

Dialogue for Advancing Social Europe (DIADSE) Project Country Report: Ireland

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1. Introduction

“Social Partnership as a formal entity collapsed in Ireland in 2009 following on from a 22-year period in which it probably became progressively important in the running of the Irish economy. With that collapse came a quite significant disavowal, in political circles and among employers, of the Social Partnership model. It lost ideological legitimacy to response to economic or social issues and therefore is not in position to implement change”.

Male, Academia

This report presents the findings from research carried out according to the objectives of the international project ‘DIADSE – Dialogue for Advancing Social Europe’. This project is funded by the European Commission DG Employment, Social Affairs and Inclusion, Social Dialogue, Industrial Relations. Its main aims are to:

“carry out a comparative analysis of labour law reforms and social dialogue initiatives in several EU Member States... investigating how the social dimension of Europe ... has been affected by the latest socio-economic adjustments and how the EU social model might be re-constructed and advanced through social dialogue.”¹

To explore the current state of social partnership and social dialogue in Ireland we examined developments in Ireland with regard to macroeconomic, fiscal policies, employment, industrial relations, and labour law reforms. We discuss the period of Celtic Tiger, or pre-recession, Ireland between roughly 1992 – 2008 to establish the background for the main focus of the analysis being the recession 2008 to 2013 and the emergence of a post-recession Ireland from 2014 onwards. In particular, we examined the themes of enhanced employability, reduced labour market segmentation, and flexibility in the labour force. The main focus of this research explores the effects of the socio-economic adjustments undertaken in this period on social partnership and social dialogue and the involvement of social partners in designing and implementing reforms in Ireland.

¹ <http://hsi.uva.nl/en/diadse/information-on-the-research-project/information-on-the-research-project.html>

To adequately explore the financial reality that the recession in Ireland presented, the legal context in which it occurred, and the perspective of the social partners, a mixed method approach was adopted. This included: desk research examining the legislative amendments in the area of social partnership; the legacy effect of the recession on social partnership in Ireland from this legislative and social policy perspective; and a qualitative research approach involving a series of in-depth interviews capturing the experiences of Irish social partners through. Qualitative methodology supports the researcher in exploring, understanding, interpreting and mapping emerging social phenomena (Ritchie et al, 2013), through asking questions which focus on the 'how' and 'why'. It allows for flexible and responsive examination of emergent concepts and narratives, and yields rich and detailed content capturing a depth and breadth of the experiences of participants. The legislative review was carried out primarily through desk research and provided a background and context to the research.

In particular, a *Framework* approach (Ritchie et al, 2013) was adopted. It is employed as the basis upon which to build an analytical methodology. Framework involves a case and theme based approach, portraying findings as a matrix with key themes presented vertically and individual studies horizontally. In this way data can be reduced through a synthesis of critical issues emerging from a series of narratives. It also allows for a reflective review of links to the findings from the desk research. Finally, it supports the production of key outputs which allow for comprehensive mixed method data analysis. It is a data management and sequential approach which aims to order data and facilitate analysis based on the interpretation involving thematic analysis, typologies and explanatory examination of the combined data (ibid). This approach is used as it allows for constitution of systematic connection of networked concepts across a range of inputs including the legislation, policies and experiences of the social partners interviewed.

The main themes explored were: How has the social dimension of Europe been affected by the latest socio-economic adjustments to the economic crisis? To what extent and in what way have policies in member states been directed at the objectives of enhancing flexibility and employability, reducing labour market segmentation, and maintaining the quality of work and employment protection? The effect of policy reforms on social partnership. The role of social partners' involvement in reforms including collective bargaining systems and

labour protection legislation. What have been the effects and to what extent have the aims of these reforms been achieved? How to advance the contribution of social dialogue to the EU social model?

A qualitative research fieldwork explored the opinions of the main social partners. This included 8 in-depth interviews of between 45 and 90 minutes in duration. They were carried in 2015 and employed a targeted non-probability sampling method allowing us to capture a depth and breadth of opinions. The interviewees included 2 government officials, 2 trade union representatives, 2 members of the academic community, and 2 representatives of employer and business organisations. Five were carried in person with 2 by Skype and 1 by phone in 1 case. The results of this analysis are presented herein.

Setting the context for explaining the reforms

"It is a matter of very wide public knowledge, and this court has no hesitation in taking judicial notice of it on that basis, that in late September 2008 our country entered the most serious economic crisis in its history."

Per Edwards J. in McKenzie v Minister for Finance, 2011, E.L.R. 109, 135

The twenty-year period before 2008 had been marked by what was known as "social partnership". In 1987, a three year *Programme for National Recovery* was negotiated between the government, the trade unions and employers which, on its expiry was followed by the *Programme for Economic and Social Progress* (1990-1993), the *Programme for Competitiveness at Work* (1994-1997), *Partnership 2000* (1997-2000), the *Programme for Prosperity and Fairness* (2000-2003) and *Sustaining Progress* (2003-2006). All provided for a range of social and economic issues, such as amendments to the maternity leave legislation, and including staged pay increases with the pay terms of the last programme - *Towards 2016* which had been negotiated in 2005 - providing for increases totalling 10% over 28 months.

This period had also seen the enactment of significant pieces of employment rights legislation not required by membership of the EU, such as the Payment of Wages Act 1991 (addressing deductions from wages) and the National Minimum Wage Act 2000, which provided for a national minimum hourly rate of pay, with effect from July 2007, of €8.65 per

hour. This rate had been originally set at the equivalent of €5.59 with effect from the 1st of April 2000. It was estimated that it would benefit 13.5% of the workplace and add 1.6% to the national wage bill.

At the time of enactment of this Act, there were in operation two types of sectoral wage determination mechanisms, both of which had been established by the Industrial Relations Act 1946 (the 1946 Act). The first was the Joint Labour Committee system and the other was the Registered Employment Agreement system.

Part IV of the 1946 Act provided for the establishment of Joint Labour Committees empowered to make proposals to the Labour Court fixing minimum rates of remuneration to be paid to all workers covered by the particular committee and regulating other terms and conditions of employment. Once the Labour Court made an Employment Regulation Order on foot of these proposals, the rate of remuneration and other conditions of employment became legally enforceable throughout the relevant sector on pain of criminal sanction. In February 2009, there were ten such committees covering sectors such as agriculture, catering, contract cleaning, hairdressing, hotels, retail grocery and security. Minimum rates of pay in these sectors were slightly in excess of that prescribed by the National Minimum Wage Act 2000 (on average 9%).

Part III of the 1946 Act empowered the Labour Court to "register" a collective agreement, subject to the Court being satisfied of certain matters such as the inclusion in the agreement of a provision that, if a trade dispute were to occur, a strike or lockout would not take place until the dispute had been submitted for settlement by negotiation. The effect of registering the agreement was that its terms became legally applicable (again on pain of criminal sanction) to every worker of the class, type or group to which it was expressed to apply, and his or her employer, notwithstanding that such worker or employer was not a party to the agreement. As of February 2012, there were 75 agreements on the register, the most significant being those for the construction and electrical contracting sectors. Minimum rates of pay in those sectors were significantly in excess of that prescribed by the National Minimum Wage Act 2000.

The national programmes of social partnership were seen by many at the time as being a significant factor in Ireland achieving a positive investment climate, near full employment,

relatively low inflation, high growth levels, major reductions in the national debt, record low levels of industrial disputes and the creation of a stable labour relations environment. From a trade union perspective, however, the era of social partnership saw a dramatic decline in trade union density. In 1987 this stood at 58.4% (the same level it had been in 1970). By 2005, however, the density level had fallen to 34.6%.

By the end of September 2008, as talks were underway on a new national pay agreement, it had become obvious that Ireland was facing a severe monetary crisis and the then government decided to guarantee the Irish bank system, covering both customer deposits and the banks' own borrowings, to an estimated total of €440 billion. In December 2008, the government were forced to recapitalise Ireland's three biggest banks.

In December 2011, the Minister for Public Expenditure and Reform, announced that savings had to be made in 2012 and subsequent years in public sector spending on allowances/premium pay and overtime. All government departments would be required to achieve a 10% reduction in overtime payments and a 5% reduction in the cost of allowances/premium payments.

In order to facilitate the necessary reduction in the cost of allowances and premium payments, the Department of Public Expenditure and Reform established a review of all allowances and premium payments. The structure of this review was advised by the Department to the Public Services Committee of the Irish Congress of Trade Unions. The Department further instructed that, pending completion of this review and with effect from the 1st February 2012, no allowance should be approved for new employees or existing employees not then in receipt of the allowance ("new beneficiaries"). Eventually a permanent decision was taken on the 18th September 2012 abolishing a large number of allowances for new beneficiaries.

Legislation was also enacted (with effect from the 24th of December 24, 2013) to remove the legislative barriers to redeployment and mobility within the public service and setting out the parameters of a new sick leave scheme for the public service: Public Service Management (Recruitment and Appointments) (Amendment) Act 2013. As regards the latter aim, the Minister for Public Expenditure and Reform emphasised the need to reduce the "unsustainable cost" of sick leave in the public sector, which was estimated to be

€430million annually. This was to be achieved through a "substantial reduction" in the period of time for which paid sick leave would be available.

The Department of Public Expenditure and Reform and the Public Service Committee of the Irish Congress of Trade Unions engaged in negotiations on the introduction of revised sick leave arrangements in the context of the Public Service Agreement and those issues which could not be agreed were referred to the Labour Court for binding recommendations: see LCR 20335 (19 July 2012) and LCR 20557 (20 December 2013).

