An Bille Sláinte (Caomhnú agus Cosaint agus Bearta Éigeandála Eile Ar Mhaithe Le Leas an Phobail), 2020
Health (Preservation and Protection and Other Emergency Measures In The Public Interest) Bill 2020

Meabhrán Minitheach
Explanatory Memorandum
Purpose of the Bill


More recently, (11 March 2020) the WHO declared the outbreak to be a pandemic. This reflects the gravity of the current outbreak and how speedily the disease has spread.

The Covid-19 outbreak brings unprecedented challenges. The Bill therefore makes exceptional provision, in the public interest, having regard to the manifest and grave risk to human life and public health posed by the spread of Covid-19, and in order to mitigate, where practicable, the effect of Covid-19.

Against this background, the Bill will:

(i) amend the Health Act 1947 to provide for regulations to impose travel restrictions, prohibit some events (including large gatherings), and for any other measures that the Minister for Health may deem appropriate for the minimisation of the spread of Covid-19;

(ii) enable the detention and isolation of persons who are a potential source of Covid-19 where they do not submit to voluntary self-isolation; and

(iii) provides for amendments to the Social Welfare Consolidation Act 2005 to make exceptional provision, in the public interest and having regard to the grave risk posed by the spread of COVID-19, for amendments in relation to entitlement to illness benefit, jobseeker’s benefit and jobseeker’s allowance.

The amendments to the Health Act 1947 are being made on the advice of the National Public Health Emergency Team and are intended to be used in extreme situations, should they arise.
Provisions of the Bill

PART 1

PRELIMINARY AND GENERAL

Section 1: Short Title and construction

Section 1 is a standard provision providing for the short title of the Bill and construal of references relating to provisions of the Bill and the Social Welfare Acts.

Section 2: Commencement and Duration

Section 2 provides for the commencement of the Social Welfare provisions of the Bill. The Health provisions will have effect from the time of signing of the Bill into law. It also provides for the time period that they shall remain in effect (a ‘sunset’ clause, specifying 9th May 2020) and the continuation (by means of Order) of those provisions beyond the period specified, should this prove necessary.

Insofar as Part 2 of the Bill is concerned, Section 2 provides that the amendments to the Social Welfare Consolidation Act in relation to Illness Benefit are effective from 9th March 2020 and in relation to Jobseeker’s Benefit and Jobseeker’s Allowance from 13th March 2020. Unless they are renewed by way of a formal Government Order, these provisions will lapse on 9th May 2020. (Any regulations introduced under the provisions of the Act would also lapse on that day).

PART 2

Introduction

Part 2 of this Bill provides for amendments to the Social Welfare Consolidation Act 2005 to make exceptional provision, in the public interest and having regard to the grave risk posed by the spread of COVID-19, for amendments in relation to entitlement to illness benefit, jobseeker’s benefit and jobseeker’s allowance.

Definition

Section 3 provides for the definition of the Social Welfare Consolidation Act 2005 (the Principal Act in this Part of the Bill).

Amendment of section 21 of Principal Act

Section 4 provides that access to the exceptional arrangements with regard to Illness Benefit (IB) which are being introduced in this Bill is extended to self-employed PRSI contributors. This is aimed primarily at ensuring that, in the interests of public health, self-employed people have access to the special Illness Benefit payment and are enabled to comply when have been advised by a registered medical practitioner to self-isolate.

Amendment of section 40 of Principal Act

Section 5 amends Section 40 of the Social Welfare Consolidation Act which sets out the legislative basis for the IB scheme.

Section 5(a) extends the scope of the IB scheme to encompass the new arrangements being provided for in this Bill.

Section 5(b) inserts new subsections into Section 40 of the Principal Act which deal solely with the unique arrangements relating to IB and COVID-19.

Section 40(7) identifies the cohort to whom the new IB arrangements will apply. In particular, IB will be available to a person who is deemed incapable of work by virtue of being certified by a medical practitioner (including an instruction a medical officer of health from the HSE) as having
been diagnosed with Covid-19 or needing to self-isolate as a probable source of infection with Covid-19. It also provides that the Minister may introduce regulations to entitle people who are deemed to be a probably source of infection. This section also provides for entitlement to people who are in self-quarantine in respect of an order under Section 38A(2) of the Health Act 1947.

Section 40(8) provides that the Minister may introduce regulations to exclude certain categories from these special arrangements.

Section 40(9) provides that the normal requirement that an IB claimant must serve six waiting days will not apply under these new arrangements.

Section 40(10) provides that the Minister may introduce regulations to amend the PRSI contribution conditions which must be satisfied to qualify for IB claims arising from COVID-19.

Section 40(11) provides that the Minister can introduce, by regulation, a higher rate of IB payment to a claimant who meets the qualifying requirements for IB arising from COVID-19.

Section 40(12) defines COVID-19 for the purposes of these exceptional measures.

Regulations in respect of persons to whom section 40 applies

Section 6 of the Bill introduces a new Section 40A to the Principal Act and deals with Regulation making powers relating to IB payable as a result of Covid-19. The regulatory powers set out in Section 40A(1) are intended to ensure that the emergency operational requirements required to deal with the payment of IB arising from COVID-19 in the interests of public health are legally permissible. Section 40A(1) provides that the consent of the Minister for Public Expenditure and Reform is required for any such regulations and that the Minister for Health will also be consulted on these regulations.

