

# DÁIL ÉIREANN

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## AN BILLE UM SHÁBHÁILTEACHT IARNRÓID 2001 —AN TUARASCÁIL

### RAILWAY SAFETY BILL 2001 —REPORT

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*Leasaithe Ionadacha agus Breise  
Substitute and Additional Amendments*

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11. In page 21, line 12, to delete “2004” and substitute “2007”.  
—An tAire Iompair.

[This amendment is in substitution for amendment No. 11 on the principal list of amendments dated 30th September 2005.]

18. In page 25, line 25, after “and” to insert the following:

“, after consultation with the Council, railway undertakings and such other persons as in the opinion of the Commission may be relevant,”.

—An tAire Iompair.

*Amendment to Amendment No. 18*

In the first line, after “with” to insert “relevant trade unions or staff associations,”.

—Róisín Shortall.

36. In page 41, between lines 3 and 4, to insert the following:

“(3) A person who is being interviewed under *subsection (2)* may, if he or she requests, be accompanied—

- (a) where the person is a member of the staff of the railway undertaking, by one other member of the staff,
- (b) where the person is a member of the staff of another person engaged by the undertaking, by one other member of that staff,
- (c) by one person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or
- (d) at his or her own expense, by a legal or other adviser.”.

—An tAire Iompair.

In the first line of subsection (3)(c), to delete “an organisation” and substitute “a trade union or staff associations”.

—Roisín Shortall.

**39.** In page 42, between lines 41 and 42, to insert the following:

“Reporting of risks, etc. by staff of railway undertakings and contractors.

54.—(1) Where a member of staff of a railway undertaking or a person working under a contract of services with a railway undertaking becomes aware of—

(a) information relevant to the investigation of a railway incident, or

(b) a risk arising from the operations of the undertaking which in his or her opinion is not adequately controlled or mitigated by the undertaking,

he or she shall inform the railway undertaking of the information or as the case may be the risk and of his or her opinion.

(2) Where, having informed a railway undertaking under *subsection (1)*, the member of staff or other person is of the opinion that the action, if any, taken by the undertaking is inadequate to comply with the general duty on the undertaking under *section 36* or to comply with any requirement on the undertaking under this Act, he or she may inform the Commission in writing of that opinion.

(3) Where a member of staff of a railway undertaking or other person working under a contract of services with a railway undertaking informs the Commission of his or her opinion in accordance with *subsection (2)*, he or she shall not be disciplined, be held to be in breach of contract or in any other way disadvantaged for the fact that he or she has informed the Commission.”.

—An tAire Iompair.

In subsection 1, line 9, after “shall” to insert “(unless he or she has reasonable excuse to the contrary)”.

—Roisín Shortall.

**92.** In page 50, line 19, after “Minister” to insert the following:

“and after consultation with the Council, railway undertakings, organisations which represent staff of railway undertakings and such other persons as in the opinion of the Commission may be relevant”.

—An tAire Iompair.

In line 2, to delete “organisations” and substitute “trade unions or staff associations”.

—Roisín Shortall.

**103.** In page 53, between lines 42 and 43, to insert the following:

“(4) A person who is being interviewed under *subsection (3) (k)* or *section 73* may, if he or she requests—

(a) where the person is a member of the staff of the railway undertaking or a person engaged by the undertaking, be accompanied—

(i) by one other member of the staff of the railway undertaking, or of the person engaged by the undertaking,

(ii) by one other person from an organisation which represents, as the case may be, the staff of the undertaking or the person engaged by the undertaking, or

(iii) at his or her own expense, by a legal or other adviser,

or

(b) where the person is not a member of the staff of the railway undertaking or a person engaged by the undertaking, be accompanied, at his or her own expense, by a legal or other adviser.

(5) The sole function of a person permitted to accompany another person in accordance with *subsection (4)* shall be the provision of advice to the person being interviewed.

(6) A person permitted to accompany another person in accordance with *subsection (4)* shall, if directed by the inspector concerned, desist from doing anything which, in the opinion of the inspector, frustrates the orderly and efficient conduct of the interview.”.