The Minister for Public Expenditure and Reform then made the Public Service Management (Sick Leave) Regulations 2014 (S.I. No. 124 of 2014) which came into force on the 31st March 2014. These regulations reduce eligibility due to sickness on full pay from six months to three months, followed by a further three months on half pay. The application of these Regulations to members of An Garda Síochána (the Irish police force) was unsuccessfully challenged in *Garda Representative Association v Minister for Public Expenditure and Reform* [2014] IEHC 457; [2016] IECA 18.

Employment data in Ireland 2005 – 2014

During this period Ireland went from the height of its greatest economic boom into the lowest recession in the history of the state. In this period the GDP peaked at €40,700 million in 2007 dropping to a low of €36,400 million in 2010; seeing a steady rise in the years proceeding from this point.

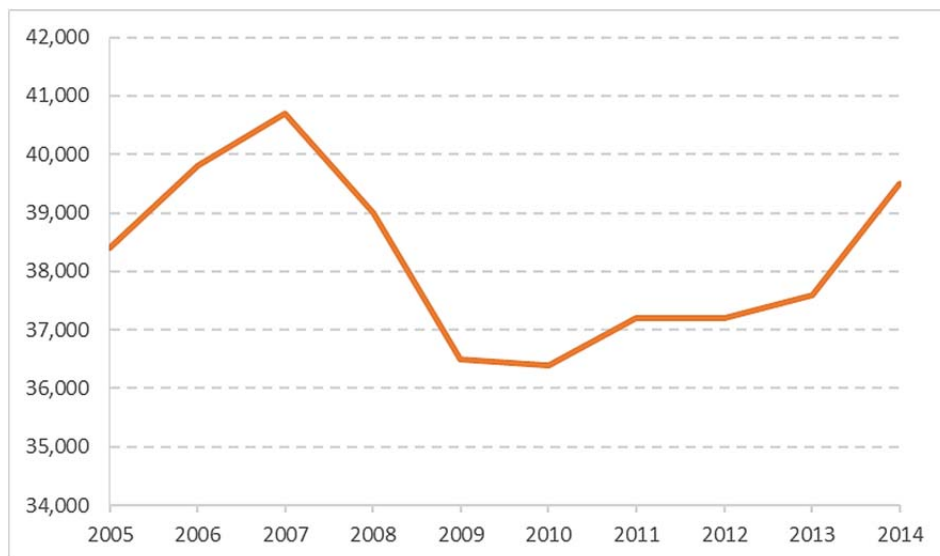


Figure 1: GDP Ireland 2005 - 2014

To compound this GDP figures, if we also compare this with Ireland Gross Debt, we can see that the overall economic stability of the country plummeted in 2007.



Figure 2: Government Gross Debt 2004 – 2014

The public deficit/surplus illustrates this dramatically. It begins with a sharp decline from 2007, hitting a low of -32.3 in 2010, and then rising sharply again to a moderate -3.9 in 2014².



Figure 3: Public deficit/surplus

² Defined in the Maastricht Treaty as general government net borrowing/lending according to the European System of Accounts. The general government sector comprises central government, state government, local government, and social security funds:

<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=teina200&language=en> .

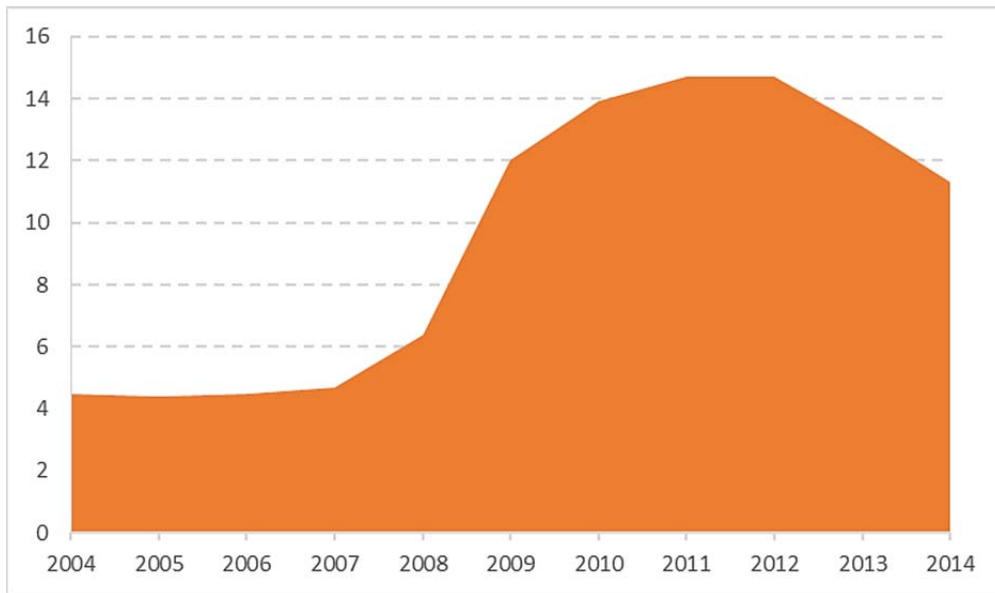


Figure 4: Unemployment rate 2004 – 2014

In addition, the unemployment rate in Ireland surged from a low of 4.4% in 2004 to 14.7% in 2011. These statistics clearly illustrate that there were significant reductions in labour costs during this period.

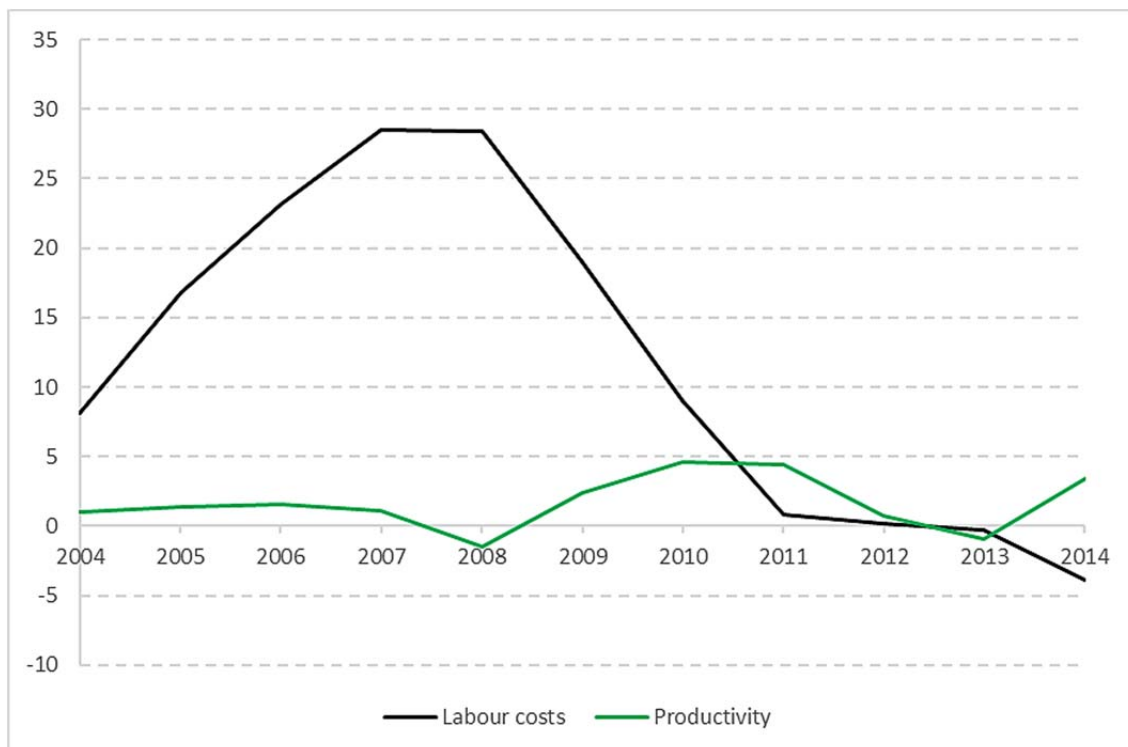


Figure 5: Labour costs and Productivity in Ireland 2004 – 2014³

³ Sources Eurostat:

<http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tipslm50&language>

Coupled with a review of the productivity statistics, we can clearly see that the relative value of unit labour costs to productivity changed during this recession in Ireland⁴ and in 2016 have become more divergent than they were before 2004.

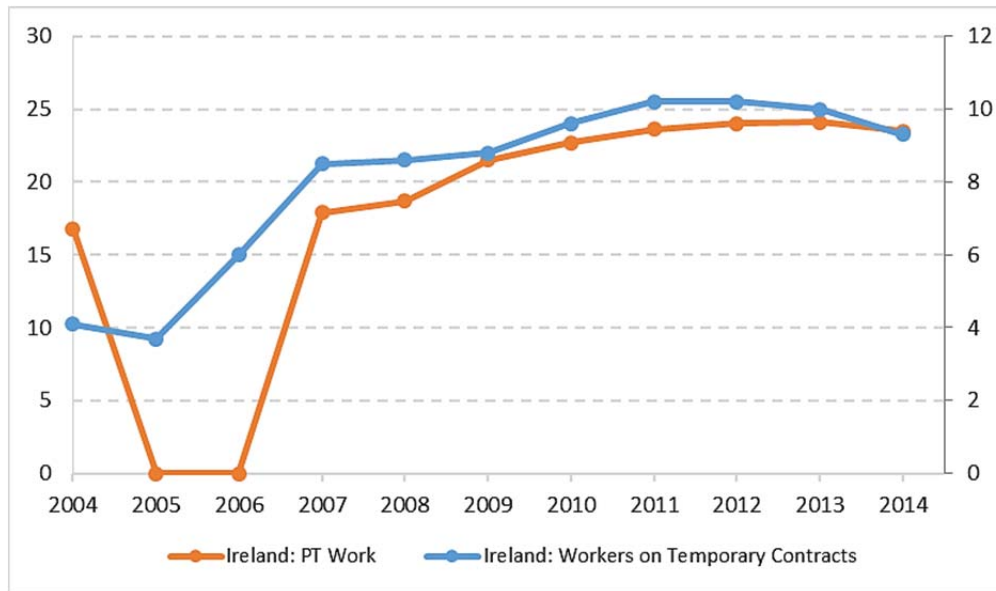


Figure 6: Ireland PT Work and Workers on Temporary Contracts 2004 - 2014⁵

We can also see a slight rise from of those on part time work from 16.8% in 2004 to 24.1% in 2014. This period also sees the rise in those on temporary contracts of 4.1% in 2004 to a high of 10.2% in 2012.

