

# Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill

Bill No. 142 of 2021

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## Abstract

The Bill provides for a number of amendments to the *Merchant Shipping (Investigation of Marine Casualties) Act 2000*, regarding the Marine Casualties Investigation Board and its duties in accordance with Directive 2009/18/ EC of the European Parliament and of the Council of 23 April 2009 concerning fundamental principles regarding the investigation of accidents in the maritime transport sector. The need for this Bill arises from the July 2020 judgement of the Court of Justice in Case C-257/19, European Commission v Ireland (C-257/19).



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## Summary

The [Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill](#) was published on 11 November 2021 and is scheduled for Second Stage debate in Dáil Éireann on Wednesday 24 November 2021 and Thursday 25 November 2021. The Bill, if enacted, will provide for a number of amendments to the [Merchant Shipping \(Investigation of Marine Casualties\) Act 2000](#), regarding the Marine Casualties Investigation Board and its duties in accordance with Article 8.1 of [Directive 2009/18/ EC of the European Parliament and of the Council of 23 April 2009](#) concerning fundamental principles regarding the investigation of accidents in the maritime transport sector. The need for this Bill arises from the [EU judgment](#) of the [Court of Justice in Case C-257/19, European Commission v Ireland \(C-257/19\)](#), and described in the [General Scheme](#) of the Bill:

“The EU Commission expressed concern at the independence of the MCIB in the context of the independence requirements of Article 8.1, with particular regard to the membership under the Act of 2000 of the Chief Surveyor and a nominee of the Secretary General of the then Department of Transport, Tourism and Sport on the Board. In its judgment, the CJEU declared that by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8.1 of Directive 2009/18/EC.”

A ‘marine casualty’ means an event or process which causes or poses the threat of: (a) death or serious injury in a person; (b) the loss of a person overboard; (c) significant loss or stranding of, or damage to, or collision with, a vessel or property; or (d) significant damage to the environment, in connection with the operation of: (I) a vessel in Irish waters; (II) an Irish registered vessel, in waters anywhere; or (III) a vessel normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters.

## Glossary and abbreviations

Table 1 Glossary and abbreviations.

Term	Meaning
Marine casualty	an event or process which causes or poses the threat of: (a) death or serious injury in a person; (b) the loss of a person overboard; (c) significant loss or stranding of, or damage to, or collision with, a vessel or property; or (d) significant damage to the environment, in connection with the operation of: (I) a vessel in Irish waters; (II) an Irish registered vessel, in waters anywhere; or (III) a vessel normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters
MCIB	Marine Casualty Investigation Board Established on 5 June, 2002. The MCIB is a non-prosecutorial body which does not enforce laws or carry out prosecutions. It is not the purpose of an investigation carried out by the MCIB to apportion blame or fault. <sup>1</sup>
MSO	Marine Survey Office, of the Department of Transport. <sup>2</sup>
Ship's husband	An agent responsible for providing maintenance and supplies for a ship in port. <sup>3</sup>

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<sup>1</sup> [MCIB - Marine Casualty Investigation Board](#)

<sup>2</sup> [Marine Survey Office \(MSO\) \(www.gov.ie\)](#)

<sup>3</sup> [SHIP'S HUSBAND | Meaning & Definition for UK English | Lexico.com](#)

## Table of provisions

A summary of the Bill's provisions is included in Table 2 below.

