



# **NEWEFIN IRELAND DRAFT REPORT**

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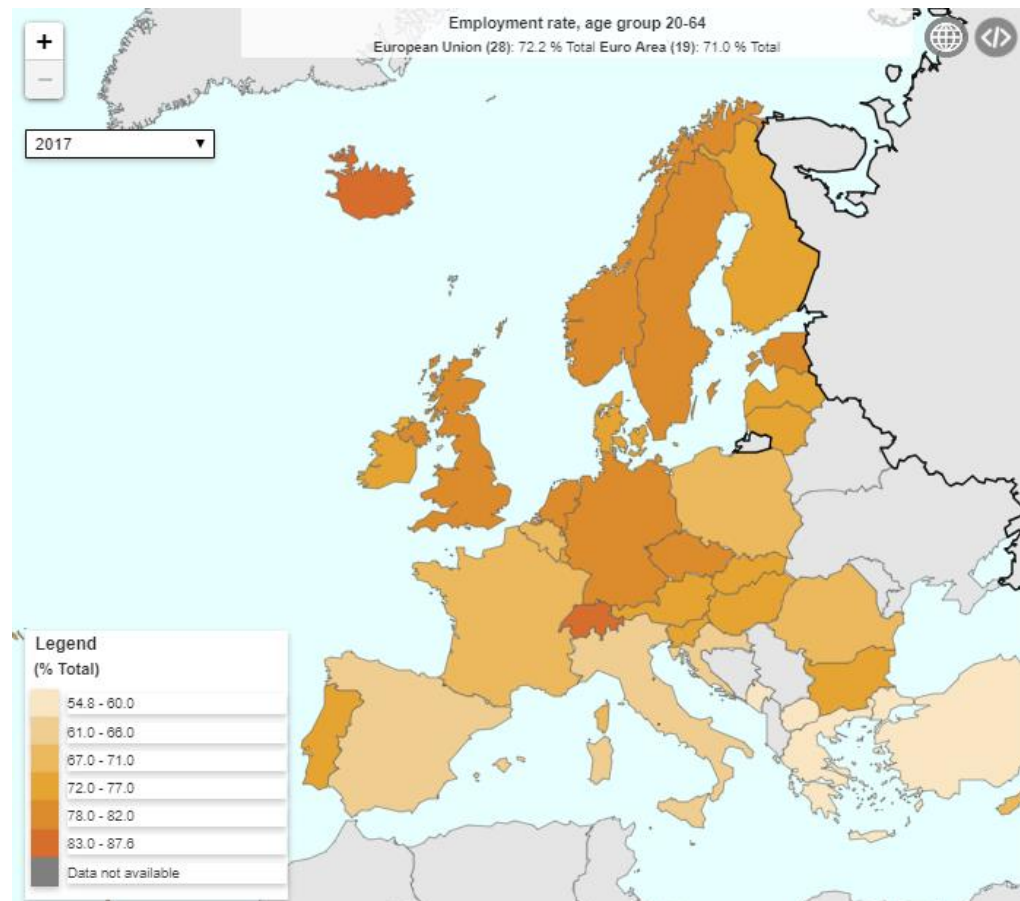


