



AN BILLE UM SHÁBHÁILTEACHT IARNRÓID, 2001
RAILWAY SAFETY BILL, 2001

EXPLANATORY AND FINANCIAL MEMORANDUM

Introduction

The main purpose of this Bill is to introduce a new regulatory framework for railway safety which will apply to all railways to which the public has access (such as the Iarnród Éireann network, the proposed LUAS and Metro lines and heritage railways), and to those parts of industrial railways which have a connection to the public railway network or cross a public road.

In this regard the Bill provides for:

- the establishment of an independent Railway Safety Commission (the “Commission”) with wide-ranging powers of inspection, investigation and enforcement;
- the transfer of railway safety regulatory functions currently in force from the Minister for Public Enterprise to the Commission;
- a general duty on all railway undertakings to ensure, in so far as is reasonably practicable, the safety of persons in the operation of their railways;
- a general duty on the staff of railway undertakings and on other persons that in carrying out an activity they do not pose a danger to persons using the railway;
- a requirement on railway undertakings to implement safety management systems and to describe, in a document called the “safety case”, how they manage safety in all of their activities, including the identification of risks arising from such activities and the measures in place to mitigate and manage those risks;
- a duty on specified classes of persons involved in the operation of a railway undertaking not to be under the influence of intoxicants while at work and a requirement for certain railway undertakings, in consultation with their staff and staff representatives, to introduce a code of conduct in relation to intoxicants and the procedures for the taking of samples.
- the investigation of railway incidents by railway undertakings, the Commission, or a Tribunal of Inquiry;
- the establishment of a Railway Safety Advisory Council with membership drawn from all areas of the railway sector, including persons representing the public interest and the interests of mobility impaired persons.

Provisions of the Bill

Part 1 — Preliminary

Section 1 deals with the short title of the Bill.

Section 2 defines the various terms used in the Bill.

Section 3 gives instructions regarding the laying of orders and regulations before the Houses of the Oireachtas.

Section 4 provides that the Bill will apply to all railway undertakings, including light railways and metros, and to sections of industrial railways which have an interface with a public road or other railway, and to such other railways as may be specified by the Railway Safety Commission where it deems it appropriate to do so in the interests of the safety of persons.

Section 5 provides for the repeal of certain provisions in other railway enactments.

Section 6 provides that the expenses incurred by the Minister in the administration of this Bill may, to such extent as may be sanctioned by the Minister for Finance, be paid out of moneys provided by the Oireachtas.

Part 2 — Railway Safety Commission

Section 7 provides for the setting, by way of an order of the Minister, of a day to be the establishment day of the Railway Safety Commission.

Section 8 provides that, on the establishment day, the Railway Safety Commission, will stand established for the purpose of performing the functions assigned to it under this Bill.

Section 9 provides that the Commission will be independent in the exercise of its functions.

Section 10 sets out the principal functions of the Commission, as to foster and encourage railway safety, to regulate and enforce railway safety, and to investigate and report on railway incidents.

Section 11 empowers the Minister, with the consent of the Minister for Finance, to confer on the Commission additional functions in relation to railway safety.

Section 12 provides for the transfer of existing railway safety functions from the Minister to the Commission.

Section 13 enables the Minister, after consultation with the Minister for Finance, to give general policy directions and guidelines to the Commission and the Commission will be required to comply with the directions and have regard to the guidelines. Any directions given will have to be laid before the Houses of the Oireachtas and will not apply to the exercise of individual functions by the Commission.

Section 14 outlines the composition of the Commission and allows for the appointment by the Minister of the members of the Commission (“commissioners”), and where there is more than one commissioner, the appointment of a chairperson. The Commission will comprise between one and three members. The person designated as the Chief Railway Inspecting Officer of the Minister will become a commissioner on the establishment day. The section provides that a commissioner will hold office in a full-time capacity for a period of

not less than 3 years and not more than 7 years, and may be re-appointed to serve a second term, subject to a limit of serving no more than 12 years on the Commission.

Section 15 provides that the Commission may, subject to the consent of the Minister and the Minister for Finance, appoint persons to be members of the staff of the Commission.

