



Uncapped: The Legal risks of removing the passenger cap at Dublin Airport

May 2026

Background

Dublin Airport's passenger cap was introduced almost 20 years ago as one of the conditions attached to planning permission for the construction of Terminal 2. Dublin Airport handled approximately 36.4 million passengers in 2025, setting a new traffic record and underscoring the gap between operational reality and the existing 32 million limit.

On 10 February 2026, the Irish Cabinet approved priority drafting of the Dublin Airport (Passenger Capacity) Bill, (the "Cap Repeal"), 2026, which would give the Minister for Transport the authority to amend or revoke the airport's 32 million annual passenger limit. When passed, the Bill will also preclude any future passenger cap from being introduced. The Cap Repeal Bill is currently undergoing its final drafting stages and pre-legislative scrutiny.

The proposed "Cap Repeal" raises serious and wide-ranging legal concerns that policymakers and the Minister cannot afford to overlook. Critically, the Bill as currently drafted proposes to exempt the Minister from the obligations set out in Section 15 of the Climate Action and Low Carbon Development Act 2015, effectively removing key national climate commitments from the decision-making process.

Opportunity Green commissioned a legal opinion from barrister Tim Johnston of Brick Court Chambers, which finds that this exemption does not absolve the Irish government of its broader climate obligations. Notwithstanding the inapplicability of Section 15, the government remains bound by a range of overlapping legal frameworks, including Ireland's human rights obligations under the European Convention on Human Rights, its legally binding national and international climate targets, and the requirement to carry out a comprehensive Environmental Impact Assessment that adequately accounts for the climate consequences of the Cap Repeal. The significant greenhouse gas emissions associated with lifting the cap will compound Ireland's already well-documented failure to meet its climate mitigation targets, exposing the government to a credible claim that it is

in breach of Article 8 ECHR, the right to protection of private and family life, by failing to shield its citizens from the health impacts of the climate crisis.

This briefing sets out these legal risks in detail, and examines the additional concerns raised by the Cap Repeal for local communities living near the airport, whose constitutional and human rights stand to be significantly affected.

Legal obligations linked to the climate impacts of the Cap Repeal

The Cap Repeal bill does not include a limit on how high passenger numbers could go, with the Minister for Climate, Energy, Environment and Transport, Daragh O' Brien suggesting passenger numbers could rise to over 60 million. It is predicted that lifting the passenger cap to just 40 million passenger journeys per year would increase flight emissions by 24%, representing an extra 580,495 tons of CO2 equivalent emissions by 2034, almost a quarter higher than if the cap remained at the current level.¹ Despite this worrying contribution to the climate crisis, the Bill currently proposes to relieve the Minister of any obligation to have regard to Section 15 of the 2015 Act. This means that key Irish climate policies, including the national transition plan and the climate change and greenhouse gas emissions mitigation objective, have no *direct* application to any decision to repeal the Cap.

The proposed exemption from the provisions of section 15 of the 2015 Act does not mean that the Irish government is legally absolved from accounting for the enormous climate impacts caused by the Cap Repeal. The Irish government indeed has an obligation:

1. To protect under the ECHR its citizens from harm to their health and well-being by adopting ambitious climate mitigation laws;
2. To meet its climate targets, including as laid down in its Nationally Determined Contribution (NDC);
3. To account for the climate impacts of any project which leads to significant emissions.

A breach of such obligations would expose the government to significant litigation risks.

Ireland's human rights obligation to protect its citizens from the climate crisis

The Cap Repeal would aggravate the persistent and widening gap between Ireland's climate commitments, as laid down under national law and international agreements, and the undermine the state's efforts to act in line with these commitments. The 2015 Act (as amended) articulates a national commitment to meeting the Paris Agreement's objective and Ireland's fair share of climate action to limit global warming to 1.5 degrees Celsius.

¹ Karen Creed, Colman O'Sullivan, and Paul Cunningham 'Legislation to remove Dublin Airport passenger cap expected soon' (RTÉ News, 14 September 2025) <<https://www.rte.ie/news/2025/0914/1533419-dublin-airport/>> accessed 18 May 2026.

