also agreed that every effort should be made to ensure that apprenticeship opportunities are sufficient to meet the demand arising in the context of NDP supported projects and programmes.

Sectoral Responses

- 5.20 The parties are agreed that there are a number of traditional sectors in the economy, in particular the manufacturing sector, where it would be useful to pursue re-skilling and other new opportunities.
- 5.21 In relation to structural changes underway in the construction sector, the Government will continue to monitor the trends and activities of the sector and will work with all of the relevant stakeholders to ensure timely and satisfactory responses to the adjustment taking place. In particular, the Government is committed to assisting individuals in the construction sector that have been made redundant. Specifically, this will include the following:
- The continued provision of a range of training opportunities to those who lose their jobs in the construction sector. This will include offering a range of specific skills to workers and developing an individual career path plan with each redundant worker to assist them back into employment or, alternatively, into self-employment;

- FÁS Technical Employment Support Grant will be used to provide retraining to redundant craft workers in emerging areas such as the installation of sustainable technologies; and
- The retraining of construction workers for employment in areas of the construction sector which are still buoyant or which are developing, including the following:
 - Environment-related activity;
 - Work related to compliance and regulation;
 - Waste management activity; and
 - Sustainable energy systems installation.

Section 6: Pensions

Introduction

- 6.1 The Social Partners are agreed on the importance of pensions, both in terms of their adequacy and coverage, and that the matter is to be dealt with as a priority issue. The Social Partners note the NESC's recommendation that *"it is important that the Social Partners make a positive contribution to [a pensions] review process and engage constructively with the output from it... Following completion of the Pensions Board Review, the Government, in consultation with the Social Partners, should determine the long-term shape of the overall pension system"*.
- 6.2 The parties to this Transitional Agreement share the objectives of the parties to the PPF in relation to pensions, namely that all retired people should have adequate incomes; that the level of coverage of occupational pension schemes should be increased; and that the Social Partners will cooperate to promote improvements in the coverage of pension schemes towards the agreed National Pensions Policy Initiative (NPPI) target of 70% of the total workforce over age 30.
- 6.3 The financial pressures associated with maintaining adequate funding of Defined Benefit (DB) Schemes are fully acknowledged. The parties are committed to protecting the viability of pension schemes on a sustainable basis in an environment which has changed dramatically in recent years due to a multiplicity of factors including the funding standard, the need to comply with accounting standards, the cost of annuities, rapidly increasing liabilities (including longevity) and the negative developments in equity markets. All parties are committed to increasing pension coverage generally in the economy through appropriate models. Industrial relations issues arising from disputes related to pension schemes may be referred to the NIB by either party. The NIB will endeavour to assist the parties to such disputes on the basis of the active engagement of its constituent members in seeking solutions to complex problems.
- 6.4 The parties are agreed that in order to promote the achievement of the above objectives and aspirations, they will actively cooperate both at national level, (e.g. through the auspices of the Pensions Board) and at workplace level, between employers and unions, through regular discussion and dialogue on pension matters. Both unions and employers are committed to promoting the introduction of occupational schemes for those employees without access to such schemes, subject to the costs involved not undermining competitiveness and employment in enterprises. Furthermore, nothing in this programme shall impede the improvement of schemes, where employers and/or employees concerned are willing and able to meet the costs.

Comprehensive Pensions Framework

- 6.5 On foot of the publication of the *Green Paper on Pensions* and the extensive public consultation process which followed its publication, the Government is committed to the publication of a comprehensive framework for future pensions policy by end-2008. This framework will also take account of the work of the Partnership Pensions Review Group, including the *Review of the Irish Annuities Market*, and current trends and developments in the pensions area.
- 6.6 The pensions landscape is complex, not least due to the current volatility in global financial markets. In the context of formulating the pensions framework, the Government will consider a range of issues, including the operation of the Funding Standard, the application of accounting standards, and their impact on the viability of DB schemes. The Government will also have regard to both national and EU requirements, their inter-relationships and impact on the security of defined benefit schemes.
- 6.7 The Partnership Pensions Review Group, established under *Towards 2016*, will continue to meet as necessary to provide a forum for engagement between the parties and Government on pensions issues.

Pensions and Transfer of Undertakings

- 6.8 The Government will introduce legislation to transpose into Irish law the optional pensions provisions of the Transfer of Undertakings Directive by end-2008 on the same basis as other terms and conditions of employment as at the date of the transfer and thereafter any change shall not be prohibited for economic, technical and operational reasons. This will also provide for the opportunity for employees and employers to agree alternative arrangements.

Section 7: Employment Rights and Compliance

Introduction

- 7.1 The positive management of change, dealing equitably with the fallout from structural and other forms of change in the Irish labour market, provides a basis for high employment rates in a competitive global market. It has been shown that these issues are capable of being addressed effectively through Social Partnership, through the attempt to formulate a shared understanding of the issues which arise, the options for responding to them and the combination of public policy and procedural responses which are most appropriate.
- 7.2 While recognising the broad level of compliance with employment rights across the economy generally, there is, nevertheless, a significant shared commitment between the parties to securing better compliance with legal requirements, underpinned by adequate enforcement. It is also agreed that an effective employment rights compliance system must cover:
- The active and responsible contribution of employers, employees and trade unions;
 - Awareness raising and the promotion of entitlements, with a special emphasis on vulnerable workers and those from overseas;
 - Information provision to all employees and employers;
 - Substantially strengthened arrangements for inspection;
 - Adjudication by the Rights Commissioners, Employment Appeals Tribunal and Labour Court;