These statistics illustrate a distinct picture of the radical decline in public finances and their repercussions on the employment and types of employment in Ireland during this period from 2004 to 2014.

There has been some improvement in the overall growth in the Irish economy coming out of the recession with the GDP growing by 7.8%, and GNP by 5.7%, for the year 2015 according

[=en](#) and <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tipsna70&language=en>

⁴ The labour productivity = GDP/ETO with GDP = Gross domestic product, chain-linked volumes reference year 2010 and ETO = Total employment, all industries, in persons. <http://ec.europa.eu/eurostat/tgm/web/table/description.jsp>

⁵ Please note that there were no figures for 2006 and 2007 available.

figures from the Central Statistics Office⁶. Budget projections for 2016 suggest that this growth will continue at a rate of 6.2%. These figures are, initially, encouraging. They must also be taken in the context that these percentage increases are being measured from a very low base.

We must, therefore, be cautious and not imply that macro-economic improvements in the state of the economy necessarily imply improved working conditions for employees.

“It is a philosophical question dependent on your political ideology as to whether you believe that the employment programmes put into place in Ireland during the recession reduced unemployment or it is a confluence of factors including the global economy, emigration, and many other things? It would be difficult to pinpoint individual things that safeguarded employment”.

Male, Academic

It is translating these improvements into tangible and equitable working conditions that represents the challenge to the government and social partners. It is argued that the most inclusive and transparent mechanism for achieving this is a rejuvenated and streamlined form of social partnership. This will be explored in some detail throughout this report.

Main domestic labour and social law reforms and the impact of the financial and economic crisis in Ireland

Crises to Crises: 1987 to 2009

Social partnership emerged from an economic crisis in 1987. In 2008 intensive discussions took place between the trade unions and employers and between the public sector trade unions and the government. Eventually the employers withdrew from the social partnership process and there was a failure to agree a consensus approach to securing a €1 billion reduction in the public sector pay bill. The opinions of the interviewees were that there was “nothing to fight for except the ‘least-worst option’” (Male, Academic), and that social partnership itself had become so complex that it ceased to function. Within days of the final collapse of social partnership, the then government enacted the Financial Emergency

⁶ <http://www.cso.ie/en/releasesandpublications/er/na/quarterlynationalaccountsquarter42015/>

Measures in the Public Interest (No. 2) Act 2009 providing for a reduction in public sector salaries of between 5% and 15% with effect from the 1st January 2010. In March 2010, effectively under threat of further emergency legislation, the public sector trade unions agreed a four-year Public Service Agreement under which public sector pay levels would be protected in exchange for reduction in employment numbers and a commitment to substantial organisational reform.

The Arrival of the Troika in 2010

On the 28th of November 2010, the then government accepted the terms of an IMF/EU Programme of Financial Support. The first Memorandum of Understanding is dated the 1st December 2010 and was focussed principally on measures relating to fiscal consolidation and financial sector reforms (such as legal costs). It did contain, however, various measures concerning "structural reforms" relating to the Irish labour market.

The Programme sought, in particular, a commitment to a reduction in the national minimum wage of 11.7% and the establishment of an independent review of the Joint Labour Committee and Registered Employment Agreement systems with terms of reference and follow-up actions to be agreed with the European Commission. The concern was expressed by the Troika that there were distortions of wage conditions across certain sectors associated with the presence of sectoral minimum wages in addition to the national minimum wage. Other than that, no demands were made to impose general reductions in statutory employment rights, reflecting no doubt the lack of any rigidity in the Irish labour market caused thereby.

The Programme also sought to strengthen competition law enforcement and avoid sectoral exemptions. Accordingly, the Memorandum of Understanding required the Irish authorities to ensure that no further exemptions to "the competition law framework" would be granted unless they were "entirely consistent" with the goals of the Programme and the needs of the economy. Consequently, the commitment given by the previous Government to amend the Competition Act 2002 to allow voice over actors and freelance journalists to exercise their right to engage in collective bargaining was vetoed by the Troika on the basis that, according to "settled EU case law", such self-employed individuals were "undertakings".

The reduction in the national minimum hourly rate of pay to €7.65 was mandated by section 13 of the Financial Emergency Measures in the Public Interest Act 2010, with effect being given to that reduction from the 1st February 2011. The independent review of Employment Regulation Orders and Registered Employment Agreement Wage Setting Mechanisms was conducted by the Chairman of the Labour Court, Kevin Duffy, and a University College Dublin labour economist, Dr Frank Walsh⁷.

Their report was published in April 2011 and recommended reform of both systems; but not abolition. The authors noted that the principal industries covered by the Registered Employment Agreement system (construction and electrical contracting) were:

"characterised by a large number of employers of various size, and a highly mobile workforce. They are also sectors which have had a relatively high level of trade union density. Both sectors are labour intensive and labour costs account for a high proportion of overall costs. Given the diversity of the industries, it would be difficult if not impossible for normal collective bargaining to take place at the level of each enterprise."

The authors also noted that employers benefited from the stability of the dispute resolution mechanism, which is required to be contained in the agreement for it to be registrable, and further noted:

"All employers in these sectors compete with each other for available contracts which are normally awarded by competitive tendering. In tendering for work, employers need to know, with a high degree of certainty, what their labour costs will be over the currency of the contract. Moreover, since all employers normally have the same employment costs, competition is focussed on cost efficiency, including efficiency in the utilisation of labour, rather than on the actual wages and conditions of employment to which individual contractors are committed. Thus, if the wages and conditions of employment of workers were fixed by collective agreements with

⁷ <https://djei.ie/en/Publications/Independent-Review-of-ERO-and-REA-Wage-Setting-Mechanisms.html#>

some contractors but not all, those covered by agreements would be placed at a competitive disadvantage relative to those who are not."

The review carefully examined all of the suggested disadvantages of the two systems and found none of them to be substantial. The authors found that it was not accurate to suggest that the body of primary employment rights legislation in force adequately covered matters dealt with by Registered Employment Agreements and Employment Regulation Orders. The authors found no evidence that such agreements or orders resulted in inflated or uncompetitive wage rates. Indeed, there was some evidence that labour costs were higher in firms implementing individual bargaining relative to firms adopting the national wage agreement or industry level agreements. Nor did the evidence indicate any substantial difference in the degree of wage rigidity across the different groups.

The authors acknowledged, however, that both systems of sectoral/industry wage determination needed to be reformed to render them fit for purpose. Their conclusions were supportive of those reached in a general review of industrial relations in the electrical contracting industry carried out in 2009 under section 38(2) of the Industrial Relations Act 1990 by the former General Secretary of the Irish Congress of Trade Unions, Peter Cassells, and a former Chairman of the Labour Court, Finbar Flood.

Following a general election in early 2011, a new Fine Gael/Labour coalition government came to power and one of the first steps taken was to reverse the reduction in the national minimum hourly rate of pay. Section 22 of the Social Welfare and Pensions Act 2011 required the restoration of the rate to €8.65 which was achieved, following some discussion with the Troika, with effect from the 1st July 2011. The rate has now been increased to €9.15 with effect from the 1st January 2016.

Before any action could be taken to give effect to the Duffy/Walsh recommendations on reforming the industry/sectoral wage determinations mechanisms, there was a dramatic intervention by the courts.

2013 and out of the financial darkness

Because of the serious disturbance in the economy arising from the rapid deterioration in the public finances, the common good required that the government take strong budgetary

action to reduce the gap between the State's revenue and expenditure by legislative action, by exercise of the delegated legislative functions and by non-statutory corrective action at the executive exchequer level.

This agreement was then extended for a further three years in 2013 by the Public Service Stability Agreement which introduced further pay reductions for public sector workers but guaranteed that there would be no compulsory redundancies in the public sector under the Lansdowne Road and Haddington Road Agreements⁸.

Workplace Relations Commission

In the 2013/4 post bailout period, when Ireland had emerged from the Troika's rule, and in the emergence of new economic growth, there has been a move to address deficits in the legislation to reflect the changes in working conditions in Ireland and a new focus on an increased need for dialogue in labour relations now there is "something to fight for": wage agreements (reverse of temporary wage cuts), contracts (zero hour contracts) and inequalities (new entrants).

In response to a growing complexity in workplace relations in Ireland the Irish government established the Workplace Relations Commission (WRC) on the 1st of October 2015 under the Workplace Relations Act 2015⁹. It has taken over the functions of: The National Employment Rights Authority; the Labour Relations Commission; and the Director of the Equality Tribunal; as well as some of the duties of the Employment Appeals Tribunal (EAT).

