

INTRODUCTION TO THE IRISH LEGAL SYSTEM

Ireland (Republic of Ireland)

Official name of State	Ireland or Éire (<i>pron.</i> Air-a)
Legal Status	Independent since 1922. (Irish Free State) Most recent Constitution adopted 1937. Republic since 1949 (Republic of Ireland Act 1948)
Territory of the State	Whole island of Ireland and surrounding islands and seas excluding Northern Ireland and its offshore islands and seas.
Size	27,000 square miles
Population	4.59 million. Almost one-third of the population lives within 20 miles of Dublin City. Approx. 17% of the population was born outside Ireland, and 12% of the population is non-Irish.
Capital and Seat of Government	Dublin (c. 1 million)
Form of Government	Parliamentary Democracy, Constitutional Republic
Head of State	President Michael D. Higgins (elected 2012)
Head of Government	<i>Taoiseach</i> Enda Kenny (elected 2011)
Religion	84% Roman Catholic, 3% Church of Ireland (Anglican Protestant), 6% no religion. Remainder includes those of the Presbyterian, Pentecostal, Methodist, Muslim, Orthodox and Jewish Faiths (2011 census)
Language	Irish and English (both official languages). Most Irish people speak English on a daily basis although small pockets of the South-West, West and North-west consist of Irish-speaking communities.
Currency	Since January 1, 2002: Euro (€). Formerly the Irish pound (£) or punt.

Northern Ireland*

Official name of jurisdiction	Northern Ireland, part of the United Kingdom of Great Britain and Northern Ireland
Legal Status	Jurisdiction in U.K. since 1920 Own Government from 1920-1973, and power-sharing government 1999-2002, restored 2007
Territory of the jurisdiction	6 of the 9 counties of Ulster (Derry/Londonderry, Antrim, Down, Armagh, Fermanagh and Tyrone) and offshore seas
Size	5,500 square miles
Population	1.8 million
Capital and Seat of Government	Stormont, Belfast
Form of Government	Parliamentary Democracy, part of a Constitutional Monarchy with significant powers devolved to the jurisdiction
Head of State	Queen Elizabeth II
Head of Government	First Minister Peter Robinson, Deputy First Minister Martin McGuinness (cross-community power-sharing government)
Religion	45% Roman Catholic or brought up as Catholic, 48% Protestant or brought up as Protestant (mainly Presbyterian and Episcopalian).
Language	English is the main language of Northern Ireland. Irish, various Scots dialects, and Ulster Scots, are also used in some isolated parts of the jurisdiction
Currency	UK Pound (£) Sterling.

For more facts about Ireland see www.irlgov.ie and www.cso.ie. For more about Northern Ireland check out www.nio.gov.uk, www.nics.gov.uk and www.nisra.gov.uk

* Some of these points are politically contested although I have endeavoured to convey legally factual information as objectively as possible.

For further details on the 2011 census in the Republic of Ireland see:

<http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Table%20of%20Contents,Foreword%20and%20Appendices.pdf> and

<http://www.cso.ie/en/media/csoie/census/documents/census2011pdr/Census,2011,Highlights,Part,1,web,72dpi.pdf>

Politico-Legal History:

English Occupation: 1169-1534

Between 1169, when Norman English invaders first arrived on our shores, and 1922, significant parts of Ireland were more or less under the control of the English Crown. Initially, English influence did not extend far beyond the hinterland of the major eastern cities of Dublin and Waterford (colloquially known as ‘the Pale’). In many cases, Irish chieftains outside these cities co-operated with the English monarch, though traditional Irish Brehon laws remained in force up to the time of the Reformation (1500s+).

In 1210, King John ordained that all English laws and customs would be followed also in Ireland, though in practice this applied only to ‘the Pale’. Poyning’s Law 1494-1495 attempted to consolidate this position, stating that all laws previously passed in England would have full status also in Ireland. Following the enactment of Poyning’s Law, a law could be proposed for Ireland only if approved by the Crown, through its Irish Representative, and by the King’s Privy Council for Ireland.

The Reformation to the Act of Union: 1534-1800

Beginning with the reign of King Henry VIII, the English Crown gradually consolidated its power in Ireland. In 1542, King Henry declared himself King of Ireland (previous English Kings had been Lords of Ireland). The rebel stronghold of Ulster held out, but by the early 1600s, the last of the rebel chieftains had been defeated and had left Ireland (termed ‘the Flight of the Earls’). From that point on, England maintained control over almost the whole island of Ireland. In particular, in the wake of the defeat and departure of the last of the rebel chieftains, Protestants from Scotland loyal to King James I were settled in Ulster (of which Northern Ireland

is a part) in significant numbers. The purpose of this was, as King James saw it, to 'civilise' this once rebel province by populating it with large numbers of Protestants loyal to the King. English domination of Ireland was further consolidated by the military campaign of Oliver Cromwell in 1649-1650, crushing resistance by Irish Catholics and English royalists. In the Act of Settlement of Ireland 1652 Catholic lands were handed over to loyal Protestants. As a result, by the early 1700s, the majority of the population of Ulster was of Scottish origin and of the Protestant faith. The Dependency of Ireland Act 1719 consolidated this position further in allowing the English Parliament to legislate for Ireland.

