



Bill Digest

Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020

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Abstract

The [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Bill 2020](#) proposes to amend the [Health Act 1947](#). It provides for, among other things, the Minister for Health to make regulations prohibiting or restricting the holding of certain events, to limit travel into and around the State and to provide for enforcement measures, and designation of areas as areas of infection in respect of COVID-19.

The Bill also seeks to amend and extend the [Social Welfare Acts](#) to provide for an entitlement to illness benefit associated with COVID-19 and amendments in relation to Jobseeker's Benefit and Jobseeker's Allowance to mitigate the economic effects associated with COVID-19.

The Bill is part of the emergency response on the part of the Government to the increasing prevalence and spread of the COVID-19.



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CONTENTS

Summary	3
Introduction	9
Policy background	10
Government responses and timeline	13
COVID-19 coronavirus and the implications for work and income.....	15
COVID-19 coronavirus and the risk of infection	16
Changes proposed by the Bill	16
Summary of the Bill	16
Employment and income supports.....	17
Health measures	19
Principal Provisions	23
Implications	25

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Please note: Changes between versions of the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020* published on 16th March 2020 and on 18th March

We would like to draw the attention of Members to differences in the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020* as published on 16 March 2020 on MerrionStreet.ie by the Government and the version published 18 March 2020 by the Oireachtas Bills Office.

The most important differences are in the different versions of a proposed new section 31A to the *Health Act 1947* which is being inserted by section 10 of the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020*.

The Bill now has the following provisions:

- A person will only contravene a regulation made under section 31A where it is stated that it is a penal provision.
- The penalties for committing an offence under this section are a Class C fine (up to €2,500) and now also up to 3 months in prison.
- It is an offence for a person to:
 - Obstruct, interfere with or impede a relevant person (as set out in the Bill) from exercising a power given under regulations
 - Fail or refuse to give to a relevant person information—
 - (i) that is within their knowledge
 - (ii) that they are required to give to a relevant person and
 - (iii) that they have been requested to give, or has been otherwise informed of the requirement to give, to a relevant person,
 - Give information that they know to be false or misleading when purporting to comply with a requirement under regulation.

There are also offences in relation non-compliance with a direction a member of Garda Síochána.

- Section 31A(7) provides that if a Garda suspects with reasonable cause that a person is contravening a regulation (and it is an offence to do so) then the Garda can give a direction to the person to comply with. It is an additional offence not to comply with the Garda's direction. A person can be arrested without warrant for failure to comply with the direction.
- Section 31A(9) provides that where a member of the Garda Síochána can ask a person for their name and address where the Garda has reasonable grounds for believing that a person is committing or has committed an offence under this section. It is an offence not to give this information, or to give false or misleading. A member of the Garda Síochána may arrest without warrant any person whom the member has reasonable cause for believing has committed an offence by refusing to give their name and address or giving false or misleading information.

Relevant person

Section 31A(13) provides that regulations made under s.31A(1) can be implemented and enforced by 'a relevant person.'

A relevant person for the purposes of the Bill includes: an authorised officer, a medical officer of health, an officer of the Minister for Justice and Equality,) an officer of customs (within the

meaning of the Customs Act 2015), or a person, or group of persons, appointed by the Health Service Executive.

A relevant person can require a member of the Garda Síochána to assist in the exercise of the power or the performance of the function, including by way of temporarily detaining any person, bringing a person to any place, breaking open of any premises, or any other action in which the use of force may be necessary and is lawful.

Summary¹

The [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Bill 2020](#) (the Bill) was published on 17 March 2020 by the Government on Merrionstreet.ie. The objective of the Bill is to mitigate, where practicable, the effect of the spread of the COVID-19 coronavirus and in so doing provide income supports for those whose income and employment are affected by the virus.

The Bill seeks to amend the [Health Act 1947](#) to provide for, among other things, the Minister for Health to make regulations prohibiting or restricting the holding of certain events, to limit travel into and around the State and to provide for enforcement measures and designation of areas as areas of infection in respect of the COVID-19 coronavirus.

The Bill also seeks to amend and extend the [Social Welfare Acts](#) to provide for an entitlement to illness benefit associated with COVID-19 and amendments in relation to Jobseekers' Benefit and Jobseekers' Allowance to mitigate the economic effects associated with COVID-19.

¹ It should be noted that this Bill Digest is based on the Bill published by the Government on 17 March 2020 on MerrionStreet.ie. Where the Bill published in the Oireachtas differs from the Government publication, the Library & Research Service will update Members on the relevant changes.

Table 1: Overview of the Provisions of the *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020*

Section	Section	Detail
Part 1	Preliminary and general	
Section 1	Short title and construction	The short title is the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. The <i>Social Welfare Acts</i> and Part 2 of the Bill can be read together.
Section 2	Commencement and duration	<p>Amendments made in sections 4, 5 and 6 (social welfare related changes) are deemed to have come into operation on the 9th March 2020.</p> <p>Amendments made in Sections 7 and 8 (social welfare payments) are deemed to have to come into operation on 13th March 2020.</p> <p>Changes made by the Act will operate until 9th May 2020. However, the Government can extend the social welfare payments when it is in the public interest to. Social welfare provisions must be laid before both Houses of the Oireachtas and are subject to a motion to annul. This means that the Oireachtas can decide not to continue with the orders.</p>

Part 2	Amendments to the <i>Social Welfare Consolidation Acts 2005</i>	
Section 3	Provides that references to 'Act of 2005' in Part 2 of the Bill are references to the <i>Social Welfare Consolidation Act 2005</i>	All references to the Act of 2005 are references to the <i>Social Welfare Consolidation Act 2005</i>
Section 4	This amends s.21 of the Act of 2005 which deals with rates of self-employment contributions and related matters.	This means that illness benefit is available to the self-employed. This is not usually the case.
Section 5	This amends s.40 of the Act of 2005 which deals with entitlement to disability benefit.	This section deals with people who are deemed incapable of work because of certification by a medical officer or because they are self-isolating.
Section 6	This amends s.40 of the Act of 2005 which allows the Minister to make regulations on how to certify that a person is a relevant person for the purposes of the Bill.	This section extends eligibility to illness benefit for people deemed a probable source of infection for COVID-19 coronavirus.
Section 7	This amends s. 62 of the Act of 2005 which deals with entitlement to unemployment benefit	This section provides for the variation in the three-day waiting period, that is three days of unemployment, before someone is entitled to receipt of Job Seekers Benefit.
Section 8	This amends s.141 of the Act of 2005 which deals with entitlement to unemployment assistance	This does away with the three-day waiting period before a person can claim Jobseekers Allowance.
Part 3	Amendments of Health Act 1947	
Section 9	Definitions – references to the Act of 1947 are references to the <i>Health Act 1947</i> .	All references to the Act of 1947 are references to the <i>Health Act 1947</i> .