**November 2018**

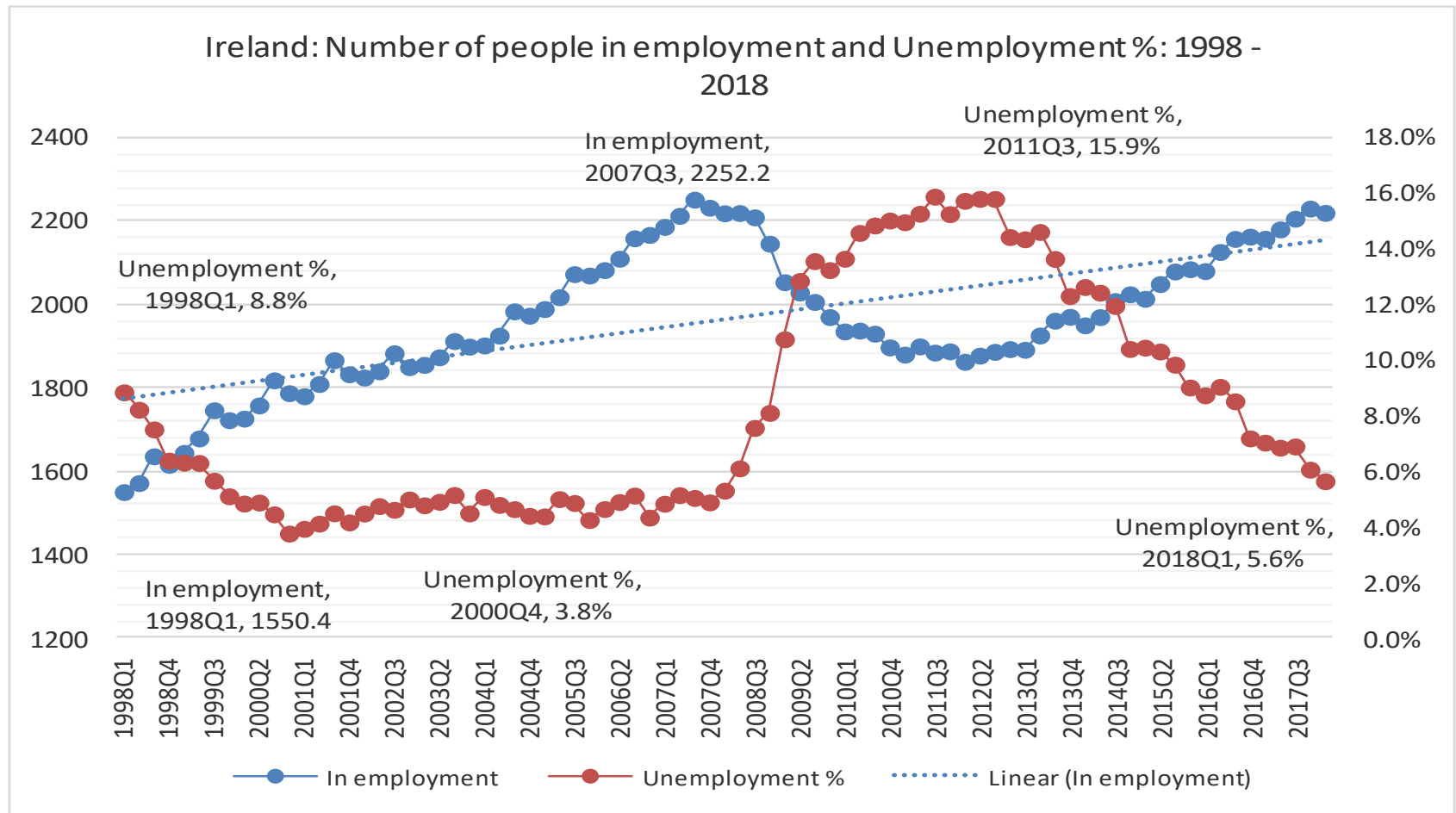
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# SECTION 1:

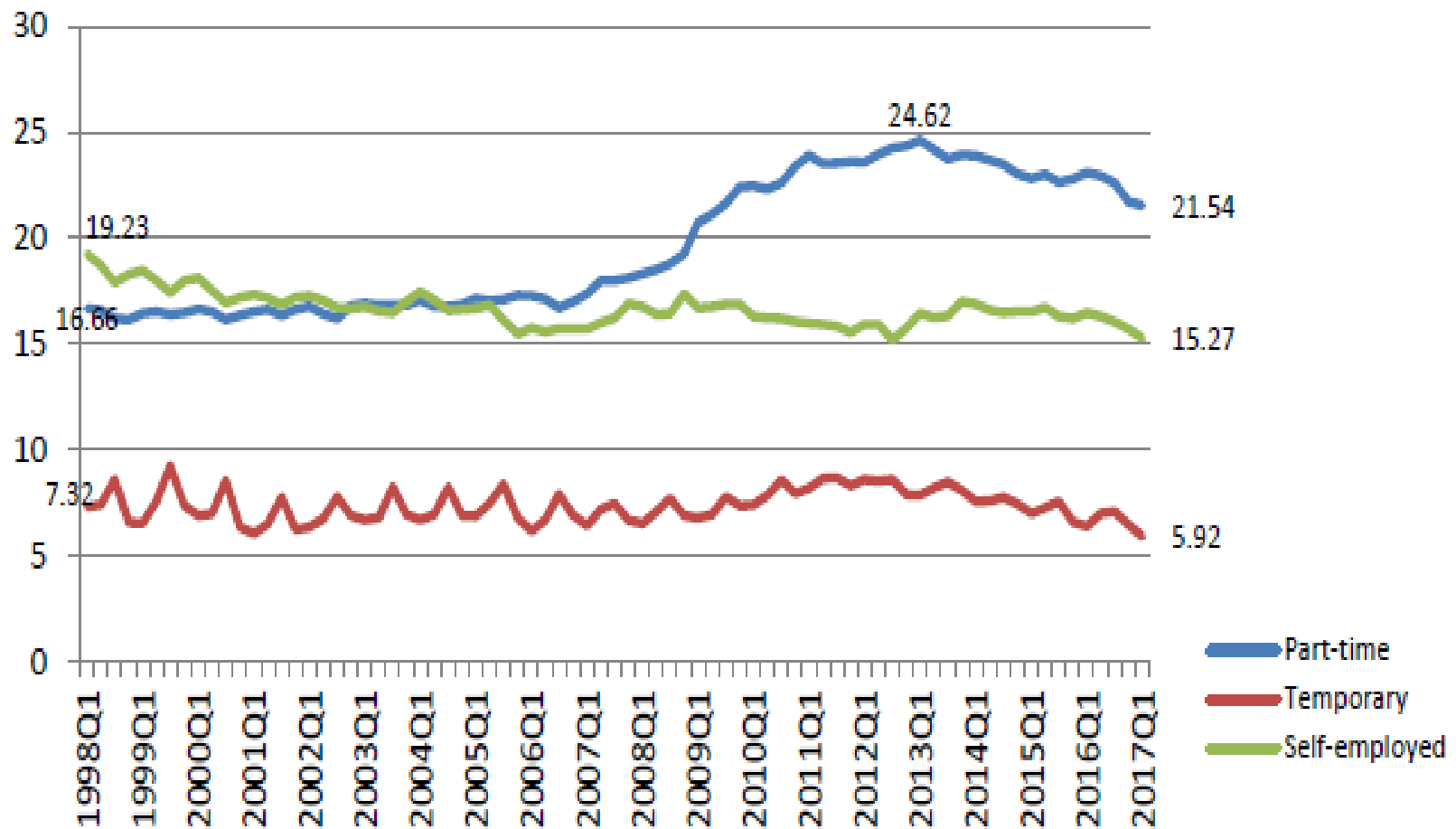
## IRELAND: LABOUR MARKET OVERVIEW



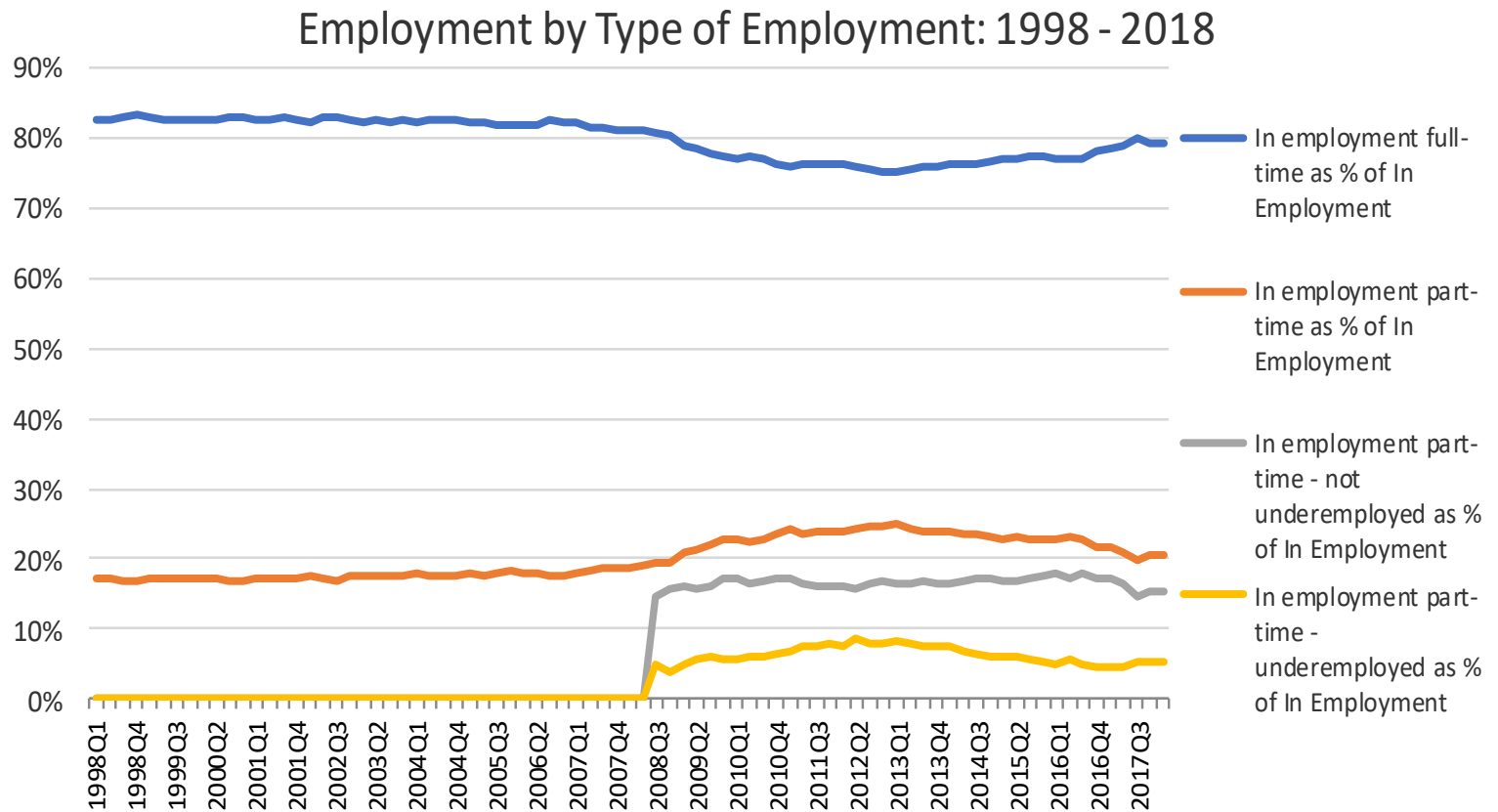
# IRELAND: EMPLOYMENT FIGURES: 1998 - 2018



