Seirbhís Leabharlainne 7 Taighde Library & Research Service

Bill Digest

Construction Safety Licensing Bill

Bill No. 24 of 2023

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Abstract

The Construction Safety Licensing Bill proposes to provide a new and comprehensive framework for the licensing of construction, quarrying and related activities in Ireland. If introduced, it will establish a designated licensing authority for the sector, including a licensing model for tutors and a register of licensees and approved training organisations. It also proposes to introduce a skills-based system of assessment, including recognition of foreign qualifications as well as create several new offences and provide for complaints and investigations for fraud or non-compliance by a tutor or approved training organisation.



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Summary/Key Messages

The <u>Construction Safety Licensing Bill</u> (the Bill) and <u>Explanatory Memorandum</u> were published on 24 March 2023, with Second Stage debate scheduled for Wednesday 3 May. The Bill proposes to provide a new and comprehensive framework for the licensing of construction, quarrying and related activities in Ireland, including the establishment of a new licensing authority. The Bill contains nine Parts, encompassing 63 sections and a Schedule providing a detailed list of activities where a relevant worker licence or tutor licence is required. The Explanatory Memorandum sets out the main features of the Bill as follows:

- The establishment of the licensing authority as a designated competent authority in respect of scheduled activities to recognise foreign qualifications (Section 22);
- The establishment of a licensing model for workers based on an assessment of competence, to replace the accredited training model (Sections 24 to 33);
- The introduction of skills-based assessment with no distinction on the basis of environment, thereby amalgamating the process for licensing scheduled construction and quarrying activities (Sections 30 to 32);
- The establishment of a licensing model for tutors (Sections 34 to 39);
- The establishment of a statutory approvals requirement for training organisations conducting related training (Sections 40 to 43);
- The creation of offences for fraudulently obtaining a worker or tutor licence, or approval as
 a training organisation, and for non-compliance by tutors and approved training
 organisations with a code of practice, as well as associated offences for contractors and
 employers (Sections 24, 25, 49, 53 and 60);
- The establishment of a register of licensees and approved training organisations (Section 44);
- The opportunity for individuals to make complaints on the basis of fraud or noncompliance and for investigations to be conducted (Sections 45 to 54);
- The opportunity for individuals effected by investigations due to non-compliance to make representations and appeals (Sections 55 to 59).1

Glossary and abbreviations

Table 1: Glossary and abbreviations

Term	Meaning
ATOs	SOLAS Approved Training Organisations
CIF	Construction Industry Federation ¹
CSCS	Construction Skills Certification Scheme
HSA	Health and Safety Authority
Minister	Minister for Further and Higher Education, Research, Innovation and Science
SOLAS	Education and training agency of the Department of Further and Higher Education, Research, Innovation and Science
QSCS	Quarrying Skills Certification Scheme

Introduction

In a <u>press release</u> on 6 October 2022, announcing Government approval to publish the Bill, Minister for Further and Higher Education, Research, Innovation and Science, Simon Harris, T.D., described the Bill as:

"... a transformational piece of legislation designed to enhance the overall skills and knowledge, as well as to improve safety standards, for all those employed within the construction sector ... [the Bill] will be incredibly important for skills enhancement within the construction and quarrying sector in Ireland, and is a monumental step forward in ensuring a high standard of health and safety practices among our construction workers. It is crucial that we place our construction workers, and most importantly their safety at work, at the heart of the industry."

In the <u>press release</u> announcing approval to publish the Bill, the licensing model was described as a

"key element in the department's response to construction skills needs and meeting workforce requirements as outlined under Housing for All, the National Development Plan 2021-2030 and the Climate Action Plan."

The <u>General Scheme</u> was published on 6 October 2022 and in the <u>press release</u> on 6 October 2022 announcing the publication, the main features of the Bill were set out as follows:

¹ The <u>Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022</u> formally appointed Construction Industry Federation as the Registration Body for the new statutory Construction Industry Register Ireland.

- introduction (on a primary legislative basis) of safety awareness requirements for workers in the construction sector
- establishment of a licensing model for workers based on an assessment of competence, to replace the accredited training model
- introduction of skills-based assessment with no distinction on the basis of environment, merging the assessment and licensing processes for construction and quarrying activities
- establishment of a licensing regime for tutors
- establishment of an approvals requirement for training organisations conducting certain reserved activities
- creation of offences for failure to hold the appropriate licence and associated offences for contractors and employers.²

This Bill Digest focuses on the substantial changes which the Bill will bring. It contains the following sections:

- Summary and Key Messages offers a concise overview of the key changes introduced by the Bill.
- Background Policy and Legislative Context provides an overview of the current system and sets out the main developments leading to the reform of the construction safety licensing sector. It also provides two recent graphics highlighting the level of accidents and fatalities in the construction industry.
- Regulatory Impact Analysis (RIA) provides a summary of the Department's RIA and its underlying rationale for choosing this option together with the policy behind it.
- Principal Provisions sets out the most significant provisions of the Bill. It does not explore
 each section but instead focuses on the those introducing changes to the current system.

² Department of Further and Higher Education, Research, Innovation and Science, General Scheme of the Construction Safety Licensing Bill 2022, <u>Press Release</u>, 6 October 2022.

Background

Current system

SOLAS³ is an education and training agency of the Department of Further and Higher Education, Research, Innovation and Science which manages the Safe Pass Health and Safety Awareness Training Programme, the Construction Skills Certification Scheme (CSCS) and the Quarrying Skills Certification Scheme (QSCS).⁴ The Construction Skills Certification Scheme (CSCS)⁵ and the Quarries Skills Certification Scheme (QSCS).⁶ provide for the training, assessment, certification and registration of non-craft operatives for occupations within the construction and quarrying sectors, as defined under the relevant legislation.

