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# **Research Matters** for the 32nd Dáil & 25th Seanad Oireachtas Library & Research Service



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## Foreword



I am pleased to present you with *Research Matters*, the Library & Research Service's first general publication to all Members of the 32nd Dáil and the 25th Seanad. Research which is robust and accurate is fundamental to informed debate and sound decision-making.

*Research Matters* provides impartial briefings on selected key issues. The topics chosen feature key challenges for Irish society in 2016. We also draw attention to demographic trends which indicate the future needs of Irish society. Topics such as youth education, higher education funding, housing supply and homelessness are addressed in this publication. We consider the evolution of the Irish economy and changes in households and the labour force. We examine key problems in our health system and the court judgments that have signalled legislative gaps in the sensitive areas of human reproduction and pregnancy. From an EU and international perspective we have included the following issues: Brexit, the EU refugee/migrant crisis, the implications of the Court of Justice of the EU *Safe Harbour Decision*, corporation tax and climate change.

The editors of *Research Matters* have summarised key challenges within some of these areas on the following page.

We have written *Research Matters* both to inform you on matters which may form part of upcoming parliamentary business and as a starting point for your research. The Library & Research Service can undertake impartial research for you. Contact us at ext.4701 and/or at [library.and.research@oireachtas.ie](mailto:library.and.research@oireachtas.ie). A staff directory can be found on page 90 of this publication.

We look forward to working with you on the research that matters to you.

**Maria Fitzsimons**

*Head of Research, Oireachtas Library & Research Service*

**April 2016**

## Note from the editors

Newly elected representatives in 2016 have reasons for both optimism and concern.

At an overall level the Irish economy is continuing to recover from the recent recession. Irish economic output grew strongly in 2015 and the unemployment rate has continued to fall. Given the severity of the economic crisis faced by the State in recent years these indications of recovery offer welcome relief. Despite this, there are many complex policy problems which need to be addressed.

The overall unemployment rate remains too high and questions also arise as to the quality of employment (e.g. 'zero hour' and 'if and when' contracts). Demographic trends indicate there will be additional pressures on our education system over the next decade. Concerns about childcare costs and care for older persons also persist.

Housing and health present particularly challenging issues. Fewer houses have been built between 2009 and 2016 (to date) than in the year 2006 alone, while the number of homeless families stood at 884 in January 2016. In the health system, almost 93,000 people waited on hospital trolleys in 2015, and the health system continues to struggle with this and other problems in 2016.

In addition to these domestic problems, there are also some very difficult global challenges – climate change, migration, and the prospect of Brexit.

Some of these problems are particularly complex and it is difficult to identify cause and effect. There may also be no meaningful 'correct' solution.

Nevertheless parliamentarians are tasked with finding resolution to these problems. As our opening article – 'Policy Making: Does Research Matter?' – discusses, the application of evidence to the policy-making process is not clear-cut, and research on its own cannot resolve the complex problems outlined in this publication. However, without careful and detailed analysis of these issues, policy-makers cannot begin to disentangle underlying causes and develop appropriate responses.

To this end, the purpose of the Library & Research Service is to provide Members with an impartial, timely, value-added, responsive, and accessible service.

**Sophia Carey,**

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**Jason Cleary**

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**April 2016**

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## Policy-making: does research matter?

Niall Watters

Policy-makers often ask ‘what works’ with respect to specific policy problems. In so doing, policy-makers look for good quality research to provide evidence of ‘what works’. Reflecting recognition that more effective public policy and public services should be informed by high quality evidence, evidence-based policy (EBP) has over the last two decades played a heightened role in public policy-making in Ireland and internationally.

Evidence-based policy (EBP) reflects recognition that more effective public policy and public services should be informed by high-quality evidence.

EBP has the potential to:

- Ensure that all stakeholders understand why policy decisions are made;
- Identify the most effective policy options;
- Learn from past policies; and
- Optimise the use of public resources.

Over the last two decades, EBP has played a heightened role in public policy making in Ireland and internationally.

However, some researchers have noted that while significant optimism has been invested in EBP there is corresponding concern that without applying caution on the usefulness of evidence in policy-making it may not be able to match up to expectations.

### Box 1: EBP in Ireland

Research evidence is already used in policy-making in Ireland. Examples include:

- Department of Social Protection’s (DSP) Families Research Programme;
- Joint DSP / Economic and Social Research Institute (ESRI) research programme;
- Department of Children and Youth Affairs’ National Strategy for Data and Research on Children’s Lives; and
- Growing up in Ireland – the National Longitudinal Study of Children, the Centre for Effective Services, TILDA – The Irish Longitudinal Study on Ageing.

There are also the ongoing EBP roles of the National Economic and Social Council, ESRI and the National Advisory Committee on Drugs and Alcohol.

## Why EBP?

The rhetoric of EBP came to prominence in the UK from 1997 where the newly elected Labour government’s philosophy on public policy-making was ‘what matters is **what works**’. The rationale for the increased interest in EBP was to move away from an ideological and value-led basis for policy-making, which was seen as not sufficiently evidenced informed.

The questions that policy-makers typically seek evidence for when assessing ‘what works’ are the following:

1. “Does doing *Policy A* work better than doing *Policy B*?”
2. “How does it work?”
3. “Does it matter?”
4. “Will it do more good than harm?”
5. “Will service users be willing to take up the service offered?”
6. “Is it worth buying this service/capacity?”
7. “Is it the right service for these people?”
8. “Are users, producers and other stakeholders satisfied with the service/policy?”

EBP came to prominence in the UK from 1997 where the newly elected Labour government’s philosophy on public policy-making was ‘what matters is what works’.

## Using evidence for making policy: issues to be aware of

The use of evidence to inform policy is not straightforward and studies of EBP have raised some concerns. Among these concerns, three key areas to be aware of are summarised below.

### Different kinds of evidence

Different forms of evidence provide answers to the respective questions set out above. Evidence can be quantitative, qualitative or a mix of both. Different policy areas will by their nature require different types of evidence. Health or environmental policy may use evidence from Randomised Controlled Trials while social welfare or education policy may favour evidence from non-experimental studies or surveys.

The use of evidence to inform policy is not straightforward and studies of EBP have raised concerns including those relating to:

- Different types of evidence;
- Evidence is often contested; and
- Policy-making is rarely ‘clear-cut’ and frequently involves the interplay of values, interest groups and other factors.

### Evidence is often contested

Evidence is often contested and questions remain about what counts as evidence. Some researchers believe that quantitative research is more robust than qualitative research and vice versa. There are also questions about the specific nature and value of a purely scientific approach and the resulting choices that are made about what to research and how to undertake that research. Studies of EBP show that what counts as ‘good enough’ evidence depends on how evidence is used (e.g. option generation, decision making, ongoing learning and development, continuing to do something, stopping doing something and developing new ways of working).

### Policy-making is not straightforward and frequently involves values

While policy-making is sometimes conceived as being a straightforward rational process, numerous studies over decades have shown that it is more complex. It is often a complicated interplay of values, ideologies, interest groups, the ‘business of politics’ and organisational cultures.

### Arguments for and against EBP

There are broader debates about the usefulness and applicability of EBP. These range from the positive impact of pursuing policies that have been proven to work to its potential to undermine the representative role of elected members. The following is a synopsis of the main arguments made for and against EBP:

**Table 1: Arguments for and against EBP**

FOR	AGAINST
A fundamental principle of good public policy is that decisions are made on the basis of strong evidence of 'what works'.	By relying on the evidence produced by experts and taking 'politics' out of policy-making, EBP can undermine the democratic role of elected Members as representatives of the people.
EBP has the capacity to ensure that resulting policy choices are more effective.	The evidence required to inform policy is often not available or of sufficient quality.
The use of evidence in policy-making allows greater levels of transparency about decision making.	Evidence may not be applicable to 'real life' policy considerations, e.g. the 'gold standard' in research evidence, Randomised Controlled Trials, while of high quality, may not be appropriate or applicable for all policy areas.
EBP boosts the policy-making expertise of existing policy-making processes under democratically elected governments.	The capacity, skills and resources within the policy-making process are not sufficient to make use of evidence.
EBP can ensure that policy decisions which are more likely to be effective offer greater value for money.	EBP is simply a cost cutting tool.
EBP can be optimised by the provision of strategic frameworks to include evidence in the policy-making and implementation process.	Under the guise of EBP, selective evidence may be used to support existing policy choices (policy-based evidence)

### What facilitates or impedes EBP?

The literature on EBP suggests there are a number of components that facilitate and optimise the use of evidence in policy-making; their absence in turn impedes EBP. The elements centre on the following:

- *Accessibility and dissemination:* having in place a planned mechanism to ensure that evidence is accessible and user-friendly to policy makers.
- *Relevance and capacity:* ensuring that there is sufficient research evidence from which to draw.
- *Education:* increasing the knowledge and the skills to produce, understand, communicate and use research evidence.
- *Timeliness:* for evidence to be effective it needs to be available to the policy-making process which often works to rigid timescales and at short notice.
- *Politicisation:* regardless of how robust the research evidence – values, ideologies and political interests can all play a role in the extent to which policy is or is not informed by evidence.



- *Organisation culture:* for EBP to be effective, institutions involved in making and implementing policy need to be supportive of changes suggested by evidence. Where this is not present, it can result in selective evidence being used to support a chosen policy (policy-based evidence).
- *Leadership:* EBP needs individuals to ‘champion’ it within the policy-making process to ensure and sustain its adoption.
- *Credible and high quality research:* evidence should come from a broad range of credible, high quality sources rather than from one or a small number of studies.
- *Planning for costs:* EBP incurs costs in human and financial terms and has to be recognised by all parties.

## EBP – why is this of interest to Members?

EBP, and its emphasis on ‘what works’, has the potential to improve the effectiveness of public policy. However, the application of evidence to the policy-making process is not clear-cut. It requires a well planned, structured framework and consideration of the debates about how it is best approached. In devising and scrutinising policy as legislators, Members, where possible, could seek and explore the evidence base for proposed policies. This has the potential to aid the effectiveness of the policy-making process and the resulting public policies in Ireland.



## The Irish economy: 100 years to 2016

Darren Lawlor

The Irish economy has changed significantly over the past century. To mark the centenary and to put today's Irish economy in context, this article provides a brief overview of key changes between the formative years of the 1920s and the present day.

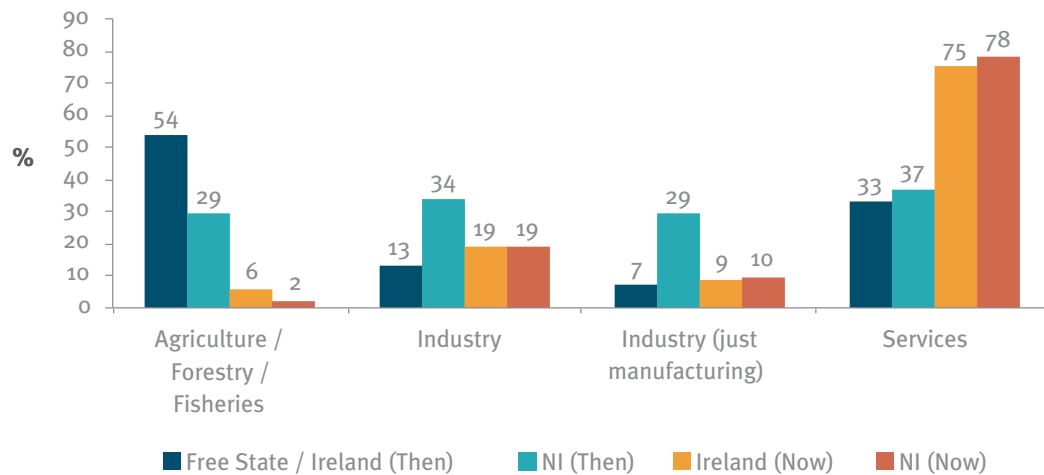
### Industry, employment and income per capita

Up to the time of the 1916 Rising (and for a substantial subsequent period), the Irish economy was highly integrated and dependent on the wider UK economic system. In the 1920s, the island's industrial core lay in the northeast. Belfast in particular acted as an industrial nucleus for textiles, linen and clothing manufacture, food processing and, famously, shipbuilding. What would become the 26 counties of the Irish Free State and later the Irish Republic was predominately an agrarian economy by contrast.

Following partition, the Irish Free State was predominately an agrarian economy in stark contrast to the newly autonomous Northern Ireland.

The typical Irish Free State worker earned their living making butter, curing bacon, processing dairy at town creameries, or by milling corn or flour. What little industry existed was concentrated in Dublin, which accounted for over half of all industrial output and comprised food processing, brewing, distilling, textile manufacture, hosiery/knitting/weaving/spinning, biscuit making and carpet making. Irish industry was heavily concentrated in the food and drink processing area (80% of total output). Brewing alone accounted for 31% of all manufacturing output. Engineering was weak, with an exception being the Ford Motors' assembly plant in Cork. Services comprised a strong retail banking sector as well as finance, postal services and transport services.

**Figure 1: Comparative sectoral employment in the Irish Free State/Ireland and Northern Ireland (1922 v. 2015)**

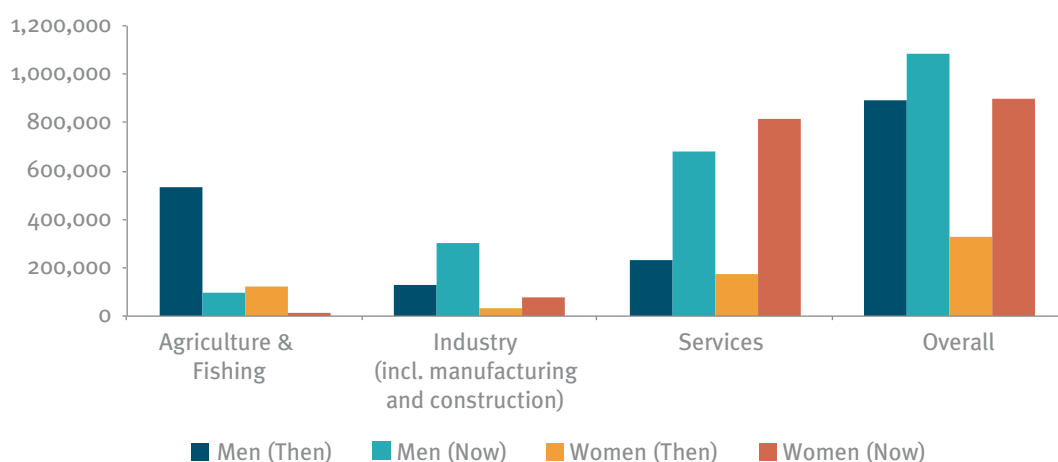


Today, employment in agriculture, forestry and fishing accounts for less than 6% of total employment. Ireland's economy is predominately service-based comprising financial services, aircraft leasing, engineering (aerospace and automotive) and software development. Ireland is also a European base and digital hub for the world's most prominent information and communications technology (ICT) companies and the pharmaceutical and chemicals industry. The composition of employment has also changed dramatically.

The proportional split of the workforce has changed from 73:27 (in favour of men) to 54:46 (in favour of men). Female workers also represent the majority in the services sector (55:45 in favour of women).

In term of employment, the proportional split of the Irish workforce has changed from 73:27 (in favour of men) to just 54:46 (in favour of men).

**Figure 2: Employment per sector by gender**



The changing composition of employment (and industry) has also impacted on the average standard of living. At the time of the Easter Rising (with a primarily agrarian economy) income per head in Ireland was just 55% of the UK level. This remained broadly constant up to the 'Celtic Tiger' era (1995-2007), a period when the economy attracted foreign direct investment at four times the UK rate. Today, income per head is approximately 107% of the UK level.

## The economy and trade

In nominal and proportional terms, the Irish economy today represents a far higher proportion of the combined UK and Ireland economy than in the 1920s (+6.5 percentage points) but the proportional share of population has actually remained almost constant.

**Figure 3: The actual and relative size of the Irish economy**



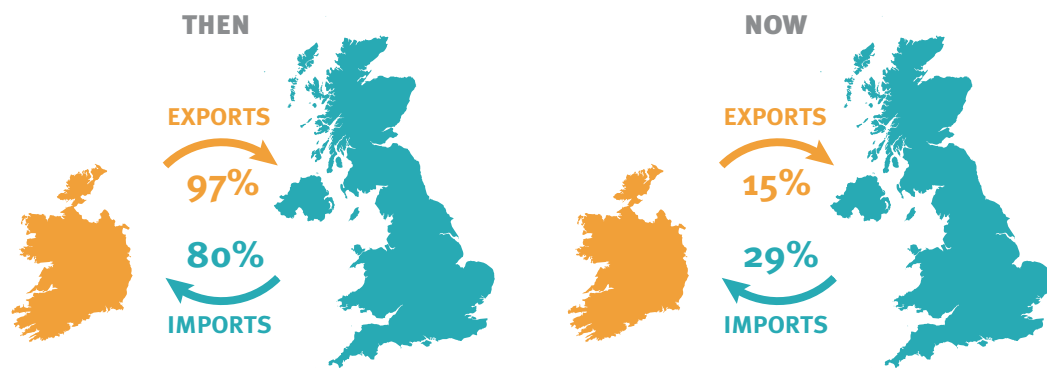
In relation to trade, in the early years of the Free State, the two major economic Departments (Agriculture and Technical Instruction and Finance) pushed for free trade (tariff-free) to enhance the export market and maximise agricultural trade, as agriculture was the dominant sector for employment.

A small number of duties were however placed on smaller traded items to encourage the public to “Buy Irish” including tobacco, sugar, confectionary, glass bottles, candles, margarine and rosary beads. Close to 90% of Irish exports were agricultural/food/drink-based and included a variety of items from live animals, footwear, woollen goods, butter, bacon and eggs to Guinness Stout, whiskey, Jacob’s biscuits and Ford tractors. Mostly, items were low value, bulk goods. Irish imports comprised manufactured goods, machinery, food, textiles and clothing.

Today, the composition of Ireland’s trade has changed significantly. Ireland’s primary imports are chemicals, food, animals and aircraft. Ireland’s primary exports are high value medical and pharmaceutical products, organic chemicals, transport equipment, food, and live animals. Notably, Irish trade dependence on the UK has fallen significantly.

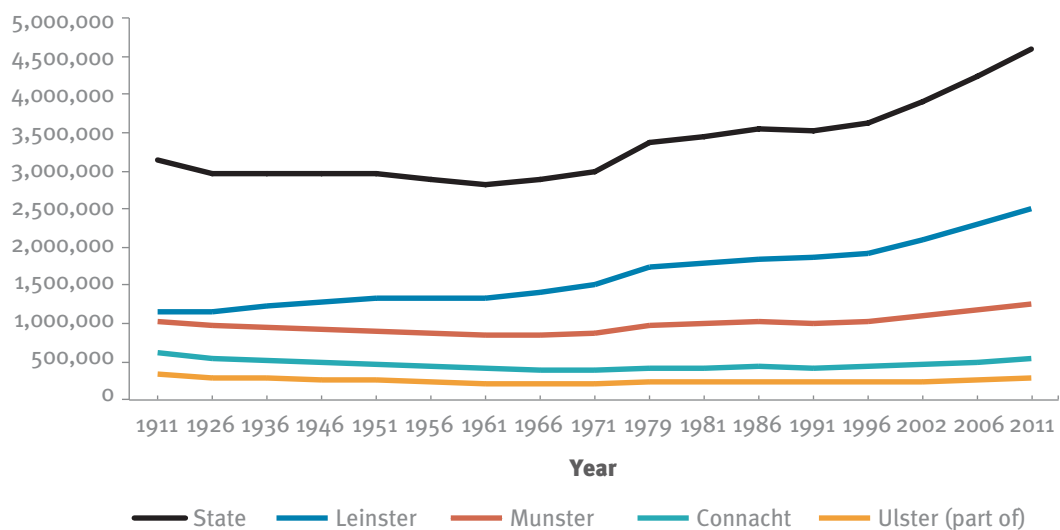
The EU-28 is now Ireland’s biggest market for imports (62%) and exports (55%). The UK by itself is now the third biggest market for Irish exports (15%, down from 97%) and the top source destination for Irish imports (29%, down from 80% in 1921). The UK still absorbs 41% of Irish food exports.

Irish trade dependence on the UK has fallen significantly. The UK has gone from being the (almost) exclusive market for Irish exports (97%) to third (15%).

**Figure 4: Irish-UK trade relationship**

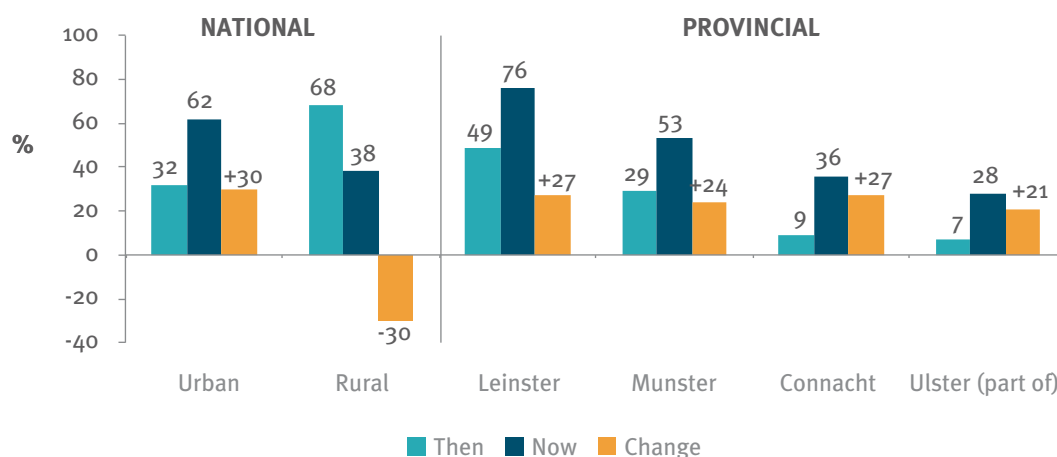
## Demographics and living patterns

A significant demographic shift has occurred in Ireland over the past century. Around the time of its establishment, the Irish Free State had a recorded population of 2.97m, down from 6.5m in 1841. Since then, both the overall population and urbanisation levels have increased in tandem.