- Enforcement of adjudication outcomes; and
 - A commitment by Government to defend vigorously the decisions of employment rights bodies, concerning important employment law issues involving accepted public policy, where relevant decisions are subject to legal challenge.
- 7.3 The overall objective is to secure greatly increased public confidence in the system of compliance on the basis of an informed and empowered working population who will have simple, independent and workable means of redress, underpinned by the need for fairness and impartiality, with adjudication and, if needs be, enforcement available to them in a reasonable length of time.
- 7.4 In *Towards 2016*, a major package of measures was agreed by the parties, including the establishment of a new, statutory office dedicated to employment rights compliance; a trebling in the number of Labour Inspectors; greater coordination among organisations concerned with compliance; new requirements in respect of record keeping; enhanced employment rights awareness activity; the introduction of a new and more user friendly system of employment rights compliance; increased resourcing of the system; and higher penalties for non-compliance with employment law.
- 7.5 Significant progress is being made on delivering the commitments agreed in *Towards 2016* and this work will continue over the course of this Transitional Agreement. In addition, in this Transitional Agreement, the parties have agreed a series of further measures to ensure achievement of the overall objective outlined above. These measures are set out in detail below.

Employment Law Compliance Bill

- 7.6 The Employment Law Compliance Bill, 2008 was published in March 2008. The Bill gives effect to the relevant provisions of *Towards 2016* for the appointment, on a statutory basis, of the Director of the National Employment Rights Authority to secure better compliance with employment law through information and enforcement activities, supported by 90 Labour Inspectors with extensive powers, and for the appointment of a statutory tripartite Advisory Board to advise the Director in relation to those activities. The parties have been invited to nominate members of the interim Advisory Board. The Bill will extend the remit of NERA Inspection Services to include enforcement of certain provisions of the Employment Permits Acts, 2003 and 2006.
- 7.7 The Government is committed to enacting the Bill before end-2008 following further detailed consultations with the Social Partners.
- 7.8 The parties have noted the progress that has been made in terms of the establishment and resourcing of NERA.
- 7.9 In relation to the Joint Investigation Units, the Social Welfare and Pensions Act, 2007 now provides for exchanges of employment information on the earned incomes of individuals between the Minister for Enterprise, Trade and Employment/NERA, the Minister for Social and Family Affairs and the Revenue Commissioners. In addition, the regionalisation of NERA's Inspection Services is facilitating enhanced liaison with local and regional offices of both the Revenue Commissioners and the Department of Social and Family Affairs, and supporting effective and efficient working of the Joint Investigations Units.

- 7.10 In relation to the strengthening of the RCT system, a significantly amended Form RCT1 declaration came into operation from 1st April, 2008. This new Form was specifically designed to identify cases of greatest risk where the form must be automatically submitted to the Revenue Commissioners. Relevant legislation has been enacted to give effect to the provisions on strengthening of the RCT1 procedures. The Revenue Commissioners will pursue the liability for VAT for those above the appropriate threshold for those operating in the construction industry.
- 7.11 The Revenue Commissioners have recently more than doubled the staff assigned to the Joint Investigation Unit (JIU). This expanded Unit will be conducting a programme of investigations based on identifying and correcting cases of bogus self employment. This programme, which will include visits to sites, will focus on the new Form RCT1. Where appropriate, this work will be carried out in conjunction with the Department of Social and Family Affairs and NERA. The risk based audit programme for construction and other sectors will also continue.

Section 8: Regulating Employment Agencies and Temporary Agency Workers

- 8.1 Work on the drafting of the Employment Agency Regulation Bill, promised under *Towards 2016*, is at an advanced stage. The Government will publish the Bill before end-2008. This legislation is intended to give effect to the commitments agreed in Section 21 of *Towards 2016* and the principles set out in the appendix thereto. It is intended that there would be continued dialogue with the Social Partners in finalising the text of the Bill.
- 8.2 Arising from the draft agreement by the EU Council of Ministers for a Directive on Temporary Agency Work in June 2008, the draft Directive must now be considered by the European Parliament as part of the co-decision process.
- 8.3 The Social Partners are committed, arising from Article 5(4) of the draft Directive, to developing a national level framework, within the parameters established in the Directive. This framework will encompass terms and conditions for temporary agency workers, appropriate to the Irish economy, which strike the appropriate balance between the need to maintain temporary agency work as an instrument of business competitiveness and labour market flexibility, and fairness in the protection to be afforded to temporary agency workers under the Directive, including under Article 4.
- 8.4 The framework should reflect the particular circumstances of the Irish labour market and take account of the *de facto* position in other EU Member States. A number of definitional issues would fall to be agreed between the Social Partners in finalising any framework, together with provision for any sub-national element within that framework.
- 8.5 The aim of the parties is that the considerations at 8.2 – 8.4 above could be comprehended by legislation to transpose into Irish law the terms of the Temporary Agency Work Directive, when that has been agreed at EU level. The enactment of national legislation could allow any framework agreed between the Social Partners to be operational from the date of enactment in 2009.
- 8.6 In the context of legislating in respect of the framework above, the Government has also agreed to prohibit, save in relation to essential services, as set out in the Code of Practice on Dispute Resolution in Essential Services (S.I. No. 1 of 1992), the use of

agency workers, as defined under Article 3(1) of the above Draft Directive, supplied by an agency, as defined in the above Agency Regulation Bill, by an employer for the direct replacement of employees in cases of an official strike or a lock out, where the employees are acting in compliance with a Labour Court recommendation. Until the framework is agreed and the requisite legislation can be enacted, this prohibition will be provided, on an interim basis, for a period not exceeding the time allowed for transposition under the terms of the finalised Directive, in legislation which will be brought forward with a view to enactment by end-2008.