<p>Section 10</p>	<p>This amends s.31 of the Act of 1947</p>	<p>This significantly amends s.31 of the Act of 1947 and allows for regulations to be made to prevent, minimise or slow the spread of COVID-19. These include:</p> <p>Restricting travel to and from the State;</p> <p>Declaring an area or region of the State to be an affected area, subject to an affected order;</p> <p>Requiring persons or classes of people to remain in their homes; and</p> <p>Prohibiting events or certain types of events.</p>
<p>Section 11</p>	<p>Section 11 amends s.38 of the Act of 1947 which deals with the detention and isolation of a person who is a probable cause of infection.</p>	<p>This allows for the detention and isolation of people when a certain number of criteria have been met in the opinion of a medical officer of health. This includes a refusal by the person in question to stay in their home.</p>

Source: L&RS analysis of the Bill

Introduction

The [*Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Bill 2020*](#) emerged as part of the Government response to the increase in confirmed cases of COVID-19 coronavirus infections in Ireland and the likely impact it will have on the labour force and public health.

The Bill was published on 17 March 2020 on Merrionstreet.ie by the Government. The statement accompanying the Bill's publication commented as follows:²

“The legislation provides for enhanced income supports for people who are diagnosed with, or required to self-isolate due to, COVID-19, as announced by the Government on 9th March. It also provides for changes to remove the waiting period for payment of Jobseekers Benefit and Jobseekers Allowance in these circumstances.

...

The Bill also provides for certain extra powers, should they be needed if extreme situations were to arise, in relation to gatherings\events and travel where there would be an immediate, exceptional and manifest risk to human life and public health from the spread of COVID-19.

In addition, it provides for further powers, in case they might be needed in relation to COVID-19, where a medical officer believes that a person is a source of infection and that the detention or isolation of a person is necessary to prevent the spread of COVID-19.”

The publication of the Bill follows earlier pronouncements from the Government on 5 March 2020 that employees who comply with medical advice consistent with guidance from the Health Service Executive and Health Protection Surveillance Centre should receive income support when doing so. In that statement, the Government also signalled that individuals who follow recommended public health advice and actions “should not be disincentivised to disclose symptoms or to inform their employer of exposure to COVID-19”.³

The Bill is due to be debated in the Houses of the Oireachtas beginning in the Dáil on Thursday, March 19th.

Given the nature of the Bill's focus and the short time between publication of the Bill (and its Second Stage Debate in Dáil Eireann (Thursday, 19 March), this Bill Digest provides a summary examination of the Bill in terms of:

- Policy background
- Changes proposed by the Bill
- Principal legal provisions of the Bill
- Implications

² “Government approves legislation to support national response to COVID-19”, MerrionStreet.ie, 17 March 2020. Available [here](#).

³ “Government says employees should receive income support”, MerrionStreet.ie, 5 March 2020. Available [here](#).

The L&RS would also refer Members to the Parliamentary Budget Office (PBO) 16 March 2020 paper entitled [Ireland's Fiscal Response to COVID-19](#). The paper summarises the Irish Government's fiscal response to COVID-19. It also includes information about the European Commission's €25 billion fund to help member states deal with the COVID-19 pandemic.

Policy background⁴

This section provides a brief overview of the policy context and background for the Bill. In particular, it looks at the COVID-19 coronavirus and its implications for work, income and social welfare Illness Benefit.

At the time of writing (17/03/20), there are 223 cases confirmed of coronavirus in Ireland⁵, with this number likely to increase, as recently suggested by Taoiseach, Leo Varadkar T.D., to 15,000 cases by the end of March 2020.⁶

Box 1 below provides a brief overview of the COVID-19 coronavirus

Coronaviruses are a family of viruses that circulate among animals, but can also be found in humans. Coronaviruses were identified in the mid-1960s and are known to infect humans and a variety of animals (including birds and mammals). Since 2002, two coronaviruses infecting animals have evolved and caused outbreaks in humans: SARS-CoV (2002, Betacoronavirus, subgenus Sarbecovirus), and MERS-CoV (2012, Betacoronavirus, subgenus Merbecovirus). At the end of 2019, a new virus strain that had not previously been identified in humans, was detected in the Chinese city of Wuhan (Hubei province). The novel coronavirus – now referred to as 'COVID-19'⁷ – can cause mild, non-specific symptoms, including fever, cough, shortness of breath, muscle pain and tiredness. More serious cases can develop severe pneumonia, acute respiratory distress syndrome, sepsis and septic shock that can lead to death. The virus is transmitted via respiratory droplets. The estimated incubation period is 2-14 days, but could be longer. There is currently no vaccine to prevent the 2019 coronavirus disease (COVID-19), and no cure has yet been found. At a global level, the World Health Organisation declared a public health emergency of international concern at the end of January 2020, and subsequently a pandemic in March 2020, as infections spread rapidly within China and globally. The situation is evolving rapidly with Europe, at the time of writing, the new epicentre of COVID-19 infections. The World Health Organisation publishes daily situation reports. On 17 March 2020, there were 179,111 cases confirmed worldwide and 7,426 deaths to date.⁸

Source: L&RS, adapted from World Health Organisation and European Centre for Disease Prevention Control.

⁴ Given the nature of the emergency legislation and its context, the time between publication of the Bill and its Second Stage debate was limited. For this reason, this Digest focuses on areas that were signalled as likely constituents of the emergency bill, namely amendments in respect of social welfare legislation, and less so in respect of the proposed amendments to the *Health Act 1947*.

⁵ See Figure 2 below for more detail on the expansion of cases of COVID-19 coronavirus since the beginning of March in Ireland.