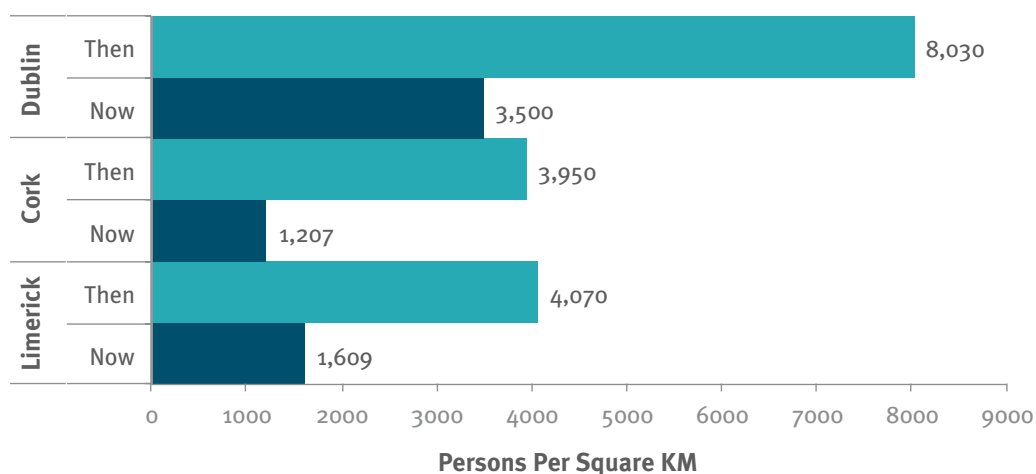
**Figure 5: Population 1911-2011**

However, the pattern is not uniform across the State. In the 1910s/20s, Dublin was the 'second city' of the UK in terms of population. Today, Dublin city accounts for 28% of the State's population (up from 17% in 1926) while Cork city, by contrast, accounts for 11% of the State's population (down from 12%). The reason for this is that over half of the population (55%) now reside in Leinster (up from 39%). While a total of 62% of the State's population (2.8m people) live in urban areas, the Dublin area alone accounts for 40%.

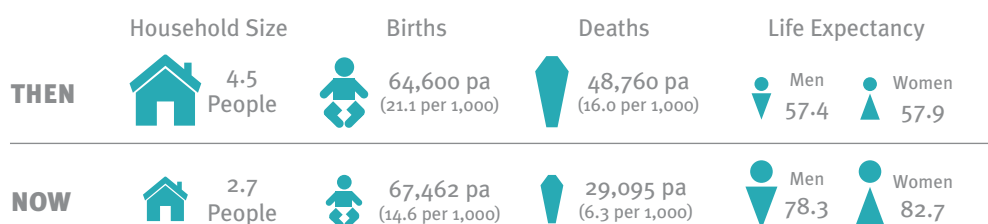
An 'urban' area is defined as a population cluster comprising greater than 1,500 inhabitants.

**Figure 6: Urbanisation in Ireland (% urban dwellers)**

One of the facets of urbanisation has been the expansion (in terms of land area) of major Irish cities where detached suburban living has become the norm, replacing city-centre tenements. As such, the population density of Irish cities has significantly declined.

**Figure 7: Population density in Ireland's three main cities**

Irish households are also far smaller today than in the 1920s, with an average size of 2.7 persons per house, compared to 4.5 in 1926. Older people (aged 65+) represent only a marginally larger proportion of the population today (11.5%) compared with the 1920s (9%). While the birth rate has declined over time, Irish people are also living far longer with the life expectancy rate increasing by +20.9 years for men and +24.8 years for women over the period.

**Figure 8: Main demographic indicators**



## Conclusion

This article provides a brief overview of Irish economic performance over the last century. As the nation reflects on the 1916 centenary, it is notable how much has changed and how far Ireland's economy has come in this time. Nonetheless, there are key issues that need to be addressed across many facets of our economy and society which are the focus of other articles in this publication.

The Irish economy has changed from being largely agrarian to one predominantly based on the services sector. Later articles discuss current issues in the agriculture sector and in the labour force such as EU and national agriculture policy, and the quality of employment.

Ireland's trade dependence with the UK has fallen significantly over the last century. Nonetheless, the UK remains an important trading partner for Ireland. The possibility of Brexit (UK Exit from the European Union) and what this could mean for Ireland is discussed later.

Ireland's population has increased over the last century as has the degree of urbanisation. As discussed later, a key current issue is a severe mismatch of housing supply and demand. Other articles also highlight how demographic trends mean that there will be additional pressures on Ireland's education and health system in the coming years.

The birth rate has fallen to 14.6 per 1,000 population from 21.1 in the 1920s. The death rate has also fallen to 6.3 per 1,000 population from 16.0.



## Mind the gap: parenting, leave and childcare in Europe

Liam Coen

In 2014, the Organisation for Economic Cooperation and Development (OECD) noted that Ireland ranked well above both the OECD and EU averages for net childcare costs as a percentage of household income, based on places for two children.

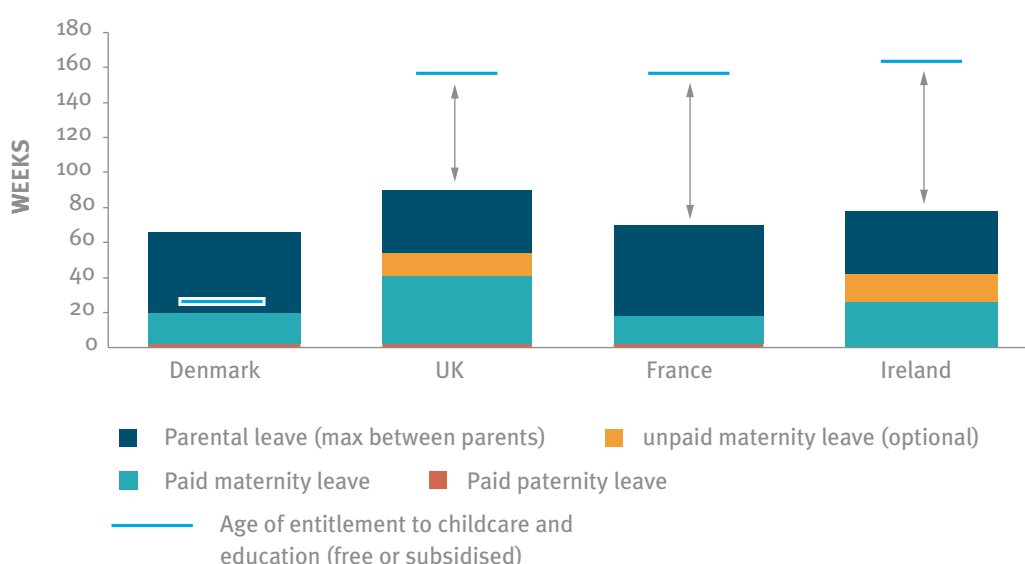
Whether, and to what extent, families are supported with such costs has been the subject of some debate. Generally, governments can and do implement, to varying degrees, a range of policies and schemes in this regard. The main supports are cash benefits, leave arrangements and free or subsidised provision of childcare services.

Ireland provides the least amount of paid leave and the smallest entitlement to subsidised childcare/preschool when compared with the UK, France and Denmark.

### Leave

Figure 1 below outlines the type and amount of childrearing leave, as well as the child age at which some form of provision (part or fully subsidised) begins in four EU countries.

**Figure 1: Leave – childcare gap**



The gap between the end of an entitlement to leave and the start of subsidised childcare is greatest in France and Ireland (86 weeks), followed by the United Kingdom (UK) (66 weeks). In Denmark there is no gap. However, the nature of provision is different in each country in relation to each of these types of supports.

## Cash benefits for children

France, Denmark and the UK each provide a universal financial payment to families with children (akin to child benefit in Ireland) although this is where the similarity ends:

- In Ireland, a monthly financial payment is made in respect of all children up to and including the age of 17 so long as they are in full-time education;
- In Denmark the payment is tapered: it reduces steadily as the child moves towards and into adolescence. Also, the payment is reduced where annual household income rises above €97,000;
- France provides a financial payment only where there are two or more children in a family. The benefit is means-tested, with reductions of 50% or 75% applied, depending on income; and
- In the UK, a financial payment is provided for all children, although such payments are taxed where annual household income rises above £50,000.

## Supports with the cost of childcare

Supports with childcare costs can take the form of free or subsidised service provision, tax reductions or rebates or specific cash payments for childcare.

### Ireland

A free preschool year is provided in Ireland. This consists of 570 hours (three hours per day/five days per week) across 38 weeks. The intention is to provide a second free pre-school year from September 2016.

### Denmark

All children between the ages of 26 weeks and six years have an entitlement to a place in a State funded public childcare/preschool centre. Parents contribute a maximum of 25% of costs (and less when siblings are also in childcare). If parents wish their children to attend a private care centre, the State may also provide some financial support to these families. This can vary with each local authority, and there is no ceiling on the overall costs set by private operators. If a parent wishes to remain at home as caregiver, the State will provide them with a tax-deductible payment (akin to a salary) so long as they care for at least two children in the home, on a full-time basis.

### France

Families pay for their child(ren) to attend a crèche/childcare centre out of their own resources until the child is three. However, in line with a long tradition of childminding, parents can avail of an allowance of up to €875 per month to have their child cared for by a childminder. Once a child reaches the age of three s/he is entitled to avail of free, day-long preschool until they begin school. A childcare tax credit is available, up to a ceiling of €2,300 per year, to those who choose not to avail of free preschool provision.

## UK

In the UK tax credits are a prominent method of childcare subvention. Parents can avail of a childcare tax credit, worth a maximum of £2,780 per eligible child, which may be drawn down to cover a maximum of 70% of childcare costs (dependent on household income, childcare expenditure and other criteria). In addition, parents who receive childcare support from their employers are eligible for tax relief on the first £55 per week. From 2017, it is intended that families in which both parents work will be eligible to avail of a 20% State contribution towards the cost of childcare, up to a maximum of £2,000. Currently all three and four year olds are entitled to three hours of free preschool per day/15 hours per week for 38 weeks of the year. It is proposed by 2017 to double this to 30 hours per week where both parents work.

## Maternity, paternity and parental leave

### Ireland

In Ireland, maternity leave is paid for 26 weeks while unpaid maternity leave is available for 16 weeks. In addition, each parent is entitled to 18 weeks unpaid parental leave per child, which can be taken until that child reaches eight years of age (or 13 years of age in the case of a civil servant). There is currently no entitlement to paternity leave in Ireland, although it was announced in Budget 2016 that two weeks paternity leave would be introduced from September 2016, alongside a paternity benefit.

### Denmark

Denmark offers 18 weeks paid maternity leave. Paternity leave is two weeks in length and paid at the same rate as maternity leave.

Parental leave is paid for 32 weeks in total, at the same rate as maternity leave. This leave can be used by one or other parent, or by both at the same time. The length of leave can be extended to 46 weeks but the rate of pay is reduced. Leave must be taken within 11 months of the child's birth.

### France

Maternity leave (paid) is 16 weeks duration for a first and second child. Paternity leave (paid) is 11 days in duration and must be taken within four months of the birth.

France introduced a new shared parental leave benefit for parents of all children born after 01 January 2015. For parents of one child, parental leave can last for a maximum of one year, although each parent may only take six months leave. For those with two or more children, leave can last up to three years, with a maximum of two years to be taken by one parent. To avail of the benefit, all parents must reduce the amount of hours they work per week, or stop completely for a period. The value of the benefit is dependent on the number of hours worked.

## UK

Maternity leave is 52 weeks in length, 39 weeks of which is paid. For all children born on or after 05 April 2015, 50 weeks of maternity leave can be transferred to the child's father (with no obligation on the mother to return to work). In addition, the UK offers two weeks paternity leave, paid at the same rate as maternity leave. It must be taken within the first eight weeks of birth.

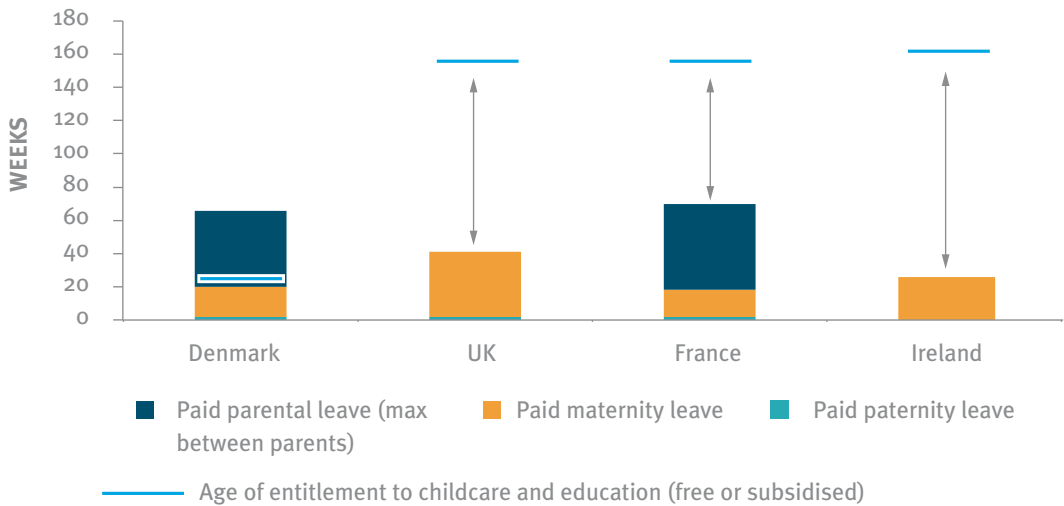
Each parent is entitled to 18 weeks unpaid parental leave per child. Only four weeks can be taken in any one year unless an employer accedes to more.

## Conclusion

The manner in which governments support families with the costs of raising young children is broadly similar in each of the countries examined, although the extent is different. Ireland is similar to both the UK and France in its provision of total leave available to parents but when unpaid leave is discounted, it lags far behind either country, as Figure 2 illustrates. The gap between the end of paid leave and the beginning of subsidised preschool in Ireland is 138 weeks, compared to 115 in the UK and 86 in France (and this does not include the childminder allowance discussed above, which further narrows the gap for parents in France).

Ireland provides the least amount of paid leave and the smallest entitlement to subsidised childcare/preschool when compared with Denmark, France and the United Kingdom.

**Figure 2: Paid leave – childcare gap**



Each of the four countries have adopted universal, free or heavily subsidised childcare and/or preschool provision, introduced at varying stages in a child's life. This is the primary method to support families with the cost of caring for their young children, alongside a number of other initiatives, which highlight the potential for multiple options to be used in this policy area. However, as can be seen, the nature and duration of provision varies widely, resulting in some cases in a significant gap which families are required to bridge.



## Home care for older people

Anne Timoney

Population ageing and other demographic and social changes are increasing the need for care of older people. Older adults would like to stay in their own homes as long as possible, even if they have care needs. While informal/family carers provide the bulk of such care, there is a growing demand for professional or formal care.

The home is the preferred place of care for older people and demand for professional home care is growing rapidly.

### Policy

The Health Service Executive (HSE) provides home care both to support people's preference for home over residential care, and to relieve pressure on acute hospitals. In addition, the Department of Health (the Department) contends that home care support can be a cost-effective alternative to long-term residential care for some older people. The Department has indicated that:

*"The decision to adjust the model of care provision to increase emphasis on community based services and supports has already been taken in principle."*

The sector is growing (especially the private sector), however there is no overarching, national home care strategy and no statutory entitlement to home care.

There is no national strategy and no statutory entitlement or financial support scheme.

The significant policy development in recent years has been the introduction, on a statutory basis, of the Nursing Home Support Scheme (NHSS) also known as the 'Fair Deal Scheme'. This Scheme provides public funding for long-term residential care, along with means-tested co-payments from the person in receipt of care. The Scheme includes the option of paying part of the contribution from one's assets after death. It has been argued that the implementation of the Fair Deal Scheme – in the absence of any similar, structured scheme for home-based care – has been to the detriment of community based services and may draw people into residential care prematurely.



## Current home care

Currently home care comprises largely of:

Many people pay privately for home care.

**Table 1: Types of home care**

Type of care	Description
<b>Informal</b>	
Family/Friend caregiver – Unpaid	<b>Family members/friends</b> – providing most home care, generally unpaid. This is critical for hands-on care and co-ordinating with formal care providers.
<b>Formal</b>	
HSE (Arranged by the HSE and provided by HSE or under contract by voluntary or private providers)	<p><b>Home Help Service</b> – providing help with housework, shopping, or sometimes may provide more personal care like help with dressing, bathing etc.</p> <p><b>Home Care Packages (HCPs)</b> – extra services and supports beyond the normal community services – home help, nursing, physiotherapy, occupational therapy, speech &amp; language therapy, day care services, respite care, etc.</p>
Private	<b>Paid for by individuals/families</b> – care provided by agencies or individuals. About one in five carers providing this type of care are not attached to an agency.

## Public spending: home care versus residential care

Public spending on home care is less per person than on residential care. However, care needs are likely to be lower, and the cost of accommodation, meals, etc. is not included.

**Table 2: Spending on home care vs residential care\***

	No. of people/ year	Total budget/ cost	Avg. cost per person per week (2014)*
Nursing Home Support Scheme(2016)	23,450	€940m	€1,390 (public home) €893 (private/ voluntary home)
Home Help (2014)	47,500	€185m	€75
Home Care Packages (2014)	18,573	€130m	€135

\*Some of this cost to the Exchequer is offset by co-payments from individuals.

## Demand in 2016

The Department acknowledges that the service supplied often falls short of the hours required – the HSE estimated that supply fell 10% short of demand in 2015.

It is estimated that an extra 1,600 people will need home care in 2016.

However, the HSE plans no increase in the number of home help hours or clients, or the number of HCPs in 2016. There will be 649 more people supported by the NHSS (on a weekly average basis). This implies that the rising demand for care will be met by residential rather than home care.

The HSE is due to establish waiting lists for home help and HCPs this year – these are already an established feature of the NHSS.

HSE provision of home care is static despite increasing demand; 10% of need is unmet.

## Challenges for policy makers

### Developing a strategy

In the absence of a national strategy, services may develop in an ad hoc manner and lack co-ordination and standardisation. The lack of a strategy could be seen as a barrier to the development of a policy framework – some potential elements of which are indicated below.

### Selecting a funding model

To keep up with demand it is estimated that the HSE home care budget would need to increase from €315m in 2014 to €467m in 2024 (a 48% increase) – indicating a need to reallocate resources or raise further revenues. A number of commentators have called for the introduction of “*a long-term plan to fund long-term care*”, maintaining that the plan must be equitable and sustainable.

Options include:

#### *Taxation*

Continue to use tax revenues for home care, re-allocating additional resources or raising taxes, subject to acceptability.

#### *Private insurance*

In theory, voluntary private insurance would involve risk pooling, but this is likely to be hampered by fewer younger people taking up such insurance, making it too expensive for those who did.

#### *Social Insurance*

Social insurance could provide a stable form of income and, if mandatory, would have the desired inter-generational transfers. The link between payments and entitlements might make

Challenges for policy-makers include decisions on:

- A funding model to finance additional services to meet the growing demand in a fair way;
- A quality regime similar to that applicable to nursing homes;
- Legislating for statutory entitlement;
- A workforce planning policy including issues related to migrant workers; and
- Optimal supports for informal carers who provide the bulk of home care.

this an acceptable finance method. However, contributions would have to be made for people not in work and it may be difficult to control expenditure.

#### *Applying a similar model to the NHSS*

Applying a modified version of the current NHSS would charge people for home care in accordance with their means. It could include a loan-style element repayable after death. However, the level of contribution from individuals would have to take into account the higher living costs of those in the community versus residential care.

### **Legislating for eligibility**

According to many stakeholders, the greatest gap in home care policy is the lack of statutory entitlement to services. Establishing a right to home care would require primary legislation.

### **Ensuring a high quality of care**

The Health Quality and Information Authority (HIQA) sets standards for, and inspects, nursing homes for older people. Primary legislation would be required to implement a similar system in the home care sector, where there is no equivalent.

### **Addressing workforce planning**

Providing home care is labour intensive and the work is challenging. Employment in the sector has been characterised as ‘precarious’. Concerns include over-reliance on unqualified staff and the exploitation of migrant staff.

A key challenge is ensuring the availability and retention of suitably qualified staff, not least by securing favourable pay and conditions. This includes consideration of how to move all care into the formal labour market.

### **Supporting informal care and other options**

The vast majority of care for older people is provided by informal carers, who comprise 90% of all carers. There are a number of supports in place for this group and the National Carer’s Strategy seeks to recognise, support and empower informal carers. Future plans would likely attempt to ensure optimal incentives and supports are provided to sustain informal care provision. Issues include whether social protection payments provide adequate compensation for lost earnings and policies to support combining care and employment.

In addition, the expansion of sheltered housing as a level of provision between home care and residential care has been recommended.



## Feeling the strain: emergency department overcrowding in Ireland

### Sophia Carey

It has been suggested that emergency departments (EDs) are a good barometer of the general state of the health system. A key problem facing Irish EDs, and EDs internationally, is the use of trolleys to accommodate patients who have been admitted but for whom a bed is not available (access block). This results in overcrowding, longer inpatient stays and can have adverse outcomes on patient mortality.

### Measuring the problem

In 2015, there were nearly 1.3 million attendances in EDs, up 20,871 on 2014. Two main sources of data tell us how our EDs are operating:

- The numbers of people on trolleys waiting for a bed (trolley waits); and
- How long people have to wait for either admission or discharge (known as patient experience time or PET).

### Trolley waits

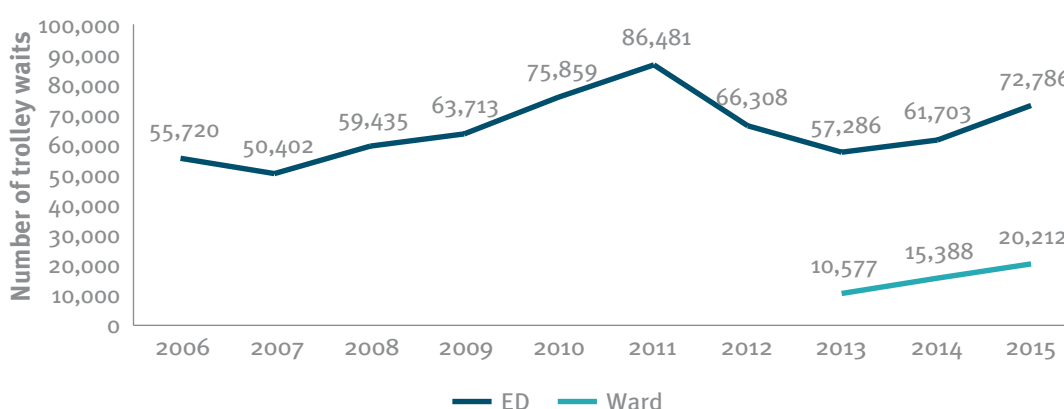
Figure 1 shows trolley waits in EDs from 2006, and inpatient wards from 2013. Following a period of improvement from 2011, there were over 9,000 more trolley waits in 2014 than 2013 (a 13.6% increase). In 2015 nearly 93,000 people waited on trolleys for a bed throughout the year, up 16,000 on 2014, an increase of 21%.

Following some improvement in early 2016, the situation deteriorated in March, when numbers waiting on trolleys (9,381) were 5% up on March 2015.

93,000 people waited on trolleys for a bed in 2015 – 21% more than 2014.

5% increase in March 2016 over the previous March.