The CSCS and QSCS programmes are delivered by SOLAS Approved Training Organisations (ATOs) and tutors. Successful trainees receive QQI accreditation and a CSCS/QSCS Registration Card. Cards are currently renewable every five years. Renewal is on the basis of payment of an appropriate fee with no requirement for re-certification or proof of competence.⁷

Safe Pass is a one-day health and safety awareness programme delivered by an approved SOLAS Safe Pass Tutor. Completion of the programme results in the attainment of a Safe Pass identification card, which is valid for a period of four years. It can be renewed by updating health and safety awareness through completion of a subsequent Safe Pass programme.⁸

Policy and legislative context

The proposed licensing model envisaged by the Bill will assist in meeting the workforce requirements, skills and objectives outlined in Government strategies, including <u>Housing for All</u> and the <u>National Development Plan</u>. As part of Housing for All, it was recognised that "Ireland needs a competitive, dynamic, and sustainable construction sector that can deliver high quality physical infrastructure for all our citizens." This involves upskilling workers and increasing competitiveness and attractiveness of the sector. The Housing Policy Objectives within Housing For All set out the following as one of the key objectives:

"Support quality of construction and enhance safety within the construction sector through a licensing system for certain specified construction activities to replace the existing qualification system"¹⁰

⁸ Overview of the SOLAS Safe Pass Programme Health and Safety Awareness Training

³ SOLAS was established in 2013 under the Further Education and Training Act as an agency of the Department of Further and Higher Education, Research, Innovation and Science. Our work is guided by the Further Education and Training (FET) Strategy 2020-2024 and the SOLAS Corporate Plan.

⁴ SOLAS Learning Works, 'Who We Are'.

⁵ SOLAS, 'Construction Skills Certification Scheme'

⁶ SOLAS, 'Quarries Skills Certification Scheme'

⁷ SOLAS, 'Course Information'

⁹ Government of Ireland, 'Housing for All - A New Housing Plan for Ireland', September 2021

¹⁰ Government of Ireland, <u>'Housing for All - A New Housing Plan for Ireland'</u>, September 2021 at 95.

In 2017, SOLAS commissioned an independent review (known as the <u>Bearing Point Report</u>) of its Construction Services Unit, which involved stakeholder consultation and attempted to identify opportunities for process improvement, including of the CSCS, QSCS and SafePass schemes. This involved meeting with various stakeholders, including the Construction Industry Federation (CIF), the Construction Industry Training Board, Approved Training Organisations, Education and Training Boards, individual trainers, tutors, the Irish Congress of Trade Unions, the Building and Allied Trades Union, the Transformation and Transition Steering Committee and Construction Industry Advisory Group.¹¹ It also reviewed international practice in several countries including the United Kingdom, Norway, New Zealand, Australia and Poland, surveyed workers, and undertook a study of comparable Irish agencies such as the Food Safety Authority of Ireland.¹²

Bearing Point undertook a six month review of SOLAS's Construction Services Unit from May to October 2017¹³ and found several issues which required change including legislation, governance, processes, technology, organisation, and resources.¹⁴ The Bearing Point Report proposed significant changes and set out key recommendations for change including:

- Legislative change ensure training programmes continue to meet the changing needs of the sector including potential future relocation of services to another organisation.
- Organisation outsourcing of specialist technical skills to external providers.
- Programmes changes to training programmes to embed safer behaviours and create sustainable behavioural change.
- **Providers' Register** create a register that includes information on trainers, tutors, assessors, as effective delivery of training and assessments is critical to ensuring the highest standards of health and safety are adopted.
- **Internal Processes** technical solutions to streamline processes including automation of current manual processes and enhanced external monitoring across all schemes.
- Supporting systems and technology overhaul of the current technical infrastructure is required to support the delivery of a 21st century service including eLearning and registers for card holders.¹⁵

Following on from the BearingPoint Report, an independent Technical Working Group was established which reported on how to progress the review's recommendations. The Group found that the current legislative system was dated and did not reflect technological and sector changes. The Government then approved in principle the development of a licensing model for certain construction safety and related activities and in 2019 SOLAS drafted the General Scheme of The

¹¹ Department of Further and Higher Education, Research, Innovation and Science, '<u>General Scheme of the Construction Safety Licensing Bill 2022</u>', *Press Release*, 6 October 2022.

¹² BearingPoint, '<u>Safe Pass and CSCS/QSCS Programmes Business Process Review'</u>, December 2017 at 52.

¹³ BearingPoint, 'Safe Pass and CSCS/QSCS Programmes Business Process Review', December 2017 at 1.

¹⁴ BearingPoint, 'Safe Pass and CSCS/QSCS Programmes Business Process Review', December 2017 at 1-

¹⁵ BearingPoint, 'Safe Pass and CSCS/QSCS Programmes Business Process Review', December 2017 at 62-64.

Licensing of Construction Activities Bill 2019. Work was paused on the 2019 General Scheme until the creation of the Department of Higher and Further Education, Research, Innovation and Science which then moved the General Scheme forward.¹⁶

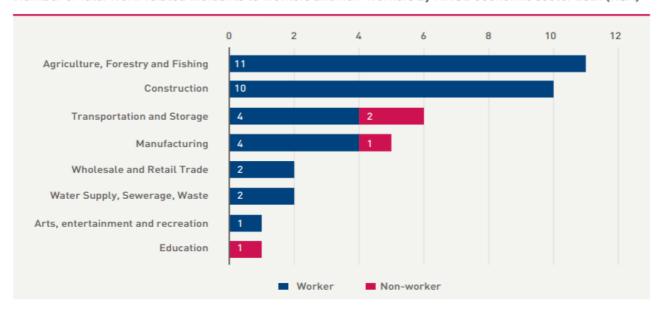
Health and Safety At Work

The Health and Safety Authority (HSA) was established under the <u>Safety, Health and Welfare at Work Act 1989</u>, which has since been replaced by the <u>Safety, Health and Welfare at Work Act 2005</u>. ¹⁷ Part of the HSA's mandate includes regulating and promoting improvement in the safety, health and welfare of people at work and those affected by work activities. ¹⁸ The HSA undertakes an Annual Review of Workplace Injury, Illness and Fatality Statistics which provides the most recently available data on work-related fatalities, injuries and illnesses in Ireland. It has three data sources including a database it maintains on reported non-fatal accidents, a register of fatal work related incidents along with CSO data from its Labour Force Survey. The HSA caution that the data is limited for several reasons including underreporting in certain sectors and limited sample size in the CSO survey. ¹⁹ Nevertheless, it provides a useful insight into health and safety in certain sectors. In 2021, construction was the second highest industry for fatal work related incidents in Ireland, after agriculture, forestry and fishing.

