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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

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(OFFICIAL REPORT—*Unrevised*)

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DÁIL ÉIREANN

Dé hAoine, 2 Iúil 2021

Friday, 2 July 2021

Chuaigh an Leas-Cheann Comhairle i gceannas ar 9 a.m.

Paidir.
Prayer.

Covid-19 Vaccine Roll-out: Statements

An Leas-Cheann Comhairle: Dia dhaoibh ar maidin. Tá sé iontach a bheith ar ais sa Dáil, fiú más lá amháin atá i gceist. Good morning, Members. It is lovely to be back in the Dáil Chamber, as I believe the last time that we sat here was in December. We are beginning with statements on the Covid-19 vaccine roll-out.

Deputy David Cullinane: May I raise a point of order, please?

An Leas-Cheann Comhairle: Certainly Deputy, but as I understand it, on the instructions before me it is statements only this morning, to be concluded within 145 minutes. I call Deputy Cullinane.

Deputy David Cullinane: I fully accept that according to what is in front of the Leas-Cheann Comhairle, this is a statements-only session. However, any time that we have had exchanges on the vaccine roll-out, it has been a questions-and-answers session and I have always used that facility because we have questions to ask and we need answers to those questions. It is not a productive use of anyone's time for Members to stand up and make long statements when people are asking us questions they want us to put to the Minister but we are not then going to get a response. I presume the Minister will say that he will forward such responses to us but it always has been much better to have an interaction, to go over and back and to get information in real-time. Statements are not the way to go. It was obviously the Government that decided this for whatever reason but it is not the way to proceed.

Deputy Róisín Shortall: Yes, I completely agree with those comments. I do not understand why there is a difficulty with questions and answers in this session, which has been taking place for months now at the end of the week, at which we have interaction on the latest information on the vaccine programme. It is generally fairly productive and the Minister has not had a difficulty with that. Were the Minister agreeable this morning, we could continue like that where we use our time for a question-and-answer session. Would it be possible to arrange it in that manner? Is that acceptable, a Leas-Cheann Comhairle, because it is much more productive?

Given the events of recent days and the need for us to get additional information for the public, there are endless questions to be asked about the vaccine programme. It would be fairly meaningless for us all to be just getting up and making statements. I ask the Minister to concede to that request.

An Leas-Cheann Comhairle: What is before me is what is before me but I will afford the Minister the opportunity to reply here now.

Minister for Health (Deputy Stephen Donnelly): I thank the Leas-Cheann Comhairle. To be honest, I was simply told that it was statements. It was not something that I had requested at all, as we do question-and-answer sessions all of the time. I cannot do it today because doing such a session requires a tremendous amount of preparation and there is a great amount of data that I need to have available for colleagues but I fully appreciate where they are coming from. Can I suggest that we proceed with statements today, as agreed, and I can work with colleagues to find the time to do a question-and-answer session? Alternatively, if colleagues have pressing questions we could set up an informal briefing for health spokespeople, as we did on the National Public Health Emergency Team, NPHE, advice. I am very happy to facilitate it, which is what we have done the whole time in the past, but I just cannot have such a session now because the preparatory work required to ensure that I have sufficient answers for colleagues takes a significant amount of time and that work was not done because today's session was for statements.

An Leas-Cheann Comhairle: I ask Deputies to respond very briefly.

Deputy David Cullinane: I thank the Leas-Cheann Comhairle. I accept that the Minister did not request this session format but essentially what he is saying is that he will not have the information we need at his disposal today, which is problematic. Briefings in private session, whenever they are organised, are not what we need. People are asking us reasonable questions on the supply chain, how many of the vaccines will be available for young people and when. The Minister made some announcements this morning, which we all welcome. It would have been a good opportunity to have an engagement to get that story out and to tease out some of the working in this regard. It is unfortunate but we have to proceed in this manner.

Deputy Róisín Shortall: With all due respects to the Minister, he spoke on "Morning Ireland" earlier this morning and presumably he had preparation for that. He had a great deal of material at his disposal and he shared information on that programme. The Minister is fairly up-to-date on the situation and if there are issues we raise that he is not in a position to answer, we would be very happy to accept a note on them afterwards. The Minister should be reasonable about this and I do not know why there would be any attempt made to limit debate on this by not doing a question-and-answer session, especially given the week that is in it. We need to be in a position to ask questions and it is not sufficient to say to us that he will work to arrange a briefing. We waited six months for a briefing from NPHE and we got it finally this week. It is really not on to treat the House like this.

An Leas-Cheann Comhairle: The points have been made on now. The Minister has 20 minutes to speak now.

Deputy Stephen Donnelly: The point made by Deputy Shortall is disappointing and I do not accept her final comment. I am not treating the House like anything. I have come into the House week after week to speak with all Deputies in good faith, to engage with questions and

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answers and I am offering to do so. The order of the House was not arranged by me but by the Business Committee and I have come here as requested to go through statements. I have offered multiple alternatives to that, as I recognise that Deputies have an important job to do, including to have a question-and-answer session at the next possibility, as well as informal briefings - to answer Deputy Cullinane's point - to try to get the answers for the Deputies as quickly as possible. I categorically do not accept that the House is being treated with anything other than respect by me by coming here as arranged by the Business Committee to make statements. I thank the Leas-Chathaoirleach.

An Leas-Cheann Comhairle: The lines have been drawn, the questions have been asked, replies have been given and we will proceed now.

Deputy Stephen Donnelly: I thank the Leas-Cheann Comhairle. I will be sharing time with the Minister of State, Deputy Feighan.

It is fair to say at this point that our vaccine programme has been an enormous success. Uptake has been phenomenal and it is something we should all be immensely proud of as a society.

It has not been plain sailing, as colleagues will know, and I know many Members have had concerns in the past, just as I have had, at different stages through this programme.

Earlier on in our roll-out programme, we faced some real challenges in supply and some remain. Evolving evidence meant we had to regularly change our plan and update our implementation. Unlike other European countries, we did not have digital records at the level that we should have had. There were concerns about our capacity to deliver the biggest vaccination programme in the history of our State.

I remember when US President Joe Biden unveiled his ambitious vaccination plan. I wondered whether we, and indeed our European neighbours, would catch up with the United States. We did catch up. More of our adult population have now received a first dose vaccination than is the case in the United States. This did not just happen. It was not down to chance, or luck. If Members will allow me, I would like to pay tribute to the Department of Health, the HSE and its leadership team, the tremendous workers right across the country and indeed to the task force for the enormous contribution they have made in making this programme a success.

Approximately 20 people join me on the vaccination task force meeting on Mondays. Some are household names we all have come to know and others are not. It is through their hard graft and determination that we have the highest take-up rates of the vaccine in the European Union for the most vulnerable groups. We have many talented people working behind the scenes in our public sector and they are regularly working together alongside us into the early hours day after day. As a country, we will forever be indebted to their dedication and hard work - I want to re-emphasise this point to the entire healthcare family in every county in Ireland - as well as to the amazing partnership we have had with the likes of the Defence Forces, voluntary groups and volunteers right across the country. I know the Oireachtas is hugely grateful to everyone who has been involved in that partnership. I also thank people for their enthusiasm, including Annie Lynch, who was the first person in the country to be vaccinated. I remember having a telephone conversation with Annie and her niece the morning Annie was to be vaccinated. Our first vaccination seems like an eternity ago now. I also thank everyone in our vaccination centres, including our wonderful volunteers. We all know that there have been a lot of challenges and that it has been a bumpy road rolling out the vaccine programme. However, as a society,

a healthcare system and an Oireachtas, we have overcome those challenges on each and every occasion, and progress continues to be made.

The Delta variant presents us with another deeply unwelcome but, unfortunately, very real and immediate challenge. Vaccines are one of the most powerful preventative measures we can use against both the spread of the Delta variant and the damage it can do to people who contract it. Vaccination protects the people vaccinated but, just as importantly, it protects the people around us as well. This is not just about individual vaccinations; it is about a population vaccination programme.

While the recent cyberattack continues to impact the HSE's business activities and some healthcare delivery, it has not been allowed to impact the State's ability to deliver the vaccination programme, which is critical. Therefore, in spite of the attack, I can advise colleagues that almost 4.2 million vaccine doses have now been administered; more than two in every three adults in our country have now received at least one vaccine dose; and, at 45%, we are getting close to one adult in every two being fully vaccinated. Last week, the vaccine programme delivered the highest number of vaccines yet. It was a record week, with in excess of 350,000 vaccines delivered. This week will see in excess of 300,000 doses administered, probably between 310,000 and 330,000. The vaccine programme continues at pace. I can provide confirmation to colleagues on a measurement we have all been keen to ensure we endeavour to meet. It has been a cornerstone of our programme. The volume of vaccine that goes out is the volume that has arrived into the country. I refer to that really high percentage, well into the 90s, of vaccines getting into people's arms within seven days of arriving into the country. In spite of numerous challenges and changes, that pace has been maintained, which is really welcome.

The HSE is now accepting registrations for vaccination from those aged 35 to 39 and is scheduling appointments for that age group. I announced yesterday that registration for those aged 30 to 34 will commence next week. I can confirm to colleagues this morning that the portal will open to those aged between 30 and 34 on Friday. As has been the case with previous age groups, on the Friday the portal will open to 34-year-olds, on the Saturday to 33-year-olds, etc. That is how it will work. I confirm to the House this morning that we will see, in addition to this, a significant acceleration of the vaccine programme beginning this coming Monday. In short, the changes we are implementing from Monday will mean that the 18 to 34 years age group will have the option of being vaccinated one to two months early. That would have been really welcome regardless of the Delta variant and this surge but is particularly so in light of the modelling we saw from Professor Nolan's team as to what is likely to happen here through August and September. To be able to pull forward a huge number of people from September into August and some from August into July is incredibly valuable and will help us to protect one another and protect our population from the Delta surge that we know is coming.

I recently sought advice from NIAC specifically on the Johnson & Johnson, or Janssen, and AstraZeneca vaccines for the groups for which it was not available, that is, those aged 40 and below. This was in the context of the Delta wave. The question was whether, if we see the surge we are seeing in the UK arrive here, the advice can be updated to accommodate the higher risk of not taking a vaccine, since the risk of being infected goes up without a vaccine. While the data are still coming in and there is not consensus yet in the scientific community, there are serious pieces of research that suggest not only that the Delta variant is much more contagious but it is also potentially much more severe. There is some analysis that says the variant is about as severe as the Alpha variant in respect of the likelihood that it will put an individual in hospital. There is other analysis from the UK that says it could be two and a half times more likely

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to do so, or more. Obviously, therefore, accelerating the administering of vaccines and making the vaccines we have available to younger people in the face of that threat, I believed, was very important. Essentially, we could use every vaccine dose we had because, without this change, we would be left with supplies of Janssen and AstraZeneca, incredibly effective vaccines, and would not have been able to use them because everyone over 40 would have already been vaccinated. The changed advice from NIAC is therefore very much welcome.

The online portal for the mRNA vaccines we are all aware of will continue. As I said, this day next week it will open to the 30 to 34 age group. People in that age group will very quickly start getting appointments, and first dose vaccinations for them will start about a week after that. The current estimates - and this is important for people aged between 18 and 29 - for when their mRNA round of first dose vaccinations will begin are as follows. For the 25 to 29 age group, the estimate is early August, and for the 18 to 24 age group the estimate is from mid-August. For anyone in that group who is thinking, "I will be scheduled for an mRNA vaccine but I now have an option of a Janssen or AstraZeneca vaccine earlier - do I want to take that?", those dates are important to consider. Again, for those aged 18 to 24 it will be late August and for those aged 25 to 29 it will be early August.

In parallel with the portal for mRNA vaccines, from this coming Monday we will open up an opt-in model for those aged between 18 and 34. That, as I said, is so that if they want to avail of earlier vaccination, they may opt for either a Janssen or an AstraZeneca vaccine. People will be able to seek an appointment in one of over 700 pharmacies across the country for a Janssen vaccine, subject to supply. I will come back to this, but we do not have an infinite amount; it is subject to supply. That is from this coming Monday, 5 July.

The following week, the week of 12 July, those aged between 18 and 34 will also be able to register on the HSE portal for an appointment in a vaccine centre for an earlier vaccination. In the main, that will be AstraZeneca and there will be some Janssen supply available as well. The point is that they will then be vaccinated earlier than if they had waited for an mRNA vaccine. Supplies of Janssen and AstraZeneca will be somewhat limited during July, but we expect that supplies will be able to accommodate a significant number of this age group through July. To give colleagues a sense of this, the estimates we have as of this morning are that for this age group there should be between 205,000 and 210,000 Janssen doses available in July, and we have line of sight of about 100,000 AstraZeneca doses. That is after all the second doses are done, so those are new first doses. AstraZeneca is committed to providing significantly higher numbers than that. We do not have confirmation of that, so we are sticking with what we have confirmation of now. Essentially, the approximate numbers are between 205,000 and 210,000 Janssen vaccines and 100,000 AstraZeneca vaccines for July, and then significant amounts again into August.

As we unravel each lockdown measure, increasing the range of day-to-day freedoms we can enjoy, we must also have regard, obviously, to the progression of the disease, both internationally and domestically. The emergence and progression of the Delta variant is an issue which gives rise to other new decisions which now must be taken. It is unfortunate that these decisions have to be taken at a moment in time when many indoor activities, including hospitality, dance classes, other activity classes, were on the cusp of opening up. I know a huge amount of work was being done in hospitality, exercise, dance and all sorts of sectors getting ready. Everyone was really looking forward to being able to open up on Monday. However, the Government and the Oireachtas were obligated to review all the evidence to hand before making a judgment to make sure that people are as protected as possible. I understand that these deci-

sions have not been easy.

NPHET was tasked with carrying out an assessment of the evidence in order to determine whether to reopen. This is a responsibility it does not take lightly and which it has always conducted with the highest degree of professionalism. As they have always done, the Chief Medical Officer, CMO, and his public health colleagues carefully considered all aspects before making their recommendations, which the Government then took account of. I wish to put on the record of the House just how disappointed and uncomfortable I have been with some of the public commentary and the online vitriol that has been directed at senior figures in NPHET in recent days. These people have worked tirelessly for the past 18 months. I have enormous respect for them. They do have an important and difficult job that they have to do.

I will conclude by saying the potential danger of the Delta variant is substantial. Delta surges are being seen in the UK and other European countries. Scotland, for example, is recording its highest ever Covid case rates despite a large portion of its population having been vaccinated. I know colleagues will agree that the Delta variant is very serious despite the progress in vaccination. The message I want to get out, and I ask Members to help with this, is that we must do two main things - we have to get as many people vaccinated as quickly as possible, as quickly as possible, and we have to help people to stick to the public health measures. Things have been going well and naturally people have become a bit more relaxed. That is totally understandable but we must really lean into the public health measures again, and as we have done before, together, as a society, we will get people protected and we will get through this.

Minister of State at the Department of Health (Deputy Frankie Feighan): The Covid-19 vaccination programme is the largest immunisation programme in the history of the State. More than 4.1 million doses of vaccine have now been administered since the programme began in December. Approximately 65.2% of the eligible population have received a single dose while 44.5% have been fully vaccinated. The programme continues to gather pace and the trajectory it is on has been unhindered by the recent HSE cyberattack. This robustness has been matched by an agility which has enabled the programme to respond to updated clinical advice and changing delivery schedules.

The success of the programme has necessitated an unprecedented national effort from across the healthcare system. There are now 40 vaccination centres operating across the State, including at least one in each county. A further centre will commence operating at the Munster Technical University campus in Cork this week. Approximately 1.7 million people have now received a vaccination at one of the HSE-operated vaccination centres following registering on the online portal.

The roll-out has now begun to reach those in their 30s with those aged between 35 and 39 years invited to register for vaccination. The portal remains open for those aged between 40 and 49, with 644,000 people having registered to date. The HSE expects registration to open for those aged between 30 and 34 years towards the end of next week. I encourage anyone in these age groups who has not yet registered for vaccination to do so and avail of the protection it offers. GPs have played a pivotal role in the programme thus far and their involvement continues. Approximately 1.64 million vaccines have been delivered by GPs since the roll-out began.

Protecting the most vulnerable has always been a core tenet of the roll-out and this continues with socially vulnerable groups now being prioritised for vaccination. The Minister for Health approved three vulnerable groups to be prioritised for vaccination, namely, the homeless and

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members of the Roma and Traveller communities. Individuals in the custody of the State, including those in the Irish Prison Service and residing in direct provision, were subsequently also designated as high priority. Rolling out vaccines to the estimated 4,800 people residing in the 73 direct provision centres commenced this week. The vaccinations will be delivered through bespoke vaccination clinics, GPs, vaccination centres and pharmacies. I was in one of those clinics yesterday near Broombridge and want to thank all the workers and everyone who has participated in this very successful project.

GPs continue to offer vaccination to members of the Traveller and Roma communities, either directly or via referral to their local vaccination centres. To date, approximately 3,300 vaccinations have been delivered to members of both communities and an additional 400 vaccination appointments were scheduled for last week. The HSE is working closely with the community healthcare organisations to ensure that the vaccine roll-out continues efficiently to both the Traveller and Roma communities.

Individuals in custody in the Irish Prison Service are also being prioritised for vaccination. The roll-out in this commenced in March with those aged 70 years and older. It has now reached younger individuals in the custody of the State and it is anticipated that, over a four-week period, 75% of prisoners will have received a first dose. In order to accommodate the estimated 4,000 population residing in prison facilities, the National Ambulance Service has been attending some prisons to assist with vaccination.

As Minister of State with responsibility for the national drug strategy, I am pleased to inform the Dáil that those with addiction issues have now been designated as high priority for vaccination. The HSE is in the process of developing an operational plan to roll-out the vaccination to this group and once finalised it will be issued to the Department.

The national vaccination programme is well advanced and continues to gather pace. Thanks to the extraordinary efforts of staff across the healthcare system and the significant sacrifices of the Irish people, there has been a marked improvement in the situation. The continued success of the vaccination programme has led to a marked reduction in levels of hospitalisation. The vaccination programme has always sought to prioritise those most at risk, whether on the basis of their age, existing conditions or surroundings. I am pleased that the programme is reaching some of the most marginalised and oft forgotten in our society, including those seeking refuge and most in need of assistance, members of the Travelling community and those in the grip of addiction. The vaccination programme will leave no one behind and all will be offered the protection that vaccination affords. I was in a clinic in the city centre some weeks ago which had vaccinated 700 medically vulnerable people who are homeless. This great news for the people involved.

Deputy David Cullinane: The Minister said, and rightly, that we all have a responsibility to get the message out about the threat posed by the Delta variant. We do. I take my responsibilities very seriously in that regard because it is a threat. Right through the pandemic, my overriding objective has been to keep people safe. That has to be what we all do. Decisions that have to be made are never easy and a curtailment of people's individual freedoms is really difficult. We had hoped that we were out the gap to some degree but now the Delta variant has given rise to complications. We have to look at how we manage that variant as best we can. However, while we in opposition have a responsibility to ensure that that public health message is given, the Government has a responsibility to present the plan.

On Tuesday, we all anticipated and expected a plan from the Taoiseach about the safe reopening of indoor dining. I accept that recommendations were given to the Government on Monday or Tuesday by NPHE and that recommendations came from NIAC on Monday evening in respect of changes in the vaccine roll-out, but we also have to be honest. Those of us in opposition have been on the media in recent weeks. One of the main areas of discussion has been the possibility that the medical experts could recommend pausing the reopening of indoor dining, at least for two weeks. What was the Government doing during that two-week period? Industry tell us that it had no serious engagement during that time. What NPHE actually presented to the Government was modelling with different scenarios - it has to look at every eventuality - and that modelling has all sorts of assumptions underpinning it. That is the purpose of contingency planning. The Government should have been doing that and then presented a plan on Tuesday based on having worked out all of the contingencies, engaging with the sector and building in the public health advice that was given at a particular time. Let us be honest: what the Taoiseach said on Tuesday is that we do not have a plan but that we will come back in a couple of weeks, on 19 July, and will hopefully have one by then.

That said, I welcome the engagement that is now taking place with the sector. I want a safe reopening of indoor dining and hospitality for everybody. I do not want to see anybody left behind. As the Minister is aware, social cohesion is important. To take steps which, for example, would leave young people behind would be impractical and problematic. The Government's focus must be to put in place a plan that allows for the safe reopening of indoor hospitality and indoor activities for everybody. The clear ingredients for that include an accelerated roll-out of the vaccine. I welcome the changes that have been made for those in the 18 to 34 age bracket and that vaccines will be made available for them through pharmacists from Monday next. That is going to be important.

We must make sure that the over-60s are vaccinated as quickly as possible. I got my second dose of the Moderna vaccine yesterday, but I know family and friends who are over 60 and who are still waiting for their second dose. Is that fair? I do not believe so. When the vaccine roll-out was first presented to us, we were told that we had to vaccinate the most vulnerable quickest. That did not happen because of the way various vaccines were administered to different age cohorts. I know that was based on recommendations from NIAC but I simply make the point that there is not just an irony, there is an unfairness in me and, possibly, the Minister and others getting our second doses and being fully vaccinated, yet there are some in the over-60s category who are not.

I anticipated that this would be a question-and-answer session but it is only statements. I will, however, ask some questions and the Minister might be able to come back with the answers. NPHE outlined four scenarios - one pessimistic, two in the centre and one optimistic. When will the changes the Minister announced and signed off on today be factored into that modelling? When will we see revised assumptions and estimations in respect of case numbers, hospitalisations and ICUs? That is important for public confidence. That is the first question.

Are we going to see a plan for everybody brought forward by the Taoiseach on 19 July? Is it possible that there will be more delays? It is important that people have a sense that we will get a plan the next time. As part of that, we must also see revised timeframes and a revised scheduling for the vaccine roll-out. Some of the data the Minister provided is welcome, but more information is necessary.

I had a question on how many Janssen and AstraZeneca vaccines will be available for the

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18 to 34 age cohort in the next while. If I read what the Minister said correctly, it is that there will be approximately 305,000 in total - 205,000 doses of Janssen and 100,000 doses of Astra-Zeneca.

Deputy Stephen Donnelly: For July.

Deputy David Cullinane: For July. Obviously, that is an important start, but what we need to know then is where we stand in the following months. Getting that age cohort vaccinated is going to be key to ensuring that we can have a safe reopening everywhere, which we all want to see. It is important to outline not only information on those vaccines but also on the supply chains for the coming months. When the Government comes back with its plan for reopening – let us hope it is a plan for everybody – it would make sense that it be underpinned by an accelerated vaccine roll-out that will not be the victim of the type of supply difficulties and challenges we saw in the past, that will be sustainable and that will happen. There is a major concern regarding what occurred in recent weeks.

May I advocate that we look at antigen testing as an option as well? Nobody has ever said that antigen testing can be a replacement for PCR testing. I understand the points that have been made time and again by the CMO, but he has never said he is against antigen testing. What he said is that it is not a replacement for PCR, but antigen testing does have a role to play. Months ago, the European Commission set out very clear terms and ways in which antigen testing could be used. We were looking for antigen testing to be rolled out on flights as a pilot scheme in order that we could learn from it. This is something that must be examined.