Not everyone accepted this situation. From the mid 1700s onwards opposition to British rule mounted. Much – though not all – of this opposition was religiously motivated. Since the Reformation of 1534, most (though not all) of England had converted to Protestant Episcopalianism. Ireland, by contrast, remained largely Roman Catholic, with dissenting Protestants (those Protestants who did not accept the King's established church – these were mainly Presbyterians) forming a significant minority by the early 1700s. From the mid 1600s onwards, and despite a commitment to religious tolerance in the Treaty of Limerick, Roman Catholics and Presbyterians were discriminated against and oppressed by the 'penal laws'. This led to some considerable agitation throughout the 1700s, culminating in a failed republican rebellion in 1798.

For a brief period from 1782 to 1800 Ireland's dependency on the English Parliament was suspended, with provision made by the Dependency of Ireland Act 1782 for a very limited form of self-rule. Up until 1800, Ireland had its own Parliament in Dublin – it was, however, generally loyal to England. Not surprisingly: one could only be a member if one was male, Episcopalian and owned land.

The Act of Union to Independence: 1801-1921

In 1801, the Irish Parliament passed an Act of Union, essentially ceding its power to London. Ireland, England and Wales, and Scotland became one United Kingdom, with a centralized Parliament in Westminster, London. Thus, the whole island of Ireland, from 1801 until 1922, was part of the United Kingdom of Great Britain and Ireland, heading up in turn an empire that spanned the globe. The island, then, was

effectively under the jurisdiction of the London-based United Kingdom Parliament. Elected representatives from Ireland sat and voted as part of the Westminster Parliament in London (about one-sixth of the representatives in Parliament represented Irish constituencies). Ireland had its own Government, but it was essentially an arm of the UK Government.

Although Ireland was well represented in the UK Parliament, the London-based Government demonstrated from an early stage some ineptitude in addressing Irish issues properly and promptly. The devastating Famine of 1845-1847 highlighted the inability (some would claim unwillingness) of a London-based Government effectively to serve its Irish constituents. It was no coincidence, thus, that the post-famine era saw the rise of the Irish nationalist movement, which argued (through democratic means) for the restoration of a limited form of 'home rule' for Ireland. Home rulers envisaged a parliament in Dublin with power over most matters of relevance to Ireland, though ultimately subordinate to the Westminster Parliament. At the same time, more hardline republican elements began to regroup, agitating for a united Irish republic, with several failed sporadic rebellions throughout the 19th century. Home Rule Bills providing for Irish independence were introduced in 1886 and 1893 but failed. A Home Rule Bill was passed, however, in 1914 (Government of Ireland Act 1914) but was suspended for the duration of World War I. In the meantime, however, political conditions changed dramatically.

Easter 1916

More moderate nationalists (who favoured home rule) enjoyed majority support in Ireland for most of the 19th and early 20th century. This situation, however, changed dramatically in the middle of the First World War. In Easter 1916, a number of key buildings in the centre of Dublin were taken over by hardline republican and socialist rebels in what came to be known as the '1916 Rising'. Militarily, the Rising failed. Within a week, British forces took back control over the city. However, the ensuing execution of the Rising's leaders shifted public support considerably to more hardline republican political elements. Combined with skepticism in relation to likelihood of home rule becoming a reality and a botched attempt to introduce conscription in Ireland, Irish people became increasingly more militant. The introduction of universal franchise in 1918 allowed all men aged 21 or over to vote and allowed

women to vote for the first time. All this led, arguably, to a shift in the electorate away from more conservative home rule party.

As a result, the republican party, Sinn Féin, won the majority of Irish seats in the 1918 election (including the UK's first elected female MP). The Sinn Féin delegates refused to take their seats in Westminster but instead formed a provisional Parliament and Government in Dublin in 1919 – on the same day as the Parliament first met, a War of Independence began. The Irish forces primarily used guerilla tactics, ambushing British troops. There were serious atrocities on both sides. A truce was signed in mid-1921, leading to negotiations.

The Anglo-Irish Treaty, 1921

In December 1921, a Treaty was signed between members of the breakaway Provisional Government of Ireland and the Government of the United Kingdom. As a result of this Treaty, Ireland became a broadly independent dominion of Britain (much like Canada) called the 'Irish Free State' or '*Saorstát Éireann*'. The Treaty conferred considerable power on the new Irish state, with the new State enjoying (amongst other things) the power to raise taxes, powers in relation to justice and policing, and the power to raise an army. The two key political features of this Treaty were:

1. The Partition of Ireland. The six counties of Northern Ireland were allowed to remain within the United Kingdom and chose to do so. Northern Ireland had been established as a separate state in 1920 and by this stage had its own Parliament and Government. It chose to remain within the UK and not join the new Irish Free State.

2. The King as Head of State. The King of England remained Head of State in Ireland. He was formally head of the Government and all members of Parliament had to swear allegiance to the Crown before taking their seats in Parliament.

Foreign affairs responsibility was reserved to London, though the Irish largely ignored this requirement, building its own foreign affairs capacity from an early stage in the history of the State.

From The Free State Constitution to the Republic: 1922-1949

The Free State Constitution of 1922 replicated these features. In particular, while it declared the Irish people to be the sovereign power, it copperfastened the provisions of the Treaty by requiring that the Constitution could not in future be altered in such a way as to breach the 1921 Treaty. The Treaty, however, served to split the Republican movement in two – those who supported the Treaty, albeit with reservations and those who opposed it bitterly. Some saw the Treaty as less than ideal but as providing a platform for achieving further freedom. Others felt that the exclusion of Northern Ireland was a sellout, as were the provisions allowing the King to remain as King of Ireland.