"The Workplace Relations Commission (WRC) has responsibility for

- promoting the improvement of workplace relations, and maintenance of good workplace relations,
- promoting and encouraging compliance with relevant enactments,
- providing guidance in relation to compliance with codes of practice approved under Section 20 of the Workplace Relations Act 2015,

⁸ See <http://www.per.gov.ie/wp-content/uploads/FAQs-Public-Service-Stability-Agreement-2013-to-2018-HRA-and-LRA-July-2015.docx> for more details.

⁹ <http://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/html>

- conducting reviews of, and monitor developments as respects, workplace relations,
- conducting or commissioning research into matters pertaining to workplace relations,
- providing advice, information and the findings of research conducted by the Commission to joint labour committees and joint industrial councils,
- advising and apprising the Minister in relation to the application of, and compliance with, relevant enactments, and
- providing information to members of the public in relation to employment

The Commission's core services include the inspection of employment rights compliance, the provision of information, the processing of employment agency and protection of young persons (employment) licences and the provision of mediation, conciliation, facilitation and advisory services."¹⁰

While this body consolidates the regulatory duties of the previous agencies, it does not represent a forum for proactive and constructive dialogue. This may be an additional role of this commission in the culture if a new form of social dialogue is established.

The Involvement of the Courts

While there were conscious efforts to replace sectoral wage agreements and fix the collective bargaining legislation in 2001. There were two high court and one Supreme Court decisions that stopped joint labour committee and registered employment committees that were effectively a super minimum for setting sectoral wage rates. This has been the primary focus of the governments tenure in this period. The opinions of social partners were gathered across a number of key areas which are explored individually here.

On the 12th May 2008, the Labour Court, acting on proposals from the Catering Joint Labour Committee, made an Employment Regulation Order increasing the statutory minimum remuneration of workers employed in catering establishments covered by the committee with effect from the 2nd June 2008. On the 12th December 2008, a fast food outlet in Cork, one of its directors and a body known as the Quick Service Food Alliance issued a plenary

¹⁰ https://www.workplacerelations.ie/en/WR_Bodies/WRC/WRC.html

summons in which they sought a declaration that the relevant sections of the Industrial Relations Acts 1946 and one section of the Industrial Relations Act 1990 were invalid having regard to the provisions of the Irish Constitution and a declaration that the Catering Employment Regulation Order constituted an unlawful and disproportionate interference with their constitutionally guaranteed property rights.

The case was heard in the High Court on the 16th, 22nd and 23rd of March 2011 and judgment was delivered on the 7th July 2011; *John Grace Fried Chicken Ltd v Catering Joint Labour Committee* [2011] IEHC 277; [2011] 3 I.R. 211. Feeney J. granted the declarations sought on the basis that the 1946 and 1990 Acts failed to set out anything that could properly be described as policies or principles directing or informing Joint Labour Committees and the Labour Court as to the matters to be taken into account in carrying out the task of fixing wage rates and conditions of employment and thus the powers delegated to those bodies were excessive and amounted to an impermissible transfer of power from the Oireachtas (the Irish Parliament) contrary to Article 15.2.1^o of the Constitution.

In its Summer 2011 review of the Economic Adjustment and Programme for Ireland, the European Commission's Director-General for economic and monetary affairs said that this finding "redoubles the urgency of reform in this area". The Commission welcomed the government's commitment to introduce legislation going beyond what was recommended by the Duffy/Walsh report "as eliminating any impediments to job creation/reallocation, while safeguarding basic workers' rights, is essential to ensure that the emerging recovery benefits all".

In response to the High Court judgment, the Oireachtas passed the Industrial Relations (Amendment) Act 2012 (the 2012 Act) which came into effect on the 1st August 2012. The amendments effected by this Act require Joint Labour Committees, when formulating their proposals, to take into account a variety of factors, such as the legitimate commercial interests of employers and levels of employment and wages in comparable sectors both in Ireland and within the European Union. The 2012 Act also provides that employers might seek temporary exemptions from Employment Regulation Orders from the Labour Court. This last mentioned matter was specifically referenced in the Memoranda of Understanding of February and May 2012.

The 2012 Act also made changes to the Registered Employment Agreement system as a result of which the registration of collective agreements was to be subject to much more elaborate principles and policies and provision for review and consideration by the Minister for Jobs, Enterprise and Innovation and the Oireachtas (the Irish Parliament). Yet again, the actions of the government in enacting the 2012 Act were overtaken by another dramatic intervention by the courts.

On the 22nd of May 2008, an application had been made to the Labour Court to cancel the Registered Employment Agreement for the electrical contracting industry. After some initial legal skirmishes, the Labour Court embarked upon an eleven-day hearing and, on the 26th February 2009, issued a determination refusing the application for cancellation of the agreement. The Labour Court also refused, it should be noted, an application by the Technical, Engineering and Electrical Union to vary the agreement by increasing the minimum rate of remuneration.

A judicial review application brought in respect of this determination was dismissed by the High Court on the basis that the application had been brought outside the prescribed time limits and that it was undesirable that any constitutional challenge to the validity of the REA system should proceed in judicial review proceedings.

Some of the applicants appealed to the Supreme Court and, in a judgment delivered on the 9th of May 2013, that Court granted a declaration that the entirety of Part III of the Industrial Relations Act 1946 Act was invalid having regard to the provisions of Article 15.2.1^o of the Constitution: *McGowan v Labour Court* [2013] IESC 21; [2013] 2 I.L.R.M. 276; [2013] 3 I.R. 718.

O'Donnell J., delivering the judgment of the Court, said that these provisions of the 1946 Act involved a delegation of the law-making power of a most fundamental and far-reaching kind. There was a wholesale grant, indeed abdication, of law-making power to private persons unidentified and unidentifiable at the time of grant to make law in respect of a broad and important area of human activity. Once an agreement purported to become binding on non-parties, it passed into the field of legislation which, by Article 15 of the Constitution, was the sole and exclusive preserve of the Oireachtas. The immediate consequence of the *McGowan* decision was to invalidate all agreements registered under

Part III of the 1946 Act, even those involving single employers, and to render meaningless the amendments effected by the 2012 Act.

Influence of the Troika on the provisions of the Industrial Relations (Amendment) Act 2012

The Memorandum of Understanding of November 2011 stated that the Irish authorities would present legislation to modernise Employment Regulation Orders with a view to reducing the possible negative impact on job creation and competitiveness and obliged those authorities to engage with the staff of the Commission, the IMF and the ECB on the basis of draft legislation in advance of publication. The specific Troika requirements, as set out in the Memoranda of Understanding of February and May 2012, were that:

- (i) An employer might apply to the Labour Court, where there is a substantial risk that a significant number of workers would be laid off or made redundant or where the sustainability of the employer's business would be significantly adversely affected, for a derogation down to the level of the national minimum wage for one or more recurring periods up to a maximum of two years.
- (ii) There is a requirement that Joint Labour Committees be reviewed every five years.
- (iii) There be a requirement for the committee and the Labour Court, to take into account, where enterprises in the sector in question are in competition with enterprises in other Member States, the general level of wages in the enterprises in that other Member State.
- (iv) The extent of any Employment Regulation Order be restricted.

In May 2012, the European Commission reported that the Bill was "broadly in line with the programme objectives" in that it made the wage-setting systems more flexible and more responsive to economic conditions. The Commission expected that the revised Employment Regulation Orders emerging from the reformed system would be "leaner and more employment-friendly". The 2012 Act accordingly limits such an Order to providing for a minimum hourly rate of remuneration and not more than two higher hourly rates of

remuneration based on length of service or attainment of recognised standards or skills. Other matters such as providing for a rate for Sunday working, pay in lieu of notice, redundancy etc. are specifically excluded.

The first orders made under the new system applied to workers in the Security Industry and in Contract Cleaning providing for basic hourly rates of €10.75 and €9.75 respectively: see S.I. Nos. 417 and 418 of 2015.

Restoration of the Registered Employment Agreement System

The vacuum created by the Supreme Court's decision in *McGowan* was addressed by the Industrial Relations (Amendment) Act 2015, which came into operation on the 1st August 2015: see S.I. No. 329 of 2015. Part 2 of this Act re-establishes the registered employment agreement system for enterprise level agreements and empowers the Minister for Jobs, Enterprise and Innovation to make "sectoral employment orders" regulating the terms and conditions relating to the remuneration, and any sick pay or pension scheme, of workers in a specific sector of the economy.

2. Position and role of the social partners on the social reforms

While the previous section establishes the legal, policy and financial context under which social partnership deteriorated, the following explored the opinions of the social partners themselves as captured through the in-depth interviews.

Flexibility

While the recession in Ireland effected employment flexibility; the reality of the challenges this represented are viewed very differently by the different social partners.

Increased flexibility is exemplified in the rise in the number, frequency, and poor conditions under which zero hour working conditions, or ‘if and when contracts’, during the recession. Two national studies were conducted examining these forms of contracts in 2014 and 2015. The first was conducted on behalf of Eurofound¹¹ by Dr Robert Mooney and the other was conducted by the University of Limerick¹² on behalf of the Department of Jobs, Enterprise and Innovation.

The findings of the Eurofound study, concluded that:

“the suitability of the zero hours work for individuals with different individual circumstances. For example, workers with domestic responsibilities, or other external pressures, view the flexibility of the on-call system as advantageous. However, those who are seeking regular working hours or who are seeking to re-enter the workforce might view this flexibility as unpredictable, lacking in job security and inadequate. Some reported that these positions were based on the perception that there was a power imbalance in the conditions of the contracts which placed few requirements on the employer.