When looking at the fastest return to indoor hospitality, we must examine indoor ventilation and air filtration. That must be part of the solution as well. I hope that when the Minister and his Government colleagues sit down to engage with the industry, the discussions will focus on the acceleration of the vaccine roll-out, potentially antigen testing, PCR testing, indoor ventilation and air filtration.

Before I hand over to my colleague, I will use my final minute and 40 seconds to raise with the Minister the harrowing “RTÉ Investigates” programme that aired last night. Many of us in this Chamber were members of the Covid committee that met some months ago. We compiled a report on this matter and we heard from advocate organisations, care champions, the Irish Association of Social Workers and others who were raising these issues for many months. They raised very real concerns about neglect in some nursing homes and care homes because of the major challenges Covid presented in those locations at a particular time. I echo the call made by the committee: something the Government must consider is a full public inquiry that puts the families of the bereaved first and also survivors in nursing homes as well, and people who worked through all of that. It was all rehearsed – there were major staff shortages of between 50% and 80% in some care homes and some residents did not get the care they needed, sometimes for days. How could people have got the proper care when one considers that was what was happening? Phones were not answered. People were not able to see their loved ones die. They were not able to get information on what was happening. We all accept that it was harrowing. I am not apportioning blame, what I am saying is that we need a full inquiry into the matter. I hope that is something the Minister will support.

Deputy Louise O'Reilly: I thank an Teachta Cullinane for sharing his time with me this morning. I pay tribute to those workers who have been on the front line right throughout this pandemic. While we were all busy having a series of L'Oréal moments in the convention cen-

tre, people were putting themselves in harm's way. They were going into Covid wards. They were working in retail. They were making sure that we were fed and kept safe. There are people who have worked right throughout this pandemic, including the staff here in the Houses, who deserve to be recognised and deserve our respect.

We should not lose sight of the fact that many of the measures that were recommended had to be implemented on the back of the fact that we had to protect the health service. We had to protect the health service because we went into this pandemic with a health service that was effectively on its knees because it was understaffed and under-resourced. We know how that happened; it did not happen recently, it was decades long in the making. That is the reason many of the measures had to be taken. The legacy of this pandemic must be a wake-up call for the people who sit on the Government benches. We cannot allow the health service to be exposed in that way ever again.

I want to touch on two areas in the few minutes available to me, namely, aviation and hospitality. Both of those sectors are anxiously looking at antigen testing. I refer to the minutes of the 4 June meeting of the HSE antigen testing working group, which state:

A recent modelling exercise by HIQA the Health Information and Quality Authority of Ireland, has suggested that with respect to workers in ... processing plants, [which are high-risk work environments,] ADT-based testing of supervised self-collected nasal samples once or twice a week with RT-PCR confirmation of positive results may offer benefit in terms of a potentially increased detection of cases, reduction in infectious person-days circulating, and a reduced overall cost relative to the current practice of monthly RT-PCR testing.

It seems, therefore, that the use of antigen testing was modelled in meat factories. Like an Teachta Cullinane, I thought we would have questions. My question is, why was it not modelled for aviation or for hospitality when there was time to do that and when case numbers were low? This time last year case numbers were in the single digits. That was not done and now we are in a situation where we are playing catch-up, which is regrettable. As the Minister will know, there are 140,000 jobs hanging in the balance in the aviation sector. Public health and safety must come first and we absolutely realise and respect that. The vaccine passports are due to go live on 19 July and while we all hope that works, there are questions. As people in the airline industry are used to dealing with inoculations and with them being a requirement for travel, they are ready to go. They are asking whether the Minister is ready to go and whether this will go live on 19 July. The hope is it will but as yet, we have not seen any evidence. We do not know if it has been trialled and we do not know the result of that. Has it been trialled as yet? Are we up to speed? Can the Minister confirm it will go live on 19 July?

Turning to hospitality, as the Minister is aware, it is a low-paid and largely non-unionised sector. I will point to the correlation there, which is that if a person wants to improve his or her pay, he or she should join a trade union, get active in that trade union and demand decent terms and conditions. Notwithstanding that the conditions are poor and the pay not great, despite what some in government would claim, people in the hospitality sector are really anxious to get to work. They want to get off the pandemic unemployment payment, PUP, and back into work. I know there has been engagement with representatives from industry and I am asking that the workers' voice also be heard at that table. It is really important. These 180,000 workers want a safe place in which to go back to work.

In the few seconds remaining to me, I have a few questions. As I said, I had hoped to have

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a back and forth but there are some issues arising with dance classes. If they are in a private facility, it appears they can go ahead but where a person is renting a facility from the council it appears he or she is being told they cannot go ahead. The Minister is nodding, which is good. There is some confusion there.

On the sacraments of communion and confirmation, I am not a religious person but for some people it is really important and is not about the party afterwards. Has the Minister looked at the possibility of having some ceremonies outdoors and will he be discussing that with church leaders?

Deputy Duncan Smith: I want to put on record that we could have had questions and answers this morning. Many of the questions that have been asked by the preceding Deputies and others that are going to be asked are ones he would be able to answer easily enough. We all accept there is stuff he cannot answer and would have to come back to us on.

We welcome the Minister's contribution on "Morning Ireland" earlier and his statement on the Janssen and AstraZeneca vaccines for 18- to 34-year-olds. It is something our leader, Deputy Kelly, and the Labour Party have been calling for all week. We are very happy that has been brought forward. It messed up my planned script for this morning, I must say but that is not a big issue. On the opt-in element for people aged between 18 and 34, will he be able to confirm at some point how that will match up with the mRNA vaccination system? We must ensure we do not reach a stage where there will be a cohort of 18- to 34-year-olds that has not opted in but is not captured by the parallel system and ends up falling through a gap. I am not going to say this is rushed; I will be positive and call this a reactive process. I just want to ensure young people are not going to fall through a gap, which is very important. Is the Minister sufficiently confident in our supplies that, with this parallel process, we will by 13 September have enough young people vaccinated in advance of third-level education terms restarting?

There are now reports that some states, such as Romania, have excess supply and Denmark is purchasing some of that. Is Ireland actively in the market with other states to purchase surplus supplies? That would be really interesting to know.

I was due to be vaccinated on Wednesday. I got a text asking me to fill out a form online. It had two questions, namely, did I have Covid and did I have a coagulation condition. I was scrupulous and in my two short responses I said "No" but then I got a text saying my vaccination appointment had been cancelled. I rang up the next day thinking I had messed up and got great customer service on the 1800 number. It turned out this text has been piloted with a number of people in my cohort and there have been major problems with it. I have since had people of my own age contacting my office who did the same thing. They filled out answers to the two short questions. These are questions that were asked in seconds in the vaccination centres. There is no real need for this and that has been recognised. That said, there are now a number of people to whom the process is now shut, myself included, and we are waiting for a repeat vaccination. I would be interested to know just how widespread that is. It is probably small enough but it is affecting a few people.

The AstraZeneca vaccine for people over 60 years has already been raised and I note people over 50 years are caught up in this as well. They are becoming the left-behind people of this vaccination programme. It is a positive process and admittedly, is something we have never done at this scale before. However, the one consistent negative representation I am receiving in my office about the process relates to this group. Those people really need to see the Minister

and the Government lead with something which is going to improve that for them and which is going to try to shorten it. As Deputy Cullinane said, he will be fully vaccinated, as will many people in their early 40s and late 30s, before people in their late 60s and that is not right.

On antigen testing I heard the Minister on the radio this morning saying he had now set up an implementation group. This is a huge issue. There are people out there now using antigen testing. Tests are readily available and people know how to use them. They are effective. We know they do not meet the gold standard like PCR. We have been hearing that for a year and people know it as well. I believe the Minister is a supporter of how antigen testing can be used within the overall system of testing. As someone representing a constituency that has many aviation workers, it is difficult to see aviation continuing to be treated separately from every other industry, especially when there were examples of how we could have piloted antigen testing on a route-by-route basis, which we saw at the transport committee of which I am a member. The system was there and it was acknowledged by the aviation industry and people in the HSE that it could be done. It was never done. As for the role of NPHE with respect to antigen testing, the team's appearance at the transport committee a couple of weeks ago was quite incredible. NPHE brought absolutely all its big hitters. It was quite an aggressive meeting and it did not need to be like that. At the root of that was this feeling around antigen testing and how it is not being used in aviation. We are in July now and we have two and a half weeks now until 19 July. The aviation industry needs some certainty on the EU Covid certificate. They need certainty as well in relation to children being vaccinated in relation to travel. In terms of children being vaccinated in general, we need more information on that.

I will finish on the matter of indoor and outdoor dining because I am running out of time. I am sure everyone has picked this up, including the Minister, but not since "Golfgate" last year have I experienced such anger in my office as I did when the announcement was made by the Government earlier this week. People want to be in this together and for the most part feel they have been. However, when the Government is implementing a policy that is going to drive a wedge between younger and older people, the whole edifice could fall down. I hope the Minister has pulled some of that back now with the Janssen and the AstraZeneca vaccines for 18- to 34-year-olds but he should not take that for granted. There is a whole heap of work that must be done to ensure our young people are treated with the respect they deserve after everything they have been through as a cohort over the last year and a half.

Deputy Fergus O'Dowd: I welcome the Minister's statements, the Government's work and the HSE's work to provide vaccines and to reach out to people to ensure that the most vulnerable in society are dealt with fairly. I welcome the comments made today. I get a sense that all of us are working together to achieve the best for everybody.

I raise the issue of people aged between 60 and 69. It is clear, as the Minister knows, from Dr. Holohan's letter, that about 75% of this group had received just one dose. Much work is left to be done. There is clear evidence now that while getting two AstraZeneca doses is very effective, it is not as effective as two doses of Pfizer. There is evidence from the Com-CoV study, which is led by the University of Oxford, that one dose of the AstraZeneca vaccine, followed by a dose of the Pfizer vaccine, gives the best immunity to people in this age cohort. There is evidence that people are concerned about that. Some commentators on the media are clear on this. If the Minister has the medical advice to do so, could there be substitution of the Pfizer vaccine for the second AstraZeneca vaccine dose for that age group, which is most at risk?

The other question that arises in the United Kingdom is that the National Health Service is

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looking at a booster vaccine for the vulnerable population in the autumn. I appreciate that this is not a question the Minister can answer here. I ask him to correspond with me on that issue. Does the Government intend to provide booster vaccines this autumn, especially for vulnerable age groups and vulnerable people? We are learning as we go. The best evidence is what we have always acted on. I support all of the actions the Government has taken on this matter heretofore.

I refer to “Prime Time” on television last night. I ask the Minister about the appalling number of deaths in Dealgan House Nursing Home and the need for a public inquiry into those deaths. I have been made aware, as the Minister has, of the appalling situation that arose in Kilbrew nursing home and the deaths there. Last night, three more nursing homes were added to that list, the Ballynoe nursing home, Cahercalla nursing home and Tara Winthrop Private Clinic. The families affected suffered grievously as a result of care not being provided and they are concerned. The *Irish Examiner* today refers to one patient, who died later, saying that he was not in a nursing home but on death row, because there were so many dead bodies being wheeled past the door of his room. There is clear evidence that in one of these homes, no nurse was on duty for a 12-hour shift in one part of the home. That is entirely unacceptable. There is mounting and conclusive evidence of the need for an inquiry.

I refer to the Tara Winthrop nursing home. I wrote to the HSE last year to list the 20 nursing homes in Ireland where most people had died from Covid. One of those nursing homes was Tara Winthrop Private Clinic. I have some information on minutes of meetings between public health officials, the area crisis management teams and records of meetings between nursing home proprietors. I was refused the information I was looking for about Tara Winthrop Private Clinic in Swords on the grounds that it would prejudice the effectiveness of investigations, inquiries or audits into that home. That information was given last March. I ask the Minister to publish the information about those investigations, inquiries and audits into Tara Winthrop Private Clinic. There is clear, abiding and serious concern about it. I do not doubt the Minister’s integrity or that of the Department. I do not doubt that there are fantastic, well-run, brilliant nursing homes in the country, but a core number continue to raise serious concern.

I have evidence about Dealgan House Nursing Home in Dundalk. Two witnesses told me that they are prepared to give serious evidence to an appropriate and proper inquiry. The families were in touch with me again today and will publish a letter for the Minister shortly. The Minister needs to grab this in both hands, have those inquiries, and meet the needs of the families, especially those who spoke last night and those I listed. Dealgan House Nursing Home cries out. It is the only nursing home in which the State intervened to take over management.

Deputy Cormac Devlin: It is nice to be back in this Chamber. I hope it will be possible to return to Leinster House in September. I speak about the vaccination programme this morning in a totally different context from when I have spoken previously. I acknowledge the 5,000 people who have sadly passed away during the pandemic and I express my condolences to their families, friends and loved ones.

Anyone who watched last night’s “Prime Time” programme on nursing homes will have been struck by the sense of sadness and anger at conditions in some of the nursing homes. I welcome the Minister of State, Deputy Butler’s, comments about investigating the issue. As a member of the Special Committee on Covid-19 Response, I also support a public inquiry into the issues raised. There will be others.

News of a fourth wave of the pandemic, driven by the Delta variant, has come as a disappointment, both here in this Chamber and across the country. We all hoped that this pandemic was in our rear-view mirror but we must prepare once again as a society as we face into a fourth wave for the impact it will have on our society, economy and health service. It is devastating news for the hospitality sector. I urge all Ministers to work together to find an innovative solution in the period ahead, including antigen testing, which I have spoken about before. I hope there will be no need to roll back the easing of restrictions that has been achieved to date. Thankfully, Ireland is well placed to face a fourth wave. More than 4.1 million doses have been administered. About 67% of adults have now had their first jab with almost 45% fully vaccinated. We are told by EU and Irish medical experts that all four vaccines licensed in the EU are extremely effective against the Delta variant. This is extremely reassuring.

Uptake of the vaccine has been extraordinary. It is at 99% for people over 80, 98% for people in their 70s, and 92% for people aged 60 to 69. This is well ahead of EU averages which are as low as 76% in many states. I am hopeful that our extremely high uptake in older people and people with underlying health conditions will pay dividends as the fourth wave begins to be established. The vaccines also appear to limit the transmission of the Delta variant. Therefore, it is critical that we accelerate the vaccination programme with all possible speed. I welcome the Minister's comments that the portal will open from next Friday for people aged 30 to 34.

News that experts on the national immunisation advisory committee, NIAC, have approved the use of AstraZeneca and the one-shot Janssen vaccine for everyone over 18 if they wish to be vaccinated early is also welcome. I note the Minister's comments this morning about the opt-in for that cohort. The reduction in the interval between AstraZeneca vaccine doses to four weeks is welcome. I know many people in the 60 to 69 cohort are still awaiting their second jab and are hoping for an appointment in the next two weeks. I ask NIAC to explore having an opt-in for the over 60 cohort if there are excess vaccines because a number expressed concern about the option facing them about what vaccine they were getting.

I urge the Minister to ask NIAC to decide on vaccinations for children aged 12 to 15, especially those who would otherwise fall into group 4 or group 7, with a serious underlying condition that puts them at risk. I have raised this matter before and I understand that many hospital consultants have lists prepared and are awaiting the decision and that the HSE is drawing up plans. I note the European Medicines Agency, EMA, approved the measure some time ago. The Minister might come back to me about whether NIAC cited any reason for what seems to be an undue delay. We need to offer these children a vaccination as soon as possible and certainly before the return to school in September.

10 o'clock

The Minister might also confirm if he expects most teachers and special needs assistants, SNAs, to be fully vaccinated before the return to school.

I join with the Minister in expressing my gratitude and that of the House to all those working on, and administering, the vaccination programme across the now 40 national centres, pharmacies and other healthcare centres. Feedback has been very positive, but I ask the Minister to ensure there are proper facilities for people with disabilities. I will forward details to the Minister of feedback I have received in this regard. It is wonderful to see 692,000 vaccinations arrive this week, with another 1 million due over the course of July and more again in August. I wish everyone involved in the programme every success as they ramp up administration to

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protect Ireland from the worst effects of a potential fourth wave.

The Minister's comments on this morning's "Morning Ireland", and in his opening speech this morning, are welcome. It seems that a lot of work and preparation has gone into what is facing us in the next couple of months. Hopefully, with the co-operation of all in this House, we can put out positive messages, get engagement and keep the co-operation of the public as we face into the next couple of months.

Deputy Violet-Anne Wynne: I will comment on several issues relating to the Covid-19 vaccine roll-out. In Clare, over the course of the last few months, I have been inundated with emails from constituents who were not given appointments in due course as per the stated timeline of cohorts, despite the fact they had underlying conditions and, as such, were told they would be prioritised. I am talking about our extremely vulnerable people who believed they would be prioritised.

I will raise one specific example. I have been in regular contact with a constituent whose wife is housebound and suffers from multiple sclerosis, MS, and, therefore, has extremely limited mobility. This individual has a care team that have all been vaccinated but there was no contact, unfortunately, from her GP about her vaccination date even though she reached out on multiple occasions. Eventually, the independent care team rather than HSE workers orchestrated her receiving the vaccine. Her husband, unfortunately, had to drive her to a test centre more than an hour away, where a nurse agreed to come out to the vehicle and vaccinate her *in situ*. In response to a representation from my office to the HSE, I was told that generally people in cohort 4 were being vaccinated in hospital settings, which is an erroneous remark as housebound people are entitled to access vaccination through GPs and-or their consultants.

This is all the more striking when we consider the circumstances of another individual in the same locality, with the same risk and in the same cohort, but for whom the National Ambulance Service managed to arrange vaccination at home six weeks earlier. This discrepancy in the time elapsed is a serious concern and I wanted to raise it with the Minister today. Time and again this constituent reached out to the HSE helpline, specially formed to deal with queries from the public, but there did not seem to be any sort of effective communication between staff answering the freephone line, who are tasked with redirecting and resolving queries, staff in HSE headquarters or staff working remotely for GP offices across the country. The lines of communication were extremely, and frustratingly, convoluted.

We welcomed the announcement that vaccinations would be administered through pharmacies. That seemed a proactive response to address a lack of access to centralised vaccination centres but, to date, in Clare, only one pharmacy has been given the capacity to administer vaccines and, ironically, it is in Ennis where there is a vaccination centre. Clare is a huge county and I ask that this matter, in particular, be addressed. Access is so important. We do not want to make it difficult for people to access their vaccination. It was initially conceived of, and presented as, something that would benefit people in more isolated areas but that does not seem to be the case. Many pharmacists in Clare were excited at the prospect of being able to offer this opportunity and essential service to their local populations in more rural parts. Again, I ask that this matter is addressed.

Another issue raised with my office is the seeming postcode lottery determining where constituents are allocated a vaccination appointment. People living in the same locality, for example, have been sent to different vaccination centres, which has caused huge frustration and

confusion. This may be a less pressing issue than the ones I have outlined. However, I mention the frustration and difficulties this has caused people in trying to arrange transport in order to make an appointment that is more than an hour's journey away. These are seen as minor administrative errors that should, and could, have been foreseen and avoided.

I will raise a further issue, which is the access to vaccination appointments for homeless people. I understand rough sleepers are finding it impossible to access vaccinations as they may not necessarily be linked in with homeless charities. If they are not linked in with charities through accommodation services, will they be able to receive vaccines another way? Some of these people are the most marginalised in our society, already dealing with the everyday stress of not having accommodation and, therefore, Government should ensure they are reached and enabled to get their vaccines.

I will mention the mass confusion regarding the initial extended interval between first and second doses of AstraZeneca for the cohort aged 60 to 69, much to their dismay, as they see younger, stronger people only waiting four weeks between their first and second vaccine. The projected figures for incoming AstraZeneca vaccines mean that interval has now, finally, been reduced to four weeks, but not without serious and legitimate anxiety from a section of our population that has already struggled enough and does not deserve unnecessary ambiguity and lack of clarity. I wish I could say that a line has been drawn in the sand and these issues have been resolved, but I foresee we are not out of the woods yet, unfortunately.

Deputy Róisín Shortall: I will mention last night's "Prime Time" programme, which exposed very disturbing and shocking abuse and neglect of older people in some nursing homes. This is an issue that has been very well flagged for a long time. Last year, the Covid committee raised serious concerns, as did the expert group Sage Advocacy and care champions. They have all raised issues relating to the maltreatment of older people. An inquiry is needed, but we know the key things that need to be done urgently and we need action on those. The introduction of statutory staff-resident ratios in nursing homes needs to happen very quickly. It is shocking that they do not exist. Obviously, the Health Information and Quality Authority, HIQA, needs to be given greater powers as a regulator. Those two things should happen, urgently. I ask the Minister to take action on that. The fundamental problem is the privatisation of nursing home care for older people and care for older people generally. It is a major issue that nursing homes are seen as good investment opportunities rather than essential elements of the care service for older people. We need urgent action on that.

On vaccinations, I join with others in thanking and commending HSE staff, GPs, people who volunteered as vaccinators, pharmacists and all the people who really stepped up to roll out the vaccines as quickly as possible. The system has been absolutely fantastic. As somebody who has both experienced it first-hand and also spoken to many people, there is nothing but praise for how the system is working. It has been very successful. More demands will be made on all those people in the coming weeks, but I am very confident they have the capacity to deal with that. There is great willingness and the public has responded extremely well.

I will make a couple of points. Many of the pharmacists have been blindsided. I am getting reports this morning of a big rush to contact pharmacists to find out when people can get access to vaccines. Pharmacists have not been told what their deliveries are likely to be. Many of them have run out of vaccines at this stage and do not know when they will get new deliveries. It is very important that the message of what pharmacists can expect gets out to them as quickly as possible. They are very keen and willing to participate fully, but they need to know what the

supplies are going to be.

I will make another point about public health messaging, which has been quite weak in recent weeks. There is now a need to put a new focus on it. We all have a responsibility on the whole question of the importance of vaccinations. All of us in this House have been putting out that message loud and clear. That needs to be repeated. However, we also need to make it clear to people what the waiting period is after completing vaccination in respect of the different vaccines. Everybody is keen to get back to some kind of normality and to get out and about and so on, but it is important to stress that waiting period. It is not clear in relation to the Janssen vaccine what that waiting period is. We need to be much clearer in the message to people that they are not fully protected until they have completed that waiting period. There is also a need for clarification in regard to the level of protection having had Covid gives to people, particularly in the context of the Delta variant. As of now, we have not heard much about that. The information messaging to people who have had Covid in regard to the period of protection that affords them is not clear. We have a lot of people in that situation and they need clarity in that regard.

The general public health measures, in particular in regard to ventilation, need to be refreshed and repeated. This is an issue that has been neglected by official sources. The tendency is to talk about the medical aspects of this and while they are essential there are also many practical and non-medical or non-pharmaceutical aspects to responding to this and ensuring public safety. Ventilation is a key aspect. The expert group made recommendations but those recommendations do not appear to have been taken on board and incorporated into the public health messaging. I ask the Minister to check the HSE website in regard to ventilation because the information provided there is not accurate. It states that there is no evidence to support that Covid is airborne. That does not stand up any longer. That is an incredible statement that is on the HSE website. It must be changed. There must be clear guidance given to industry as well in regard to the important role of ventilation. That can be as simple as making CO2 monitors obligatory in business premises. This has been taken on board by education, which is great. There has to be clear guidance and standards set out in relation to ventilation. I do not know why we are not doing that. I ask the Minister to take up that matter.