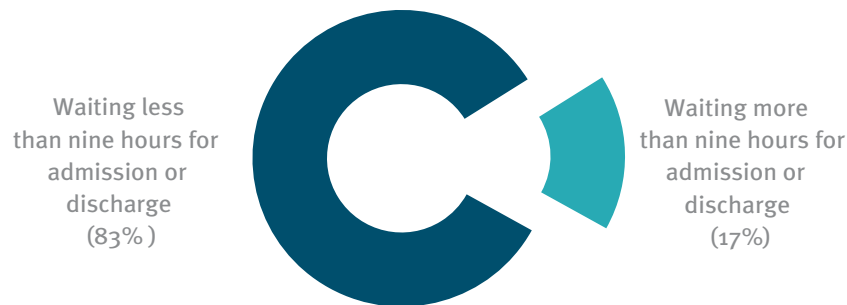
**Figure 1: Trolley and ward waits, 2006-2015**



### Patient experience time

A key ED target is to have 100% of people admitted or discharged within nine hours. In December 2015, 83% of ED attenders were waiting for admission or discharge for less than nine hours.

**Figure 2: ED attenders waiting times**



In December 2015, 3,599 patients over 75 years old were waiting in ED for admission/discharge for over nine hours, and 661 were waiting for more than 24 hours.

However, total numbers waiting for more than 24 hours reduced from 3,514 in November to 2,565 in December.

### Explaining ED problems

ED access block and overcrowding can be due to a wide number of factors. Table 1 lists some of the more common factors influencing ED flows.

**Table 1: Factors affecting ED overcrowding**

Factors affecting flows into the ED (input)	Factors affecting flows within the ED (throughput)	Factors affecting flows out of the ED (output)
<p>Increased demand due to:</p> <ul style="list-style-type: none"> <li>Demographics – growing numbers of older people; and</li> <li>Growing burden of chronic disease.</li> </ul> <p>Primary care and community care shortfalls e.g. shortage of out-of-hours service; nursing supports in community.</p> <p>More complex needs as well as higher volume.</p> <p>Seasonal factors.</p>	<p>Staff resources.</p> <p>Clinical decision-making capacity e.g. numbers of senior staff.</p> <p>Ancillary services e.g. radiology, blood tests.</p> <p>Effective use of clinical care pathways, such as frail elderly pathways.</p> <p>ED design.</p>	<p>Bed capacity.</p> <p>Competition for beds between emergency and elective procedures.</p> <p>Rate of ED admissions.</p> <p>Shortage of residential, community and home care services leading to delayed discharge.</p> <p>Poor discharge management.</p> <p>Variations in average length of stay (ALOS).</p>

Adapted from Asplin et al 2003; Boyle et al 2011.

### The current situation in Ireland

Ireland has a long-standing problem with ED overcrowding. However, deterioration from mid-2014 onwards led to the establishment of an ED Task Force reporting in March 2015 (the Taskforce report). This deterioration was ascribed to a combination of factors, many of which echo those in Table 1 above. For example, the Report pointed to longer waits for the Nursing Home Support Scheme (NHSS – or the ‘Fair Deal’), growth in the total number of delayed discharges and in emergency admissions, and issues around attracting and retaining senior clinical decision makers.

Reductions in HSE expenditure (from 2009), bed numbers (from 2007), and staffing (from 2008) may be underlying contributory factors. However, some commentators have raised questions about the cost-effectiveness of Irish health spending compared to other countries.

Non-financial factors are important too. For example, the introduction of higher regulatory standards for nursing homes led to a significant reduction in long-term care beds. Issues around process, management, efficiency and patient flow have also been identified as important factors.

### Tackling ED overcrowding in Ireland

The Taskforce report lists 88 long-term and short-term actions to address ED overcrowding, broadly grouped into three policy domains:

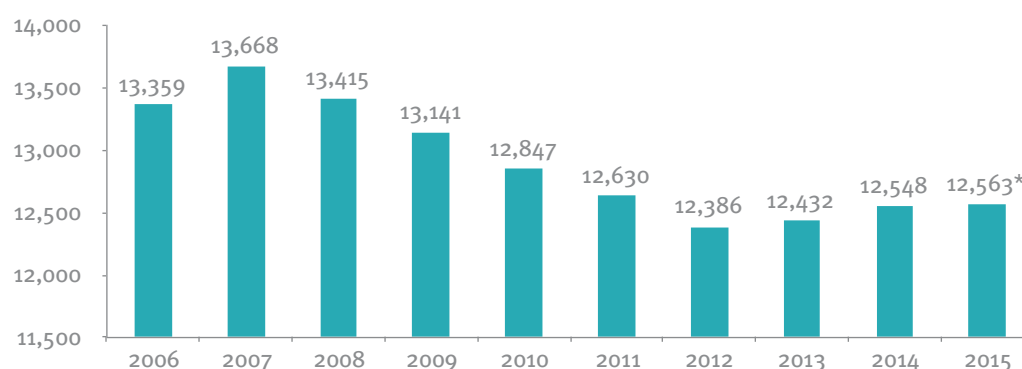
- **Capacity:** optimising access to existing capacity in hospitals and community;
- **Capability:** patient flow and process improvements; and
- **Control:** accountability, oversight and measurement.

### Capacity

Capacity is multi-dimensional, but is often spoken of in relation to numbers of beds. Figure 3 shows reductions from 2007 to 2012, followed by small increases thereafter. Additional new or re-opened beds were promised for quarter 1 2016, as part of initiatives to reduce ED overcrowding by increasing bed capacity.

**Capacity:** optimising access to existing capacity in hospitals and community.

**Figure 3: Inpatient and day case beds, 2006-2015, (at year end)**



\*HSE provisional data – subject to change.



However, capacity also relates to lower bed occupancy. This can be achieved by a range of measures, one of which is effective discharge planning.

The current HSE target is for fewer than 500 delayed discharges. However, for the early part of 2015 delayed discharges were routinely above 700. The ability to discharge depends in particular on community services existing to support those in need of non-acute care.

The Taskforce report pointed to a need for investment in NHSS, transitional care and home care services (alongside other measures including process improvements within hospitals). Additional resources for these areas were provided through 2015. Delayed discharges reduced to 509 in December 2015, down from 558 in November.

## Capability

Capability actions include appropriate admission avoidance (e.g. alternative rapid access routes), effective management of patients within ED, rapid access to inpatient care and diagnostics, and access to senior decision making. Having access to senior personnel with experience in ED decision making has been found to have many benefits, including reduced hospital admissions, increased discharge rates, more timely decision making, reduced hospital length of stay, and fewer unplanned returns to ED (McCarthy, 2015).

**Capability:** patient flow and process improvements.

As noted, the Taskforce report identified challenges in attracting and retaining senior clinical decision makers as a contributory factor to growing trolley waits. However, skills shortages persist.

Staffing levels throughout the health service have increased since 2013, following decline from 2008. There was a 5.9% increase in overall hospital staffing levels in 2015, including a 12% increase in ED consultants. However, in November 2015 the HSE signalled that there may be 'significant financial and workforce challenges' in 2016 if additional and further planned recruitment was not offset by staff turnover or savings (e.g. agency and overtime expenditure).

## Control

This encompasses various actions around leadership, governance, planning and oversight. A response to ED overcrowding used in a number of countries is to place admitted patients on additional beds across hospital wards, which spreads the load throughout the hospital system. This is known as a Full Capacity Protocol (FCP). While some stakeholders advocate its use in Ireland (the Irish Association of Emergency Medicine), others (for example, the Irish Nurses and Midwives Organisation) have not agreed to its use.

**Control:** accountability, oversight and measurement.

In November 2015 a HSE Escalation Directive mandated a requirement for implementation of a system wide Escalation Plan (including to FCP as a last resort) when the ED experiences specified levels of overcrowding, with financial penalties for non-compliance. Following a threat of industrial action by nurses, the Workplace Relations Commission (WRC) in January 2016 brokered an agreement around a revised set of escalation measures incorporating additional ‘confidence building measures’. These include measures to monitor implementation, such as weekly meetings between hospital group senior management and nursing representatives to review, monitor and ensure application of the escalation framework. It also includes procedures whereby nurses’ concerns about implementation can be escalated if necessary, and provision for review of progress by the WRC. An ED Staffing Review is also to be carried out.

While these escalation measures have received qualified welcome from stakeholders, one outcome may be reductions in elective procedures, with spillover effects on waiting lists.

## Conclusion

Because the root causes of ED overcrowding are multi-factorial, solutions can be challenging. It has been suggested that output factors are the main cause of ED crowding internationally, in particular a lack of inpatient beds, often in tandem with increased demand on the ED due to demographic factors. Where this is the case, output focused interventions may be the most effective strategies. HSE recruitment may be a key challenge in 2016.



## Demographic trends and the education system in Ireland

### Adele McKenna

Over the next decade shifting demographic trends may lead to a significant growth in the population of children and young people, before potentially declining in size again. Ireland's education system will need to adapt in order to respond to these trends as they will present it with both opportunities and challenges. A number of these are highlighted below.

### Demographic trends

In an overall population of 4.6 million, Ireland has one of the youngest populations in the European Union, with 1.2 million children and young people (Census, 2011). This number is expected to grow steadily, reaching a peak in 2018 for primary school-aged children (6-12 years old) and in 2025 for young people of secondary school-age (13-18 years old). The size of both groups is then projected to decline in the period thereafter to 2033.

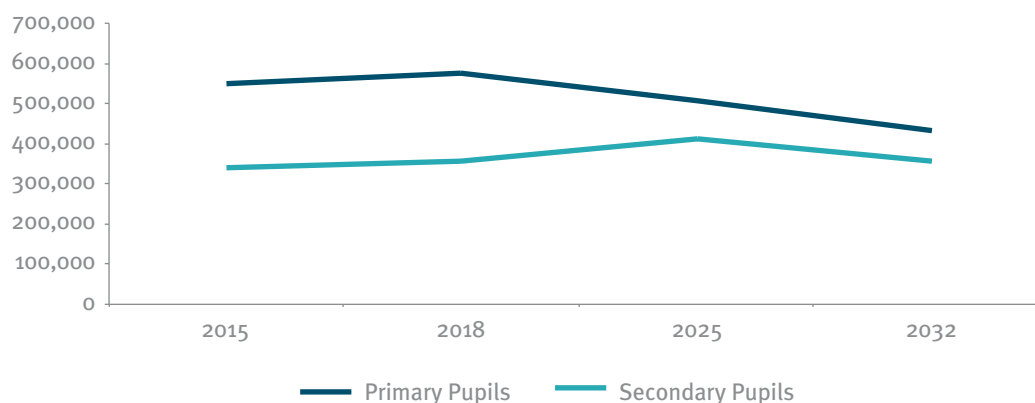
The increase in size of this population signals a possible bounty for Irish society and the economy, in the form of a large, skilled future workforce. However, there may also be challenges in dealing with demographic peaks and troughs.

#### School goers (primary)

In 2015 there were 548,542 children in primary education in Ireland. At its peak in 2018 there may be as many as 574,469, according to projections by the Department of Education and Skills (DES). This represents a possible increase of almost 5% (nearly 26,000 children) within three years. However, based on projections for 2019 to 2033 this number may decrease by up to 26% when compared with 2018 forecasts (reducing the primary school-aged population to approximately 427,000 children).

#### School goers (secondary)

In 2015 there were 339,207 young people enrolled in secondary education in Ireland. Projections suggest there may be as many as 357,825 young people enrolled by 2018 – an increase of 18,618 or more than 5%. As it reaches peak demand in 2025 numbers may exceed 410,000 (410,756) – an increase of 71,549 (or 21%) on 2015 figures. By 2033 however, these numbers are projected to decrease to 345,360 (16% less than its potential peak in 2025). Figure 1 below illustrates the projected growth and decline of the school-aged population between 2015 and 2033.

**Figure 1: Primary and secondary school population projections to 2033**

## How will the increased demand for school places be met?

The projected increase in the school-aged population is likely to result in demand, in the short-term, for up to 100,000 additional primary and secondary places in new or existing schools in the future. DES allocated almost €2.2 billion to a new school buildings programme between 2012 and 2015 and is expected to commit a further €2.8 billion to it between 2016 and 2021.

## What are some of the implications of increased demand for school places?

### More graduates needed to fill teaching posts

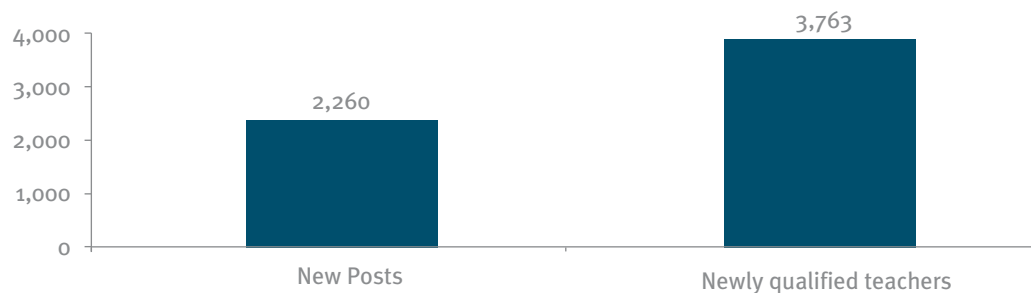
As greater numbers of pupils enrol in schools over the next decade, greater numbers of teachers will be required to fill teaching posts (in line with the ratio of teachers to students).

Historically, the number of students graduating with teaching qualifications has been greater than the number of teaching posts available, for example the Irish National Teachers Organisation (INTO) estimate a surplus of approximately 600 primary teaching graduates per year.

The number of teaching posts funded by DES in 2016 is 66,025 (full-time equivalent) posts (35,925 at primary level and 30,100 at post primary level). This includes an additional 2,260 posts on 2015 figures (an increase of 3.5%). The number of students graduating with a teacher training qualification in 2015 was 3,763. This represents an increase of more than 15% on the previous year.

Figure 2 shows new teaching posts funded by DES in 2016 in relation to the supply of newly qualified teachers graduating in 2015.

**Figure 2: New DES funded teaching posts (2016) and newly qualified teachers (2014/2015 academic year)\***



\*Most recent year for which data was available.

The anticipated need for more teaching posts in the education system over the next decade may absorb the current oversupply of teaching graduates.

### Student teacher ratios

The DES budget for 2016 is €9.069 billion. Budget estimates allow for an improvement in student teacher ratios as follows:

**Table 1: Student teacher ratios**

	2015	2016
Primary Level	28:1	27:1
Post-Primary Level	19:1	18.7:1

However, should student numbers increase, without commensurate investment in new teachers' posts from 2016 onward, student teacher ratios are likely to increase during the period of potential peak demand.

## Competition for school places

An increase in the school age population may also result in greater competition for school places, although this is likely to be dependent on where a child lives. Variations in school admission policies may contribute to competition for places in certain areas (currently, approximately 20% of schools are over-subscribed). Schools operate a range of admission policies for new entrants, such as:

- 'First come, first served';
- Geographical (catchment) area;
- Whether or not siblings are already enrolled;
- Whether parents were 'past pupils'; and

*"Under existing legislation schools are, generally, allowed to draw up their own admission policies. This enables schools to apply a range of enrolment criteria which **may favour some applicants over others**. For instance, in schools for which **demand is greater than the number of places available**, a child's application may be prioritised on the basis of where they live (**catchment area**), whether their **parent is a former pupil**, or whether or not they have **a sibling already attending the school**. Some schools operate on a **'first-come first-served'** basis and, depending on demand, may require parents **to apply several years in advance**, sometimes when the applicant is an infant. Other schools may require **payment of an application fee**."*

Source: Houses of the Oireachtas Joint Committee on Education and Social Protection, Report on the Draft General Scheme of an Education (Admission to Schools) Bill 2013, published March, 2014, p.5

- Adherence to a specified religious faith (in accordance with the specific character of the educational patron). This was a policy area addressed by the Education (Admission to Schools) Bill 2015 – which did not reach second stage before the dissolution of the 31st Dáil.

## What are some of the implications of reduced demand for school places?

### Monitoring numbers graduating from teacher training institutions

Should numbers in primary and post-primary schools decline in future, this could result in an over-supply of teaching graduates. In other European countries the numbers of graduates are monitored for planning purposes. This is not currently the case in Ireland. Examples of monitoring in other countries include:

- In England – the Department for Education and the National College for Teaching and Leadership have devised a teacher supply model to calculate the number of teacher trainees needed each year to keep pace with student population trends and replacement rates for teachers leaving the profession.
- In Finland – the Ministry of Education conducts biannual studies to determine supply and demand for graduates and adjusts access to available places in teaching institutions accordingly.

## School buildings

Between 2012 and 2014 a total of 83 new schools were built (62 of these were primary schools) and hundreds of schools were extended.

A decline in demand for school places in future could potentially lead to the under-utilisation of school buildings if built to cater for demand at, or approaching, its peak. Projections indicate that by 2026 the number of children entering primary school may decrease by 81,000 or more and the total number of school-aged children may drop below 2015 levels.

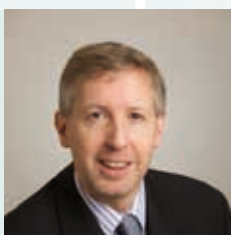
By **2026** the number of children entering primary school could decrease by **81,000**. Demand for places could be **14% lower** than at its peak in 2018.

In such a scenario school buildings and their uses would need to be reimagined. For example, in 2015 DES earmarked €3 million for investment in after-school activities in existing school buildings.

## Conclusion

Ireland has a young school-going population which is expected to continue growing for some years to come – a situation that is likely to have an impact on teacher training, school building provision and, ultimately, third-level provision (which is dealt with in the next article in this *Research Matters*). The challenges of dealing with this projected growth and the possible subsequent decrease in the relevant population is one that requires careful scrutiny and future-proofed planning by the incoming Minister for Education.





## Public funding of Higher Education Institutions

Niall Ó Cléirigh

The overall core income (for teaching and general operations) of the publicly funded Higher Education Institutions (HEIs) has seen a decline of 9% since 2007/08 while the number of students has risen by 18%. High birth rates in Ireland over the last 15 years mean that the issue of increasing number of student enrolments is projected to continue until 2028. In addition, during the period 2008-13 Ireland was the only European country where student numbers increased by more than 10% (i.e. 18%) but where funding decreased by more than 10% (i.e. 29%). It was reported (09 March 2016) that “a record” 76,000 people (an increase of approximately 2,000 on 2015) have applied to the Central Applications Office (CAO), underlining the increasing demand for higher education.

The question of how a basic level of public funding for the teaching and general operational needs of HEIs can best be provided is one which is being explored by many countries and the models employed are evolving. The issue is also a key one in Ireland.

It has been estimated that participation rates in higher education in Ireland have increased by an average of 2% per annum since 1960.

The national target is that, by 2020, 72% of 17-19 year-olds should enter higher education.

## Public funding of Higher Education Institutions (HEIs) in Ireland

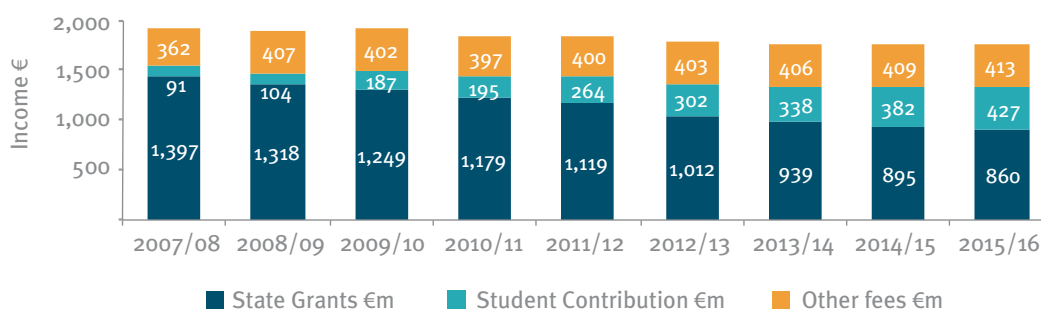
The ‘free fees initiative’, introduced in 1995/96, abolished tuition fees for first time full-time undergraduate students who meet certain eligibility criteria. As a result, over 90% of students attending publicly funded HEIs are now primarily funded by the State. Direct state grants to HEIs have been reducing since 2007/08 but are still projected to account for just over half of the €1.7bn in annual core funding (i.e. excluding research for specific time-limited projects) of HEIs for 2015/16.

Even after the abolition of undergraduate student fees, a standard registration charge continued to apply. With effect from the 2011/2012 academic year, this was replaced by a new student contribution charge. The student registration/contribution charge has increased steadily to €3,000 but this has not halted the reduction in total income per student which HEIs are receiving.

At present, half of undergraduate students (who qualify for 'free fees') have all or part of this charge paid for them by the State. It is estimated that this charge will contribute a total of €427 million to HEIs' funding requirements in 2015/16. This amount is almost matched by the amount of funding raised by other income and fees (postgraduate, part-time, international students etc.).

A steady decline in overall State funding (see Figure 1) has resulted in a substantial reduction in the proportion of total recurrent core funding for HEIs funded by the State – from 78% in 2008 to an estimated 64% in 2016. This compares to an OECD average of 68%.

**Figure 1: Income of publicly funded HEIs by source**



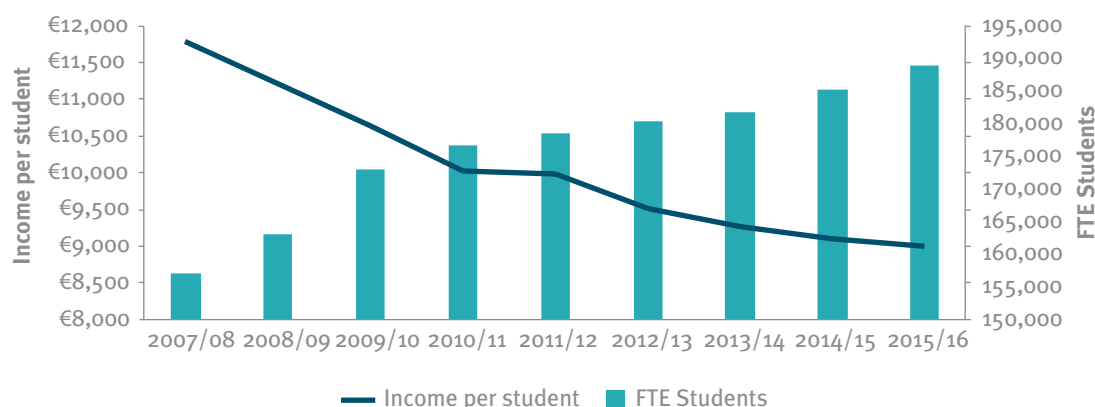
Note: Data in respect of 2014/15 and 2015/16 is estimated.

Figure 2 illustrates the financial pressure under which HEIs are operating as can be seen in the trend of full-time equivalent (FTE) student numbers and income per student in the period since 2007/08.

This decline has led to, for example, a higher lecturer/student ratio than the OECD average, i.e. 1:20 in Ireland versus the OECD average of 1:16.

Maintaining the current *status quo* would almost inevitably mean that public funding of HEIs would have to increase or that the student contribution charge would have to rise.