Section 16 provides that the Railway Inspecting Officers of the Minister, and any other person recruited in advance specifically for transfer to the Commission, will be designated by the Minister to be transferred to the Commission.

Section 17 provides for the appointment by the Commission of a member of its staff to be a deputy member of the Commission for the purpose of carrying out the functions of the Commission where the membership of the Commission is vacant or in the absence of all commissioners.

Section 18 makes provision for the Commission to engage consultants and advisers to assist it in carrying out its work.

Section 19 obliges the Commission to draw up a code of conduct in relation to the control of interests and ethical behaviour of commissioners and members of staff of the Commission.

Section 20 provides that a commissioner will cease to be a commissioner in circumstances where he or she accepts a nomination as a member of Seanad Éireann, is elected as a member of either House of the Oireachtas or as a representative of the European Parliament, or becomes a member of a local authority. A member of staff will stand seconded from his or her employment where he or she accepts a nomination as a member of Seanad Éireann or is elected as a member of either House of the Oireachtas or as a representative of the European Parliament.

Sections 21, 22 and 23 place obligations on commissioners, members of staff of the Commission, and other persons engaged by it, to make a declaration of their interests, and outlines the procedures which will be adopted where a conflict of interest occurs, and places obligations on them not to disclose information deemed confidential by the Commission.

Sections 24 and 25 provide for the making of superannuation schemes for the benefit of commissioners and members of staff of the Commission.

Section 26 provides that the Minister may, on request from the Commission, make appropriate resources available to the Commission, including staff, premises, equipment, services and other resources. The section also provides that the Commission may, on request from the Minister, pay the expenses incurred by the Minister in providing such resources.

Section 27 provides for the payment of annual grants by the Minister, with the consent of the Minister for Finance, to the Commission to cover the expenses of the Commission in the performance of its functions.

Section 28 provides that the Commission, with the consent of the Minister and Minister for Finance, may make regulations imposing a levy, to cover the expenses of the Commission in the performance

of its functions, on any class of railway undertaking as may be specified in the regulations. Such a levy cannot be imposed before 31 December 2004. The regulations may provide for an exemption from payment of the levy for railway undertakings whose operating revenue is below a threshold prescribed in the regulations.

Section 29 enables the Commission to borrow money for the purposes of performing its functions, subject to the consent of the Minister and Minister for Finance.

Section 30 provides for the keeping of accounts by the Commission, the auditing of these accounts by the Comptroller and Auditor General and for their laying before each House of the Oireachtas (together with the report of the Comptroller and Auditor General). The section also provides for the preparation and submission to the Minister of an annual report by the Commission in relation to the performance of its functions in that year and for the laying of the report before each House of the Oireachtas.

Section 31 requires the Commission to prepare and submit to the Minister a statement of strategy within six months of its establishment and every three years thereafter. The section provides that the statement of strategy be published.

Section 32 allows the Commission to publish any reports on matters relating to its functions.

Section 33 requires the Commission, when requested to do so, to give evidence before a Committee of Dáil Éireann in relation to its accounts and such matters as the efficiency of the Commission, the systems in place within the Commission for the monitoring of its effectiveness, and on any other matter raised in a special report by the Comptroller and Auditor General.

Section 34 empowers the Commission to purchase, lease, maintain and equip premises for the purposes of discharging its functions, subject to the consent of the Minister and Minister for Finance.

Section 35 provides that the Commission shall provide itself with a seal.

Section 36 obliges the Commission to keep itself informed of the policies, objectives, resolutions and guidelines of the Minister, the European Commission and any other competent authorities as may have a bearing on any matter with which the Commission is concerned.

Section 37 enables the Commission to provide services (including services of staff) to the Minister.

Part 3 — General Duties of Railway Undertakings, Staff and Other Persons

Section 38 places a general duty of care on all railway undertakings to ensure, in so far as is reasonably practicable, the safety of persons in the operation of its railway.

Section 39 places a general duty of care on members of staff of a railway undertaking, and on any other person who is on or near a railway or who is carrying out an activity on or near a railway.

Members of staff and other persons being on or near a railway, will have a duty to conduct themselves in such a way as to ensure in so far as is reasonably practicable that no person is exposed to danger

as a result of any act or omission of his or hers. Members of staff also have a duty not to be under the influence of drugs or alcohol to an extent that may pose a danger to persons.