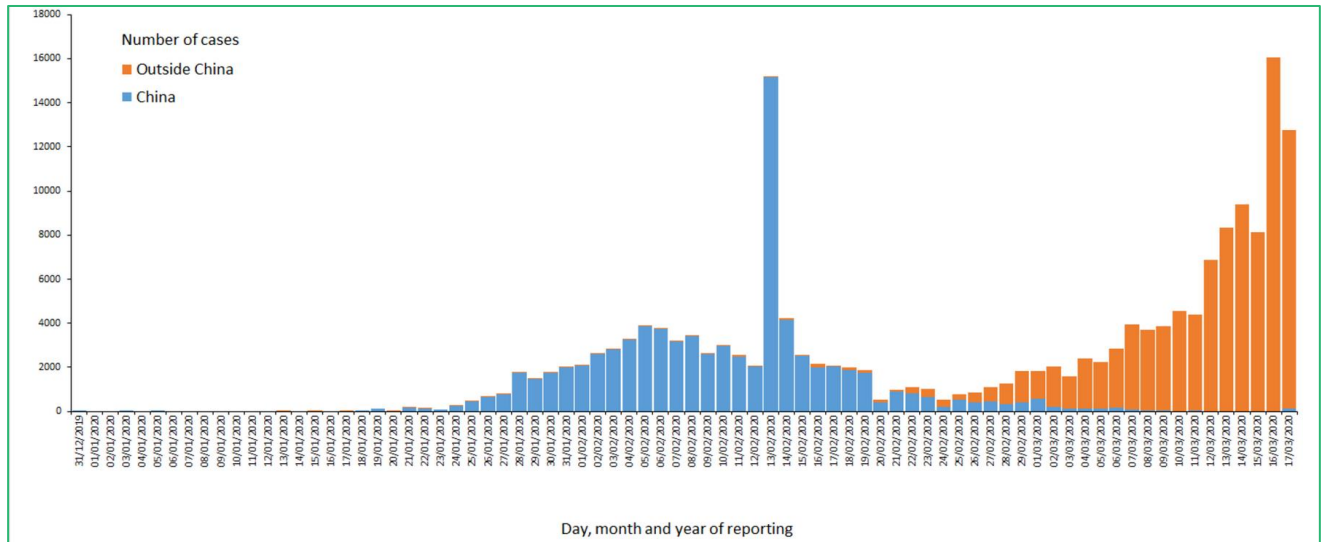
⁶ "Address by An Taoiseach, Leo Varadkar, 17th March", MerrionStreet.ie. Available [here](#).

⁷ **CO**rona**VI**rus **D**isease - 20**19** = COVID-19. COVID-19 is the official name of the disease caused by the virus, which in turn is named severe acute respiratory syndrome coronavirus 2 or SARS-CoV-2. (for comparison, the disease measles is caused by the rubeola virus). Viruses are named based on their genetic structure, typically to assist vaccines and diagnostic tests. Diseases are named to enable discussion of disease prevention, spread, transmissibility and treatment, among other things. See WHO [here](#).

⁸ It should be noted that these numbers are expanding each day, see [here](#) and [here](#) for more up to date details

While COVID-19 coronavirus originated in China, it has spread across countries to a point in recent weeks where there are now more new cases emerging outside of China than in China. Figure 1 below shows the distribution of cases from initially within China alone to additional countries around the world as at 17 March 2020.

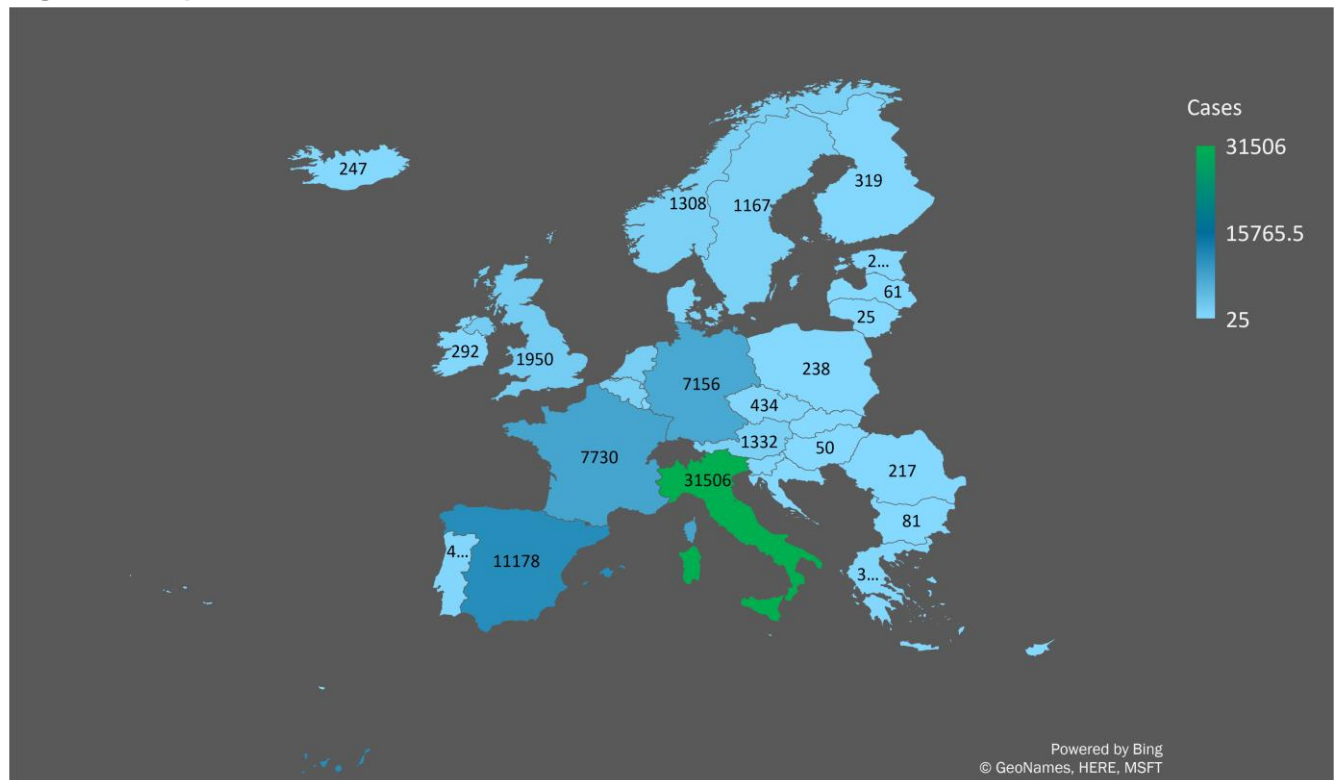
Figure 1: Distribution of COVID-19 cases worldwide (17/03/2020)



Source: European Centre for Disease Control. Available [here](#).