**Figure 2: Student numbers (FTE) and income per student**



Note: Data in respect of 2014/15 and 2015/16 is estimated.

## Additional funding issues

The Higher Education capital budget has also been reduced by 85% since 2008 and it is now estimated that it requires €5.8bn of investment over a period of 10 years.

Other funding issues not discussed here are the State's means-tested contribution to the living costs of students by way of a grant and the failure of universities to attract a higher number of (fee-paying) international students.

Finally, it may be noted that there also exists a growing number of private and/or for profit colleges awarding degrees and other qualifications, often through links with universities outside the State as well as other institutions.

## Reform proposals in Ireland and in the OECD

### The Hunt report

The most comprehensive reform proposal published since 2011 is *The National Strategy for Higher Education to 2030* (the 'Hunt report'), which was intended to address pressures on the system such as demand for places, the resource implications of commitments to quality in teaching, and maintaining/expanding the physical infrastructure of the institutions.

In addition to the introduction of measures such as changing academic contracts, and associated aspects such as pay, staff consultation and maintenance of balanced budgets, the Hunt report also proposed establishing some form of student loan system.

### The Cassells group

In July 2014, the then Minister for Education and Skills established an Expert Group (chaired by Peter Cassells) to examine future funding policy for higher education. Its objective is to identify approaches that will achieve a sustainable funding base to address the continual expansion of the sector while protecting quality of education.

The chair of the group has been reported (in the media) as stating that the current situation for universities and institutes of technology is unsustainable and that continuing with the *status quo* (funding primarily through government and a €3,000 student contribution charge) is not an option.

Although the Cassells report was not released at the time of this publication, latest media reports suggest that the option of income contingent student loans, together with higher State and employer contributions is one of three possible models proposed. The others would, reportedly, involve increases in State funding to a lesser or greater extent (the latter making provision for the abolition of the student contribution charge).

#### How does an income-contingent loan system work?

Under such a system, higher education is free at point of access to students. However, arrangements are later made with their employers to repay the loan when their income reaches a minimum threshold.

The OECD notes that, while countries have similar goals for higher education, they differ in the way that the financial burden is divided between governments, students and others.

A background policy paper prepared by the Higher Education Policy Institute for the Cassells group notes that:

*“There is no suggestion that practice in [OECD] countries...provides a model for Ireland to follow. Every country has a different starting point, and different political and social considerations apply.”*

Table 1 makes a comparison between Ireland and a range of OECD countries in relation to two funding issues.

OECD countries differ significantly in the amount of tuition fees charged by their tertiary institutions. In eight OECD countries, public institutions charge no tuition fees for full-time students in bachelor programmes. However, in more than half of the remaining countries, public institutions charge annual tuition fees in excess of approximately €2,000.

**Table 1: Comparison between Ireland and selected OECD countries**

	Ireland	Norway	England	Australia
<b>Does the State grant aid HEIs?</b>	Yes, mainly through the Higher Education Authority (HEA). Over half of recurrent (non-research) funding is by State grant.	Yes, the funding of higher education is predominantly a public affair. There are three components including a basic allocation and one based on education and one on research outcomes.	Yes – but, most ongoing direct public funding for tuition has been cut and now stands at a projected £1.521bn for 2015/16. By comparison, estimated fee income from “home/EU students” is £8.1bn.	Yes – the principal source of base funding is the Commonwealth Grant (CG) which is provided to assist with providing education, administration etc.
<b>Do students pay fees?</b>	Some students pay a contribution charge.	Not in public institutions.	Yes – these constitute the single most significant element of the non-state core income. The cap on tuition fees for new students was raised to £9,000 in 2012/13.	Yes – the second component of base funding is student fees. Base funding is calculated as the sum total of the CG and the student fee; as one increases the other decreases. Therefore, an average funding amount has been set per student.

Another crucial issue that arises is the relationship between funding and quality outcomes. Lecturer/student ratios are one possible proxy indicator of the likely outcome of varying levels of investment. The Royal Irish Academy, for example, has proposed that sufficient funding needs to be provided to bring down the current ratio from 1:20 to 1:16.

The quality of instruction is difficult to measure but is one crucial component in the delivery of a successful Higher Education sector. An internationally recognised indicator for the capacity of student instruction is the ratio of academic staff to students.

## Conclusion

All stakeholders recognise the role the Irish higher education sector has played in the economic progress Ireland has made over recent decades. Its importance in ensuring continued economic growth, especially with regard to attracting foreign direct investment, has been acknowledged.

Publicly funded higher education in Ireland receives its income from a mixture of sources and this trait seems likely to continue into the future. It is the relative reliance on the different sources and the minimum funding requirement needed to meet the optimal outcome that remains to be resolved.



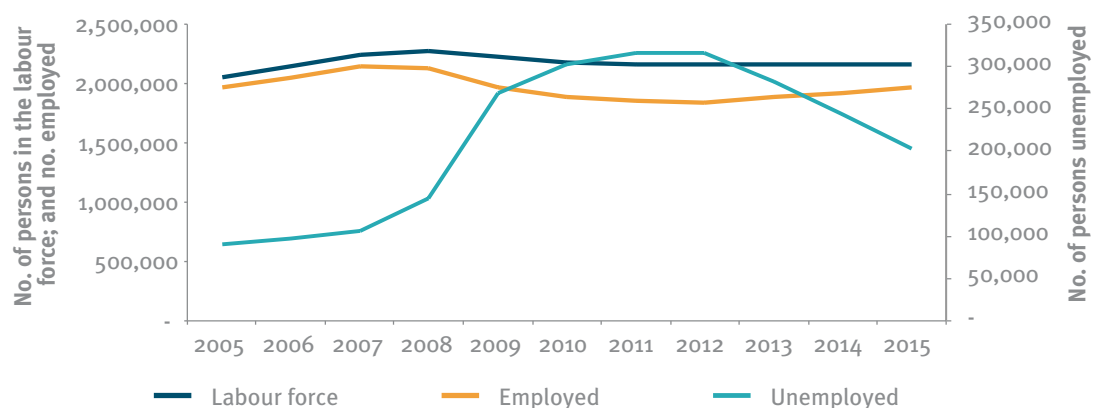
## Policy issues in the labour market

### Barry Comerford

Key issues in the Irish labour market for 2016 and beyond include long-term unemployment, the quality of employment, low work intensity households and ageing of the workforce.

Overall the employment situation has improved since 2012. However, employment is still below peak levels. According to the Central Statistics Office (CSO), there was an average of 1.964 million people in employment in 2015, representing a 6.8% increase (125,700) from the recent low point (2012). However, this is 179,500 below the peak of annual employment in 2007.

**Figure 1: Headline labour force trends 2005 to 2015 (absolute number)**



Source: CSO Quarterly National Household Survey.

There was an average of 204,000 people unemployed in 2015 representing an unemployment rate of 9.4%. In March 2016 Ireland's seasonally adjusted unemployment rate was estimated to be 8.6%. Ireland's unemployment rate is below the EU-28 average (8.9%) and the Euro Area average (10.3%).

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## Long-term unemployment

The long-term unemployment rate was 4.7% in Q4 2015. The longer a person is unemployed the more their skills deteriorate and the harder it is for them to gain employment.

There is substantial evidence that such individuals receive permanently lower wages than similar individuals who did not experience unemployment. The Economic and Social Research Institute (ESRI) have estimated that future wages could be reduced by 10% by this effect.

Active labour market policies such as helping with job search (vacancy matching, helping with CVs and interview preparation etc.), skills development (training, education, and improving basic numeracy and literacy skills) and employment subsidies (such as internship programmes, subsidised employment etc.) can help combat long-term unemployment. However, the key challenge is directing resources to the most effective programmes.

## Quality of employment

The quality of the jobs created has become an issue for many. There has been anecdotal evidence that atypical work, short-term and short-working hours contracts seem to have become more common in certain sectors. A recent study by researchers from the University of Limerick found that while ‘zero-hours contracts’ were not extensive in Ireland, ‘if and when’ contracts were more prevalent. ‘If and when’ contracts can include guaranteed and non-guaranteed hours.

### Box 1: *Zero-hours vs. if and when contracts*

The difference between ‘zero-hours contracts’ and ‘if and when contracts’ is that a ‘zero-hours contract’ requires an individual to make themselves available for work (and risk their position if they do not attend when required) whereas an ‘if and when contract’ allows the individual to refuse work.

While such contracts can suit employers and some employees, they can have negative effects for some individuals including:

- Low and/or unpredictable working hours;
- Working outside normal working hours;
- Unstable levels of income;
- Difficulties managing the work-life balance;
- Problems with childcare arrangements;
- Insufficient notice of shifts;
- Feeling compelled to be available for work; and
- Issues with social welfare benefits.

There can also be a lack of clarity over their employment status. Are they employees or are they self-employed? This has implications for their access to social welfare benefits as self-employed individuals have lower social insurance based benefits than employees. Such contracts are more prevalent in the accommodation, food and retail sectors and in some occupations in the health and education sectors.

## Low work intensity households

The focus of unemployment tends to be on individuals. However, there is also concern over households where no one is working or has very limited access to work. Eurostat statistics show that in 2014, 21% of Irish people under the age of 60 lived in low work intensity households (defined as people aged 0-59 living in households where the adults (excluding students) work less

than 20% of their total work potential during the past week). This was the highest rate in the EU – above Greece (17.2%) and Spain (17.1%) which have much higher unemployment rates than Ireland.

**Figure 2: Share of people aged 0-59 living in low work intensity households**



Source: Eurostat.

According to the National Economic and Social Council (NESC):

*“Those who live in [such] households are more likely to have no educational qualifications, to have never worked or to be in the unskilled social class. They are also more likely to be renting their accommodation, to be single or parenting alone, and to either have a disability or to live with someone with a disability.”*

The transition to work for such households can be difficult. Their individual circumstances (e.g. disabilities, parenting alone, location, etc.) can greatly affect whether they can find a job. The interactions between the social welfare system, the taxation system, and access to other services can be a barrier to employment especially if taking a job puts access to services at risk. Lack of access to affordable childcare is a barrier for many parents, especially single parents, entering the labour force or working full-time.

Recent ESRI studies have shown the majority of the unemployed are better off in work than claiming benefits. However, a significant proportion of those unemployed with children face high replacement rates (i.e. welfare benefits compared to potential income from work) potentially reducing their incentive to find employment.

Activation measures which are aimed at the unemployed can help such households but as the NESC points out, responses must also include developing a capacity to provide tailored services that respond to individual household's needs and circumstances. This may include adult literacy, child development, family supports, addiction services, disability services, housing, education and training, public employment, and community employment.

The interactions between the social welfare system, the taxation system, and access to other services can be a barrier to employment especially if taking a job puts access to services at risk.



## Ageing of the labour force

Ireland's labour force is relatively young, but is ageing. The estimated median age of the Irish population was 37.0 in April 2015 compared to an EU average of 42.2. Since 1996, when it was 34.1, the average age has increased by almost three years. There are a number of reasons for this including increased life expectancy (in 2013 life expectancy at birth was 81.1 years compared to 76.6 years in 2000), the reduction in the birth rate in the 1980s and early 1990s and the recent emigration of many young people. Between 2010 and 2015, the number of individuals aged 20 to 30 years fell by 181,000. Approximately half of this was due to emigration with the other half due to the fall in the birth rate in the late 1980s and early 1990s.

The estimated median age of the Irish population was 37.0 in April 2015 compared to an EU average of 42.2.

In addition, the change in the State pension age (to 66 in 2014, 67 in 2021 and 68 in 2028) will mean individuals will work longer. The implications of an ageing workforce potentially include:

- Less labour market flexibility as older workers are less willing to move areas to change jobs;
- Upward pressure on aggregate wage levels as older workers as a whole tend to be paid more than younger workers (as they are more productive due to experience);
- However, certain older workers receive lower incomes – older workers who lose their jobs can find it difficult to find a position which replaces their previous level of income;
- The need for continuous on-the-job training and retraining to maintain and develop the skills of the workforce as it ages; and
- Age discrimination in hiring.

## Conclusion

The challenge for policymakers is to focus on the volume and quality of employment, while at the same time considering the complex interaction that policies in other areas (such as social protection and taxation) have on the ability of individuals to fully engage in the labour market.



## Housing supply in Ireland

### Eoin Sheanon

The housing market has been one of the most problematic issues facing policy makers in recent years. There is a lack of housing supply, particularly in urban areas, which has resulted in a number of issues of concern such as inflating rents and increases in homelessness.

A number of policy and regulatory measures have been introduced to encourage housing development (see Table 1). However some further potential policy options (in the areas of access to finance, planning and taxation) are discussed below.

## Housing construction

An examination of house completions since 1970 shows that in no other previous period has residential construction activity been as low as in each of the years between 2011 and 2014.

Despite Ireland's population growing at the fastest rate in the EU, and the accompanying need for appropriate levels of housing, fewer houses have been built between 2009 and 2016 (to date) than in the year 2006 alone.

Some of the results of the slowdown in residential construction have been:

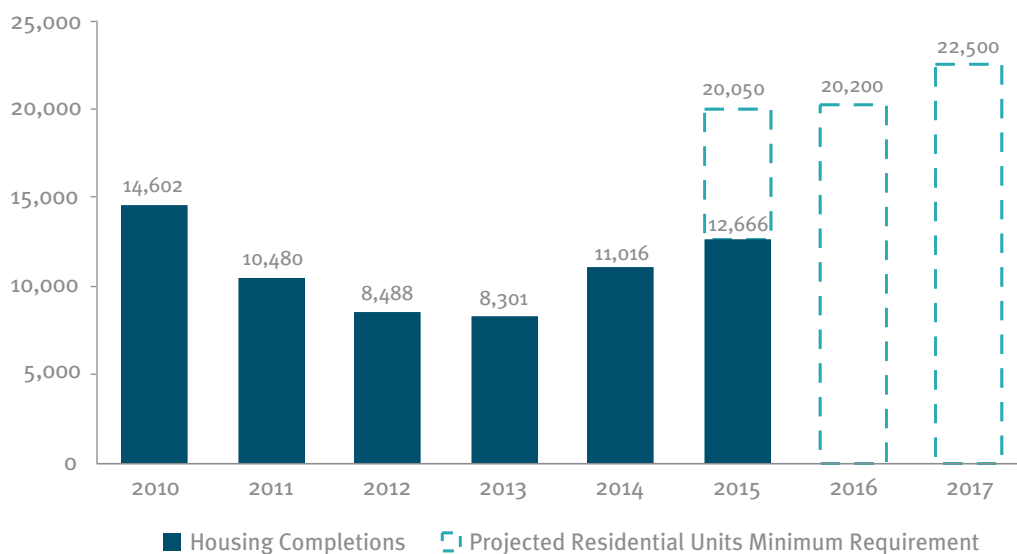
- A sharp reduction in the homes available to rent, with only 3,600 properties available on 01 February 2016, lower than at any point in the last 10 years;
- Increases in rent – according to Private Tenancies Residential Board (PRTB) data, as of Q4 2015 rents nationally were just 9.1% lower than their peak in Q4 2007, and 0.4% higher in Dublin than this previous peak; and
- A rise in homelessness, with 884 homeless families living in emergency accommodation in January 2016 compared to 401 in January 2015.

Fewer houses have been built over the period 2009 – 2016 (to date) than in 2006 alone.

This has led to a:

- Reduction in the homes available to rent;
- Rise in rents; and
- Rise in the number of homeless families.

The Housing Agency has stated that at least 60,000 houses need to be built over the three year period covering 2015 – 2017 in order to keep up with demand.

**Figure 1: Housing completions and projected housing requirements 2010-2017**

The ESRI (2016) has recently suggested that possible reasons for a shortage of housing supply in the Dublin market could include a lack of suitable developed land, developers may be hoarding land, and/or developers may be facing financing constraints. In addition, NESC (2014) has pointed to serious problems in each of the main channels of social housing provision (local authority, housing associations and the private rental sector).

At least 60,000 houses need to be built over the period 2015-2017 to keep up with demand.

Housing supply can be influenced by economic instruments such as:

- Taxation – which influences choices by altering incentives in the housing market;
- Regulation – which can determine the amount of housing that can be supplied, its location and nature; and
- Subsidies – which take the form of the provision of social and affordable housing.

## Regulatory and policy measures to boost housing supply

To combat pressures in the housing market, and to incentivise the annual construction of the 18,000 – 24,000 houses needed to keep abreast of demand, including shortfalls in social and affordable housing, a number of policy initiatives have been published and a series of Acts passed as outlined in Table 1 below.

**Table 1: Policy and regulatory measures**

Published	Policy/Legislation	Aims and Objectives
May 2014	Construction 2020	Seventy five actions with the central objective of trebling housing output by 2020 and creating an additional 60,000 jobs in the construction sector; and  Calls for a strategic approach to the provision of housing and for the continued improvement of the planning process.
November 2014	Social Housing Strategy 2020	Deliver 35,000 new social housing units by 2020; and  New units to be financed through exchequer funding and off-balance sheet mechanisms.
July 2015	<i>Urban Regeneration and Housing Act 2015</i>	Vacant site levy of 3% on vacant land; to encourage development on vacant sites (over 282 in Dublin city alone);  Amendments to Part V of the <i>Planning and Development Acts</i> ; to ease the burden on developers to build social housing; and  Lower development contributions to incentivise construction.
December 2015	<i>Planning and Development Act 2015</i>	Application of uniform apartment standards across the country which it is hoped will permit easier and cheaper construction of apartments; and  The introduction of modular housing, in order to alleviate the current pressures on local authority housing waiting lists and homelessness particularly in urban areas.

In addition to Table 1 above, the National Management Asset Agency (NAMA) has, among its other objectives, a commitment to facilitate the provision of residential accommodation. It has estimated that 20,000 residential units may be delivered under its Residential Funding Programme between 2016 and 2020.

## Potential policy options

Various policies have been proposed by commentators as a means to increase housing supply. For example, one of a number of actions suggested by NESC (2015) is the use of public authority, capacities and assets to lead housing provision (for example making land available to actors capable of supplying affordable homes).

Some of the measures outlined here which could help address housing supply constraints include:

- Improving access to finance;
- Remedying restrictive planning practices; and
- Creating carefully targeted tax incentives.

### Access to finance

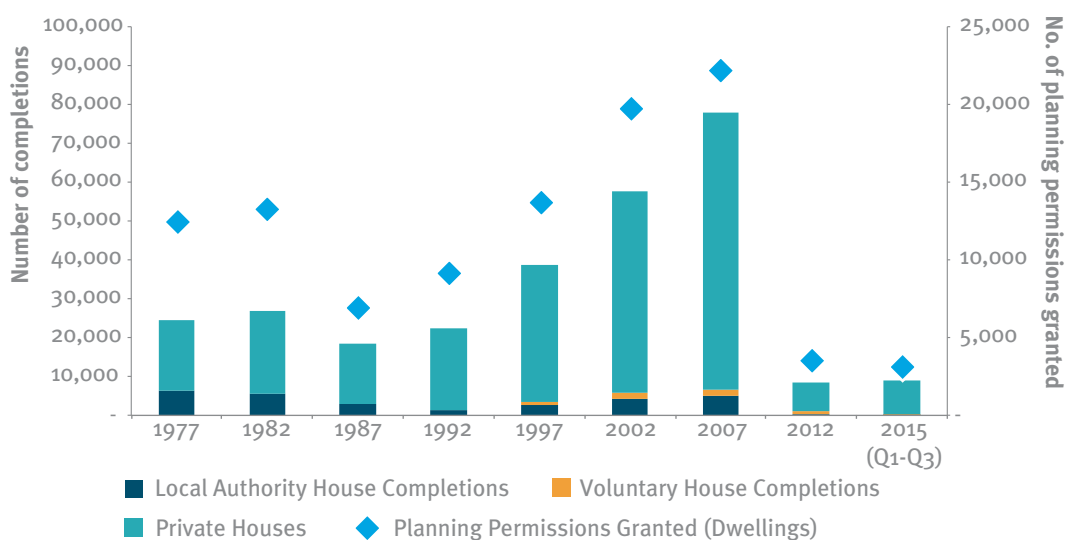
Several reports on the construction sector have highlighted the difficulties encountered by smaller construction firms in raising finance for projects. A report by the Department of Finance on *Access to Finance for Construction and Development* explored options to bridge a 35% funding gap that exists because banks are only willing to provide up to 65% of development costs. This concluded that more could be done to educate smaller developers on how to attract equity financing and bridge the funding gap.

A government backed builder's finance fund of £525m was introduced in 2014 in the UK. The Society of Chartered Surveyors has called for the creation of a similar fund in Ireland. However, by mid-2015 only £1m of the UK fund had actually been drawn down, highlighting bureaucratic and legal problems involved in the process. Despite the UK experience, consideration of the implementation of such a fund in Ireland may be worth exploring.

### Planning

As of Q3 2015, both planning permissions and local authority housing completions were at their lowest levels in almost 40 years.

**Figure 2: Planning permissions granted and house completions by type, 1997 - 2015.**



A Library & Research *Spotlight* (no. 6, 2014), *Issues and context – government reform of planning legislation*, highlighted some aspects of the planning system in Ireland which may hinder housing supply. One of these aspects is planning compliance regulation – there is a legal obligation on the applicant to ensure that their permitted development complies with conditions. However, there is no statutory timeframe for the planning authority to make a decision on compliance submissions. This can lead to a delay in the progression of developments, lack of clarity for developers, and in some cases non-compliant developments. It has been suggested that a statutory timeline regarding compliance in the Planning Regulations 2010-2015 may help to prevent extended delays in the commencement of developments.

## Taxation Measures

There is a 75% limit on mortgage interest relief on money borrowed to purchase, improve or repair residential property available against gross rental profits. This is not reflective of other international jurisdictions, or lettings in the Irish commercial sector, which enjoy 100% mortgage interest relief. This may act as a disincentive by dampening demand for smaller buy-to-let properties.

In addition, the Society of Chartered Surveyors Ireland has observed that a reduction in the VAT rate from 13.5% to 9% on new housing units up to a selling price of €300,000 would increase the commercial viability of house construction at the lower end of the market. However, the ESRI has concluded that tax breaks would have little effect on supply if supply constraints such as lack of finance, restrictions in the planning system and the lack of development infrastructure are not addressed first.

## Conclusion

Demand for new housing is outstripping supply. Consequences of this include a reduction in homes to rent, increased rental prices, a rise in social housing waiting lists and homelessness.

The question of how to address this complex issue is not easy. Housing supply can be impacted by a range of factors including house prices, construction costs, land use regulation and development fees among others.

As outlined above, recent years have seen substantial policy initiatives to address these problems. However, time-lags involved in housing production mean that it may not be immediately clear if such initiatives help alleviate the problem.

Another issue is that interventions in the housing market may lead to unintended consequences. The ESRI (2015) has noted that before implementing any new initiatives in the housing market, a formal cost benefit appraisal should be undertaken (e.g. the ESRI refers to reports which have stated that any tax incentive schemes which are introduced should have a defined lifespan and extensions should only be considered after evaluation of a cost-benefit appraisal).