—An tAire Iompair.

1. In the first line of subsection (4)(a)(ii), to delete “an organisation” and substitute “a trade union or staff association”.

—Roisín Shortall.

2. To delete subsections (5) and (6).

—Roisín Shortall.

**122a.** In page 68, line 22, after “danger,” to insert “or,”.  
—Roisín Shortall.

**122b.** In page 68, line 30, to delete “, or”.  
—Roisín Shortall.

**141.** In page 71, before line 1, to insert the following:

“Penalties.

108.—A person guilty of an offence under this Chapter (other than *section 102(4)*<sup>1</sup>) is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.”.

—An tAire Iompair.

[<sup>1</sup>*This is the appropriate reference if amendment no. 135 is accepted.*]

[*This amendment is in substitution for amendment No. 141 on the principal list of amendments dated 30th September 2005.*]

**142.** In page 71, before line 1, to insert the following:

“Chapter 3

Carelessly or dangerously working or working while unfit, on  
railway

Careless working on  
railway.

109.—(1) A safety critical worker shall not perform a safety critical task on railway property or in a public place without taking due care and attention.

(2) A person who contravenes *subsection (1)* is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,500 or to imprisonment for a term not exceeding 3 months, or to both.”.

—An tAire Iompair.

[*This amendment is in substitution for amendment No. 142 on the principal list of amendments dated 30th September 2005.*]

**143.** In page 71, before line 1, to insert the following:

“Dangerous  
working on railway.

110.—(1) A safety critical worker shall not perform a safety critical task in a manner which, having regard to all the circumstances of the case, is dangerous to the safety of persons or poses an unreasonable risk of harm to persons.

(2) A person, being a supervisor, manager, director or secretary of a railway undertaking, shall not instruct a safety critical worker to perform a safety critical task in a manner that may cause that worker to contravene *subsection (1)*.

(3) A person who contravenes *subsection (1)* or (2) is guilty of an offence and—

(a) in case the contravention causes loss of life or serious personal injury to another person, is liable on

conviction on indictment to imprisonment for a term not exceeding 10 years or to a fine not exceeding €10,000, or to both, or

(b) in any other case, is liable on summary conviction to a fine not exceeding €5,000 or to imprisonment for a term not exceeding 6 months, or to both.

(4) In proceedings for an offence under *subsection (3)*, it shall be a defence for the person against whom such proceedings are brought to prove that the safety critical task—

(a) in respect of a contravention of *subsection (1)*, was performed, or

(b) in respect of a contravention of *subsection (2)*, was instructed to be performed,

in accordance with written rules or procedures of the railway undertaking concerned, where those rules or procedures specify the manner in which that task should be performed.

(5) Where a member of the Garda Síochána is of the opinion that a person has committed an offence under this section causing loss of life or serious personal injury to another person, the member may arrest the person without warrant.”.

—An tAire Iompair.

[This amendment is in substitution for amendment No. 143 on the principal list of amendments dated 30th September 2005.]

**144.** In page 71, before line 1, to insert the following:

“Medical fitness for duty.

111.—(1) A railway undertaking may require a safety critical worker to undergo an assessment by a medical practitioner, nominated by the undertaking, of his or her fitness to perform a safety critical task and such person shall co-operate with such medical assessment.

(2) Railway undertakings shall ensure that safety critical workers undergo assessment by a medical practitioner of their fitness to perform safety critical tasks.

(3) Where, following an assessment under *subsection (1)*, a medical practitioner is of the opinion that a safety critical worker is unfit to perform a safety critical task, he or she shall notify the railway undertaking concerned, by the quickest practicable means, of that opinion and shall inform the safety critical worker of that opinion and the reasons for that opinion.

(4) If a safety critical worker becomes aware that he or she is suffering from any disease or physical or mental impairment which, should he or she perform a safety critical task, would be likely to cause him or her to expose a person to danger or risk of danger, he or she shall immediately notify the railway undertaking concerned.