**Table 2 Table of provisions of the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill.**

Section	Title	Effect
1	Interpretation	“Act of 2000” means the <a href="#">Merchant Shipping (Investigation of Marine Casualties) Act 2000</a> , throughout.
2	Amendment of section 2 of Act of 2000	This short section deletes the previous definition of a Chief Surveyor.
3	Amendment of section 9 of Act of 2000	<a href="#">Section 9 of the Act of 2000</a> dealt with composition of the Marine Casualty Investigation Board (the ‘MCIB’).  These amendments are to have ministerial appointees, numbering between five and seven members. It defines the eligibility of board members in terms of defined skillset, with marine, maritime and health and safety expertise and experience. It excludes ministerial advisors and civil servants of the previous five years from the Department of Transport.  The section provides for ministerial appointment of one chairperson, one deputy chairperson, and shall aim for a gender balance of 40% men and 40% women.
4	Amendment of section 10 of Act of 2000	<a href="#">Section 10 of the Act of 2000</a> dealt with the tenure of office of chairperson and members of board.  This amendment allows for chairperson and all board appointees to the board to have an initial appointment period of up to five years (rather than for a set period of five years), and to have one second term only (as opposed to multiple reappointments allowed for in the Act of 2000). This amendment removes an age limit which was of up to age 70. The Bill <a href="#">Explanatory Memorandum</a> states that this amendment brings conditions in line with the <a href="#">Code of Practice for the Governance of State Bodies</a> .
5	Amendment of section 11 of Act of 2000	Minor consequential amendment to reference of appropriate section.
6	Amendment of section 14 of Act of 2000	<a href="#">Section 14 of the Act of 2000</a> dealt with quorum numbers. This amendment stipulates that a three-person quorum is required and spells out the possible member compositions to make that quorum.
7	Amendment of section 16 of Act of 2000	<a href="#">Section 16 of the Act of 2000</a> dealt with consultants, advisers, and investigators in support of the board.

Section	Title	Effect
		This amendment now allows for engagement of an external “provider of other skills or expertise” by the board, and for fees payment from the allocated funds to the board.
8	Amendment of section 17 of Act of 2000	Minor consequential amendment following persons defined in Section 16.
9	Amendment of section 18 of Act of 2000	<p><a href="#">Section 18 of the Act of 2000</a> dealt with disclosure of confidential information.</p> <p>This section makes amendments in line with <a href="#">Directive 2009/18/ EC of the European Parliament and of the Council of 23 April 2009</a> with regard to confidentiality and the unauthorised disclosure of confidential information. <a href="#">S.I. No. 276/2011 - European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011</a> had served as the transposition of this directive, requiring confidentiality of all submissions and identities relating to safety investigation matters by the board.</p> <p>This amendment requires that board members or those performing duties engaged by the board must not (unless authorised or required or permitted by law to do so) disclose ‘confidential information’ obtained in the course of the duties with the board matters; and creates an offence to do so. It defines ‘confidential information’ therein.</p> <p>A court order for such disclosures may be granted in the overriding public interest.</p>
10	Amendment of section 23 of Act of 2000	<p><a href="#">Section 23 of the Act of 2000</a> dealt with initial notification of marine casualties.</p> <p>This amendment updates the notification requirements to be made to the MCIB rather than the now defunct Chief Surveyor or notification to the marine survey office of another department.</p>
11	Amendment of section 26 of Act of 2000	<p><a href="#">Section 26 of Act of 2000</a> included a requirement for the MCIB to consult with the Minister before its marine casualty investigation, this is removed by this amendment.</p>
12	Amendment of section 34 of Act of 2000	These amendments address timelines for reporting and interval report publication by the MCIB, amending from nine months to 12 months with requirements for interval reporting if the 12-month timescale is not met.

Section	Title	Effect
13	Notification of marine casualties to Marine Survey Office	<p>Section 13 is a new section and does not amend the Principal Act. It sets out the requirements for immediate notification of a marine casualty. It covers the following professions/persons of a vessel involved in a marine casualty: owner, charterer, master, skipper, person in charge, ship's agent, ship's manager or ship's husband.</p> <p>These persons are required to use the 'quickest means possible' to notify to the Marine Survey Office (MSO) at the Department of Transport, and the nature of required information is defined. This section defines an offence of failure to notify, which carries an imprisonment of up to two years and/or a fine of up to €100,000.</p> <p>A stated exception is made for vessels of the Naval Service of the Defence Forces, or to warships of another state (as defined in <a href="#">Defence Act, 1954</a> and Article 29 of the <a href="#">1982 United Nations Convention on the Law of the Sea</a> (UNCLOS).</p> <p>This Section does not include an obligation to notify the MCIB (as provided for in Section 10) so it is slightly unclear if, in the first instance, the notification of a marine casualty is to the MSO who then inform the MCIB, or if the notifying person must inform both the MSO and the MCIB directly.</p>
14	Transitional provision - continuation of ongoing investigations etc	<p>Section 14 addresses investigations that are underway but not yet completed at the point of commencement. It clarifies that an investigation underway, and its associated reporting, will continue to completion as per the Act of 2000 and not the new Act.</p> <p>Section 14 allows for existing MCIB board members and chairpersons to continue their term in accordance with the original Act of 2000.</p>
15	Amendment of Merchant Shipping (Safety Convention) Act 1952	<p><a href="#">Section 3 of the Amendment of Merchant Shipping (Safety Convention) Act 1952</a> dealt with interpretation and construction of the 'accepted Safety Convention certificate'. It predated the International Convention for the Safety of Life at Sea (SOLAS Convention), including provisions for the Maritime Safety Committee of the International Maritime Organization (of May 2018).</p> <p>This amendment inserts the definition of 'Safety Convention' as the specified International Convention(s) on maritime safety and Safety of Life at Sea (SOLAS), namely those up to and including the 99th session of the</p>