The two key political aspects of the Treaty highlighted above especially annoyed anti-Treaty politicians (and led to a brief but tragic civil war, from 1922-23). Thus, when Fianna Fáil, the main anti-Treaty party, came to power following elections in 1932 it set about dismantling the Treaty and the Constitution on which it was based. This led to the enactment of the 1937 Constitution of Ireland (*Bunreacht na hÉireann*). The main political features of this were:

1. The assertion that the Nation of Ireland consisted of the whole island, including Northern Ireland. This effectively amounted to an assertion of a **legal claim over Northern Ireland** although one that was never formally exercised. (This claim has since been dropped consequent upon the Good Friday Agreements, 1998. In fact Northern Ireland throughout the 20th century continued and today continues to be administered as part of the UK.)

- 2. The ousting of the King of England as Head of State in Ireland.**

He was to be replaced by a democratically elected President. He was also to lose his position as Head of the Executive Branch though he

retained a formal role in relation to the conduct of Ireland's foreign relations until 1949.

Republic of Ireland 1949

Ireland formally remained part of the (British) Commonwealth of Nations until 1949. This was a community of former British colonies, which acknowledged the King of England as its figurehead. In particular, the King of England, under the Executive Authority (External Relations) Act 1936, retained a formal role in international relations involving the State, including the signing of Treaties and appointment of Ambassadors on behalf of the State. The King's role, however, was merely a formal one – the King acted on the advice of the Government. Thus, in international relations involving the State, the King remained a figurehead, with the Government effectively calling the shots.

In 1949, however, Ireland withdrew from the Commonwealth and declared itself a 'Republic', denying the King of England even the very minor role he retained in the wake of the 1937 Constitution. Under the Republic of Ireland Act 1948 the King's limited role in connection with international relations was terminated, and transferred instead to the President. Again the President's role in this regard is merely a formal one, as the President can only act on the instructions of the Government.

'Ourselves Alone': A policy of isolation

These political changes reflected a broader emphasis on sovereign rule and independent economic policy that marked the period from 1932 to late 1950s. From the 1930s, Ireland adopted what might be described as an isolationist stance on the international stage. Politically and militarily, the State declared itself 'neutral' in the Second World War and refused to participate in the war or assist either side (though informally and unofficially, the State in practice leaned towards the Allied side, the UK and US). Economically the State attempted to be as self-sufficient as possible, a near-impossibility considering the virtual lack of crucial indigenous natural resources such as iron, oil and coal. Tariffs and quotas on imports and exports fettered the free movement of trade with neighbouring countries and stifled competition in the Irish market. Ireland attempted, effectively, to be self-sufficient, politically, economically

and culturally, with mixed results. The country remained relatively poor and underdeveloped and emigration (mainly to the US and UK) remained high.

From ‘Splendid Isolation’ to Open Borders: 1950-1973

The mid to late 1950s saw the start of a serious rethink in Irish economic and foreign policy. Inward investment was greatly encouraged, with the result that U.S. and European companies started to invest in the State’s fledgling industries. Borders were gradually opened up more and more to foreign trade. Ireland had realised that – as a small country - it was simply not sufficient for it to trade with itself.

This trend broadly culminated in Ireland joining what is now called the European Union in 1973. Along with 26 other European states,¹ Ireland is now part of one of the largest political and trading blocs in the world. Member States trade freely with each other, without tariffs or other barriers to trade. EU Citizens may move and work, study and carry on business throughout the EU without significant restrictions. This has opened Ireland up to a market of over 450 million people and allowed Irish people to move, without restriction, throughout the EU for employment, study and business.

The beginning of 2002 saw the final phase of the introduction of a single currency (the Euro (€)) that seventeen EU states have adopted to date (Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, the Netherlands, Portugal, Slovakia, Slovenia and Spain). In total, over 320 million people use the Euro as their day-to-day currency. While Sweden, Denmark, the UK, and 7 Eastern European and Balkan states are not yet part of the Euro system, a number of smaller countries have formal agreements linking their currencies to the Euro, and other European countries have informally adopted the Euro as their currency or pegged their domestic currencies to the Euro. Collectively, the states using the Euro are called the ‘Eurozone’.

¹ Besides Ireland, the EU comprises Austria, Belgium, Bulgaria, Cyprus, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, The Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom.

As a result of its membership of the EU, Ireland has had to limit its sovereignty. Certain decisions that are made by the EU institutions (in which Ireland participates) automatically are deemed part of Irish law, creating rights and obligations that are as much part of Irish law as anything passed by the Irish Parliament. Where there is a conflict between Irish and EU law, EU law prevails, even over the Constitution of Ireland. That said, Ireland has on the whole benefited from this arrangement. Ireland is well represented in the various institutions of the EU, arguably even over-represented considering that it makes up only 1% of the population of the EU. Ireland has in the past benefitted significantly from EU membership. In particular, it has opened up new markets and facilitated inward investment. Politically and economically, it has allowed Ireland to move out from under the wing of UK. Up to the early 2000s, Ireland was a net recipient of a sizeable chunk of structural funds from the EU, allowing the State to improve radically our infrastructure, particularly roads and rail networks. As a result, Ireland traditionally has featured amongst the most pro-EU states in Europe, though in the past five years euro-skepticism has mounted due in no small part to our current economic experience.