Section 40A(2) sets out the policies and principles to be taken into account by the Minister in introducing Regulations under Section 40A, while Section 40A(3) sets out the necessary definitions for terms used in this Section.

Amendment of section 62 of Principal Act

Section 7 provides a regulation making power to the Minister to vary the three day waiting period for the PRSI contributions-based Jobseekers Benefit scheme. Normally jobseekers must have three days of unemployment before they are entitled to Jobseekers Benefit. Because many businesses are closing temporarily due to Covid-19, the Minister will have powers in these exceptional circumstances to reduce waiting days for people who have suddenly become unemployed.

Section 8 provides for parallel powers to those set out in Section 7 insofar as they relate to the means-tested Jobseeker’s Allowance payment.

PART 3

AMENDMENTS OF HEALTH ACT 1947

Section 9: Definitions for Part 3 of the Bill

Section 9 is a standard provision, providing for the definition of terms used throughout Part 3 (e.g. “Act of 1947” refers to the Health Act 1947).
Section 10: Amendment of Act of 1947

Section 10 inserts two new sections, section 31A and section 31B, in the Health Act 1947. The purpose of section 31A is to provide for regulations to prevent, limit, minimise and slow the spread of Covid-19. Section 31B provides for the Minister to make affected areas orders.

Addressing unprecedented and grave circumstances, regulations under section 31A may provide for travel restrictions, prohibition or restriction of some events for example large gatherings, and requiring persons to remain at home.

Regulations on travel restrictions may apply to and from the State and within the state, including in locations to which an affected area order applies (please see section 31B).

As indicated above, regulations may prohibit certain types of events in the interest of preventing, limiting minimising or slowing the spread of Covid-19. Regulations may also be made on the safeguards to be put in place by organisers of events. In addition, regulations may provide for the safeguards to be put in place in relation to premises to prevent the risk of infection to people visiting or working there. The regulations may also provide for safeguards in relation to creches, schools, universities and other educational facilities (including the temporary closure of such facilities). Regulations may provide for any other measures that the Minister may deem appropriate in order to prevent, limit, minimise or slow the spread of Covid-19.

Subsection (2) sets out what the Minister must have regard to in making regulations, reflecting the nature of this national emergency.

Subsection (3) provides that the Minister may consult with other Ministers or other persons that he may deem appropriate when making the regulations.

Subsection (4) provides that the Minister may (after consultation with any Minister deemed appropriate) exempt specified classes of persons, including but not limited to persons providing essential services, including statutory functions, other specified public services or other services.

Subsection (5) provides that this new section is without prejudice to other provisions in the Health Act 1947, including as they may relate to Covid-19.

Subsections (6) provides for offences relating to the regulations and compliance.

Subsections (7) to (12) have enforcement powers, including powers for An Garda Síochána. There are also related offences. Subsections (13) provides for implementation and enforcement by relevant persons for example medical officers of health. Subsection (14) provides for assistance to relevant persons by An Garda Síochána.

Subsection (16) defines terms used in section 31A and 31B.

The new section 31B provides that the Minister may, by means of order, specify an area or region to be an ‘affected area’ (i.e. an area where there is a high risk of infection or importation of with covid-19). Travel restrictions and event restrictions relate here. When making an affected areas order, the Minister will have regard to the advice of the Chief Medical Officer and will consult with relevant Ministers.
Section 11: Detention and isolation of persons in certain circumstances

Section 11 inserts a new section, section 38A into the Health Act 1947. The intention of the new section 38A is to allow a medical officer of health to order the detention and isolation of a person where the medical officer of health reasonably believes that the person is a potential source of infection and where the person refuses to self-isolate. The medical officer of health must keep the person under review and a medical examination must be carried out as soon as possible but in any event no later than 14 days after detention. This reflects the incubation period and is intended to indicate an outer time period. In practical terms, the person would be medically monitored throughout any time of detention. The person detained may also ask for a review of his or her detention by another doctor.

Subsections (1) and (2) set out what the order provision and what the medical officer must consider.

Subsection (3) imposes a requirement upon a medical officer of health to certify his or her opinion in relation to the matters outlined in the order in order for it to have effect.

Subsection (4) requires a medical officer of health who makes an order to keep the matter under review and to ensure that a medical examination is carried out as soon as possible and in any event no later than 14 days from the time a person has been detained.

Subsection (6) provides for a review by another doctor where one is requested by the person detained.

The intention under subsection (7) is that the provisions of subsections (2)(a) to (g), (3), (4) and (5) of section 38 of the Health Act 1947 shall apply to a person who is subject to detention and isolation. These provisions include the provision of a copy of the order to the Minister and the person detained or their appropriate person, for example a parent in the case of a child.

Subsection (8) is the offences subsection.

Under subsection (9) costs of maintenance and treatment during detention and isolation will be paid by the HSE.

Subsection (10) defines terms used.

An Roinn Sláinte agus an Roinn Gnóthaí Fostaíochta agus Coimirce Sóisialaí.