Section 9: Employee Representation

- 9.1 The system of voluntary collective bargaining provides the context within which the Social Partnership process developed and operates. Consideration of how the industrial relations system could ensure that fair and reasonable terms and conditions of employment can be assured has featured in past agreements, notably in *Partnership 2000* where it was agreed that this issue would be considered by a High Level Group; in the *Programme for Prosperity and Fairness* where it was agreed that the operation of the legislation arising from the report of that Group would be monitored by the Social Partners; and in *Sustaining Progress*, where agreement was reached on a number of amendments to these arrangements in order to enhance their effectiveness.
- 9.2 These arrangements were based on a shared commitment that, where negotiating arrangements are in place, the most effective means of resolving differences which arise between employers and trade unions representing employees is by voluntary collective bargaining. In the absence of a practice of voluntary collective bargaining, subject to agreed qualifying criteria, these arrangements provided for a mechanism by which the fairness of the employment conditions of workers in their totality could be assessed.
- 9.3 The parties have reviewed recent developments in the operation of this framework, including in particular the consequences of the outcome of litigation on a number of these aspects. These have had the effect of substantially impairing the capacity of the arrangements, which have been agreed, to operate as intended. These have also clarified certain aspects of fair procedure and natural justice applicable in such cases. The parties, therefore, are agreed to the establishment of a review process which will consider the legal and other steps which are required to enable the mechanisms which were established under previous agreements to operate as they had been intended. This process will take account of issues of concern to both sides from their experience of the mechanisms to date, the necessity for fair procedures, and will take account of expert legal advice and international practice, where relevant. The review will be completed by the end of March 2009 with the view to the enactment of the necessary legislation in June 2009.

Anti Victimisation

- 9.4 In a system of voluntary collective bargaining there is no obligation on the other party to engage in bargaining. However, just as public policy encourages such bargaining to occur through its legislative provisions and industrial relations machinery, it should also protect individuals as they exercise their rights within that framework without impinging on the discharge of managerial responsibility. Accordingly, the Government will bring forward legislative proposals to prohibit victimisation,

including dismissal, and incentivisation, and to provide effective protection and means of redress to employees when engaged in the proper and legitimate exercise of their rights to trade union membership or activity on behalf of a trade union or non-membership or a manager discharging his or her managerial functions. The relevant legislative proposals will make provision for access to the Courts for the purposes of injunctive relief. The proposals will also ensure that the burden of proof rests with the claimant and will make provision for penalties in cases which prove to be frivolous or vexatious; and define victimisation following consultation with the parties. The Government will bring forward the draft legislation with a view to its enactment by March 2009. The effectiveness of this legislation will be reviewed no later than three years after its enactment.

Amendment of the Competition Act, 2002

- 9.5 The Government, on foot of the recent public consultation as part of its review of the operation and implementation of the Competition Act, 2002, has examined the interaction between that legislation and provisions of the Industrial Relations Acts as regards the issue of collective bargaining for certain vulnerable workers.
- 9.6 The Government is committed to introducing amending legislation in 2009 to exclude voice-over actors, freelance journalists and session musicians, being categories of workers formerly or currently covered by collective agreements, when engaging in collective bargaining, from the provisions of Section 4 of the Competition Act, 2002, taking into account, *inter alia*, that there would be negligible negative impacts on the economy or on the level of competition, and having regard to the specific attributes and nature of the work involved subject to consistency with EU competition rules.

Section 10: Joint Labour Committees & Registered Employment Agreements

- 10.1 In *Towards 2016* the Social Partners committed to measures aimed at modernising and streamlining the Joint Labour Committee system, including the rationalisation of the number of committees. The implementation of these measures is now well advanced.
- 10.2 With a view to continuing and deepening this process, the Government and the parties have agreed the implementation of a series of further measures. These will include, in particular:
- The introduction of legislation to strengthen the existing system for the making of both Employment Regulation Orders and Registered Employment Agreements and to provide for their continued effective operation; and
 - Measures to provide for improved operational procedures to include the nomination of chairmen for JLCs, following consultation with the Social Partners, for a fixed term of office and the continued enhancement of expertise and competencies through the practice of nominating chairmen on the basis of their experience and qualifications for the role.

Section 11: Tracking Labour Market Trends

- 11.1 The parties are agreed on the need to monitor changing patterns of employment and are committed to ensuring further progress on measurement issues and data sources. In this regard, the Group on Labour Market Trends and Employment Standards will continue its role as provided for in *Towards 2016* and will be assisted by the Central Statistics Office (CSO). The parties have noted the progress that has been made in terms of the development of a new CSO module on Working Conditions and Agency Workers and improvements to the core question on temporary employment in the Quarterly National Household Survey. The parties note that detailed results of the new module are expected to become available at the end of October 2008 and will inform the development of future policy in this area. In addition to the Quarterly National Household Survey, other sources of data on total numbers of agency workers (such as the National Employment Survey) will continue to be monitored.

Section 12: Exceptional Collective Redundancy Situations and Dismissals in Industrial Disputes

- 12.1 The commitments regarding exceptional collective redundancy situations and dismissals in industrial disputes made in *Towards 2016* are provided for in the Protection of Employment (Exceptional Collective Redundancies and Related Matters) Act, 2007.