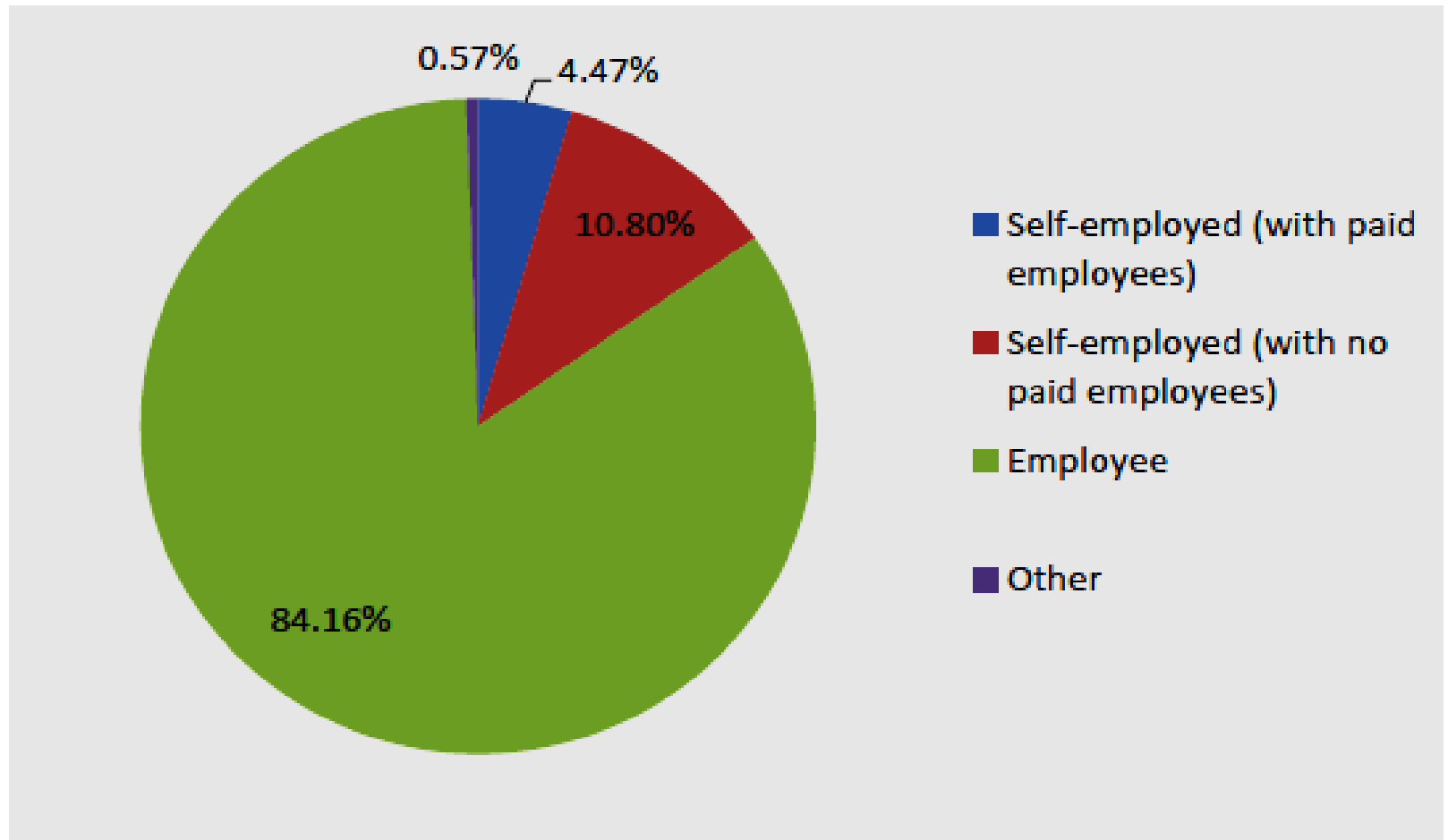
## IRELAND: EMPLOYMENT FIGURES: PART-TIME, TEMPORARY, AND SELF-EMPLOYED: 1998 - 2018