Finally, there may be specific issues relating to the supply of social and affordable housing. Problems with supply in this area have been linked to growing problems with homelessness, and this is discussed further in the next article on homeless families in Ireland.



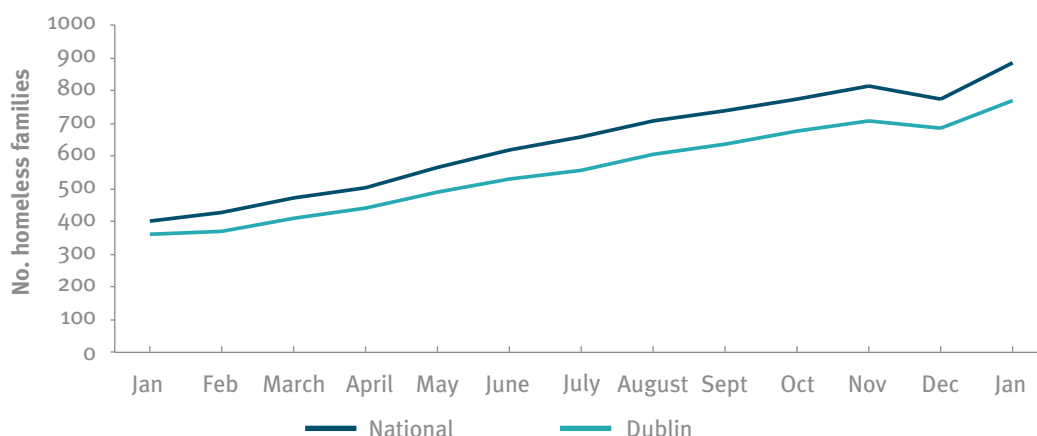
## Homeless families in Ireland

Shane Burke

Traditionally those presenting to homeless services are single. However since 2013 there has been an increase in the number of homeless families (i.e. a couple with children, or a lone parent with at least one child). In December 2015, 29% of all homeless adults were in emergency accommodation with their dependents.

The number of homeless families has increased from 401 in January 2015 to 884 in January 2016. These 884 families include 1,191 adults and 1,830 dependents. Figure 1 compares the national trend with Dublin, where 87% of all homeless families were living in January 2016.

**Figure 1: Number of homeless families Jan 2015- Jan 2016**



### Why are more families becoming homeless?

Over 60% of families presenting to homeless services were previously living in the Private Rented Sector (PRS). With a sharp decline in the construction of new houses (see previous article on housing supply in this *Research Matters*), approximately one in five households are now renting their home in the PRS (compared with 1 in 10 in 2006). However, nationally there are fewer properties available to rent than at any time over the past 10 years and rent inflation is high in cities. As a result, rent supplement (RS) limits ('caps') are often lower than market rents and families have found themselves priced out of the PRS.

Most new families presenting as homeless have incomes that put them at risk of poverty. Providing long-term security for such families is difficult without an adequate supply of social housing. Also, repossession of buy-to-let properties is exacerbating the homelessness problem. Some commentators have recommended that the Government look at ways of allowing tenants to stay in their homes in such cases.

*Providing long-term security for such families is difficult without an adequate supply of social housing.*

## How are homeless families accommodated?

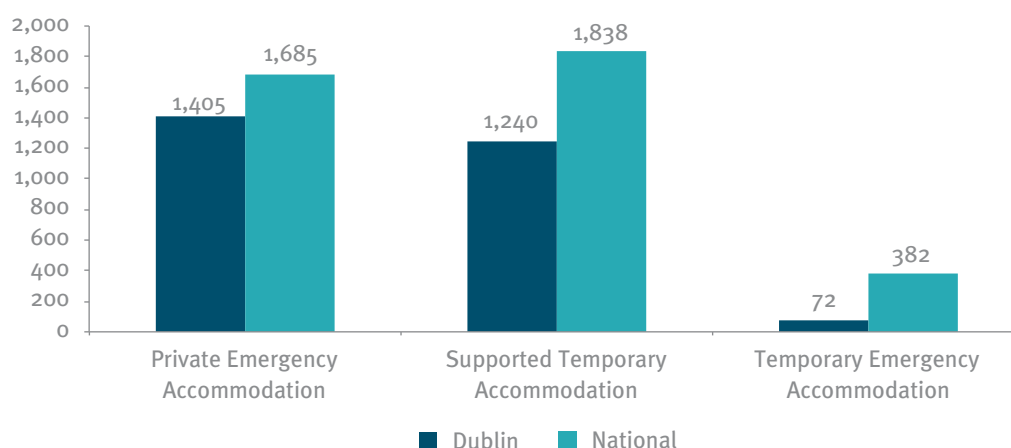
In the initial stages of homelessness, families sometimes stay with relatives or friends ('sofa surfing'). They may then contact their local representative, or go to the Homeless Services Section of their Local Authority, where they will be assessed.

Categories of emergency accommodation are:

- Private emergency accommodation – accommodation rented directly from private landlords, B&Bs and hotels;
- Supported temporary accommodation – hostel accommodation with onsite support from e.g. Focus Ireland, Simon, or Crosscare; and
- Temporary emergency accommodation – hostel accommodation with low or minimal support.

Presently most new families are referred to private emergency accommodation until long-term accommodation is found. Homeless families are allocated a "key worker" to help them exit homelessness and support them with health/education needs. Figure 2 shows where homeless persons were located in January 2016.

**Figure 2: Homeless persons in emergency accommodation, January 2016**



Emergency accommodation is difficult for families, as there are often no fridges, cooking, or laundry facilities. It is also costly, with families facing increased transport, laundry and meal costs. Other issues include lack of privacy, long travelling times to schools and child protection issues.

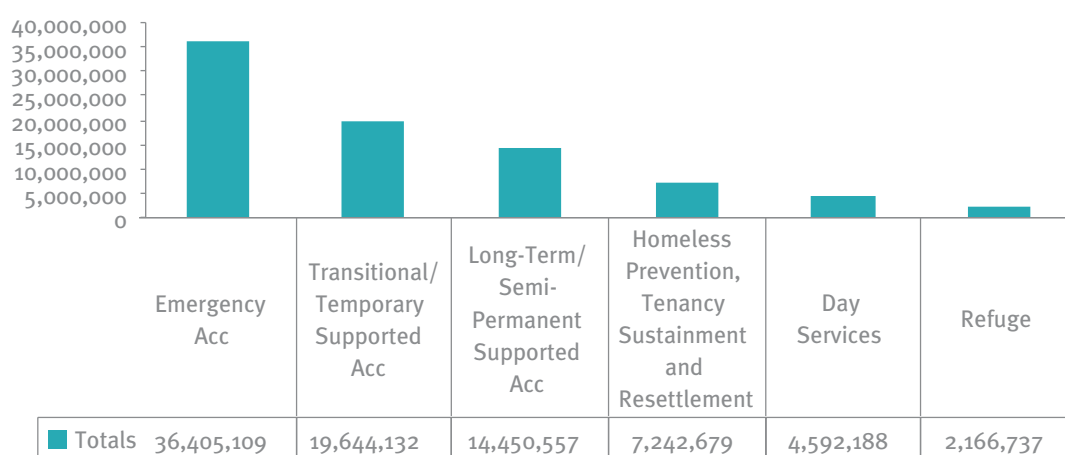


## The cost to the State of providing homeless services

An independent review commissioned by the Department of the Environment, Community and Local Government (2015) shows that the biggest proportion of Exchequer funding to the homeless sector (38%) in 2014 went towards emergency accommodation, while a further 20% was spent on temporary accommodation. The review states that this proportion of expenditure would appear to be at odds with the Government's (2011-2016) aim of ending long-term homelessness through secure housing.

*The biggest proportion of Exchequer funding to the homeless sector goes towards emergency accommodation.*

**Figure 3: Distribution of exchequer funding by service type 2014**



Budget 2016 announced a 32% year-on-year increase in funding for homeless accommodation and related services to €70 million. Across Government Departments, spending on homeless services is in excess of €150 million.

### Response to the homeless crisis

The Government's (2011-2016) response to homelessness may be summarised as (i) finding long-term accommodation for families and (ii) assisting families at risk of becoming homeless.

## Providing long-term accommodation

### Increasing the supply of social housing

The Government's (2011-2016) long-term solution to homelessness was to increase the supply of homes, particularly social housing. The PRS is crucial to the Social Housing Strategy 2020 which sets a target that out of 110,000 social housing units to be provided by 2020, 75,000 (68%) will be Housing Assistance Payment/Rental Accommodation Scheme (HAP/RAS) units i.e. provided through private landlords.

However the PRS is less secure than local authority housing and private landlords may choose not to participate or to leave these schemes. Also, substandard accommodation is an aggravating factor at the lower end of the PRS, with damp, vermin and other hazards reported. As such, greater compliance with rental accommodation standards needs to be ensured.

### **Moving families out of homelessness**

Nationally, over 2,000 people exited homelessness in 2015. In the Dublin region 1,050 of these were transferred to social housing and HAP. A number of other measures have been taken to help families, such as:

#### **Modular housing**

500 units of modular housing were approved for use as emergency accommodation in Dublin. There has been some resistance from local groups, who claim these units are allocated to already disadvantaged and underserviced areas. One site, residents argue, was intended solely for social housing. While the first 22 units are due to be ready in April 2016, the original tender for the remaining 131 units was cancelled due to a lack of applications, leading to a reissue of the tender and delay on completion.

#### **Higher priority in local authority housing allocations for homeless households**

In December 2014 the Minister issued a directive to the four Dublin local authorities to allocate 50% of available social housing to homeless households and other vulnerable groups. A similar directive was issued to local authorities in Cork, Galway, Limerick and Waterford, with 30% of available dwellings to be allocated this way. Barnardos claim an unintended consequence of the policy is that some families, who are struggling in the PRS, are becoming homeless as a means of gaining social housing support.

#### **Housing Assistance Payment (HAP) Homeless Pilot**

The HAP Homeless Pilot, managed by the Dublin Region Homeless Executive (DRHE) aims to transition households from emergency accommodation to the PRS by using the Housing Assistance Payment (HAP), which has higher rent limits than RS.

The Dublin Place Finders unit, managed by the DRHE, promotes the pilot HAP scheme among landlords in the region, with a view to building up a database of interested landlords. Participating tenants remain eligible for other social housing supports and remain on the social housing list.

## **Preventing homelessness**

#### **Tenancy Protection Service (TPS)**

Available in Dublin and Cork, TPS is operated by Threshold and provides support and advice to people at risk of losing their private rented accommodation. If required, Threshold can apply, on the tenant's behalf, for an increase in RS above the current rent limit. According to DRHE, the TPS has protected 1,346 tenancies in Dublin between June 2014 and September

*Services such as the Tenancy Protection Service operating in Dublin and Cork have shown promise and could be rolled out to other cities.*

2015. In the majority of cases, an increase in RS was required. Around 96% of these were families with children. In February 2016, the Minister of State reported that a more flexible approach to RS has assisted over 6,200 households nationwide to retain, or acquire, rented accommodation.

Services such as TPS operating in Dublin and Cork have shown promise and could be rolled out to other cities experiencing rent inflation and homelessness.

*A more flexible approach to rent supplement has assisted over 6,200 households nationwide to retain, or acquire, rented accommodation.*

### **Rent certainty measures**

Rent certainty measures were taken by the Government (2011-2016) to ensure that rent reviews can only take place once every 24 months, giving more certainty to tenants. Under the same legislation, landlords cannot charge more than 'market rent'. In March 2016, Barnardos suggested that rents be linked to the Consumer Price Index.

While some stakeholders recommend that rent supplement limits be increased, a 2015 review published by the Department of Social Protection concluded this could lead to further rent inflation. The review favored maintaining flexibility around the payment.



## Courts highlight areas where legislation is needed

### Maeve Ní Liatháin

Article 15.2.1° of Bunreacht na hÉireann provides that ‘the sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State.’ This means that the courts interpret legislation introduced by the Oireachtas and have no role in creating laws. Where there is no legislation dealing with a particular issue then it cannot be interpreted by the court. However, the courts can, and do, strongly state where a lack of legislation or regulation in a particular area is a matter for concern.

This article looks at two areas relating to assisted human reproduction (AHR) where the Supreme Court has repeatedly highlighted the urgent need for legislation. Planned legislation in this area has not been introduced (surrogacy) or commenced (AHR provisions in the *Children and Family Relationships Act 2015*).

The courts have pointed out that a difficult topic such as surrogacy and the legal status of embryos does: ‘not absolve the legislature from the obligation to consider’ it. Furthermore, the courts have cautioned that given the scientific advances in embryology and stem cell research and the lack of regulation: ‘Ireland may become by default an unregulated environment for practices which may prove controversial.’

The courts have noted a continued reluctance by the Oireachtas to legislate in the area of Assisted Human Reproduction (AHR). This reluctance has practical and other consequences for children born through AHR and their families.

## What is the legal status of fertilised embryos which have not been implanted?

Article 40.3.3° of the Constitution gives constitutional protection to the life of the unborn – but does this protection extend to fertilised embryos which have not been implanted? The Supreme Court found in *Roche v. Roche* [2009] IESC 82 that it did not. The court highlighted that it is for the Oireachtas to decide what protection such embryos are entitled to.

Chief Justice Murray held that:

*“I do not consider that it is for a court of law .... to pronounce on the truth of when human life begins. Absent a broad consensus on that truth, it is for legislatures in the exercise of their dispositive powers to resolve such issues on the basis of policy choices.*

*The choice as to how life before birth can be best protected, and therefore the point which in law that protection should be deemed to commence, is a policy choice for the Oireachtas. The Courts do not have at its disposal objective criteria to decide this as a justiciable issue.”*

Justice Hardiman noted that:

*“There has been a marked reluctance on the part of the legislature actually to legislate on these issues: the court simply draws attention to this. That is all it can do. ... The issue is all the more urgent because, of course, scientific developments in the area of embryology and the culturing of stem cells will not stand still.”*

## Who is the legal mother of a child born through surrogacy?

Surrogacy is not regulated by law in Ireland. The case of *M.R. & Anor v. An tArd Chláraitheoir* [2014] IESC 60 looked at who was entitled to be registered as the legal mother on the birth certs of twins born through surrogacy – was it the surrogate mother or the genetic mother? The Supreme Court found that the legal mother was the woman who gave birth to the children and not the genetic mother. This reversed the finding of the High Court on the issue.

The lack of legislation governing the area was a matter of obvious concern for the court which pointed out the effects that a lack of regulation has on families and children. Assisted human reproduction was described as a ‘legal half world where the only constraints on the process are those imposed by the dictates of a private market and the sense of responsibility of practitioners.’

There is no Irish legislation dealing with surrogacy. Provisions in the *Children and Family Relationships Act 2015* which focused on donor assisted human reproduction have not been commenced. An Assisted Human Reproduction Bill which was on the C list of the Autumn 2015 Government legislative programme was not published.

Chief Justice Denham noted that:

*“There is a lacuna in the law as to certain rights, especially those of the children born in such circumstances. Such lacuna should be addressed in legislation and not by this Court. The issues raised in this case are important, complex and social, which are matters of public policy for the Oireachtas. They relate to the status and rights of children and a family.”*

Mr. Justice Hardiman stated that:

*“There is, at present, a serious disconnect between what developments in science and medicine have rendered possible on the one hand, and the state of the law on the other. It is as if Road Traffic Law had failed to reflect the advent of the motor car. The failure to adapt the law in relation to developments in embryology of course, affects far fewer people, but it affects them in a peculiar and intimate fashion which makes statutory law reform in this area more than urgent.”*

Mr. Justice Murray pointed out that:

*“This is not a case which gives rise, or could give rise, to the Court assuming the role of law maker and laying down some golden principle, or a series of principles, regulating the legal status that might be accorded to a “biological mother” or a “birth mother” where children are born to the latter arising from a surrogacy arrangement with the former. .... To do so would be to usurp the role of the Oireachtas as the institution authorised by the Constitution to make laws.”*

Justice O'Donnell stated that:

*“The absence of legislation does not mean an absence of assisted reproduction; rather it means an absence of regulation. ....This Court in clear and forceful terms drew attention to the absence of regulation in its decision in Roche v. Roche. The need for legislation is even more urgent today.”*

## Conclusion

The Supreme Court has repeatedly raised concerns in relation to the lack of regulation of assisted human reproduction and associated issues in Ireland. The Oireachtas has the sole power and responsibility to legislate under the Constitution. Without legislation it is likely that further cases which highlight deficiencies in current assisted human reproduction regulation will end up before the Supreme Court.



## The future of the Eighth Amendment

### Lianne Reddy

### What is the Eighth Amendment?

The “Eighth Amendment” refers to Article 40.3.3° of the Constitution. It reads:

*“The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right.”*

Inserted in 1983, the Amendment was the culmination of a campaign which began in the wake of developments in the US. In 1973 the US Supreme Court case of *Roe v Wade* had given women a right to an abortion. This was done on the basis of earlier decisions which used the concept of privacy to liberalise access to contraception. When a judgment on privacy was made in Ireland in *McGee v Attorney General* [1974] I.R. 284 which stated that the marital family right to privacy included a right to obtain contraceptives, some argued that this judgment had similar potential to lead the way to abortion access.

In 1998, Article 40.3.3° was amended clarifying that nothing in the Article limits the right to travel to another state (the 13th Amendment), nor does it limit the freedom to provide or obtain information on services lawfully available in another state (the 14th Amendment).

Though not defined in the Article itself, the “unborn” has been interpreted by the Supreme Court in *Roche v Roche* [2009] IESC 82 as life which has the capacity to be born. Therefore, the constitutional protection afforded by Article 40.3.3° only begins after implantation in the womb. This judgment is discussed in more detail in the article ‘Courts highlight areas where legislation is needed’ at page 50.

### When is abortion legally permissible?

Since the 1992 decision of the Supreme Court in the *X Case*, termination of pregnancy is lawful if it is established as a matter of probability that there is a real and substantial risk to the life of the woman which can only be averted by a termination. This risk to life can include the risk of suicide. On two occasions, in 1992 and 2002, referenda proposed to exclude suicide as a ground for legal termination but these were rejected. A risk to the health of a woman is insufficient to justify a legal termination in Ireland.

The *Protection of Life During Pregnancy* (2013 Act) did not change the legal position of abortion in Irish law but gave it statutory expression, as had been recommended in several reports and cases.

The provision allowing a risk of suicide as grounds for a legal termination was particularly controversial. Some argued, as in the aftermath of the *X Case*, that it may lead to wide-scale abortion. According to Department of Health figures, published in June 2015, three terminations were carried out under this ground in 2014. The total number of terminations carried out under the legislation that year is presented below.

UK Department of Health figures show that in 2014, a total of 5,521 women resident outside the UK obtained abortions in England and Wales. Of these, 68% (3,754) were from the Republic of Ireland.

**Table 1: Total number of terminations in 2014**

Reason for termination	Number
Risk from physical illness	14
Emergency from physical illness	9
Risk from suicide	3
<b>Total</b>	<b>26</b>

Source: Department of Health, June 2015.

## Since the 2013 Act

In 2014, the UN Human Rights Committee strongly criticised the *Protection of Life During Pregnancy Act 2013* and advised the State to revise both the legislation and the Constitution to provide for additional instances in which a legal termination could be permitted.

Following several high-profile cases over the past number of years, a campaign to repeal the Eighth Amendment has emerged:

- ‘Pro-choice’ campaigners argue that as a medical issue, abortion has no place in the Constitution and should be a private matter between individual women and their doctors; and
- ‘Pro-life’ campaigners argue that if the Eighth Amendment is repealed, there will be no protection of unborn life in the Constitution and future governments will be free to legislate for abortion should they choose to do so.

## How do our laws compare?

The UN lists seven legal grounds under which countries generally allow abortions. These are:

- To save a woman’s life;
- To preserve a woman’s physical health;
- To preserve a woman’s mental health;
- Rape or incest;
- Fatal foetal impairment;
- For social or economic reasons; and
- On request.



Of the 28 Member States of the European Union, 21 allow abortion on all seven grounds. The position of the seven countries with more restrictive regimes is summarised below.

**Table 2: Legal grounds on which abortion is permitted**

Country	To save a woman's life	To preserve a woman's physical health	To preserve a woman's mental health	In cases of rape or incest	Foetal impairment	For social or economic reasons	On request
Cyprus	X	X	X	X	X	–	–
Finland	X	X	X	X	X	X	–
Ireland	X	–	–	–	–	–	–
Luxembourg	X	X	X	X	X	X	–
Malta	–	–	–	–	–	–	–
Poland	X	X	X	X	X	–	–
United Kingdom	X	X	X	–	X	X	–

## The future of the Eighth Amendment: repeal, amendment or retention

### Repeal

If the Article was to be repealed, this would also have consequences for the 13th and 14th amendments on the right to travel and the right to information. These amendments relate directly to the Eighth and, as such, cannot exist in their current form in its absence.

The removal of the Article from the Constitution would mean that the Oireachtas would have the ability to legislate for abortion access. ‘Pro-life’ campaigners have argued that without the Eighth Amendment, the unborn would have no protection in the Constitution. ‘Pro-choice’ campaigners argue that as a medical issue, the level of protection afforded to unborn life is more appropriately dealt with by legislation and medical guidelines, rather than in the Constitution.

It has been suggested that even before the insertion of the Eighth Amendment, some Irish judges had displayed a willingness to interpret the Constitution as giving protection to unborn life. But the decision of the High Court in *Ugbelase v. Minister for Justice, Equality and Law Reform* [2009] IEHC 598 found that the Eighth Amendment contains the full extent of constitutional protection afforded to the unborn, and no other Articles of the Constitution provide further rights or protection.

### Amendment

It would be possible to amend the Article, for example providing for the termination of pregnancy in certain specified situations such as in cases of rape, incest, or fatal foetal abnormality. This would also require legislative guidance, or judicial interpretation, as to its practical operation and the decision as to what situations may be included would no doubt be the subject of intense debate.