Ireland in Transition: 1973-2007

Traditionally populated by a homogenous, white and largely rural people, the Irish social and cultural landscape has undergone huge changes since joining the European Union. Even as late as 1988, Ireland remained overwhelmingly conservative, with official bans on divorce, abortion and male homosexual sexual acts, and restrictions on the availability of contraception. Attendance at mass was high. Religious conformity was widespread, and racial diversity was minimal. In fact it was *emigration* rather than immigration that was the norm between 1845 and 1995, with as many as 50,000 young Irish people leaving the country every year for greener pastures. Unemployment was high - indeed, it was not unusual for unemployment rates to exceed 20%.

Between 1990 and 2007, however, Ireland experienced rapid economic growth and in tandem significant social and cultural change. Many saw the election in 1990 of Mary Robinson as President of Ireland as a catalyst for these changes. Robinson, later to become UN High Commissioner for Human Rights, was an accomplished lawyer who had campaigned on many liberal causes. This election marked what many saw

as the end of the domination of the churches (particularly the Roman Catholic Church) and a growing openness to diversity in Irish society.

Today, Ireland is characterized by growing diversity and plurality in several areas, in particular a welcome growth in ethnic diversity. Although Irish church attendance remains amongst the highest in Europe, the influence of the Roman Catholic Church (of which 84% of people in the Republic claim membership) has waned considerably since the early 1990s. Traditionally staunchly Roman Catholic, the Republic of Ireland has witnessed a notable decline in adherence to religious practices in recent years and a growth in anti-clericalism. Serious scandals in the Roman Catholic Church involving allegations of widespread physical, sexual and emotional abuse against children (and a failure to respond appropriately to such scandals) have particularly dented confidence in religious institutions and organizations. The Church's response to these incidents of abuse was initially characterized by a desire to 'cover-up' any scandal, a strategy that has toppled or tainted several bishops and has generally damaged the Church's credibility. (Though great efforts have been made to improve child protection in recent years).

Public attitudes, especially on socio-sexual matters, have liberalized considerably since 1990. In line with this relaxation of attitudes, divorce and male homosexual sexual acts have been legalized (in 1995 and 1993 respectively), and the restrictions on the availability of contraception relaxed since 1992. Employment Equality and Equal Status laws protect workers and consumers respectively from discrimination on a number of grounds including gender, race, religion, civil status (being married or a civil partner, being divorced, separated or widowed), parental status and sexual orientation. A very extensive form of civil partnership for same-sex couples became law in January 2011, while non-marital couples also benefit from legal reforms that came into force at the same time. A Constitutional Convention is currently debating reforms including the possibility of permitting civil marriage of same-sex couples.

The Economic Rollercoaster: Boom and Bust

Since the mid-1990s, Ireland's economic fortunes have also changed considerably though the last five years have seen a significant decline in our economic position. Traditionally one of the poorest states in Europe, Ireland was, between 1990 and

2007, one of the fastest growing economies in the European Union. This new, confident, economic climate was termed the 'Celtic Tiger'. From being one of the poorest states in the European Union in the mid 1970s, by the late 1990s Ireland was out-performing most developed economies. The Irish population started growing significantly, with inward migration replacing a long and steady history of outward emigration. Employment rates increased considerably. By the mid-2000s, the State had reached the point of what economists effectively consider full employment. Wages and the standard of living improved significantly, though the cost of living rose sharply in tandem. (Some commentators note also that the income gap between rich and poor widened).

A significant increase in demand for houses in the 1990s (much of it speculative) led to sharp hikes in the price of property. The cheap supply of credit (much of it from abroad) fuelled a building boom, and a property frenzy. Banks lent heavily to developers, property investors and homebuyers fuelling the boom further and increasing house prices to exorbitant levels. Irish household bought into the frenzy, borrowing sometimes up to 10 times the annual family income to invest in property in Ireland and abroad. Many bought second homes as investment properties.

The subsequent credit crunch and attendant property crash hit Ireland particularly severely. The Irish economy was, until 2007, strongly dependent on property development and construction and over-reliant on property as a source of wealth and taxation. A decade-long building boom gave way to a property slump that in turn saw ten of thousands of construction workers laid off, with knock-on effects for other industries. This in turn led to a collapse in state revenue (particularly as there was, until 2012, no general residential property tax; previously, property was only taxed when it was bought or sold). In addition to the rapid slump in income tax and capital gains tax receipts, the downturn in the property market has led to a collapse in stamp duty revenues on property purchases. (Ireland only commenced imposing annual property taxes on residential properties in 2012. A stamp duty is imposed on the purchase of a home; this does not apply to first-time buyers.)

A faltering banking sector has effectively been bailed out in four separate moves; first, by the conferral of a blanket state guarantee in respect of all monies deposited in

Irish banks, exposing the State to upwards of €400 billion in potential liability; this was followed by the nationalisation of the ‘toxic’ Anglo-Irish Bank (which loaned heavily and seemingly recklessly to property developers) – the bank was liquidated in 2013); in tandem the State’s largest bank and most other financial institutions have been recapitalised and effectively nationalised; finally, the State has established of the rather innocuously titled National Asset Management Authority (NAMA), effectively a bad bank which has taken toxic assets and loans held in Irish banks into State hands. NAMA has effectively bought up bad loans from the banks, at a discount reflecting the drop in value of the property on which those loans are secured. The idea behind this is that by freeing the banks of significant bad debts, and paying them the ‘long-term market value’ of these debts, the banks will have capital to loan money to kick-start the economy. While the NAMA takeovers have proceeded as planned, the banks remain severely undercapitalised and largely unwilling or unable to lend, with the result that credit availability remains poor. A significant number of households are in mortgage default. Property values have in some cases dropped by 50-60% in just 5 years.