The European Centre for Disease Prevention and Control (ECDC) publishes daily situation updates for the EU/EEA and the United Kingdom. As of 18 March 2020, 70,989 cases of infection and 3,309 deaths have been reported, of which 31,506 and 2,505, respectively, occurred in Italy.

Figure 2: Map of EU, EEA and UK cases, 8am 18/03/2020



Source: L&RS adapted from ECDC, available [here](#).

Figure 2 above maps the prevalence of COVID-19 coronavirus cases in the EU, EEA and UK as of 18 March 2020. Table 2 below shows the numbers on which Figure 2 is based. In reading Figure 2 above and Table 2 below, **it should be noted** that different countries may have different testing regimes, have started testing earlier than others and may have contrasting demographic characteristics. Members should refer to the original source for more information and context for the figures listed.

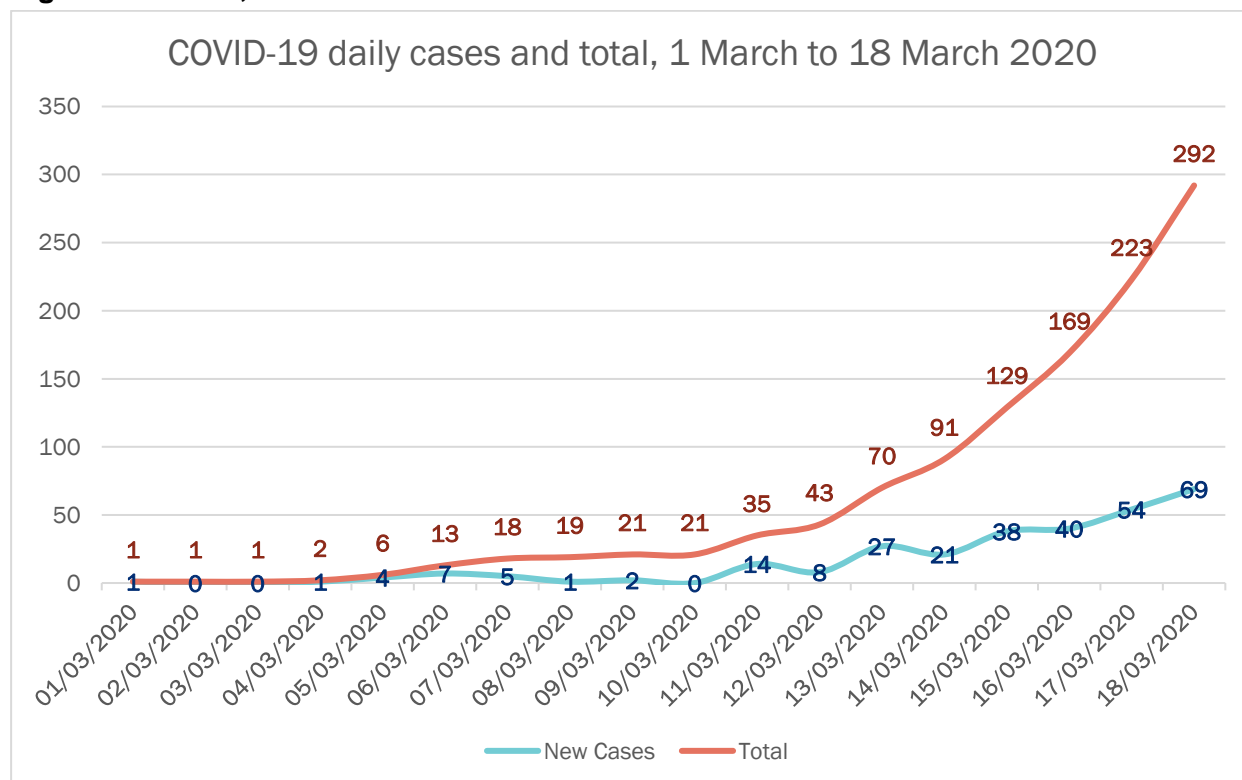
Table 2: EU, EEA and UK cases, 8am 18/03/2020

EU/EEA and the UK	Cases	Deaths	% Mortality
Italy	31506	2505	8.0%
Spain	11178	491	4.4%
United Kingdom	1950	60	3.1%
Bulgaria	81	2	2.5%
France	7730	175	2.3%
Poland	238	5	2.1%
Hungary	50	1	2.0%
Netherlands	1705	24	1.4%
Greece	387	5	1.3%
Luxembourg	140	1	0.7%
Sweden	1167	8	0.7%
Ireland	292	2	0.7%
Belgium	1243	5	0.4%
Denmark	1024	4	0.4%
Slovenia	275	1	0.4%
Norway	1308	3	0.2%
Austria	1332	3	0.2%
Portugal	448	1	0.2%
Germany	7156	13	0.2%
Czech Republic	434	0	0.0%
Finland	319	0	0.0%
Iceland	247	0	0.0%
Estonia	225	0	0.0%
Romania	217	0	0.0%
Slovakia	97	0	0.0%
Croatia	69	0	0.0%
Latvia	61	0	0.0%
Cyprus	40	0	0.0%
Malta	38	0	0.0%
Lithuania	25	0	0.0%
Liechtenstein	7	0	0.0%
Total	70989	3309	4.7%

Source: L&RS adapted from ECDC Situation update for 18 March 2020, available [here](#).

Turning to Ireland, Figure 3 below shows the number of daily and total cases of COVID-19 coronavirus from the 1 March 2020 to 18 March 2020.

Figure 3: Ireland, COVID-19 cases 01/03/20-17/3/20



Source: L&RS analysis, adapted from ECDC, available [here](#).

Government responses and timeline

Health strategy

The overall Government strategy to respond to COVID-19 coronavirus is based on three phases: containment, delay and mitigation.⁹ In addition, the Government issued a set of actions on 9 March and a subsequent action plan on COVID-19 on 16 March.

Containment phase

This phase focuses on identifying existing cases and their contacts as early as possible. The aim is to prevent further community transmission of COVID-19 coronavirus.

Delay phase

At the time of writing, Ireland is in the delay phase in respect of its response to the virus. COVID-19 coronavirus is contagious and has the potential to infect significant numbers across the population. A key aim of the delay phase is controlling the impact of the virus on the capacity of the health service to respond effectively for existing and new cases. The Department of Health characterises the delay phase as follows:

⁹ Department of Health, 2020, Ireland's response to COVID-19 (Coronavirus), Department of Health website. Available [here](#).