Ireland's national target is to reduce emissions by 51 per cent by 2030 compared with 2018.

However, despite these ambitious commitments, the Minister for Climate, Energy, Environment and Transport, Darragh O' Brien stated in January 2026 that instead of reaching its legally binding target of 51% reductions in GHG emissions Ireland is projected to reach the mid to high 20% in emission reduction until the end of the decade.² This situation exposes the Irish government to legal action, as it is now clear that European citizens have a right to be protected by their governments from the adverse consequences of the climate crisis, and that failure from a government to do so constitutes a breach of Article 8 ECHR. Such principle can be found in recent landmark rulings from the European Court of Human Rights³ and the Dutch Supreme Court,⁴ where the link between human rights law and the climate crisis is clearly established and where European governments have been found to fall short of their legal obligations due to the lack of ambition of their climate action.

The obligation on the Irish government to adopt ambitious climate mitigation measures is reinforced by the recent International Court of Justice ('ICJ')s Advisory Opinion on state obligations with respect to climate change. The ICJ found that every country must use '*all the means at its disposal*' to adopt measures to prevent domestic and transboundary harm from GHG emissions under customary international law, which necessarily includes emissions from aviation. The ICJ was clear that fossil fuel consumption (in addition to fossil fuel exploration and extraction) falls under States' mandate to exercise due diligence in preventing significant harm to the environment.⁵

In light of this recent jurisprudence, barrister Tim Johnston found in the context of the Cap Repeal that '*it is at least possible to argue that: (a) Ireland is in breach of its own targets in relation to GHG mitigation; (b) it is behind other states in this respect; (c) it has failed to meet its previous targets as regards GHG mitigation; (d) the Government is subject to a positive obligation to ensure that its citizens do not suffer harm to their health and well-being; (e) the above failures have breached that obligation; and (f) the decision to lift the Cap – and in doing so to circumvent the existing statutory obligations in relation to climate change mitigation – is a breach of Article 8, when placed into the above context.*'

The Cap Repeal would increase the risk that Ireland could be subject to litigation under Article 8 ECHR for its failure to protect its citizens from the harm linked to the climate crisis, due to its insufficient mitigation of national greenhouse gas emissions.

² Harry McGee, 'Ireland will miss emissions-cut target by half, says Minister for Climate Darragh O'Brien,' (*The Irish Times*, May 2026) <<https://www.irishtimes.com/politics/2026/01/07/ireland-will-miss-emissions-reduction-target-by-half-says-obrien/>> accessed 18 May 2026.

³ *Verein KlimaSeniorinnen Schweiz and Others v Switzerland* [2024] ECtHR 304 (Application no. 53600/20) <[VEREIN KLIMASENIORINNEN SCHWEIZ AND OTHERS v. SWITZERLAND](#)>.

⁴ *State of the Netherlands v Urgenda Foundation* [2019] Supreme Court of the Netherlands <[ENG-Dutch-Supreme-Court-Urgenda-v-Netherlands-20-12-2019.pdf](#)> (unofficial English translation).

⁵ Obligations of States in Respect of Climate Change (Advisory Opinion) [2025] ICJ, [427-428] <[Advisory Opinion of 23 July 2025](#)>.

The impact of the Cap Repeal on Ireland's ability to meet its climate targets

The legal obligation for the Irish government to meet its climate targets, including as laid down in its Nationally Determined Contribution (NDC) and the national transition objective set out in the 2015 Act, is not absolved by the fact that section 15 of the 2015 Act currently does not apply to the Cap Repeal.

As stated by Tim Johnston, *'The exemption of the Bill from the provisions of section 15 of the Act of 2015 will create significant adverse consequences for Irish policymakers. They will be obliged to have regard to s. 15 and to do so in light of the fact that the Cap has been lifted. It may be that subsequent infrastructure decisions, whether taken by local or national government, will be constrained by the effects of the lifting of the Cap. Other mitigation measures (whether in relation to the airport or more likely other infrastructure decisions) that the government might well regard as undesirable may become necessary because of the consequences of 'carving out' this one decision from the scope of the 2015 Act.'* (...) *'Ireland's future mitigation plans, carbon budgets, planning decisions and noise mitigation plans will all have to take account of this decision. Put another way, all the elements in s. 15 will still have to be taken into account, but that consideration will be by other decision-makers at a later point: the extent of their discretion and ability to make strategic decisions about infrastructure and planning will be considerably narrowed.'*

Obligation to carry out a comprehensive climate impact assessment in the EIA

The disapplication of section 15 of the 2015 Act to the Cap Repeal directly impacts Ireland's climate targets, as the significant emissions associated with the Cap Repeal will significantly constrain the margin of discretion of public authorities to make strategic decisions about future infrastructure.