By late 2010, the Irish State faced economic disaster on two fronts: annual expenditure exceeded tax revenues by €17 billion each year, while the state’s banks saw their assets deteriorate sharply and bad debts mount with increasing defaults on loans by developers and householders alike. Flagging confidence in the Irish bank system saw them haemorrhaging deposits, requiring enormous capital injections from the State. Unable to borrow at reasonable rates in the open market, the Irish state was effectively forced in November 2010 to accept an IMF-EU bailout, the result of which is that Ireland has withdrawn from regular bond markets. An €85 billion loan facility has been extended to the State accompanied by strict conditions, including requirement to cut public expenditure and increase taxes. While significant cutbacks have been made to date, growth remains stagnant, but the economic situation has stabilised in 2011 and 2012, and appears to be stabilising further this year. Ireland expects to exit the bailout and return to the bond markets later this year though the prospects for full recovery in the next 5 years are exceptionally slim. The debt to GDP ratio is still unacceptably high, personal debt levels are high, as is unemployment, while consumer spending is low and banks remain unwilling to lend.

The ordinary Irish punter has borne the brunt of the fallout, with a steep increase in unemployment (now at almost 15%), pay cuts of 5-20% for private employees, levies and pay cuts (up to 15%) imposed on public sector workers with further cuts due this year, significant reductions in the value of pensions and significant extra tax, levy and excise increases imposed in a recent State budgets. The result is that most families' incomes have diminished considerably and what discretionary income remains, families are unwilling to spend for fear of further deterioration. It remains very difficult to source credit. Historically low interest rates have given way to mounting interest costs, which has further squeezed ordinary workers.

All of the above should, however, be considered in the light of a historic legacy of deprivation that prevailed right up to the late 1980s. On the whole, Ireland is still considerably wealthier than it was up to 1980s, though very drastic action will be required to prevent further significant deterioration in economic fortunes.

THE MAIN FEATURES OF THE IRISH NATION AND STATE

Ireland is a Democracy.

The State operates according to the Rule of Law. The State cannot act in a manner that is inconsistent with the Constitution of 1937. Ireland's Constitution was passed in 1937 by a vote of the People of Ireland – the Constitution can only be changed by a further vote of the People in a referendum. The People elect both the Head of State (President) and the Legislature, the People being the sovereign power in the State.

Ireland is a Republic.

Although it is not described as such in the Constitution, Ireland is officially designated a 'Republic' by the Republic of Ireland Act 1948. The key feature of this 'Republic' is that the People of Ireland are the sovereign power, *i.e.* the People are supreme. Only the People (in referendum) can alter the Constitution of Ireland. The People elect Ireland's Head of State (the President). Republicanism in its original form presupposes that all citizens are equal before the law and equally eligible to hold high office.

Ireland is a Unitary State.

Ireland, in short, is not a federal state. There is one central, unitary Government with jurisdiction over the whole State. Although there have been some attempts in recent years (most now abandoned) to disperse government agencies and departments throughout the State, power remains heavily centralized and regional and local government powers are relatively minimal.

Ireland is, however, part of a quasi-federal Union in the shape of the European Union to which Ireland has ceded competence in a number of important areas.

Ireland is a member of the European Union

Since 1973, Ireland has been a member of what is now termed the European Union. Spanning 27 states, and with 450 million citizens the European Union is the one of the largest single economic and political unions in the world. European Union law is 'supreme', that is, it takes precedence over conflicting measures of Irish law, including provisions of the Irish Constitution. It is also often 'directly applicable' in Ireland, which means that a measure passed by the institutions of the European Union generally may be relied upon in an Irish court of law, even where it has not received the approval of the Irish Parliament.

SEPARATION OF POWERS – THE INSTITUTIONS OF STATE

Ireland's Institutions of State have been established by, and must operate in conformity with the Constitution of Ireland 1937. As in the United States, the institutions broadly fall under the headings of Legislative Branch, Executive Branch and Judicial Branch. These institutions operate according to the doctrine of the separation of the powers, although the Legislative and Executive branches are not as comprehensively independent of each other as they are in the United States. (*e.g.* in Ireland, the Executive is elected by members of the Legislature).

The Head of State

The Head of State is called the President. This is largely a formal position. While the President does have some specific powers, he is largely a figurehead elected to

represent the State on an official level. He has certain very limited powers in ensuring the observance of the Constitution of Ireland. There have been 8 Presidents since 1937, the present incumbent being His Excellency Mr Michael D. Higgins, a poet, and formerly a member of parliament (TD), Minister for the Arts, and a professor. The President is elected by the People to serve for a 7-year term. He may be re-elected for a further 7-year term but may only serve a maximum of two terms. The President must be a citizen but need not have been born in the State – for instance, the third President of Ireland, Mr. Éamon de Valera, was born in New York. Mrs. Mary McAleese, eighth President of Ireland (1997-2011), was the first president to have been born in Northern Ireland. The seventh President, Mrs. Mary Robinson (1990-1997) also served as UN High Commissioner for Human Rights. See www.president.ie for further details

Talking point: Two of our Presidents have been women and two, including the first President, were Protestant, in a state that is overwhelmingly Roman Catholic.

The Legislature (Parliament)

The *Oireachtas* (pron. Eer-ock-tas) is Ireland's State Parliament. It consists of two Houses, a House of Representatives called *Dáil Éireann* (pron. 'Doyle Air-an') and a Senate, called *Seanad Éireann* (pron. 'Shan-ad Air-an'). A member of the Dáil is called a '*Teachta Dála*' ('TD') or a 'Deputy'. A member of the Senate is a '*Seanadóir*' or Senator. The current members of the Dáil and Seanad were elected in February 2011.