Section 13: Supporting Employment Standards through Public Procurement

- 13.1 The parties reiterate their agreement on the importance of public procurement policy as a mechanism for contributing to the maintenance of employment standards and statutory norms, including in respect of wage levels, while also ensuring competitive tendering and value for money.
- 13.2 The parties have noted that, in the construction sector, the new Forms of Construction Contracts for Public Works now apply.
- 13.3 Under revised procurement guidelines to be issued by the Department of Finance, service contract conditions will contain a similar approach in relation to compliance with the existing legal requirements.
- 13.4 The Departments of Finance, Environment, Heritage & Local Government and Transport, in particular through the Government Contracts Committee, will actively promote compliance by highlighting and maintaining awareness of the new provisions, through guidance in the practical operation of the provisions. In this context, in the interest of promoting good industrial relations practice, contracting authorities will issue advice to contractors in the performance of a public contract to avail of access to the Labour Relations Commission Conciliation Service, Labour Court and the Rights Commissioner Service (e.g. in the event of an industrial dispute), as appropriate, in accordance with industrial relations legislation. The Department of Finance will establish a liaison mechanism at which issues arising from the implementation of the foregoing commitments and those set out in Section 20 of *Towards 2016* can be monitored and discussed by the parties to this Transitional Agreement.

- 13.5 The Government will hold discussions with the Social Partners with a view to exploring the possibilities for further development of all-island cooperation on public procurement consistent with best practice. In the light of those discussions, the possibility of establishing a joint North South taskforce on public procurement, to include representatives of the Social Partners, will be explored with the Northern Ireland Executive.

Public-Private Informal Advisory Group on PPPs (IAG)

- 13.6 The Public-Private Informal Advisory Group (IAG), which includes representatives of IBEC, ICTU and CIF, will continue to meet on a quarterly basis. The Group plays an important role in helping to develop partnership arrangements with the private sector by reflecting the interests of the Social Partners in the area and facilitating the parties involved to exchange views and information on issues arising in relation to PPPs.

Section 14: Economic Migration Policy

- 14.1 It is acknowledged that economic migration policy should have regard to prevailing economic circumstances and should be flexible to meet the needs of the economy and employers generally while ensuring the protection of migrant workers. The parties recognise the importance of an employment permits system in protecting migrant workers' rights and supporting employment standards.
- 14.2 Under the Employment Permits Act, 2006, provision is made for, *inter alia*, a Green Card permit scheme for occupations where there are strategic skills shortages; a revised Work Permit scheme; a new Intra-Company Transfer scheme; a Spousal/Dependant Work Permit Scheme; and a Non-EEA Graduate Scheme.
- 14.3 The granting of an employment permit is dependant on a job offer once the employer has demonstrated the vacancy could not be filled from within the EEA or is in a strategic skills shortage category deemed eligible for a Green Card. As this system is vacancy-specific, it is capable of flexibly responding to labour market needs while also ensuring that only those posts which need to be filled from outside the EEA are filled in this way. A list of Green Card occupations in which it is considered that there are strategic skills shortages and a list of labour categories deemed ineligible to qualify for work permits are kept under frequent review to reflect changing supply and demand in the labour market and outcomes of upskilling initiatives.
- 14.4 A particular focus of the schemes introduced under the Employment Permits Act, 2006 was on increasing protection of migrant workers' rights. New initiatives included the provision for either the employer or employee to apply for an employment permit; the issuing of the original copy of the employment permit to the employee in every case; the ability for the employee to apply to change employer after 12 months; and a statement of the main rights of the employee on the face of the permit.
- 14.5 The Employment Law Compliance Bill, 2008 provides for the National Employment Rights Authority (NERA) to promote, encourage and secure compliance with the provisions of the Employment Permits Acts as well as other employment legislation. It is intended, through the cooperation of NERA and the Garda National Immigration

Bureau (GNIB) in enforcement of provisions under the Permits Acts, to increase compliance and to act as a deterrent to illegal work as a pull for illegal immigration to Ireland.

- 14.6 It is planned, during 2008, that a scheme will be introduced to issue work permits to non-EEA students to ensure adequate tracking of the job in which they work and the protection of the employment rights of these students in the workplace.
- 14.7 The Social Partners noted that the Government is currently examining proposals for the introduction of an administrative scheme, on an ex gratia basis, to address the situation of foreign national workers in the State who previously held employment permits but then became undocumented through no fault of their own. The parties agreed that it was desirable that the details of the scheme should be finalised with a view to their coming into effect prior to the commencement of the Immigration, Residence and Protection Bill, 2008, subject to the enactment of that proposed legislation by the Oireachtas.
- 14.8 Another important aspect of economic migration policy is the regulation and quality assurance of language courses and programmes of education and training for international students.
- 14.9 The development and implementation of a Quality Mark for international education programmes, the award of which will be based on appropriate certification of educational programmes and implementation by institutions of a Code of Practice for the delivery of international education services, supported by an appropriate inspection regime, will enhance the regulatory framework in which international education services are provided. Responsibility for these functions will be assigned by the Government to an appropriate authority. This will strengthen the regulatory regime in areas such as providers' duty of care in respect of learners; information to be provided to learners prior to enrolment; treatment of fees; evidence of protection of learners; monitoring of attendance; information on language competency requirements needed for particular programmes; and complaints procedures. The strengthened regime will also include arrangements for examining tax clearance certificates, where appropriate. Issues related to inclusion or alignment of programmes with the national qualifications framework, where appropriate, will also be examined.

