

**Pre-Legislative scrutiny of the General Scheme of the Merchant Shipping  
(Investigation of Marine Casualties) (Amendment) Bill 2020**

**Opening Statement by the Minister for Transport, Mr Eamon Ryan TD, to the  
Joint Committee on Transport and Communications Networks  
Friday, 29 January 2021**

I thank the Chairman and the Committee members for inviting me here today to discuss the General Scheme of the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill.

Marine safety, and the promotion and enhancement of safety, are key objectives and priorities of my Department that underscore many of our policies, strategies and actions, with a view to reducing risks, and the number of marine casualties and lives lost in the sector.

I must stress at the outset, the current Bill is not the final step in the process of reviewing the legislative and structural framework that applies to marine casualty investigation in Ireland. Rather, it is the latest important legislative step to address the findings of a Judgment of the Court of Justice of the European Union (CJEU) and to ensure the continued functioning of the Marine Casualty Investigation Board (MCIB) in the immediate term.

**Background**

In an Irish legislative context, the concept of marine accident investigation goes back many years. The Merchant Shipping Act 1894 provided a historical framework until the Merchant Shipping (Investigation of Marine Casualties) Act 2000 was enacted to

implement key recommendations of the Investigation of Marine Casualties Policy Review Group, which reported to the then Minister for the Marine and Natural Resources in 1998. The 2000 Act addressed the core recommendation of the Policy Review Group in facilitating the establishment of the MCIB as an independent State body to investigate marine casualties and publish reports of such investigations.

The MCIB, in accordance with the 2000 Act, is composed of a five person Board, comprising three members appointed by the now Minister for Transport and two other persons who, until recently, were the Chief Surveyor of the Department of Transport and a nominee of the Secretary General of the Department. Under 2011 regulations made under the European Communities Act 1972, the MCIB is also designated as the investigation body in the State for the purposes of Directive 2009/18/EC, which established fundamental principles governing the investigation of accidents in the maritime transport sector and applies to a subset of the marine casualties that come within the remit of the MCIB. Article 8 of the Directive includes a requirement that 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.

### **EU Infringement process and CJEU Judgment**

In recent years, a formal process was undertaken with the EU Commission relating to the implementation of Directive 2009/18/EC in Ireland and the independence of the MCIB in the context of the requirements laid down by Article 8 of the Directive. My Department engaged with the Commission at all stages and, following this process,

the Commission lodged a case with the CJEU, which was defended with the approval of the Government and having regard to legal advice received.

This led to the CJEU Judgment on 9 July 2020 in which 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 two Department officials on the Board who were seen as persons whose interests could conflict with the task entrusted to the MCIB. There was no court finding of wrongdoing on the part of any members of the Board.

### **Actions following the CJEU Judgment**

Following the CJEU ruling, legal advice was received on the Judgment and on legislative and administrative options to address the findings of the Court. My Department set about addressing the findings as follows:

1. To address the immediate issue regarding the membership of the Board, the two Board members of concern were requested to resign from the Board and did so on 30 July 2020. Therefore, since 31 July 2020, the Board consists of three persons only, as the current legislative framework does not provide for the replacement of the two members in question.

2. To address the infringement findings, I made the European Communities (Merchant Shipping) (Investigation of Accidents) (Amendment) Regulations 2020 (S.I. No. 444 of 2020) on 16 October 2020. These regulations amend the 2011 regulations that transposed Directive 2009/18/EC (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 of Transport 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 revised the quorum for a meeting of the Board, reducing it to a two person quorum when it is performing a function under the regulations.

3. My Department also wrote to the EU Commission regarding the actions taken to address the Judgment and the proposed Bill to amend the 2000 Act.