On booster doses, what contingency planning has been made and have pre-orders in that regard been made? On older people, Age Action Ireland has set out a number of requests in regard to the queries and concerns of older people, particularly the over-60s. Concern has been expressed about the fact that they did not get access to what they would see as the best possible vaccines. There needs to be clarification on that. I ask that the Minister interact with Age Action Ireland in particular and that information be provided.

Deputy Réada Cronin: I want to raise the issue of Erasmus students who have contacted me worried about the fact that under the current roll-out programme they will not be vaccinated prior to leaving to attend universities across the EU. I submitted a parliamentary question on this matter to the Minister's office, but the reply takes no account of the vaccine needs and concerns of these young people who will be leaving this State for up to ten months, and their parents. It is a record year with over 7,000 students heading across the EU and an exciting time for them after the two years' disruption to their studies. To protect them and our neighbours in the host countries they should be able to get vaccinated before they leave and not be left at the mercy of the bureaucracy of a health system in another part of Europe. In some countries in Europe, non-residents are at the end of the queue. No young adult wants to have that worry and no parent wants to be worrying about his or her adult child or children getting sick or at risk of Covid when abroad. I ask the Minister to give consideration to these students being able to get

vaccinated before they go. We have an international responsibility to ensure that the students we send abroad are not at risk and will not cause risk or burden to health systems in other countries. I am also anxious that we would live up to our international responsibility to get more vaccines to our brothers and sisters in poorer countries around the world.

As in the case of climate change, Covid affects all of us. We are all interdependent. If this pandemic has not taught us that, I do not know how our intelligence fairs. Our fates are intertwined. Leaving the selfishness out of it, the Delta variant has shown us that we are not at the end of the road in terms of Covid. The mood has much changed in the last week. Last week, the CMO was optimistic, but we appear to be back to square one. The sharing of vaccines is essential to poorer parts of the world where the virus is outrunning vaccines. We still have a chance in our race. Their new variants become our new variants. For selfish reasons alone, we should care about that very much.

Ireland has a seat at the UN Security Council. We need to do what we can to make the world secure. I hope there will be a rethink in relation to the intellectual property rights and the lifting of the waiver to expand vaccine production across the world. If this pandemic was not something that affects economies all over the world, I dread to think how we might have reacted to it.

On “Prime Time” last night, I add my voice to the calls for a public inquiry. It is almost one year since I called for such an inquiry. I am a Teachta Dála for Kildare, which has suffered disproportionately in terms of deaths. I pay tribute to Professor Cusack, the Kildare coroner, who was to the fore in highlighting how we fared in Kildare.

Related to the virus and vaccine roll-out is the issue of partners of pregnant women having access to visits. It is almost a year since I first raised this issue with the Minister as well. I was one of the first Deputies to raise it in this House. Listening to the airwaves, it appears we are back again to this being an issue. Fathers are now more likely to be able to wet their baby’s head indoors in a pub than to see it on a scan. That is bonkers. We are supposed to have had huge learning over the past 18 months about what really matters in life, but I do not think we have. The maternity hospitals need to be on board. Access should not be dependent on where a person lives. As I said, it is almost one year since I first raised this issue with the Minister. Women are facing invasive internal examinations not because they are necessary but to establish their status in labour in order that their partners might be allowed to join them. It is obvious that the people making the decisions here have never given birth. I hope the Minister will look at this area again.

Deputy Gino Kenny: I am sharing time with Deputy Barry.

An Leas-Cheann Comhairle: Is that agreed? Agreed.

Deputy Gino Kenny: I too would like to raise serious questions in regard to the “Prime Time” programme last night. There must be a public inquiry in regard to what happened in nursing homes last year in the interests of the loved ones and relatives and in the public interest. It is inevitable that that will happen.

Vaccine roll-out is a logistical challenge. This country has been quite good in administering the roll-out. It is going very well. My experience at Citywest was excellent. The Minister’s statement about the roll-out of the vaccine for the cohort aged between 18 and 35 is very welcome. Many in this cohort work in the hospitality industry and could be vulnerable at this moment or in the future to any counteroffensive from the virus, such as the Delta variant. There

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was sombre news during the week when NPHEt gave its advice. It probably shocked most people in the country to hear that we could be facing the deaths of up to 2,000 people over the next three to four months. Anybody would have been shocked by that news. We have an advantage, which is that we can see what is happening in Britain. In some ways, Britain is four to six weeks ahead of Ireland. Its vaccine roll-out programme is probably four to six weeks ahead. One can see the trajectory of the virus. It is not plateauing by any means, it is actually going up and at a rapid pace. The good news is that the vaccine roll-out is being run really well in Britain but the Delta variant is taking hold. That is very important.

I have another criticism, which relates to the handling of the cohort aged between 60 and 69. It was a mistake to leave a gap of, in some cases, three months between vaccinations for this cohort. I am fully vaccinated but somebody who is 20 years older than me still is not. That was a big mistake. I know this is being addressed but the ambiguity around the mixing of vaccines as it relates to this age group still has not been cleared up. It is very important that happens quickly.

I have another question, the answer to which the Minister can send me in a note. It relates to a cohort of Irish citizens who are living in Abu Dhabi. They may contact the Minister with regard to their situation. There are 2,000 Irish citizens living in Abu Dhabi, most of whom working in the education sector. They have got a vaccine made by Sinopharm. They are fully vaccinated but, if they want to come back to Ireland, they have to go into mandatory hotel quarantine. They are unhappy about that because at the time, a number of months ago, this was the only vaccine available to them. At this moment, if they wanted to come back to Ireland, they would have to go into mandatory hotel quarantine, which they believe is very unfair. I hope the Minister could address that at some point in the future.

Deputy Mick Barry: Last night's "RTÉ Investigates" provided shocking insights into the treatment of elderly citizens in some of our nursing homes during the pandemic. I again support, loudly and clearly, the call for a national inquiry into nursing home care and nursing home deaths in the time of Covid. The case for that is now unanswerable. I will address the issue of the vaccination of people aged over 18. They are to get the one-shot Janssen vaccine in pharmacies. This process will start on Monday. I will start by appealing to young people to avail of this and to get vaccinated. The point has been raised over the course of this week that young people should be paid money to get vaccinated. I do not quite know where this idea came from. It smacks of the scenes in the United States wherein people were given beer and pizza if they got vaccinated. I do not believe that young people need that. They can see the sense in getting vaccinated. It makes sense for themselves, for their families and for society. Young people have made big sacrifices. They have not only been hit the hardest medically, they have also been hit the hardest economically. They have made great sacrifices and have shown great patience. Young people will do the right thing with the vaccination. To leave the beer and pizzas to one side, there is a powerful case to be made for a Covid dividend for our young people, a package or suite of measures as we come towards a point in this pandemic, during which our young people have made a great many sacrifices. Such a suite of measures could and should include things like an increase in the national minimum wage to €15 an hour. That is a far better to dealing with this question than the beer-and-pizza approach floated earlier in the week.

An Leas-Cheann Comhairle: Táimid ag bogadh ar ais go dtí an Rialtas. There are three speakers listed here but I am not sure about that. There are 11 minutes of speaking time remaining. An Teachta Pádraig O'Sullivan is here. I am not sure if he is taking all 11 minutes but he is entitled to do so.

Deputy Pádraig O’Sullivan: I have never been offered 11 minutes of speaking time for anything here. I will use as much as I can.

An Leas-Cheann Comhairle: Unless the Deputy’s colleagues arrive.

Deputy Pádraig O’Sullivan: Yes. I am aware that this is not a question-and-answer session but I would appreciate it if the Minister or the Minister of State could respond to some of these issues when replying. Like every other Deputy present, I welcome this morning’s announcement regarding vaccine portals being opened up for those aged 18 to 34. This is something for which I have called repeatedly. It gives young people an opportunity to register in advance of returning to college in September. It will also be of benefit to those undertaking summer work and who find themselves stuck in different scenarios with regard to the proposed certification for indoor dining and so on. I will put on record that I personally have issues with the idea of certificates being required to dine indoors, to attend one’s local pub or whatever the case may be further into the summer but I feel that today’s announcement regarding the potential for those aged 18 years and older to get vaccinated renders the issue of certification moot. I do not think that system is practical or implementable in light of what has been announced this morning, which is very welcome.

I will also speak to vaccine hesitancy and the need to vaccinate as many people as possible as quickly as possible. I concur with Deputy Barry who mentioned the idea of rewarding young people for getting vaccinated. We do not need to go down that road. Our rate of vaccine take-up is among the highest in the EU. The idea that was mooted this week is a non-runner. I do not believe there is a need for such inducements. As I said, our rate of vaccine take-up is among the highest in the EU. Will we, at some stage, have figures or a breakdown regarding those who have refused the vaccine? The reason I ask for this once more is so that we can try to tackle resistance to taking up the vaccine.

What plans are being made for vaccine top-ups in the autumn, the winter or into the future? It seems to be widely recognised that this will be necessary and I would like to know what preparations we have made. In addition, I would be interested to hear how the State is preparing to combat future pandemics. When will such an assessment be ready or published? Many of us here have been contacted over the past few weeks by people who are awaiting their second dose of the AstraZeneca vaccine. They have been waiting nine or ten weeks, or longer. Will the Minister clarify NIAC’s advice regarding reducing the interval between doses to four weeks? Will this lead to a further reduction in waiting times for those still awaiting their second dose?

I will also raise the issue of last night’s “Prime Time Investigates” programme. Ballynoe Nursing Home is located on the north side of my constituency. Over a number of months, I have been seeking answers to questions raised by grieving families. I join the call for a public investigation into this issue. This is again something the Special Committee on Covid-19 Response, on which I served, asked for last year. In light of what was reported last night, further delays are not acceptable. Some form of inquiry needs to be undertaken. Will the Minister confirm if any preliminary report or investigation has been conducted by himself, the HSE or any other relevant State actor?

I will also mention antigen testing. This is something I have pursued for the best part of 12 months. Judging from news reports this week, the Government is finally looking to undertake measures in this regard. We waited for the Ferguson report for a long time. Now that it has finally arrived, it needs to be implemented quickly. I understand there are mentions of pilot

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programmes in relation to return to colleges but antigen testing is happening in private and public settings all over the country. I do not understand why we have not rolled it out to a greater level, as other EU states have. I have heard nobody in here argue that rapid antigen testing will replace PCR. It is time, in relation to the return of travel and of industries like hospitality, indoor dining and so on, to grab the bull by the horns and implement a proper, cohesive rapid antigen testing regime.

Deputy Ruairí Ó Murchú: Most people are saying it is great to be back here. The only advantage I have in the convention centre is nobody notices when I walk about. I am not good at staying in one place.

We are dealing with an incredibly serious issue. I would be happier if it was questions and answers. I accept the situation we are in and recognise the tragedy the Covid pandemic has been for many families. We have heard the shocking figure of 5,000 this week. My heart goes out to all those families. We believed we were in a slightly better place but the conversation changed in recent weeks to the Delta variant.

There should have been preparation for the fact this week would not be what we anticipated in relation to opening up but we are where we are. I welcome the change to the NIAC guidelines. We need as much clarity as possible on the revised timelines for the vaccine roll-out. I think it was Tony Holohan who said it was a race of the Delta variant versus the vaccination roll-out. We need that to happen as soon as possible.

Many Deputies have spoken about the difficulties in relation to those in the 60- to 69-year-old cohort who have not got their second vaccination. We have all been contacted by people in this cohort who are worried and probably annoyed that younger people ended up being vaccinated earlier. We welcome the clarity that those people should be dealt with in the next fortnight. I think 12 July is the date given. We need to ensure this happens. We welcome the changed guidelines for 18- to 34-year-olds. We need to ensure the systems are up and running as soon as possible. We cannot have a two-tier society comprising those who have been offered vaccinations and those who have not. We need to streamline this as much as possible.

We are all living with a variant and see the difficulties that will arise until we deal with a global vaccination programme. COVAX will only look at 20% of people in the developing world so that will not work. We have to look at the TRIPS waiver and whatever else is necessary. None of us is safe until all of us are safe.

I add my voice to what Deputies have said about “Prime Time Investigates” and families that have gone through so much. We have had multiple reports into weaknesses in how we look after our old people and the whole system. We know the issues in relation to the Covid period. I think everyone is in agreement that there needs to be an inquiry into that period, particularly regarding nursing homes and what the State did or did not do. The Minister will not be shocked, having met the Dealgan House families. He knows the tragedy, the huge loss of life and the impact on a huge number of families who are still looking for answers.

At this point, I can only see the answer being a full public inquiry. There is a huge number of players and everybody has a right to their narrative. We need this to be interrogated completely, involving nursing home management in Dealgan, HIQA, the MEP who was involved in some of the interactions, the HSE, CHO 8, the Minister for Health at the time, the CMO, the CEO and the head of community operations of the HSE and the RCSI Hospital Group. Every-

one has a part to play. We need a full inquiry. I would like the Minister to return to the families. He has told them they need to be given some mechanism to provide answers and an inquiry is the only way to do it.

Deputy Verona Murphy: I have called consistently for a plan from Government on re-opening. It was never produced, even though I was told on the airwaves by many Government Members that there was a plan. According to the Government's reaction this week to NPHET's modelling figures, it does not have a plan. It offered another reactive approach which has been an absolute car crash instead of ensuring preventative measures by having a plan in place. We have been hearing for months about the Indian variant, called the Delta variant. Now the Government is considering allowing only fully vaccinated people to eat indoors, whenever that will be. In other words, the Government is considering introducing a medical apartheid, keeping many families from being able to go for a meal together. Then it tells the restaurant sector to come up with the idea on how to do this.

If Government cared to look at how countries which are opened are doing this, it is called antigen testing. They have been doing it since last year and it allows people to eat indoors, stay in hotels and in the workplace and keeps nursing homes and meat factories clear of Covid. It has also allowed HGV workers to continue their work distributing food imports and exports for months when the French requested it. Still NPHET says no to antigen testing. Young, unvaccinated people can work in our pubs and restaurants for hours on end but if they eat indoors, NPHET says they are at risk. This is the 2021 version of the €9 meal. Having destroyed and closed businesses for most of the last 15 months, does the Government really expect the publicans or restaurateurs to check people's vaccination status? Is there any scrutiny of these hare-brained ideas going on inside Cabinet? Of the 44 countries in Europe, we are the only one with a ban on indoor dining, even though the Minister says we have the greatest take-up of vaccine in the EU in the vulnerable age cohorts. We have administered to date over 4 million vaccines and we are still in a disastrous place.

Despite NPHET's ongoing doom and gloom reports, deaths in Ireland for 2020 were within the usual rates in a given year. Yet NPHET says we could have a surge of 2,000 deaths if we open the pubs. As a matter of extreme urgency, the Government must carry out an international peer review of NPHET's modelling. This has nothing to do with trust. It is because we are outliers in the EU. My constituents in Wexford, young and old, want to know what is different about Ireland, even if the Government does not.

This week's stock response from Government was that it would consider the issues over the coming weeks and come up with a plan. The people thought that is what Government was doing when it announced dates to open. Government should be putting resources into the mechanisms to ensure it happens on the date announced, no matter what the strain and what numbers. We have to live with Covid. We need measures such as a fit for purpose test, trace and isolate system, antigen testing in every village and town pharmacy so people can test for Covid affordably and increased ICU beds. Instead, we just have a shambolic approach. We have no leadership and no plan other than lockdown and delay, delay, delay.

It appears that the decision to cancel communion and confirmation services was not based on NPHET's advice but that is what the Tánaiste said when he announced it. The children who would be attending those services have been in schools with Covid cases and those schools were not closed. Their grandparents have been vaccinated. The churches made preparations to have 50 people at most at the services. However, like young working adults, the people in-

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volved cannot have a party because, it appears, they cannot be trusted. The disrespect shown by the Tánaiste and the Government to religious services and the people involved in organising communion and confirmation ceremonies for the past number of months is unforgivable.

I heard the Tánaiste suggest some days ago that we should give away our unused vaccines. A couple of days later, however, he announced continued restrictions because our vaccine roll-out has not been fast enough. It appears from information I have been given, on very reliable authority, that the no-shows at vaccination centres are people who have already been vaccinated by their GP but failed to get a response from the HSE's helpline when they tried to cancel their appointments. The question they want answered is why their vaccination was not recorded on a system that correlates data on vaccination centres and GP patients, and what system is in place to record vaccinations if certification of same is needed.

I have had people contact me who are in the 60 to 69 years of age category and have passed the eight-week period without receiving a text calling them to attend for their second jab. Others have told me they were contacted and asked why they did not turn up for their second jab, even though they did not receive a text calling them for it. When they explained this to the HSE operative, they were told this is happening a lot. What was initially a vaccine roll-out based on prioritising vulnerable and older cohorts then became just an age-based roll-out, going from the oldest in the population to the youngest, who are being left until last because they are not at any great risk. Now it appears that a choice is to be made between giving a second jab to the older cohort or a first jab to the younger population. When NPHET asked NIAC about this and got an answer, NPHET did not even factor that answer into its modelling.

There are serious questions to be answered on this issue. The answer is not to attack the people asking those questions as conspiracy theorists. Nor is it to create an environment in which vaccinated people are pitted against those who are not vaccinated. It is very important to understand that not all of those who will not take the vaccine are anti-vaxxers. There are genuine medical reasons for not taking a vaccine. I have a constituent who suffers from an allergy that causes anaphylactic shock, for which he has been hospitalised in the past. The health authorities will not give him the vaccine and, as such, I take it he will not be able to eat indoors in restaurants or pubs. I have also spoken to a number of people who are home from the United Arab Emirates visiting their families. They have been vaccinated but the vaccine they received, Sinopharm, is not recognised by the Government or NPHET. Those people will not be able to eat indoors in restaurants or pubs.

Being vaccinated is voluntary, as has been stated at all times. There are people who will not, as opposed to cannot, take the vaccine. Why point them out and ostracise them? It is a very dangerous precedent to set. In the course of its vaccine roll-out, the Government has yet to meet any vaccination target. Who has been held to account for this? Has anyone lost his or her job because of it? In fact, the only people who have lost their jobs are the hundreds of thousands of workers in the hospitality industry who have seen their jobs and livelihoods destroyed by a disorganised, NPHET-controlled Government. The power of decision-making must rest with the individual because the Government, it seems, has completely lost the plot.

The issue raised on last night's "Prime Time" programme will come as no surprise to the Minister as I emailed him about it months ago. While the HSE had a recruitment embargo in place coming into the Covid period, it thought nothing of instituting a recruitment drive to poach staff from nursing homes and leave them bereft. Facing staff shortages in the teeth of a storm, nursing homes were told by the HSE that they would not be receiving assistance to

address this problem, which was caused by the HSE itself. I very much hope that issue will be considered pertinent and relevant to the inquiry we will have to see into what happened in nursing homes, both public and private.

Deputy Kieran O'Donnell: I am sharing time with Deputies Flaherty and McGuinness. I expect the Acting Chairman will allow us the same additional minute and a half he allowed the previous speaker.

Acting Chairman (Deputy Bernard J. Durkan): That is not negotiable at the moment, Deputy, so we will proceed on the basis of the time allocated.

Deputy Kieran O'Donnell: I am delighted to speak in this debate in the time allowed to me. I welcome the announcement by the Minister, Deputy Stephen Donnelly, yesterday regarding the appointment of Professor Mary Horgan to lead an antigen testing working group. As Chairman of the Oireachtas Committee on Transport and Communications, I wrote to the Minister yesterday afternoon requesting that the aviation sector form part of the terms of reference of the working group. It is hugely important that it does. The committee has held extensive public debates on antigen testing. In fact, we have led the way in terms of a constructive discussion on the role antigen testing has to play. Witnesses who have appeared before the committee include Professor Mark Ferguson and Professor Michael Mina, as well as the CMO, Dr. Tony Holohan, and his team. I would like the Minister to give a commitment here today that antigen testing for aviation will form part of the work programme of the new group.

It is also important that the working group led by Professor Horgan should move on from questioning antigen testing to seeing how we can best use it. All I have seen, within the system as opposed to within the Government, is questioning. The bottom line is that antigen testing is not foolproof but it has a role to play. PCR testing is the gold standard but there are areas where it may not be able to do what antigen testing can do. One of those instances is aviation, where there is a requirement for PCR testing three days prior to departure but no guarantee that by the time a passenger gets on the aeroplane, he or she does not have Covid. Antigen testing will pick up that cohort of people who are at their most infectious. It will not identify everyone who has Covid but it will pick up the cohort in which people are in the ten-day period when they are most infectious. For the same reason, antigen testing also has a role in indoor dining. Vaccination is the absolute gold standard, followed by PCR testing and then antigen testing. They all have a role to play.

My position, then, is that the terms of reference of the working group must include the aviation sector and must be about implementing a structured approach in terms of the role antigen testing can play in reducing the risk from the coronavirus. It is about identifying people when they are at their most infectious. If we are taking a vaccination status approach when it comes to indoor dining, antigen testing can be used to facilitate people who are not vaccinated. For crying out loud, why was there such resistance within NPHE to antigen testing? It is not the be-all and end-all but it has a role to play. Let us grab the opportunity it presents. Professor Horgan's working group must not be about continued questioning but, rather, about ascertaining what role antigen testing has to play. I hope the Minister will give a commitment today that aviation will be included within the group's remit.

I very much welcome the announcement this morning that, from Monday, people aged between 18 and 34 can go to a participating pharmacy and get the Janssen vaccine. In Limerick, like everywhere else, we have a large number of young people. I encourage them to go to the

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pharmacy and get the vaccine. It will benefit them, their family and the wider community. It is hugely important that they do so. From next Friday, those aged 30 to 34 can register on the HSE online portal for the mRNA vaccines - Pfizer and Moderna. This is very much welcome. From 12 July, those aged 18 to 34 can register on the HSE portal for the AstraZeneca and Janssen vaccines. I ask young people aged 18 to 34 in Limerick to look up the HSE website, find out their participating pharmacy, contact it and get the vaccine. It will take a worry away from them, their friends and families and the wider community. This is the way forward.

It is a race against time between the vaccine and the virus. I very much welcome the fact that the Minister made the decision yesterday to bring in antigen testing as part of the toolkit in the fight against the coronavirus. Antigen testing has a role to play but it has not been allowed to feed into things for the past number of months, although it has fed into certain areas. The terms of reference of the working group must include the aviation sector. The working group must also look at how we can make best use of antigen testing rather than continuing to question it. It must be action driven. If the working group ends up being a talking shop in the public mind, it will lose its currency. This is about action rather than talk. Now is the time to drive on. We have a window of time. The digital green certificate is coming in on 19 July, which is just under three weeks away. It is hugely important that the aviation sector is included in the terms of reference of the working group and prioritised.