Table 2: Overview of fatal incidents by economic sector 2021 taken from Health and Safety Authority, 'Annual Review of Workplace Injuries, Illnesses and Fatalities 2020–2021'.

Figure 3.2:

Number of fatal work-related incidents to workers and non-workers by NACE economic sector 2021 (HSA)



¹⁶ Department of Further and Higher Education, Research, Innovation and Science, 'Minister Harris announces publication of the Construction Safety Licensing Bill 2023', Press Release, 31 March 2023.

¹⁷ Health and Safety Authority, 'About Us'.

¹⁸ Health and Safety Authority, 'Vision, Mission and Mandate'.

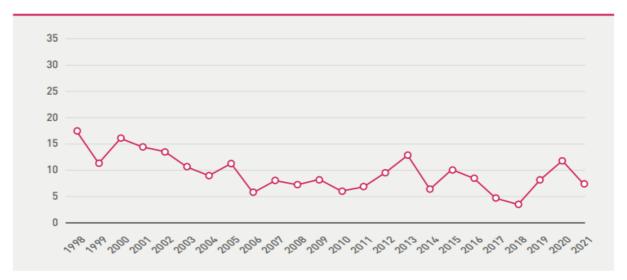
¹⁹ Health and Safety Authority, 'Annual Review of Workplace Injuries, Illnesses and Fatalities 2020–2021', 24 October 2022 at 8.

Since 1998 when the HSA first began recording incidents, the rate of fatal incidents per 100,000 workers in Construction has fallen from 17.4 to 7.2 in 2021.

Table 3: Timeline of rate of fatal work-related incidents per 100,000 workers in Construction, 1998 – 2021 taken directly from Health and Safety Authority, 'Annual Review of Workplace Injuries, Illnesses and Fatalities 2020–2021'

Figure 3.5b:





Previous legislation related to the current Bill

- Regulation of Providers of Building Works and Miscellaneous Provisions Act 2022
- Safety, Health and Welfare at Work (Quarries) (Amendment) Regulations 2013
- Safety, Health and Welfare at Work (Quarries) Regulations 2008
- Safety, Health and Welfare at Work Act 2005

Regulatory Impact Analysis (RIA)

The RIA was published on 10 May 2023 and notes that the overall objective is to improve health and safety practices in construction and quarrying so as to reduce workplace accidents, work-related injuries and fatalities.²⁰ It explores two possible options of

- 1. Do nothing or
- 2. Progress with legislative changes

²⁰ Department of Further and Higher Education, Research, Innovation and Science 'Screening Regulatory Impact Assessment Construction Safety Licensing Bill, 2022', 10 May 2023 at para 1.2.

In considering option 1, it was found that there were no benefits to choosing it and "that lives could be in danger if workers are not skilled in the most relevant and up to date safety knowledge and practices."²¹ It also noted that it could affect Ireland's ability to attract construction workers and cause reputational damage for the country.²²

In examining option 2, it noted that currently, CSCS, QSCS and Safe Pass training arrangements are delivered by private ATOs with no input from the Department or SOLAS in determining fees. The RIA notes that amendment of the current safety system was recommended through independent research (the BearingPoint Report) and that the benefit of this would be in "developing a modern and fit for purpose training and recognition system for construction safety awareness." It observed that it would have three main impacts as follows:

- Quality Regulation- introducing a new licensing model will change how the health and safety of workers will be regulated;
- Competitiveness and Industry Costs awareness will be raised regarding the scale and diversity of opportunities in the sector;
- Gender equality- awareness will be raised regarding the scale and diversity of opportunities in the sector which will also create an opportunity to support increased female participation in the construction industry.²⁴

Public consultation

A pre-consultation process took place in late 2021 and early 2022. The consultation consisted of a draft questionnaire that was circulated to a small number of key stakeholders who agreed to participate in an informal process. The feedback received from the questionnaire then informed the development of a survey issued for full consultation with 30 industry stakeholders and other key partners. The Department in preparing the draft General Scheme had regard to the responses that it received from this survey and it has also closely engaged with SOLAS.²⁵

²³ Screening Regulatory Impact Assessment Construction Safety Licensing Bill, 2022 as provided to the Library & Research Service by the Department of Further and Higher Education, Research, Innovation and Science at para 2.2.

²¹ Screening Regulatory Impact Assessment Construction Safety Licensing Bill, 2022 as provided to the Library & Research Service by the Department of Further and Higher Education, Research, Innovation and Science at para 2.1.

²² Ibid.

²⁴ Ibid.

²⁵ Screening Regulatory Impact Assessment Construction Safety Licensing Bill, 2022 as provided to the Library & Research Service by the Department of Further and Higher Education, Research, Innovation and Science at para 3.

Pre-legislative scrutiny of the General Scheme of the Bill

The Bill was granted a waiver from pre-legislative scrutiny after a private session committee meeting on 25 October 2022. ²⁶ As PLS was waived, it is not possible to conduct the usual L&RS traffic light dashboard comparison of the Bill as published against the Committee PLS recommendations.

Principal provisions of the Bill

This section of the Bill Digest examines the main provisions of the Bill, which contains 9 Parts and 63 sections. It does not provide detail on every section of the Bill but attempts to highlight the most significant changes that the Bill will introduce. The Schedule lists the activities in respect of which relevant worker licence or tutor licences are required.

Part 1: Preliminary and General

Part 1 of the Bill includes some of the standard legislative provisions including short title and commencement and definitions. Section 3 of the Bill sets out the interpretation for construction work as:

"...the carrying out of any building, civil engineering or engineering construction work, prescribed by the Minister for Enterprise, Trade and Employment under section 58 of the Act of 2005, or any guarrying operations."

Section 3(2) provides that work carried out on an individual's own residence (dwelling house including garden or grounds) is not considered construction work for the purposes of the Bill. Quarrying operations are construed "in accordance with the <u>Safety, Health and Welfare at Work (Quarries) Regulations 2008</u> (S.I. No.28 of 2008)".