### Retention

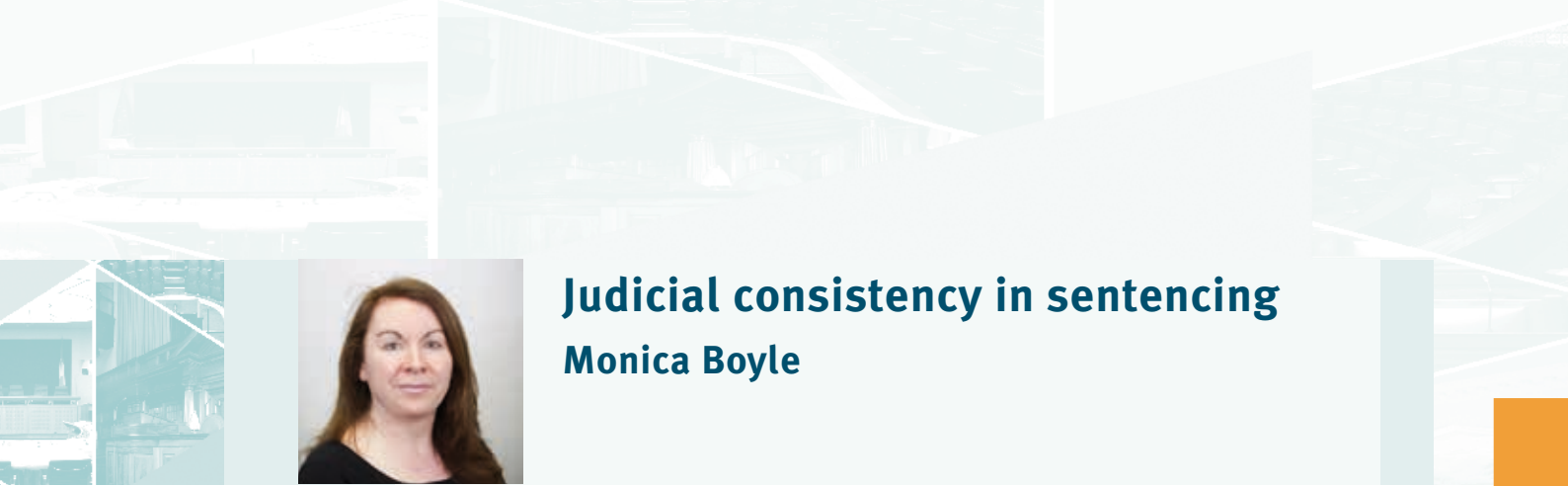
If the Article was retained in its current form, failing a significant development in the interpretation of the Article by the Supreme Court, this would mean that the Oireachtas would remain unable to legislate for access to abortion in circumstances other than where the life of the woman is at risk.

However it is likely that further cases will come before the Supreme Court, quite possibly on the issue of abortion in cases of fatal foetal abnormality. The Irish State has argued before the European Court of Human Rights in the case of *D v Ireland App No 26499/02* (ECHR 28 June 2006) that it is an open question as to whether an abortion could be permitted in such circumstances and there is a possibility that the Supreme Court could develop the interpretation of the Eighth Amendment in this way.

If such a case does come before the Court and the Court rules that the protection afforded to the unborn in Article 40.3.3 does not apply in cases of fatal foetal abnormality, there will be a similar legislative gap to that which existed after the *X Case* which would need to be filled.

### Conclusion

It is likely that the issue of the Eighth Amendment will need to be addressed in one way or another in the coming years. Whether this happens by referendum, through a period of consultation in the form of a citizens' assembly followed by a referendum, or in the wake of a Supreme Court ruling, remains to be seen. What appears certain is that it remains at the front of the public consciousness and will be the subject of ongoing debate for the incoming Dáil.



## Judicial consistency in sentencing

### Monica Boyle

It is not unusual for Irish sentencing decisions to generate debate and criticism, particularly ‘high profile’ cases which attract large scale media coverage. The type of penalty imposed (for example imprisonment, suspended sentence, or fine), the length of sentence imposed, and served, are seen as indicators of how serious a particular offence is viewed by the Judiciary, the Legislature and the Executive. Sentencing decisions which are seen as being inconsistent or which do not reflect what the public sees as ‘justice being done’ can lead to controversy.

Claims of inconsistency are often supported by comparing seemingly similar cases where the sentences imposed are at odds with each other. The danger with comparing sentences is that it does not take into account the individual circumstances of the offence or the offender. This is why judicial discretion in sentencing is so important. Judges are independent in the exercise of their judicial functions (including sentencing) subject only to the Constitution and the law. Judges will consider many factors when deciding on an appropriate and proportionate sentence including the seriousness of the offence, a guilty plea, and any mitigating factors.

The necessity for consistency in the sentencing process is essential not only for those involved in the process (i.e. victims, offenders, lawyers, and members of the Judiciary) but also for the general public. However, consistent sentences do not necessarily equate to just sentences – what is required is a consistent approach to sentencing.

Judges are independent in the exercise of their judicial functions (including sentencing) subject only to the Constitution and the law.

Consistent sentences do not necessarily equate to just sentences.

## Suggested approaches

Research suggests that there is no universally accepted process for ensuring consistency in the sentencing process. The establishment of sentencing councils and the creation of mandatory sentencing guidelines are some of the approaches which have been taken in other jurisdictions, including England and Wales.

As Ireland’s largely unstructured sentencing process has been attributed to the individualised and discretionary nature of our system, how can consistency in the sentencing process be ensured without interfering with the constitutionally protected discretion of the Judiciary?

Options which have been suggested include:

- The establishment of a Judicial Council and/or a Sentencing Council; and/or
- The creation of sentencing guidelines.

This article will briefly look at each of these options.

## Judicial Council v Sentencing Council

### Judicial Council

In 2010, the General Scheme of a Judicial Council Bill was published. The proposed Bill sought, among other things, to establish a Judicial Studies Institute responsible for the continuing support and education of judges through, among other things, the dissemination of information on sentencing. The Bill would also have provided a statutory basis for the work being undertaken as part of the sentencing project.

The Chief Justice, Susan Denham, recently stated that it is imperative for Ireland's international reputation that a Judicial Council is established. While the Minister for Justice and Equality indicated in December 2015 that work was ongoing in relation to the Bill, the lack of progress to date has been described by some as a wasted opportunity for reform.

### Sentencing Council

The Government (2011 – 2016) indicated that it was not in favour of establishing a Sentencing Council. However, the introduction of the Sentencing Council Bill 2015, a Private Members Bill, highlighted concerns in relation to accountability and consistency in sentencing decisions. The proposed Bill sought to establish a Sentencing Council, similar to that in place in England and Wales.

The Sentencing Council of England and Wales produces definitive guidelines on sentencing. Its aim is to promote greater consistency in sentencing while maintaining judicial independence, and to increase public understanding of sentencing. When passing sentence a court must follow any relevant guidelines (for example the guidelines on assault, burglary, or sexual offences) unless satisfied that it would be contrary to the interests of justice to do so.

## Sentencing guidelines

While some believe that the Legislature has a role in the creation of sentencing guidelines others believe that this is entirely a matter for the Judiciary. The Government (2011 – 2016) indicated that it was not in favour of enacting statutory guidelines, signalling that the primary role of developing such guidelines in Ireland is the responsibility of the Judiciary. This approach is in line with the Report of the Working Group on the Strategic Review of Penal Policy (2014).

While traditionally there has been resistance to any move perceived as limiting the independence of the Judiciary, judges have taken the lead in this area and recent case-law has demonstrated a willingness on the part of the Superior Courts to deliver guideline sentencing judgments.

In the *DPP v Fitzgibbon* [2014] 2 I.L.R.M 116, *DPP v Ryan* [2014] 2 I.L.R.M 98 and *DPP v Z* [2014] 2 I.L.R.M 132 the Court of Criminal Appeal (now the Court of Appeal) addressed the issue of sentencing guidance. It established guidelines in the form of recommended sentencing ranges (for cases involving possession of firearms and assault causing serious harm) with scope for departure where the circumstances of a case so demand. As a result of these cases:

- The prosecution now has a role to play in offering assistance to the Courts in relation to sentencing; and
- The appellate courts have a dual function, namely the review of specific sentencing decisions and the elaboration of general principles, including sentencing guidance.

Together, these cases have been heralded as one of the most important sentencing developments in the history of the State.

While it is expected that more and more detailed sentencing guidelines will emerge from the Court of Appeal, it may take years to develop guidelines which cover the entire range of indictable offences.

## The importance of sentencing data

Traditionally, there has been little statistical data in relation to sentencing decisions, making it difficult to draw conclusions in relation to sentencing behaviour or patterns. The Supreme Court rejected the idea of sentencing guidelines in the *People (DPP) v Tiernan* [1988] I.R. 250 noting the absence of reliable statistical data on sentencing patterns. This lack of information may in some way contribute to a perception of inconsistency in sentencing decisions.

It has long been accepted that a body of jurisprudence in relation to sentencing practice needs to be accrued on an ongoing basis. The Courts Service launched a pilot sentencing project in 2010 designed to gather information about the range of sentences and penalties imposed for particular offences in Irish Courts. While a lack of funding and resources has hampered the development of the project, work has been ongoing and it is intended that a redeveloped website will be launched in the near future.

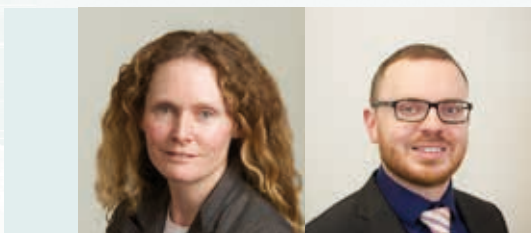
## Conclusion

While it is generally accepted that a consistent approach to sentencing is required, there is disagreement on how to best achieve this. This paper briefly considered potential options, including the establishment of Judicial Council and/or a Sentencing Council and the creation of sentencing guidelines.

Public confidence in the criminal and sentencing process is essential, so too is the independence of the Judiciary. The challenge – finding a way to balance both.

Bunreacht na hÉireann provides for a separation of powers between the Legislature, the Executive and the Judiciary, thereby ensuring that no one organ of State may interfere with the functions of another.

- The Legislature creates, defines and sets out the penalties which may be imposed upon conviction of a criminal offence.
- The Judiciary has discretion in each individual case (subject to the maximum penalties set by the Legislature) to determine the sentence to be imposed upon conviction – except in cases where a mandatory sentence must be imposed (for example murder).
- The Executive has the responsibility of enforcing any sentence imposed.



## Parliamentary inquiries: addressing the challenges

Catherine Lynch and Matthew Day

Public inquiries hold public officials accountable. While they frequently inquire into alleged poor policy making, administrative policies or misconduct, their purpose is to record and establish facts and not to administer justice. This is a matter for the Courts under Article 34 of the Constitution.

All three types of public inquiry in Ireland (Table 1) face challenges in relation to legalities, procedure and cost. In spite of efforts by the Government (2011-2016) to address the challenges to Oireachtas Inquiries, the capacity of Oireachtas committees to carry out short timely inquiries is limited by procedural requirements, legal constraints on scope and permissible findings, and the resource implications stemming from these.

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### Constraints

First, under *Abbeylara (Maguire v Ardagh)* [2002] 1 I.R. 385), parliament does not have an inherent constitutional power to inquire into matters of public importance beyond the remit of their functions as a legislative body and, in the case of Dáil Éireann, holding the government to account. The Court highlighted the fine line between fact-finding (inquisition) for policy purposes and ‘adjudication’ to establish culpability, and the consequences for the reputation of individuals where an inquiry veers towards the latter. It ruled that Oireachtas Inquiries may not make adjudicatory findings of fact about the behaviour of public officials who are not directly accountable to parliament (non-office holders) which risk impugning their good name and livelihood. This constraint is specific to public inquiries by the Oireachtas.

Second, because inquiries are semi-adjudicatory in nature, the principles of constitutional justice (under Article 40.3.1 of the Constitution) apply to their conduct (*Re Haughey* [1971] 1 I.R. 217). There must be no structural/institutional bias (i.e. the inquiry body must not be inherently biased, which can be challenging for a politically-composed institution), or individual bias (members of the inquiry must have no conflict of interest). Under fair procedures, persons potentially adversely affected by the inquiry must be able to put their own side of the argument to the inquiry through counsel. The implications of this, which applies also to Tribunals, are costly.

Third, there is a possibility that, by straying into adjudicatory territory, any public inquiry may prejudice criminal trials and investigations.

In light of constraints on parliamentary inquiries, the *Houses of the Oireachtas (Inquiries, Privileges and Procedures) Act 2013* (2013 Act) sets out the basis and parameters for inquiries including the extent to which they may make findings of fact. Part 2 provides for six types of inquiry; two of which – s.7 (general) and s.8 (exercise of House’s legislative functions) – are subject to *Abbeylara*. They may not make findings of fact which directly impugn the good name of individuals. S.7 inquiries (e.g. Banking Inquiry) are further constrained; they may only make findings of fact where there is no disagreement between witnesses and where its terms of reference explicitly permit it.

The 2013 Act and Dáil Standing Orders (107A-I) outline procedures which must be followed by a Committee proposing to establish and conduct any Part 2 inquiry.

## Addressing the constraints

While a constitutional amendment is one way to address these constraints, a number of other measures, implemented together or separately, may address them within the constitutional framework.

### Constitutional amendment

It is argued by some that to remove uncertainty about the authority and scope of inquiries, the Constitution should be amended to give parliament an explicit power to inquire and to make findings of fact about the conduct of any person in relation to the subject of the inquiry, in line with the majority of parliaments in Europe.

Any amendment proposed in the future is likely to be more clearly compatible with a person’s constitutional rights under Article 40.3.1.

Such a proposal was rejected by 53% of voters in October 2011. The proposed amendment aimed to redress the balance between an ‘individual’s right to a good name’ and the public’s right to ‘a transparent and regularly run public service.’ However, it was criticised for giving the Oireachtas the power to determine and ensure this balance and for diminishing the judiciary’s power to review decisions about the conduct of inquiries (especially regarding an individual’s right to fair procedures). Any amendment proposed in the future is likely to be more clearly compatible with a person’s constitutional rights under Article 40.3.1.

### Within existing constitutional framework

First, in order to reduce the constraints on what may be concluded by inquiries into non-officer holders (ss. 7 and 8 inquiries), the 2013 Act could be amended to add a policy focused inquiry with power to make findings of fact in relation to systems, practices, procedures and policy only (not to persons). This was recommended by the Banking Inquiry.

While constitutional amendment is one way to address constraints, other reforms could be instituted, including adding an inquiry model of overarching (i.e. non-person) findings of fact; permitting an external investigator model for parliamentary inquiry and/or creating a dedicated support office/adviser to assist parliament.



Second, the adoption of an external investigator model could minimise the circumstances under which an entitlement to constitutional justice arises, speed up and introduce more efficiency to the inquiry process and allow parliamentary committees to concentrate on the policy-recommendations. The features of such a model are:

1. Parliamentary Committee instigates an inquiry and sets broad terms of reference;
2. Committee commissions an expert external investigator to conduct an investigation on its behalf, and delegates to it its powers to summon persons, papers and records (compellability);
3. Investigation is primarily conducted in private; and
4. Investigator's report is considered by the Committee, which may then hold public hearings, and will make recommendations.

This model, which was recommended by the Joint Committee on the Constitution (2011), can be implemented in different ways. For example:

- A Committee appoints a 'Parliamentary Commission of Inquiry' which would relate to a Committee as the Comptroller and Auditor General relates to PAC (as proposed for the UK by the House of Commons Public Affairs Committee, 2005). In Ireland, the *Commission of Investigation Act 2004* empowers the Government (through the relevant Minister), but not the Oireachtas, to initiate this type of commission.
- Alternatively, an Office of the Parliamentary Investigator could be established to conduct investigations on behalf of parliamentary committees. Academics in the journal *Parliamentary Affairs* (Vol. 58, 1, 2005) suggested assigning this as a statutory duty of a reformed Parliamentary Commissioner for Standards (Parliamentary Ombudsman). In the Dutch Parliament, an Investigation and Verification Office may conduct investigations on behalf of Committees.

To use an external investigator model the *2013 Act* would require amendment to give Committees an explicit power to appoint, and to delegate their powers to, an investigator to compile a preliminary report (in private). This was proposed by a Labour Party Private Members Bill (2010) and is Recommendation 13 of the Banking Inquiry.

Third, an Inquiry Unit could use experience and expertise to minimise the legal and procedural challenges to the establishment and conduct of inquiries. It may address additional challenges encountered by the Banking Inquiry such as the development of a resource model for the Committee and the recruitment of external expert staff (Report 2 pp.49-52). The Dutch Parliament's Investigation and Verification Office, established in 2002 advises on how to establish an inquiry (including terms of reference); conducts, or assists with the conduct of, the investigation on behalf of (or with) the Committee; procures external investigators where relevant and; tests and verifies the evidence submitted to the investigation.



**Table 1: Types of public inquiry in Ireland**

	Oireachtas Inquiry	Tribunal of Inquiry	Commission of Investigation
<b>Establishment</b>	Initiated and established by the Oireachtas.  Conducted by an Oireachtas Committee.	Generally initiated by Government and established by resolution of the Oireachtas.  Conducted by independent inquiry, usually a “sole member”.	Established by Government (Order) and requires approval by motion in Dáil.  Conducted by independent appointee.
<b>Powers</b>	Compellability powers (conferred by the Houses).	Powers of the High Court; may compel attendance and production of documents.	Power to compel witnesses and documents; powers of entry (with a warrant).
<b>Proceedings</b>	Public (primarily)	Public (primarily)	Private (primarily)
<b>May make findings of fact that impugn a person's good name</b>	No (s.7 and s.8 inquiries).	Yes.	Yes in accordance with terms of reference.

## Conclusion

While constitutional amendment may be one way to address the constraints faced by parliamentary inquiries, other reforms could be instituted by way of amendment to legislation and enhancement of internal resources. These include an additional Part II inquiry of overarching (i.e. non-person) findings of fact; the option to use an external investigator approach to inquiries; and/or the creation of a dedicated support office/adviser which harnesses expertise and experience and assists and advises parliamentary committees while in inquiry mode.



## Brexit – why it matters for Ireland

### Aoife Halligan

#### Introduction

On 23 June 2016, the UK will go to the polls to vote on whether to leave or to remain part of the EU. This follows Prime Minister David Cameron's commitment to renegotiate the UK's relationship with the EU and hold an in/out referendum on continued membership by the end of 2017. Ireland's close economic and political connections make the possibility of a British exit from the EU (Brexit) a matter of the utmost significance.

The UK will vote on whether to stay in the EU on 23 June 2016.

#### What reforms did the UK want?

The key areas of reform that were sought, known as “baskets”, have been summarised as:

- No to “ever closer union” and decisions taken far from people;
- Eurozone integration must be fair to those inside and outside the single currency;
- Welfare incentives encouraging EU citizens to seek work in Britain must be tackled; and
- Need to maintain competitiveness, jobs, growth, innovation and success.

#### What was the UK offered?

In early February 2016, European Council President Donald Tusk published draft proposals that provided a basis for agreement at the European Council later that month, paving the way for the polling date this summer.

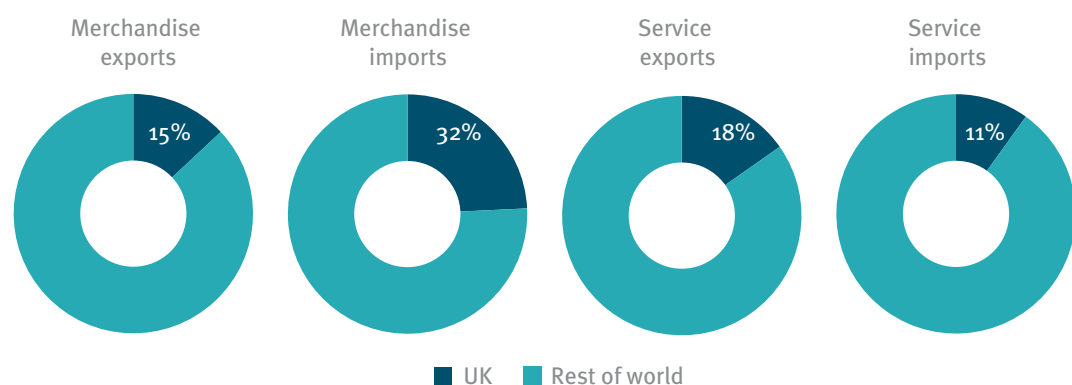
During the negotiations, moves to curb benefits for EU migrants perhaps proved the most contentious. The agreement creates a new mechanism that will allow Member States to limit access to in-work benefits to newly arriving EU workers for up to four years from the start of employment.

## Overview of aspects of Ireland's economic relationship with the UK

### Trade

Ireland has a very close trading relationship with the UK. In 2014, the UK was our largest destination for service exports, the second largest destination for merchandise exports, the most important source of merchandise imports and third largest source of service imports.

**Figure 1: UK share of Irish trade, 2014**



### Labour market/free movement of people

There are large migratory flows between Ireland and the UK. The Economic and Social Research Institute (ESRI) explains that approximately 60,000 people moved from Ireland to the UK between 2011 and 2013. Central Statistics Office (CSO) data also shows a significant outflow to the UK. It estimates that, in 2015, Ireland's net migration (immigration minus emigration) with the UK was 8,700 out of a total net migration of 11,600 persons.

### Foreign Direct Investment (FDI)

The overall level of FDI is important in terms of how it impacts on the wider economy, e.g. employment and economic growth. The UK's inward FDI stock is the largest in the EU and Ireland accounts for 1.5% of the UK's inward FDI stock.

### Energy

Ireland was the fourth most energy dependent EU Member State in 2014, and is heavily reliant on the UK market. More than 90% of the €6.5bn of energy products Ireland imported in 2014 came from the UK (3.6% of real GDP).

An all-island electricity market has existed since 2007 and the two countries' electricity grids have been linked since 2001 via the Moyle Interconnector to Scotland and since 2012 via the East-West Interconnector. Electricity prices in Ireland benefit from access to the cheaper UK market. The vast majority of Ireland's gas comes via the Scotland interconnector.

The UK is a significant trading partner for Ireland and Brexit could impact bilateral trade by over 20%.

There could also be important implications regarding free movement, FDI and energy.

## Potential impact of Brexit on Ireland's economy

One source (the Open Europe think tank) estimates that Brexit could result in a permanent loss of 1.1% to 3.1% of GDP by 2030 for Ireland. The magnitude of any economic impact (positive or negative) would, however, depend on the terms of the withdrawal agreement between the UK and the EU.

**Table 1: Potential impact of Brexit on Irish and UK GDP (2030)**

	Best case impact on GDP by 2030	Worst case impact on GDP by 2030
UK	+ 1.6%	- 2.2%
Ireland	- 1.1%	- 3.1%

Source: Open Europe and Cluriak Consulting

A summary of the ESRI's assessment of potential impacts on selected key areas is below.