The section also imposes a duty on persons carrying out any activity on or near a railway not to expose persons on the railway to danger.

Part 4 — Safety Management Systems and Safety Case

Section 40 provides for the Minister to appoint, by order or orders, a day or days, for the coming into operation of provisions in relation to safety management systems and the safety case.

Section 41 provides that a railway undertaking must implement a safety management system and must prepare a document (called the safety case) to describe the components of that safety management system. The section sets out the objectives of the safety case, as a means to demonstrate that the railway undertaking has the ability to safely manage its operations, and a means of enabling the railway undertaking and the Commission to ensure that the safety management systems are being properly maintained and implemented.

The section also lists the minimum components of the safety case as a description of the operations of the railway undertaking, a statement of its safety objectives, identification of risks arising from the operation of the railway and the means by which they are being mitigated, the management and organisational arrangements in place for the management of safety, and arrangements for monitoring, auditing and reviewing the safety case. In preparing a safety case, a railway undertaking is required to consult with its staff and staff representatives.

Section 42 requires railway undertakings to co-operate with each other in instances where they have an operational interface; for example, where the trains of one railway travel over the railway tracks of another railway undertaking. In such circumstances, both railway undertakings are obliged to agree systems and procedures by which they intend to manage their operations safely. An agreement under this section must be included in the safety cases of the undertakings concerned. Where railway undertakings are required to make an agreement under this section, but fail to do so, they are prohibited from operating the relevant railway services. An agreement under this section must include provisions for monitoring, reviewing and updating the agreement, and for dealing with instances where an undertaking which is party to the agreement is not complying with its terms.

Sections 43 and *44* provide that a railway undertaking, before bringing into operation new works (such as new railway lines, new signalling systems, or material changes to existing railway lines or existing signalling systems) or new rolling stock (or material alterations to existing rolling stock), will generally be required to prepare a safety assessment of the works or rolling stock in question. An exception to this requirement is where the new works or new rolling stock are similar to works or rolling stock already in operation within the railway undertaking. The safety assessment will be submitted to the Commission and must demonstrate to the satisfaction of the Commission that such works or rolling stock are safe. The Commission may also require a railway undertaking to engage an independent person to assess the safety assessment of a railway undertaking. Where the Commission is not satisfied that the safety assessment provides reasonable assurance of safety it may refuse to allow the bringing into operation of the works or rolling stock. A railway

undertaking which does not comply with this section will be guilty of an offence.

This section, in relation to new works, updates 19th century legislation (which is being repealed by this Bill), and in relation to new rolling stock, closes a loophole in existing legislation where the Minister had no function in approving the bringing into operation of such rolling stock.

Section 45 sets out the procedures which are required in circumstances where there is a change in ownership of a railway undertaking or where the rights to operate a railway are being transferred. It is designed to ensure the safe management of the railway during the changeover period. The section requires the new owner or operator to notify the Commission in advance and to specify the changes which it intends to make to the safety case of the original railway undertaking. It is also required to prepare and submit to the Commission a new safety case within three months of the date of changeover. At all times, the new railway undertaking is required to ensure the safety of persons in operating its railway.

Section 46 requires a railway undertaking to submit a safety case within six months of the commencement of *Part 4* of the Bill. Before doing so, it must engage a suitably qualified person to assess the safety management system described in the safety case. The report of the independent person must be submitted by the railway undertaking at the same time as it submits its safety case.

A railway undertaking is prohibited from operating its railway unless the Commission has accepted its safety case. A railway undertaking which does not comply with this section is guilty of an offence.

Section 47 provides that the Commission can accept the safety case of a railway undertaking where the information contained in the safety case is sufficient to satisfy the Commission that the undertaking is capable of carrying out its operations in compliance with its general duty under section 38. The section provides that the Commission will issue a safety certificate where it has accepted the safety case, and where appropriate, the safety certificate may contain conditions restricting specified activities of the railway undertaking. An appeal procedure is provided where a safety certificate is refused or revoked.

Section 48 makes it an offence for a railway undertaking not to implement the safety management system described in its safety case.