Deputy Richard O'Donoghue: On my second day in the Dáil, I told the Tánaiste that it was as if the Taoiseach was driving a bus but the Tánaiste was trying to push it off the road and the Minister for the Environment, Climate and Communications was asleep in the back. Everything seems to have been the same since then. Every time the Government makes a decision, it has to change it because it does not talk to sectors such as hospitality. I spoke to people aged between 18 and 20 last week who told me that they are serving people who are dining outside or staying in hotels. Last week, the Taoiseach stated that people visiting pubs should be asked if they are vaccinated. People working in the hospitality sector asked whether it will be the case that they will be allowed to serve people all day long but, come the weekend, if they want to go out themselves, they will be told, sorry, they cannot come in because they are not vaccinated. The Government has now said it will roll out vaccination to those aged 18 upwards. This is like closing the gate when the cattle are outside on the road. The Government is second best all the time.

We always talk about European law. Under a European law adopted in January 2021, we must ensure that citizens are informed that the vaccination is not mandatory and that nobody should be under political, social or other pressure to be vaccinated. Europe is saying that we cannot use political pressure. The Taoiseach has done the opposite. What will the Government do? People are taking the vaccines. People in the vaccination centres have been outstanding but under European law, the Government was told it could not use political pressure. There is an old saying, "you will get an awful lot more with honey than you will with vinegar." The Government would want to start using a bit of honey, start encouraging people and stop dictating what people can and cannot do. People in Ireland are responsible for themselves. They are responsible for and will look after their own health.

The Government should stop messing people around. It has already messed around with regard to indoor dining. It seems to be messing everything up. I have said before that there is such a thing as an educated fool - someone who is over-educated and has no common sense. The Government is over-educated and has no common sense but members of the Rural Independent Group will give it plenty of common sense if it would like to adopt our policies.

Deputy Michael Collins: When I was a member of the Oireachtas Special Committee on Covid-19 Response at the beginning of the Covid crisis, it was the only Oireachtas committee operating at the time. I was lucky enough to represent the Rural Independent Group on it. From the word go, I called for both PCR and antigen testing. Every time I called for it, the Tánaiste, who was Taoiseach at the time, and other Ministers were against it. Everybody was against something that eventually proved to be a help. Nothing is ever 100% but certainly antigen testing would help get this country up and running again.

I look at the hospitality sector and the way it has been treated so shoddily by the Government, not only in the past week but for over 400 days during which most businesses in the sector have had their doors shut. One could nearly predict the announcement made this week. It could have been made somewhat sooner because some businesses were painted and made ready with staff organised and even some food or drink products purchased. To have that pulled from under them was a disaster. To add insult to injury, the Government told them that when the restaurant or pub opened, staff would have to stand at the door and stop people from coming in unless they are vaccinated. For the love of God, where is the Government coming up with such things? As somebody said, if it was a sketch from “Killinaskuddy”, it would be a great laugh but it is not a laughing matter. It is a very serious matter. People’s livelihoods are being ruined.

We have a situation where Mary and John want to go for a drink but their two children are not vaccinated so they would be left outside the door. Is that what the Government expects? Is this how it thinks this will work? Alternatively, we have a situation where 18-year-olds working in a bar cannot be vaccinated, through no fault of his or her own. The Government may have announced today that this group can be vaccinated but those aged over 60 cannot even get a second vaccination, so never mind seeing the 18-year-olds. It is a nice announcement and sounds good. A worker in a bar who may not be vaccinated can serve drink to vaccinated people but if he or she sits down for a drink at 11 p.m. when the pub is closed, he or she could be arrested or the publican could be charged with allowing him or her to be inside the premises. It is insane. It is not workable and no publican will work it. My advice to Fianna Fáil or Fine Gael politicians is not to call on publicans and the restaurant sector because they will run them out the door and chase them down the road for the way they treated them. They are absolutely livid and rightly so.

The second issue I wish to raise concerns the over 60s. Some of this group have not received their second vaccination. They are asking and calling me and I will always stand up for people who want to get vaccinated. That is their choice with which I am in full agreement. Why has this not happened?

I spoke about supports for nursing homes in the Dáil yesterday. It is incredible that the Government is saying we no longer need supports for nursing homes and grants for material or equipment to help save people from getting Covid in nursing homes because we are moving on but, at the same time, we cannot open the hospitality sector because we are not moving on. What is wrong? These are two conflicting messages. The Government should come out with one clear message. The Tánaiste is saying no confirmations or first holy communions can take place but NPHEAT says it never advised that. What is going on?

Deputy Catherine Connolly: Forgive me if I avoid niceties in the two minutes and ten seconds available to me. The Minister spoke about the role of pharmacists. It is emerging that pharmacists learned about it this morning when the Minister went on “Morning Ireland”.

11 o'clock

Then we learned there are only some approved pharmacists so it is not a question of all pharmacists being involved. We understand there are no approved pharmacists in Connemara.

I stood up in the House in March of last year and gave my full support to draconian legislation on the basis of full and frank disclosure and no spin. What we have got since has been spin, more spin and then “unspin”. This week, which marks the lowest point in my political career, I lost all faith – I say that most reluctantly – when the Minister came out with a statement that only vaccinated people could go to restaurants, pubs and so on. I find that shocking and unacceptable. It lays bare the worth of the rhetoric to the effect that we are all in this together. We never have been. Nursing homes were certainly not in it together. I did not need “RTÉ Investigates” last night to tell me there were problems in nursing homes in early 2020. We knew there would be because we have privatised and segmented our public services. We have segmented knowledge. We are here today with a little discussion and a certain amount of information on vaccination, but we have no overall discussion. I have said before that I do not entirely blame the Minister for that but I certainly blame the three unwise men at the top. We have had no discussion on the cost of vaccination and the cost of the indemnity. We are facing circumstances in which we need a passport. This morning, the Minister tells us that digital passports will be posted out. How people are going to get those under the Office of the Taoiseach, I do not know. I find the whole thing unacceptable.

Respite services have never been restored to Galway. Those between the ages of 60 and 69 have been told that they will go to the bottom of the list. The information coming out is that they should have mixed vaccines, that is, the AstraZeneca vaccine they got with no choice followed by a different one that is much more effective.

Deputy Joan Collins: I will be very quick. Again, I will have to avoid niceties because I only have two minutes. I support an immediate public investigation, not on the back of the “RTÉ Investigates” programme last night, even though it was harrowing to watch, but on the basis that it should have happened a long time ago.

I note the change to the vaccine programme. I hope it works and that there will be a positive uptake. I ask the Minister to supply a breakdown outlining all the groups that are outstanding and the numbers involved. I would like him to link that information with the information on the vaccine that is coming now and the expected position on the vaccine roll-out over the next month or two. That will be very important for transparency.

A revised module is required immediately, as has been asked about already. My concern over indoor dining is simply that workers in the indoor dining environment will have to be safe and protected by public health measures. The worker should return to pay and conditions that are the same or better than those they had before March of last year.

The Minister raised this morning the major concern that there could be a surge if the predictions on the pessimistic side are correct. Could the Minister state in his reply or as soon as possible thereafter how the hospitals are managing and preparing for this in regard to elective surgery and normal healthcare?

I want to raise a point that has been raised on numerous occasions. The Minister said that we have entered agreements through the European Commission for the delivery of millions of doses of vaccines in 2022 and 2023. While I welcome that, will the Minister apply the same

determination to ensuring the international population will be vaccinated to protect us all?

Deputy Marian Harkin: I have tried to consider this issue based on where we were and where we are now. I remember when we debated the roll-out of vaccines and asked whether we would have enough vaccinators, etc. The truth is that we have heard largely positive outcomes in this regard. Admittedly, we have had setbacks but we have done well. It is important that all of us in this House recognise the incredible work of everybody - I am not singling out anybody - who has been involved in the vaccination process.

There are two matters on which I wish to comment. The Minister needs to move on the issue of mixing vaccines. I will say no more about that; I just wanted to put it on the record. The Minister should also move on the issue of antigen testing.

The other issue on which I really want to focus today is nursing homes. I did not see the programme last night but believe it was heartbreaking and heart-rending. I cannot believe I am about to say the same thing for the third time in the Dáil. I ask the Minister to consider again the temporary assistance payment, TAP, scheme, which ensures enhanced infection control in nursing homes. I asked the Taoiseach about this in the convention centre this week and he was quite negative. I asked the Tánaiste about it yesterday. He was not as negative and said I might engage with the sector. Since the decision was taken, we have had the figures at the beginning of this week. Nobody, including the Minister, was expecting them. They change everything.

The HSE in Donegal has restricted visits to certain nursing homes. That indicates the point we are at. We recall what we have heard from other countries, including Belgium, but I am not going to get into it here this morning. In all sincerity and honesty, I ask the Minister again to re-examine the TAP scheme and continue it, even for a short period until we get over what everybody is saying is going to be the fourth wave.

Deputy Joan Collins: On a point of order, Members of the Opposition like ourselves are fighting for speaking slots in this debate. The Government had 21 minutes in this discussion that could have been used by the Opposition.

Acting Chairman (Deputy Bernard J. Durkan): The point is taken.

Minister for Health (Deputy Stephen Donnelly): I thank colleagues right across the House for their time and for the questions, ideas and challenges they put to me. It has been really useful to listen to the various ideas, concerns and issues raised. I have about ten minutes. I took notes throughout the session. Given that we are a little ahead of ourselves, the Acting Chairman might indulge me a little at the end if I run out of time. It is up to him. I have tried to group the issues raised. I will not get to every specific one but I want to try to address the various themes.

Many colleagues spoke about rapid testing. I hear and understand the agitation from within the Oireachtas for rapid testing to play a bigger role. I believe it can and must play a bigger role. We are aware that there are strongly held expert views on both sides of this. I fully respect the views on both sides. Everyone who is advising me, from those in the medical community to those in the scientific community, is doing so with only one objective, that is, to find the best possible outcome for Ireland in this pandemic. That is the only thing motivating people.

My view is that rapid testing has a role to play, or has more of a role to play, and that is why I set up the expert group some time ago. After setting it up, we began to implement its recommendations. It recommended the running of multiple pilots in multiple sectors. That is exactly

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what we did. Pilots have been run in education, meat processing and various other sectors. The Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Deputy Catherine Martin, and I are working on a pilot right now for the entertainment sector. The Minister of State responsible for sport, Deputy Chambers, and I are examining pilots for sport and so on. All of that has happened. The next thing that happened is what I announced yesterday. I believe it was yesterday but it has been a busy week. I am referring to the setting up of an expert implementation group. It is chaired by Professor Mary Horgan. It has fantastic members who are tasked with supporting State agencies and Departments on pilots, validation, full roll-out and implementation. In this regard, several Deputies referred to the aviation sector, for example, and asked whether it can be included in pilots and validation. It absolutely can. The Government is running this model as a decentralised one so it does not require me or the Department of Health for any Department to say it is going to run a pilot. The Department of Health and the HSE have been providing expert support and now the group to which I have referred will also be providing that expert support. If, for example, the Department of Transport wants to engage with the aviation sector to run pilot programmes, that is entirely up to it. My Department and the group will provide the support for that to happen. The establishment of the group this week has been warmly welcomed. I thank Professor Horgan, who was also a member of the expert group, and all of the other people who have agreed to give their time, effort and expertise to the new group.

Some questions were asked seeking clarification on the opt-in model I announced this morning. This is very exciting and we all agree it is very positive. Ultimately, it comes down to ensuring that every vaccine dose we have can be used. Whether people choose to make use of them is a separate matter. As the State, the Oireachtas and the Government, we need to ensure all vaccines are available. That is why I asked some time ago for a review of NIAC's position and contingency planning for whether, in a scenario in which it looked like there would be a serious Delta wave, it would allow for a further use of AstraZeneca and Janssen. The answer NIAC came back with this Monday was "Yes". A tremendous amount of work was done during the week. The HSE, the task force, the Department and I worked through the details late last night and turned that NIAC advice around and into implementation in one week. I thank everyone in the task force, the Department and the HSE who has worked non-stop to implement that very quickly.

Deputy Joan Collins asked about the numbers of people in the 18 to 34 age cohort and the amount of vaccine we will have. I will give the Deputy the exact figures, as I have them. The estimate is that the number of people yet to be vaccinated in this group numbers approximately 800,000, comprised of approximately 550,000 from the 18 to 29 age group and about 250,000 from the 30 to 34 age group. We do not know how this will work but my expectation, given that the portal will open for the 30 to 34 age group next Friday and they will start being vaccinated through the established process with the mRNA vaccines approximately one week later, is that many people in this cohort will register on the portal and proceed with the mRNA vaccine. Some will opt for the other vaccines but that is what I imagine will happen. I expect many people in the 18 to 29 age group may decide to opt in because the mRNA vaccine cycle does not start for them until mid or late August and they will want to be vaccinated earlier than that.

The number of vaccines we have available and in our line of sight for July includes approximately 205,000 Janssen vaccines and 100,000 AstraZeneca vaccines. AstraZeneca is contracted to deliver significantly more than that but that is what we have in our line of sight and confirmed right now, so that is all we can plan for. Essentially, through July, we have between 300,000 and 305,000 vaccines but we have no confirmation from AstraZeneca for August. I can

tell the House what we are contracted for but that does not really matter because what we need is confirmation of what is coming and that is yet to be determined. We have confirmation from Janssen of 285,000 vaccines for August. This is a considerable number of vaccines. If we assume that most of the 30 to 34 age group will continue to be vaccinated through the Pfizer vaccine and most of the AstraZeneca and Janssen vaccines will then be available for the 18 to 29 age group, that will cover a very sizeable portion of the latter group. Ultimately, it boils down to the fact that this group now has the option of being vaccinated one to two months earlier than anticipated. That would have been welcome even if we had not received the news on Delta but in the context of the latest NPHET modelling, it is very welcome news.

Deputy Joan Collins: Did the Minister mention the number of Pfizer vaccines coming in?

Deputy Stephen Donnelly: I will get figures on the Pfizer vaccines for the Deputy but we have sufficient numbers coming in to be able to open up vaccinations next week for the 30 to 34 age group.

I will address now the issue for those aged 60 to 69, which has been raised by many Deputies. I have also spoken to people in this group, some of whom have contacted my constituency office. We all hear the frustration and the very urgent desire and, indeed, demand of people aged between 60 and 69, and many other people as well who have had one dose of AstraZeneca. This is not just confined to the 60 to 69 age group. What have we done? First, this group has been prioritised. I know that everyone is looking for a second dose but let us remember that the first dose gives a great deal of protection, particularly against severe illness. That is very important. A lot of protection has already been afforded because this is a priority group. The good news is that because of the NIAC changes, we have been able to go from a 16-week interval to a 12-week interval, then an eight-week interval and now a four-week interval. For this reason, we are expecting to complete, in the next week and a half, second doses for the 60 to 69 age group and all those in other cohorts who have had one dose of AstraZeneca. We are moving very quickly because the NIAC advice has allowed us to accelerate the process and we are doing that immediately. We all hear the demands from this group and the urgency involved. Deputies should rest assured that we are doing everything we can to accelerate that. I hope that message will be well received.

I will now address indoor activities because there has been a strong focus, rightly, on the public health advice the Government received and accepted on indoor activity. There has been a focus on hospitality but we must remember that this also involves dance classes and indoor exercise. Much more than hospitality is involved. It has been very difficult for people who were planning to open their premises and were ordering stock and scheduling classes to hear they had to cancel those plans. We hear that very clearly.

The unambiguous advice that we got from NPHET in light of its modelling and based on what is happening in Scotland, Northern Ireland, England and Wales is that, in terms of becoming infected, it is not safe for unprotected people to engage in what NPHET would describe as high-risk activity. This advice is not given based on what is fair or unfair but on what is safe and unsafe. The State believes it is unsafe for there to be smoking indoors in bars but safer for it to be done outdoors, if not for the people smoking but for other people. The State believes it is unsafe for people aged 17 and under to drink alcohol in bars but over the age of 18 it is considered safe. The framing for this is what is safe and unsafe and the only motivation is to try to keep people safe.

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I will give some context on the level of contagion that we are dealing with. NPHET laid out a case in Waterford recently where a super-spreader event was linked to socialising at a pub. That was outdoors. In Scotland, there are now 2,000 Delta Covid-19 cases linked to the European soccer matches outdoors. That is what is happening outdoors with Delta. Can we imagine what would happen if people are not protected indoors? If we accept, as I do, that the public health advice is right, although obviously colleagues are free to refute or not accept it, then we have only one of two options available to us. We can keep indoor activities, including hospitality, closed for everybody. That is absolutely legitimate and it would treat everybody in the same way. We would just say that it is closed for everybody, regardless of whether it is safe for most people, because that is to treat everybody in the same way. That is a completely legitimate view to hold. The alternative view, which is the one we have taken, is that we need to help the hospitality sector and facilitate people to go to exercise and dance classes or go out for dinner. We need to help the people in those sectors who need jobs. If we can open them for most people, should we do so? My view is that “Yes” we should. Hopefully, today’s announcement of the parallel opt-in model for the AstraZeneca and Janssen vaccines will go a long way. Anyone who works in a bar or restaurant and wants to be able to have a drink or a meal in that bar or restaurant can now do so because he or she can now opt in and get vaccinated.

We all accept that there is nothing fair about this virus. It is not fair that this virus kills older people much more than younger people. It is not fair that last year people over the age of 70 had to isolate themselves in an extraordinary way and other people did not because other people did not need to do so for safety reasons. None of us suggested, however, that because those over 70 had - I hate the word but we understand the concept - to cocoon, everyone under 70 should have had to do so as well because we should all do the same thing. What we said was that for this group of people, for safety reasons, we needed to apply different public health measures. I fully accept anyone here saying they disagree with that and that if everyone cannot do something, then nobody should be allowed to do it. That is an absolutely legitimate view to take. My view is that, on balance, if we can support the sector, support jobs and allow people to go about their lives like they are doing in Germany, the Netherlands, Denmark, Austria and various other countries, that is probably the better way, but I fully appreciate there are different views on that.

I was asked some very reasonable questions about the modelling. Will we update the modelling now that we have a plan as of this morning as to how we will implement the NIAC advice? Absolutely, we will. Also, we will keep updating the modelling based on what we are learning from the UK in the main. There is a big question the scientists are looking to answer. We know the cases have shot up in the UK, and NPHET is telling us they will shoot up here. Thankfully, to date, the hospitalisations and fatalities in the UK have not shot up. They have increased and are going up. The latest data I have been given show that for every 1,000 people who get the Delta variant in the UK, three people are dying. Therefore, if there were a super-spreader event at which 1,000 people at some large stadium or something got infected, the information we have is that three of those people would die from Covid. That is still pretty stark. We are therefore watching the UK very carefully to see, as their cases shoot up, what happens with hospitalisation and death. Obviously, the advice and the measures will change depending on what we see happen there.

Very reasonable questions were raised about the pharmacists and whether this has just been landed on them. The Irish Pharmacy Union, IPU, was central to the detailed planning for this. About 700 pharmacies have opted in so far; more may join. People can go onto [hse.ie](https://www.hse.ie) and find the full list of pharmacies that are engaging and find a pharmacy near them and on Monday

engage with that pharmacy to see if they can get registered.

It is worth saying we will have to appeal to people's understanding on this. We are moving really quickly on this. Going back to when the GPs started rolling out the vaccine programme, we will all remember that there was a lot of debate, sometimes very robust debate, about a GP in one county or another not getting the supply he or she was meant to get on Monday and having to cancel a list of people and that being deeply frustrating - and it was deeply frustrating. However, as Dr. Mike Ryan of the WHO said, in a pandemic the perfect is the enemy of the good and we have to operate like that. The HSE did phenomenal work with the GPs, a call centre was set up and, over time, those supply chain issues were ironed out but it did not start perfectly. I expect that it will not start perfectly with the pharmacists either. We are moving really quickly and moving supplies to 750 pharmacies all over the country. Is it possible that any given pharmacy may not get the supply it was expecting on Monday? It is. Is it possible the pharmacy will have to contact people it had scheduled to tell them the supply has not arrived and that it will get back to them later in the week? That is entirely possible. I will be surprised if that does not happen. What I can tell the House is that we will do everything we can to get this as right as possible and that when mistakes are made we will learn and respond, just like we tried to do with the GPs. I ask Oireachtas colleagues and the public just to bear in mind that we are doing this really quickly, it is logistically very complex and it will not run perfectly. There will be people looking for a Janssen vaccine, for example, that may not be available in their local pharmacy. The local pharmacy may have run out and those people may get frustrated. Right now, there is not one for everyone in the audience in July. There is a lot. We do not know what the uptake will be, but I ask for people's understanding on this.

There were a lot of questions about planning for the future. Are we looking at boosters? We are. We are looking at the scientific and the medical evidence as to how and when they may be appropriate. We have pre-purchased a large volume of multiple different vaccines for both this year and next year, planning for vaccination programmes for next year as well. We are also planning for the autumn and winter vaccination work. I have no doubt but that we will have ongoing Covid vaccinations, a flu vaccination programme and all the school-based vaccination programmes. We now have this wonderful new infrastructure in place which we have never had before. The Department, the HSE and I are working to figure out how best to consolidate that into planning for the autumn and the winter.

Lastly, one colleague asked about public health. Are we building to protect ourselves for the future? Are we putting a state-of-the-art pandemic defence system in place, which we need? The answer is "Yes". What are we doing? Colleagues will be aware we have agreed an historic deal with public health doctors to move to a consultant-led contract. That is really important. Last year in the budget I sanctioned a doubling of the workforce. The HSE is hiring to double that workforce, and the Chief Medical Officer, the HSE and my Department and I are engaged in an established reform plan in place for public health as it relates to the regions, local autonomy, responsiveness and so forth. That is all being looked at to be implemented.

Deputy Marian Harkin: I asked the Minister about nursing homes. He did not respond.

Deputy Stephen Donnelly: I am happy to talk to the Deputy about that at a later date.

Sitting suspended at 11.27 and resumed at 11.47 p.m.

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Workplace Relations (Miscellaneous Provisions) Bill 2021: Second Stage

An Ceann Comhairle: The Chamber suddenly seems very small, but it is good to be back. I welcome the Minister of State. We have 220 minutes in which to deal with the Bill before the House.

Minister of State at the Department of Enterprise, Trade and Employment(Deputy Damien English): I move: “That the Bill be read a second Time”.

It is good to be back in the Dáil Chamber. Hopefully, it will not be too long before we get back here permanently.

I am pleased to introduce the Workplace Relations (Miscellaneous Provisions) Bill 2021 for the consideration of the House. I propose, in the first instance, to summarise the background to and context of the Bill, the basic aim of which is to ensure that the matters of immediate concern identified by the Supreme Court in its majority decision in the Zalewski case are immediately remedied in statute. I will then describe the purpose and reasoning behind each section of the Bill.

