

Joint Oireachtas Committee on Transport
Pre Legislative Scrutiny on a
General Scheme of a Railway Safety (Amendment) Bill 2018
Opening Statement

Thank you, Chairman. I am here today in response to an invitation by the Committee to assist in the consideration of the General Scheme of a Railway Safety Amendment Bill as recently submitted to and approved by Government for publication and for the drafting of a Bill by Parliamentary Counsel in the Office of the Attorney General.

Rail Safety in Ireland

A key role for the Minister is to develop robust legislation to underpin railway safety in Ireland. Firstly, I will give an overview of the various agencies that operate under that legislative framework and who each have important roles in relation to railway safety.

The prime duty of safety in relation to the day to day safe operation of railways rests on the **railway operators**, in accordance with the Railway Safety Act 2005 and a wide range of EU law. These include Iarnród Éireann and Transdev, the company which operates Luas. All railway organisations are obliged to implement statutory compliant safety management systems.

As an independent specialist Regulator, the **Commission for Railway Regulation** is the National Safety Authority for the rail sector in Ireland. The CRR is charged under the 2005 Act with oversight of the safety of the heavy and light rail organisations that provided over 80 million passenger journeys in 2017. The CRR approves and audits the safety management systems of the railway operators and takes enforcement proceedings, where necessary.

The **Railway Accident and Investigation Unit** or RAIU is an independent investigation unit which conducts investigations into accidents/incidents on railways in Ireland. Investigations are carried out in accordance with the Railway Safety Act 2005 and EU law.

The purpose of RAIU investigations is to make safety recommendations in order to prevent future accidents and improve railway safety.

This comprehensive framework is in place because railway safety is critical for passengers; for railway workers; and for all who come in contact with the railway network. One aspect of rail safety involves safeguarding against impairment of safety critical workers as a result of intoxicant use. The main provisions in the General Scheme as circulated propose important amendments to the Drug and Alcohol provisions of the 2005 Act. The General Scheme also has some miscellaneous amendments of the 2005 Act as well as one amendment of the Public Transport Regulation Act 2009.

Drug and Alcohol – Work Place Testing under Part 9

I will focus first on Part 9 of the 2005 Act which provides for the implementation in the workplace of a statutory Code of Conduct for Drugs and Alcohol for railway safety critical workers. Not all employees are safety critical workers. Under the Act, a safety critical worker is one who performs safety critical tasks including tasks to control the movement of trains (encompassing train drivers and signal operators); tasks to control movement of persons e.g. at railway crossings; as well as maintenance tasks. The Code sets out the workplace policy for testing these workers for intoxicants. Disciplinary sanctions apply for non-compliance, up to and including dismissal.

Under these provisions, Iarnród Éireann and Transdev, the current Luas operator, both have agreed Codes of Conduct for Drugs/Alcohol. Random testing is undertaken as well as testing for cause - e.g. post incident. Iarnród Éireann has 2,421 employed safety critical workers. In the 3 years to end 2017, 710 employee tests were undertaken with 8 positive results. None of the positive results was Post Incident and all were dealt with under Disciplinary Procedures. Transdev has 246 safety critical workers. Since the commencement of Luas operations in 2004, four Luas safety critical workers have had positive results. None of these has continued in employment or returned to work for Transdev.

Iarnród Éireann has indicated that the introduction of Drugs and Alcohol Policy and the associated testing has been extremely effective in developing their safety culture and it

would seem that WorkPlace Testing and the culture of awareness around intoxicants can be considered as factors in the continued positive record of rail safety over recent years.