Section	Title	Effect
		Maritime Safety Committee of the International Maritime Organisation.
16	Short title, collective citation and construction	This is a standard provision regarding citing and commencement of the Act and collective acts.

Source: Derived from [Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill 2021](#) and [Explanatory Memorandum](#). 'Act of 2000' refers to the [Merchant Shipping \(Investigation of Marine Casualties\) Act 2000](#).

## Introduction

This Bill Digest provides a background to the Bill, its associated Regulatory Impact Analysis (RIA), and a summary of Pre-legislative scrutiny of the General Scheme of the Bill by the Joint Committee on Transport and Communications. The principal provisions of the Bill are explained, and some of the implications and implementation issues for the Bill are highlighted.

## Background

The Bill mainly concerns the composition of the Marine Casualty Investigation Board (MCIB) which was established on 5 June 2002. It currently comprises three persons and a secretary.<sup>4</sup> The Bill provisions relate to the board members and its operations, confidential disclosures to the board, notifications of marine casualty incidents to the board and Marine Survey Office of the Department of Transport; plus a number of amendments to reflect international maritime safety definitions and conventions.

In the opening statement to the Joint Committee on Transport and Communications [29 January 2021](#), the Minister for Transport Minister for Transport, Deputy Eamon Ryan, said [in introducing the General Scheme of the Bill]:

“Clearly, it is not the final step in the process of reviewing the legislative and structural framework governing marine casualty investigation in Ireland. The Bill seeks to ensure the continued functioning of the Marine Casualty Investigation Board in the immediate term.”

Further, regarding a quorum for the MCIB:

“One of the risks we need to immediately manage is the risk of us not having an effective board should we, for whatever reason, lose one of the three existing board members”

Ireland faced a legal challenge principally with respect to its obligations in accordance with Article 8.1 of [Directive 2009/18/ EC of the European Parliament and of the Council of 23 April 2009](#) (action Article 258 TFEU<sup>5</sup> for failure to fulfil obligations, brought on 26 March 2019). Directive 2009/18/EC is the EU legislation governing the investigation of accidents in the maritime transport sector and is currently given effect in Ireland by the European Communities (Merchant Shipping)

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<sup>4</sup> [Board Members \(mcib.ie\)](#)

<sup>5</sup> Treaty on the Functioning of the European Union.



(Investigation of Accidents) Regulations 2011 (S.I. No. 276 of 2011), as amended by the European Communities (Merchant Shipping) (Investigation of Accidents) (Amendment) Regulations 2020 (S.I. No. 444 of 2020).

The case is [Case C-257/19, European Commission v Ireland \(C-257/19\)](#). The [court judgment](#) of 9 July 2020 states the following:

“By its application, the European Commission requests that the Court declare that, by failing to provide for an investigative body which is independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8(1) of Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 establishing the fundamental principles governing the investigation of accidents in the maritime transport sector and amending Council Directive 1999/35/EC and Directive 2002/59/EC of the European Parliament and of the Council (OJ 2009 L 131, p. 114).”

Separately, a Private Member’s Bill titled [Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill 2019](#) was initiated 3 July 2019 and sponsored by Deputy Mattie McGrath. The purpose of the PMB was to revise the requirements for composition of the Marine Casualty Investigation Board only. That bill is currently before Dáil Éireann, Third Stage.