Section 6 of the Bill sets out the necessary requirements for giving of notices including that they must be written, and addressed to the person concerned and can be hand delivered, left at a business address, sent by post, delivered by electronic means and addressed to an owner/occupier of land where the name cannot be reasonably ascertained. This largely echoes what is provided for under section 3 of the Safety, Health and Welfare At Work Act 2005 in relation to the giving of notices. Section 7 authorises the Minister to give written directions to the licensing authority including to amend or revoke directions. Section 8 authorises the Minister to issue written guidelines to the licensing authority, including tutors, workers and approved training organisations as well as to revise or re-issue such guidelines.

Part 2: Licensing Authority

Part 2 involves one of the more significant changes introduced by the Bill. Section 9 provides for the establishment of a body as the licensing authority. This was one of the main recommendations made in the BearingPoint Report and section 9 also appears to have adopted the report's proposal

²⁶ Information enclosed in private email communication from the Department of Further and Higher Education, Research, Innovation and Science to the Library & Research Service, 15 December 2022.

of referring to an open and unnamed body to allow ongoing flexibility. Section 9(2) also sets out the matters which the Minister must take into account when appointing a body as follows:

- (a) the need for efficiency, effectiveness and economy;
- (b) the need for sufficient expertise and knowledge relating to construction work;
- (c) the need for sufficient expertise and knowledge in relation to training;
- (d) the need for the availability of sufficient capacity and resources for the purpose of performing functions conferred on the licensing authority by or under this Act;
- (e) any other matters which, in the opinion of the Minister, are proper matters to be taken into account for the purposes of appointing a body.

Section 10 provides for the transfer of the functions of the licensing authority. The Minister may appoint by way of an order the transfer of functions to a transferee licensing authority. The transfer would be on foot of a report into the performance of a licensing authority or otherwise and having taken account of one or more matters referred to under section 9(2). Such an order may include provision for the transferor licensing authority to continue to perform any function for a specified period or purpose or both (section 10(4)). Subsection 5 provides a list of 10 possible functions that can be transferred including records, data and information, employee/employment contracts, the register and moneys advanced by the Minister or collected fees. Under section 11, provision is made for the review of the performance of functions by the licensing authority. The Minister must appoint a person to carry out periodic inspections, reviews and audits of the performance of the functions of the licensing authority and they must furnish a report to the Minister and to any Oireachtas Committee tasked with examining matters relating to education and skills.

Section 12 provides that the licensing authority must perform those functions conferred on it and have all powers necessary or expedient to perform those functions. Subsection 2 sets out the functions of the licensing authority. These range from setting standards for training, granting, renewal, suspension and revocation of licences and charging of fees. The functions are as follows:

- (a) specify requirements in respect of training, including the standards to be met by, and the duration of, such training, in accordance with sections 13 and 14,
- (b) grant and renew, as appropriate, and issue licences in accordance with Part 5,
- (c) suspend or revoke licences and approvals in accordance with Part 8,
- (d) inspect the licences of sole traders in accordance with section 26,
- (e) appoint examiners for the purposes of sections 30, 31 and 32,
- (f) act as the competent authority for the purposes of the mutual recognition of professional qualifications and experience in accordance with Directive 2005/36/EC of the European Parliament and of the Council of 7 September 20051 for the purposes of applications under Part 5 or 6,
- (g) recognise, as appropriate, the experience and training of, and qualifications conferred on, persons from third countries for the purposes of applications under Part 5 or 6,
- (h) establish, maintain and publish the register in accordance with section 44,
- (i) establish procedures or rules, as the case may be, for the performance of its functions in accordance with this Act.

- (j) appoint inspectors and, where appropriate, investigate and prosecute alleged offences under this Act,
- (k) provide the Minister, in such form and manner and within such period as the Minister may specify, with such information or advice as the Minister may request in relation to any matter relating to its functions as the Minister may specify,
- (I) undertake or commission, or collaborate or assist in, research projects and activities relating to construction work, including the compilation of statistical information and other records,
- (m) develop in consultation with such other bodies as it considers appropriate, information and education campaigns aimed at improving safety standards among licensees, and
- (n) charge and recover fees in respect of the performance by it of its functions

Section 12 also provides that the licensing authority must undertake a review of its performance at intervals decided by the Minister. It can also decide to carry out a review at other times. A report must be presented to the Minister within 2 months of conducting a review. The licensing authority may provide advice to the Minister without being asked, and the Minister can by order give the licensing authority additional functions as they consider appropriate and subject to any specified conditions. The licensing authority can establish procedures and rules to facilitate the performance of its functions under the Act.

Section 13 of the Bill provides that the licensing authority must specify on its website the training programmes or courses, including safety awareness training, that a person needs to hold for a licence. It must also include the frequency at which training must be undertaken to ensure validity of a licence. The licensing authority must also specify on its website the processes and procedures to recognise foreign training experience and qualifications. Section 14 provides that the licensing authority must provide for workers with licenses to undertake continuous training during the validity of their licence. It is also obliged to specify the particular programmes or training including safety awareness training and the frequency at which they should be done.

Under section 15 of the Bill, the licensing authority may enter into agreements with third parties including service level agreements to perform functions on behalf of the licensing authority. It also sets out six terms for entering into such agreements including that the agreement must be in force for at least 3 years, the agreement and any changes must be published on its website within 3 months of being entered into, and the third party must prepare an implementation report at a 9 month interval each year of the agreement which can be published on the licensing authority's website. Where there is failure of a third party to perform all or a significant part of the agreement, the licensing authority must promptly implement arrangements to ensure performance of the agreement. It also has the power to make a special report to the Minister.

Section 16 of the Bill provides for the charging and recovery of fees by the licensing authority. The licensing authority must identify the fees to be charged on its website. It is authorised to provide for exemptions, waiving, remitting or refunding of fees. In setting the fees, the licensing authority must fix them at a level that will produce an annual amount which will discharge the capital outlay, salaries and remuneration and any miscellaneous expenses of the authority, any third party contracted and the appeals committee. The licensing authority is prohibited from specifying fees without consulting and obtaining the consent of the Minister. The Minister can, with the consent of the Minister for Public Expenditure, National Development Plan Delivery and Reform, prescribe matters to be taken into account by the licensing authority in determining when fees are to be

charged and the different fees to be attributed to different classes of licence. The authority can recover a simple contract debt in any court of competent jurisdiction for fees owing.