On 6 April last, the majority judgment of the Supreme Court in the Zalewski case overturned the judgment of the High Court, which had found that the adjudication service of the Workplace Relations Commission, WRC, was not administering justice within the meaning of Article 34 of the Constitution. The seven judges of the Supreme Court agreed that the WRC’s adjudication service is the administration of justice, traditionally a matter exclusively for the courts. However, the majority decision saved the 2015 Act from being constitutionally repugnant because it found that the administration of justice is limited and therefore permissible under Article 37. The limited nature is due to the fact that the WRC deals with workplaces; has statutory limits on the awards it can make; enforcement of its decisions is required through the courts; its decisions are subject to an appeal; and the decisions and procedures of the adjudication services are subject to a judicial review before the High Court.

In issuing its decision, the Supreme Court rejected a challenge to the validity of certain sections of the 2015 Act and section 8 of the Unfair Dismissals Act 1977 as amended. Separately, however, the Supreme Court also determined that two aspects of the 2015 Act are in fact incompatible with the Constitution. First, the court found that the practice of holding all hearings in private as provided under section 41 (13) is not an acceptable feature of the administration of justice and therefore not compatible with the Constitution. Justice must be done in public and while there are situations where privacy is warranted, a blanket approach of hearing matters in private is not an acceptable feature of the administration of justice. This requirement to administer justice in public will also have an impact on the routine anonymisation of parties under section 41(14) of the 2015 Act. The second procedural weakness that the court identified was that the absence of a statutory provision for the administration of an oath, and any possibility of punishment for giving false evidence, is inconsistent with the Constitution. While not subject to an express declaration of unconstitutionality by the Supreme Court, the majority decision noted and expressed concern about the statutory drafting concerning the removal of an adjudication officer. This provision is now remedied in section 2 of the Bill before the House through the provision of a constitutionally robust and fair removal procedure, should the requirement ever arise.

Similarly, while the fact that the 2015 Act provides for the enforcement of decisions to be a

matter for the District Court, the Supreme Court found the provision to be lacking in fairness. The fact that the enforcement of adjudication decisions is a matter for the District Court is an integral aspect of the limited nature of the WRC's adjudication service. This, in turn, is crucial in ensuring that the WRC's adjudication service is permissible under Article 37 of the Constitution. Accordingly, the provision has been remedied in this draft Bill to ensure that employers have a right to be notified and heard.

Finally, the Supreme Court's finding, that the functions being performed by the WRC adjudication and the Labour Court are functions of a judicial nature involving the administration of justice under the Constitution, warrants the inclusion of an express statutory guarantee that the membership of the Labour Court "shall be independent in the performance of his or her functions". This will require amendments to the Industrial Relations Acts 1946 and 1969.

As declarations of the court have immediate effect, the WRC's adjudication service has been very restricted in the matters that it can dispose of until these amendments are made to the 2015 Act, the Equal Status Act 2000, the Employment Equality Act 1998, the Protection of Employees (Employers' Insolvency) Act 1984; the Unfair Dismissals Act, and the Redundancy Payments Act 1967. These separate Acts contain stand-alone provisions in relation to proceedings before the director general-adjudication officer. In order to address these immediate matters of concern, this short Bill is required to ensure that the constitutional frailties that the Supreme Court identified in the investigative procedures of the WRC's adjudication services are brought in line with the constitutional requirements in order that the adjudication services of the WRC can resume in full.

I am very grateful that this urgency was recognised on a cross-party basis by the members of the Oireachtas joint committee, who agreed to waive the requirement for pre-legislative scrutiny on this Bill, and for your good offices, a Cheann Comhairle. I would like to place on record my appreciation for the collegial and productive engagements my officials and I have had with the members of the committee in our efforts to ensure that this Bill is published without delay in order that the WRC can resume its functions in full. Some committee members have been in touch with me directly also on some aspects of the Bill. I am appreciative of that. The open-door policy will continue as we progress the legislation to its conclusion.

Pre-legislative scrutiny is an important element in the legislative process and in recognition of this, and our duty as legislators to fully consider the rationale and implications of the decisions we make, I was happy to accept the committee's suggestion to include a review clause in the draft Bill. This provides that a statutory review of certain sections of the Bill will take place not later than 12 months after it has been commenced.

It should also be noted that the decisions of the Supreme Court provide for certain matters that will require policy and possible legislative attention at a later stage. These matters relate to the independence of the decision makers and the necessity to ensure that persons carrying out these functions have the appropriate skills and capabilities. Consideration will need to be given to the potential impact that the court's judgment may have on other quasi-judicial bodies administering permissible justice. That is the reason, once this legislation has been commenced, my Department will convene an internal review group consisting of officials with policy responsibility for the various bodies and agencies which may now find themselves administering justice to consider the rulings in full and to analyse its impact on their functions. In doing so, it will engage with the office of the Attorney General and other Departments with oversight of similar bodies.

I will now outline the principal provisions of the Bill. Section 1 contains definitions. Section 2 is a technical amendment required to facilitate the introduction of amendments in section 41 of the Workplace Relations Act concerning the offence of perjury. Section 3 contains an amendment to section 40 of the Act of 2015. The purpose of this amendment is to provide for a fair procedure for the revocation of an adjudicator's warrant.

Section 4 contains an amendment to section 41 of the 2015 Act. In respect of the provision in section 41(13) of the Workplace Relations Act 2015, which currently provides that "Proceedings under this section before an adjudication officer shall be conducted otherwise than in public", the court held, at paragraph 148, that it was appropriate to declare subsection (13) repugnant to the Constitution, and that the effect of this is that "the prohibition on public hearings is removed, and proceedings may, but not must, be heard in public." The proposed amendment provides that either party can make an application to the adjudicator, but also provides the adjudicator with discretion to inquire into the matter on his or her own motion and subsequently to direct that either the whole or part of the relevant proceedings can take place otherwise than in public, where this would be desirable in light of the nature or circumstances of the specific case. The default position in respect of such proceedings is that they would be held in public.

In respect of the proposed substitution of subsection (14), while the judgment of the court did not address the issue of automatic anonymisation, which is currently provided for in subsection (14), it is the Department's view, supported by legal advice, that maintaining a policy of anonymisation of all published decisions is contrary to the requirement that justice be administered in public.

Paragraph (b) of subsection (14) provides an adjudication officer with the *vires* to direct the commission, if he or she is satisfied that the special circumstance of the particular case so requires, not to name parties in the published decision. A further constitutional issue was identified by the court in respect of the absence of any provision relating to the administration of oaths or an associated penalty for giving false evidence.

The amendment to subsection (12) introduces the statutory power for the administration of oaths and affirmations, and to provide for a criminal offence of wilfully and corruptly providing false evidence under oath or while subject to such an affirmation. This provision is aligned with section 12 of the Criminal Justice (Perjury and Related Offences) Act 2021, signed into law on 21 June 2021.

Section 5 provides an amendment to section 43 of the Act of 2015. The purpose of this amendment is to strengthen the rights of employers in matters relating to the enforcement of decisions of adjudication officer in the District Court. Section 6 provides an amendment to section 10 of the Industrial Relations Act 1946. The purpose of these amendments is to provide for the statutory independence of the chairperson and ordinary members of the Labour Court. A further amendment to section 21 of the 1946 Act has been provided to align the offence provided for in the Criminal Justice (Perjury and Related Offences) Act 2021.

Section 7 provides for an amendment to section 39 of the Redundancy Payments Act 1967 concerning proceedings in public and the administration of an oath or affirmation. Section 8 provides an amendment to section 4 of the Industrial Relations Act 1969. The purpose of this amendment is to provide for the statutory independence in the performance of the functions of the deputy chairs of the Labour Court. Section 9 provides for an amendment to section 8 of the Unfair Dismissals Act 1977 concerning proceedings in public and the administration of an oath

or affirmation. The offence of perjury is also provided for.

Section 10 provides an amendment to section 9 of the Protection of Employees (Employers' Insolvency) Act 1984 concerning proceedings in public, anonymisation, and the administration of an oath or affirmation. The offence of perjury is also provided for. To align this Act with the Workplace Relations Act, a regulation-making power has been inserted empowering the Minister to make provision in relation to any matter relating to the presentation, referral or the hearing of a complaint under section 9 of the 1984 Act that he or she considers appropriate.

Section 11 provides for the amendment of section 79 of the Employment Equality Act 1998 concerning proceedings in public and the administration of an oath or affirmation. The offence of perjury is also provided for. Section 12 provides for amendment of section 25 of the Equal Status Act 2000 concerning proceedings in public and the administration of an oath or affirmation. The offence of perjury is also provided for.

Section 13 provides for statutory review of certain sections in this Bill. The review is to take place not later than 12 months after this Bill has been commenced, as recommended by committee members. Section 14 introduces a Short Title of the Bill and provides for its commencement. I commend the Bill to the House.

Deputy Louise O'Reilly: I am grateful for the opportunity to make a contribution today on this important legislation. We understand that the issues which arose for the WRC following the Zalewski case and the subsequent Supreme Court judgment are serious and require fairly swift rectification. For that reason, in early April I drafted legislation which sought to accommodate the judgment of the Supreme Court and to rectify the issues it posed for the operation of the WRC. I thank the Minister of State, Deputy English, and his officials for the swift engagement, the useful exchange of views and the publication of the legislation.

12 o'clock

I specifically thank the departmental officials, and obviously the Minister of State himself, for the information they provided and their willingness to discuss with us issues we had because, as the Minister of State knows, we did waive pre-legislative scrutiny, PLS, of the Bill at the committee. It is not something I want to get into the habit of doing notwithstanding that this was done due to urgency. With the exception of a difference of opinion on some fairly small matters both I and Sinn Féin will be supporting this Bill. I will return to those points later.

Remedying the issues outlined by the Supreme Court is necessary to ensure the proper administration and working of the WRC. The core issues the legislation seeks to address are ensuring the administration of justice is capable of being conducted in public and the provision of statutory authority to administer oaths and affirmations in circumstances where there is a material dispute of fact. Ancillary to this is addressing an expressed concern by the Supreme Court regarding the removal of an adjudication officer.

As someone who has represented people in the WRC and the Labour Court, the use of oaths and affirmations does not sit well with me. I completely understand why it is there but the court and the WRC are somewhat non-adversarial in nature and the requirement to swear an oath steps it up to the next level. That is why I welcome that there is going to be a review because of the practical implications of this legislation for workers. Very often the workers are not the ones who go in all lawyered up, as it were. They generally have the services of a trade union official who is generally not legally qualified, although more and more of them are these

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days. I have a concern about the impact that is going to have on the possibility of a resolution. Even at that level of adjudication and when that level of engagement is being had, it is possible, given the informal nature of how business is conducted, it can sometimes, though not always, be possible to reach an amicable solution. While the swearing of an oath is necessary and I do not dispute that, I worry it will change the character of how hearings are conducted and do so in a way that benefits the people with deep pockets, usually the employer, and which does not benefit the worker. I would have issues with that.

The provisions added in section 3 to do this now provide a constitutionally robust and fair procedure to remove an adjudication officer, should the need ever arise in the future. As we have discussed it is highly unlikely it would but we understand the necessity for it.

On WRC proceedings being held in public, the sections which stipulate that the proceedings be conducted in public unless the adjudication officer of his or her own motion or upon the application by or on behalf of a party to the proceedings determines that due to the existence of special circumstances, the proceedings should be conducted otherwise than in public, are important. However, I can see there is going to be a problem here. If just one party to a case is requesting that the proceedings be otherwise than in public that might cause an issue. Cases here are taken by the employee, and naturally many will want the hearings to be held in private because they will be concerned that a public hearing will damage their future employment opportunities and indeed their likelihood of getting promotions. Everybody is familiar with Google. I could come in and be interviewed for a job and as soon as I walk out the door my name will be searched for online. The first thing that pops up will be that I was in the WRC and that might have a chilling effect. I know from having represented workers that one of the things they will ask is can it be guaranteed this is going to be anonymous, because they are very genuinely concerned about potential kickback. That must be balanced on the other side against the power the State can exercise over an employer who might want the proceedings held in private because he or she does not want to expose him or herself to the potential reputational damage on behalf of the worker. That can be an important tool inasmuch as one might say to the employer that he or she does not want this to go public either and that might encourage people to reach a settlement. As such there is a difficulty with that and many in the trade union movement have a concern about the potential chilling effect this is going to have on workers because they may not wish to expose themselves to that kind of publicity and public scrutiny.

As the Minister of State knows, I have submitted a series of amendments to this Bill which I feel will address both the concerns I have raised while also maintaining the constitutionality of ensuring that the administration of justice is capable of being conducted in public. They provide, however, that where there is a request and sufficient reasoning, so it is not just on a whim, to protect the interest of a party or parties to proceedings, it may be held in private. That is really important. We will get a chance to tease out the amendments at a later Stage. The Minister of State will have seen them anyway but that is where we will be coming from.

I have also included a provision for the adjudication officer to publish the rationale for any decision made on whether to hold a hearing in private or where he or she has overruled a request to hold proceedings in private. To ensure the process is fair and robust, I have also included an appeals mechanism to the director of the WRC for final adjudication on the decision. Again that relates to an issue where there is a serious and genuine concern on the part of a worker taking a case to the WRC that this will have a detrimental impact on him or her and that where he or she may not be satisfied with the judgment, at the very least he or she should be entitled to know and understand the rationale for that. Also, in relation to the sections which compel the com-

mission to publish on the Internet every decision of an adjudication officer under this section, I have included a provision where names would be redacted where it is felt that to publish names would detrimentally impact on either party specifically with reference to the capacity of a party to secure employment in the future.

It would be remiss of me to not mention the importance of the work the WRC does. Despite being underfunded and under-resourced, the Workplace Relations Commission does fantastic work on behalf of workers across this State. In spite of the challenges posed by the pandemic the WRC carried out 7,687 inspections in 2020 and managed to recover almost €1.7 million in unpaid wages for workers. Indeed, data recently revealed to me in response to parliamentary questioning outlined how, since 2011, the WRC has recovered almost €18 million in withheld wages for workers. This proves the worth of the WRC and actually makes a very compelling case in the funding for this particular institution. Further data also revealed the scale and number of breaches of employment law detected by WRC investigations since 2015. In those six years, the WRC has detected breaches in employment law in more than one third of all investigations. Of the number of cases investigated, 35.9% found breaches by employers for non-payment of the minimum wage, employment permits, protection of young persons, annual leave and public holiday breaches and unpaid wages, among others.

Sectors such as food and drink, retail and wholesale, hair and beauty, and construction, to name but a few, have seen consistent breaches of employment law in recent years. The breadth, scale and nature of these breaches reveal a dark underbelly of the Irish economy, which absolutely must be stamped out. Again this reinforces the need to properly resource the WRC. Furthermore, as Irish Small and Medium Enterprises, ISME, has said, businesses not paying workers the minimum wage are undercutting decent employers, are engaged in anti-competitive practices, and should be put out of business. I think that is something we can all agree on. The idea that there are only a select few bad apples breaching employment law and workers' rights has been blown apart by these data. We can see it is not just a tiny minority and that in fact there are breaches right across the board. It is not every employer, nor even the majority, but it is a significant amount and they must be dealt with.

In six short years, more than a third of employers investigated by the WRC have been found to be in breach of employment law. Added to this is the fact that the WRC is underfunded and understaffed. In all probability - and the Minister of State knows this - if it had more staff it could do more work and if it was doing more work it would be detecting more breaches. The commission has only 53 inspectors carrying out this work, despite being authorised to recruit 90 inspectors back in 2006. We can debate this again but 90 should be the floor. It should not be what we aspire to but the absolute minimum given there are more people in work now than there were in 2006 when that agreement was reached.

I have asked the Tánaiste on many occasions that the commission receive additional funding and resources to recruit more inspectors. I am aware there is a recruitment campaign under way at the moment. I would like to see it accelerated and increased. The work of the WRC and the rate of breaches it detects reinforces the need for workers to be given the legal right to collective bargaining through their recognised trade union in order that they can do the job they do so well. We know there are sectors of the economy where low pay and precarious work is the norm and where workers' rights are pretty much an afterthought.

That does not happen in unionised employment so the best defence against being exploited is to join a trade union, be active in it and be sure that your rights are upheld. That is not just

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legal rights. The law provides for a minimum. The trade union provides for what is decent and fair. The Government cannot continue to turn a blind eye to the employment law breaches, which we need to get serious about.

I recognise the importance of this legislation. I get that. I will get back to my point about pre-legislative scrutiny. I do not like waiving it. It is a bad habit to get into. I recognise the need in this case but I put it on the record that I hope the committee will not do this routinely. Having said that, we are happy to facilitate the passage of this legislation, considering the circumstances.

I reinforce the potential chilling effect that publicity will have on workers. When people feel that they are in a vulnerable situation, quite apart from anything else, they probably have to wait for six months or longer to get into the Workplace Relations Commission. All the while, they are probably continuing to work in the place where the issue has arisen. Added to that is the fear that they will be exposed. I cannot count the number of workers who I have represented at the WRC. I know from talking with them that anonymity gives the confidence to take the case, since there will be no backlash. We need to give serious consideration to the amendments which I have submitted, which I feel will deal with those issues. Nobody wants to have a situation where there is a chilling effect on a worker.

The existence of the third-party machinery is grand but it is also functionally useless unless people are empowered to exercise their rights under that third-party machinery. We cannot do anything in this House that will interfere with people's ability to exercise their right under the law to take a case to the WRC. We would be doing everyone a significant disservice. We would cause a bigger problem than we are trying to fix if we had a situation where we put that chilling effect into law. We need to give careful consideration to how we can ensure that workers still have the confidence to take a case to the WRC and still have the capacity to maintain their anonymity and not suffer from any potential backlash.

Deputy Aodhán Ó Riordáin: It is good to be back in this House. I think it is the first time since December. Hopefully we can resume regular business here soon. The Labour Party is happy to support the Workplace Relations (Miscellaneous Provisions) Bill 2021. This Bill has been brought before us without pre-legislative scrutiny as a matter of urgency. Unlike some other Bills which have been rushed through, this Bill is indeed urgent and is suitably concise and limited to be progressed rapidly. It is extremely important that we get this Bill right. There is a constant battle in the State between those who seek to protect and enhance the rights of workers and those who seek to challenge them. We see consistent attempts to undermine any legislative protections afforded to workers, especially when they involve the strengthening of collective bargaining, the roles of trade unions or giving a seat at the table to represent workers.

The Labour Party has always stood on the side of workers and their rights to collective bargaining and trade union representation. In considering this Bill, we believe that those rights are essential to a functioning democracy. I was delighted to see the recent judgment of the Supreme Court stating that the provisions of the Industrial Relations (Amendment) Act 2015 were constitutional. This Act was introduced by my party colleague, Deputy Ged Nash, and paved the way for thousands of workers in low-paid and poorly organised sectors to take advantage of sectoral orders to improve their pay and terms and conditions. In his ruling on that legislation, Mr. Justice Peter Charleton stated:

The 2015 Act seeks to promote or to preserve high standards of training and qualifica-

tion and by a subordinate body searching for, and the Oireachtas ultimately approving, fair and sustainable rates of remuneration. All these are objectives well recognised in a modern democratic society that strives for both economic dynamism and for social protection; an aim that becomes unachievable in chaos or stagnation. These must be recognised as being legitimate matters which the Oireachtas can pursue or seek to achieve.

The sectoral order legislation was a major undertaking to remedy the implications of a judicial decision. I hope that those who are critical of the Bill will give credit where credit is due and recognise that the Industrial Relations (Amendment) Act 2015 is an important achievement by the Labour Party in government in strengthening the rights and terms and conditions of workers as well as the practical effectiveness of collective bargaining. While the substance of that Act was vindicated, we are here because of another court case which has resulted in the need for amended legislation. I hope that this Bill will further strengthen the working of the industrial relations apparatus of the State, which is the WRC in this case.

It has been clear since the Ryanair judgment that more formality about how the Labour Court adjudication officers arrive at their decisions will be required as a response to the judgment of the Supreme Court in the Zalewski case. This Workplace Relations (Miscellaneous Provisions) Bill is imperative to allow the WRC to resume its vital work. The two major findings of the case were that a blanket prohibition on public hearings was not justified and that there should at least be capacity to take an oath for the process to be constitutional.

The proposed amendment gives adjudication officers discretion in cases which have been referred to them to decide that either all or part of the case proceedings can take place in private if the nature, circumstances or interests of justice make it preferable. The default position would be for these to be held in public. Given the often sensitive nature of cases for both sides, I hope and expect that, by agreement, many cases will in practice be heard in private. A strength of the WRC is that damage to individuals and indeed companies from publicity surrounding cases can be avoided.

The Bill also provides for either side applying to have either part or all of the proceedings held in public. The paragraph to be substituted for subsection (14) provides for an adjudication officer effectively to direct the commission not to name parties in the published decision, which I think is merited.

The Bill provides for an adjudication officer to hear evidence on oath and the Government seems to think it necessary to make provision for an offence such as perjury. This offence is provided for in six separate amendments to other legislation, set out in sections 4, 6 and 9 to 12 of the Bill.

On a technical point, the memorandum accompanying the Bill states “aligned with section 12 of the Criminal Justice (Perjury and Related Offences) Bill 2018 (Bill 112 of 2018).” However, the Oireachtas recently passed the Criminal Justice (Perjury and Related Offences) Act 2021, which was signed into law on 21 June and came into immediate operation. In that Act, a judicial or other proceeding includes proceedings before any “person having by law power to hear, receive and examine evidence on oath”. It would therefore include proceedings before adjudication officers once they are given the new power to administer oaths. Under section 2(1) of the Act, a person commits the offence of perjury if he or she in or for the purpose of such proceedings gives a statement material in the proceeding while lawfully sworn as a witness that is false, and he or she knows to be false. This seems to cover the same grounds as the new of-

fences created in today's Bill. The Act goes on to deal with several important matters related to the offence of perjury, including subornation, incitement, collaboration etc.

Given that the Act places perjury on a statutory footing for the first time in a consolidated and simplified manner, and that it will apply across the board, including to the proceedings before the WRC, would it be unnecessary and perhaps unworkable, without any reference to that legislation, to include separate provision on exactly the same subject matter in the current Bill? I could be mistaken but given the time pressure due to the large volume of accelerated business in the House and the general increase in everyone's workload due to Covid, which I think everyone would acknowledge, I would be grateful if the Minister and Government could indulge me and refer this point to receive relevant legal examination before Committee Stage.

While the facility for an oath is required from a constitutional point of view, a strength of the process is the absence of some of the intimidating trappings and legalese that can be associated with full judicial court proceedings. I hope that in the day-to-day operations of the court it will not be necessary to invoke the provision in every aspect of every case.

Section 3 of the Bill sets down provisions to remove adjudicators which, hopefully, will be rarely, if ever, needed. We can all agree that the importance of passing this Bill is paramount. I look forward to the discussion of any amendments and, hopefully, we can pass this Bill quickly to allow resumption of the full operation of the WRC and that it will be improved in the interests of everyone.

Deputy Jim O'Callaghan: I thank the Minister of State for bringing forward this legislation. We all know the reason we are here is because of the recent Supreme Court decision in the Zalewski case. It was probably one of the most important decisions given by the Supreme Court this century and has resulted in this legislation coming before the House.