Section 15: North-South and East-West Cooperation

- 15.1 The Government and the parties reiterate their commitment to building on existing contacts between FÁS, the industrial relations institutions, relevant Departments and the Social Partners and their Northern Ireland and British counterparts, with a view to promoting greater cooperation on labour market policies and workplace issues. The parties recognise the importance of these efforts in the context of the development of an all-island economy.
- 15.2 The Government will continue the process of regular consultation with the Social Partners, both bilaterally and through the Steering Group and Plenary meetings, on the development of the all-island economy.
- 15.3 The Government will continue to seek to maximise the role of InterTradeIreland, consistent with its remit and by agreement with the Northern Ireland Executive, in the development of the all-island economy.

Section 16: EU Legislative Developments and the Workplace

- 16.1 The development of the EU legislative and policy framework in the area of employment rights and the workplace has a particular relevance in achieving the objectives set out in this Transitional Agreement at 0.4, especially as regards the protection of existing employment and the promotion of further job creation; the further development of a balanced and effective employment rights framework; and enhancing the quality of the working environment.
- 16.2 The Government is committed to engaging in ongoing dialogue with the trade union and employer sides in relation to both existing and proposed Directives and policy proposals which impact on the workplace, including in particular in relation to Temporary Agency Workers (see Section 8).
- 16.3 The Government is also committed to ongoing dialogue with the parties on potential implications arising from European Court of Justice cases that may impact on the domestic workplace, with a view to pursuing the objectives set out above. The Government will continue to encourage the Court to have regard to the particular industrial relations traditions and cultures of Member States and, in particular, the unique voluntarist nature of industrial relations in Ireland, including those arrangements negotiated by the Social Partners in the areas of employment law, industrial relations policy and its related machinery.

Appendix [Extract from *Towards 2016*]

Regulating Employment Agencies and Agency Workers

The principles envisaged for the new legislation referred to at Section 21, reinforcing the existing system of regulation, include:

- Requirement that an employment agency hold a licence and make it an offence to use an unlicensed agency in Ireland;
- Provision that an employment agency shall not charge a job seeker a fee for seeking employment for him or her or for placement;
- Provision that employment agencies shall in their dealings with job seekers abide by all employee protection legislation and Data Protection legislation in force in the State;
- Provision that a corporate applicant for an employment agency licence shall comply with the provisions of the Company Law Enforcement Act 2001 in relation to the “Phoenix” syndrome;
- Provision that an applicant for an employment agency licence shall receive clearance from the Garda Síochána that he or she has not been convicted of an indictable offence;
- Provision that the Minister may seek nominations from the Social Partners and other interested organisations and persons for membership of a Monitoring and Advisory Committee to oversee the conduct of employment agencies in relation to the statutory Code of Conduct;
- Provision that any person may make a complaint to the Monitoring and Advisory Committee about the conduct of an employment agency;
- Provision that the Minister may revoke a licence for breaches of a statutory Code of Practice or for non-compliance with the legislation;
- Provision that the terms of the Registered Employment Agreements (REAs) Employment Regulation Orders (EROs) and statutory terms apply to agency workers and posted workers in the relevant employments;
- Provide for effective monitoring, investigation of complaints and the provision of appropriate redress mechanisms;
- Provide clarity as necessary in relation to who is the employer of agency and posted workers for the purposes of Employment Rights Legislation; and
- for the purposes of enforcement, seek to require the maximum presence in Ireland of such agencies for the purpose of record keeping on pay and other employment related matters to facilitate compliance and enforcement, to the extent consistent with the EU Treaties.

The statutory Code of Practice covering standards of behaviour for employment agencies will include:

- Recruitment and placement practices;
- Restrictions on the handling of personal information;
- Advertising practices – including a prohibition on trawling for CVs;
- Clarity in relation to travel expenses;
- Verification of qualifications;
- Provision of information in the language of the job applicant;
- Provision of information together with terms and conditions in a single document;
- No variation of terms and conditions without the agreement of the jobseeker;
- Every application for an employment agency licence shall be accompanied by a tax Clearance Certificate;
- An applicant for an employment agency licence shall be required to hold an appropriate HR qualification;
- An employment agency shall not solicit, persuade or induce an employee to leave any employment in which the employment agency has placed the employee;
- Where a job seeker is referred to the same employer by two employment agencies the employer's fee shall be paid to the employment agency which first contacted the job seeker;
- Employment agencies shall not disclose the results of any drug or medical testing on job seekers to third parties; and
- Prohibition on the reimbursement of the employer fee by the jobseeker.

Public Service Pay and Related Issues

Section 17: Public Service¹ Pay

Support for Modernisation and Flexibility

17.1 *Sustaining Progress and Towards 2016* set out a number of principles concerning public service modernisation and flexibility. The parties to this Transitional Agreement consider that these principles have established a worthwhile framework within which the process of ensuring that our public services meet the evolving requirements of the Irish people can be advanced. These principles are incorporated in this Transitional Agreement.

Maintenance of Essential Services

17.2 Continuity of service is a primary concern for the public. In *Towards 2016* the parties acknowledged the importance of stable industrial relations and committed themselves to maintaining a well-managed industrial relations environment to prevent disputes affecting the level of service to the public. A stable industrial relations climate has important benefits for the general public and the public service itself. These benefits include the provision of uninterrupted services; improved productivity and staff morale; increased public confidence; and the maintenance of Ireland as a desirable location for foreign direct investment.