“[the] delay strategy is planned to slow down the spread of the virus... This means that for example if 1,000 people are going to catch the virus, the delay initiative should result in 200 people per week catching the virus over five weeks, rather than 500 over two weeks. That way we will be able to reduce the burden on our GPs and hospitals”.

Mitigation phase

Following the delay phase, a follow-on phase, the mitigation phase, will be activated. The mitigation phase will be activated where containment (and delay) are no longer effective in controlling the spread of COVID-19 coronavirus. The mitigation phase’s main focus will be on identifying the cases who are most at risk of harm from the virus.

Government actions to tackle COVID-19 coronavirus

On 9 March, the Government issued a set of actions to limit and slow down spread of COVID-19 coronavirus. These included:¹⁰

- Moving towards the Delay and Mitigation Phases over the coming weeks and months, with the response calibrated in accordance with public health advice;
- a package of reforms for sick pay, illness benefit and supplementary benefit designed to ensure that employees and the self-employed can follow medical advice to self-isolate where appropriate, while having income protected to a greater degree than under the current social welfare schemes. This specific package was estimated to cost up to €2.4 billion;
- an initial package for business including €200 million in liquidity funding; and
- the scaling up by the HSE of actions to deal with a population impact over the coming months, which was acknowledged to potentially produce service demand beyond anything previously experienced. The estimated cost for this measure was in the region of €435 million for 2020.

The first major Government announcement in respect of the current phase of COVID-19 coronavirus was made on 12 March 2020, at which time Ireland had 43 cases, to rise to 70 on 13 March. In that announcement, Taoiseach Leo Varadkar T.D., stated that from 6pm that evening the following measures would be put in place until 29 March 2020:¹¹

- closure of schools, colleges and childcare facilities;
- closure of cultural institutions;
- cancellation of indoor gatherings of more than 100 persons and outdoor gatherings of more than 500 persons;
- where possible, people should work from home and in workplaces where this is not possible, limit face to face interactions;
- restaurants, cafes and other business should implement public health advice on social distancing;
- reduce social interactions outside of work; and

¹⁰ Government.ie, 2020, “Government agrees next phase of Ireland’s COVID-19 response”, Available [here](#).

¹¹ Merrionstree.ie, 2020, “Statement by An Taoiseach Leo Varadkar on measures to tackle COVID-19 Washington”. Available [here](#).

- continue with public health measures in respect of handwashing, coughing and sneezing and seeking medical advice where symptoms develop.

Government action plan

On 16 March, the Government published its National Action Plan on COVID-19.¹² The action plan suggests that actions that are being taken across Government are based on the following goals:

- to minimise the risk of becoming unwell for all people in Ireland;
- to minimise, in particular, the health, wellbeing and social impact for people in Ireland who may be at greater risk from COVID-19 through minimising the risk of illness for them while working to maintain their quality of life; and
- to minimise the social and economic disruption associated with the COVID-19 outbreak and the public health measures needed to respond to it.

COVID-19 coronavirus and the implications for work and income

In the context of the present Bill, the core of the national responses to COVID-19 coronavirus is the public health message(s). A key aim of the public health message around the virus is slow its spread and manage the capacity of the health services in responding to the virus. In this regard, the HSE's dedicated site for the COVID-19 coronavirus states that 'social distancing is now more important' to stop the spread of the virus and this means 'self-isolation and limiting social interactions'.¹³

The HSE draws a distinction between self-isolation on the one hand and self-quarantine on the other. Self-isolation according to the HSE means 'staying indoors and completely avoiding contact with other people' with the object of stopping the transmission of the virus to other persons. Self-quarantine refers to the avoidance of contact with other people and social situations as much as possible and where a 'close contact' is a confirmed case of COVID-19 coronavirus.¹⁴

This has a number of key implications for work, income and employment:

1. Where a person develops symptoms or has been in contact with a confirmed case of COVID-19 coronavirus, they are required to self-isolate, which has implications for work attendance and in many cases continuity of income.
2. Due to the high contagion risk associated with the virus, many business (especially those reliant on face-to-face contact with customers and employees and/or interaction of employees with other employees) have been forced to close or suspend trading.

In both cases, this has resulted in, and continues to give rise to, a significant decrease in the numbers at work and has obvious knock on effects on businesses and other organisations as well as the incomes of those affected directly by the virus or its impact on places of work.

¹² Government of Ireland, 2020, "National action plan in response to COVID-19 coronavirus". Available [here](#).

¹³ HSE website, 2020, "Overview – Coronavirus (COVID-19)". Available [here](#).

¹⁴ HSE website, 2020, "Self-isolation and self-quarantine". Available [here](#).

At the time of writing, it is estimated - according to reports in the national media - that the number of people who are unemployed or not working and availing of illness pay is 10% of the labour force and increasing.¹⁵

The above is the broad context for income support / social welfare measures proposed in the Bill.

COVID-19 coronavirus and the risk of infection

As noted earlier, the COVID-19 coronavirus is highly contagious and this has considerable implications for the health of particularly vulnerable groups, as evidenced by the extent of hospitalisations and fatalities associated with the virus. The practice of self-isolation and social distancing are key planks in the Government's response to manage the spread of and response to the disease.

Furthermore, in announcing the set of measures covered by this Bill, the Government's aim is to "limit and slow the spread of COVID-19, to keep the number of affected people to a minimum and to reduce peak pressure on the health service".¹⁶

Changes proposed by the Bill

Summary of the Bill

The long title of the Bill emphasises that the provisions of the Bill are exceptional due to the grave risk to human life and health posed by COVID-19. It states that it is necessary for the State to 'take the measures in this Act to address the emergency and to defend and vindicate the rights of citizens to life and to bodily integrity'.

The *Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020* (the Bill) is in three parts.

Part 1 of the Bill deals with preliminary and general provisions. This part sets out the short title of the Bill, commencement information and the duration of the measures proposed in the Bill. Sections 4, 5 and 6 of the Bill are deemed to have come into operation on 9 March 2020, with section 7 and 8 deemed to come into effect on the 13 March 2020.

All of the measures proposed in Part 2 of the Bill have a limited duration as set out in the legislation. However, this duration can be extended by orders if passed by both Houses of the Oireachtas. This means that the extraordinary social welfare payments could be extended beyond May.