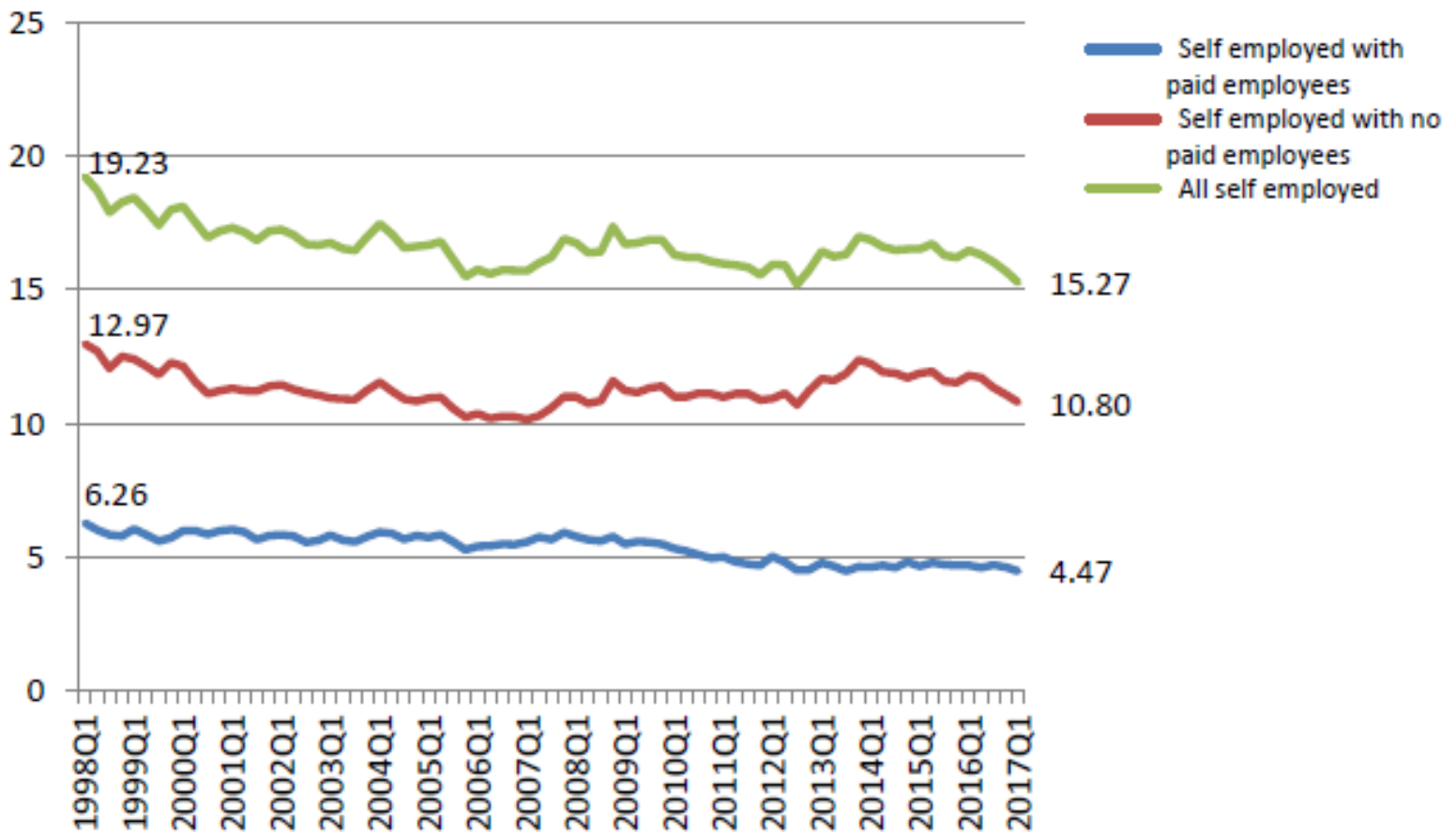
# IRELAND: EMPLOYMENT FIGURES: EMPLOYED / UNDEREMPLOYED: 1998 - 2018



## SELF-EMPLOYED – IRELAND 2017



## SELF EMPLOYED- 1998 - 2017



# SECTION 2: RESEARCH STUDIES AND POLITICAL DISCOURSE



### 3 MAIN STUDIES IN THE PAST 3 YEARS

- Study on the Prevalence of Zero Hours Contracts among Irish employers and their impact on employees (University of Limerick, 2015)
- New Forms of Employment in Ireland (Eurofound, 2015)
- Measuring Contingent Employment in Ireland (Economic and Social Research Institute, 2018)



Both Zero Hour Contracts and If and When Contracts involve **non-guaranteed hours of work**.