The respondents suggested that provisions within the legislation designed to allow for more efficient zero hours working arrangements may be warranted under

¹¹ <http://www.eurofound.europa.eu/new-forms-of-employment>

¹² <https://www.djei.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>

specific conditions, and that this may be beneficial to employers and employees whose business includes this type of working arrangement.”¹³

Trade union representatives interviewed for this study suggested that this was significant issues promoting increases in irregular hours and insecure working conditions. The areas this was prominent include the retail, hospitality and restaurants, and construction sectors.

“Legislation: specifics the period of time determining where a person needs to be made permanent. We still have people on lower paid jobs in precarious positions in temporary jobs and irregular hours.”

Female, Unions

As very little change has emerged in employment law between 2009 and 2014, and this was a period of significant change in employment conditions in Irelands, the results of these studies highlighted the legislative deficit in contemporary employment law in Ireland. These challenges have prompted aforementioned changes in the current employment law¹⁴.

“If we take 2008 as year zero; my view is that it is very noticeable that there has not been much coming out of Europe or nationally in the space of employment law. The last major employment law director was the agency worker’s directive in 2008. Everything since then has been ad hoc.”

Male, Academic

At this time, in the public sector, saw increased flexibility in the pay and conditions in the public sector with the trade-off being the aforementioned no compulsory redundancies.

From the employer organisations perspective they take a cautiously positive view of increased flexibility. One interviewee suggested that “it took a seed change to convince employees that flexibility was important [particularly in terms of] flexible hrs, working from home etc.”. They also suggest that the implementation of this legislation is challenging for

¹³ [http://www.eurofound.europa.eu/sites/default/files/page/field_ef_documents/61-ef1461-
ie-casual-work-0.pdf](http://www.eurofound.europa.eu/sites/default/files/page/field_ef_documents/61-ef1461-ie-casual-work-0.pdf)

¹⁴ E.g. the Industrial Relations (Amendment) Act 2015

small to medium enterprises and it is a “move against flexibility and an imposition on the employer” (Female, employers organisation).

We can argue that increased flexibility, supported by organisational working legislation, and the EU, can support flexible arrangements reflecting what happens in the market place as long as legislation ‘keeps pace with reality’.

“It is not really about flexibility; it is about bringing certainty for employers and workers around terms and conditions. Useful for employers so they can plan and useful for employers when issuing contracts and what their labour costs are going to be in the next two to three years and avoid a race to bottom as we have seen in a few sectors recently.”

Male, Government

The main challenge for the next government is to implement the most recent employment legislation effectively improving employment standards or conditions of employment. In particular, removing the scope for collective bargaining and looking to set conditions for employment rights at a statutory minimum.

Enhancing employability

Some of these initiatives in the recession period included “targeting people through policies”. There were many schemes put in place in Ireland during the recession. The main policy instrument overseeing the enhancement of employability of the individual was, and remains, the Action Plan for Jobs; the latest edition being the fifth iteration and launched in 2016¹⁵.

The main provisions of the plan include a ten-year Enterprise Strategy to 2025 aimed at achieving full employment and sustaining it. Its main aims are:

- Reducing unemployment,
- Addressing the skills shortages and delivering skills for a growing economy,
- Increasing labour market participation,
- Supporting start-up and growing indigenous industries,

¹⁵ <https://www.djei.ie/en/Publications/Publication-files/Action-Plan-for-Jobs-2016.pdf>

- Increasing innovation,
- Protection against international and domestic fragilities,
- Improving the competitiveness of Irish business, and
- Delivering to all Irelands regions.

In response to the recession there was a large increase in the number of internships. These were viewed by some as somewhere between education and full employment. There was a particular emphasis on improving transitions to work for people under 25: in particular, JobBridge¹⁶. The main aims of this scheme were to position unemployed persons in a work placement for up to 30 hours per week for €52.50 per week in addition to their social welfare entitlement. Its effectiveness was questioned by a number of respondent who suggested that it had been poorly regulated and left participants open for exploitation where they were tasked with carrying out what are in fact are the duties more appropriate to a paid employee without being paid. The National Youth Councils 2015 Report *'JobBridge: Stepping Stone or Dead End'*¹⁷ makes some recommendations which challenge the capacity of the scheme to meet the needs of participants under the following headings:

- Progression to employment: they suggest that the scheme should only be open to employers who have proved track record in progressing participants to employment.
- Systems need to have an active monitoring programme which established quality of the individual programmes and that the individual is not being exploited.
- The mentors and mentoring programme should be monitored to ensure that participants are treated equally and fairly according to the parameters of what is expected of them and that placements are of similar standards across the scheme

While this study cannot claim to be representative of the experiences of the Irish population, having captured data on 82 participants, it is indicative of the main challenges that the participants in scheme face.

Respondents who participated in this study suggested that there were reports of JobBridge placements being exploitative and only served to artificially lower the unemployment

¹⁶ <https://www.welfare.ie/en/Pages/JobBridge.aspx>

¹⁷ <http://www.youth.ie/sites/youth.ie/files/NYCI-JobBridge-Full-Report.pdf>

figures. In some cases, they reported being informed of placements where the individuals would be tasked with menial duties (including cleaning and filing). In addition, many placements were in fact paid roles and served as a means of the employer obtaining free labour without the burden of issuing contracts, or any employment security beyond the timeframe of the internship.

This scheme still exists. At present a new, more progressive, scheme entitled JobPath is being implemented nationally. The main goals of the JobPath include:

- Job Path is a Department of Social Protection programme of employment activation for the long-term unemployed.
- People who have been unemployed for over a year will be selected to participate in JobPath by the Department.
- This service will complement the Department's existing resources and other Local Employment Services.
- Strategy:
 - The first meeting with one's personal advisor will last about 3 hours and examine the participant's skills and experience.
 - From this they will design a Personal Progression Plan which will include retraining, upskilling and placements within employers, the main aim of which is to secure full time employment for the individual within six months.
 - The individual is assigned a Personal Adviser with whom they will work with on a one to one basis to achieve this.

The Irish government have contracted the implementation of this to two organisations overseeing its implementation in different regions of Ireland:

- Seetec - West; Midlands North; North East; North West, Dublin Central; Dublin North; Dublin South.
- Turas Nua – Cork Central; South East; Mid-Leinster, Mid-West; South West; Midlands South.

The claimed aim is to get people back to sustainable work. It is hailed as a more progressive initiative which focus on retraining and making connections between the unemployed and

employers. New organisations have also been established to support the effective implementation of these initiatives including Intreo; the Department of Social Protection's single point of contact for all employment and income supports.

In addition, SOLAS, Ireland's new Further Education and Training Authority, supports the learning and education across a diverse range of education initiatives which meet the needs of employers and employees.

The social partners take very different views on these schemes. Respondents from employer organisations suggested that these initiatives had a very positive attitude to new programmes as they provide low cost employment placements and respond to challenges emerging in Ireland in the recovery due to skills shortages (as a result of emigration)- e.g. health and construction.

“We have structures that predate the crises and the aftermath of it. JobBridge includes an employer charter which included moving the funding from training people who were employed to training the unemployed to meet the needs of jobs that were vacant. The Intreo system and the professionalization of the employment and the advice giving service has improved this process. One of the big issues now is that unemployment is decreasing and we are seeing skill shortages in certain areas. In fact, a short conversion programme implemented at local level enabling people to turn around skills programmes is very desirable. The new apprentices in medical technologies, high end manufacturing and pharmaceutical industries can make a lot more people employable without having to go to 3rd level [education] ... Skills have moved to education, makes more sense in terms of connectivity.”

Females, Employers Organisation

In some cases, holders of higher postgraduate degrees are able only to secure menial internships with their particular skills not valued in the existing jobs market.

“In many cases these are highly educated people with little real life experience “

Male, Academic

These initiatives have also come in for criticism including being ineffective and inappropriate with individual participants. It was the view of trade unions interviewees that these schemes did little to improve 'real' employability as many initiatives with little actual training or mentoring, and served only to reduce the unemployment figures.

"In reality they did little mentoring and monitoring was poor, and these measures did not lead to employment in many cases."

Female, Unions

Employment protection

It is clear that there was little if any legislation supporting employment protection passed during the recessionary period. New legislation recently introduced does, however, strengthen employment protection and the quality of jobs.

"Any legislation passed in recent years has tried to strengthen legislation and not water it down. We would take some credit for being able to maintain the level of protection for employees".

Male, Government

From the trade unions point of view, they argue that although this is welcome, there are legacy issues to be addressed which stem from the years of recession. They suggest that in the private sector many people now work longer hours for less pay, have taken reduced hours and other emergency short terms measures to retain their jobs. Further, there are inequalities between the sectors which have emerged including the pensions levy (representing an imbalance between public and private sector employees), and reduced terms and conditions for new entrants to the public sector and across all pay grades.

While the imposition of pay cuts and other employment benefits was widespread in the public and private sectors; the main difference between them was that in the public sector the cuts were balanced by the guarantee of no compulsory redundancies while no such guarantee was possible in the private sector where reduced hours and pay cuts were necessary to ensure businesses remained in operation.

Further, it was suggested, that during the recession and under the guidance of the Troika macro fiscal policies guided all decision making about employment in Ireland.

“The new fiscal rules do not do anything to foster partnership in that what they do is to set a European agenda on behalf of the commission and the council in respect of macro-economic fiscal policy; this is where the action has shifted decidedly. At the EU level or the level of individual states, I don’t see a great deal of social partnership in respect of the formulation or implementation in these new rules.

Male; Academia

Vulnerable groups

There is little doubt that vulnerable groups were negatively affected by the recession. The various social partners viewed this from a variety of perspectives. The respondents representing the governments perspective argued that they have targeted these groups through progressive planning and initiatives such as the aforementioned JobPath, Intreo, JobBridge, and Turas Nua and also pointed to the reversal of the reduction in the minimum wage.