Section 15 of the 2015 Act lays down an obligation for public authorities to consider the Irish national transition plan and the objective of mitigating climate change and greenhouse gas emissions as part of their decision-making process. However, because the Bill proposes to relieve the Minister from this obligation, we consider that any EIA conducted under the Bill's current framework would not comprehensively and adequately assess the climate impacts of the Cap Repeal.

This situation exposes the Bill to significant litigation risks due to the growing consensus in Europe that EIAs for high-emitting projects must account adequately for the climate impacts of said projects. The European Court of Human Rights, building on previous

precedents set by the UK Supreme Court⁶ and the European Free Trade Association (EFTA) Court,⁷ found in *Greenpeace Nordic and Others v Norway*,⁸ that:

- EIAs must provide a “comprehensive assessment of the effects of the anticipated petroleum production on climate change, comprising, among other things, the assessment of combustion emissions” [335].
- Such EIAs “should assess the possible downstream effects of activities contributing to GHG emissions, based on the best available science”.⁹ This finding stems directly from the ICJ’s Advisory Opinion, which found that an inadequate environmental risk assessment of the possible downstream effects of a project qualify as a failure to exercise due diligence in preventing significant harm to the environment.¹⁰
- Scope 1 to 3 emissions must be accounted for in the EIA, regardless of whether those emissions are considered in respect of any other projects.

In his legal opinion, Counsel Tim Johnston found that ‘*Whilst these findings were in respect of fossil fuel extraction projects they arguably apply by analogy to airport expansion projects, particularly when taken with the ICJ’s wide interpretation of States procedural obligations to conduct an EIA assessment for any proposed activity which poses a risk of significant transboundary harm*’.

Any EIA carried out in the context of the Cap Repeal must therefore include all CO₂ and non- CO₂ emissions from arriving and departing flights in its assessment, or present significant risks of being challenged in court.

Impacts on local communities

The Cap Repeal will almost certainly have significant impacts on local communities living near the airport, including due to noise associated with additional take-offs and deterioration of air quality.

Local residents have already brought a number of judicial review claims in relation to the airport, focusing on noise pollution and water emissions. These claims highlight the existing concerns among local communities linked to the airport’s operation; concerns which will only be heightened after the Cap Repeal.

⁶ *R (Finch) v Surrey County Council* [2024] UKSC 20 <[R \(on the application of Finch on behalf of the Weald Action Group\) \(Appellant\) v Surrey County Council and others \(Respondents\)](#)>.

⁷ Case E-18/24 *The Norwegian State v Greenpeace Nordic, Nature and Youth Norway* (Advisory Opinion) [2025] EFTA Court <[eftacourt.int/download/18-24-judgment/?wpdmdl=10625](#)>.

⁸ [2025] (Application no. 34068/21) <[GREENPEACE NORDIC AND OTHERS v. NORWAY](#)>.

⁹ *Ibid*, [324].

¹⁰ *Obligations of States in Respect of Climate Change* (Advisory Opinion) [2025] ICJ, [295–298] <[Advisory Opinion of 23 July 2025](#)>.