## Policy and legislative context

The policy context is comprehensively described in the [Regulatory Impact Analysis \(RIA\) for the Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill 2021](#):

“The Marine Casualty Investigation Board (MCIB) was established under the Merchant Shipping (Investigation of Marine Casualties) Act 2000 (No. 14 of 2000) (2000 Act) to investigate marine casualties and publish reports of such investigations. The primary purpose of the 2000 Act was to provide for a new legislative regime to regulate the entire area of marine casualty investigation in Ireland and to replace the system established in 1894. The decision to establish the Board followed a wide-ranging examination of the then existing investigation system in Ireland carried out by the Investigation of Marine Casualties Policy Review Group which reported in 1998. Section 8 of the 2000 Act provides that the MCIB shall be independent of the Minister (currently the Minister for Transport) in the performance of its functions and, in general, shall be independent of any other person or body whose interests could conflict with the functions of the Board. Section 9 of the Act sets out the composition of the Board, which shall consist of three persons appointed by the Minister for Transport, the Chief Surveyor, and the Secretary General of the Department of Transport or his or her nominee.

“Under the 2000 Act, a marine casualty means an event or process which causes or poses the threat of – (a) death or serious injury in a person; (b) the loss of a person overboard; (c) significant loss or stranding of, or damage to, or collision with, a vessel or property; or (d) significant damage to the environment, in connection with the operation of – (I) a vessel in Irish waters; (II) an Irish registered vessel, in waters anywhere; or (III) a vessel normally located or moored in Irish waters and under the control of a resident of the State, in international waters contiguous to Irish waters, and includes an accident or damage referred to in section 26(1)(b) of the Act.

“In accordance with section 25 of the 2000 Act, the purpose of investigations is to establish the cause or causes of a marine casualty with a view to making recommendations for the avoidance of similar marine casualties. It is not the purpose of an investigation to attribute blame or fault.

“Directive 2009/18/EC of the European Parliament and of the Council of 23 April 2009 established the fundamental principles governing the investigation of accidents in the maritime transport sector and was one of a number of measures included in the Third Maritime Safety Package that was introduced in the interest of improving maritime safety. Directive 2009/18/EC is given effect in Ireland in the European Communities (Merchant Shipping) (Investigation of Accidents) Regulations 2011 (S.I. No. 276 of 2011), as amended by the European Communities (Merchant Shipping) (Investigation of Accidents) (Amendment) Regulations 2020 (S.I. No. 444 of 2020). The Directive applies to a subset of the marine casualties covered by the Act of 2000, i.e. it applies to marine casualties and incidents that: (a) involve ships flying the flag of one of the Member States; (b) occur within Member States’ territorial sea and internal waters as defined in the United Nations Convention on the Law of the Sea (UNCLOS); or (c) involve other substantial interests of the Member States, but applies a number of exemptions, as set out in Article 2.2. The Directive does not apply to marine casualties and incidents involving only: (a) ships of war and troop ships and other ships owned or operated by a Member State and used only on government non-commercial service; (b) ships not propelled by mechanical means, wooden ships of primitive build, pleasure yachts and pleasure craft not engaged in trade, unless they are or will be crewed and carrying more than 12 passengers for commercial purposes; (c) inland waterway vessels operating in inland waterways; (d) fishing vessels with a length of less than 15 metres; (e) fixed offshore drilling units.

“Furthermore, the obligation on a Member State to investigate applies only to “very serious marine casualties”, under Article 5.1. A requirement for a preliminary assessment only applies in the case of serious casualties. Therefore, the casualties and incidents that come within the scope of the Directive are a subset of the marine casualties that come within the remit of the MCIB.

“Article 8.1 of Directive 2009/18/EC provides: *“Member States shall ensure that safety investigations are conducted under the responsibility of an impartial permanent investigative body, endowed with the necessary powers, and by suitably qualified investigators, competent in matters relating to marine casualties and incidents. In order to carry out a safety investigation in an unbiased manner, the investigative body shall be independent in its organisation, legal structure and decision-making of any party whose interests could conflict with the task entrusted to it.”*

“In S.I. No. 276 of 2011, the MCIB was designated as the investigative body in the State for the purposes of Article 8 of the Directive.

“In March 2019 the EU Commission lodged a case with the Court of Justice of the European Union (CJEU) expressing concern at the independence of the MCIB in the context of the independence requirements of Article 8.1 of Directive 2009/18/EC, with particular regard to the membership of the Chief Surveyor and a nominee of the Secretary General of the Department of Transport on the Board.

