



Statement to the
Oireachtas Joint Committee on Enterprise, Trade and Employment
on the
Safety, Health and Welfare at Work (Amendment) Bill 2020

Dr. Sharon McGuinness, Chief Executive Officer
Health and Safety Authority

Tuesday, 30 March 2021

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Statement to the Joint Committee on Enterprise, Trade and Employment, 30 March 2021

Chair, Committee Members,

1. Thank you for the invitation to come before you to present the Health and Safety Authority views on the Safety, Health and Welfare at Work (Amendment) Bill 2020. I am Dr. Sharon McGuinness, the Chief Executive Officer of the Health and Safety Authority.
2. Before commenting on the specifics of the proposed amendment, I would like to provide a general outline of the work of the Health and Safety Authority and then follow that with some details about our role in relation to COVID-19 before concluding with comments on the specifics of the Bill.
3. The Health and Safety Authority, hereafter the Authority, is the national body with responsibility to secure occupational safety, health and welfare for all persons at work. The Authority operates under the provisions of the Safety, Health and Welfare at Work Act 2005 and associated regulations. Our mandate is broad and varied covering matters related to occupational health and safety, chemicals and market surveillance of products. The Irish National Accreditation Board, INAB, is also part of the Authority.
4. Accidents and dangerous occurrences are required to be reported to the Authority in line with the 2016 Safety, Health and Welfare at Work (General Application) (Amendment) (No. 3) Regulations (S.I. No. 370 of 2016). Under the 2016 Regulations, the Authority receives approximately 9,000 non-fatal incident and injury reports in any given year, which are primarily used to complete EU statistical reporting and inform policy making. On the basis of prioritisation and severity, a portion of these may be assigned for investigation.
5. Another regulation, which is relevant in the context of today's discussions, is the Safety, Health and Welfare at Work (Biological Agents) Regulations 2013. These Regulations transpose Directive (EC) 2000/54 on the protection of workers from risks related to exposure to biological agents at work. The Regulations address the occupational risks arising from working with biological agents, and one of the requirements is that employers must report to the Authority in the event of an incident involving a biological agent or a case of illness or a fatality caused by a biological agent.
6. Therefore, when it comes to reporting of occupational accidents, dangerous occurrences as well as illness caused by a biological agent, this is done by way of Regulation, either the 2016 Regulation or the Biological Agents Regulation 2013, rather than by way of the Act itself.
7. With respect to the Authority's role in relation to COVID-19, a number of points are relevant.
8. Firstly, as COVID-19 is a pandemic, it is managed by the public health authorities. Therefore, it is the Department of Health and the Health Service Executive (HSE) who determine the

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public health advice, make recommendations to suppress the virus and manage outbreaks in workplace and community settings as provided for under the Public Health legislation for Infectious Diseases.

9. The Authority has supported the Government and employee and employer stakeholder groups in the development of the Return to Work Safely Protocol and more recently the Work Safely Protocol. In support of the Protocol, the Authority is providing advice and supports through our Workplace Contact Unit and website to employees and employers. In addition, the Authority is also carrying out adherence checks of the Protocol as part of the cross-body inspection approach involving several agencies and departments, as agreed by Government in May 2020.
10. In 2020, the Biological Agents Directive was updated to include SARS-CoV-2 (the biological agent which causes the disease COVID-19) as a Risk Group 3 human biological agent. This Directive is transposed into Irish legislation under S.I. 539 of 2020 and its associated Code of Practice for Biological Agents. The Code of Practice has been prepared and published by the Authority.
11. The Biological Agent Regulations cover the potential for exposure to SARS-CoV-2 which may occur whenever employees are in contact with that agent (virus) in the course of their work with bodily samples, COVID-19 waste or caring for COVID-19 patients. Any employee carrying out work with the coronavirus (SARS-CoV-2) who contracts COVID-19 as a result of occupational exposure should be notified by the employer to the Authority. Up to the 19th of March 2021, the Authority has received 454 reports from employers covering 828 employees.
12. Following a decision of the Board of the Health and Safety Authority on 26 June 2020, the Authority initiated the preparation of a Regulatory Impact Analysis (RIA). The intention of the Board was to ensure that the Authority has comprehensive and immediate data to support the protection of workers from COVID-19. The purpose of the RIA is to identify a range of possible options for the potential achievement of this objective, and to provide detailed information on the costs, benefits and impacts of each option. The RIA will provide the Board with a basis for recommending the most appropriate way forward, which may include a recommendation to amend the Health and Safety (General Application) (Amendment) (No. 3) Regulations (S.I. No. 370 of 2016). The final RIA will be considered by the Board of the Authority in the coming weeks.
13. The Authority also receives weekly data reports on COVID-19 workplace outbreaks from the Health Protection Surveillance Centre (HPSC). These HPSC reports are based on the medically confirmed and validated data inputted into the Public Health Computerised Infectious Disease Reporting system (CIDR). This information allows the Authority to focus

its inspections on specific sectors and workplaces in support of Public Health in their management of outbreaks in workplace settings. The Authority, as a member of the National Standing Oversight Committee (NSOC) on High-Risk Sectors, also receives weekly reports on outbreaks in construction and meat/food processing.