There are 166 members of the Dáil, directly elected by the population at large at least once every 5 years. TDs are elected by means of proportional representation from 43 multi-seat constituencies.

Senators, on the other hand, are 'indirectly elected'. There are 60 senators in all. 43 senators are elected by members of local government (themselves elected councillors) and incoming members of the Dáil together with outgoing members of the previous Seanad. 3 more are elected by graduates of the National University of Ireland, (effectively four universities: University College Dublin, University College Cork,

NUI Galway and NUI Maynooth), and a further 3 by graduates of the University of Dublin (Trinity College). The incoming Prime Minister (Taoiseach) appoints the remaining eleven members. This means effectively that the new Taoiseach usually has majority support in the Senate.

Of the two houses, the Dáil is clearly the more powerful, in matters of legislation, finance, international affairs and in the supervision of the Government alike. It can overrule the Seanad in relation to legislation and, in particular can pass legislation not approved by the Seanad (though the latter may delay the legislation by 90 days). The Seanad can introduce legislation and amendments to proposed legislation, but the Dáil can overrule the Seanad and veto these measures. By contrast, the Seanad cannot veto legislation approved by the Dáil. It may only delay legislation. The Seanad has very little say in relation to money bills, which are the province of the Dáil. The Seanad may make recommendations in relation to money bills, but the Dáil may ignore these recommendations. See www.oireachtas.ie for further details.

Talking point: Should the Senate be abolished? Many Irish people see it as an expensive talking shop, though individual senators are much admired, and the quality of debate is often viewed as superior to that in the Dáil. The current Taoiseach (Prime Minister) has proposed that the Senate be abolished at the end of the current term, leaving Ireland with a unicameral assembly, though this will require a constitutional referendum due at the end of this year.

The Executive (Government)

The Executive of a State is responsible for carrying laws passed by Parliament into effect and for administering the operation of the State. In Ireland, the Executive is also responsible for foreign affairs and international agreements. The Irish Executive consists of a 'Government' of, at most, 15 members. Unlike the United States, where the head of the Executive (President) is elected by the States through an electoral college system, the head of the Executive in Ireland (though formally appointed by the President) is effectively selected by the members of the lower House of Parliament, the Dáil. The head of the Executive is called the 'Prime Minister', or

more commonly the '*Taoiseach*' (pron. Thee-shock). The current Taoiseach is Mr. Enda Kenny. His deputy or *Tánaiste* (pron. Thaw-nish-tha) is Éamon Gilmore. The Taoiseach is technically appointed by the President but it is effectively the members of the Dáil who decide who will serve as Taoiseach. The Taoiseach and Government are answerable to the Dáil. See www.taoiseach.gov.ie/ for further details on the office of Taoiseach.

After his or her appointment by the President, the Taoiseach chooses his or her cabinet of Government Ministers. Unlike the US – where the President selects Government department heads - all Government Ministers in Ireland are drawn from the Houses of the Oireachtas. In other words, the members of Government must also be members of Parliament. Most members of the Government will also be TDs, though at any one time up to two Senators may be appointed to Government. This has only happened twice in Irish history. Notably, Senators may not hold the position of Taoiseach, Tánaiste (Deputy Prime Minister) or Minister for Finance.

Because the Dáil elects the Taoiseach, the Taoiseach and his Government are directly responsible to the Dáil for their activities. The Dáil may at any time dismiss the Taoiseach, and so a Taoiseach and his Executive depend for their political survival on the continued support of TDs.

Coalition Governments

Because of the proportional representation system of election in Ireland it is rare that one political party will gain a majority of the Dáil. As a result, most modern governments are 'coalition governments' supported by more than one political party. Given Ireland's electoral system, it is unusual for any party to gain a majority in Parliament without the support of one or more of the smaller parties, forming 'coalition governments'. Since 1989, no one party has been able to form a government on its own.

The current Government is made up of Fine Gael (a centre right party) and Labour (on the centre left) who together hold more than two-thirds of the seats in the Dáil. The immediately preceding Government also consisted of two political parties, Fianna

Fáil and the Green Party, supported by a number of independent and unaligned TDs, though the support of the independents was not always guaranteed.

Talking point: The Irish Proportional Representation system allows Irish voters to vote for candidates in order of preference. Each voter has a ‘single transferable vote’. This allows voters to rank their candidates, giving a ‘no. 1’ to their favourite candidate, a ‘no. 2’ to their second favourite and so on. Theoretically, an Irish voter could give preferences to all candidates on the ballot sheet, the idea being that if your favourite candidate does not get elected, (or if your favourite candidate gets selected with more votes than needed) your vote will be transferred to your next second or subsequent choice.

Political Parties

Up until 2011, there were two dominant parties in the Irish political realm – Fianna Fáil and Fine Gael (formerly ‘Cumann na nGaedhal’). All Irish Governments to date have been led by one or other of these two parties. Ideologically, these parties are quite similar, both being moderate to centre right, though nowadays Fine Gael tends to be slightly further to the right, socially and economically. Fianna Fáil is traditionally a centrist, broad-based, pragmatic and populist party, with strong links to business interests.