**Table 2: ESRI assessment of potential impacts of Brexit**

Trade	Labour market/free movement of people
<ul style="list-style-type: none"> <li>■ Bilateral trade flows between Ireland and the UK could reduce by 20% or more.</li> <li>■ The impact would differ significantly across sectors, products and firm types – merchandise trade is heavily concentrated in some sectors/products (so increased trade barriers would imply a greater impact on trade volumes) and indigenous firms depend on the UK for exports.</li> <li>■ The UK is more important to Ireland for imports than exports. Any trade barriers would increase prices of UK imports.</li> </ul>	<ul style="list-style-type: none"> <li>■ Restrictions on the free movement of workers could have implications for the Irish labour market, particularly in times of high unemployment.</li> <li>■ Any passport controls at the border with Northern Ireland (NI) would range from being "inconvenient" to a "regressive step" regarding facilitating "cooperation between both parts of the island".</li> <li>■ There are significant numbers of Irish people resident in the UK and vice versa. Post-Brexit, many such people could find their right to residency questioned.</li> </ul>

FDI	Energy
<ul style="list-style-type: none"> <li>■ The UK would become less attractive to FDI because of its reduced access to the Single Market. Less FDI would likely cause slower economic growth in the UK, and consequently Ireland.</li> <li>■ Any additional attractiveness of Ireland to new FDI projects relocating from the UK is likely to be small. Larger Member States would benefit more.</li> <li>■ This is partially explained by Ireland's attractiveness to FDI already being high, relative to its economic size and geographical position in Europe.</li> </ul>	<ul style="list-style-type: none"> <li>■ Electricity market interconnection is particularly important for NI which has insufficient local electricity generation capacity.</li> <li>■ If the British electricity market remains independent of the rest of the EU, interconnection with Britain only would make Ireland vulnerable to problems there. Enhanced interconnection with the rest of the EU could be a useful but costly diversification for Ireland, reducing risk for consumers.</li> <li>■ The UK would no longer be subject to EU rules on climate change and renewables, reducing the chance of reopening discussions on trade in renewables.</li> </ul>

Some commentators suggest that there could be positive outcomes for Ireland, under certain circumstances, in terms of attracting FDI and financial services from the UK. This would likely depend on whether the UK would have access to the EU's Single Market and its approach to competing for trade post-Brexit.

## How Ireland might impact on the referendum

The risk from Brexit is identified in the Government's (2011-2016) *National Risk Assessment 2015*. Contributing to an outcome that sees the UK remain an active member of the EU was the Government's overall objective in the negotiations.

The Institute of International and European Affairs (IIEA) has suggested that Ireland could take on a leadership role in mediating between the EU and the UK, as it has done on three previous occasions. Ireland could also encourage a prominent role for the UK in new spheres of cooperation at European level, e.g. an Energy Union.

Irish citizens who are UK residents will have a right to vote. Estimates suggest up to 330,000 residents of Ireland could be entitled to a postal vote, with more than half a million Irish-born people living in Great Britain also eligible to vote.

In addition, there are potentially other ways for Ireland to exercise influence. There are currently more than 50 Irish companies listed on the London Stock Exchange and almost 55,000 Irish directors of UK companies – figures unmatched by any other country. The business diaspora could shape public debate on this hugely significant question.

Ireland could take on a leadership role in mediating between the EU and the UK.

Ireland might also have influence through the business diaspora and voting eligibility in certain cases.

## Conclusion

Ireland has very close economic and political relations with the UK. Many commentators suggest Brexit would have negative impacts on Ireland, although others point to potential gains in terms of, for example, FDI. Estimates of any impacts are, however, fraught with complexities and subject to caveats. Politically, the biggest loss from Brexit would likely be in the area of Anglo-Irish relations, particularly our relationship with Northern Ireland. The only certainty amongst all the uncertainty over Brexit is that this is uncharted territory. Given the potential impact of Brexit, Ireland needs to be prepared for either possible outcome on 23 June 2016.



## Taxing times for corporations

### Jason Cleary

Corporation tax is coming under increasing scrutiny the world over as issues of tax avoidance take centre stage. In an international context, the current rules for corporate tax do not appear to be fit-for-purpose as corporations are exploiting differences in tax regimes.

While tax evasion is illegal, corporate tax avoidance is not; instead it relies on the interaction between countries' tax rules to reduce tax liability.

It may be said that taxes are not voluntary contributions but enforced exactions; and since companies are profit maximising it is logical that they seek to lower their tax liabilities. Conversely, the practice of tax avoidance may be viewed as immoral.

The European Union (EU) Commission and the Organisation for Economic Co-operation and Development (OECD) suggest that tax avoidance can result in:

- Loss of revenue (estimates of 4% to 10% (\$100 to \$240 billion) of global corporate income tax revenues);
- Public discontent;
- Perceived lack of fairness;
- Weakening of international tax principles; and
- Distortion of competition and inefficient allocation of resources.

To address these problems, the OECD recently issued a Base Erosion and Profit Shifting (BEPS) package which aims to end schemes that allow companies to artificially shift profits.

In addition, at the EU level, the Economic and Financial Affairs, Taxation and Customs Commissioner, Pierre Moscovici, has stated that 2016 will be the year of corporate tax reform and fiscal transparency.

2016 will be the year of corporate tax reform and fiscal transparency.

## Criticism of corporation tax policy in Ireland

Ireland's rate of corporation tax has been an important part of its industrial policy since the 1950s.

However, it has been argued (Stewart, 2011) that excessive reliance on tax reliefs and on the attraction/retention of foreign direct investment (FDI) has led to the development of certain tax haven type features within the Irish economy.

Ireland has faced criticism internationally in relation to its corporation tax regime as noted in the text box below.

### Box 1: Double Irish structure and tax inversions

The so-called 'double Irish structure' has been criticised as a technique used by firms to shift profits via subsidiary companies to low/ zero tax jurisdictions.

Criticism has also been made of company tax inversions taking place in Ireland. This is where a company acquires a smaller company incorporated in a foreign country and relocates its headquarters to that country for the purpose of availing of the more favourable tax regime in that country.

However, Ireland is countering aggressive tax planning through a number of mechanisms including:

- OECD BEPS;
- EU engagement;
- Domestic legislation;
- Engaging with developing countries; and
- Supporting country-by-country reporting.

One example of this, as set out in the *Finance Act 2014*, is that action has been taken (on a phased basis) to amend the corporate residence rules in Ireland. The amendments seek to remove the 'double Irish structure' i.e. to provide a default rule which states that all companies incorporated in Ireland must be tax resident.

Corporation tax revenue is the fourth largest tax revenue source (11%) in Ireland.

## Corporation tax revenues and rates in Ireland

Ireland's overall tax revenue is dependent on income tax (41%) and VAT (27%); however, after customs and excise (13%), corporation tax remains a significant contributor (11%).

The Department of Finance has previously noted that Ireland collects around the EU average of corporation tax as a share of taxes and GDP.

Corporation tax in Ireland is very concentrated and receipts are dependent on a small cohort of large multinational taxpayers. Corporation tax liabilities from foreign multinationals represented 69% of corporation tax in 2013.

69% of corporation tax receipts came from foreign multinationals in 2013.

The foreign owned sector is also relatively large in terms of total output and employment. Data from the CSO shows that in 2012:

- Foreign owned multinationals employed 256,600 persons in affiliates in Ireland; and
- The economic output of sectors dominated by foreign owned multinationals represented circa 24% of the total.

Whether or not a company is liable to Irish corporation tax is dependent on tax residency in Ireland. Irish-resident companies are taxed on their income wherever in the world it arises. Non-resident companies are taxed on profits arising from trade in the State.



The headline rate of corporation tax for trading profits in Ireland is 12.5%. A better measure is the effective rate (i.e. taking account of credits and reliefs etc.) which represents actual tax liability. However, there is lack of agreement on how this rate should be calculated. It has been said, in a Department of Finance (2014) paper, that a best estimate of the effective rate in Ireland has averaged 11% since 2003; though the estimates in the paper suggest it may range from as low as 2%, depending on the approach and data used.

The effective rate of taxation is a better measure of actual tax liability than the headline rate.

While other countries may have higher headline rates than Ireland, they also offer credits and reliefs which can result in considerably lower effective rates. For example, it has been suggested that the OECD average (excluding the US) in the past has been between 16% – 23% (PWC, 2011 and OECD, 2010).

**Figure 1: Corporations in Ireland**



Some suggest taxation of corporations should be increased; however governments need to be cognisant of the potential impact of such a change. According to research conducted for the OECD, corporation tax systems are important for FDI and, as such, a 1% increase in corporation tax rates can reduce FDI by 4%.

Furthermore, high corporate income tax rates do not necessarily result in high corporate tax revenue as it may influence corporations' decisions to shift profits to other jurisdictions.

There is also a question of whether corporation tax is an appropriate form of taxation and who actually bears the burden i.e. is it the shareholders, employees or customers of a company's products/ services?

It has been suggested that a 1% increase in the corporate tax rate can reduce FDI by 4%.

## International Developments

The OECD has concluded that it is the interplay between different domestic laws and rules that makes profit shifting possible.

The BEPS package represents the first substantial update to international tax standards in almost a century. However, the package is not legally binding.

Some of the proposed revisions could be immediately applicable, while others need changes to tax treaties and domestic law. BEPS requires coordinated responses and additional work will be needed by stakeholders.

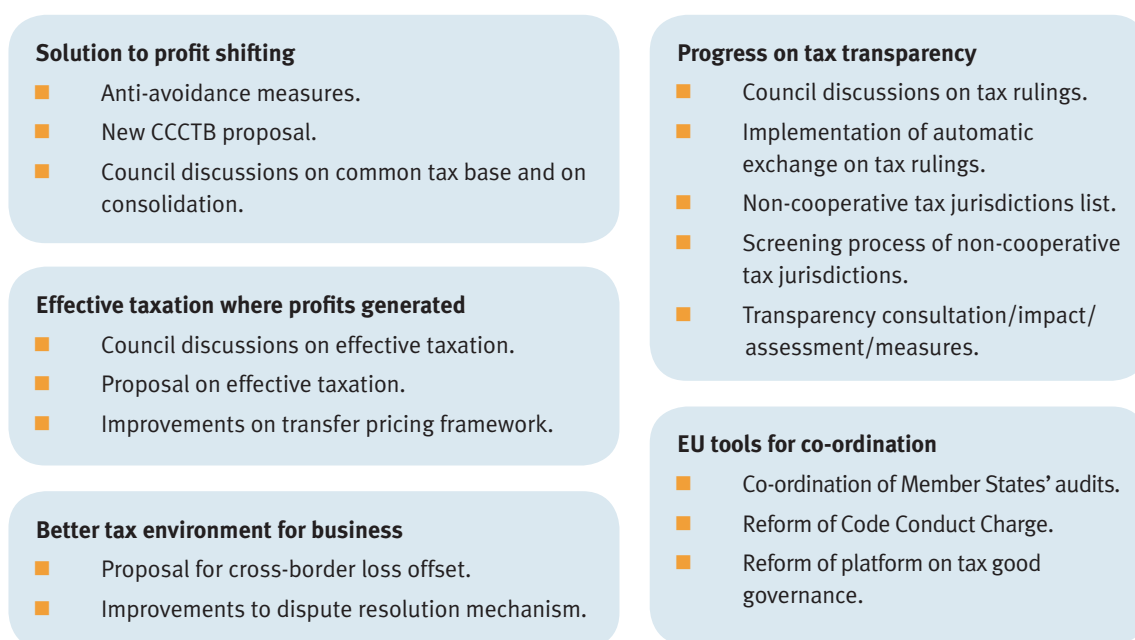
Building on BEPS, the EU Commission has proposed changes in the tax systems of EU countries. These proposals contain legal and non-legal measures which require unanimity between EU Member States.

The EU has identified five key areas for action:

- Introducing a Common Consolidated Corporation Tax Base (CCCTB) which is a single set of rules that companies operating within the EU could use to calculate their taxable profits. Once the company's tax base is determined, it would then be apportioned to all Member States in which the company is active on the basis of a fixed formula;
- Ensuring effective taxation where profits are generated;
- Implementation of additional measures such as greater coordination on tax policy and reduction in administration, tax obstacles and compliance costs; and
- Further progress on tax transparency (e.g. EU finance ministers have agreed to report on and share information on multinational corporations EU tax affairs).

This EU Action Plan for Fair and Efficient Corporate Taxation will be the basis for EU Commission work on corporate tax policy over the next number of years. The CCCTB is central to the EU Action Plan.

In addition, the EU Commission has also launched a number of formal State Aid investigations into the tax ruling systems of Member States including certain arrangements in Ireland.

**Figure 2: EU action plan for corporation tax**

Adapted from the EU Commission Action Plan for Fair and Efficient Corporate Taxation.

## Conclusion

International governing bodies are increasingly determined to address tax avoidance by corporations.

The issue is not going away and countries, particularly those whose industrial policy has been geared towards attracting multinational corporations, such as Ireland, need to be adaptable to the changing times. Increasingly there is a need for greater balance between offering an attractive tax system that encourages business investment and employment, and ensuring that such corporations are not exploiting the tax system.

Potential future developments at EU level may mean that Ireland and other EU Member States run the risk of having their sovereignty undermined on issues of corporation tax.

Nonetheless, it is clear that addressing corporation tax avoidance cannot be fully achieved without co-operation among the international community and there are no easy solutions.



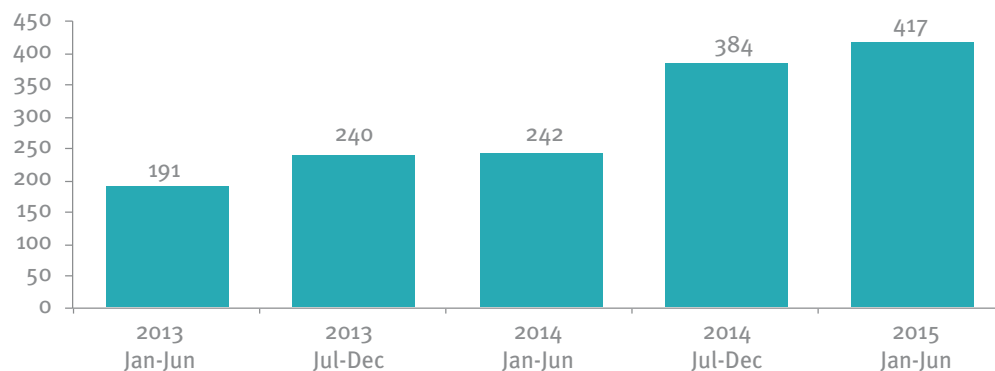
## Increased migration – European and Irish response

Rhea Bohan

The ongoing conflict in Syria as well as wars, conflict and persecution around the world resulted in the displacement of an estimated 60 million people worldwide in 2015. The majority of Syrian refugees continue to live in the neighbouring countries of Turkey, Lebanon and Jordan. However, these countries are increasingly untenable places for people to remain long-term and it is estimated that this has resulted in growing numbers attempting to travel to EU countries.

The European Commission estimates that there will be more than three million new arrivals in the EU by the end of 2016. A coherent, EU wide approach is essential to deal with the issue, something that has been lacking to date.

**Figure 1: Asylum applications in the EU28, in thousands**



Due to its location, Ireland continues to receive fewer refugees than most Member States. As an EU Member State, Ireland has a role to play in addressing the issue. An effective domestic asylum system is vital. Recent legislative efforts at reform have yet to be tested and potential issues may arise.

### Box 1: Asylum seekers, refugees and migrants

Persons fleeing 'persecution' are **refugees** while those fleeing 'serious harm' are eligible for **subsidiary protection**. Both forms of protection are collectively known as 'international protection' and a refugee or person eligible for subsidiary protection is entitled to remain in the territory of the EU.

An **asylum seeker** is a person claiming to be eligible for international protection but whose claim has not yet been determined.

**Migrants** are those who are not in need of international protection but enter the EU for other reasons, often to seek a 'better way of life'. They will ordinarily have no legal entitlement to remain and may be subject to deportation.

In response to the crisis, the European Commission has proposed a new border and coastguard agency that could intervene, independently of Member States, with the aim of protecting the Schengen area. Certain Member States have expressed concern at the prospect of conceding sovereignty over their borders to Brussels.

## Consequences for the EU of increased migration

The consequences of this increased migration include a rising death toll of people trying to get to Europe, increased security risks and associated costs as well as a rise in certain countries of ‘right wing’ parties. Concern has also been expressed about the threat to the EU principle of free-movement and the effect this might have on economic growth, as certain countries re-introduce border controls in an attempt to stem the flow of new arrivals.

A 2015 report by a coalition of Irish NGOs suggests that the EU, as one of the wealthiest regions in the world, could easily absorb the numbers arriving and that such migration, which has occurred globally for centuries, could be beneficial to Europe, in particular helping to alleviate the pressures of an ageing workforce.

The increased flow of asylum seekers to Europe has also highlighted the challenge of formulating an effective EU wide approach to dealing with the issue, with tensions arising amongst Member States. One of the main issues is burden sharing. A majority of asylum seekers coming to Europe arrive in Greece and Italy and seek to travel onwards to what are perceived as more favourable Member States. Such onward movement is prohibited under the Dublin Regulation.

### Box 2: The Dublin Regulation: its operation and issues arising

Under the Dublin Regulation, asylum-seekers are required to apply for asylum in the first EU State in which they arrive. The Regulation allows for removal to that country where this is not done.

As one of the main countries of arrival, Greece has argued that the Dublin Regulation places an unfair burden on it and has warned that it cannot cope with the influx of people. The European Commission has proposed dropping the Regulation, something that is likely to be resisted by the Irish and UK governments.

## EU response

The EU response to the influx has involved a combination of approaches. Attempts to improve burden sharing saw an agreement in September 2015 to relocate, in the coming two years, 160,000 people arriving in Greece and Italy and in need of protection. By February 2016, only 497 people had been relocated, prompting claims of a lack of solidarity amongst Member States in dealing with the issue.

Another approach has been an attempt to prevent more people arriving in the EU, and if they do, from dispersing throughout the Union. Member States have been critical of Greece for failing to police its maritime border. Greece is under pressure to prevent people arriving from Turkey, while the EU has sought to persuade Turkey to control the numbers arriving in Greece. This has resulted in an agreement whereby all irregular migrants crossing from Turkey to the Greek islands will be returned to Turkey, while for every Syrian returned, another Syrian will be resettled in the EU directly from Turkey. The EU will also provide financial assistance to Turkey of €6bn.

The United Nations Refugee Agency (UNHCR) has noted that the agreement sets out safeguards to ensure compliance with international and European law but that many of these safeguards do not

exist in practice. For example, concern is expressed in relation to Greece's systems for assessing asylum claims and dealing with people accepted as refugees. According to UNHCR, the establishment and implementation of safeguards under the agreement is essential. These include that Turkey has a fair system for determining applications for international protection, and ensures that those deemed eligible for protection enjoy asylum without discrimination.

A focus on stemming the flow of new arrivals has seen the introduction of strict border controls by certain Member States, putting at risk the EU's border free travel zone (Schengen), which allows for 'passport-free' travel between 26 states, not including Ireland and the UK.

## Irish response

Due to Ireland's geographical location, it has been less affected by the increased flow of people into Europe. Ireland availed of special procedures meaning that it did not have to take part in the EU's emergency response to the influx. However, a decision was made to opt-in to the EU relocation decisions, along with the implementation of certain measures aimed at addressing the increasing number of arrivals, including the establishment of the Irish Refugee Protection Programme in September 2015. According to the Government, this aims to provide international protection for up to 4,000 persons overall under Resettlement and Relocation Programmes. It is stated these figures will be augmented by further family reunification.

In order to allow for a more robust domestic asylum process, the Government introduced and passed the International Protection Bill in late 2015. The main aim of the Act is the introduction of a 'single procedure' for the processing of applications for international protection, in order to expedite the process. Prior to the introduction of the Bill and its subsequent enactment, Ireland was the only EU Member State without a single procedure.

Issues may arise in relation to whether some of the Act's provisions are constitutional and compatible with the European Convention on Human Rights (ECHR). The President convened the Council of State in order to consider whether to refer the Bill to the Supreme Court to test the constitutionality of some of its provisions. The Bill was not referred but was instead signed by the President. A challenge to the constitutionality or compatibility with the ECHR of some of the Act's provisions remains possible.

## Conclusion

The increased influx of people into the EU has highlighted a lack of unity within the Union on accommodating refugees, an obligation arising in respect of all Member States but, for geographical reasons, falling in practice to certain States more than others. As a Member State of the EU, Ireland's obligations are no less than others and it has a role to play in ensuring a consensus is reached throughout the EU in relation to how the situation can be most appropriately addressed. An effective domestic asylum system is essential to this process. The effectiveness of the *International Protection Act 2015* in achieving its objective has yet to be tested.



## The EU-US privacy shield – a safe harbour for data transfers?

Lisa Underwood

The digital economy is an increasingly important part of the Irish economy. Personal data has become a valuable commodity. The transfer of personal data is considered an essential element of the trade relationship between the European Union (EU) and the United States (US). It also plays an important role in law-enforcement relationships between the two regions. The commercial transfer of data must be balanced against the fundamental rights to privacy and data protection. Recent developments highlight the tensions that can arise between the rights to privacy and data protection and the expansion of international trade and national security.

### Personal data and international trade

The digital economy contributes 5% to Ireland's Gross Domestic Product (GDP). Nine out of 10 of the world's top 'born on the internet' companies, such as Facebook and Google, are located in Ireland. These companies are Ireland's top exporters and regularly transfer data from Ireland to the US.

Recent studies estimate that EU GDP would fall by 1.3% if transfers of personal data from EU to US were stopped (Espinel, 2015). This would be particularly pertinent to Ireland due to the importance of the technology sector to the Irish economy.

The digital economy contributes 5% to Ireland's Gross Domestic Product (GDP). Nine out of 10 of the world's top "born on the internet" companies, such as Facebook and Google are located in Ireland.

### Data protection regime

The right to privacy is recognised under the Irish Constitution. It is also provided for in the European Convention on Human Rights (ECHR) and the European Charter of Fundamental Rights ('2000 Charter'). The right to privacy has grown to include the right to data protection. The right to protection of personal data was expressly set out in the 2000 Charter.

Organisations that collect and process personal data must do so in accordance with the EU and Irish data protection legal regime. The main law governing data protection is the 1998 EU Data Protection Directive (DPD). This was transposed into Irish law through the *Data Protection Acts 1988 and 2003*.

The right to privacy is recognised under the Irish Constitution. It is also provided for in the European Convention on Human Rights (ECHR) and the European Charter of Fundamental Rights ('2000 Charter'). The right to protection of personal data was formally recognised in the 2000 Charter.

The DPD is monitored and enforced by National Data Protection Authorities (NDPAs). In Ireland the NDPA is the Data Protection Commissioner (DPC). Representatives from NDPAs form part of the Article 29 Working Party, which acts as an independent advisory body on data protection and privacy within the EU.

As part of EU data protection reforms, the General Data Protection Regulation (GDPR) will replace the existing DPD. The GDPR will streamline EU data protection law and will enhance EU citizens' data protection rights and reduce administrative requirements for organisations. Political agreement on the GDPR was reached in December 2015 and it is anticipated it will come into effect in 2018; the existing DPD will stay in force in the interim period.

## Safe Harbour Decision

The existing DPD provides that personal data can only be transferred to a third country if that country *ensures an adequate level of protection* for personal data, through its *domestic laws or international commitments*.

Under the DPD, the European Commission (EU Commission) may adopt a decision finding that a third country ensures an adequate level of protection for personal data transferred there. In 2000, the EU Commission adopted such a decision in respect of the US, known as the *Safe Harbour Decision*.

The *Safe Harbour Decision* provided a legal basis for commercial transfers of personal data from the EU to US organisations (transatlantic data flows). US intelligence agencies, such as the National Security Agency (NSA), could require US organisations to surrender transferred data under US national security law.