(5) Where a railway undertaking receives a notification under *subsection (3)* or *(4)*, it shall not permit the safety critical worker concerned to perform a safety critical task until such time as an assessment under *subsection (1)* confirms that he or she is fit to so perform that task.

(6) The Commission may, with the consent of the Minister, and after consultation with railway undertakings, organisations which represent staff of railway undertakings, the Medical Council, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, make regulations in relation to all or any of the following—

(a) the nature of a medical assessment under *subsection (1)* and the matters that shall be assessed, or

(b) the frequency of an assessment under *subsection (2)*.

(7) The Commission may, after consultation with railway undertakings, organisations which represent staff of railway undertakings, the Medical Council, the Health and Safety Authority and such other persons as in the opinion of the Commission may be relevant, publish guidelines in relation to the types of disease or physical or mental impairment which may require notification by a safety critical worker to a railway undertaking under *subsection (4)*.

(8) On each occasion that a safety critical worker attends his or her medical practitioner, he or she shall inform that medical practitioner of his or her position as a safety critical worker.”

—An tAire Iompair.

*Amendments to Amendment No. 144*

1. In subsection (7), in the second line, to delete “organisations” and substitute “trade unions or staff associations.”

—Roisín Shortall.

2. In subsection (7), in the third line, after “Medical Council” to insert “, the Equality Authority”.

—Roisín Shortall.

**148.** In page 74, line 31, to delete “2001” and substitute “2005”.

—Roisín Shortall.

[*This amendment is in substitution for amendment No. 148 on the principal list of amendments dated 30th September 2005.*]

**153.** In page 76, after line 36, to insert the following:

## “PART 15<sup>1</sup>

### LIGHT RAILWAY AND METRO

Amendment of  
Transport (Railway  
Infrastructure) Act  
2001.

108.—(1) The following sections are substituted for section 66 of the Transport (Railway Infrastructure) Act 2001:

‘Bye-laws. 66.—(1) Bye-laws may be made—

(a) by the Agency, in relation to a railway, or

(b) with the consent of the Agency,

by a railway undertaking in relation to a railway it operates or under its control,

in relation to any one or more of the following matters—

- (i) the general regulation, subject to any statutory provisions in that behalf, of—
    - (I) the travelling upon or use of a railway, (including a requirement to travel with a valid ticket or pass and the issue of such), or
    - (II) the working of railway transport services by a railway undertaking,
  - (ii) the prevention of the commission of nuisances in or upon a railway,
  - (iii) the prevention of damage to railway infrastructure,
  - (iv) the removal from or the prohibition of the use on a railway of any vehicle or thing which is or may become a danger to life, health, the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway,
  - (v) the regulation of parking of vehicles on or adjacent to a railway,
  - (vi) the safe custody and return or disposal of any property found on a railway,
  - (vii) the repair, improvement, extension and development of a railway,
  - (viii) subject to any statutory provisions in that behalf, the regulation of works that would affect the operation or maintenance of a railway or would otherwise interfere with the proper operation of a railway.
- (2) Bye-laws under this section may

contain such incidental, subsidiary and ancillary provisions as the Agency or the railway undertaking making the bye-laws, considers necessary or expedient for the purposes of the bye-laws.

(3) The Agency, or, as the case may be, a railway undertaking may provide for reasonable charges in respect of matters provided for in bye-laws made by it under this section.

(4) Whenever, after the passing of the *Railway Safety Act 2005*, the Agency or a railway undertaking proposes to make bye-laws under this section, the following provisions have effect—

(a) the Agency or the undertaking, as the case may be, shall publish notice of the proposal at least once in at least 2 daily newspapers published in and circulating in the State or the area to which the bye-laws relate,

(b) the notice shall include—

(i) a statement of the purposes for which the bye-laws are to be made,

(ii) an intimation that a copy of draft bye-laws is open for public inspection at the principal offices in the State of the Agency or the undertaking, as the case may be,

(iii) an intimation that any person may submit to the Agency or the undertaking, as the case may be, objections to the draft bye-laws at any time during the period of 30 days commencing on the date of the first publication of the notice,

(c) the Agency or the undertaking, as the case may be, shall, during that period of 30 days, keep a copy of the draft bye-laws open for public inspection during ordinary office hours at its principal offices,

(d) any person who objects to the draft bye-laws may submit his or her objection to the Agency or the undertaking, as the case may be, in writing at any time during that period of 30 days and the Agency or the undertaking, as the case may be, shall consider the objections, and

(e) on the completion of that period of 30 days, the Agency or the undertaking, as the case may be, shall as it thinks proper, refrain from making the bye-laws or make the bye-laws either without modification or with modification as it thinks proper.