17.3 *Towards 2016* recognises that many public services differ from services which are provided by the private sector in that they are essential services which the public cannot obtain from alternative sources. The parties accepted, therefore, that providers of essential services and their staff have a special responsibility to ensure that they have well developed communication channels and to seek to resolve problems before they escalate into industrial disputes. It was agreed that if a problem cannot be resolved, all parties would take up all available dispute resolution mechanisms (both statutory and non-statutory).

17.4 In order to develop further procedures for the resolution of disputes involving essential services, the parties commit themselves to developing, over the duration of this Transitional Agreement, workable protocols for the resolution of disputes in essential services and the maintenance of an acceptable level of service.

Current Agreement

17.5 The parties are agreed on the importance of confidence in regard to wage developments. Specifically, employers expect unions to adhere to the terms agreed and unions expect the terms to be applied to their members in accordance with the provisions of this Transitional Agreement.

17.6 This Transitional Agreement:

- Provides that no cost-increasing claims by trade unions or employees for improvements in pay or conditions of employment, other than those provided in

¹ The term "Public Service" does not include commercial State-sponsored bodies

Sections 17.18 and 17.21 will be made or processed during the currency of this Transitional Agreement;

- Commits employers, trade unions and employees to promoting industrial harmony; and
 - Precludes strikes or other forms of industrial action by trade unions, employees or employers in respect of any matters covered by this Transitional Agreement, where the employer or trade union concerned is acting in accordance with the provisions of this Transitional Agreement.
- 17.7 The parties are agreed that engagement at local level in relation to issues in dispute must be meaningful and undertaken in a spirit of making every effort to reach agreement at the earliest possible stage.
- 17.8 Where the parties cannot reach agreement through negotiations on any matters covered by this Transitional Agreement after local discussion, these will be referred to the Labour Relations Commission (LRC) and, if unresolved, shall jointly be referred to the Labour Court or, where appropriate, to other agreed machinery. Where a Conciliation and Arbitration Scheme applies, the referral shall be to the Conciliation machinery under the Scheme and, if unresolved, shall be jointly referred to the Arbitration Board acting in an ad hoc capacity.
- 17.9 If a dispute arises as to what constitutes a breach of the Transitional Agreement, after local discussion, the matter will be referred to the LRC and, if unresolved, it shall jointly be referred to the Labour Court under Section 20(2) of the Industrial Relations Act, 1969, and the parties will accept the outcome. Where a Conciliation and Arbitration Scheme applies, the referral shall be to the Conciliation machinery under the Scheme and, if unresolved, shall be jointly referred to the Arbitration Board acting in an ad hoc capacity, and the parties will accept the outcome.
- 17.10 Where there is disagreement as to what constitutes normal ongoing change, after local discussion, the matter will be referred to the LRC and, if unresolved, it shall jointly be referred to the Labour Court for adjudication under Section 20(2) of the Industrial Relations Act, 1969, and the parties will accept the outcome. Where a Conciliation and Arbitration Scheme applies, the referral shall be to the Conciliation machinery under the Scheme and, if unresolved, shall be jointly referred to the Arbitration Board, acting in an ad hoc capacity, and the parties will accept the outcome.
- 17.11 The parties will ensure that the foregoing processes will operate expeditiously. The assistance of the Public Service Monitoring Group may be sought if required.

NIB and the Public Service

- 17.12 This Transitional Agreement provides for the continuation of the National Implementation Body to ensure the delivery of the stability and peace provisions of this Agreement.

Public Service Monitoring Group

- 17.13 A Public Service Monitoring Group (PSMG) was set up under *the Programme for Prosperity and Fairness* (PPF), and continued under *Towards 2016*, to oversee implementation of the public service pay agreement. The PSMG deals with any overarching issues that arise in implementing these agreements as well as any other

issues which both sides agree would help to improve the operation of public service pay and industrial relations arrangements. The PSMG will continue to meet on a regular basis under this Transitional Agreement.

General

- 17.14 The parties, their officials and members accept as essential adherence to the spirit and intent of the Transitional Agreement and will communicate these commitments, obligations and responsibilities in good faith.
- 17.15 In this context, the parties to the Transitional Agreement recommit themselves to developing the partnership process in the workplace in accordance with commitments under previous national agreements. It is intended that the National Centre for Partnership and Performance will play a key role in supporting this process.
- 17.16 All other aspects of the Transitional Agreement apply equally in the Public Service.

Pay Increases

- 17.17 This Transitional Agreement shall come into force on the expiry of the first pay agreement under *Towards 2016* and will last for 21 months.
- 17.18 It is agreed by the parties that the following basic pay terms shall apply:
- A pay pause of 11 months from the expiry of the last phase of the first module under *Towards 2016*;
 - An increase of 3.5% from 1 September 2009; and
 - An increase of 2.5% from 1 June 2010– except for those earning up to and including €430.49 per week (€2,463 per annum) on commencement of the second phase where a 3% increase will apply.
- 17.19 The payment of these increases is dependent, in the case of each sector, organisation and grade, on verification of cooperation with flexibility and ongoing change, including cooperation with satisfactory implementation of the agenda for modernisation set out in the Transitional Agreement, maintenance of stable industrial relations and absence of industrial action in respect of any matters covered by the Transitional Agreement. The arrangements under Section 33 of *Towards 2016* to verify that the conditions for the payment of these increases have been met will continue.
- 17.20 Under the provisions set out in Section 33.3 of *Towards 2016*, a Secretary General may refuse to sanction the payment of any of the increases outlined at Section 17.18. If the matter which gave rise to that decision is subsequently resolved, then the payment may be made from the date which the relevant Secretary General deems appropriate in the circumstances. In the event that there is disagreement in relation to the effective date, it is accepted that the question will be processed through the existing industrial relations machinery and that the outcome will be binding.