14. Furthermore, the Authority can access the information reported to the National Incident Management System (NIMs), which collects data from the public healthcare sector.
15. Therefore, the Authority has a significant level of information available to it on workplace cases of COVID-19. All of these reporting systems are an important source of information in identifying prevalence and trends, monitoring progress, and informing interventions, not just for the Authority but Public Health as well.
16. In considering the proposed amendment, the Authority would firstly state that protection of workers and prevention of accidents, injuries and illness is always our primary goal. In order to do that, we need to have robust and reliable information and data. COVID-19 is an infectious disease, which has caused a public health pandemic, and an individual has the potential to be infected by contracting it in or out of the workplace. The most reliable data on COVID-19 in the workplace is the data collected in the Infectious Disease database, CIDR, as this data is medically validated and confirmed by a COVID-19 PCR test. The weekly reports from HPSC provide the Authority with details of all cases of COVID-19 in all workplaces and this allows the Authority to quickly identify the workplace, the geographical location and the number of cases associated with each workplace.
17. The information envisaged in the Bill as being necessary to be supplied to the Authority would in essence be similar to that already supplied by the HPSC directly to the Authority on a weekly basis. Therefore, given that the Authority already receives this complete and timely information on workplace cases from the HPSC, there would be no additional benefit in introducing this amendment.
18. The Bill may be contrary to the scope of the Safety, Health and Welfare at Work Act 2005. The Act only provides for an occupational illness or disease that is attributable to work. For example, asbestosis where the person's work involves regular exposure to asbestos and an occurrence of the disease asbestosis can generally be reliably associated with a specific workplace activity. The wording in the Bill would in essence make COVID-19 an occupational disease if any worker in a workplace were to contract it, irrespective of where they caught the disease. As noted above, COVID-19 can just as easily be acquired by employees outside of work and subsequently brought into the workplace and such circumstances would not be considered "attributable to work" under the Act.

19. The Bill does not consider the implications on all employers of imposing a COVID-19 reporting obligation on them. Most employers would not be in a position to assess or attribute COVID-19 infections to their workplace with any degree of medical or legal reliability, since COVID-19 can be acquired in community, domestic and workplace settings. The amendment may leave employers with an obligation, which they may not reasonably or legally be able to fulfil, as there is no counter-obligation on employees to provide detailed confidential medical information to their employer. Creating a requirement for employers to capture and report alleged incidents of COVID-19 to a third party may also have GDPR implications.
20. The Bill would introduce a significant administrative burden on employers, particularly those in healthcare to report information that is already reported to CIDR, and in certain circumstances to NIMS, all of which the Authority already has access to. Many of these employers may also have a reporting requirements to the Authority under the Biological Agents Regulations.
21. Employers are already reporting that it is difficult to determine if cases of COVID-19 amongst their workers are occupationally acquired or have arisen outside the workplace due to the high levels of community transmission. Determining the source of COVID-19 infection in an individual can require detailed medical assessment by public and occupational medical professionals.
22. There are three reporting requirements in the State related to COVID-19 in the workplace – CIDR, NIMS and the reporting under the Biological Agents Regulation. A fourth is also under assessment by the Authority (the Regulatory Impact Analysis mentioned above). The added value in creating a fourth or possibly a fifth reporting system in Ireland for the infectious disease COVID-19 is questionable, as it would not provide any additional public or occupational health assurance or relevant policy-making information on COVID-19 in the workplace.
23. Guidance from the Department of Public Expenditure and Reform (DPER) requires the preparation of a RIA to support significant legislative proposals. This is why the Authority initiated a RIA development process to consider options for reporting of COVID-19. The Authority recognises the principles and reasons behind this Bill. However, the Authority believes that a RIA should be completed before any amendment is made to the 2005 Act or indeed any other occupational health and safety legislation. Any regulation for COVID-19 reporting needs to be made on both a sound legal as well as a medical basis.
24. The Authority's RIA development process involved consultation with a range of parties including employee and employer stakeholders as well as Government departments and agencies. It is nearing completion and will go to the tripartite Board of the Health and Safety

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Authority for their consideration and recommendations. The Authority is therefore of the view that amending the 2005 Act at this juncture may be premature.

25. To conclude, there are already three reporting systems in the State for cases of COVID-19 in the workplace. The Authority has access to all three and is currently completing a Regulatory Impact Analysis, which is looking at options for a possible fourth system. Worker protection is already well served by all these reporting systems and by the work that the Authority is doing in relation to the Work Safely Protocol and specific occupational health and safety legislation such as the Biological Agents Regulation. Worker protection is also at the forefront of all the engagement and supports the Authority provides to Public Health, who are ultimately responsible for addressing this global pandemic. The key to managing COVID-19 ultimately resides with all of us adhering to public health advice, guidance and regulations.

26. On behalf of the Health and Safety Authority, I would like to thank the Joint Committee for the opportunity to present to you today.

Dr. Sharon McGuinness,
Chief Executive Officer
Health and Safety Authority.
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