“On 9 July 2020 the CJEU issued a Judgment in Case C-257/19 concerning the independence of the MCIB in so far as its investigative work falls within the scope of Directive 2009/18/EC. The Court declared that by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to that investigative body, Ireland has failed to comply with its obligations under Article 8.1 of Directive 2009/18/EC. The issue was the presence of the Chief Surveyor of the Department of Transport and the nominee of the Secretary General of the Department on the five-person Board of the MCIB. The two members were seen as persons whose interests could conflict with the task entrusted to the MCIB. There was no finding of partiality on the part of the Board.

“To address the findings of the Judgment, the two Board members of concern resigned from the Board on 30 July 2020 and the European Communities (Merchant Shipping) (Investigation of Accidents) (Amendment) Regulations 2020 (S.I. No. 444 of 2020) were made on 16 October 2020. These regulations amend S.I. No. 276 of 2011 so as to provide for a revised MCIB Board structure whereby the Chief Surveyor and the Secretary General of the Department or his or her nominee are no longer Board members for the purpose of decisions relating to investigations that fall within the scope of the Directive. The regulations also add to the list of sections of the 2000 Act that apply for the purposes of the Directive and provide for a meeting quorum of two when the Board is performing a function under the regulations.”

## Previous legislation related to the current Bill

Below are the pieces of current and previous legislation of relevance to the Bill, the most recent are listed first.

### Ireland

[S.I. No. 444/2020 - European Communities \(Merchant Shipping\) \(Investigation of Accidents\) \(Amendment\) Regulations 2020](#)

[Merchant Shipping \(Registration of Ships\) Act 2014](#)

[S.I. No. 276/2011 - European Communities \(Merchant Shipping\) \(Investigation of Accidents\) Regulations 2011](#)

[Merchant Shipping \(Investigation of Marine Casualties\) Act 2000](#)

[Defence Act, 1954](#)

[Merchant Shipping \(Safety Convention\) Act 1952](#)

### United Nations

[International Convention for the Safety of Life at Sea \(SOLAS\), 1974](#)

See also [https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\)-1974.aspx](https://www.imo.org/en/About/Conventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS)-1974.aspx).

### European Union

[Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009](#) on common rules and standards for ship inspection and survey organisations and for the relevant activities of maritime administrations, (OJ L 131 of 28.5.2009, p. 47). This directive addresses the

responsibility of Member States as flag States by establishing measures to be followed by the Member States and organisations concerned with the inspection, survey and certification of ships for compliance with the international conventions on safety at sea and prevention of marine pollution.

## Regulatory Impact Analysis (RIA)

The [Regulatory Impact Analysis \(RIA\) for the Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill 2021](#) was published by the Department of Transport in November 2021. In the RIA three policy options are explored:

1. 'Do-nothing'. The RIA identifies that proceeding with no changes to the MCIB is not in compliance with the requirement for having a fully functioning investigative body to meet the requirements of Directive 2009/18/EC. A do-nothing option would result in infringement penalties. Potential impacts such as that having a three-person composition of the MCIB, and risks associated with inappropriate persons for performing the duties in investigation of the marine casualties, are recognised.
2. Legislation. To proceed with amending the primary legislation was found to be preferable in order to establish a functioning board, and limiting risks to the costs associated of the establishment and operations of the MCIB rather than costs of infringement penalties.
3. Review first. A third option of undertaking a review of all maritime accident investigation matters to encompass current legislation and structures in the context of national, European and international requirements of the issues, was rejected.

## Public consultation

A [Public Consultation on the Review of the Current Organisational Structures Underpinning Marine Casualty Investigation in Ireland in the context of national, EU and international obligations](#), was launched on 29 March 2021 and closed May 2021. Its objectives were to:

- Assess the current organisational structures for marine casualty investigation in Ireland.
- Set out in a report to the Minister for Transport any recommendations, including in relation to change, to achieve the most appropriate and effective marine casualty investigation structures for Ireland, taking into account national, EU and international obligations.

## Pre-legislative scrutiny of the General Scheme of the Bill




A PLS waiver request by the Minister was submitted 18 December 2020. Pre-legislative scrutiny of the General Scheme of the Bill was undertaken by the Joint Committee on Transport and Communications, which began stakeholder hearings on [29 January 2021](#). The Joint Committee summarised its PLS findings in July 2021 in its [Report on Scrutiny of the General Scheme of the Merchant Shipping \(Investigation of Marine Casualties\) \(Amendment\) Bill 2020](#). See also a [briefing note](#) supplied to the Joint Committee by stakeholder Michael Kingston, who is a lawyer specialising in maritime law, and who wrote to the Joint Committee expressing concerns and proposals for the national marine casualty investigation framework in Ireland.