(5) Such details of bye-laws under this section shall be displayed on a railway, where practicable, in conspicuous places in such manner as—

(a) the Agency, where the bye-laws are made by it, or

(b) a railway undertaking, where the bye-laws are made by it, subject to any general direction of the Agency,

considers best adapted for giving information to the public. The absence of any such display is not a defence to a contravention of or failure to comply with such bye-laws.

(6) Bye-laws under this section shall not be made without the consent of the Minister.

(7) Every bye-law made under this section, after the passing of the *Railway Safety Act 2005*, shall be laid, where they are made by the Agency, by the Agency and where they are made by a railway undertaking, by the railway undertaking, before each House of the Oireachtas, as soon as may be after it is made and, if a resolution annulling the bye-law is passed by either such House within the next 21 days on which that House has sat after the bye-law is laid before it, the bye-law shall be annulled accordingly, but without prejudice to anything previously done under it.

(8) A person who contravenes or fails to

comply with a bye-law under this section is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(9) The liability of an offender to a fine under subsection (8) does not prejudice the recovery of any fare, tariff or fee payable by him or her to the Agency or a railway undertaking for any damage caused by him or her to property of the Agency or a railway undertaking.

Immobilisation,  
removal, etc. of  
unlawfully parked  
vehicles.

66A.—(1) Where an authorised officer finds on or adjacent to a railway a vehicle which he or she believes—

(a) is parked in contravention of bye-laws made under section 66,

(b) is or may become a danger or a nuisance to persons, or

(c) would otherwise interfere with the proper operation of a railway,

he or she or a person acting under his or her direction may—

(i) fix an immobilisation device to the vehicle while it remains in the place where he or she finds it, or

(ii) move it from the place where he or she finds it (whether or not he or she has fixed an immobilisation device to it) to another place and, if he or she considers it necessary, fix an immobilisation device to it in that other place.

(2) When fixing an immobilisation device to a vehicle, there shall also be affixed to the vehicle a notice in the prescribed form

(a) indicating that the device has been fixed to the vehicle and warning that an attempt should not be made to drive it or otherwise put it in motion until the device is removed,

(b) specifying the steps to be taken to secure such removal, and

(c) giving such other information (if any) as may be prescribed.

(3) Subject to subsection (4), an immobilisation device that has been fixed to a vehicle under this section may be removed only by an authorised person or a person acting under his or her direction.

(4)(a) An immobilisation device fixed to a vehicle under this section shall be removed or a vehicle moved under this section shall be released, only—

(i) if the person seeking its removal or release shows to the satisfaction of an authorised person that he or she, is the owner of the vehicle or is authorised by its owner to seek such removal or release and pays the prescribed charge,

(ii) for the purpose of the removal of the vehicle under section 97 of the Act of 1961, or

(iii) for the purpose of moving the vehicle under subsection (1).

(b) Where the owner of a vehicle which has been moved or to which an immobilisation device has been fixed under this section shows to the satisfaction of an authorised officer that the vehicle was parked while being used by a person other than the owner and that such use was not authorised by the owner, the authorised officer shall waive the prescribed charge and he or she or a person acting under his or her direction shall remove the immobilisation device from or release the vehicle.

(c) An immobilisation device fixed to a vehicle under this section shall be removed from it or a vehicle moved under this section shall be released, as soon as is reasonably practicable, after the payment of the prescribed charge or after the waiver of such charge, as the case may be.