Breach of local residents' constitutional and human rights

Legal pressure is mounting across Europe to protect local communities against the adverse effects of airports' noise and air pollution. In the Netherlands, the Hague District Court found in 2024 that the Dutch government had failed to protect local residents living near Schiphol airport from noise pollution. The Court found that the government acted unlawfully by failing to adequately balance the economic interests linked to airport growth with the citizens' human rights as protected under Article 8 ECHR, and therefore gave the government 12 months to enforce applicable laws and regulations around noise pollution and to give affected individuals 'a form of practical and effective legal protection that is accessible to all seriously affected and sleep-disturbed individuals'.¹¹

In a similar manner, the Cap Repeal could be challenged because of the disproportionate interference noise and air pollution have on local residents' constitutional and human rights, and in particular:

- Irish citizens' property rights as protected under Article 40(3) of the Irish Constitution;
- Irish citizens' right to private life, relying on Article 8 of the ECHR (made part of domestic law via the 2003 Act).

On noise impacts specifically, we note that the Bill does not anticipate any assessment of noise impact. Rather, any noise mitigation consequences are pushed 'downstream' to the local planning authority, which may impose restrictions (in the exercise of its general planning powers) but cannot limit passenger numbers at the airport. In light of the above jurisprudence, we consider that this approach could fall short of the Irish government's obligations under Article 8 ECHR.

Right of affected local residents to be consulted

Local residents could bring a judicial review to challenge the Cap Repeal within 8 weeks of the making of the . Such a case could be successful if the resident is able to demonstrate the Cap Repeal substantially impacts its property rights or right to private life, notably due to the lack of restrictions on noise levels.

As detailed above, the Cap Repeal is likely to directly interfere with rights of local residents to the airport, including:

¹¹*Stichting Recht op Bescherming tegen Vliegtuighinder (RBV - Foundation Right to Protection Against Aircraft Noise) v. The State of the Netherlands (Ministry of Infrastructure and Water Management)* [2024] The Hague District Court <[ECLI:NL:RBDHA:2024:3734, Rechtspraak Den Haag, C-09-632625-HA ZA 22-610](#)>.

- the Constitutional right laid down in Article 40(3) of the Irish Constitution to have the State protect the property rights of every citizen;
- the right to peaceful enjoyment of possessions (under the European Convention on Human Rights (ECHR) Act 2003),
- the right to a private life as protected under Article 8 ECHR.

Under Irish law, when a decision interferes with these rights affected residents must be consulted.¹² Tim Johnston found that the very narrow route for assessments provided in the Bill under Heads 6–8 are unlikely to satisfy the obligation to consult local residents: *'The various assessments in Heads 6–8 are unlikely to be sufficient to meet that common law obligation, in particular because if the screening assessments are negative, there will be no opportunity to make representations at all.'*

Given the likely significant interference of the removal of the cap with the rights of individuals living near the airport, Opportunity Green considers that there would be a significant risk that the Cap Repeal would be subject to a procedural challenge due the failure to consult local residents.

Conclusion

The proposed Cap Repeal carries profound and far-reaching legal risks that the Irish government cannot afford to ignore. As set out above, and based on the legal opinion of Tim Johnston, the Bill as currently drafted exposes decision-makers to significant litigation on multiple fronts: from Ireland's failure to meet its legally binding climate targets and its obligations under the ECHR, to the inadequacy of the proposed environmental impact assessment framework and the violation of the rights of local communities.

The disapplication of Section 15 of the 2015 Act does not absolve the government of its climate obligations, it merely defers them, narrowing the discretion of future decision-makers and creating downstream consequences for planning, infrastructure, and carbon budgeting across the board.

In light of recent landmark rulings from the ECtHR, the Dutch Supreme Court and the ICJ, the direction of travel in climate and human rights jurisprudence is unambiguous. Governments that fail to act ambitiously on climate, or that push the consequences of high-emitting decisions onto future policymakers and communities, increasingly face successful legal challenge. Ireland is not immune to this trend.

¹² Hogan, Morgan and Daly, *Administrative Law in Ireland* (9th edn) [15–141].

Opportunity Green urges the government to revisit the Bill's current framework to ensure it is consistent with Ireland's domestic and international legal obligations, protects the rights of citizens and local communities, and provides a robust and comprehensive assessment of the climate impacts of any decision to lift the Dublin airport passenger cap.

About Opportunity Green

Opportunity Green is an NGO working to unlock the opportunities from tackling climate change using law, economics, and policy. We do this by amplifying diverse voices, forging ambitious collaborations and using legal innovation to motivate decision makers and achieve climate justice.

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