### **Proposed General Scheme of the Bill**

I am advised that the strict requirement of independence on which the CJEU Judgment is based does not apply outside Directive 2009/18/EC and the Court ruling only relates to the organisation of the Board in the context of marine casualties that come within the scope of the Directive. However, it is my view that, on grounds of consistency, it is necessary to urgently progress a further legislative revision with regard to the Board structure so as to encompass the broader spectrum of investigations that come within the remit of the MCIB under the 2000 Act. Accordingly, on 20 October 2020, the Government approved policy proposals for the development of a revised legislative framework for the MCIB and, on 8 December

2020, the urgent drafting of the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill to provide for the amendment of the 2000 Act along the lines of the General Scheme that is now before the Committee for consideration.

The main focus and objective of the proposals contained in the General Scheme is to amend a number of provisions in the 2000 Act to facilitate the appointment of new members to the MCIB and to revise some operational provisions in the interest of the continued and consistent functioning of the MCIB as the investigative body in the State. In developing the proposals to provide for a revised Board structure, I was conscious of the need to assist the Board in meeting the quorum requirements of the 2000 Act, to ensure that the Board no longer contains persons who have duties within the Department of Transport, and to facilitate the retention of a specific level of knowledge and expertise on the Board.

With regard to the structure and composition of the Board, a number of changes are envisaged.

Through a substitution of section 9 of the 2000 Act (Head 3), a revised Board composition is proposed, consisting of a minimum of five members and a maximum of seven members, all of whom will be appointed by the Minister for Transport, having regard to a non-exhaustive list of desired skillsets for potential Board members. The proposed new provision facilitates the addition of further expertise on the Board, increases the membership, confirms that serving or former officers of the Department of Transport will not be eligible for appointment to the Board, and inserts

a specific consideration of Board gender balance into the section. By including the skillset requirement in legislation, the current practice and approach through the Public Appointments Service recruitment system will be formalised.

The General Scheme also proposes a number of amendments to sections of the 2000 Act that relate to the general operation and functioning of the Board, some of which are in part consequential on the proposed amendment of section 9 of the Act, the new Board composition and the fact that the Chief Surveyor and a nominee of the Secretary General of the Department are no longer members of the Board.

Head 4 and the amendments to section 10 of the Act will allow the Chairperson and other members of the Board to be appointed for periods not exceeding five years rather than for set periods of five years. It is also proposed that no member of the MCIB would serve more than two terms of appointment on the Board and to delete the existing age threshold for members.

Head 6 and the amendments to section 14 seek to clarify the possible composition of the quorum for Board meetings, which will remain at three persons.

Section 16 of the 2000 Act allows the Board to engage such consultants, advisers and investigators as it considers necessary for the performance of its functions. It is proposed to expand the scope of this section in Head 7 to facilitate the engagement of additional expertise by the Board if required and to remove all references to investigators nominated by the Chief Surveyor from the Marine Survey Office, to

confirm the current situation where no Marine Survey Office personnel are involved in investigating marine casualties on behalf of the Board. Arising from the amendment to section 16, section 17 of the Act, concerning the disclosure of interests, is being expanded in Head 8 to include such other persons who may be engaged under the amended section 16. The General Scheme also proposes an extension of the provisions to include historical interests. In that regard, I wish to mention that, from our engagement to date with the Office of the Parliamentary Counsel and the Office of the Attorney General, there may be a different legislative approach to some proposals in the General Scheme, having regard to other legislative precedents.

One of the considerations that informed the preparation of the General Scheme is to bring a greater consistency whenever possible between the provisions of the 2000 Act and the regulatory regime that applies to investigations that fall within the scope of Directive 2009/18/EC. Head 9 seeks to expand the content of section 18 of the 2000 Act, which relates to the unauthorised disclosure of specified confidential information, in order that the confidentiality provisions that apply for the purpose of Directive 2009/18/EC will also apply for the purposes of the 2000 Act.

In a similar vein, Head 12 amends section 34 of the 2000 Act to bring consistency between the timeframe for the publication of investigation reports so that the Board will endeavour to publish all investigation reports with 12 months of the occurrence of the casualty, rather than within 9 months of notification. At least one interim report within 12 months of the occurrence of a marine casualty will also be required

where the Board is not in a position to publish a final report of an investigation within 12 months.