From the Trade Unions perspective, they argue that the main issues which have negatively affected vulnerable groups include pay cuts, reductions in supports for the community, and voluntary sectors, the impositions of cuts on the health care system, and changes in new entrant to the public sector.

“The crisis was harsh on vulnerable groups. We are only at the early stages of addressing that. The community and voluntary sector suffered from huge cuts: up to 40 or 50% which had a negative effect on these groups. The health system suffered huge cuts which had an impact on those seeking health care. We are only seeing the very earliest stages where the government might suggest that they are willing to redress these cuts. There is an intensity in the demand for services in key areas. All of this means that we are lightyears from these problems being resolved”.

Female, Unions

Further, it can be argued that vulnerable groups were only supported in the sense that the cuts were not more severe.

Social Partners influence on legislation

While the influence of social partners as lobby groups remains significant, in the period of the recession in Ireland there was little room for negotiation, again with macro fiscal concerns dominating employment decision making. This has not arrested the lobbying activities of the social partners and their advocacy on behalf of their membership as part of the policy development process.

“Broadly speaking we did not have any fundamental change to our legal framework. We have a fairly lightly regulated labour market, meaning that there was little that you could alter.”

Male, Academic

“During the course of the crises Ireland had a change of government; as part of that change we have a coalition government made up of a minority party- with one of the parties ‘on the left’. Some of the trade unions would have an affiliation with the Labour Party. On that basis some thought that this would support the capacity to bring stronger legislation protecting collective bargaining. Some unions have been lobbying strongly building towards stronger legislation which has worked as evidenced in the Industrial Relations (Amendment) Act 2015”.

Female, Unions

In this period the main goal of the trade unions was to keep people employed

“Keeping people secure and ensuring that people knew they had a job was critical. The engagement at the worst part of the crises. In the public sector, even if there was income loss, jobs remained secure.”

Female, Unions

The legacy of the 22 years of social partnership remains in the form of trade agreements and working groups with government, employers and trade unions. Increase access to

resources in a post-recession Ireland provide a new capacity to negotiate this new form of social partnership.

3. Labour market effects of the reforms

Austerity measures and collective negotiations

There has been a radical increase in market and performance based determinants of pay as it is very hard to argue for a pay rise with zero percent inflation

“When you have no money there is nothing to bargain with. Ironically it has created an era of industrial peace as pay rates have been going nowhere for the past few years”.

Female, Trade Union

The main effects of the austerity measures were to set the aforementioned macro fiscal adjustments as the main context for collective negotiations. Discussions have been towards undermining social partnership and arguing for the retention of minimum statutory working conditions. In the public sector these were carried out through dialogue and evidenced through no compulsory redundancies. In the private sector there was a fracture of how wage rates were set.

“There were more negotiations than ever to maintain sustainability of employment ... All the big companies had substantial negotiations and restructuring (e.g. RTE). the Public sector has the Haddington Road Agreement. The services, hospitality and construction were the weakest. Even decisions made by the Joint Labour Commissions (which set the mechanisms for rates of pay) were thwarted as some of their decisions were considered unconstitutional when challenged in the Supreme Court”.

Female, Trade Union

A number of respondents suggested that relationships deteriorated very quickly in this context. In addition, it was suggested that the Fine Gael government, who entered power in 2011, were less invested in social partnerships and more sceptical about engagement than previous governments. Their minority partner, the Labour Party (who had traditionally been closely affiliated with the unions) also became subject to the necessity of adhering to austerity measures. In this context the government did little to reignite social partnership.

“In terms of a true formal national engagement, it hasn’t been there at all. By the nature of the country we understand that we need to understand each other in order to progress. After the formal collapse of social partnership ... working groups were set up [between employment organisations and government departments]. [Bilateral discussions emerged through] advisory groups: government advisors group on small business working with the Department of Jobs; finance groups in the Department of Finance; working group and public procurement in the Office of Public Works etc. On these groups there may not be anyone from farming, or from the community, so it is not the ‘old pillar’, but it includes interested parties advising government on how to create a more pro-business environment... I find it much more efficient.”

Females, Employers Organisation

The quote above illustrates the problems inherent in a system based on bilateralism and the benefits of opening the opportunities to participate in an inclusive social dialogue up to all social partners. The authors argue that some form of tripartite social dialogue and social partnership is necessary for an effective and functional labour market. Further, it is the basis of transparency and remains at the heart of the healthy labour relations.

Impact of EU measures

“SP was in retreat; this was beginning to happen in advance of the recession anyway. The recession further eroded the salience of SP in the European model”.

Male, Academic

The Director General of the International Labour Organisation Guy Ryder suggested, in a post in February 2015 on the Congress website¹⁸ that there has been greater job growth at the top and bottom of the labour market in Ireland and a technology driven hollowing out of the middle. He also references the challenges which flexibility of working conditions, precarious work and informality present. He can be quoted as saying that “The erosion of the traditional employer-employee relationship, the hollowing out of middle income jobs

¹⁸ <http://www.ictu.ie/blog/2015/02/26/decent-work-at-heart-of-ethical-society/>

and globalisation's effect on the labour economy are all contributing to a higher risk of income inequality."¹⁹

He suggests that policy makers have been keen to keep productive dialogue which supports policy with direct impact. In many cases it was essentially a consensus based negotiation in collective bargaining between Ibec, Congress, and the DJEE to reach agreement where all parties have to make concessions. This represents slow process but it represents some progress from a position where no formal process exists. The reestablishment of social partnership must also be viewed as a fiscal or capacity issue. If we accept the latter, there is a concern around capacity at national and EU level. Not only among trade unions but employers. We must ask, if social dialogue agreement is to be fulfilled do both sides have the capacity to deliver?

It can be argued that that the lack of social dialogue in Ireland was mirrored by the same lack of formal procedures in Europe which did nothing to encourage this form of engagement, as it had previously.

Employer organisations have declined in funding and numbers as members either went to the wall or decided they would stop paying their membership. Trade Unions density has also declined somewhat (from 31.5% in 2007 to 27.4% in 2014) according to OECD statistics²⁰. This presents a minor capacity issue through which to support a new forms of social partnership.

The authors would argue that in light of the recent improvements in the economy and increases in industrial activity that this capacity issues may be resolved in the short to medium term.

Effects of reforms

In the recessionary Ireland there are were number of key targets at which policies including the Action Plan for Jobs were aimed. These include reducing unemployment and public expenditure. In some cases, as per the statistics presented in Section 1 of this report,

¹⁹ Ibid.

²⁰ https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN

measures introduced by the government have been reached. There are viewed, and have been presented, through the prism of macroeconomic outcomes.

“There are a number of targets: to reduce unemployment, public expenditure, etc. [they have been reached. In terms of macroeconomic outcomes, other than progress made in terms of targets achieved, there is not so much reform of the labour market. The focus has been on macro finances; anything else that happened has been incidental.”

Male, Academic

These macro level figures can easily gloss over the discontent, inequality and democratic deficit which has emerged as a result of the recession in Ireland, to some degree as a result of the abandonment on social partnership and the emergence of unilateral social dialogues between the previous partners.

Other than progress made in terms of targets achieved, there has been little reform of the labour market which is only now beginning to address some of the democratic deficits as represented by the zero hour working conditions and other employment deficits. It was the opinion of some of the participants that this legislation only emerged as a result of tireless unilateral lobbying.

“The recent legislation was achieved through lobbying and not through collective bargaining or dialogue in any way *e.g.*: the sectoral employment orders and collective bargaining”

Female, Unions

There is a view that the deficit has led to more conflictual relationships and in the emergent economic revival it is becoming evident that some form of formal process is required.

“The main changes have been the abandonment of the formal social partnership. There are not too many who would be upset by that as most participants would be of the opinion that it has become sprawling and unfocused. What we are waiting to see that if we move into a period of stability; do we move into a new formal

engagement. My suspicion is that we will not. It may be that we become more sectoralised if the unions create sectoral unions.

Male, Academic

“They are beginning to be more conflictual now. During the real recession there were no issues as people were just focusing on getting through it. Whereas once the green shoots of growth come out there is [the impression] that [employers and union representatives will be of the opinion that] ‘I want a piece of that’.”

Females, Employers Organisation

The prevailing opinion among the social partner’s was that wage agreements need to be set by collective agreements. To be sustainable these agreements need to be set by inclusive discourse involving the social partners. Whether this will move toward an inclusive dialogue based approach in the life of the next government, it is too early to say.

Changes in the nature of collective bargaining

Since the recession and the failure of the social partnership in 2008 bilateral discussions had been maintained out of necessity of maintain a constructive dialogue on behalf of their workers in some cases, and in the interests of powerful lobby groups in others.

During the recession an indefinable shift from the old model of social partnership which had become “bloated, incorporated too much, and could not contain the complexity of the issues that it involved; it was very difficult to see the hall there were so many pillars in it” (Male, Government).

“The brand of social partnership became toxic; in looking at revival they are using the term social dialogue”

Male, Academic

In both public and private sectors there has been fragmentation. During the economic boom, and under social partnership, employees had the same rates of pay and a centralised system. At present there is a more sectorally and locally based system.

“Because of localised bargaining, deals are done in the work place, locally. This leads you to a place a lack of transparency. There is decrease in union engagement. This can compromise people’s wages.”

Female, Unions

The risks that emerge through this process are that many employers used the recession as a means of reducing, what are argued to have been, artificially high pay rates prompted by an unsustainable economic boom in Ireland. With no regulation, these negotiations became arbitrary and inequality emerged. It is the opinions of the unions interviewed that the optimum position would be to try to get back to registered agreements and sectoral employment orders (*Male; Trade Union*).