**zero hours contract are contractually required to make themselves available for work**

**If and When contract are not contractually required to make themselves available for work**

If and When hours arise in different forms in employment contracts. In some contracts, all hours offered to an individual are on an If and When basis.

**In other contracts, there is a hybrid arrangement whereby employees have some guaranteed hours and any additional hours of work are offered on an If and When basis.**

**University of Limerick Study**



**These types of contracts afford employers flexibility and pragmatic solutions to industry specific settings** that may require the **use of short-term staff on relatively short notice**, such as in **residential care settings or seasonal work**.

They provide **employers with the ability to respond to sudden increased demand without overcommitting financially by hiring permanent staff**.

The research suggests that there are **certain circumstances in which both employee and employer can mutually benefit from on-call staffing**. For instance, if employers were incentivised to hire on-call staff on more regular and predictable contracts in terms of working time, such as a banded hour contract for on-call employees, it might allow for the flexibility that many employers (and some employees) require, while also providing more stability for employees.

A state representative interviewee suggested that **the way toward a sustainable solution to the debate about on-call work is through attempts to ensure mutual benefit for employers and employees**.

**Eurofound**



The ESRI report suggests that the percentage of workers in **temporary employment** increased from 7.2% in 2008 to a peak of 8.7% in 2011 and has dropped back down to **7.1% as of 2016**.

Similarly, in 2008 10.3% of worker were **self-employed without employees**, rising to 11.3% through the height of the recession and coming to **10.4% in 2016**.

Over the longer term, the ESRI have **projected that by 2025 contingent employment will have increased by only 1% of total employment**, with most of that increase being driven by a rise in the number of free lancers.

**ESRI Report**



**“Bogus self-employment is a scourge of many industries, hitting the construction industry, the gig economy and the IT sector particularly hard.**

The figures that were postulated and arrived at in the study to which the Minister refers are difficult to believe. There is **very little real information on the number of people who might be in so-called false self-employment.**

The report relies on CSO figures, but the **CSO quarterly national household survey relies on self-reporting.** This means that if people tell the CSO they are employees that is how they are recorded.

For all we know, **it might be false self-employment,** but they think they are employed.”

**Willie Penrose, TD**



# SECTION 3: LEGAL FRAMEWORK



Contract of Service v Contract for Services

(Employee)

(Independent Contractor)

Implications for Taxation; Social Insurance; Employment Rights; Insolvency.



“The inference that a person is engaged in business on his or her own account can be more readily drawn where he or she provides the necessary premises or equipment or some other form of investment, where he or she employs others to assist in the business and where the profit which he or she derives from the business is dependent on the efficiency with which it is conducted by him or her.”

## **Supreme Court in Henry Denny Case**



## CODE OF PRACTICE IN DETERMINING EMPLOYMENT OR SELF-EMPLOYMENT STATUS

Purpose is to eliminate misconceptions and provide clarity. Fundamental question is whether worker is a free agent with an economic independence of the person engaging the service.



# THE CODE OF PRACTICE INDICATES THAT AN INDIVIDUAL WOULD NORMALLY BE SELF-EMPLOYED IF HE OR SHE:

- owns his or her own business;
- is exposed to financial risk, by having to bear the cost of making good faulty or substandard work carried out under the contract;
- assumes responsibility for investment and management in the enterprise;
- has the opportunity to profit from sound management in the scheduling and performance of engagements and tasks;
- has control over what is done, how it is done, when and where it is done and whether he or she does it personally;
- is free to have other people, on his or her terms, to do the work which has been agreed to be undertaken;
- can provide the same services to more than one person or business at the same time;
- provides the materials, equipment and/or machinery for the job, other than the small tools of the trade;
- provides his or her own insurance cover.



“Whether a worker is an employee or self-employed depends on a large number of factors.

The Tribunal wishes to stress that **the issue is not determined by adding up the number of factors pointing towards employment and comparing that result with the numbers pointing towards self-employment.**

It is the **matter of the overall effect which is not necessarily the same as the sum total of all individual details.**

**Not all details are of equal weight or importance in any given situation.**

**The details may also vary in importance from one situation to another.**

When the detailed facts have been established the right approach is to stand back and look at the picture as a whole, to see if the overall effect is that of a person working in a self-employed capacity or a person working as an employee in somebody else’s business. If the evidence is evenly balanced, the intention of the parties may then decide the issue. In summary there is no single test.

**Each case must be considered in the light of its own particular facts.”**

**Employment Appeals Tribunal**



# COMPETITION (AMENDMENT) ACT 2017

“False self-employed worker” defined as someone who:

- (i) performs for a person under a contract the same activity or service as an employee of that other person;
- (ii) has a relationship of subordination in relation to that other person for the duration of the contractual relationship;
- (iii) is required to follow the instructions of that other person regarding the time, place and content of their work;
- (iv) does not share in the other person’s commercial risk;
- (v) has no independence as regards the determination of the time schedule, place and manner of performing the tasks assigned to him or her; and for the duration of the contractual relationship forms an integral part of that other person’s undertaking.