While the provisions of Part 9 are working well, the General Scheme addresses some issues of concern. The alcohol limits set down in the 2005 Act mirrored the provisions that applied under Road Traffic Acts at the time. However, the alcohol limits under Road Traffic Acts have evolved since 2005. The Railway Safety Act has not kept pace. Road Traffic legislation has been amended to reduce the statutory alcohol limits for all drivers and introduced a 'specified person' category which includes professional road drivers (like drivers of buses or taxis). This means that train drivers and other railway safety critical workers are currently permitted to have 4 times more alcohol in their blood than the equivalent professional road driver. Following a CRR recommendation, the General Scheme proposes that statutory alcohol limits consistent with those specified under Road Traffic Acts for 'specified persons' will apply to all railway safety critical workers under Part 9. Other changes are proposed to clarify procedures. For example, the amended Part 9 will make it clear that a doctor is not required to be present when a urine sample is given. It is also proposed to expand the provisions to introduce a role for a nurse in sampling.

Drug and Alcohol – Criminal Sanctions under Part 10

Part 10 of the Act provides for Criminal Sanctions. It is proposed to amend the provisions so that the procedures under Part 10 would only be used following an accident causing harmful consequences (e.g. involving fatalities). Just as for Part 9, the proposal is to ensure that statutory alcohol limits consistent with those under the Road Traffic Acts for 'specified persons' will apply to all safety critical workers. Under Part 10, the sanction would involve criminal offences with potential penalties, on conviction in court, involving a fine/imprisonment. As they are currently exempt, the General Scheme also proposes to extend criminal sanction provisions to heritage train operators, where they are operating on the rail infrastructure of another rail organisation (e.g. when a steam train runs day trips on the Irish Rail mainline).

Road traffic legislation was expanded in 2016 to provide for analysis of blood samples to establish the concentration level of certain drugs (e.g. cocaine). A Schedule to the Road Traffic Act 2010 sets out the relevant drugs. In relation to drugs, it is proposed that the

approach under Part 9 and Part 10 would differ. Work Place Testing would continue to provide for a simple yes/no test for presence of drugs. The more sophisticated approach involving sampling by the Gardai and analysis for concentration of specified drugs by the MBRS would only be used in the criminal context. If in the future either the statutory alcohol limits or the list of specified drugs set out under Road Traffic legislation are amended, the Bill provides that all such changes will automatically carry through for application for rail safety also.

Since the General Scheme was circulated to the Committee, we have been liaising with the Office of the Parliamentary Counsel, and the Parliamentary Counsel has begun considering the many issues and complexities pertaining. In opening discussions, the Parliamentary Counsel highlighted the intricate interplay between Part 9 (which is broadly based on employment law) and Part 10 (which constitutes criminal law). Initial views suggest that, in order to safeguard the ability to successfully prosecute under the criminal provisions, there may be a need to deal with those provisions separately or to apply a different legislative approach. The Parliamentary Counsel has also noted that the General Scheme was developed to closely mirror the Drug and Alcohol provisions of the Road Traffic Acts, while adjusting them to fit the context of rail infrastructure rather than public road; and to consider railway safety critical tasks being performed rather than a car or road vehicle being driven.

While the OPC has not yet finalised analysis, it seems possible that the outcome of deliberations may be to recommend an approach which will be simpler than the full mirroring of the Road Traffic provisions, which is evident in the Heads as circulated. While we cannot be definitive in this regard as yet, I would like to highlight for the Members of the Committee that these considerations are on-going and that the approach currently applied in the Heads may evolve.

Other Amendments of the Railway Safety Act

In respect of the Commission for Rail Regulation, the Bill includes provisions that recognise the expanding remit of the CRR, and some streamlining of administrative procedures. Due to changes in EU law, there is a need to ensure that the Railway Accident Investigation Unit continues to have adequate powers. Post transposition of the EU Fourth Railway Package, the RAIU would be unable to conduct investigations on light rail/metro, if this change were

not made. There is also an amendment which provides for possible future international rail agreements.

Amendment to the Public Transport Regulation Act 2009

Finally. The amendment to the 2009 Public Transport Regulation Act brings commercial school bus services which operate *outside* the scope of the School Transport Scheme under the Department of Education, back within the scope of NTA's licensing regime. These services were inadvertently excluded due to the definition of 'public bus passenger service' which was amended in the 2009 Act. The new provision corrects this.

I thank you for inviting me to make this presentation and look forward to hearing your views.