This party split, however, has very little to do with ideology and instead dates back to the Civil War of 1922-3. The predecessors of Fine Gael supported the 1921 Treaty, while Fianna Fáil comprised traditionally anti-Treaty elements. Until recently, party allegiances were also traditionally strong – whole families are known to have voted Fianna Fáil or Fine Gael for generations – though younger voters are typically more independent-minded. The 2011 election in particular saw a significant shift in traditional allegiances.

Up until 2011, Fianna Fáil was the largest party in the state, a position it had held since 1932. From 1932 until 2011, Fianna Fáil generally had the upper hand in Irish politics, and in particular held power for significant periods of time. Until February 2011 Fianna Fáil had been in Government for 23 of the previous 30 years. It was once

said to be the most consistently successful party in European politics. In the 2011 election, however, Fianna Fáil lost heavily, hemorrhaging seats. Voters blamed the once dominant party for mismanaging the economy, allowing the banks to go unmonitored for so long, dithering when decisive action was required and underwriting the banks' debts, effectively converting private bank liabilities into sovereign debt. Poor communications and inertia in the wake of economic disaster saw the party's support plummet. In recent polls, however, Fianna Fáil support has improved though it is unlikely to return to the kind of dominance it experienced in the past.

Today, the Dáil consists of the following main parties:

- *Fine Gael* (pron. 'Finna Gwail') – 75 TDs (this includes the Speaker of the House, who is technically independent but is required to vote with the Government in the case of a tie). A moderate centre-right nationalist party, socially moderate to conservative, pro-business – www.finegael.ie; Leader: Enda Kenny
- *Labour* – 33 TDs - moderate left-wing, socially liberal, pro-union/worker – www.labour.ie; Leader: Éamon Gilmore
- *Fianna Fáil* (pron. 'Fee-anna Foyle') – 19 TDs Originally, the anti-treaty party. Moderate centrist republican party, pro-social partnership, broad appeal, socially moderate, relatively populist though closely linked to business interests. Has been in Government for 23 out of the past 30 years – www.fiannafail.ie. Leader: Taoiseach, Mícheál Martin
- *Sinn Féin* – 14 TDs – radical, left-wing, socially liberal, republican. Political wing of the former IRA (Irish Republican Army). www.sinnfein.ie Leader: Gerry Adams
- *United Left Alliance* – 5 TDs – a radical, left wing, socially liberal party, made up of 3 smaller socialist parties
- *Independents or unaligned* - 21 (includes several former Government supporters who have lost the Government whip)

Breakdown of Parties in Dáil (current):

Fine Gael	Centrist, Irish Nationalist	75* (2007: 51)
Labour	Centre Left, Social Democrats	33 (2007: 20)
Fianna Fáil	Centrist, Irish Republican	19 (2007: 77)
Sinn Féin	Left, Irish Republican, Socialist	14 (2007: 4)
United Left Alliance	Radical Left, Socialist	5 (2007: 0)
Independents		21 (2007: 5)

(In the 2007 elections, the Green Party won six seats and the Progressive Democrats, a centre right party, won two. The Greens lost all six seats in the 2011 election, while the Progressive Democrats disbanded before the election).

***Includes the Speaker of the House**

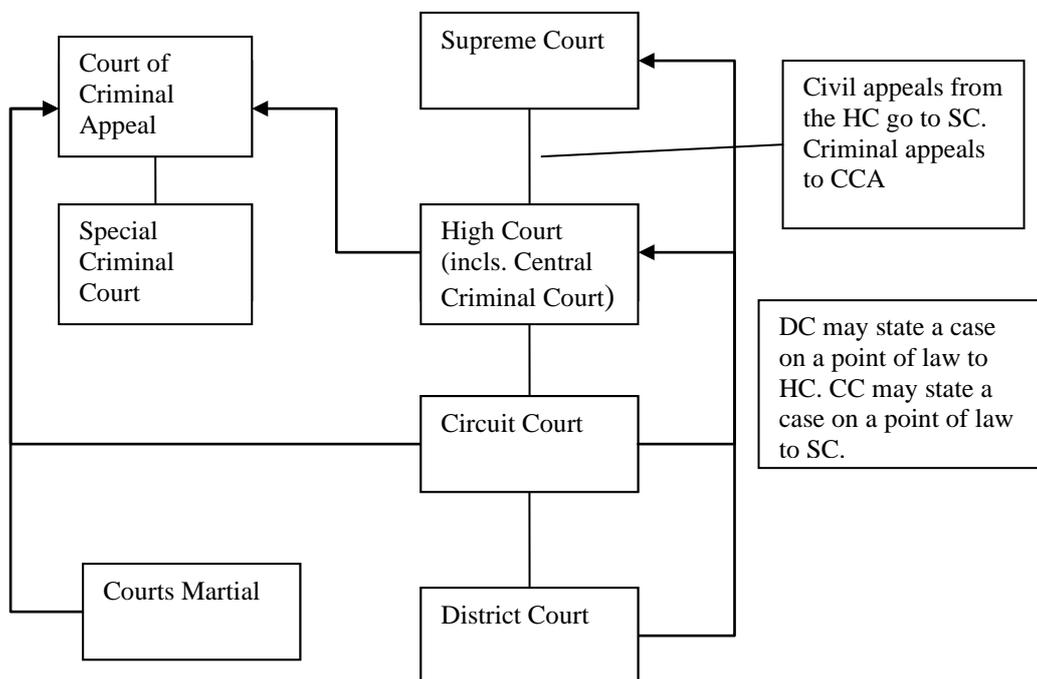
Breakdown of Parties in Seanad (current):