**“Fully dependent self-employed worker”** defined as an individual who performs services for another person and whose main income in respect of the **performance of such services is derived from not more than two persons.**

**Competition (Amendment) Act 2017**



## RECENT INITIATIVES

- Protection of Employment (Measures to Counter False Self-Employment) Bill 2018
- Prohibition of Bogus Self-Employment Bill 2018
- Employment (Miscellaneous Provisions) Bill 2017
- Department of Employment Affairs and Social Protection Awareness Campaign (May 2018)
- Joint Committee on Employment Affairs and Social Protection (November 2018)



# SECTION 4: FINDINGS FROM QUALITATIVE STUDY



# LAW AND SOCIAL SECURITY

- The central issue that determines one's access to protection under current legislation is the definition of **relationship between the person providing labour and an employer**.
- While the majority of the interviewees agreed on the central role of this relationship, the **impact of this relationship was viewed very differently by the different organisations**. For those in **recognized employment status** the employment legislation is relatively robust. Such **workers have a floor of rights**.
- For those in **non-standard forms of employment**, this can have a wide **range of implications including access to rights and social welfare**.



# FLEXIBILISATION OF THE WORK ENVIRONMENT

- Opinion was that there had been a **perceived growth in business in the contract work area** in recent years
- The **type and quality employment varies** hugely across the employment spectrum and is largely **dependent on experience, education and expertise**.
- **Self employed high end contract workers** (e.g. IT) are highly educated, highly skilled and have chosen to take up this line of work
- **'Self employed' workers** do not benefit financially, while also do not gain from the range of benefits and security of being an employee.

"Originally flexibility was offered as a benefit to employees.... but I am **sceptical about the impact of flexibility**, as it depends on the individual... but the risk of the entrepreneur has now been placed on the individual and [moved] from the business. Unions need to make themselves relevant again to young people; to the 20 to 25-year olds" (NGO)

"What we can do is **look at the current conditions**: what are **young people earning**, **what does it buy**, what does it provide for in terms of **security**... e.g. pensions; looking at Gen X- we are not certain we want to support them in their old age?"

(NGO)



# SOCIAL PARTNERS

- The definition of one's **status** is fundamental to **how social partners can engage with an individual**.
- Most **law is based on employees rather than workers**. If not paying PRSI as not in employment contract relationship so not have access to protection of employee status, maternity leave and a range of social supports.
- Therefore, 'employees' can access machinery of WRC and labour court and access to legal supports.
- Employers who are dealing in new forms of employment tend to be new companies / actors working in areas, such as online service provision, that did not exist before and are a **result of advances in technology**; for example- Uber in the UK.
- New actors in the area are contract negotiators (many with previous union experience) who work directly for large companies.

"TU are, by their nature, are **conservative, rigid, and slow to change**; that's the nature of the beast... The **union movement needs to organise in ways that** [new forms of work] ask of us... You start building that now and direct it towards a more organising and activating trade union."

(Union)

"Now **technically at near full employment...** there is huge turnover as a result of choice ... so **companies try to encourage people to stay via the culture**; the place of **health care, pensions etc are taken with a ping-pong table.**"

(NGO).

"**New employers are 'disruptors'**. Legislation is only now beginning to catch up with this **challenge.**"

(State Agencies)



# SOCIAL DIALOGUE / COLLECTIVE BARGAINING

- The **dissolution of social dialogue and partnership** during the recession has led, at the enterprise level, to **each sector** (employer and employee organisations) '**minding its own back patch**' (Government interviewee)
- One state agency felt that they did not think that there was any social dialogue in place; "there are **informal relationships/discussion** between congress of trade unions and Ibec on some matters but no common approach" (State agency).
- "The **gig economy puts us at risk of moving into a realm where work and life are blended**: "**passion and enthusiasm [for work] are the basis of exploitation**- work should be there to facilitate life not the other way around." (NGO)
- One of the key issues in the fragmentation of a workforce is the **loss of the power of the strike**: "this is the ultimate power that workers have" (Union interviewee)



# FUTURE INITIATIVES: LEGISLATION, INITIATIVES

- Remains significant ignorance in relation to an individuals entitlements: **“having a right and being able to access it are very different things”** (Academic interviewee). Therefore **legislation ‘for the floor’ was considered critical**
- Another key challenge is the **reliability of the data**- there is a need to be built up representative statistics “in a sensible way” Academic interviewee.
- Employer organisation suggested that **“platform work by its very nature captures all information about the worker**. This data, if accessed and used effectively, is a good **opportunity to get more and more reliable data**. Unions and groups need to **use technology to organize better**.” This could for a new type of collective discourse (Employee Organisation)
- Need to **“move away from unions saying these types of contacts are bad and employers saying these are great- the truth is somewhere in the middle”** Academic interviewee
- It is critical to create **employment law structures** and that these are accompanied by a **willingness to act a local level**: “disputes settled locally- get a better outcome” (Government interview).
- **Trade unions** need to work towards **different roles and need to evolve** and be a bit more mature about their identity.
- Need to **build supports for new forms of employment around future benefits in social welfare**- or we may face a serious pension crises in 20 to 30 years.