## Schrems v Data Protection Commissioner

In October 2015, the Court of Justice of the EU (CJEU) in *Schrems v Data Protection Commissioner* struck down the *Safe Harbour Decision*.

### Complaint to the Irish Data Protection Commissioner

Mr Schrems asked the DPC to investigate the transfer of personal data, under the *Safe Harbour Decision*, from Facebook Ireland to its parent company in the US. The basis of his complaint was that due to mass surveillance by US intelligence agencies the US failed to ensure adequate protection for personal data.

The DPC concluded that because of the EU Commission's *Safe Harbour Decision* he did not have the power to investigate the complaint. Mr Schrems requested that the Irish High Court review the DPC's decision.



## Referral to Court of Justice of the EU

The High Court asked the CJEU if the *Safe Harbour Decision* prevented the DPC investigating Mr Schrems' complaint, or if the DPC could investigate it. The CJEU found that NDPAs must have the power to investigate complaints relating to the protection of personal data and ruled that the *Safe Harbour Decision* denied NDPAs from doing so. The CJEU also ruled that the EU Commission did not have the power to stop NDPAs from investigating such complaints.

Furthermore, the CJEU found that the widespread access to personal data transferred from the EU to the US by US public authorities, in the interest of national security, compromised EU citizens' right to privacy. The Court ruled that the EU Commission failed to find that the US, through *its laws and international obligations*, ensured adequate protection for personal data transferred from the EU to the US.

The CJEU accordingly ruled that the *Safe Harbour Decision* was invalid.

The Court of Justice in striking down the *Safe Harbour decision* ruled, amongst other things, that the wide spread access to personal data transferred from the EU to the US by US public authorities without any limitations, in the interest of national security, compromised EU citizens' right to respect to private life.

## EU-US privacy shield

The EU Commission and the US had been renegotiating the *Safe Harbour Decision* before the *Schrems* judgment but the judgment added urgency to these negotiations. The Article 29 Working Party (WP29) set a deadline for agreement on a new decision before suspending transatlantic data flows.

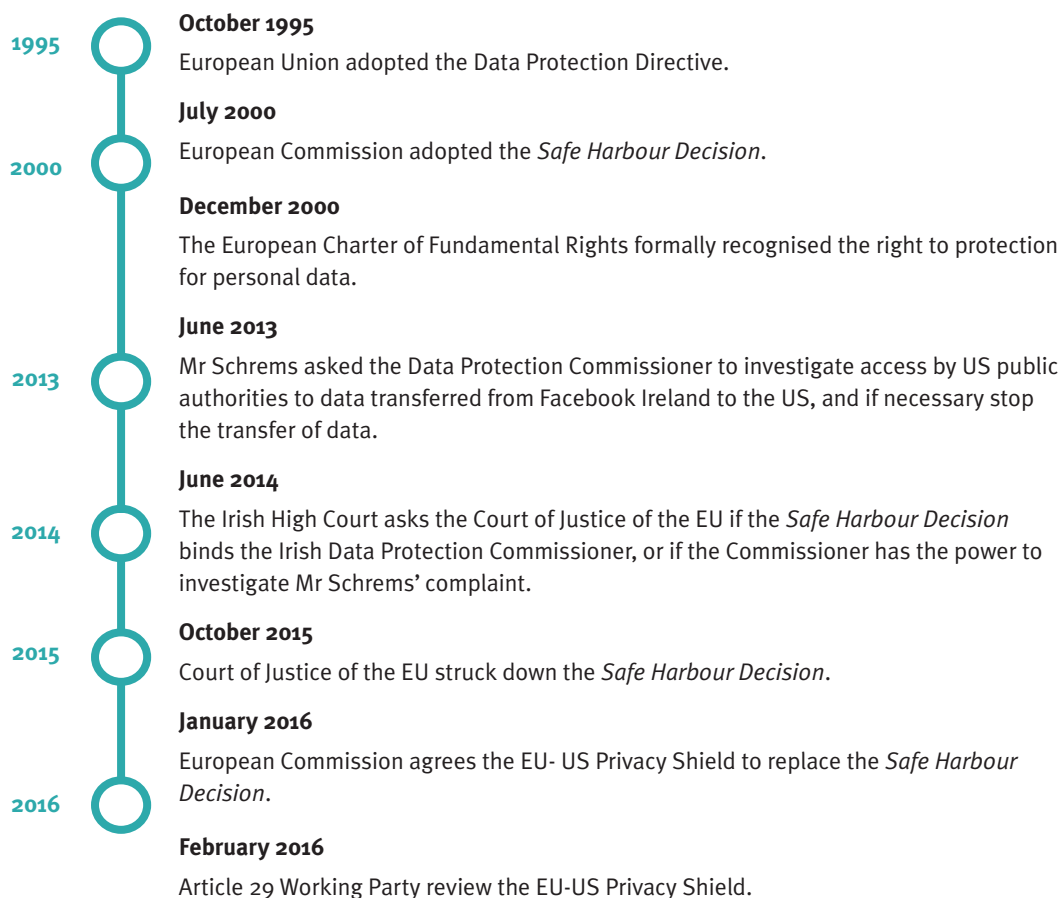
On 02 February 2016, the EU Commission and the US agreed the *EU-US Privacy Shield* ('Privacy Shield'). Irish officials played an active role in those negotiations, including the Minister of State for Data Protection, Dara Murphy, and Irish Members of the European Parliament (MEPs).

### Box 1: Main points of the Privacy Shield

- Obligations on US companies and public authorities on processing personal data and enforcement of the *Privacy Shield* by US public authorities;
- Written assurances from the US that there will be safeguards around accessing EU citizens' personal data, including access by US public authorities for national security purposes;
- Redress mechanisms to deal with data protection disputes, including the establishment of a US Privacy Shield Ombudsperson to receive inquiries relating to US intelligence practices; and
- An annual joint review by the Commission and US public authorities on the implementation of the *Privacy Shield*.

Mr Schrems has queried whether the binding written assurances will provide sufficient legal basis to ensure adequate protection for EU citizens' personal data in the US. Sophie Int' Veld MEP, has questioned whether the new ombudsperson will have the necessary powers to oversee US surveillance services.

**Figure 1: Timeline to EU-US Privacy Shield**



## National DPAs

The *Schrems* judgment, by reinforcing the independence of NDPA, has enhanced the role of NDPA in protecting personal data. Furthermore, due to the number of global technology companies in Ireland, the DPC is considered one of the most important in the EU.

After the *Schrems* judgment, the High Court referred Mr Schrems' complaint back to the DPC for investigation. The DPC may have to decide whether the transfer of personal data to the US by Facebook Ireland should be restricted or suspended. The DPC's investigation had not concluded at the time of publication.

The GDPR will further enhance the role of the DPC. Under the Regulation, organisations will only have to deal with one NDPA, the one in the country where their European headquarters are. As many of the technology companies have European headquarters in Ireland, the DPC will be responsible for regulating these companies operations throughout the EU.

Due to the number of global technology companies in Ireland, the Irish Data Protection Commission is considered one of the most important in the EU.

## Conclusion

Data protection is a big policy issue in the EU, as borne out in the *Schrems* judgment. The *Safe Harbour Decision* and its replacement, the *EU-US Privacy Shield*, play a small, but noteworthy, role in Europe's data protection regime. The boundaries of this regime are constantly being tested by technological advances and the risks those advances pose to the rights to privacy and data protection. The evolving nature of the data protection landscape is likely to result in legislative and regulatory changes to the data protection regime in Ireland.



## Agriculture in Ireland

### Maggie Semple

The agri-food sector encompasses primary production (agriculture or farming), forestry, fishing, food and drinks (excluding tobacco), and wood-processing.

In 2015 it contributed €25 billion to the national economy, generated 7.6% of economic output and provided 8.5% of national employment. Its resilience during the recession is reflected in 51% cumulative growth in agri-food exports from 2009-2015 leading to a sixth consecutive year of record exports, worth €10.8 billion last year (Bord Bia, 2016).

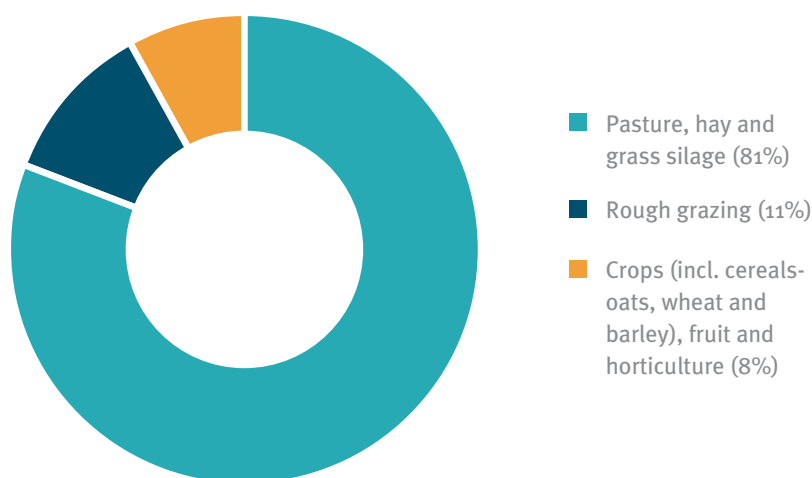
### Profile of Irish agriculture

The abolition of milk quotas in 2015 is seen as one of the most fundamental changes to farming this generation. Currently beef and milk production account for 69% of agricultural output at producer prices (excluding forage) but both livestock and milk production are expected to increase in line with national policy.

Figures from the National Farm Survey 2014 (Teagasc, 2015) and the Factsheet on Irish Agriculture November 2015 (DAFM, 2015) show that farm size is increasing (from an average of 32.7ha in 2010 to 48ha in 2014). The number of full-time and active farmers is falling with corresponding farm numbers decreasing (from 139,860 in 2010 to 75,881 in 2014). The average age of a farmer is now 57 years old.

In 2014 the average farm income was €26,642 (up 5% from 2013) with dairy consistently the most profitable farm system (average income of €67,598) and cattle rearing the least lucrative (average farm income €10,369). 51% of farm households have an off-farm job and the average income for full-time farmers was €51,661 and part-time farmers, €9,677. Direct payments under Pillar I of the Common Agricultural Policy (CAP) continue to be very important to farmers and the average direct payment for 2014 was €19,139 (representing on average 72% of farm income, ranging from 31% on dairy farms to 149% on cattle rearing farms) (Teagasc, 2015).

Of Ireland's 6.9 million hectares (ha), 4.5 million ha are used as shown in Figure 1:

**Figure 1: Agricultural land use**

## Agri-food sector

The food and drinks sector encompasses over 1,200 enterprises, from small independent farmhouse producers to the large, often multinational food processors and marketers. It employs 169,100 people (112,700 in primary production and 51,800 in food and drinks with the remainder employed in forestry, fishing and wood processing).

Ireland currently exports 80% of its food produce with 41% going to the UK, 31% to continental Europe and 28% to the rest of the world (Bord Bia, 2016).

Ireland exports over 80% of its beef and dairy production, is the largest net exporter of dairy ingredients, beef and lamb in Europe and the largest exporter of powdered infant formula in Europe.

**Table 1: Summary of EU and national policy**

European	
<b>CAP Reform 2014-2020</b>	<p>Full implementation of the current round of the CAP (2014-2020 CAP Reform) began in 2015.</p> <p>From 2014-2020 there will be a total spend of over €12.5 billion in CAP and Exchequer funding for agriculture (up on the total from the previous round) in Ireland.</p> <p>In 2016 Irish farmers will receive €1.2 billion in funding for direct payments from the EU and €494 million will be allocated for investment in rural development.</p>

### National

#### Food Harvest 2020

The strategic report Food Harvest 2020 (FH2020) was published in 2010 and represented Ireland's vision and driver in terms of growth in the agri-food sector to 2020.

The FH2020 tagline was **Smart, Green, Growth** – act **smart** by investing in ideas, knowledge and skills, think **green** by maximising the benefits from our extensive, low-input grass-based production systems and achieve **growth** through minimising input and distribution costs and increasing our production.

#### Food Wise 2025

In July 2015, the Department launched Food Wise 2025 which sets a course for the agri-food sector to grow over the next decade with a renewed focus on exports.

Cumulatively it projects agri-food exports to grow to €19 billion per annum by 2025 driven chiefly by expansion in dairy, beef, seafood and consumer food and drinks exports.

Food Wise 2025 identifies that to become a sustainable leader internationally in agri-food this must be based on the Sustainable Intensification model. Sustainable intensification refers to simultaneously improving the productivity **and** environmental management of agricultural land. The primary goals are a resource efficient agriculture with significantly higher environmental performance.

## The future of Irish agriculture

### Global outlook

According to the Food and Agriculture Organisation (FAO), the global outlook for agricultural commodities remains positive over the medium term, albeit with significant volatility. Rising consumption in developing countries is expected to help. Factors point to 2016 being a mixed year for agriculture in Ireland.

### Opportunities

Opportunities for the sector to grow include building on agri-food exports and taking advantage of new markets such as the North American market which opened up to Irish beef after a 15 year ban (due to BSE fears).

Another possible opportunity for Ireland will come from the abolition of sugar beet quotas in 2017. However, Food Wise 2025 does not commit to investment in this area, rather it states its intention to *“continue to examine whether the likely development of the sugar and ethanol markets would justify farmer and industry investment in the redevelopment of a sugar beet industry in Ireland”*.

### Challenges

The future of Irish agriculture is dependent on many factors, indigenous and global. Challenges facing the industry identified by the Department and the FAO include low farm incomes, price volatility on world markets (especially from the continuing depressed price of milk), increased beef exports, competition for prepared foods and the generally poor global economic position.

Another significant challenge to the agri-food sector is Ireland's commitment to climate change. Despite operating the most carbon efficient dairy system in the EU and the fifth most carbon efficient beef system (Bord Bia, 2015), agriculture represents almost a third of Irish greenhouse gas (GHG) emissions (this arises partly because Ireland does not have a large industrial base but also because we produce for export several times more dairy and meat products than our own requirement (DAFM, n.d.)). There is a disparity between the planned continued expansion of food production under Food Wise 2025, especially in livestock numbers and our GHG emissions reduction targets.

### Climate SMART agriculture

To help combat the twin challenges of food security and climate change, Ireland has a number of schemes which help farmers to farm in a more resource efficient or Climate Smart manner. These include:

- BETTER farm programme – this brings Teagasc expertise to farmers by transferring knowledge from research into practice.
- SmartFarm programme – a collaboration between a number of bodies but principally between the Environmental Protection Agency (EPA) and the Irish Farmers Association (IFA) (and driven by the IFA), aims to improve farm returns with better resource management. This is a voluntary on-farm resource efficiency and cost saving programme.
- Carbon Navigator – developed by Bord Bia and Teagasc the tool helps farmers to improve their financial performance while also reducing the carbon footprint of their farms.
- Origin Green – a Bord Bia initiative, this is a sustainability programme which encompasses both farmers and food and drinks companies. By setting measurable and independently verified goals, the ambition of the programme is the achievement of 100% of Irish food and drinks exports committed to a sustainability charter by 2016. Origin Green is linked to the Carbon Navigator.



## Climate change and Ireland

### Maggie Semple

Scientific consensus indicates that a two degree Celsius (2°C) rise in global temperature from pre-industrial levels is the highest rise we can afford if we want to avoid dangerous climate change.

Since the industrial revolution the planet has warmed by 1°C. Without additional efforts to reduce greenhouse gas (GHG) emissions beyond those in place today, by 2100 world temperatures could increase by as much as 5°C above pre-industrial levels (IPCC, 2014).

For Ireland, climate change means changes in our weather patterns such as those seen in winter 2015 with the wettest December ever recorded in most parts of the country.

The difference between today's global average temperature and the average temperature during the last Ice Age is 5°C.

## International response to climate change

### Background

The international political response to climate change began with the adoption of the United Nations Framework Convention on Climate Change (UNFCCC) at the 1992 Earth Summit held in Rio de Janeiro. The UNFCCC entered into force in 1994 and set out a framework for action aimed at stabilising GHG emissions to avoid dangerous climate change.

The Kyoto Protocol was adopted in 1997 (entering into force in 2005) and committed industrialised nations to stabilise GHG emissions from 2008 to 2012 (first commitment period). In 2012, the Doha Amendment to the Kyoto Protocol was adopted and this launched the second commitment period from 2013 to 2020.

During 2015, governments made pledges to reduce GHG emissions through the submission of Intended Nationally Determined Contributions (INDCs). The EU and its Member States submitted their INDC to the UNFCCC committing to a binding target of at least a 40% domestic reduction in GHG emissions by 2030 compared to 1990 levels.



**Box 1: 2015 Paris agreement**

On 12 December 2015, almost 200 countries reached an historical agreement with the adoption of the Paris Agreement which provides a framework for global action on climate change post 2020, to which all parties contribute.

The objective of the Paris Agreement is to limit global temperatures well below 2°C above pre-industrial levels while making efforts to limit the increase to 1.5°C thereby protecting against dangerous climate change. It also addresses adaptation to climate change, financial and other support for developing countries (including the existing commitment to the Green Climate Fund to provide at least €100 billion/year by 2020 by developed countries).

The agreement contains some provisions which are legally binding (such as the preparation and implementation of Nationally Determined Contributions (INDCs become NDCs once submitted) as well as reporting) and others that are voluntary. It does not provide for enforcement or sanctions. Parties decide their targets or NDCs themselves and must communicate them every five years for review with the intention of ratcheting them upwards at each review. In this way, the Paris Agreement has established a floor rather than a ceiling for cuts to GHGs by 2030 (European Parliament, 2016).

Paris was hailed a success by many but a failure by others. It was an agreed success in that it was the first global commitment on climate change of its kind but its detractors argue that it did not go far enough. Of primary concern is the gap between INDCs and what is actually required to keep warming below 2°C above pre-industrial levels (current pledges under the INDCs would limit global temperature increase to around 3°C).

In the first major global gathering since Paris, the International Renewable Energy Agency (IRENA) met in January 2016 in Abu Dhabi and indicated that increasing renewables to 36% of the global energy mix by 2030 would provide about half the emissions reductions needed to hold warming to 2°C.

## Ireland's response to climate change

Ireland's response to climate change is shaped by its commitments at EU and international levels. In 2007, the Government published the National Climate Change Strategy (NCCS) 2007-2012 which set out a range of measures to meet Ireland's European climate change commitments.

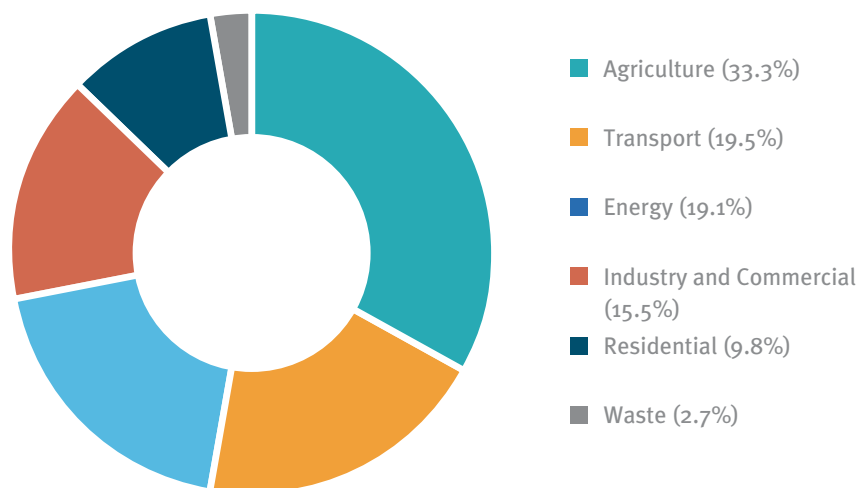
The *Climate Action and Low Carbon Development Act 2015* placed national climate policy in legislation with the ultimate aim of pursuing the transition to a low carbon, climate resilient and environmentally sustainable economy by 2050. It also established the National Expert Advisory Council on Climate Change and dealt with adaptation to climate change (through National Climate Change Adaptation Frameworks). The Act did not set any specific targets for GHG emissions reductions.

In December 2015 the Government launched its White Paper on *Ireland's transition to a low carbon energy future 2015-2030*. Its vision is of a low carbon energy system where GHG emissions from the energy sector will be reduced by between 80-95%, compared to 1990 levels, by 2050, and will fall to zero or below by 2100 (Department of Communications, Energy and Natural Resources, 2015).

## Ireland's progress

According to the Environmental Protection Agency (EPA, 2015), in 2014 Ireland emitted 58 million tonnes of carbon dioxide equivalent, as depicted in Figure 1 below.

**Figure 1: Ireland's GHG emissions by sector, 2014**



Ireland's GHG emissions are broken into two main sectors – those under the EU Emissions Trading Sector (ETS) which covers power generation and heavy industry, and those under the non-Emissions Trading Sector (non-ETS) which covers agriculture, transport, residential, non-energy intensive industry, commercial services and waste. Each has separate EU targets to 2020.

Ireland's EU non-ETS target for 2020 is to reduce GHG emissions by 20% on 2005 levels. New obligations for Ireland to reduce GHG emissions from the years 2021-2030 are being negotiated at EU level in 2016.

Based on GHG emissions projections released by the EPA in March 2016, Ireland is unlikely to meet its EU non-ETS 2020 targets. The EPA projects that emissions will be 6-11% below 2005 levels by 2020 and indicate that agriculture and transport will account for over three-quarters of non-ETS emissions in 2020 (EPA, 2016).

## Agriculture

Although Irish farmers operate the most carbon efficient dairy system in the EU and the fifth most carbon efficient beef system (Bord Bia, 2015), this sector dominates Ireland's GHG emissions. It is important to take cognisance of carbon leakage whereby, if food consumption stays the same in Europe, reducing food production there simply displaces that production to other countries which may be less carbon-efficient at producing food leading to an increase in global GHG emissions.

Critically for Ireland, given the vital role of agriculture, the October 2014 European Council conclusions included a specific reference to the agriculture sector, stating that the *“the multiple objectives of the agriculture and land use sector, with their lower mitigation potential, should be acknowledged, as well as the need to ensure coherence between the EU’s food security and climate change objectives”*.

## Ireland’s options

Potential options to help Ireland reach its national and EU GHG emissions targets include:

- Increasing the levels of renewable energy (RE);
- Improving the energy efficiency of buildings across the public, residential and commercial sectors through retrofitting and smart metering;
- Electrification of our energy requirements using RE. This would likely be consumer-led through, for example, driving low emission and electrical vehicles (EVs) and households using small scale RE such as solar energy for their electricity needs;
- Use of heat pumps (heat pumps extract suns energy from the environment (through air, ground or water) and raises it to a temperature suitable for heating) in rural areas and district heating systems in urban areas; and
- Phasing out of Ireland’s coal and peat-fired power plants.

## Conclusion

In conclusion, we are not on schedule to meet our EU GHG emissions targets for 2020. For Ireland to become a low carbon, climate resilient country by 2050, further action to reduce our GHG emissions is needed.

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