

Stephen Curran
Principal Officer
Safety, Health, Chemical Policy Unit,
Department of Business, Enterprise and Innovation,
Davitt House,
Dublin 2.

Dear Mr Curran,

Your email of 3rd April Refers. While we believe the drafters of the Extreme Weather (Miscellaneous Provisions) Bill 2018 to be well-intentioned, we do not believe the Bill as drafted would make good law. ISME wishes to make the following formal observations on the Bill:

1. ISME was not consulted on the drafting of this Bill. Given the nature of the proposals contained therein, we consider this most improper. It would be perverse if a Bill with such wide implications for employers were not to be proffered to employers for consultation, and were employers not invited to contribute at Committee.
2. While in general ISME takes a liberal view on the conduct of private activity, and is usually against proscribing it in any but the most exceptional circumstances, we are well-disposed to the Section 6A amendment of the Safety, Health and Welfare at Work Act 2005 (the 2005 Act) to define 'Dangerous activity in public place.' Upon the declaration of an extreme weather event, it is reasonable to request private citizens to refrain from activities which would unnecessarily endanger members of the emergency services, or which would divert them from more urgent and appropriate taskings. Whether the definition set out in the Extreme Weather (Miscellaneous Provisions) Bill 2018 is the most appropriate wording is another issue, and we feel this particular section requires further work.
3. The amendment of Section 11 of the 2005 Act to close all workplaces in the event of a Status Red severe weather warning is an ill-thought and fundamentally bad idea. The notion that all employers would be required to shut all workplaces upon the issue by Met Éireann of a Status Red severe weather warning takes no account of the fundamental unpredictability of weather, nor the necessity of many workplaces to open when it is locally safe to do so. The Department

will remember that, during the recent Storm Emma event, employers were initially warned that the Status Red warning for most of the country would take effect at 16:00hrs on 1st March. This was subsequently amended to a national Status Red alert from 23:00hrs on 28th February, i.e. outside working hours. Have the drafters of this Bill considered the implications for an employer such as a filling station, or a nursing home, or a hotel, which prepared in good faith for the initial warning, but was caught at night by the second warning with staff on its premises? This Bill seeks to introduce certainty to an issue (weather) where there is none. It therefore fails the most basic test of common sense.

4. However, to compound the logical failure described in (3) above, the Bill goes further, in suggesting that workers prevented from going to work because of a Status Red alert shall be *'treated by his or her employer as if at work for so much of the period of such warning as he or she would have been otherwise at work.'* Having shut down every place of work upon issue of a Status Red alert, as this Bill proposes to do, it is a truly perverse legislative proposal to suggest that all workers affected should thence be paid as if at work. From where is it proposed that the money for such remuneration comes from? In service industries, where product and consumption take place at the point of delivery, there will be no payment for the service not delivered. Who will pay? The social fund? With the greatest of respect to the drafters of this Bill, this proposal is clear evidence that they lack, at quite a profound level, any understanding of how a small business is run.
5. Lastly, the Bill proposes to amend Section 11 of the 2005 Act to extend to the Minister for Communications, Climate Action and the Environment the authority to designate additional classes of workers as providing an essential service during the currency of a Status Red weather alert. Presumably this becomes necessary because the effect of the Bill would be to immediately close down, without exception, every workplace not employing people as defined in Section 11 (5) of the 2005 Act. The proposition that a Minister would adopt such Zeus-like powers of designation during a weather event opens up many potentially troubling areas of liability for the State, and/or the employers of 'designated' workers. For example, were the Minister to designate bakers or delivery drivers as essential, upon whom would the liability fall if such a worker was injured in the course of his/her duties during a Status Red warning- the State or the Employer?
6. The fact remains that this Bill purports to address issues which are already legislated for, *in great detail*, under Section 11 of the 2005 Act. Amending the 2005 Act in the manner proposed is therefore entirely redundant, while raising issues of uncertain liability for the State.

Regarding payment to affected workers during the currency of a Status Red warning, in ISME's view, this is adequately catered for under Section 11 (3) of the 2005 Act.

Therefore, and with the exception of our comments at paragraph (2) above, ISME is completely opposed to this Bill.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Neil McDonnell', with a long horizontal flourish extending to the right.

Neil McDonnell

Chief Executive