Benchmarking

- 17.21 It is agreed by the parties that the increases recommended in the second report of the Public Service Benchmarking Body will be paid as follows:
- (a) 5% from 1 September 2008, or where the total increase is less than 5%, the full increase from that date; and
 - (b) The issue of the payment of any balances will be discussed between the parties in the context of any successor to this Transitional Agreement which might be agreed between the Social Partners, or whatever other arrangements may be in place on the expiry of this Transitional Agreement.
- 17.22 The provisions above, including the phasing specified, will apply to any increases that may arise from the Craft Parallel benchmarking process and the related processes for the non-nursing grades and the general operatives.

Review of the process

- 17.23 Public service pay, in the late 1990s, was characterised by a disconnection with the labour market generally, internal leap-frogging and considerable industrial action. In this context, the parties to the *Programme for Prosperity and Fairness* in 2000 recognised that there was an urgent need to find a more appropriate way of determining public service pay which would benchmark public service pay by reference to pay in the labour market in Ireland generally. It was accepted that such an approach was required in the interests of fairness both to public servants and taxpayers; to assure industrial peace in the public service; and to ensure that the public service is in a position to attract and retain staff of the number and calibre needed to deliver the quantum and quality of services that the public are entitled to expect. It was also agreed that this system of pay determination was allied to a continuing programme of public service modernisation and change.
- 17.24 There was agreement that the traditional approach to pay reviews in the public service, based on analogues and relativities, had given rise to serious difficulties in the past. The parties committed themselves, therefore, to an alternative approach grounded in a coherent and broadly-based comparison with jobs and pay rates across the economy.
- 17.25 The agreement between the parties provided for benchmarking exercises on the following basis:
- in-depth and comprehensive research, involving examination and analysis of pay levels across the private sector;
 - an examination of overall public service and private sector pay levels, as well as an examination of the pay rates of particular occupational groups (such as clerical/administrative staff, and technicians) and other identifiable groupings (such as graduate recruits);
 - an examination of the overall pattern of pay rates in the private sector and employments across a range of type, size or sector, taking account of the way reward systems are structured in the private sector;
 - an acceptance by both sides that cross-sectoral relativities are incompatible with the operation of benchmarking while acknowledging that, in practice, wide variations would be unlikely to emerge between the various sectors in the pay of

common groups such as clerical/administrative staff, engineers and technicians;

- an acceptance that internal relativities would be a relevant criterion but that traditional or historical relativities between groups in a sector would not prevent the Benchmarking Body from recommending what it considered to be appropriate pay rates on the basis of existing circumstances; and
- an opportunity for employers and unions to make written and oral submissions to the Benchmarking Body.

17.26 It remains the view of the parties that the principle of benchmarking on the basis set out above is the right one. Periodic and independent reviews are a necessary assurance that public servants are neither lagging behind, nor benefitting excessively, relative to their private sector counterparts. Since the agreement reached under the *Programme for Prosperity and Fairness* in 2000, two benchmarking exercises have been carried out by the Public Service Benchmarking Body. It is appropriate at this stage that the parties should review the manner in which the benchmarking process has operated.

17.27 Over the course of this Transitional Agreement, the parties will conduct a joint review of the benchmarking process. While acknowledging that the principle of benchmarking remains appropriate, the review will consider the manner in which benchmarking has operated; the terms of reference for future reviews; the methodology to be used; and the basis for comparisons between remuneration in the public service and the private sector. Concerns expressed by the Public Services Committee of the Irish Congress of Trade Unions in relation to these and other matters relating to benchmarking will be covered in this review. In the context of these discussions, there will also be a focus on the development of a more citizen-centred approach to public services (including the impact of the OECD Review of the Public Service) and consideration of how this might be comprehended as part of the benchmarking process.

Public Service Modernisation

Section 18: Focus on the needs of citizens

- 18.1 The parties will support the development of a more customer-focussed approach to the delivery of public services which puts the public at the centre of public services and acknowledges that there are challenges that must be addressed if the public service is to meet the needs and expectations of our citizens.
- 18.2 The public service must review continuously its systems, processes and procedures, to ensure that it is responsive and efficient and that it provides high quality, value for money services. The provision of public services must be centred on the needs of the citizen with a clear customer focus as the guiding principle which ensures that citizens are provided with the public service that will deliver the services they expect when needed.
- 18.3 The parties accept, therefore, that the public service modernisation process must deliver results that are clear, useful and verifiable to the user and must provide a level of performance that delivers outcomes in line with the needs of citizens. This requires that the public service should be organised around the attainment of societal goals with a focus on the outputs needed and the development of indicators to monitor their achievement. There will be a need also for changes in skill mix; in how services are

delivered; when and where they are delivered; and by whom they are delivered. Therefore, in accordance with the provisions of *Towards 2016*, the parties acknowledge the requirement for developing the range of service delivery options; for utilising shared services in areas such as HR, ICT and financial management; and for developing cross-organisational solutions as a way of addressing problems of service delivery on a ‘whole of Government’ basis.