Section 23 of the 2000 Act provides for the notification of marine casualties to the Chief Surveyor or any other marine surveyor of the Marine Survey Office. Head 10 amends this to provide a specific requirement for persons involved in or aware of a marine casualty to notify the MCIB of information regarding the marine casualty and, in so doing, brings the 2000 Act in line with the existing requirements in the 2011 regulations to notify the Board in the case of marine casualties and incidents that fall within the scope of Directive 2009/18/EC.

Notwithstanding the proposed revision to section 23 of the 2000 Act, there still remains a requirement for the Chief Surveyor and the Marine Survey Office of the Department of Transport to be aware of any marine casualties that may occur, as there may be safety implications or regulatory compliance issues that need to be addressed. The General Scheme contains a separate provision in Head 13, which requires that the Marine Survey Office be notified of marine casualties.

Mindful of the CJEU Judgment, Head 11 amends section 26 of the 2000 Act to remove the requirement to consult with the Minister for Transport where the Board decides to investigate a casualty that falls within section 26(1)(b) of the 2000 Act.

Head 14 contains a transitional provision to confirm that any investigations that have been commenced and are ongoing under the 2000 Act on the date of enactment of the



Bill may continue and be completed under and in accordance with the 2000 Act as amended by the Bill.

Other minor consequential amendments to sections 2, Interpretation, and 11, Remuneration, etc., of the 2000 Act are provided for in Heads 2 and 5.

Finally, with regard to Head 15, this is a separate provision that will facilitate the transposition into Irish secondary legislation of amendments to the International Convention for the Safety of Life at Sea (SOLAS Convention) that have been adopted up to and including the 99th Session of the Maritime Safety Committee of the International Maritime Organization (IMO) in May 2018. Without this proposed amendment, any Convention amendments that entered into force since December 2014 cannot be transposed into Irish secondary legislation.

As the latest legislative response to the CJEU Judgment, I again emphasise that the primary objective of the proposed Bill is to ensure the continued independent functioning of the MCIB in the immediate term. I am most anxious that the Bill progress as quickly as possible to facilitate the appointment at the earliest opportunity of new members to the MCIB. There are risks associated with the current reduced Board composition of three persons. Insofar as EU responsibilities are concerned, in the event that the Board was unable to carry out its role, this could leave the State open to further infringement proceedings for a breach of Article 8 of Directive 2009/18/EC, which requires that EU Member States have an independent investigative body in place.

## **Other issues and proposed Review**

I am aware of correspondence that has been received from certain parties regarding the operation of the MCIB. I reiterate that the MCIB acts independently of me and my Department and, for that reason, I do not consider it appropriate for me to comment on individual incidents, MCIB reports and recommendations, or on allegations and statements made. These issues are separate to the pre-legislative scrutiny of the current General Scheme.

However, as outlined in my letter of 19 January 2021 to the Committee, I consider that the time is now opportune to undertake a fundamental review of the structures in place for marine accident investigation in Ireland. It is my intention that this review will be carried out by an independent expert and concluded over the coming months. This is by no means a criticism of the MCIB Board and its members past and present, its secretariat or its investigators and the valuable work they have undertaken. However, circumstances have changed since the Policy Review Group's 1998 report and the enactment of the 2000 Act and in light of the CJEU Judgment, I consider it to be an opportune time to have such a review. The review will look at how maritime accident investigation is structured overseas and also how other modes are treated in Ireland.

Therefore, this Bill should be viewed as a transitional measure and not a permanent legislative framework for marine accident investigation in the State. Further legislation may be required following completion of the Review.

However, pending the outcome of the Review, it is imperative that the State continues to have a functioning marine investigation body in place. This requires the amendment of the 2000 Act in the first instance.

In conclusion, I thank the Chairman and the Committee for taking the time to undertake pre-legislative scrutiny of the General Scheme of the Bill and I look forward to hearing your views on the matter.