The Minister has the power to make extensive regulations under Part 3 which may impact on the Constitutional rights of citizens such as the right to assembly or the right to travel. These regulations do not have a fixed duration set out in the Bill although it is possible that they may

¹⁵ <https://www.irishexaminer.com/breakingnews/business/unemployment-rate-likely-heading-to-10-amid-covid-19-economic-toll-988359.html>

¹⁶ Department of Employment Affairs and Social Protection, 2020, COVID-19 (Coronavirus): Information for employers and employees. Available [here](#).

be made of limited duration in the regulations themselves. A majority of the regulations the Minister can make under the Bill cannot be reviewed or appealed under the Bill.

Part 2 of the Bill (sections 2 to 8) deals with amendments to the *Social Welfare Consolidation Act 2005*¹⁷ to deal with changes to social welfare legislation to help people with employment and welfare supports.

In response to COVID-19 coronavirus, the Bill proposes new measures in the area of income and employment supports and health protection and preservation respectively.

Employment and income supports

As provided for in Part 2 of the Bill (see *Principal provisions* section below for more detail on the specific legal proposals proposed in the Bill), the Minister for Employment Affairs and Social Protection will introduce two broad measures or enhanced arrangements which seek to reduce the financial loss potentially incurred by workers – employed and self-employed people – who are not adequately covered by their occupation sick pay arrangements,^{18,19} and to offset loss of income resulting from personal or employer circumstances resulting from COVID-19 coronavirus.

The first broad set of measures related to those who have lost employment and the second to those who are ill resulting from the virus.

COVID-19 Pandemic unemployment payment²⁰

This new social welfare payment is available to employees and self-employed people who are unemployed or who have their hours of work reduced during the COVID-19 coronavirus pandemic. This includes people who have been put on part-time or casual work.

Under the new payment, there is no restriction on people aged between 18 and 66 years applying for the payment provided they have been in employment up to the present and it has now ceased.

The payment is to be paid for a period of 6 weeks at a flat rate payment of €203 per week for jobseekers. It is designed to quickly deliver a social welfare payment to the unemployed and provide income security during this 6-week period.

Individuals applying for the payment will be required to apply for the normal jobseeker's payments within this 6-week period. Once this normal jobseeker claim is subsequently received, the Department of Employment Affairs and Social Protection (the DEASP) will process these claims and accommodate payment. This will involve the backdating of increased payments for certain customers.

¹⁷ www.irishstatutebook.ie/eli/2005/act/26/enacted/en/html

¹⁸ Department of Employment Affairs and Social Protection website, "COVID-19 latest updates". Available [here](#).

¹⁹ Department of Employment Affairs and Social Protection, 2020, "COVID-19 (Coronavirus): Information for employers and employees". Available [here](#).

²⁰ <https://www.gov.ie/en/service/be74d3-COVID-19-pandemic-unemployment-payment/>

Illness Benefit

Following the recent press release from the Ministers for Finance, Public Expenditure & Reform, and Business, Enterprise and Innovation, trade unions and employers respectively, stated that there was a need for “an unprecedented national effort ...to respond to the global and national public health crisis arising from COVID-19”.²¹

Part of this response includes that “employees and the self-employed abide by public health advice to self-isolate where appropriate, while having their income protected to the greatest extent possible”.²²

The statement points out that the:

“trade unions and employer representatives are now, jointly with the Government, urging all employers to support national public health objectives by continuing to pay workers who cannot attend work due to COVID-19 illness or certified self-isolation, the difference between the special Illness Benefit rate and their normal wages”.²³

The statement goes to say that following consultation with trade union and employer representatives the Government “has agreed to introduce a series of measures to enhance the State illness payments for people affected by COVID-19”.

In more recent days, on foot of the above discussions, the DEASP has issued further guidance on Illness Benefit for COVID-19, which is proposed to be given a legal basis on foot of the current Bill.²⁴

These measures include:

- the current 6-day waiting period for Illness Benefit will not apply to those affected by COVID-19 coronavirus or is in medically-required self-isolation. In effect, this will bring forward the payment of benefit;
- the personal rate of Illness Benefit will increase from €203 to €305 weekly for a maximum of 2 weeks medically-required self-isolation or for the full duration of absence from work following a confirmed diagnosis of COVID-19 coronavirus; and
- the normal social insurance requirements of Illness benefit will be changed or the means test for Supplementary Welfare Allowance will be removed.

These measures aim to reduce the financial loss incurred by employees and the self-employed.

It should be noted, although not covered in the Bill, those employees in receipt of the enhanced illness benefit payment who still face financial distress because their employer may fail to pay sick pay beyond the level paid by the State, are eligible to apply for additional emergency income support, in the form of [Supplementary Welfare Allowance](#).

²¹ “Unprecedented national effort required to respond to the COVID-19 – say Govt, trade unions and employers in joint statement”, Merrionstreet.ie, 11 March 2020. Available [here](#).

²² Ibid.

²³ Ibid.

²⁴ DEASP, 2020, “COVID-19: Information for employers and employees”, Available [here](#).

Health measures

Orders under the *Health Act 1947*

COVID-19 is a notifiable disease under the *Health Act 1947*. Under Part 4 of the Act there are significant powers to combat the spread of an infectious disease including the detention and isolation of a person likely to have an infectious disease. Section 31 of the *Health Act 1947* already gives the Minister for Health the power to make regulations (secondary legislation) to prevent the spread of infectious diseases including those set out in the Second Schedule to the Act such as the power to compel people to present themselves for inspection, restrictions on children attending school and an obligation to give the public information about the disease.

Part 3 of Bills (sections 9 and 10) amend the *Health Act 1947*²⁵ to give the Minister for Health powers to make regulations to prevent, limit, minimise or slow the spread of COVID-19. These measures can:

- restrict travel to and from the State;
- declare an area or region of the State to be an affected area, subject to an affected area order;
- require persons or classes of people to remain in their homes; and
- prohibit events or certain types of events.

Regulations for preventing, limiting, minimising or slowing spread of COVID-19

Section 10 of the Bill gives the Minister a general power to make regulations, as well as making other specific regulations. Section 10 of the 1947 Act is amended by inserting a new section 31A which deals specifically with COVID-19. It allows for the following actions against COVID-19:

- restrictions to be imposed upon travel to and from the State;
- restrictions to be imposed upon travel to, from and within geographical locations to which an affected areas order applies;
- restrictions to be imposed upon persons, or classes of persons, resident in, working in or visiting locations to which an affected area order applies, including requiring persons to remain in their homes, and requiring persons to remain in other places specified by the Minister;
- the prohibition of events, or classes of an event, where there is a risk of infection of COVID-19 based on the nature of the event, its location or its level of attendance, or the events are held at a location where an affected area order applies; and
- safeguards required to be put in place by the owners or occupiers of a class of premises, or any other place or class of place.