I am conscious that my colleagues in the House know the facts of the Zalewski case, but it is important to remind other people who may not be here about it and to recall what happened in that particular claim. Mr. Zalewski claimed he was unfairly dismissed. He was entitled to bring a claim against his employer under the Unfair Dismissals Act 1977. Under the procedure and architecture we have put in place, he did so pursuant to the Workplace Relations Act 2015 and his claim was heard by an adjudication officer at the Workplace Relations Commission. Mr. Zalewski did not get a fair hearing. In fact, he did not really get any hearing. Rather than listening to my description of it, I urge colleagues to reflect again on what Mr. Justice McMenamin said in the Supreme Court about the hearing Mr. Zalewski got, which he described as "Kafkaesque".

In any event, Mr. Zalewski's claim was rejected by the WRC and, as a result, he decided to challenge the constitutionality of the Workplace Relations Commission and the fact that it operated over such a wide, broad range of legislation, such as the redundancy Acts, the Unfair Dismissals Act and the Employment Equality Act. His contention was that the Workplace Relations Commission was administering justice; it stated it was not. That is something we should probably all reflect on because I am conscious that if a person is sacked from their job and brings a claim against an employer, it is probably one of the most significant steps they will take in their life. Nobody lightly takes a claim against their employer or anyone else.

However, there are circumstances where employees and workers are entitled to bring claims against their employers. I have listened very carefully to what Deputies O'Reilly and Ó Ríordáin said and it appears to be the case that criticism can be made of an employee who brings a claim

against his or her employer. The chilling effect that can have on an employee was referred to. That may be correct. I know my friends were not in any way criticising employees who take such an action, but it is important to emphasise that in our system people are entitled to bring claims. It should not be stated or thought that because an employee is taking a claim against an employer that in some way that employee should be criticised.

In any event, Mr. Zalewski went to the High Court. The High Court looked at the case and at what was happening in the Workplace Relations Commission. It applied the tests established in *McDonald v. Bord na gCon* back in the 1960s, which set out five tests for the administration of justice. The High Court stated this was not the administration of justice because the Workplace Relations Commission did not have the power to enforce its own orders or judgments. Instead, if you are trying to enforce a decision of the Workplace Relations Commission, you have to go to the District Court. Mr. Zalewski lost that case because the determination in the High Court was that it was not the administration of justice. He appealed to the Supreme Court, which said it was the administration of justice. That is a very significant development because throughout the High Court and Supreme Court cases, and from 2015 onwards, the WRC stated it was not administering justice. We now know that it is. Ultimately, there was a split decision, four-three, in the Supreme Court, in favour of a finding that while this was not unconstitutional, certain aspects, as identified by speakers here, were regarded as requiring change.

It is a big question to determine whether or not a body is administering justice. Article 34 of our Constitution states that justice shall be administered by our courts in public save in certain circumstances. The article then sets out the courts we have for the administration of justice. However, we also recognise in this House that justice can be administered elsewhere if it is for the purpose of limited or local jurisdiction. That is why Article 37 of the Constitution is very important, because it provides for limited functions that can be carried out by statutory bodies other than the courts, which are established under the Constitution.

We have seen a trend, both in recent years and over the past 100 years, that legislation is enacted by a parliament in any country, but it will also allocate responsibility for the determination of disputes under that legislation to a new statutory body. There are many such bodies in Ireland. The Workplace Relations Commission, the Residential Tenancies Board and other boards and functions fulfil determinations of disputes. They are administering justice but doing so on a limited basis. The Supreme Court in the Zalewski case stated that the administration of justice is in fact happening at the WRC but is being done on a limited basis, since it relates to workplace disputes and has some limitation in terms of financial awards. However, there are extensive powers available to the Workplace Relations Commission when it comes to the determination of issues and making of awards.

Behind all of this, the Oireachtas has a certain amount of concern that if we do not take issues concerning the administration of justice away from the courts, it will result in lawyers and in inefficiencies. The well-intentioned objective and purpose behind establishing the Workplace Relations Commission as the place where employment disputes are resolved is to try to make the system more efficient and cheaper and to ensure it does not get bogged down with lawyers. All I would say in respect of that is that it is absolutely vital that anyone who brings a claim, and is involved in the administration of justice and is seeking justice, gets fair procedures and a fair hearing. I believe this legislation will go a considerable way towards that but we have to ensure that all claims before the Workplace Relations Commission are heard in a very fair and just way.

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Deputy Martin Browne: I also welcome our return to Leinster House. I welcome the opportunity to speak on this matter and also on the importance of ensuring workers' rights are upheld and how the WRC plays a key role in this regard. It is for these reasons I am pleased to see this legislation being brought forward, following the Zalewski case and the matters it shone a light on. These are important observations for the proper functioning of the WRC in its highly important role. Sinn Féin will be supporting this Bill, although an Teachta O'Reilly has tabled some amendments to it she published on the matter in April.

It will of course be appreciated that when it comes to the protections afforded to workers and the effective functioning of the WRC, nothing can be left to chance. This is exemplified by the work that has been done by the WRC only recently. Despite recent restrictions, the WRC has been as committed as ever in working for the interests of this country's workers. In total, 7,687 inspections were carried out in 2020. In my county of Tipperary, the WRC detected 190 breaches last year, of which 140 were in the food service and wholesale and retail sectors. This is concerning and indicates how certain businesses are spoiling it for others in their sector by engaging in what are also anti-competitive practices. The most common offence involved working time records for which there were 44 detections, terms of employment were at 27 detections, public holidays at 23 and no Sunday compensation at 17. In each case, the WRC is serving our employees well.

The work of the WRC also improves the business landscape by improving competitiveness while protecting our workers. The WRC has a difficult job. We have been told that the number of breaches of employment law detected nationally since 2015 has amounted to 35.9% of all cases investigated. However, there is one sector whose record is worse than most. Unsurprisingly, it is the country's meat factories. I am sick and tired of pointing out how these factories are handled with kid gloves by successive Governments. That employment law breaches were identified in 48% of all inspections in meat factories between 2015 and 2020 reinforces my concerns, which I will not stop highlighting until the matter is addressed. These are worrying figures, but they show the level of commitment of the staff of the WRC to their work and the welfare of the workers that keep this economy going. They also highlight the need for workers to have the legal right to engage in collective bargaining through their trade unions. While the identification of breaches of employment law can go some way towards protecting our workers, enabling workers to exercise their rights is where the power truly is. In truth, more breaches may have been detected if the WRC had the level of staffing it needs. The Minister of State, Deputy English, informed the House in March that the Workplace Relations Commission has only 53 labour inspectors and that its authorised staffing complement is 90, which authorisation was given as far back as 2006. I ask the Minister of State to outline when the additional inspectors will be provided.

Deputy Catherine Murphy: I too welcome that we are back in our home Chamber. While the Convention Centre is a wonderful venue for all sorts of conferences and music events and so on, when empty it feels a little like an airport terminal. It feels pretty good to be here.

The purpose of this Bill is to address the urgent matters identified in the Supreme Court's majority decision on the Zalewski case. The case was taken against a WRC adjudication officer, the WRC, Ireland and the Attorney General. It challenged the constitutionality of the procedures introduced when the dispute resolution bodies were streamlined under the Workplace Relations Act 2015.

In 2015, reforms were introduced to streamline workplace relation services. The five em-

ployment rights bodies which existed at the time were merged into the WRC and the Labour Court. The WRC was set up to deal with every case in the first instance, which case is made in front of an adjudication officer in private session and there is anonymity in respect of those presenting the cases. This has not worked out as planned. We are now in need of emergency legislation as the work of the WRC has stalled in the wake of the Supreme Court ruling. It is essential that the legislation is enacted as soon as possible. The work of the WRC is too important to be left on stand-by. We all appreciate that and that is, in part, the reason pre-legislative scrutiny was waived. Pre-legislative scrutiny is, probably, one of the better reforms because it provides for better and more robust legislation that, probably, is less likely to be challenged in the future. We appreciate that there is an urgency in respect of this legislation.

The Supreme Court was critical of the WRC's handling in the Zalewski case which was brought forward in 2016. The core issues discussed were to do with the fundamental nature of the WRC. The issue at hand was whether or not the WRC counted as administration of justice as provided for under Article 24 of the Constitution and whether the framework of the WRC vindicated claimants' rights. A narrow 4-3 majority held that the WRC process counted as the exercise of limited powers of the administration of justice and was not unconstitutional.

We came dangerously close to the WRC being ruled unconstitutional. It is hard to comprehend the disaster that would have been in terms of its affect not only on current cases, but previous cases as well. However, a number of aspects of the Workplace Relations Act 2015 were identified as unconstitutional, including the requirement that all hearings before an adjudication officer be held in private and the lack of provision for administration of an oath or affirmation or any consequences for giving false evidence. While not declared unconstitutional, the Supreme Court raised concerns on a number of matters, including the perceived lack of independence of the adjudication officers, a provision in the 2015 Act concerning the Minister's ability to remove an adjudication officer, in respect of which I welcome the clarification provided for under this Bill, and a lack of fairness in the Workplace Relations Act 2015 provision which states that enforcement of decisions is a matter for the District Court. I welcome that the provision has been remedied to ensure that employers have the right to be notified and heard. The court also criticised the lack of expressed provision for the right to cross-examine witnesses, which I understand is to be provided for under the new procedural guidelines. I understand that this was already provided for under the existing guidelines but that the Supreme Court's concern was in regard to the lack of provision in legislation rather than in practice.

With respect to the public versus private sittings of the WRC, the Supreme Court did not decide that hearings could not be held in private, but that they could not be exclusively in private. This decision needs to be given serious consideration and there is need for serious consultation on it with stakeholders. Under this Bill, adjudication officers are given the power to decide whether a hearing should be in public or private based on the conditions of the case. Some workers would be hesitant to come forward in a public setting, in fear of reputational damage or an impact on future job prospects. Consideration must also be given to whistleblowers. Unions favour private sessions to prevent the blacklisting of workers. For those who might think that does not happen, it does. It has happened many times. I know of people who have had to leave this country because they were essentially blacklisted and could not get work in their chosen field. Very often, these were people who had taken a degree of responsibility, for example, a shop steward at the time of a strike. This issue should not be minimised. There is a history of real concern and we need to take it seriously. On the surface, it would appear that employers have more to fear in a public setting in terms of reputational damage. This might encourage

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some businesses to take internal resolutions and to take the mediation stage more seriously. That would be valuable. There is a balance to be reached. This area needs to be monitored closely and considered in the review.

While I understand that this Bill refers exclusively to the urgent constitutional matters at hand, with the Supreme Court referring to the independence of adjudication officers, we need to take a closer look at these areas in due course. When the WRC commenced operations, the adjudication officers tended to be lawyers in human resources, people from a trade union background etc. but now a large number of them are public servants on secondment, which may counteract the independence provision. The lived experience of a public servant is different because of the greater security of employment and guarantees in working conditions. It is not that people cannot take good decisions, but that they are coming from a different perspective. That can be an issue.

With workers facing serious changes to the conditions in the WRC, particularly in terms of anonymity, it is understandable that many would seek legal advice. There is no legal aid available in employment cases. The Free Legal Aid Centres, FLAC, received a 40% increase in employment law inquiries last year. During one week in May, for the first time in the history of FLAC those queries exceeded the family law queries. Of the queries related to employment, 16% were in regard to redundancy, which amounts to almost triple the number of calls on the subject in 2019, with 326 calls received in 2020, compared to 112 the previous year. I note that that was a particular point in time in the context of Covid. Many of the people who contacted me had built up years of service and they were concerned that they were not being retained on the basis of the supports available but were being let go because it did not appear that their return to work would be imminent. The hospitality sector was a particular case in point. I received many inquiries from people who had accumulated years and were concerned as to whether or not they would be re-employed or carry those rights. There were a range of issues arising because of the circumstances. As we know, it was around May of last year the first wave hit. Some 14% of employment law cases relate to dismissal, with the number of such calls increasing by approximately 40% on the previous year. A further 10% involve grievance procedures, with the number of calls up 8% on 2019. Another 30% of calls relating to employment law involve an issue arising from the terms of contracts, with the number of such calls increasing by 6% on 2019. Access to justice is unattainable for too many. There was nowhere to refer many of these callers for legal assistance. If we are formalising the Workplace Relations Commission, we need to consider providing legal aid in such cases. While there are many really excellent employers and while I am not branding a whole cohort of people in this way, there were certainly employers who took advantage of the pandemic. At a point when people's incomes were at their lowest and people were struggling to pay their rent, mortgage or whatever, in many cases, it was not going to be possible to spend money on legal assistance. I know it was a particular time, but it exposes a serious weakness.

Unfortunately, it is clear that many of the cases that had already begun in the WRC will have to be started all over again, which will add to the backlog of cases. There may well be a need to employ more adjudication officers to deal with this backlog. People who had already submitted complaints to the WRC for adjudication did so on the basis of anonymity but this no longer applies and the names of parties will be made public. Although it is by no means guaranteed, this may result in complainants withdrawing their complaints or wishing to enter mediation in respect of them. I understand that claims which have been heard in part cannot be referred back for mediation because they have already commenced. Perhaps the Minister of State might deal

with that particular matter because it is a very practical issue. Normally, a claim before the WRC can only relate to an issue arising in the last six months. This is the statutory time limit set out in section 41 of the Workplace Relations Act 2015. Will the Minister of State outline how this will impact on people who have had to resubmit claims or who have held off in advance of this legislation? We have seen, for example, the duration for planning permissions and driving licences being extended. We understand the circumstances leading to these things happening. Will the Minister of State deal with that aspect in particular?

While the WRC was waiting for this legislation, many employees and their employers will have refocused on mediation. An examination of mediation in the public service is needed. Mediation is conducted in-house and the mediator is employed by the organisation in question. That raises serious questions as to the independence of mediators. Clarity needs to be sought as to whether the Mediation Act 2017 applies in such cases. I am a bit confused on that point. If the Minister of State is not going to respond to that point today, he might give it some thought as the legislation advances. Very few mediators in the WRC have any formal accreditation. Mediation can be done over the phone, which raises issues of confidentiality. Consideration needs to be given to the signing in advance of mediation agreements in which all parties agree on how the mediation is to be conducted.

A review of this Bill is provided for. This should be conducted within a year. I ask the Minister of State to strengthen this section with explicit mention of the need to consult trade unions, employment lawyers, adjudication officers, people who have used WRC procedures and, critically, people who have chosen not to do so. We need to understand why they have so chosen. There is a need for urgency with this legislation which means the process is more rushed than many of us would like it to be. This strengthens the need for the comprehensive review of the legislation to ensure there will not be any unintended consequences. If there is to be a revision, pre-legislative scrutiny will be an absolute must.

On the subject of the WRC, SIPTU has brought a case with regard to secretarial assistants in the Houses of the Oireachtas after talks stalled. This case has been ongoing since 2017. There is a starting salary of €24,423 and those recruited are obliged to start on the lowest band regardless of education or experience. That is below the living wage. That sits very uncomfortably with many of us in this House. I would have thought that this House could have concluded this matter. It sits uncomfortably, particularly when one considers the restoration of pay for people on higher bands under the financial emergency measures in the public interest, FEMPI, legislation, including Deputies and Senators. The speed at which decisions can be made with regard to a Secretary General grates with people. There was a very generous uplift in salary in that case. We have to look to ourselves. We should be setting a good example. I ask that this matter be looked at again rather than relying on the WRC.

We do not take free collective bargaining seriously. We are an outlier among European jurisdictions. In recent years, we have increasingly seen precarious types of employment. It is young employees in particular who are most at risk. There is a value in being a member of a trade union. There is a value to employers as well as employees in that they have people with whom to negotiate. We need to change our value system in that regard. We cannot have a race to the bottom. That must be addressed if we are to have something akin to - perhaps somewhat different from but akin to - a collective response. That should not be a replica of what happened in the past but, with regard to a national agreement, there is value to considering free collective bargaining. I will leave it at that. I am likely to table amendments. I know we have a very short period in which to do so.

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Deputy Ruairí Ó Murchú: An awful lot of what I am going to say has already been said. We all accept the absolute necessity of the Workplace Relations Commission and the vital work it does. We all know that this is the outworking of the Zalewski case in the Supreme Court. I have obviously mispronounced that name and I apologise for that. We need to make sure we do not impact on the operational ability of the WRC to carry out the work that needs to be done. It was mentioned in the House earlier that, during this period, we need these sort of accountability measures. During the Covid pandemic, there have definitely been companies and firms that have chosen not to waste a good crisis. We need to ensure that all the fundamentals are in place.

There are weaknesses across the board in our protections for workers. We need to review all of the legislation underpinning these and I will return to that point in a minute. I will also reiterate what Deputy O'Reilly said. I understand that there has been a significant amount of interaction between the Minister's officials and Deputy O'Reilly and her office with regard to the legislation she previously introduced on this matter. That is to be welcomed if it gets us further towards a solution. There is an issue with regard to publicity. We have all heard, both anecdotally and in people's actual cases, of people being afraid of it being put out publicly that they are troublemakers as employees. This is not a case we can deal with. I accept that there may be companies which fear the reputational damage that can be done to them. That is to be welcomed but we need to ensure that those protections are in place.

I agree that employers who disregard the rights of employees, as ISME said, do a disservice to both employees and to good employers. We need to make sure we have all that is necessary to deal with this.

Unions and collective bargaining were mentioned. We have seen in recent years in redundancy negotiations, including in my constituency, cases where a number of people are put in an invidious situation and have to enter into negotiations with a top-tier squad from an American multinational. That is unfair. We need to look at all the rules and regulations and at the rights we need to afford people in the context of collective bargaining and the powers of unions to represent people who need it.

Deputy Paul Murphy: I thank Mr. Zalewski and his legal team for pursuing this case and laying bare the fantasy that operates in relation to third-party arbitration and industrial relations in this country. That fantasy is that we have, as the Government insists on saying over and over again, a voluntarist system, that is, a system whereby that employers and employees are equal and agree freely to enter or not to enter into contracts or employment.

Behind the technical definitions, legal interpretations and judgment in the Zalewski case that we are legislating for is a simple and stark fact. A security worker was the victim of an unfair dismissal. His employer did not bother to have witnesses show up but a judgment was issued anyway. It was only because he and his legal team pursued the case that it went any further. The case shows what many workers experience at the WRC and elsewhere. It is not justice, fairness or vindication of their rights but a confusing and heavily unbalanced system which rewards the action of employers who drag out the process and hope that workers who do not have matching resources will give up or move on. In this case, the adjudicator's decision made reference to documents and written evidence from the employer which the worker had not seen or been given.

Unfortunately, I do not believe that Mr. Zalewski's experience was a one-off or particularly unusual. Many workers have had similar experiences in these forums whereby a process is

dragged out by employers, appeals are left to the last minute, IBEC hires and sponsors lawyers and legal experts are used. The cost, the length of time it takes and the entire process militates against workers taking cases.

There is also the arbitrary nature of awards. Workers do not know if they will be awarded €1,000, €5,000 or €10,000 if they are successful. That militates against workers taking an action. In many cases, workers find it difficult, even when they have a decision in their favour, to have it enforced. We should provide free legal aid for workers to take cases to the District Court for them to be enforced. There is also the question of unfair dismissal for complaints relating to health and safety. It is clearly against the law but if someone has not been working there for 12 months, they will not be able to take a case and get justice.

Far from the fantasy of a system based on equal power between workers and employers, this case is an example of the imbalance between the two. The system is based on that inequality of power and it reflects wider issues about workers' rights and the lack of them in this country. There is the lack of a right to union recognition or to have a union representative in the workplace to fight for workers' rights. There are anti-union laws - I refer to the Industrial Relations Acts - which must be repealed. These are laws which were copied and pasted, in large part, from Thatcher's laws. There are also laws against solidarity and secondary picketing. The entire industrial relations machinery in this State is designed to give employers the upper hand in dealing with workers. The odds are heavily stacked against workers. That is what a voluntarist system means. It is effectively a free-for-all for employers.

The results of that deliberate policy can be seen everywhere. Ireland will rank at the bottom of almost every indicator for workers' rights across Europe. It is seen in the prevalence of low pay, the growth of precarious employment, the widespread abuse of migrant labour and young workers, the spread of bogus self-employment to evade paying sick pay, pension or other entitlements, the attacks on pension rights and defined benefits schemes and the absence of a statutory sick pay scheme. Ireland is one of five countries in the EU without such a scheme. We have been presented with a very weak proposal from the Government, which is too little, too late, the purpose of which is to address this matter in the aftermath of Covid shedding a light on it. We are close to the bottom of the table in terms of annual leave and public holidays.

I do not believe this Bill adequately addresses the systemic issues and problems faced by workers seeking justice. I have concerns, given the unequal and severely unbalanced system we have, about the measure, which I agree with in general, introducing a fine for giving false evidence. In a scenario where evidence is disputed and there are two contradictory statements of fact by the employer and the worker, I fear that such a measure could be used to say to the worker that if he or she takes a case and it is not found in his or her favour, he or she could face a fine of up to €100,000 and a possible prison sentence of ten years. It could be used to intimidate workers from taking cases. We will have to watch carefully for that and react if it happens.

I will make a point on the under-resourcing of the WRC, especially on the inspections side. Since 2016, it was agreed as part of a national pay deal that the number of inspectors would increase to 90. As of 1 May 2021, there are 53 inspectors. While workers' representatives, unions and most of society knows there has been a rapid increase in the abuses of workers rights, the State has not bothered to increase or even achieve the agreed level of workplace inspectors. That was highlighted, above all, in the meat plants, where the Government turned a conscious blind eye to what was happening. It accused those of us who raised concerns of slandering the meat factory owners and the inspections came very late. The fact the WRC has detected

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breaches in more than one third of its investigations tell us that, if more inspections took place, we would uncover significantly more breaches. Almost 36% found breaches by employers regarding non-payment of the minimum wage, employment permits, protection of young persons, annual leave and public holiday entitlements and unpaid wages. Sectors such as food and drink, retail, wholesale, hair and beauty and construction have seen consistent breaches of employment law in recent years.

I refer to the allegations made by George McLoughlin, a former inspector with the forerunner to the WRC. The allegations are extremely serious. I have spoken to him. He is not making wild allegations that are not backed up with documentary evidence. In an observation to *Village* magazine, he said-----

An Ceann Comhairle: I do not think it is appropriate to raise cases of that nature where the parties involved are not here to answer for themselves.

Deputy Paul Murphy: It is on the public record. I will quote one paragraph from a magazine article. It does not name any individuals or anything like that.

An Ceann Comhairle: Okay.

Deputy Paul Murphy: He said:

[T]he proper work of the labour inspectorate in ensuring that employers in low-pay sectors of the economy comply with the state's most basic employment rights legislation is being deliberately undermined by a management that sees its [primary] function as facilitating some employers in circumventing the very legislation they are supposed to be enforcing thereby leaving vulnerable workers at the mercy of unscrupulous employers.

1 o'clock

This is something to which the Government has not responded properly. The individual in question has made two protected disclosures at this point.