The appointment of inspectors is provided for under section 17 of the Bill. The licensing authority can appoint its own staff to be inspectors as well as other persons for a period and for purposes determined by the authority. Inspectors are furnished with a certificate upon appointment and when exercising powers conferred by the licensing authority must produce the certificate or a copy of it. The licensing authority has the power to revoke the appointment of an inspector regardless of whether it was a fixed position. An appointment will cease if:

- An inspector resigns
- The licensing authority revokes the appointment
- On expiry of a fixed period
- If an inspector is a member of staff from the licensing authority and they cease to be a member of staff

The licensing authority is not precluded from reappointing a person as an inspector where any of the above terms of cessation apply.

Section 18 provides that the licensing authority must prepare and adopt a code of practice but must obtain the consent of the Minister before adopting it. The licensing authority can amend or revoke any code of practice adopted once it has consent from the Minister and has consulted with any other appropriate person identified by it or directed by the Minister. A code of practice can be prepared for several purposes including specification of programmes, courses or other training, and the qualifications to be held by licensed tutors or approved training organisations, as well as providing practical guidance to licensees and approved training organisations. Where a code of practice is adopted, the licensing authority must publish it on its website, publish a notice in Iris Oifigiúil identifying the code and indicating when it will come into operation. Where a code of practice is amended, the licensing authority must publish the amended code on its website, publish a notice in Iris Oifigiúil identifying the amended code and indicating when the amended code will come into operation. Where a code of practice is revoked, the licensing authority must publish a notice in Iris Oifigiúil and on its website specifying the code being revoked and the date on which the revocation will come into operation. A code of practice is admissible in evidence in any proceedings where any act or omission of the licensee or approved training organisation alleged to have been in compliance with that code of practice or failed to observe a code of practice. The code of practice must have been in operation and have provided practical guidance to licensees and approved training organisations in relation to the matter which is the subject of the alleged contravention. A certified copy of the code of practice on behalf of the licensing authority must be admitted in evidence in any proceedings unless the contrary is proved.

Section 19 provides for the preparation by the licensing authority of an annual report for the preceding year to the Minister on its functions and any third party agreements including obligations and the functions of the appeals committee. A copy of the annual report must be laid before the Houses of the Oireachtas. The licensing authority can also prepare and furnish other reports to the Minister as it considers appropriate. The licensing authority must give the Minister other information they may require in relation to any or all of the following:

- Performance by the licensing authority, any third party and the appeals committee
- Any document or account prepared by the licensing authority
- Annual report or any report

The licensing authority must publish its annual report, including on its website, in a form it considers appropriate as soon as possible after the report has been laid.

Part 3: Safety Awareness

Part 3 consists of sections 20 and 21. Section 20 provides that a person who holds a relevant worker licence who is not in possession of a valid safety awareness registration card will be guilty of an offence. A safety awareness registration card means the Safe Pass registration card and a registration card issued in another Member State where SOLAS had approved the training as being equivalent to Safe Pass training.

Safety awareness registration cards are valid for five years. Where a safety awareness registration card was issued under the <u>Safety, Health and Welfare at Work (Construction) Regulations 2013</u> (Regulations of 2013) it will be recognised as a card issued under section 20 of the Bill, for the period provided for under the previous legislation which is four years.

The Minster may, after consultation with the licensing authority, the Minster for Enterprise, Trade and Employment, the HSA, CIF, and any other representatives from the construction sector make regulations to extend the persons to whom this section applies (other than scheduled activities which are provided under the Schedule to the Bill).

A person will be guilty of an offence where they make false statements with intent to deceive, alter or forge a safety awareness registration card or intend to deceive through the making, supply or possession of a fake card made to look like a safety awareness registration card. This is already provided for under Regulation 29 of the Regulations of 2013. Section 21 makes several amendments to the Regulations of 2013 to include references to section 20 of the Bill and also provides that this section does not prohibit subsequent amendment/revocation of the Regulations of 2013.

Part 4: Recognition of Foreign Qualifications

Part 4 consists of section 22. Section 22 provides for the designation of the licensing authority as the competent authority for all matters under the <u>European Union (Recognition of Professional Qualifications)</u> Regulations 2017 (Professional Qualifications Regulations). This relates to the recognition of foreign qualifications of workers carrying out scheduled activities and tutor delivering related training.

Part 5: Licensing

Part 5 contains three Chapters, related to the requirement to hold a licence for activities, and licences that workers and tutors must hold.

Chapter 1 which consists of section 23 provides that a worker or tutor must have a valid relevant worker licence before carrying out any of the scheduled activities or delivering relevant training set out in the Schedule to the Bill. Section 23 also provides that the Minister can prescribe activities to be added or removed to the Schedule on advice of the licensing authority and following consultation with the HSA, CIF and the Minister for Enterprise, Trade and Employment. Subsection 4 sets out factors to be taken into account including technical developments and developments in the health and safety requirements.

Chapter 2 consists of sections 24 to 33 and provides for the terms around holding a worker licence including application for a provisional worker licence and a worker licence. Section 24 provides that a worker must hold a valid relevant worker licence when carrying out a scheduled activity and if they fail to do so, will be guilty of an offence. Where a person engages a worker to carry out a scheduled activity, under section 25 they must ensure the worker holds a valid relevant worker licence and will be guilty of an offence where they fail to do so. Section 26 empowers the licensing authority to inspect licences of workers who are sole traders in order to ensure that they are compliant with the requirement for holding valid relevant worker licences. Under sections 27 – 29, a worker can apply for a provisional worker licence (valid for 2 years, cannot be renewed, must be over 16 years old) or a worker licence (valid for 5 years and can be renewed, must be over 16 years old).

Section 30 sets out the application process for a provisional worker licence including what must be included in the form, which may be in electronic form, together with the fee (which is specified under section 16). Such information to be provided by the applicant includes proof of identity, address and age, PPSN, evidence of completion of the new entrant programme and holding of a valid safety awareness registration card. The licensing authority can request additional information and seek independent verification of anything furnished and applicant's PPSN can be entered and retained by the licensing authority. The licensing authority is obligated to establish and maintain a new entrant programme, which must comprise of compulsory instruction in specific health and safety matters. Where the licensing authority is satisfied that a training/programme completed in another country is equivalent to the new entrant system, it must accept evidence of this in lieu of evidence of completion of the new entrant programme.