The PLS report identifies three key issues:



1. the functioning of the MCIB Board
2. the implementation of the CJEU judgement, and
3. the Department's ongoing review of marine casualty investigation legislation.




Key Issues 1 and 2 are addressed by the Bill, and Key Issue 3 is noted to be beyond the scope of the Bill.

**Table 3 Key to traffic light dashboard comparing the Bill as published with Committee PLS recommendations.**

L&RS categorisation of the Department's response in the Bill to the Committee's key issue	Traffic light dashboard used in Table 4 to highlight impact of the Committee's PLS conclusion
Key issue has clearly been accepted and is reflected in the Bill.	
The Bill may be described as adopting an approach consistent with the key issue or the impact of the key issue is unclear.	
Key issue has not been accepted or implemented in the Bill.	

**Table 4 Traffic light dashboard comparing the Bill as published with Committee PLS recommendations.**

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill
<b>Key Issue 1: Functioning of the MCIB Board</b>	
a) Achieving a quorum of the board	 <p>Section 3 increases the board composition numbers, to between five and seven (from a previous maximum of five), to ensure a quorum of three is achievable. Note that the MCIB is <a href="#">currently operating with three members</a> plus a Secretary (as at November 2021).</p> <p>Section 6 sets out the combinations of members that may achieve a quorum of three persons.</p>
b) Prior employment of the board members	 <p>The Committee recommends that wording be included to address potential conflict of interest of board members, with wording "A serving officer of the Department of Transport shall not be appointed as a member of the Board." The General Scheme had considered exclusion of all former officers. A counter view by stakeholders was that all previous departmental employees should not be excluded given the pool of maritime experience. Section 3 of the Bill deals with this issue by compromise, with exclusion of civil servants of the Department of Transport from the previous five years, similarly for previous Ministerial advisors.</p>

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
c) Provision for gender-balance of the board members		The Committee recommended a gender-balance provision: “the Minister shall have regard to the objective that where possible at least 40 per cent of the members of the Board shall be women and at least 40 per cent shall be men.” In contribution to PLS, some stakeholders held the view that this does not reflect the current reality of the maritime sector. Section 3 of the Bill provides for this.
d) Engagement of external consultants		<p>The Committee questioned whether external appointees could be included in support of the board. One PLS stakeholder expressed concern that such external services may not encourage the MCIB to develop in-house expertise and capacity. Section 7 deals with engagement of a broader pool of external expertise by the board but does not specifically address the Committee’s concern that this approach “could be utilised to employ a full-time investigator on a rolling contract, and keep the current Board functioning on an interim basis” or allow for these to fulfil the roles of the board in terms of reaching a quorum.</p> <p>Note that external consultants propose themselves for consideration of the board.</p>
<b>Key Issue 2: Implementation of the CJEU Judgement</b>		
a) The key issue of concern following the CJEU judgement is that the number of Board members of the MCIB has been reduced from five to three members, which may impact the functioning of the board.		<p>The Committee acknowledged this concern and also makes note that only a two-person quorum is required, and provision for this is addressed in <a href="#">SI No. 444/2020</a> of October 2020.</p> <p>Section 6 sets out the combinations of members that may achieve a quorum of three persons out of a membership of between five and seven members provided for in Section 3.</p>
<b>Key Issue 3: Review of marine casualty investigation legislation</b>		
The Committee flagged that in PLS, stakeholders raised a number of broader issues regarding the functioning of the national marine investigation framework. Some are outside the scope of the Bill but will be	N/A	These issues are not associated with the Bill but are the subject of wider departmental review and public consultation. Note, in its PLS report it states “the Committee believes that the review is a matter of urgency.”

Commentary as per Committee report	Whether addressed (either in whole or in part) in the Bill	
addressed by review and public consultation.		

## Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains 16 Sections. A synopsis of each Section of the Bill is given in Table 1 above.

### Section 3

Section 3 of the Bill deals with the competencies and required skillsets of the MCIB board members. This matter was highlighted in the legal challenge taken against Ireland by the EU Commissions in [Case C-257/19, European Commission v Ireland \(C-257/19\)](#),

Previously, prospective board members were limited to a pool of maritime expertise, with the amendments in Section 3 these are broadened to others including health and safety professionals. Having considered excluding former officials and civil servants, notably of the Department of Transport, Section 3 of the Bill makes provision for such inclusion of members with greater than five years since employment at the Department. This is something that PLS stakeholders agreed would be important in order to not exclude key expertise from the maritime sector.