We need more inspectors. That is the bottom line. We also need a thorough shake-up of the entire industrial relations system. The development that will make the greatest difference to workers' rights is the growth of fighting trade unions that will represent and fight for their members' rights. Ultimately, the right to join and be represented by a union of one's choice is the only real safeguard on which workers can rely.

Deputy Verona Murphy: One of the main functions of the Workplace Relations Act 2015 was to establish the Workplace Relations Commission. Some of the functions of the commission are to promote the improvement of workplace relations and maintenance of good workplace relations, promote and encourage compliance with the relevant laws, provide guidance on compliance with codes of practice, conduct reviews of, and monitor, developments in regard to workplace relations, conduct or commission relevant research, provide advice, information and the findings of research to joint labour committees and joint industrial councils, advise the Minister for Enterprise, Trade and Employment on the application of, and compliance with, relevant laws, and provide information to the public on employment laws other than the Employment Equality Act 1998.

Reading through those functions, it seems clear, unfortunately, that we must prepare ourselves for the potential for the commission to become very busy with Covid-related employ-

ment issues. Covid-19 has created a unique scenario of unprecedented unemployment, State supports and workplace policies and procedures. Ultimately, I believe it will lead to unprecedented levels of workplace disputes. We must prepare for that, which means we must ensure the Workplace Relations Act is updated to address as many anomalies as possible. That seems to be the main aim of the amending Bill we are considering today.

I have taken advice on the proposed amendments set out in the Bill. It is vital, of course, that our employment-related laws are up to date and allow, as far as possible, for justice to be done in respect of workplace relations matters. We must ensure we have robust and fair procedures in place for employers and employees. One of the key changes contained in the Bill is a provision to allow evidence to be taken under oath. This is necessary where there is a conflict in evidence that is central to the case at hand. Currently, we have a situation where some employment laws provide that evidence may be taken on oath and some do not. Hence the requirement for the Workplace Relations Act to be brought into line with many other employment-related laws. This change is desirable because evidence taken on oath carries more weight and, if found to be false, leaves the person uttering the falsehood open to prosecution for perjury. Obviously, we want evidence given to be truthful. It is one of the principles on which our justice system relies. It follows logically that there must be some punishment, or potential punishment, for those who give false or untruthful evidence. Therefore, providing for evidence to be given under oath is helpful and welcome. Providing substantial punishments for those who commit perjury in workplace relations hearings is also welcome.

The Bill also contains a provision to allow hearings to be heard in public. To date, the WRC adjudication hearings have taken place otherwise than in public. As justice needs to be seen to be done, this amendment is desirable. The obvious concern is that anonymity goes out the door for the parties involved. It should be noted, however, that it is currently common for parties to be identified even where hearings do not take place in public. There is no provision in place to protect anonymity should it be necessary, given the circumstances, to do so. It is not suitable or proper for a one-size-fits-all approach to be taken when it comes to public hearings. I support the provision for appropriate cases to be heard *in camera* where that is necessary to protect a lawful and vital interest of a party or parties involved in the proceedings.

The experts in the field with whom I have discussed the Bill have suggested a number of provisions that were not included. Perhaps the Minister of State will take those suggestions on board and consider amending the Bill to include them. It was raised that external adjudication officers are currently, subject to the revocation provision, in role for life if they so wish. It was suggested that there should be a provision for three-year to five-year terms of appointment and that no officer would hold office for more than two terms. It is reported to me that many of the existing adjudicators are double-jobbing in that they are in the business of HR advisory and similar fields, as part of which they advise employers and employees on how to make a claim to the WRC. No adjudicator should be allowed to perform that type of advisory role. It is imperative for the future that adjudicators sign a declaration to say they will not directly or indirectly advise either employers or employees on taking WRC claims. As they will now be performing a judicial function, it would equally be completely unacceptable for a High Court judge to advise anyone to take a High Court claim.

The WRC was set up to eliminate the costs associated with court hearings. In a post-Covid era, it will be possible to continue arrangements for remote attendance and hearings. To facilitate this further, the director general should be given the power to decide whether a hearing is required or if a case be dealt with on submissions only. As it stands, the latter can only happen

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if both sides consent to it and subject to fair practice and procedures being in place. The director general can hear any objections raised but should ultimately be able to make a decision to the contrary, thereby saving time and money not just for the State but also for employers and employees. This would be mostly relevant to minor disputes such as cases based on payment calculations. Equally, all claimants would retain the right to be referred to the Labour Court in any case. These are practical measures to ensure costs are kept to a minimum and claims can be dealt with faster, thus saving the State, employers and employees money on all fronts.

Overall, I welcome the Bill and will support it. It is important that there be punishments for giving false evidence. Workplace disputes and cases can have serious impacts on businesses' and employees' future prospects. It is important, therefore, that there be laws in place to discourage the giving of false witness and encourage truthfulness. Openness and transparency are also very important when it comes to justice, but with important provisions for privacy where it is absolutely necessary to protect those involved.

Deputy Michael Collins: I appreciate the opportunity to speak in this debate. The Workplace Relations (Miscellaneous Provisions) Bill 2021 proposes to amend the Workplace Relations Act 2015 and the Unfair Dismissals Act 1977 in response to the judgment of the Supreme Court in the case of *Zalewski v. Adjudication Officer and others*. The court upheld the constitutionality of the WRC's adjudication service but held that section 41(13) of the 2015 Act and section 8(6) of the 1977 Act were incompatible with the Constitution. These sections require relevant WRC proceedings to be conducted privately. Additionally, it was held that the lack of legislative provision concerning the administration of oaths or affirmations, and provision for a penalty for giving untruthful evidence, was inconsistent with the Constitution.

This Bill proposes to amend the 2015 and 1977 Acts to provide that evidence may be given under oath and that a penalty may be enforced for the provision, while under oath, of false or misleading information. It also provides that matters before the WRC adjudication service will be conducted in public except in certain circumstances. Similar amendments will also need to be made to the Employment Equality Act 1998 and the Equal Status Act 2000. In addition to these constitutionally required amendments, it is proposed that a number of other amendments be made to address further issues raised in the majority judgment of the Supreme Court. These include amending the 2015 Act to provide for a fairer system for the removal of a WRC adjudication officer, amending the Industrial Relations Acts 1946 and 1969 to provide an express statement that the chairperson, deputy chairpersons and ordinary members of the Labour Court are independent in the performance of their duties, and amending the 2015 Act to strengthen the rights of employers in matters relating to the enforcement of a decision of an adjudication officer in the District Court.

The Supreme Court ruled on 6 April 2021 that the system operated by the WRC and the Labour Court to determine employment claims and disputes is not unconstitutional. The law that was challenged was Part 3 of the Workplace Relations Act 2015. The challenge was based on the argument that the system involved the administration of justice but the Constitution provides that this can only be done by courts and judges, pursuant to Article 34. The Article states:

Justice shall be administered in courts established by law by judges appointed in the manner provided by this Constitution, and, save in such special and limited cases as may be prescribed by law, shall be administered in public.

The Supreme Court decided that the WRC was only assigned limited jurisdiction, which is

something permitted by Article 37. Article 37 states:

Nothing in this Constitution shall operate to invalidate the exercise of limited functions and powers of a judicial nature, in matters other than criminal matters, by any person or body of persons duly authorised by law to exercise such functions and powers, notwithstanding that such person or such body of persons is not a judge or a court appointed or established as such under this Constitution.

However, the Supreme Court did observe that justified questions were raised as to the procedures that the WRC employed, including evidence being given without the taking of an oath, the absence of a right to cross-examine a person giving evidence and hearings not being held in public. The WRC does permit cross-examination and the failure of the legislation to make express provisions for it did not render the legislation unconstitutional. However, the Supreme Court did declare that evidence being given without an oath or affirmation and no penalty for untruthful evidence and the removal of the possibility of certain cases being held in public under section 41(13) of the Workplace Relations Act 2015 and section 8(6) of the Unfair Dismissals Act 1977, as amended, are inconsistent with the Constitution. The High Court had previously ruled that the WRC was not administering justice as any decision must be brought to the District Court to be enforced if the losing party did not abide by the determination. That sums up the current situation.

Certainly every Deputy in the country should fully support the WRC and the works it carries out. If it needs increased powers, by all means, the Rural Independent Group would certainly be in agreement with that. Most of us employ people and we must abide by the rules and regulations out there. A lot of people enter into disputes, be it in a healthcare situation or even the community voluntary sector where many employees could be working, and, unfortunately, if these disputes are not nipped in the bud, they get out of control and end up in the WRC. It is an unfortunate situation because sometimes when someone is in that situation, it is very hard and there is no winner as such. The person taking the case will feel he or she is under severe pressure that has brought him or her to the position whereby it was necessary to take a case to the WRC for a judgment to be made. I sympathise with people but I am a strong believer that stronger negotiations should take place between the parties before it gets to that point and if there is a good negotiator in one's team or voluntary sector, he or she should be put to work to try to nip something in the bud. If that is not done, unfortunately, it leads to a very dangerous situation. Many decisions are made here in Parliament.

Very difficult decisions have been made on the ground with people. We spoke about the hospitality sector during the week. Bars and restaurants are facing closure for God only knows how long. If they do open, the employee or the person running the business must stand at the door and ask everybody entering whether they have been vaccinated. The pressure this will place on employers and employees is phenomenal. Restaurant owners and publicans are saying they will not work this so I do not know who will work it. It is a daft idea because with young people not being vaccinated, some people cannot get in because they cannot get a vaccination and an employer will have to try to get a staff member to carry out that role, which is probably against the employee's will and makes it very difficult. Decisions we make here can have a bearing on what happens on the ground and the difficulties between employers and employees.

I look at the fishing sector in recent months and the difficulties foisted on them from every angle without anyone here suggesting the handbrakes in government should be pulled up and that it should stop for a minute. There was obviously no senior Minister. The penalty points

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system and the weighing crisis were foisted on them and there was nobody here. Down in the convention centre, in one of the few sessions where we could talk about the fishing industry, a Member from People Before Profit stated the fishing industry was treating foreign workers appallingly. That was an awful statement to make and I am shocked that this Member has not come in here and apologised to the Dáil for making it. That is the way People Before Profit thinks about the fishing industry, which works hard and spent months with me around the table and on the phone trying to protect the foreign workers working on their feet. That is what they were telling me.

An Ceann Comhairle: I very much appreciate the Deputy's passion for these issues but he must admit that he is wandering away from the provisions of the Bill we are supposed to be discussing.

Deputy Michael Collins: It would not be the first time I wandered but the Ceann Comhairle might bear with me because I was angered greatly by the Member from People Before Profit making that statement and not coming back here. It does relate to workers' rights and workers being treated badly. I do not mind. We all say things here for which we might have to make an apology. I would certainly do so if I said so but it was very wrong to do that. I had been talking to individual owners of trawlers and the Irish South and West Fish Producers Organisation, whose CEO, Patrick Murphy, had contacted me to try to rectify that situation and the wrongs done to foreign workers on their fishing vessels. Then I heard the complete opposite, as if it was the fishermen and owners of the trawlers who were committing these wrongs, which is totally untrue and unfair.

I will not take up all my time because I might wander a bit more. I will support this Bill and any laws that will strengthen the rights of the worker in a fair way. However, we must always remember when we pick on anyone, it is always the employer, who cannot take much more pressure because they are under severe pressure with payments and are trying to be as fair to workers as they possibly can. We must find a very fair balance here. The Government and the Rural Independent Group will work together to try to find that in the amendments we have put forward to find a fair balance.

An Ceann Comhairle: I admire Deputy Michael Collins's versatility for getting in a variety of issues of interest to him.

Deputy Thomas Pringle: I am glad to have the opportunity to contribute to the debate on this Bill. Regarding the comments on balance in terms of tribunals, it has been my experience that the balance is very much in favour of employers when one looks at the amount of suits they have going into hearings, while workers very often cannot afford that. It is a very unbalanced situation and we need to do everything we can to balance that up.

It is interesting that this Bill comes from a Supreme Court judgment. Overall, I believe that it is a useful judgment that protects the rights of individuals. Although it may be bizarre for me to say this, I believe it is I believe going to protect and help employers as well. I will talk more about that later.

This Bill arises from a case that was taken in the Supreme Court by a person who felt that he was mistreated by the Workplace Relations Commission. When one reads the facts of the case and how it arrived in the court, there is no doubt but that he was mistreated. This also needs to be rectified. It is not legislation that will rectify this rather it will be fair procedures in the com-

mission to make sure that does not happen again. I hope that will take place as well because it was a bad mistake. It has given rise, however, to a useful judgment that will correct that as well.

In its judgment, the court found, and rightly so, that the commission's business had to be conducted in public like all administration of justice in the State. It should be a basic principle that all proceedings should be in public. Justice should be seen to be done. Article 6 of the European Convention on Human Rights, which states that in the determination of his or her civil rights and obligations, everyone is entitled to a fair and public hearing, is telling and should guide all that the State does.

It may cause some people difficulty, in that they are held in public but on balance, it is right that they should be in public. In reality, most cases will not attract attention anyway, and the novelty of a public hearing will soon wear off. I think there is another reason that hearings should be held in public, which is that it will force employers to participate in proceedings. I have heard anecdotally, I admit that it therefore may not be strictly true, that employers view the tribunal as having an employee bias. Therefore, they decide not bother to turn up and choose to take the hit of a negative outcome. I have heard that on a number of different occasions. It undermines the role of the tribunal itself, as well as affecting employers. It allows those making spurious claims to get away with it because employers just decide to take the hit and get on with it. It also prevents employers being scrutinised. If they do not participate, the tribunal cannot look into how they are behaving and force them to change their procedures and behaviour. Perhaps that is why they choose not to participate.

That kind of rationale is highly negative and undermines the whole system. I believe, from my experience, that if employers have dealt with a person fairly and they are represented at the hearing, they will get a fair hearing. In reality, it is because employers did not follow their own rules and procedures that they have a case adjudicated against them. Therefore, employers should be exposed to the public if they do not follow their own procedures or do not follow fair procedure and workers should benefit from that.

I have been at what used to be known as the Employment Appeals Tribunal a few times, mostly representing workers and getting their entitlements for them, and once as an employer. Therefore, I have seen it from both sides. I believe that the giving of evidence under oath is necessary and should be required. That requirement was removed for the Workplace Relations Commission by the 2015 Act. I am not sure why it happened; perhaps it was an oversight. If it was an oversight, I am glad to see that it has been reintroduced. Perhaps it was not an oversight and there was a rationale behind it. I do not know what that rationale could have been but it did not help employees.

In general, the tribunal is the only time that most employees attend a court or find themselves in a court-type situation. The requirement to give evidence under oath would underline that fact. Employers would find it more difficult to give evidence under oath, particularly when they are mostly in breach of the rules of procedure and fair play and are trying to defend that.

The additional power included in the Bill to remove the power of removal of inspectors from the Department is also welcome. It is not to say that it has happened but the appearance of independence is very important. The possibility of an inspector thinking about his or her position in making a decision is real if the power is left as is.

Sadly, employees should not generally have to take a case to the commission. Neverthe-

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less, the commission needs to be part of the system. It may be unrealistic but I hope that in the future, it might not need to be used if employers deal with their employees properly.

There is another issue that needs to be addressed. Perhaps it is being addressed now. I am aware of instances where the employee won their case at the WRC and the employer appealed it to the courts. Subsequently, the employee was unable to get representation and the employer won the case by default. That is wrong. There must be a balancing of resources. If an employer has the resources goes to court, the chances are that they will win by default. I am not sure how employees can be protected against that. Perhaps the introduction of a blanket entitlement to representation at the point at which a case gets to court would be useful. I take on board the points made by Members earlier about how employees need representation at tribunals. I think the unions do a very good job. That is the type of representation that employees need at that point. However, when an employer decides to lodge an appeal with the court, there must be a balancing of the situation. Employees need access to legal representation in that situation. I know that if the employee is represented by a union that the union might provide that legal representation. When I have represented workers at tribunals, they have been in non-unionised employment. In some cases unions will not represent these workers. The vast majority of workers in Ireland are in non-unionised employment. That is a problem that will be dealt with another day. It is important that employees have access to that representation. I have engaged with employers and employees. When an employee's case goes to court, they do not know what to do. They are left behind and they lose their case. That needs to be dealt with.

Overall, the Bill will make things better all around for employees and that is to be welcomed. If employers embraced the procedures and treated their workers fairly in the first place, they would not end up at a tribunal. In cases where they do end up at a tribunal, the suggestion that they do not turn up, having decided to take the hit, is wrong. Employers must address that. If they do attend the tribunal, they will find that it is very fair and gives a fair hearing to all parties. When a party loses a case, it is because they deserve to do so.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Damien English): I thank all the Members for their contributions today. I thank the Deputies for their general support of the Bill, their recognition of the urgency to pass it and their co-operation in that regard. Some of the issues raised probably are not the most directly urgent in respect of the Supreme Court judgment but I will certainly follow up on them. I will respond to Members in writing. Deputy Pringle was the second Deputy to raise the issue of access to legal representation for employees in cases that are appealed to the courts. I will look into it to determine if there is some way to facilitate and assist with legal costs for the employee, when an employer has appealed the finding of the tribunal. I agree with the Deputy that when the unions are involved they should be able to use their resources to assist with legal representation. However, in some cases, it is not an option. I will certainly look into it, to see if we can do something in that space. It is not necessarily within the remit of my Department, but I will look at it across the system.

As I have set out, the purpose of this short Bill is to ensure the matters of immediate concern identified by the Supreme Court in its majority decision are dealt with. That is something that we are doing and we will do it as quickly as possible. As has already been discussed here today, the WRC's adjudication service is unable to proceed with cases where material facts are in dispute due to the fact that it does not have the required statutory power to administer an oath or affirmation. This is having a very real and substantial impact on those who wish to have their cases heard by an adjudicator in the WRC at present. All Members present want that issue to be

addressed as quickly as possible to enable the WRC to hear cases, settle disputes and build on its track record of delivering a fair, simple, cost-effective and user-friendly service for employers and employees in the State.

A few common issues were raised by the Deputies. One concerned the backlog of cases. As I have already set out, it is critical that we deliver this legislation to give effect to the Supreme Court decision. For information, the WRC is continuing to schedule cases. I am informed that of the 1,601 hearings scheduled from 6 April to 22 June 2021, under 20% have been adjourned due to the adjudication officer concluding that it is necessary to adjourn to facilitate an oath or affirmation to be administered. Some hearings are still proceeding but there is a high number of adjournments. Therefore, we need to address it urgently.

There are a range of outcomes that may arise when hearings are scheduled. Proceedings may be postponed prior to the hearing date, the hearing may be completed, the issues may be case managed to reduce the matters to be dealt with if proceedings are adjourned or the case may be part-heard, requiring it to be rescheduled later. Settlement may also be reached prior to, or during the hearing. Deputy Catherine Murphy raised the issue of mediation. I will come back to her with the details of the cases involved. Given the public aspect of hearings, some participants might want to go back to mediation. That is something I will look at with a view to bringing some clarity on the issue.

On the public aspect of the hearings, I am aware that amendments are being tabled by Deputy O'Reilly and others. We will tease through the issues on Committee Stage. We have tried to accommodate various perspectives as best as possible. Perhaps it might be best to put the amendments into the regulations and guidelines. We must honour the clear ruling of the Supreme Court in this regard. I appreciate the amendments that are being put forward by the Members. We will look at them with a view to striking a balance. If we do not feel that we can include them in the legislation, we will be able to include them in regulations and guidelines to ensure that the adjudicators understand that in many cases, participants, by agreement, may want to have private hearings. We must try to do this as best we can.

On the defence of perjury, I appreciate that there has been some disquiet about this provision. However, the recognition that perjury is a serious offence is about ensuring there is a protection the administration of justice. Fraudulent claims affect reputations, cost both parties to a dispute money and time and undermine the laws that are designed to protect us all. I believe it is a matter of huge public importance to the victims of perjury that there at least be some penalty for those who attempt to inflict injustice on them. Clear statutory penalties will act as both a deterrent for the act of perjury and be significantly punitive to reflect the substantial effect that perjury can have. This offence has been aligned with the horizontal offence of perjury that already extends its scope to adjudicator hearings pursuant to the Criminal Justice (Perjury and Related Offences) Act 2021, which was passed in June. Deputy Ó Ríordáin referred to that but he may have missed a part of my speech. I referred to it and noted the legislation has been updated to reflect the legislation that was passed last week. I wish to highlight that when we engaged with committee members on the issue and in respect of Deputy O'Reilly's Bill, that legislation had not yet been passed and that piece was not included in it. Lest Deputies think we are trying to pull a fast one, we are not. We had to update the Bill to reflect the updated legislation that had been passed.

I have dealt with the issue of private hearings. We can address the issues on Committee Stage and discuss them with Members.

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Members raised a few other issues in their contributions and I will revert to them directly to tease through them. I am happy to do so before Committee Stage next week, if we can.

Question put and agreed to.

Sitting suspended at 1.30 p.m. and resumed at 2.10 p.m.

Companies (Rescue Process for Small and Micro Companies) Bill 2021: Second Stage

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): I move: “That the Bill be now read a Second Time.”

I am pleased to have the opportunity to introduce this Bill. Fundamentally, it represents an effective lifeline to viable small businesses and affords them an opportunity to restructure their debts and continue trading. In light of the Covid-19 crisis, the Government made a commitment to review the Companies Act to simplify and improve examinership laws for our small business sector. A key commitment in the programme for Government, this Bill is a culmination of a significant body of work by the Company Law Review Group, CLRG, and nearly a year’s work by me and my officials, which included important consultation with business and industry representatives and, of course, the support of the Members of the Oireachtas, demonstrating that when we work together collectively, we can make a difference.

This Bill delivers a new corporate rescue framework designed specifically for small and micro companies, which form the backbone of our economy and communities. The Bill provides an alternative to examinership which is more cost-efficient and which can be concluded within a shorter period. As we emerge from the pandemic, the Bill will ensure that the necessary legal framework is in place to help viable small and micro businesses to stay in business. Delivering this Bill is reflective of the Government’s commitment, and mine, to our small companies sector and the many jobs it supports.

Before I go through the specific provisions, I want to outline the process undertaken to develop the Bill and give appropriate context and recognition to the stakeholders involved. Throughout the pandemic, the Government has prioritised measures to ensure the survival of the countless small companies across the country. While a response to the crisis so far has proven successful in mitigating the immediate impact of the pandemic, I am acutely aware of the enormous pressure business owners currently face in terms of their liquidity and the sustainability of their businesses. This is particularly true of many small and micro companies, which employ 788,000 employees. Some 78% of those companies operate in sectors that have been particularly challenged by the pandemic, such as retail, hospitality and the service industry.

The Government quickly recognised last year that additional measures would be necessary to support the businesses in the face of the then rapidly evolving crisis. With that in mind, we set our sights on a proactive and comprehensive review of the regulatory framework for the rescue of viable small and micro companies and an assessment of all available policy options to enable these companies to continue in business and return to full operations and profitability. That work began in July 2020 when we requested the CLRG to examine the issue of rescue for small and micro companies and make recommendations as to how a process for these compa-

nies might be put in place. As many Deputies will know, the membership of the CLRG, a statutory body, comprises representatives from a wide range of stakeholders, including representatives from the trade unions, business associations and banking and auditing bodies, in addition to academics, legal practitioners and insolvency experts. The breadth of representation makes it uniquely well positioned to advise on matters of company law.