Not subject to review or appeal

Restrictions or prohibitions made under section 10 are not open to review, unlike a decision to detain or isolate someone under section 11 of the Bill.

²⁵ www.irishstatutebook.ie/eli/1947/act/28/enacted/en/html

Exemptions

The Minister can exempt classes of people from regulations made under section 10. This can include but is not limited to people who perform essential services, including statutory duties or other specified public services.

Offences

A person who contravenes a regulation made under section 10 or who wilfully obstructs its implementation or gives false or misleading evidence in purported compliance with this regulation will be guilty of a Class C offence (liable to a fine of up to €2,500).

Detention and isolation of persons

The Bill provides for powers where a medical officer believes that a person is a source of infection and that the detention or isolation of a person is required to prevent the spread of COVID-19. This is set out in section 11 of the Bill, which inserts a new section 38A into the [Health Act 1947](#) (the 1947 Act).

This section sets out the provisions for detaining and isolating a person who is considered by a medical officer of health (MOH) to be a potential source of infection, a potential risk to public health, and his or her detention is appropriate to address the spread of COVID-19 and minimise the risk to human life and public health. It also provides that such a person can be detained if he or she cannot be effectively isolated, refuses to remain in isolation or is unlikely to remain in isolation.

The proposed section provides for a separate detention and isolation process for those who refuse to or cannot be isolated, to be used for COVID-19 only. There are several key differences between [section 38](#) of the 1947 Act and what is proposed in the Bill. The proposed section refers to a “potential source of infection” as opposed to “a probable source of infection” in the 1947 Act. It also outlines five set criteria for defining a potential source of infection, including:

- recent contact with a person believed by a MOH to be a probable source of infection with COVID-19 or suffering from COVID-19;
- recent attendance at an event believed by a MOH to have also been attended by a person or persons who are either probable sources of infection with, or suffering from, COVID-19;
- a person who has travelled from or has been in contact with a person(s) who has travelled from a place outside the State that the MOH believes to have a significant number of cases of COVID-19;
- a person who has travelled from, or has been in contact with a person(s) who has travelled from, to or within an area subject to an affected area order; and
- any other person whom the MOH believes to be a potential source of infection.

The most notable difference between the existing legislation and the Bill is the absence of the appeals process to the Minister for Health as set out in section 38(2)(h) of the 1947 Act. By contrast the Bill limits the capacity of a person seeking to review their detention to a procedure where they can request that a second MOH reviews their detention on the basis that they are no longer a potential source of infection.

This also contrasts with the position in relation to involuntary detention where a person is suffering from a “mental disorder” under [Part 2 the Mental Health Act 2001](#). In this instance every person who is involuntarily admitted to an approved centre under the Mental Health Acts 2001-2018 is reviewed by what is known as a “mental health tribunal” or “tribunal” within 21 days of the making of the admission or renewal order detaining the person. A person has a right of appeal to the Circuit Court where the mental health tribunal affirm their involuntary admission. Although there is no appeals process, as with all detention, a person could challenge the legality of their detention by way of a *habeas corpus* application brought before the High Court.

The Government has stated that²⁶:

“These are provisions which the Government hopes it won’t have to use, given the powers already in place under the *Health Act 1947*, but legislation is being introduced to give Government powers in exceptional circumstances in the unlikely event the need arises. All measures in the Bill relate only to the exceptional circumstances facing the country due to COVID-19.”

Designation of areas of infection

The Bill proposes to include provisions (through the insertion of a new section 31B) allowing the Minister to declare an area or region of the State to be an ‘affected area’ and subject to an affected area order. Such an order may only be made after consultation with the Chief Medical Officer of the Department of Health and other relevant Ministers and must only be made for the purpose of preventing, limiting, minimising or slowing the spread of COVID-19 (including the spread outside the State) or to deal with public health risks arising from the spread of COVID-19.

Regulations may be made to impose restrictions upon travel to, from or within ‘affected areas’ and to prohibit events, or classes of an event, in ‘affected areas’, while the order remains in place. Affected area orders may also be used to identify potential sources of infection under the amended Act.

Irish and European Laws affecting restriction of movement

[Article 40.6.1 of the Constitution](#) guarantees the right of citizens to assemble peacefully, but also provides that provision may be made in law to control meetings that are determined to “cause a breach of the peace or to be a danger or nuisance to the general public”. Similarly, Article 11 of the [European Convention on Human Rights](#) protects the right of freedom of assembly, but provides for legal restrictions to this right in the interests of public safety and the protection of health and morality.

There is precedent in Ireland for the restriction and control of public movements by statute. Under [Section 2\(2\)\(j\) the Emergency Powers Act 1939](#) (lapsed), the Government was empowered to “authorise and provide for the prohibition, restriction, or control of the entry or departure of persons into or out of the State and the movements of persons within the State”. However, this was enacted pursuant to Article 28.3.3° of the Constitution, i.e. during a time of war or armed rebellion, and expired on 2 September 1946.

²⁶ See www.merrionstreet.ie for further details

A further precedent to restricting the movements occurred in 2001, when pursuant to [section 15\(b\) of the Diseases of Animals Act 1966](#) (repealed by the [Animal Health and Welfare Act 2013 Sch. 1](#)), the Minister for Agriculture was empowered to make orders restricting movements of persons and animals into, within and out of areas infected with Foot and Mouth Disease. Many of these orders however related to restricting animal movements and the importation of certain animals.

[Section 9 of the Animal Health and Welfare Act 2013](#) (repealed)²⁷ also had a provision empowering the Minister for Agriculture to declare the State, or part of the State, to be a 'disease eradication area', where it was considered to be at risk of, or suspected of, being affected with disease, or where the relevant disease was present there.