Section 3 also includes a gender-balance quota, requiring 40% men and 40% women membership of the MCIB.

### Section 7

Section 7 of the Bill provides for paid engagement of “a consultant, adviser, investigator or provider of other skills or expertise” by the MCIB. The amendment in this Section intends to broaden the pool of potential contributors. The Act of 2000 refers to a list of contributors established for this purpose and maintained by the MCIB, who are essentially those who volunteer themselves to be considered for such.

### Section 9

Section 9 of the Bill provides for clarifying what information relating to a marine causality is deemed confidential, and when those involved in the MCIB (both members and those engaged by the board) must maintain such confidentiality, and when it can be overridden by legal order in the overriding public interest.

These amendments are required to address Article 9 of the [Directive 2009/18/ EC of the European Parliament and of the Council of 23 April 2009](#) which concerns confidentiality. The Directive requirements are:

“Without prejudice to Directive 95/46/EC, Member States, acting in the framework of their legal systems, shall ensure that the following records are not made available for purposes other than the safety investigation, unless the competent authority in that Member State determines that there is an overriding public interest in the disclosure of: (a) all witness evidence and other statements, accounts and notes taken or received by the investigative

body in the course of the safety investigation; (b) records revealing the identity of persons who have given evidence in the context of the safety investigation; (c) information relating to persons involved in a marine casualty or incident which is of a particularly sensitive and private nature, including information concerning their health.”

## Section 13

Section 13 of the Bill provides for a new offence (applicable to maritime personnel, defined professions/persons of a vessel involved in a marine casualty: owner, charterer, master, skipper, person in charge, ship’s agent, ship’s manager or ship’s husband) of failure to notify the Marine Survey Office (MSO) at the Department of Transport of a marine casualty. However it is unclear between Section 10 (notification to the MCIB), and Section 13 (legal duty to notify a marine casualty to the Marine Survey Office (MSO) at the Department of Transport), whether a notifying person is duty bound to contact both the MSO and the MCIB. It is clear that failure of notification is only in relation to failure to notify the MSO.

This Section does not address non maritime personnel, and makes exceptions for defence forces and/or foreign state warship marine casualties.

## Implications and implementation issues

The Bill addresses a number of specific concerns around the membership of the MCIB, the competencies and prior experiences of those members, and the requirements for a functioning board in terms of a quorum of members and bringing in external expertise when appropriate.

The gender-balance quota provision in Section 3 of the Bill might be somewhat difficult to achieve, according to contributing stakeholders during PLS, who described a maritime sector that is not inherently gender balanced.

The main implications of implementing this Bill are potential costs around engagement and reliance of external consultants and advisors, for which no financial estimate or caps are provided. Note that the MCIB was funded to €276,014 in 2020 and € 200,590 in 2019 according to the [Marine Casualty Investigation Board Financial Statements 2020](#) laid before the Houses of the Oireachtas.

Section 7 of the Bill relates to paid consultants and investigators engaged by the MCIB, but the Bill does not set out any limits of guidance for payment of these roles or to what extent they may perform the investigatory duties of the board. This Section does not define the minimum requirement of experiences or qualifications for those so engaged, nor requirements for their representation of different sectors of the maritime field, nor deal with potential conflicts of interest that might arise by individuals acting in a paid capacity for the board balanced with other roles and responsibilities. The pool of individuals that can be engaged are those who volunteer their details to the MCIB, rather than are recruited through a transparent process or with defined criteria for their qualification.

There is a lack of clarity about the requirement for both maritime professionals and members of the public in their duty of care in reporting a marine casualty incident. Whilst Section 13 does detail the responsibilities for notifying a marine casualty to the Marine Survey Office at the Department of Transport, it remains a little unclear if this is in addition to or in lieu of responsibilities set out in Section 10 in which the marine casualty notification requirements are to be made to the MCIB and not the MSO. The Bill does not provide for requirements or penalties regarding notification by non



maritime persons i.e., general members of public, and stakeholders in PLS highlighted that a lack of education for the general public on matters of marine casualty incidents meant that a potential gap arises here.

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