Section 49 provides for the circumstances under which a railway undertaking can revise its safety case.

Section 50 sets out the procedures for the establishment by the Commission of a register of persons who are sufficiently independent and have appropriate expertise to carry out the various independent assessments required under the Bill, such as the assessment of a safety case of a railway undertaking. The section also provides that persons who are not on the register may be appointed by a railway undertaking, subject to the prior consent of the Commission. The Commission may agree to bear the cost of the independent assessment of the safety management systems of a heritage railway, but where it proposes to do so, it may recoup some of the costs involved from the heritage railway concerned.

Section 51 requires that the safety management system of a railway undertaking be independently safety audited at least every four

years. The section also allows the Commission to undertake its own safety audit at any time of all, or any part of, the safety management system of a railway undertaking. It also gives a power to the Commission to direct that a railway undertaking engage a person to undertake an independent audit in circumstances where the Commission believes that a danger exists.

Part 5 — Reporting and investigation of railway incidents

Section 52 defines a railway incident to mean any event or process in the operation of a railway that results in a death or injury to a person, or a collision involving a train, a derailment, or such other incidents that may be specified in regulations by the Commission.

Section 53 requires a railway undertaking to notify the Commission when a defined railway incident occurs.

Section 54 obliges a railway undertaking to carry out an investigation into all reportable railway incidents defined in *section 53* in order to establish the cause of the incident and to make recommendations for the avoidance of incidents in the future. The section allows a railway undertaking to interview relevant members of staff for the purpose of an investigation and places a duty on the members of staff to give their co-operation. It also gives a power to the Commission to enable it to designate an inspector of the Commission to act as an observer at an investigation by a railway undertaking.

Section 55 provides that the Commission may investigate a railway incident. The purpose of such an investigation is to establish the cause or causes of the incident with a view to making recommendations for the avoidance of incidents in the future. It is not the purpose of the investigation to attribute blame or liability. The section also provides that if the incident involves an international service (i.e. a railway service operating between the State and another State), the Commission may request a nomination from a competent authority in the other state and can appoint the nominated person to be an inspector in order to assist in the investigation by the Commission.

Section 56 provides that the Commission may re-open an investigation into a railway incident if new evidence becomes available.

Section 57 requires the Commission generally to publish a report of an investigation within nine months of the commencement of the investigation. Provision is also made for the publication of an interim report.

Section 58 provides that a report of an investigation by the Commission must include all relevant findings, the cause or causes of the incident where these have been established, and any recommendations, which the Commission wishes to make for the avoidance of other incidents or generally for the improvement of railway safety.

Section 59 provides that before a report into a railway incident is published, the Commission must send a copy of the draft report, or of relevant parts of the draft report, to any person who is likely to be adversely affected by its publication. A period of 28 days is provided for affected persons to send their observations to the Commission. The Commission may alter a draft report on the basis of observations received.

Section 60 provides that a recommendation made by the Commission in a report of an investigation does not create a presumption of blame or liability. Persons or bodies to whom a recommendation is addressed are obliged to furnish the Commission with a statement

outlining the action, if any, taken or under consideration in response to the recommendation.

Section 61 provides for the establishment of a tribunal of inquiry (and for the conduct of the inquiry) where the Minister, after consultation with the Minister for Finance and the Commission, considers it necessary to do so. The tribunal will have all the powers of a judge of the District Court and an inspector of the Commission.

Section 62 provides that an investigation into a railway incident is suspended where the Minister directs that that a tribunal of inquiry is to be established.

Section 63 provides that the Minister, after consultation with the Commission, may re-open a completed inquiry into a railway incident if new evidence becomes available.

Section 64 provides that an inspector of the Commission may, if requested by the coroner, act as an assessor to the coroner in cases where the inquest is on the body of a person whose death was caused by a railway incident. The section also requires the coroner to notify the Commission of any evidence of neglect or defect in the operation of a railway which, in the coroner's view, should be remedied.

Section 65 provides that sections 4, 5 and 6 of the Railway Clauses Act, 1842 (relating to the prior approval of the Minister for the opening of new railway lines or parts thereof) continue to apply in respect of any notification received by the Minister prior to the repeal of these sections as provided for in this Bill.