Section 19: Provisions of *Towards 2016*

- 19.1 *Towards 2016* is a ten year framework agreement. That Agreement sets out an agenda for the further modernisation of the public service. It commits the parties to continued cooperation with change and modernisation initiatives, as well as improved productivity across the public service. It builds on the progress made under previous agreements on modernising the public service, through the Strategic Management Initiative/Delivering Better Government in the Civil Service and similar frameworks in other sectors.
- 19.2 *Towards 2016* recognises the necessity for a flexible approach to working practices by individual public servants, management and unions to satisfy the increasing demand for improvements in the provision of public services. This flexibility involves the removal of unnecessary demarcations; the adoption of more modern approaches to work; and the promotion of innovative ways of meeting the demand for services. It is also accepted that it is necessary that managers have the flexibility to adapt procedures to respond to particular pressures, which may vary from sector to sector, and to ensure that work methods are suited to the efficient delivery of services.
- 19.3 *Towards 2016* recognises that the public service must continue to modernise, and at a faster rate than heretofore, if it is to continue to meet the objectives of an increasingly sophisticated, complex and diverse society. This requirement has even greater force in the challenging economic environment now faced and that Agreement provides an important framework for meeting the economic and social challenges that lie ahead.
- 19.4 There is a well established acceptance of the requirement for cooperation with modernisation and flexibility. While recognising that it is not possible to set out a comprehensive definition of such cooperation, which would cover every circumstance which will arise, *Towards 2016* describes key principles of organisational change and gives examples of specific areas of flexibility and change which are covered by that Agreement. It further recognises that, while these examples are not exhaustive, the principles and examples, taken together, provide clear guidance on the cooperation that is required. In light of the importance of this issue, the parties reaffirm their commitment to cooperate with normal ongoing change and the flexibility and modernisation provided for in Sections 28 to 32 of *Towards 2016*.
- 19.5 The specific provisions of *Towards 2016* in regard to modernisation of the public service are unaltered and remain in force. The parties consider, however, that it is necessary to take account of developments which have occurred since the *Towards 2016* Agreement and to reflect the appropriate response to these in this Transitional Agreement.

Section 20: Developments since the *Towards 2016* Agreement

- 20.1 Significant progress has been made at sectoral, organisational and grade level in the public service on advancing the modernisation agenda during the lifetime of the pay agreement that forms part of *Towards 2016*. Through the performance verification process, it has been possible to establish that there has been cooperation with flexibility and ongoing change, including cooperation with satisfactory implementation of the agenda for modernisation set out in *Towards 2016*. Stable industrial relations have been broadly maintained and, with a few exceptions, there has been an absence of industrial action. The parties recognise, however, that further attention must be given to implementing the principles and examples set out in *Towards 2016* and to ensuring a stable industrial relations environment.

Section 21: OECD Review of the Public Service

- 21.1 The OECD Review of the Public Service, *Towards an Integrated Public Service*, marks an important stage in the ongoing modernisation of the public service. It acknowledges the central role played by the public service in contributing to national growth and development. It concludes that our public service is on a sound path of modernisation, and that our public service has contributed to our competitive advantage. However, the review also pointed to the requirement for an integrated public service and a greater focus on meeting the needs of citizens.
- 21.2 The Government has established a Task Force to develop a new Action Plan for the public service of the 21st Century in the light of the recent comprehensive review by the OECD.
- 21.3 While the detailed implementation of the Action Plan will require discussions with all relevant interests, the parties to this Transitional Agreement commit themselves to implementation of the basic principles emerging from the OECD report. In particular, the parties accept the need identified by the OECD to give more emphasis to the public service as an integrated system, with a greater focus on meeting the needs of citizens. This requires that people within the different elements of the public service system work in a more consistent, co-ordinated, networked way across the traditional sectoral and organisational boundaries. It also means that Departments, Offices, and Agencies must interact with each other in new ways to ensure integrated action in policy-making, delivery and implementation.

Section 22: Open Recruitment

- 22.1 *Towards 2016* recognises that an expanded use of open recruitment is essential to allow the public service to attract staff with the wide range of skills and experience needed in a modern public administration. The parties affirm their commitment to implementing the agreed provisions in *Towards 2016* in regard to open recruitment, particularly in areas of scarce skills, and to leveraging the best internal talent through mentoring, training and promotion.

Section 23: The Health Sector

23.1 The modernisation process presents some particular challenges for the health sector, including the ongoing evolution of the HSE during the course of this Transitional Agreement, as revised structures; reallocation of functions and redeployment of staff; and associated measures will be implemented. It is agreed that, as provided for in Section 28.13 of *Towards 2016*, this will be progressed in a collaborative manner between the parties and that there will be cooperation with the implementation of the changes.

Health Forum

23.2 It is accepted that the delivery of integrated health and other services is complex, and that achieving the reconfiguration of services from acute hospitals to the community will require solutions that may vary in different locations and for different services. The Health Forum may provide a mechanism for the parties to test new ideas, to work through the implications of major change for particular services and, potentially, to pilot new initiatives in a co-operative and non-confrontational environment.

23.3 The parties to this Transitional Agreement undertake to utilise the Health Forum fully and to participate in its operation. It is agreed that an early meeting of the Forum will be convened and that regular meetings will be held thereafter. It is further agreed that, for the Health Forum to be effective, a programme of work including priorities, timelines and targets, will need to be agreed by the parties as soon as practicable after the ratification of this Transitional Agreement.

23.4 It is intended that the Health Forum will provide a setting where the challenges of implementing new ways of working, including standard and target setting for various services, can be considered in an open, discursive and non-confrontational way, without prejudice to the position of the parties. It is agreed that any industrial relations issues identified in the course of the Forum's considerations will be dealt with through the normal industrial relations machinery. It is also accepted that the work of the Health Forum will be within the context of stated Government policy for the health service.