(5) A notice affixed to a vehicle under this section shall not be removed or interfered with by a person other than the owner of the vehicle or a person authorised by such owner to use the vehicle and a person who contravenes this subsection is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(6) Charges may be prescribed for the purposes of this section for the removal of an immobilisation device or the release of a vehicle.

(7) A person who—

(a) obstructs or impedes an authorised officer, or a person acting under his or her direction, in the performance of his or her duties under this section, or

(b) without being authorised to do so under this section, removes or attempts to remove from a vehicle an immobilisation device fixed to it under this section,

is guilty of an offence and is liable on summary conviction to a fine not exceeding €2,000.

(8) An immobilisation device shall not be fixed under this section to an ambulance, a fire brigade vehicle or any vehicle used by a member of the Garda Síochána or the Defence Forces, in the performance of his or her duties, in an emergency situation.

(9) In this section—

“immobilisation device” means any device or appliance designed or adapted for fixing to a vehicle for the purpose of preventing it from being driven or otherwise put in motion;

“prescribed” means prescribed in regulations made by the Agency with the consent of the Minister;

“vehicle” has the same meaning as in the Act of 1961.

Powers of  
authorised officers.

66B.—(1) If an authorised officer reasonably suspects that a person—

(a) is contravening or has contravened or is failing or has

failed to comply with a bye-law made under section 66,

(b) is committing or has committed on a railway an offence under section 64 or 65,

(c) is assaulting or has assaulted or is causing or has caused deliberate harm to another on a railway,

(d) is causing or has caused wanton or deliberate damage to railway infrastructure,

(e) has contravened *section 96 or 106<sup>2</sup> of the Railway Safety Act 2005*,

(f) is obstructing or has obstructed or is impeding or has impeded an authorised officer in the exercise of his or her duties under this section, section 66A, 66C, or under any bye-law made under section 66,

(g) on any railway is intoxicated or is committing or has committed an offence under section 15 of the Misuse of Drugs Act 1977, or

(h) if requested by an authorised officer to cease such contravention or action or to so comply, fails to comply with the request,

he or she may—

(i) using such reasonable force as the circumstances require, remove or escort the person from the railway or any part of it,

(ii) in circumstances where the authorised officer considers it to be justified, arrest the person without warrant, or

(iii) require the person to give his or her name and address and, if the person fails or refuses to do so or gives a name that the authorised officer reasonably suspects is false or misleading, arrest that person without warrant,

and, if he or she is not a member of the Garda Síochána, deliver, as soon as practicable, the person, if arrested, into the custody of a member of the Garda Síochána to be dealt with according to law.

(2) A person who fails or refuses to give his or her name or address when required under subsection (1), or gives a name or address which is false or misleading, is guilty of an offence and is liable on summary conviction to a fine not exceeding €1,000.

(3) The Agency, or a railway undertaking with the consent of the Agency, may appoint such and so many persons as it considers necessary to be authorised officers for the purposes of this section, section 66A, 66C or any bye-law made under section 66.

(4) An authorised officer, who is not a member of the Garda Síochána, is not entitled to exercise a power under this section unless he or she has received training and instruction, which, in the opinion of the Agency is such as will provide guidance to him or her in the exercise of the power.

(5) The Agency or a railway undertaking, as the case may be, shall endorse on the warrant it furnishes to an authorised officer under subsection (6) a statement to the effect that the officer has received the training and instruction referred to in subsection (4).

(6) An authorised officer, who is not a member of the Garda Síochána, shall, on his or her appointment under this section, be furnished by the Agency or a railway undertaking, as the case may be, with a warrant of his or her appointment as an authorised officer.

(7) An authorised officer, who is not a member of the Garda Síochána, when exercising a power under this section shall be in uniform provided or authorised—

(a) where he or she is appointed by the Agency, by the Agency, or

(b) where he or she is appointed by a railway undertaking, by the railway undertaking.

(8) The arrest of a person under this section

does not prejudice the re-arrest of the person by a member of the Garda Síochána.

(9) An authorised officer, who is not a member of the Garda Síochána, may be referred to—

(a) where he or she is appointed by the Agency, by the Agency, or

(b) where he or she is appointed by a railway undertaking, by the railway undertaking,

by such title as it decides.