Lockdowns

[Ireland's National Action Plan in response to COVID-19 \(Coronavirus\)](#) states that the government would look to use legislative powers to support the health service to respond to COVID-19, including putting in place population protection measures regarding isolation and quarantine.²⁸ To date, there has been no official mention of a whole or area-specific lockdown in Ireland. Officials have been quick to discredit rumours of any proposed nationwide lockdown or the use of the military to enforce quarantine.²⁹

The *Health Act 1947* as it currently stands empowers the Minister to make regulations requiring adults to remain in their homes, and for children to be kept in their homes by their parents, as well as requiring precautions of such adults or parents against the spread of infection.³⁰ The Minister may also make Regulations requiring adults to remain away from specified places and, in the case of children, for parents to keep them away from such places.³¹

Over the past week, Belgium,³² France,³³ Spain and Italy³⁴ have implemented lockdowns. Non-essential movement has been banned. All people leaving their homes are required to carry a signed form, or attestation, explaining their purpose of travel and destination. Lockdowns in Italy and Spain were initially confined to prescribed areas, before being extended country-wide.

Informing decisions about affected areas

The HSE has a current protocol on the [Notification of Infectious Disease Outbreaks to Departments of Public Health in Community Settings](#). The protocol outlines a process to support medical officers, GPs and managers of long-term care facilities to ensure compliance with statutory obligations with respect to notification of outbreaks of infectious diseases. The protocol

²⁷ This provision was deleted by the [Greyhound Racing Act 2019 s. 66](#).

²⁸ Department of the Taoiseach, [Ireland's National Action Plan in response to COVID-19 \(Coronavirus\)](#), Updated 16 March 2020, p. 39.

²⁹ Jack Power, '[Coronavirus: Misinformation about emergency measures continues to circulate](#)', *The Irish Times*, 16 March 2020.

³⁰ [Health Act 1947 Sch.2 item 4](#).

³¹ [Health Act 1947 Sch.2 item 5](#).

³² Gabriela Galindo, '[Coronavirus: Belgium enters nation-wide shutdown from noon](#)', *The Brussels Times*, 18 March 2020.

³³ France 24, '[French lockdown comes into force in bid to curtail spread of deadly virus](#)' 17 March 2020.

³⁴ Joseph Wilson and Geir Moulson, '[France and Spain to Follow Italy Into Lockdown as Coronavirus Cases Soar](#)', *Time*, 14 March 2020.

also outlines the systems associated with infectious disease allowing regional and national data to be collated and inform decision making.

Principal Provisions

The following table, Table 3, sets out the principal provisions of the [Health \(Preservation and Protection and other Emergency Measures in the Public Interest\) Bill 2020](#). It should be noted that this table is reproduced in full in the summary section of the report above.

Table 3: Overview of the Provisions of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Bill 2020

Section	Section	Detail
Part 1	Preliminary and general	
Section 1	Short title and construction	The short title is the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. The <i>Social Welfare Acts</i> and Part 2 of the Bill can be read together.
Section 2	Commencement and duration	<p>Amendments made in sections 4, 5 and 6 (social welfare related changes) are deemed to have come into operation on the 9th March 2020.</p> <p>Amendments made in Sections 7 and 8 (social welfare payments) are deemed to have to come into operation on 13th March 2020.</p> <p>Changes made by the Act will operate until 9th May 2020. However, the Government can extend the social welfare payments when it is in the public interest to. The Government can also decide that orders made under Part 3 of the Bill such as affected area orders or travel bans may continue in force where they are satisfied it is in the public interest to do so.</p> <p>Orders to extend social welfare provisions or orders made under Part 3 must be laid before both Houses of the Oireachtas and are subject to a motion to annul. This means that the Oireachtas can decide not to continue with the orders.</p>
Part 2	Amendments to the <i>Social Welfare Consolidation Acts 2005</i>	

Section 3	Provides that references to 'Act of 2005' in Part 2 of the Bill are references to the <i>Social Welfare Consolidation Act 2005</i>	All references to the Act of 2005 are references to the <i>Social Welfare Consolidation Act 2005</i>
Section 4	This amends s.21 of the Act of 2005 which deals with rates of self-employment contributions and related matters.	This means that illness benefit is available to the self-employed. This is not usually the case.
Section 5	This amends s.40 of the Act of 2005 which deals with entitlement to disability benefit.	This section deals with people who are deemed incapable of work because of certification by a medical officer or because they are self-isolating.
Section 6	This amends s.40 of the Act of 2005 which allows the Minister to make regulations on how to certify that a person is a relevant person for the purposes of the Bill.	This section extends eligibility to illness benefit for people deemed a probable source of infection for COVID-19 coronavirus.
Section 7	This amends s. 62 of the Act of 2005 which deals with entitlement to unemployment benefit	This section provides for the variation in the three-day waiting period, that is three days of unemployment, before someone is entitled to receipt of Job Seekers Benefit.
Section 8	This amends s.141 of the Act of 2005 which deals with entitlement to unemployment assistance	This does away with the three-day waiting period before a person can claim Jobseekers Allowance.
Part 3	Amendments of Health Act 1947	
Section 9	Definitions – references to the Act of 1947 are references to the <i>Health Act 1947</i> .	All references to the Act of 1947 are references to the <i>Health Act 1947</i> .
Section 10	This amends s.31 of the Act of 1947	This significantly amends s.31 of the Act of 1947 and allows for regulations to be made to prevent, minimise or slow the spread of COVID-19. These include: Restricting travel to and from the State;

		<p>Declaring an area or region of the State to be an affected area, subject to an affected order;</p> <p>Requiring persons or classes of people to remain in their homes; and</p> <p>Prohibiting events or certain types of events.</p>
Section 11	Section 11 amends s.38 of the Act of 1947 which deals with the detention and isolation of a person who is a probable cause of infection.	This allows for the detention and isolation of people when a certain number of criteria have been met in the opinion of a medical officer of health. This includes a refusal by the person in question to stay in their home.

Source: L&RS analysis

Implications

In its publication “COVID-19: Information for employers and employees”, the DEASP referred to the Government announced package of measures to respond to COVID-19 coronavirus across various State bodies, including the HSE. This publication states that €2.4 billion of the total package is allocated “to support State illness payments for people affected by COVID-19 coronavirus”.

In addition, in the Explanatory Memorandum accompanying the Bill, the figure of €2.4 billion is the estimated cost associated with the extension of entitlement of Illness Benefit to employees and the self-employed at the increased weekly maximum rate of €305.

The removal of the three waiting days for Jobseeker’s Benefit and Allowance will cost in the region of €0.385 million per week, based on 2019 claim volumes. However, in the likely scenario of increased claims, a 33% increase in claims would increase the €0.385 million to €0.512 million per week and a 50% increase in claims would volume would increase the weekly cost to €0.58 million per week.³⁵

³⁵ Communication from DEASP to the L&RS.



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