While such proceduralisation has remained, for the most part, intact in the public sector (with the government acting in its dual role as legislator and employer and trade unions), there is now an administrative and procedural gap in the private sector negotiations. The legacy of the parties meant that the social partners accommodated bilateral bargaining and not social partnerships.

It was argued, by a representative from an employer organisation, that social partnership as a centralised concept may be outdated. In particular, the employee model employed at Google was cited as exemplifying the efficacy of contemporary unilateral employment agreements supporting. This, it was argued, suggested that the traditional social partnership model was outdated as was the traditional Trade Union model.

“[Social partnership] is [the language of] ‘yesterday world’. [For example] nearly 49% of jobs did not exist at the time of the great depression (1929). Not only will we be doing different jobs, but we will be working differently with the work place itself changing dramatically. The employers who are behind these changes (the Googles’ and Amazons) are not unionised, and the reason is that there is no pressure to become unionised as there have better conditions: they look after people better, they pay people better, they do everything exist. If we ask why do unions exist it is because of that old traditional model of the capitalist employer with the dominance of power abusing the worker and now there is a much clearer shift towards ‘your

people are your asset'. As people have become more educated and more empowered and realising that they have more power as an individual than a group we see things change fundamentally. The older model will eventually just die out."

Females, Employers Organisation

In seeming contradiction of this view, only a small number of union organisations lost significant membership considering the redundancies. In addition, this opens up the potential for the establishment of a series of bilateral agreements leading to inequalities across a range of sectors and levels of employment and opening up new industrial relations disputes.

In fact, cases such as the McGowan v Labour Court where the Supreme Court judgment, declared the Registered Employment Agreement system unconstitutional²¹, and John Grace Fried Chicken of Cork and the Quick Service Food Alliance in which the High Court found that the Joint Labour Committee system of setting wages for lower paid workers was unconstitutional, suggests that this is a flawed argument.

In recent statements, both Ibec and Congress have suggested that they would be interested in re-establishing some form of formal organisation. In the present political vacuum in which this report is written, with Ireland under the auspices of a caretaker government, there can be no broad political consensus that this is the best approach. The opinion of a union member was that, in fact, what this presented was the opportunity for employer bodies to retreat from the process itself.

"The employer body has become more invisible".

Female, Unions

The recent legislation, particularly some of the conditions provided for in the Industrial Relations (Amendment) Act 2015²² address pay, sick leave, and benefits. It is the ambition of the government that this bill may enable new collaboration at all levels.

²¹ <http://constitutionproject.ie/?p=249>

²² <http://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/html>

During the recession, and possibly as a consequence of working under the government of the Troika for a number of years, all the decisions are made by public expenditure and reform and emerged from the Department of Finance, with every decision being guided by from a financial perspective. This is mirrored at EU level. It is increasingly the Directorate Generals who are manage economic affairs at the expense of the other DG's (for example employment and social affairs).

This, the authors of this report argue, is not a convincing argument for the dissolution of social dialogue and social partnership. It does, however, suggest that a more effective process management system should be established in a new form of Social Partnership.

“Neither outgoing nor incoming governments engaged with the Trade Unions as a social partner in a structured way. The Trade Union movement as the biggest civil society organisation should have some mechanisms by which to engage with the government.”

Female, Unions

Social Partnership support for collective negotiations and the involvement of Social Partners in the process of responding to the crisis

In the private sector employers made strategic decisions and defined what kind of employment model suited their business needs. It is argued here that the tensions between social partners were actually diffused by the presence of the Troika and the imposition of austerity measures as there was little, if anything, to bargain over.

While the tensions have not been significant at the time of writing this report, there has been a market increase in disputes, legal cases and industrial activity in recent months²³. In fact, since writing the initial draft of this report, there has been a rise in industrial actions in Ireland in response to the economic recovery.

This is epitomised by the current pay dispute between the Dublin Luas employees and Transdev where employees are seeking up to 60% pay rises. Luas employees have embarked on a number of one day strikes discommoding up to 90,000 passengers per day. Transdev,

²³ Exact statistics are not yet available.

already losing money on the operation of the Luas, re also subject to the National Transport Authority withholding €100,000 per day each day the service is not operational. The Luas drivers voted to reject the pay deal tentatively struck by the Workplace Relations Commission which would have seen an 18% to 20% pay increases for all drivers over a period of 33 months.

Transdev are quoted stating that the WRC proposal would have provided substantial pay increases:

“For example a driver on €42,247 would have seen an increase in their salary to €50,000 by January 2019 – plus a bonus of €3,250 to an overall salary level of €53,250.”²⁴

The new strike dates are Saturday 2 April, Sunday 3 April, Saturday 23 April and Sunday 24 April. 167 out of the 169 drivers, or 99%, voted against the deal.

Transdev won a five year €150 million Euro contract to operate the Luas in Dublin from the NTA in 2014 through public procurement. Transdev argue that they are a private company who has lost money on the operation of the Luas, and is bound by contractual obligations with the Irish government, cannot meet these demands financially. Further, they argue, that if they were to agree to the terms and conditions of the demands of the Trade Unions they would be in breach of their contract to operate the Luas with the Irish Government. This may, in turn, open up the possibility of the other tenderers who were unsuccessful in the procurement process suing the Department of Transport and appealing the contract decision. As a consequence of the intractability of both parties, strike action, coinciding with the centenary celebrations of the Irish Easter 1916 rising at the Easter weekend severely disrupted through, and further strikes occurred on the 2nd and 3rd of April. As of the 4th of April 2016 the dispute has not been resolved and further strike actions are planned for the 23rd and 24th of April.

“Regrettably it now appears that the strike action proposed for this weekend, to coincide with the Centenary Programme of Commemorations, will now go ahead following the result of this ballot by staff.”²⁵

²⁴ <http://www.businesspost.ie/luas-drivers-reject-labour-relations-commission-pay-deal/>

The current (acting) Minister for Transport has called for the unions (SIPTU) to withdraw its strike action. In addition to the challenges that the Luas strikes have presented, the initial agreement brokered by the WRC, and rejected, has prompted Irish Rail employees to seek up to 25% pay increases²⁶.

Further disputes have arisen in recently in the public sector. One of the key elements of the Lansdowne Road Agreement was that all new recruits to the public sector would enter the lowest point on the pay scale, irrespective of their experience and their qualifications. In addition, the scale for new recruits was lowered significantly. In addition to this pay increments were changed from 12 months to 18 months in many cases, the increments themselves were lowered, as were the terms and conditions of retirement benefits and pensions.

These issues, in particular the lower pay conditions for new entrants, represented a short term solution to a long-term problem. The consequences of which are becoming evident in a post-recession Ireland where workers who are carrying out the same duties as their colleagues, are gaining experience and expertise, and are now in receipt of significantly different rates of pay and terms and conditions of employment.

It is argued, by trade unions, that this had led to a significant shortage of skilled teachers and nurses entering the profession resulting from the disparity between the pay terms and conditions of existing staff and new recruits. This has resulted in fewer people being attracted to these positions in the first instance, many being attracted by better opportunities overseas (e.g. nurses leaving for the UK), and with those who do enter leaving due to the poor quality of life these opportunities offer.

During the recession in Ireland this disparity was accepted as a necessary reality under the auspices of the Troika and the bailout program. With an emergent and newly buoyant economy significant industrial relations issues are emerging which contest these measures and are now viewed in terms of inequality, exploitation and below what should be expected to maintain living standards. In response to this there is a rapidly emerging industrial

²⁵ <http://www.businesspost.ie/luas-drivers-reject-labour-relations-commission-pay-deal/>

²⁶ <http://www.thejournal.ie/irish-rail-pay-rise-2667652-Mar2016/>

relations dispute with nurses and teachers' unions arguing for the restoration of equity in terms of pay and conditions.

Kieran Mulvey, Director General of the Workplace Relations Commission, in an article published in the Irish Independent on the 5th of April 2016 argues that:

“After seven years of wage famine and increased taxation there is a growing expectation among employees in both private and public sectors for increases in take home pay. Talk and evidence of some economic recovery in certain sectors fuel these demands. Unions, Ibec and the CIDP have published evidence of modest increases in wages. The uneven level of this fragile recovery will add to a multi-wage system that in itself will contribute to potential industrial unrest. The absence of a national bargaining structure and agreed "ground rules" is unhelpful in the current situation.”²⁷

In response to these renewed challenges the current Minister for Transport Paschal Donohoe, in an article reported in the Irish Times, argued that “in order for a season of strikes to be avoided, the Government needs to look at reforming workplace relations bodies [and] that there should be dialogue between all stakeholders to look at how the Labour Court and Workplace Relations Commission can do their work in a more effective manner.”²⁸

New approaches to social partnership and social dialogue

It was the opinion of the majority of the social partners that a well structured dialogue is productive.

“A lot of mistakes were made in the previous Social Partnership model. If there is to be a new dialogue it should avoid mistakes. [It] should be open and transparent and support trade unions in setting out their vision as to what might make things better for worker’s quality of life. Continuous lobbying of political parties is not the way to go.”

²⁷ <http://www.independent.ie/opinion/comment/kieran-mulvey-workplace-chaos-looms-unless-cool-heads-prevail-34554369.html>

²⁸ <http://www.rte.ie/news/2016/0320/776153-public-transport-donohoe/>

Female, Unions

It can be argued that there is an opportunity to reconstitute and reinvent a reformed version of the social partnership institutions. This will support the re-institutionalisation of a highly focused form of national dialogue. This will be supported by the two new forms of collective bargaining law in place.