(10) In this section a reference to the committal of an offence or an act includes a reference to an attempt to commit the offence or the act.

(11) In this section “authorised officer” means a person appointed under this section or a member of the Garda Síochána whose attendance is requested by an authorised officer or by the Agency or a railway undertaking.

Fixed payment  
notice.

66C.—(1) Where—

(a) an authorised officer has reasonable grounds for believing that a person is committing or has committed an offence under section 64(1), 66(8) (for a contravention or failure to comply with a bye-law made under that section), 66A(5) or (6), or 66B(2) or *section 96 or 106<sup>2</sup> of the Railway Safety Act 2005*, or

(b) a member of the Garda Síochána has reasonable grounds for believing that a person is committing or has committed an offence under section 54(5),

he or she may serve the person with a notice (“fixed payment notice”) in the prescribed form stating that—

(i) the person is alleged to have committed the offence,

(ii) the person may during the period of 21 days beginning on the date of the notice make to the Agency or the railway undertaking concerned, as the

case may be, at the address specified in the notice a payment of €100, or in lieu of that amount such other amount standing prescribed for the time being, accompanied by the notice, and

- (iii) a prosecution in respect of the alleged offence will not be instituted during the period specified in the notice and, if the payment specified in the notice is made during that period, no prosecution in respect of the alleged offence will be instituted.

(2) Where a fixed payment notice is given under subsection (1)—

- (a) a person to whom the notice applies may, during the period specified in the notice, make to the Agency or the railway undertaking concerned, as the case may be, at the address specified in the notice the payment specified in it and accompanied by the notice,
- (b) the Agency or the railway undertaking concerned may receive the payment, issue a receipt for it and retain the money so paid, and any payment so received shall not be recoverable in any circumstances by the person who made it, and
- (c) a prosecution in respect of the alleged offence shall not be instituted in the period specified in the notice, and if the payment so specified is made during that period, no prosecution in respect of the alleged offence shall be instituted.

(3) In a prosecution for an offence under this Act the onus of proving that a payment pursuant to a notice under this section has been made lies on the defendant.

(4) In this section ‘prescribed’ means prescribed in regulations made by the Minister.’.

(2) Any bye-law made under section 66 of the Transport (Railway Infrastructure) Act 2001, which is in force immediately before the passing of this Act, continues in force as if made under section 66, inserted by *subsection (1)*.”

—An tAire Iompair.

[<sup>1</sup>The proposed new Part comprehends the inclusion of amendment nos. 153 and 154.]

[<sup>2</sup>These are the appropriate references if amendment no. 151 is accepted.]

[This amendment is in substitution for amendment No. 153 on the principal list of amendments dated 30th September 2005.]

#### *Amendments to Amendment No. 153*

1. In the new section 66A of the Transport (Railway Infrastructure) Act 2001, in subsection (1), to delete subparagraph (i).

—Roisín Shortall.

2. In the new section 66C of the Transport (Railway Infrastructure) Act 2001, in the seventh line of subsection (1) (ii), to delete “€100” and substitute “€60”.

—Roisín Shortall.

**154.** In page 76, after line 36, to insert the following:

“Increase of fines.

109.— Parts 4 and 5 of the Transport (Railway Infrastructure) Act 2001 are amended by substituting in—

(a) section 54(6), “€1,600” for “€600 (£472.54)”,

(b) section 56(2), “€5,000” for “€2,500 (£1968.91)”,

(c) section 59(3), “€1,600” for “€600 (£472.54)”,

(d) section 60(4), “€5,000” for “€2,000 (£1575.13)”,

(e) section 63(3), “€5,000” for “€2,000 (£1575.13)”,

(f) section 64(1), “€1,600” for “€600 (£472.54)”,

(g) section 65, “€5,000” for “€2,000 (£1575.13)”, and

(h) section 67(2), “€1,600” for “€600 (£472.54)”.”

—An tAire Iompair.

[This amendment is in substitution for amendment No. 154 on the principal list of amendments dated 30th September 2005.]