Part 6 — Regulations and Review of Legislation

Sections 66 to 69 empower the Commission, with the consent of the Minister, to make regulations in relation to specified railway safety matters and place a duty on the Commission to keep under review the provisions of this Bill and any other statutory provisions relevant to the functions of the Commission, and to make recommendations where appropriate to the Minister or other Ministers in relation to these statutory provisions.

Part 7 — Enforcement

Sections 70 to 72 give inspectors of the Commission the necessary powers to carry out their functions in accordance with this Bill. An inspector is empowered to enter railway property without a warrant, or in certain cases non-railway property when authorised by a warrant of a judge of the District Court, and carry out any examinations or searches necessary for the purposes of exercising his or her functions under the Bill. Provision is also made for penalties for persons who obstruct or interfere with the work of an inspector.

Sections 73 to 76 give a range of powers to the Commission to take enforcement action in instances where the operation of a railway undertaking, or an activity by another person which may affect the operation of a railway undertaking, is likely to pose a risk to the safety of persons, or where a railway undertaking or other person is contravening a provision of the Bill. The powers available to the Commission include the issuing of a notice requiring a railway undertaking or other person to submit an improvement plan, the issuing of an improvement notice directing a railway undertaking or other person to remedy an alleged contravention of the Bill, the issuing of a prohibition notice in cases where there is an immediate and substantial risk to the safety persons requiring that specified activities being carried out should cease until remedial action is taken. Provision is also made for the Commission to make an application to

the High Court for an order immediately restricting or prohibiting a serious risk to the safety of persons.

Section 77 provides an indemnification for actions carried out by an inspector and members of staff of the Commission or other persons engaged by the Commission, where such actions are carried out in the exercise of a function under this Bill and in a bona fide manner.

Part 8 — Railway Safety Advisory Council

Sections 78 to 80 provide for the establishment of a Railway Safety Advisory Council (the “Council”) on a day to be appointed by an order of the Minister. The Council will have 14 members, including an independent chairperson. Its membership comprises representatives of the railway undertakings, the railway unions, the Commission, the public interest, a statutory body involved in worker or public safety, an organisation representing the interests of mobility impaired persons and an independent railway safety expert. Members will be appointed by the Minister and will be paid allowances in respect of expenses incurred.

The general duty of the Council will be to consider issues relevant to railway safety and to make recommendations to the Minister (on matters such as railway safety policy and legislation) or to the Commission (on matters such as existing standards, guidelines or codes of practices in relation to railway safety).

Part 9 — Intoxicants

Sections 81 and 82 provide that *Part 9* of the Bill shall come into operation on such day as the Minister may by order appoint, and contain definitions for terms used in this Part.

Section 83 provides that this Part of the Bill applies to all railway undertakings (other than heritage railways) that operate railway infrastructure, or operates trains on railway infrastructure, where such infrastructure is used to carry members of the public. The section also specifies the persons to whom this Part will be applied (such as persons involved in the control or affecting the movement of a train, or involved in the maintenance of trains, the permanent way or signals, or in the uncoupling or coupling of trains, or the maintenance of any equipment used for supplying electricity to trains).

Section 84 places duties on railway undertakings and on persons to whom this Part applies in relation to intoxicants (i.e. drugs and alcohol). It will be the duty of a person to whom this Part applies not to be unfit through an intoxicant to carry out his or her work, not to be under the influence of an intoxicant to such an extent as to expose a person to danger, not to have a presence of alcohol in his or her body above a specified limit, and to comply with a code of conduct and procedures drawn up by a railway undertaking which has been accepted by the Commission. A duty is also placed on a railway undertaking to take reasonable steps to ensure that a person, while at work, complies with his or her duties under this section.

Section 85 requires a railway undertaking to draw up a code of conduct in relation to intoxicants and procedures for the taking of samples from persons to whom this Part applies (including the means of sampling, being by provision of a breath test or blood or urine specimens, or more than one such means). The section provides that the railway undertaking must also provide counselling and other services in order to facilitate persons to comply with the code of conduct. Railway undertakings are required to consult with relevant staff

and their staff representatives in drawing up the code of conduct and the sampling procedures.