Section 31 similarly sets out the application process for a worker licence. The application must include similar documents but requires evidence of different training (certified monitoring training and a final licence examination) as well as holding a valid provisional worker licence and a valid safety awareness registration card. The licensing authority may, as with the provisional worker licence, also request additional information and seek independent verification of anything furnished. The applicant's PPSN can be entered and retained by the licencing authority. Definitions for 'certified monitoring training' and 'final licence examinations' are provided. Where the licensing authority is satisfied that a training/programme completed in another country is equivalent to the certified monitoring training, it must accept evidence of this in lieu of evidence of completion of the certified monitoring training. The section also provides that the licensing authority must accept evidence of equivalent examinations to the final licence exam and that an applicant is not precluded from applying where they are from another country and would otherwise be eligible but do not hold a provisional worker licence.

Section 32 sets out the terms for renewing a worker licence which must be done no sooner than 6 months before the expiry of a worker licence. The conditions largely reflect those set out under section 31. A definition for a 'worker renewal programme' is also included. This section also provides that the licensing authority must establish and maintain a worker renewal programme and appoint suitably qualified examiners as part of that programme.

Section 33 provides that the licensing authority must grant or refuse to grant a relevant worker licence, or renew or refuse to renew, the worker licence within 3 months of receiving an application. Where the licensing authority refuses to grant a relevant worker licence or renew a worker licence, it must give notice to the applicant as soon as possible after making the decision. It must include in the notice information on the applicant's right to make representations to the licensing authority or to appeal to the appeals committee.

Chapter 3 consists of sections 34 – 39 in relation to tutors. Section 34 provides that those who wish to deliver training specified by the licensing authority must hold a valid tutor licence. Such a licence will be valid for 5 years, can be renewed and cannot be granted to a person under 16 years old. The application process for the tutor licence is very similar to the one under sections 30 and 31 with the exception of the requirement to detail how they propose to deliver training and evidence that they are complaint with the code of practice of the licensing authority. Similarly, it also provides for the recognition of comparable foreign qualifications or experience to satisfy the requirements for compliance with the code of practice or examinations passed. Section 38 deals with the process of renewing a tutor licence, which also reflects largely that for the licences and includes an undertaking they will continue to comply with the code of practice. A tutor licence must be renewed no earlier than 6 months before the licence expires. Where the licensing authority refuses to grant or renew a tutor licence, it must give notice to the applicant as soon as possible after making the decision. It must include in the notice information on the applicant's right to make representations to the licensing authority or to appeal to the appeals committee.

Part 6: Approved Training Organisations (ATOs)

Part 6 consists of section 40 - 43. It provides that training must only be delivered by ATOs in respect of applications for worker licences for:

- The new entrant programme
- Final licence examinations
- Safety awareness training
- Worker renewal programme
- Tutor licences and the renewal programme

A licensed tutor or person who wishes to deliver training must apply for approval as an ATO and approval is valid for 5 years. Section 41 sets out the process for a licensed tutor to receive approval to be an ATO (largely following the other application processes) including that they will provide an undertaking to adhere to the code of practice. It also provides that if an applicant is not a licensed tutor, they must provide an undertaking that only licensed tutors will deliver the training on behalf of the applicant and that both will adhere to the code of practice. If an applicant is not a licensed tutor, they may be required to provide information under the Companies Act 2014 and, where applicable, the names and licence details of licensed tutors who will be delivering training on their behalf. Section 42 provides for the renewal of approval no earlier than three months before expiration of the existing approval and evidence of the training must be included and a declaration that they are compliant with the code of practice and will continue to do so. The licensing authority must also accept as evidence any training/experience/qualifications undertaken in another country where it is satisfied that it is equivalent to that specified under section 13. Under section 43, a decision around approval as an ATO is also subject to the same conditions as other licences where the applicant must be informed as soon as possible after a decision is made. They must also be notified of the option to make representations and appeal to the appeals committee.

Part 7: Register of Licensees and Approved Training Organisations

Part 7 reflects one of the recommendations of the BearingPoint Report to introduce registers of this nature. Section 44 provides that the licensing authority must as soon as possible after this section comes into operation establish and maintain a register of licensees and ATOs. This must include the names and contact details of licensees and ATOs, the relevant scheduled activities and any other information that the licensing authority considers appropriate. The register must be divided into different divisions as decided by the licensing authority. The register must be made available for inspection to the public free of charge through publication on an accessible part of its website and in *Iris Oifigiúil* not less than every 4 months. Copies of entries must be provided when requested for a fee specified under section 16. This section also provides that an officer of the licensing authority can provide proof of registration as evidence during legal proceedings. Any alterations made to the register must be notified to the relevant licensee or ATO as soon as possible. A licensee or ATO must give written notification to the licensing authority where it knows of an error in the entry and of any change that would impact on the accuracy of the entry.

Part 8: Enforcement

Part 8 contains 2 Chapters divided into Complaints and Investigations, and Representations and Appeals and consists of sections 45 to 59.

Chapter 1 deals with complaints and investigations. Section 45 makes provision for a person to make a complaint to the licensing authority for alleged fraud or improper conduct (non-compliance by tutor/ATO with a relevant code of practice). A complaint will be referred to an inspector for investigation <u>unless</u> the licensing authority:

- Has insufficient information to determine if it should be investigated,
- Is satisfied that the complaint is not made in good faith,
- Is satisfied that the complaint is vexatious/frivolous/abuse of process,
- Does not relate to alleged fraud or improper conduct,
- Can be resolved through mediation of other informal means.

Where a complaint is not referred for inspection, the licensing authority must notify the complainant and the relevant licensed tutor/ATO of the decision and reasons for it. Where the complaint is not resolved through mediation or other informal means, a fresh complaint can be made.