Fine Gael	Centrist, Irish Nationalist	20
Fianna Fáil	Centrist, Irish Republican	14
Labour	Centre Left, Social Democrats	11
Sinn Féin	Left, Irish Republican, Socialist	3
Independents		11

Talking point: The 2011 election saw a dramatic change in the fortunes of the political parties. Fianna Fáil, for nearly 70 years the largest party in the state, saw its vote collapse, losing more than two-thirds of its seats. Fine Gael and Labour made significant gains, as did independents. Left wing parties also made significant gains, signaling a significant shift to the left in the Irish political spectrum. On the other hand, the Green party – who had former a Government with Fianna Fáil in 2007 – saw its support plummet with the result that it lost its full complement of seats in both Houses. The previous 2007 election had seen the demise of the Progressive Democrats, a centre right pro-business party that had had a strong influence on Ireland’s economic policy for over a decade.

Polls show Fine Gael continuing as the party with most political support, though their Labour coalition partners have fared poorly in recent polls. Support for Fine Gael and the Government have declined in recent polls, but voters seem to be blaming Labour most for recent austerity measures. Polls have shown Fianna Fáil regaining support but Sinn Féin is fast becoming the 'party of opposition' with growing support particularly amongst working class voters.

THE COURT SYSTEM IN IRELAND (BASIC)



The Courts (The Judiciary)

The Supreme Court. The Court of Final Appeal is called the 'Supreme Court'. This is the highest court in the land. Except in two specified cases, the Supreme Court may only hear cases on appeal, in other words after they have been heard in a lower court. An appeal basically involves a challenge to the correctness of the lower court's decision. An appeal to the Supreme Court, however, is usually limited to legal argument. The Supreme Court does not usually entertain challenges to decisions on the facts of a case, unless it is clearly established that the lower court made a decision that no reasonable judge could have made.

The Supreme Court has 8 judges in all, including the Chief Justice, (currently Mrs. Justice Susan Denham), the highest judicial position in the land. Ordinarily the Supreme Court sits in groups of 3 or 5 judges, but at least 5 judges must be present when considering the constitutionality of an Act or of a Bill under Article 26. In addition, not less than five judges must be present when a question arises as to the President of Ireland's permanent incapacity (see Article 12.3). It has also sat occasionally in groups of 7.

Ordinarily the Supreme Court may only hear a case after it has been heard in another Court. There are, however, two situations in which the Supreme Court has original jurisdiction, that is, where it can hear a case that has not been before another court.

- The first situation is where, under Article 12.3 of the Constitution, it is alleged that the President has become permanently incapable of performing his or her job. The Supreme Court alone considers such a case.
- The second scenario arises under Article 26 of the Constitution, where the President may refer a Bill directly to the Supreme Court in order to test its constitutional validity.

The High Court. The main Court of First Instance is the High Court. Article 34.3 of the Constitution gives the High Court the full power ('full original jurisdiction') to determine all judicial matters and questions, whether of law or fact, civil or criminal. These powers include the right to determine the constitutional validity of any law. In fact, only the High Court or Supreme Court on appeal may consider such constitutional questions. The constitutional validity of a law may not be questioned in any other Court.

The High Court currently consists of 37 judges, though this number is frequently varied, as well as a President of the High Court. The Chief Justice of the Supreme Court is also technically a judge of the High Court. Each judge usually sits alone, although it is possible to form a 'Divisional High Court' consisting of an odd number of judges in certain rare circumstances. There is a President of the High Court who is responsible for the overall running of the Court and the allocation of work amongst

judges. The High Court ordinarily sits in Dublin though some High Court judges may tour 'on circuit' and sit in other parts of the State on a temporary basis.

The Lower Courts. Article 34.4.4 of the Constitution also provides for the establishment of courts of local and limited jurisdiction. The main courts in this category are the District Court and the Circuit Court. The Circuit Court currently consists of 37 judges (not including the President of the Circuit Court), with responsibilities divided between eight geographical 'circuits'. The Circuit Court is fast becoming one of the most important courts for family law hearings, with most divorce and judicial separation proceedings being held in this Court. The Circuit Court may also hear contract and tort cases involving (unless otherwise agreed) claims of sums of no more than €38,092 (defamation cases up to €50,000). This maximum figure is due to be increased to €75,000 by the Courts Bill 2013. The Circuit Court's criminal jurisdiction extends to most non-minor offences, with the result that criminal cases in the Circuit Court are usually held in front of a jury. In addition to its original jurisdiction, the Circuit Court may hear appeals from the District Court.

The District Court is the lower of these two courts. It has jurisdiction to hear minor criminal offences (without a jury), contract and tort cases involving sums not more than €6,350 (due to be increased to €15,000) and other miscellaneous matters, such as the renewal of liquor licences. There are currently 64 District Court judges (including the President of the District Court), allocated to 24 districts throughout the State.

Other Courts. In addition to the four main Courts noted above, there is a variety of other courts with specialised jurisdiction:

- The Small Claims Court hears cases involving relatively minor legal disputes, usually involving less than €2,000 in damages.
- In the arena of criminal law, there are two additional courts, the Special Criminal Court, which hears cases that cannot, for security reasons, be heard in the ordinary courts, (these cases are heard without juries) and the Court of Criminal Appeal, which hears appeals from the other criminal Courts. The Special Criminal Court is used to try cases involving suspected terrorists and

alleged members of organized criminal gangs, where there is a fear that juries will be intimidated into findings of not guilty. See www.courts.ie for further details