## DEFINITION OF 'WORK'

“What is needed to recognise what is happening in the economy- **abandoning the old common law notion of master and servant** and adopt a definition of employee/worker as a **person who works for another in return for a wage** and should be regarded as part of the workforce and covered by all the regulation intended to protect people in the workforce.”

(NGO)



## ISSUE OF GENDER

“We are **sending our daughters into a workplace designed by our fathers**; so to me the traditional forms of work are patriarchal.

New forms of employment are throwing that open.

I am happy to play a part in that because **if your value is to tie someone to being in a physical location Monday to Friday 9 to 5, then you are cutting out a huge amount of the population.**

You are not taking into account.”

(Employer/Employer Organisation)

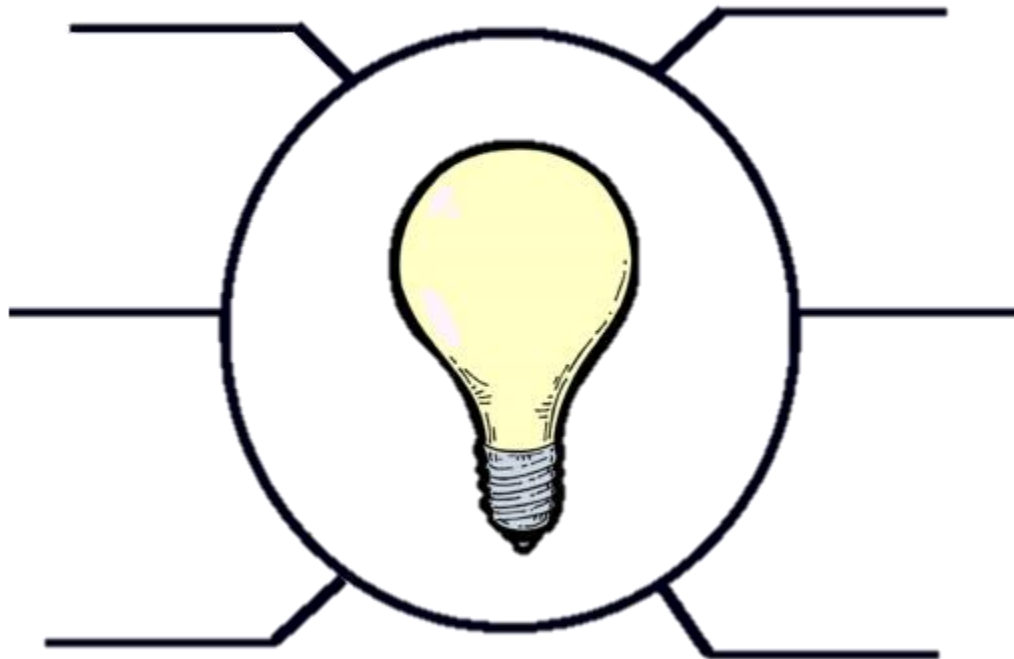


## USE OF TECHNOLOGY

- Can technology be harnessed by trade unions and employees to improve their situation as it is by employers?
- The more difficult issue to argue is non-geographically based / national projects which present a transnational challenge.
- The challenge is to differentiate between quantification of an issue in terms of numbers and legislating for basic human rights to establish a floor of protection.
- This should be done in a way that supports new business models, and also ensures the collection of appropriate taxes – which are a potential huge loss of revenue for the country.



# SECTION 5: SUMMARY



# SUMMARY

- No set of **data** that can claim representativeness about new forms of new employment.
- From a legal, policy and strategy point of view, it is imperative that the government of Ireland **legislate for all workers in Ireland**.
- This is critical to ensure that **employee rights** are upheld, and vital **funds** are not diverted from the **exchequer**.
- **Trade unions are wholly unprepared** for these forms of employment, which poses a significant risk to new forms of collective bargaining. Therefore, it is even more important that the rights of the **worker are supported by legislation**, and that all **workers are aware of their rights** and the **mechanisms by which they can exercise them**.
- This includes their employer, the WRC, access to effective union support.
- Further additions to this support are **organic networks** employing some of the same **technologies (e.g. online communications platforms)** the **gig economies** use to employ the workers.