Section 46 provides for the process around investigations including that the licensing authority must appoint an investigator where it receives a complaint to carry out an investigation and submit a report to it after the investigation is completed. More than one inspector may be appointed and where there are more, any report must be jointly prepared. Where a complaint is withdrawn before submission of the investigation report, the licensing authority may proceed if it satisfied there is a good and sufficient reason for doing so. If it does so, it must notify the complainant and the investigation is treated as one initiated by the licensing authority.

Section 47 allows the licensing authority to suspend a licence or approval where it considers it appropriate while an investigation is pending. An inspector undertaking the investigation must inform the licensed tutor/ATO of the suspension at the time they are notifying them about the investigation. The licence or approval holder must be notified of their right to make representations or appeal to the appeals committee regarding the suspension. Section 48 provides for the

procedure around the notification of an investigation. It provides that as soon as possible after an investigator is appointed they must give notice to the licensee/ATO of the complaint, including the particulars. They must also provide a copy of this Part of the Bill along with a copy of any documents relevant to the investigation. The person being investigated has 30 days in which to respond. Where it relates to a complaint being investigated, the inspector must make efforts to keep the complainant informed of the progress of the investigation.

Section 49 relates to the powers of inspectors. Inspectors can for the purposes of an investigation at reasonable times enter, inspect, examine and search any premises where a licensee/ATO carries out training. They can require the production of records, reports, books or account or other documents necessary for the purposes of the investigation as well as inspect, examine and copy them. Inspectors can require any person by or on whose behalf data equipment has been used in connection with any activity related to holding a licence or approval to assist the inspector in the use of such equipment. Where there is reasonable cause to believe there will be serious obstruction to exercising their power, inspectors may be accompanied by a member of An Garda Síochána.

Any requirement to comply with requests to produce information for the investigation must specify a period of time and date in which to comply. The inspector is given the power to request a person who they believe possesses relevant information for the investigation to provide this information as appropriate. The section also provides that an inspector may question a person under oath, and that the inspector may administer such an oath. An inspector is prohibited from entering a private dwelling except where they have the consent of the person or a warrant from the District Court. The District Court is authorised to issue a warrant permitting the inspector to enter any relevant premises of the person under investigation if they believe they are withholding documents. Section 49 also provides that if an inspector believes that a person is not complying with the investigation, then, with the consent of the licensing authority, they can apply to the Circuit Court for an order to comply. Documents are not compelled to be produced where a person would be exempt from producing them in court proceedings on the basis of legal professional privilege. Where otherwise a person withholds, destroys, conceals or refuses to provide information or fails to comply with any requirement of an inspector they will be guilty of an offence.

Section 50 provides an investigator must prepare a draft investigation report which is provided to the person under investigation, in addition to a copy of this Section of the Bill and a notice that they have 30 days to make a submission in writing on the contents of the report. Following expiration of that period, the investigator must as soon as possible prepare a final written report with any submissions annexed to it and submit it to the licensing authority. The final report must state if the inspector was satisfied that improper conduct has occurred or is occurring, or are not so satisfied. Where they are not so satisfied, they must include the ground on which this is so and their opinion on whether further investigation is warranted and if so what this should relate to. The inspector has several penalties at their disposal depending on the findings. Section 51 provides that where an inspector finds there was improper conduct, they may give a direction in writing to submit an improvement plan. This must be complied with within 30 days, before an inspector provides their report to the licensing authority, and that plan will be implemented from the date of submission. Within 2 months of receipt of the plan, an inspector will review its implementation and within 30 days of the review, confirm whether they are satisfied the plan is being implemented. If the inspector is not satisfied that the plan is being implemented they can issue an improvement notice. Section 52 provides that an inspector can serve a written improvement notice on a licensed tutor or ATO. Such a notice must include several items. These include stating the reasons why the inspector believes that the improvement plan has not been complied with, directions on measures

to be taken to remedy the matter, information on how to appeal and the notice must be signed and dated by the inspector. A licensed tutor or ATO who has been served with an improvement notice and believe it has been remedied must give written notice of this to the inspector. Where the inspector is satisfied, they must, within 30 days of receipt, confirm compliance with the improvement notice. Where the inspector is not satisfied, they must issue a prohibition notice to the licensed tutor or ATO. The licensed tutor or ATO has the opportunity to appeal to the appeals committee within 14 days of service of the notice on them. Simultaneously, they must notify the licensing authority who is entitled to appear, be heard and adduce evidence on the hearing of the appeal. The appeals committee can confirm, vary or cancel the notice. Where an appeal is made and the notice is not cancelled, the notice must take effect. The inspector also has the power to withdraw the improvement notice or extend the period of the notice where no appeal is made or pending and the licensed tutor/ATO must be notified.

Section 53 provides that an inspector, where they are of the opinion that a licensed tutor/ATO has not complied with an improvement notice, may issue a written prohibition notice. A prohibition notice must state the opinion of the inspector, state the reasons for the opinion, prohibit the carrying on of scheduled activity or training activity until the reasons for non-compliance have been remedied, include directions on what measures to be taken to remedy any non-compliance. It must also include information on how to appeal the notice and must be signed and dated by the inspector. As with the improvement notice, a licensed tutor/ATO has 14 days in which to appeal the notice to the appeals committee. Where an appeal is made and the notice is not cancelled, the notice must take effect. An inspector can also withdraw the prohibition notice or extend the period of the notice and the licensed tutor/ATO must be notified. A licensed tutor/ATO who fails to comply with a prohibition notice is guilty of an offence. Where an inspector is unsatisfied that the prohibition notice has been complied with, they must submit an investigation report and relevant submissions so that the licensing authority can make a determination.

An inspector, may recommend to the licensing authority, and must provide reasons for the following recommendations -

- 1. Suspend fully or partially for a certain period, or revoke, the tutor licence or approval:
- 2. Prosecute the tutor or ATO for failure to comply with the prohibition notice.