“I think it is important to try to have some form of communication supporting thought leadership to challenge and set new visions”

Females, Employers Organisation

To achieve this effectively capacity building for each of the Social Partners individually and collectively needs to be supported. This includes examining what employers are offering (e.g. IR expertise), what Trade Unions have ability to support, and how the government bodies can best provide an ideological and practical space for social dialogue in Ireland. It is suggested that this should also emerge in the context of supporting and promoting a resurgence of a collective bargaining within the European union institutions and their increased support of social dialogue and social partnership at both the national and European levels simultaneously.

“It would be nice if the new commission was more open to stakeholder views. Looking at a review of various directives to do with information consultation, such as the European Works Councils and Redundancies. We need some reinvigoration because nothing has happened in the last few years. At the start of the crises there were a number of cases, the Levalle case, which stuck at collective bargaining in the Nordic countries in particular. The focus should be on social dumping.”

Male, Academic

“A right wing resurgence is happening across Europe. The big cheeses in European decided Social Partnership and Social Dialogue was not in their interests and that the important issue was to mind the money. And the workers were not important. This will not turn in on them in a number of years. Workers will say that they have had enough and will not take anymore. I think that in Europe there will be a seed change.

The aura of those who championed the austerity agenda will not be tolerated much further.”

Female, Unions

Taking a pragmatist perspective, the employers’ organisation representative suggested that social partners are not interested in lobbying until issues arise. One means of establishing a new form of Social Partnership is to create a space where it is possible to share best practice in the negotiation and establishment of the parameters of social dialogue. While this approach is taken in research and development (in academia) it is not employed in terms of social policy and labour relations at present.

4. Conclusion

To summarise, social partnership emerged in Ireland in response to an economic crises and collapsed in the face of one. Some suggest that it became a “slow and lumbering behemoth sluggishly meandering through corridors of wealth” (Female, Union).

After its collapse, there was little to discuss in the context of the worst recession in the history of the state, under the conditions of the bailout programme and the diktats of the Troika. The main labour relations agreements active in the public sector during this period were the abovementioned Lansdowne Road and Haddington Road Agreements.

In the context of the recession the employment conditions of many workers in both the public and private sectors were diminished to meet the necessities of the recessionary period. In the context of the recovering economy these conditions, viewed by many at the time as temporary, are now viewed as unacceptable. These challenges have prompted a resurgence of industrial unrest. The dissolution of social partnership since 2009 has left a democratic deficit in Irish social partnership. The current practices include individual discussions between lobby groups, trade unions, and/or the government or discussion at the newly formed Workplace Relations Commission. This is exemplified by the renewal in bilateral pay restoration discussions which have begun to emerge. This points to a lack of coherent and inclusive dialogue which poses significant risks to industrial relations in Ireland as evidenced by the aforementioned threatened strikes by the Irish Rail workers in response to Luas dispute.

As the country emerges from the recession into a period of growth some form of resurgent social partnership is required to underpin productive social dialogue arguing for workers’ rights and guide the complexities of collective negotiations. How to achieve this represents the next challenge.

This research illustrates that there are radically different perspectives among the social partners illustrated. The market perspective takes the approach that economic planning in the market will ensure stability for all. The unions take a rights based approach and are critical of the lack of new legislation and the failures of, and challenges in, the implementation of legislation. The government perspective includes a heavy emphasis on

legislating with a renewed focus on social partnership as a means of the implementation of this legislation. The academic perspective is critical of any one single viewpoint, yet again supportive of inclusive dialogue. The only voice not immediately in favour of the re-institutionalisation of social partnership is the employer organisations. The findings of the research suggest that their objection is not to social partnership nor social dialogue in itself, but the cumbersome format that it took in the pre-recession era.

Returning to the article by Kieran Mulvey, he argues that:

“Legislating for compulsory arbitration requires a new debate and should not be a reaction, understandable as it may be, to recent disputes. It requires "buy in" from potential disputant parties. This could be explored if we had a forum for social dialogue.”²⁹

This suggests that a streamlined and efficient form of social dialogue and social partnership would be a welcome and effective medium to mitigate this looming industrial relations chaos³⁰. In this context there are significantly different definitions of what constitutes ‘good practice’.

Further, Kieran Mulvey is also supportive of a new streamlined form of social partnership:

“There appears to be a need to begin to construct a new model for the future determination of public service pay...The alternative is pay chaos where those with the biggest muscle get the biggest settlements. This would be an unwelcome return to the past.”³¹

With the country reeling in the results of an inconclusive general election and with no clear government in place, it is unclear whether there is a future prospect of some form of national engagement between employers, trade unions and government. The outgoing government made clear its distaste for social partnership as it operated in the past (mainly because the function of public representatives was seen as being supplanted by those with

²⁹ <http://www.independent.ie/opinion/comment/kieran-mulvey-workplace-chaos-looms-unless-cool-heads-prevail-34554369.html>

³⁰ Ibid

³¹ Ibid

no electoral mandate); but it was accepted that there is an institutional deficit in that there has been no forum where labour market issues can be discussed between the social partners.

Regardless of what form the new government takes, to enable it to implemented the recent legislative changes, support the WRC in implementing their recommendations, and consequently address new workplace conditions in a post-recession economy, will require a new and inclusive mechanism for facilitating constructive dialogue. This study suggests that there is an appetite among social partners is for a streamlined and more effective mechanism. It is therefore the suggestion of this report that a new form of social partnership should be sought which is derived through: an analysis of the old form of social partnership; a revision of the inefficiencies in this mechanisms; a review of the changes in legislation and industrial relations issues in a post-recession Ireland; and the examination of international examples of best practice in social partnership. This further research design would support the design of a new model of social partnership based on the participative co-design including inputs from the government, the unions, and employers organisations. This would encourage social partners participation in this new mechanism furthering the ultimate goals of achieving relative industrial peace in an effective and fair labour market which functions through inclusive dialogue.

References

- Action Plan for Jobs 2016:
 - <https://www.djei.ie/en/Publications/Publication-files/Action-Plan-for-Jobs-2016.pdf>
- Central Statistics Office:
 - <http://www.cso.ie/en/releasesandpublications/er/na/quarterlynationalaccountsquarter42015/>
- Constitution Project: <http://constitutionproject.ie/?p=249>
- Department of Jobs, Enterprise and Innovation:
 - ERO and REA Wage Setting Mechanisms:
<https://djei.ie/en/Publications/Independent-Review-of-ERO-and-REA-Wage-Setting-Mechanisms.html#>
 - Study on the Prevalence of Zero Hour Contracts,
<https://www.djei.ie/en/Publications/Publication-files/Study-on-the-Prevalence-of-Zero-Hours-Contracts.pdf>
- Department of Social Protection:
 - JobBridge: <https://www.welfare.ie/en/Pages/JobBridge.aspx>
- Eurofound:
 - New Forms of Employment, European Report, 2015:
<http://www.eurofound.europa.eu/new-forms-of-employment>
 - New Forms of Employment, Irish Case Study, 2015:
http://www.eurofound.europa.eu/sites/default/files/page/field_ef_documents/61-ef1461-ie-casual-work-0.pdf
- Eurostat European Statistics:
 - <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=teina200&language=en>
 - <http://ec.europa.eu/eurostat/tgm/web/table/description.jsp>
 - <http://ec.europa.eu/eurostat/tgm/table.do?tab=table&init=1&plugin=1&pcode=tipslm50&language=en>
- Independent, Kieran Mulvey: Workplace chaos looms unless cool heads prevail:
<http://www.independent.ie/opinion/comment/kieran-mulvey-workplace-chaos-loom-unless-cool-heads-prevail-34554369.html>

- Industrial Relations (Amendment) Act 2015:
<http://www.irishstatutebook.ie/eli/2015/act/27/enacted/en/html>
- International Research Project DIADSE (Dialogue for Advancing Social Europe):
<http://hsi.uva.nl/en/diadse/information-on-the-research-project/information-on-the-research-project.html>
- Labour Relations Commission Proposals for Public Service Stability Agreement 2013-2018; <http://www.per.gov.ie/wp-content/uploads/FAQs-Public-Service-Stability-Agreement-2013-to-2018-HRA-and-LRA-July-2015.docx>
- National Youth Council of Ireland, JobBridge: Stepping Stone or Dead End?; 2015
<http://www.youth.ie/sites/youth.ie/files/NYCI-JobBridge-Full-Report.pdf>
- OECD Statistics: https://stats.oecd.org/Index.aspx?DataSetCode=UN_DEN
- Ritchie, Jane et al. (2014), *Qualitative Research Practice: A Guide for Social Science*, Sage
- RTE News, Public transport sector not facing a 'spring of discontent' – Donohoe, 20 March 2016: <http://www.rte.ie/news/2016/0320/776153-public-transport-donohoe/>
- Ryder, Guy (2015), Director General of the International Labour Organisation, Congress Website <http://www.ictu.ie/blog/2015/02/26/decent-work-at-heart-of-ethical-society/>
- Sunday Business Post, Luas drivers reject Workplace Relations Commission deal March 24, 2016: <http://www.businesspost.ie/luas-drivers-reject-labour-relations-commission-pay-deal/>
- The Journal, Irish Rail workers are asking for pay increases of up to 25%, March 18, 2016 <http://www.thejournal.ie/irish-rail-pay-rise-2667652-Mar2016/>
- Workplace Relations Act 2015
<http://www.irishstatutebook.ie/eli/2015/act/16/enacted/en/html>
- Workplace Relations Commission Overview
https://www.workplacelrelations.ie/en/WR_Bodies/WRC/WRC.html