Railway undertakings are required to submit a draft code of conduct, draft sampling procedures and details of counselling services to the Commission within 6 months of the commencement of this Part (or, at the discretion of the Commission, not later than 12 months from the commencement of this Part). The Commission will accept the code of conduct, procedures and counselling services if it is satisfied that they are sufficient to enable a railway undertaking to discharge its duty under this Part and that the undertaking has consulted with its staff and staff representatives. A railway undertaking is required to implement the code of conduct, procedures and counselling services within 6 months of their acceptance by the Commission.

Section 86 provides that railway undertakings are to appoint authorised persons for the purposes of taking samples from persons and that such authorised persons have unhampered access to all railway property in order to carry out their duties.

Section 87 provides that an authorised person may require persons to whom this Part applies to provide a sample where reasonable cause exists, or after a railway incident, or at random. The section provides that a sample taken is to be analysed by an independent competent body. In the case of a sample taken after a railway incident, a railway undertaking shall provide the results of the analysis to the Commission, on request, for the purposes of an investigation by the Commission.

Section 88 provides that a person who has allegedly failed to comply with a duty under this Part will be subject to a disciplinary hearing within the railway undertaking, and if the railway undertaking is satisfied that he or she has failed to comply with a duty, the railway undertaking can decide the action to be taken in accordance with its code of conduct (including dismissal, termination of contract, suspension, prohibition on working at specified activities, or mandatory attendance at counselling). Persons subject to a disciplinary hearing may represent themselves or may be represented by another person. The section provides that a person may appeal against any sanction imposed on him or her and that such appeal can be heard by the railway undertaking or, if requested by the person involved, by a person unconnected to the railway undertaking or to any other railway undertaking.

Part 10 — Works on public roads in the vicinity of railways

Section 89 provides that works cannot be commenced on a public road in the vicinity of a railway (whether by a road authority or other person) where such works may affect the safe operation of the railway, without the relevant railway undertaking being notified in advance and given an opportunity to make representations or objections. A railway undertaking is also required to notify a road authority where the undertaking proposes to bring new works into operation in the vicinity of a public road and where such works may affect the safety of users of the public road. The section also provides that advance consultation is not required for the carrying out of emergency works.

Part 11 — Procedural

Section 90 enables the Commission to prosecute a summary offence under the Bill.

Section 91 provides that in certain circumstances where an offence is committed by a body corporate, an officer of the body corporate may also be guilty of the offence.

Section 92 provides that the costs and expenses of the Commission in relation to the investigation, detection and prosecution of an offence under this Bill can be recovered from the person convicted of the offence, unless the Court decides there are substantial reasons for not doing so.

Section 93 sets out the procedures for the serving of a notice under the provisions of the Bill.

Section 94 provides that certain classes of records (witness statements, medical information, recordings, opinions expressed in the analysis of information, or observations of an affected person on a draft report of an investigation) gathered in the course of an investigation into a railway incident cannot be disclosed to any other party, unless the Commission or a tribunal considers that the benefits to the public interest of the disclosure would outweigh any adverse impact on the investigation in question or on any future investigation. The intention of this section is to enhance the effectiveness of an investigation and thereby improve overall railway safety.

Penalties

Persons who are convicted of an offence against a provision of this Bill will be liable to the penalties set out in those particular provisions. Summary convictions carry fines of up to €3,000 (IR£2,363) and, in some instances, a term of imprisonment of up to 3 months. On conviction on indictment, provision is made in some cases for fines of up to €500,000 (IR£393,782), and in one instance, a term of imprisonment up to 3 months.

Staffing and costs implications

The Department of Finance has given its sanction for the creation of 9 posts in the Commission. The Bill provides that the Chief Railway Inspecting Officer and the two Railway Inspecting Officers of the Minister will be transferred to the Commission on the establishment date, thus leaving 6 posts to be filled.

The Bill provides that the Commission may, with Ministerial approval, impose a levy on railway undertakings after 31 December 2004 to recover all or part of its costs. Prior to the imposition of a levy, the Bill provides that the Exchequer will meet the full costs of the Commission (estimated to be €2.0m (IR£1.57m) gross per annum in 2001 prices).

*An Roinn Fiontar Poiblí,
Nollaig 2001.*