Section 54 provides that the licensing authority must consider the report received following an investigation and recommendations from the inspector. Where the licensing authority is satisfied that improper conduct has taken place or is taking place, it must as it considers appropriate, impose a minor or major sanction. A minor sanction includes advice, a reprimand, a caution or any combination of these. A major sanction includes suspension of a licence or approval until compliance is achieved, revocation of a licence or approval or any combination of these. Where the licensing authority is not satisfied that improper conduct has or is taking place, it can request a further investigation or dismiss the original complaint. The licensing authority also has the power to conduct an oral hearing as it sees fit if it considers it appropriate or where requested by the licensee or ATO. Alternatively, it can provide to the licensee/ATO and complainant if relevant, a copy of the investigation report and a notice advising that submissions can be made to the licensing authority within 30 days. Section 54 also provides that the appeals committee can remit the decision to the licensing authority for reconsideration and the decision will be suspended while it is being reconsidered. Where no appeal is made within 14 days of the decision being received, then the decision of the licensing authority is final.

Chapter 2 deals with representations and appeals and encompasses sections 55 – 59. Section 55 provides that those applicants who have been given notice of refusal to grant or renew a licence/approval (sections 30,31,32,37, 28, 41, 42) or who have been given notice of a proposal to suspend a licence or approval (section 47) may make representations to the licensing authority within 14 days. The licensing authority must take notice of any representations and must notify the applicant, licensee/ATO of the decision and the reasons for the decisions as well as informing them that they may appeal within 14 days of the date of the notice. Where no appeal is made, the decision of the licensing authority is final.

Section 56 provides for the establishment and operation of an independent appeals committee to determine appeals. It must consist of a chairperson and at least 4 ordinary members appointed by the Minister who are not members of the licensing authority. The chairperson must be a practising solicitor or barrister within the meaning of the <u>Legal Services Regulation Act 2015</u>. When ordinary members are being appointed, the Minister must be satisfied that the person has knowledge/expertise in:

- construction skills, education and training;
- general skills, education and training;
- health and safety matters relation to construction.

The Minister must attempt to ensure a gender balance in the composition of the appeals committee. The appeals committee must make rules regarding the conduct of appeals and these must be published on a website maintained by or on behalf of the appeals committee. Such rules include requirements to give notice of an appeal, documentation to the supplied by the licensing authority, procedures for hearing of an appeal, examination of witnesses, time limits, recording of proceedings and procedures for sittings in private. The appeals committee may determine that whole or part of proceedings should be heard in private, where it considers in the interests of justice, the interests of the parties require it. The appeals committee must have due regarding for the protection of commercially sensitive information. The licensing authority can be directed by the Minster to provide administrative support to the appeals committee as it requires.

Section 57 provides that an appeal in writing may be made to the appeals committee within 14 days of a licensee or ATO being adversely affected by a decision of the licensing authority. An appeal can be based on procedural or substantive matters and can be withdrawn in whole or part, at any time before the appeal is heard. A witness at a hearing of the appeals committee enjoys the same immunities and privileges as if they were a witness in the High Court. The chairperson of the appeals committee has several powers including directing an appellant or other relevant person to attend before the appeals committee as well as requesting the licensing authority to produce documents related to the appeal and its observations on it.

The appeals committee can:

- confirm the decision of the licensing authority subject to amendment;
- remit for stated reasons with/without directions to the licensing authority for reconsideration and the making of a new decision;
- substitute its determination for the decision of the licensing authority.

The chairperson must notify the appellant of the decision made on the appeal including the date it was made, reasons for the decision and their right to appeal the decision to the District Court under section 58 of the Bill. The licensing authority must also be notified.

Section 58 provides for a right of appeal by any licensee or ATO to the District Court on a decision of the appeals committee within 30 days of it being issued. The Court must dismiss an appeal where it finds it vexatious, frivolous, an abuse of process or without substance or foundation. A licensee or ATO must comply with the requirements of section 58 and relevant rules of court or the appeal will be found invalid and be dismissed. The Court may make two findings - confirming the decision or finding that a serious or significant error of law or fact or a series of minor errors of law or fact taken together amount to a serious or significant error was made in making the decision. In the latter case, the Court can decide to annul the decision and substitute its own decision or it can remit the matter to the appeals committee for reconsideration and the making of a new decision with or without directions.

Section 59 sets out the matters to be taken into account where decision of sanction is being determined by the licensing authority, appeals committee or District Court as appropriate. These include but is not limited to the following:

- the need to ensure the sanction is appropriate and proportionate to the improper conduct;
- the seriousness of the improper conduct;
- the duration of the improper conduct;
- whether a similar sanction has already been imposed;
- · any precedents related to previous improper conduct.

Part 9: Miscellaneous

Part 9 consists of section 60 – 63 and deals with offences and penalties. Section 60 provides that a person who knowingly makes any false or misleading statement in any application or document or otherwise gives false or misleading information to the licensing authority or the appeals committee will be guilty of an offence. On summary conviction (minor offence tried in the District Court), a person found guilty will be liable to a class A fine or no more than 6 months imprisonment. The person's licence or approval may also be revoked. Section 60 sets out the penalties for offences under different sections of the Bill with either a Class A or B fine applicable, a term of up to 6 months imprisonment or both, and revocation of the safety awareness registration card or licence or approval. The licensing authority must notify the CIF if a person is convicted of an offence under the Act. The licensing authority can bring summary proceedings for an offence under this Act within 12 months of the offence being committed or within 6 months from when sufficient evidence was produced. Where the licensing authority brings proceedings, the person convicted will be ordered to pay to the licensing authority costs and expenses incurred and measured by the Court.

Section 61 provides for the liability for offences committed by bodies corporate. Where an offence has been committed by a body corporate and it is proven to have been committed with the consent or collusion by a person who was a director, manager, secretary or other officer or is attributable to wilful neglect on their part, that person will also be held liable and guilty of an offence.

Section 62 provides for transitional arrangements for several matters once the Bill is enacted. These include that a safety awareness registration card, construction skills registration card or quarries skills registration card that is valid when section 62 comes into operation will continue to be valid for 5 years beginning on the date the section comes into operation or until it expires, whichever is earlier. A person who is approved by SOLAS as a tutor will continue to be approved for one year beginning on the date the section comes into operation or until it expires, whichever is

earlier. It also provides that a person or company approved as an ATO can continue to deliver training for 1 year beginning on the date on which this section of the Bill comes into operation.

Section 63 provides that the licensing authority can specify the form of documents as required including the requirement of a statutory declaration to be made by the person completing the form. The form of a document must be completed according to such directions and instructions as specified in the document.

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