The CLRG delivered its report on the rescue of small companies in October 2020. From that point on, officials from my Department worked to develop the its advice from both operational and policy perspectives. This work involved ongoing consultation with the Office of the Attorney General and key stakeholders, including the Revenue Commissioners, the Department of Social Protection and the Department of Justice. In February, I launched a month-long public consultation on the proposed measures to further inform the development of the general scheme of the Bill. My Department received 17 substantive submissions from representatives of employers and employees across all sectors and industry professionals in the field of company law and insolvency. An overview of these, together with my Department's analysis and subsequent responses, is published and publicly available in a report on the Department's website.

While we set ourselves a very ambitious task - some thought it too ambitious - to develop a new rescue process in the midst of the public health crisis, we did so in the most transparent and accessible way possible. Consequently, I am happy to say that the Bill has met broad support from stakeholders, including industry and professionals in the field.

While I am hopeful that the pressure on small businesses has begun to ease with the gradual reopening of the economy, I fully recognise that many companies, while viable, will nevertheless continue to experience difficulties as we emerge from this crisis. In that context, the Bill is essential to provide these companies, where necessary, with a clearly defined and accessible rescue process that will give them the breathing room they need to get back on their feet. It is our responsibility to ensure this vital legislation is implemented in time to make a difference to those viable small and micro companies that are trading through a difficult period.

I thank the members of the Joint Committee on Enterprise, Trade and Employment, under the chairmanship of Deputy Quinlivan, and the Business Committee for their consideration of the Bill and their agreement to waive pre-legislative scrutiny, which will facilitate the Government in bringing the Bill before the House in advance of the summer recess.

Speaking specifically on what is proposed today, many Deputies will be familiar with examinership as a well-established, internationally recognised framework for the rescue of companies in trading or financial difficulties. We know from years of experience that examinership works and saves both companies and employment. However, examinership as a process is overseen by the court from beginning to end. For this reason, it can be an expensive undertaking and, thus, potentially out of reach for the average small company, especially one in financial difficulties.

The defining feature of this Bill is a novel process which reduces court involvement as far as possible with a view to speeding up the rescue process and reducing the associated costs. The small company administrative rescue process, or SCARP, is initiated by the directors of the company concerned and can proceed without significant court involvement if the company's creditors are positively disposed towards the rescue plan. The process is capable of conclusion within a shorter timeframe than examinership. Where examinership can currently run for up to 150 days, this process seeks to arrive at a conclusion within 70 days, although it can be

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suspended where applications to court are required to allow the courts the necessary time and flexibility to deal with the matters raised.

While court involvement is limited, I am conscious that the issue of corporate rescue extends far beyond the distressed company and, as such, the process incorporates robust and necessary safeguards and reflects what I believe to be a fair balance of the sometimes competing interests of stakeholders.

The introduction of this legislation or any new legislation is not without risk. For this reason, officials from my Department have engaged extensively with the Attorney General's office to ensure the process is constitutionally robust and meets the required standards of procedural fairness. The Bill fundamentally mirrors the key elements of the examinership model in an administrative context. We have, therefore, designed a process which is built on a tried and tested framework, with the benefit of years of experience and jurisprudence. The proposals are founded on an existing bedrock of well-understood and well-respected law and deliver an accessible, fair and balanced process for the broad range of stakeholders impacted by corporate rescue.

This Bill also provides for amendments arising from the CLRG's first phase of work in the area of employees' rights as creditors under the Companies Act in line with the recently published Plan of Action – Collective Redundancies following Insolvency. The plan has been broadly welcomed by the social partners, in particular the Irish Congress of Trade Unions. I express my gratitude to all involved for their constructive engagement in this space and I look forward to our continued work together.

I will now outline the main provisions of the Bill. The Bill consists of three Parts and 12 sections. An explanatory memorandum has been published and it provides a summary of the provisions.

Part 1 contains the Short Title, commencement provisions and interpretation. Part 2 inserts a new Part 10A into the Companies Act 2014 providing for the small company administrative rescue process. The Part, which is divided into 12 chapters, details the legal framework for qualifying for, initiating and the subsequent operation and conclusion of the rescue process.

Chapter 1 defines relevant terms specific to the newly inserted Part 10A for the purposes of the operation of the rescue process for small and micro companies.

Chapter 2 sets out requirements an eligible company must meet to avail of a rescue plan. It provides that the process adviser, who is a qualified insolvency practitioner, must determine whether the company concerned has a reasonable prospect of survival. The chapter outlines various criteria the process adviser may have regard to when making his or her determination on the company's viability. Where there is a reasonable prospect of survival, the process adviser must prepare a detailed report in accordance with the criteria laid down in the chapter and this report and its recommendations must be presented to the company directors.

Chapter 3 provides for the appointment of the process adviser by a resolution of the company directors. The rescue process is commenced by a resolution rather than by an application to court. The chapter goes on to set out the process advisers' various duties, for example, to keep the original determination as to the viability of the company under constant review and to give notice of their appointment to the Companies Registration Office, the relevant court, *Iris Oifigiúil* and on the company's website. It also obliges the process adviser to give notice to

employees, creditors and other stakeholders so they are afforded an opportunity to disclose any facts they consider material to the process. In this regard, all relevant parties are involved from early on in the process.

This chapter also deals with the treatment of excludable debt, whereby State creditors, such as the Revenue Commissioners and the Department of Social Protection, may determine to opt out of the process on specific statutory grounds, such as if the company has a poor history of tax compliance. This should provide comfort to businesses that the State will not remove itself from the process for arbitrary reasons. I highlight that there has been significant consultation with the Revenue Commissioners in developing this Bill. The Revenue Commissioners are excludable creditors under the Personal Insolvency Act 2012 and have opted in to over 90% of cases where they are in a position to quantify the debts owed. The Revenue Commissioners have committed to being similarly constructive participants under the process provided for by the Bill.

Chapter 4 provides for the rescue plan process. It allows for repudiation of contracts where the process adviser considers it necessary for the survival of the company as a going concern. Repudiation allows the company, subject to court approval where appropriate, to either formally accept or reject certain uncompleted contracts to which it is party. Any party to a contract which suffers loss or damage because it is repudiated becomes an unsecured creditor for the amount of the loss or damage. The Bill provides for repudiation to be dealt with in two ways. One is by application to court and the other is by way of an out of court process led by the process adviser who will engage and negotiate with the relevant party. Repudiation has proven to be a key tool for dealing with problematic leases in examinership and its inclusion in the new process is welcome.

Under chapter 5, the process adviser is required to call a meeting of all creditors and members to present the rescue plan. The rescue plan is binding without court approval provided at least one impaired class of creditors votes in favour of the plan and no creditor raises an objection to it within a 21-day cooling-off period following the vote. A rescue plan shall be deemed to have been accepted by a class of creditors when 60% in number representing the majority in value of the claims in that class vote in favour of the rescue plan. As with examinership, the proposed process does provide for cross-class cram-down. This means that where one class of impaired creditors votes in favour of the rescue plan, it can be imposed on all classes of creditors.

Under chapter 6, creditors have the right to object to the rescue plan and where that happens, the courts will then have a role in adjudicating the matter, as is currently the case in examinership.

Chapter 7 provides for the treatment of liabilities of third parties for debts of a company using the rescue process.

Chapter 8 provides for the conclusion of the rescue process. This chapter and chapter 9 also incorporate safeguards for creditors such as various enforcement provisions in relation to failure by company directors and process advisers to comply with filing, notice and information obligations. There are also safeguards against and penalties for irresponsible and dishonest director behaviour.

Chapter 10 sets out the various powers of the process adviser such as the power to convene

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and preside at board meetings and general meetings, to dispose of charged property and to examine under oath any relevant person.

Chapter 11 provides for the remuneration, costs and expenses of the process adviser. Chapter 12 deals with matters of a general nature such as the suspension of the various time limits set out in Chapter 10A while any matter is being considered by the courts and the retention of records for six years.

Part 3 provides for miscellaneous amendments to the Companies Act 2014 necessitated by the introduction of the rescue process such as additional cross-referencing throughout the Act. Part 3 also provides for amendments arising from the CLRG's first phase of work in the area of employees' rights as creditors under the Companies Act in line with the recently published plan of action on collective redundancies following insolvency. These are discrete amendments which improve the flow of information to employees as creditors during a liquidation and provide for a dedicated position for employees on the committee of inspection, a committee which may be elected to oversee the liquidation. Finally, Part 3 provides for the application of the temporary amendments made by the Companies (Miscellaneous Provisions) (Covid-19) Act 2020 to provide for meetings under the small company administrative rescue process to be held virtually during the Covid-19 period.

We are all aware of the enormous pressure business owners currently face in respect of not only their immediate liquidity but also the sustainability of their businesses into the future. This is particularly true of small and micro companies. The contribution these companies make to our economy cannot be overstated. These companies will be key to our country's economic recovery. It is for this reason that my priority since taking office last year has been to develop a framework that can provide a genuine alternative for these companies, and through engagement with key stakeholders and Opposition Members we are now in a position to bring forward an effective alternative for the rescue of small and micro businesses. I take this opportunity to commend the extraordinary effort of our public servants, who responded swiftly to the evolving challenges posed by the global pandemic. This legislation is a testament to that, and I commend the officials in my Department working in this area on their dedication and hard work to bring forward this significant legislation to help struggling but viable small businesses that need an opportunity to restructure. As we reopen the economy, I want these businesses to know that this Government is committed to supporting their long-term viability, and I want their employees to know that we are committed to supporting their jobs. To that end, we must have an appropriate regulatory response not simply planned but actually in place and available to small businesses, one which supports fundamentally viable companies to continue to trade, to get themselves back on their feet and to preserve employment.

I remind Deputies that it is our responsibility to ensure that this essential rescue process is implemented in time to make a difference to these companies. It is my hope we can have this legislation enacted before the summer recess. I hope Deputies will appreciate the difficulties inherent in trying to strike what is at times a delicate balance between the respective rights of companies and creditors. More importantly, I believe the balance struck in the Bill is fair for all concerned. I look forward to hearing the views of Deputies and to working with them to progress this important legislation as quickly as possible through both Houses. I am proud to commend the Bill to the House.

Deputy Louise O'Reilly: I think it is safe to say there is more or less unified agreement that there has long been a need for the examinership-lite model, and that is what the small company

administrative rescue process Bill 2021 attempts to deliver. The Bill, while long overdue, is welcome, and I will work constructively and thoroughly to ensure there are no undue delays in getting it implemented. There are many welcome aspects of the Bill, which outlines the small company administrative rescue process. However, the success or failure of the process will boil down to two things: speed and cost. The new process must be not only cheaper than the current administrative process, which is estimated to cost on average between €80,000 and €120,000, but also quicker. It is hoped the new process will reduce the costs to between €20,000 and €50,000, which is extremely welcome. Any reduction in costs will be welcome if we can achieve it. However, these costs are only estimates, and my concern is that in practice they could end up being much higher. Regardless, the costs, even if the target of €20,000 to €50,000 is achieved, can still be prohibitively expensive for micro businesses and some small companies. I hope that through the passage of this legislation we can work out ways to achieve even greater cost reduction so as to benefit micro and small businesses. That is something we can tease out on later Stages.

As for the length of time the new process will take, it is estimated that there may be little reduction in the length of time it takes to conclude the new small company administrative rescue process in comparison with normal administration. As outlined in the legislation, the process could take up to 49 days to produce a rescue plan, and it could take even longer to implement it thereafter. I feel that this area can be improved on, and perhaps we should look at amendments that will reduce the timeframe to a month instead of a month and a half.

The Bill also seeks to give a permanent statutory footing to virtual AGMs. From speaking to many businesses, I understand this is most welcome. I have included an amendment to allow for virtual meetings of members and creditors where a rescue plan has been agreed. I hope to speak further about that on Committee and Report Stages. Again, we will have an opportunity to tease that out fully. In normal times, but especially Covid times, there can be many issues whereby an otherwise sound company can end up in difficulty with debt, and I hope this legislation will ensure that their way out of that difficulty is quick, cheap and straightforward and that they can return to profitability as soon as is possible. Utilising the administrative process through this Bill, I hope, will achieve that. Simple changes that businesses have long called for, such as the commencement of an administration process by resolution of the directors of the company rather than by application to the courts, will make a difference. So too will changes whereby a rescue plan can be approved without the requirement of court intervention provided that the majority in value of an impaired class of creditors vote in favour of the proposal and no creditor raises an objection to the plan within the 21-day period which follows the vote.

It is important that creditors are also protected, and the small company administrative rescue process incorporates safeguards for the protection of creditors of the companies engaging in the process. There is no automatic stay on proceedings to recover debt owed by the insolvent company; therefore, creditors are not impaired by agreeing and entering into the rescue plan. Creditors can engage with the process adviser on his or her appointment and disclose any facts they consider relevant to the process. The process adviser will be subject to the same reporting requirements as the liquidator. Company directors will be subject to the existing restriction and disqualification regime provided for under the Companies Act 2014. The Office of the Director of Corporate Enforcement will also have the power to examine books and investigate, as appropriate, in line with what is provided for in respect of liquidations, receiverships and examinerships. These are all important aspects of the legislation. What is key for all parties is that the rescue plan must satisfy the best interests of creditors test. This means that the plan

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must provide each creditor with a better financial outcome than if the company were liquidated, while also ensuring the future viability of the company in question.

At its core, this legislation is about saving companies and, ultimately, saving jobs. Therefore, I feel there needs to be further provision for workers. It is important that a rescue plan for an eligible company does not include a reduction in the number of employees unless this has been done by agreement with employees and their recognised trade union or representative body, save in the case of a voluntary redundancy process. Also, any rescue plan should make provision to ensure collective agreements can be and are honoured regardless of what happens to the company into the future. In that regard, I have tabled amendments to achieve just this, and I hope we will get an opportunity to discuss these further on Committee Stage.

While this legislation might not get the same coverage as other legislation because it is relevant only to small and micro companies, it is important to remember that these companies provide employment to 788,000 workers in this State. This is very significant legislation which, it is to be hoped, will have a wide-ranging and positive impact. The reality is that the pandemic has taken a significant toll on the economy in general, but especially on small and micro companies. Once Covid-19 restrictions ease this summer and Government support and creditor forbearance reduces, it is clear that a cost-effective restructuring process will be required. Numerous companies with sound business models incur significant debts for many reasons. This new process must put those businesses and their workers front and centre, and ensuring that the new process is cheaper and quicker is essential to that.

We are discussing liquidations. The Minister of State has a report on his desk, the Duffy Cahill report. Provision must be made to look after workers in a liquidation scenario. I have put forward some amendments, which we will have an opportunity to discuss. I watched the debates in this House after the Clerys closure from outside. To a man and woman, every Member took to his or her feet and said we cannot allow this to happen again. Since then, we have had the Debenhams and TalkTalk closures and a list of other examples. Every time this happens, we say we cannot allow it to happen again. I urge the Minister of State to act on the recommendations and select whatever is the preferred option and to talk to the Opposition. We will not do anything other than try to be constructive and get this done.

We need to ensure workers are not left high and dry by the process because that will not do anyone any favours. This process will benefit companies and its ultimate objective is to save the businesses and the jobs. There is another body of work to be done to ensure those jobs are decent jobs. That is the work of the trade union movement, working co-operatively with progressive parties like Sinn Féin to ensure we can make work better. We need to recognise that while we have legislation to help save businesses, we also need legislation that protects workers in a liquidation because very often they are left aside.

I will refer briefly to the workers in Stobart Air who have just been laid off in the middle of a pandemic. This is the worst news at the worst possible time. The aviation sector has been decimated. A plan of sorts, the aviation recovery task force plan, exists but there seems to be no appetite on the Government's part to implement it. The 480 workers must now deal with the Department of Social Protection. They are trying to sort out their redundancies. Many are represented not by a trade union but by a staff association. This is my fourth or fifth time to make this call. We need a named person, either from the Department of Enterprise, Trade and Employment or the Department of Social Protection, with whom these workers can liaise because they are at sea. They are not familiar with the process. They were working in a viable

industry and stopped working not because they wanted to but because of the pandemic. They want nothing more than to be able to go back to work but they cannot do so. They now face collective redundancy and they need some help to access their entitlements, including redundancy and social welfare payments. I ask that the Minister of State liaise with his colleagues in his Department or in the Department of Social Protection to ensure the assistance these workers desperately need is provided.

I will not be able to stay for the duration of the debate as I must go to another meeting. I will follow proceedings on the monitor.

Deputy Ruairí Ó Murchú: We all welcome the legislation to establish the small company administrative rescue process. We acknowledge the need for the system to be streamlined. As Deputy O'Reilly said, the big issues are speed and cost. The Bill provides for examinership-lite to give viable micro and small businesses whatever is needed to ensure they survive. That is why in recent times the State has provided business supports such as the EWSS, the TWSS before that and the CRSS. Particular issues arose when businesses fell between two stools. It appears the small business assistance scheme for Covid, SBASC, and the business resumption support scheme, BRSS, will deal with some of these issues for companies that do not have rateable premises. That is very welcome. This was a particular issue for taxi drivers and businesses in tourism. Hospitality has also been under severe pressure and has not been given great news this week. We need to ensure we can maintain as many businesses and jobs as possible in future. That is vital.

I agree with Deputy O'Reilly that we need to ensure there is protection in place for creditors and, in particular, workers. Liquidations have been a major issue in the past while. We need to find solutions because they are necessary. There is a long sordid history of not protecting workers, from Clerys to Debenhams. As Deputy O'Reilly said, the list is long and we need to deal with this matter.

On viability and the survival of companies, it would be remiss of me not to raise the public liability insurance crisis at this time. I worked with my predecessor, Deputy Gerry Adams, with a company in Dundalk which approached us after its public liability insurance premium went through the roof. The company had come up with possible solutions for the leisure industry specifically but also for community centres and so on. We met the then Minister of State, Mr. Michael D'Arcy, and I followed up on the issue with the Ministers of State, Deputies Fleming and English. I thank them for their interaction on the matter.

I recognise that moves are being made in areas such as perjury legislation and the duty of care where personal responsibility has to come into play. I and many other Deputies have been dealing with companies which have been put under the cosh by Covid and public liability insurance. It has reached the stage that a community centre in Blackrock, Dundalk, was charged a premium of €11,000. To give credit to the local community and the community centre, the money was raised online through a GoFundMe-type campaign. This approach is not viable. It is ridiculous that these premiums have to be paid through charity and community support. No entity can continue like that. The community centre in question previously paid a public liability insurance premium of €3,000, so the premium jumped by €8,000. People bring claims cases and I will not get into the ins and outs of those. Sometimes a case arises from an event or a company may have been providing material. A particular organisation may have had a greater level of involvement, to the extent that a claim might never land directly at the door of the community centre. Unfortunately, however, the €11,000 charge for the premium has landed

at its door.

In many cases, insurance companies do not go to court because they generally do not think it is worth their while to do so. This creates the difficulties we have now.

We all recognise that the new guidelines on payments are positive. We would like to think they will lead to a reduction in the amount people must pay in premiums, especially for motor insurance. However, we have a specific problem with public liability insurance. I have received multiple submissions on the issue. A community organisation very close to home has possession of a very small piece of ground. Previously, it paid public liability insurance of approximately €600 or €800 a year at its most expensive, but the amount involved has jumped to €3,000. This crisis will impact on the community and voluntary sector, individual organisations and a large number of businesses. It is just not viable. I am aware that the Government has engaged in discussions with some insurance companies. We have an insufficient number of underwriters for public liability insurance. However, we are at a crisis level and we must ensure a solution is found.

I would welcome an update from the Minister of State on where those discussions are with other underwriters and what solutions there are for the community and voluntary sector and the organisations I mentioned. Some of the issues I have been dealing with concern guidelines and licensing for community centres and certain aspects of the leisure industry. The aim is that we introduce best practice and reduce the chance of an accident happening. At the same time, we need Government action to ensure that we have more underwriters in the field and that we reduce the chance of spurious claims. We must happen as soon as possible.

I have already given my support for the direction that has been given regarding the legislation. It is necessary, but we must ensure the viability of the business sector and it will be impossible to do it even post-Covid, when we get beyond the point of needing to provide supports, if we do not deal with the public liability insurance crisis.

Deputy Aodhán Ó Ríordáin: This is a Bill whose aims we in the Labour Party consider reasonable. The objective is to try to put in place a SCARP to reduce the number of companies that go into liquidation and instead to give them access to an affordable rescue plan, an alternative and lower cost version of examinership. In the context of Covid, there is pressure on hundreds if not thousands of companies in affected industries that are struggling to survive. We must ensure that perfectly viable companies that are hamstrung by Covid-related debts and obligations have a choice between the new SCARP provided for in this Bill and liquidation.

I understand the pressure to get something done, and to do it quickly. We started the examination of this Bill in the hope that we would be able to swiftly approve the new process and commit to ironing out any problems as we go. However, the more we look at it, the more worried we are that this legislation is far too important to be rushed through without proper legislative scrutiny. The Bill is 64 pages long and will undoubtedly become the bedrock legislation for most cases where companies will be rescued in the next five to ten years. Within that context, there are three main areas that worry us.

The first problem we have is that the Bill does not appear to be compliant with EU Directive 2019/1023. The purpose of the latter is to implement an alternative to liquidation for companies of all sizes in all European countries which will reduce the current level of liquidations, which is exactly what this Bill is designed to do. The Government has asked for a derogation until

2024 for the implementation of this directive, yet we have here the perfect opportunity to implement legislation which would comply. Why will the Government not make the legislation compliant? It appears to us that the Government has no intention of making this small companies administrative rescue process compliant. It will implement compliance in examinership, giving workers in smaller companies less protection than those in larger companies, even though it is workers in smaller companies who need it more. It would be far safer and more effective to make this Bill compliant now rather than try to amend it later.

The second major concern we have is the unholy speed with which the Government is pushing through the Bill. If we were paranoid, we might suspect that the Government is using Covid as a cover for rushing through a Bill which would otherwise be painstakingly examined, line by line, and proper consideration given to amendments. We got first sight of the actual Bill only a week ago, yet the deadline for amendments to the Bill was the day before Second Stage had even started. It is not good practice for us to have a deadline for Committee Stage amendment before the Bill has even been discussed on Second Stage.

As important as this Bill is for companies in the context of Covid, this is not a Covid-related Bill at all. It was part of the Company Law Review Group agenda long before Covid-19 even existed. Unlike other Covid-related emergency measures, the Bill, as it stands, is not time-limited. The fact that there is no time limit greatly leads us to fear that, by accident or design, we could end up with flawed, unscrutinised legislation becoming the bedrock of the industrial rescue process for a generation.

Our third concern is that this Bill will leave workers less protected than they should be. In the short time available, I submitted three amendments designed to address some of the most obvious flaws, but I feel we have only scratched the surface, which again is the reason we should extend the time to debate or put in place time limits if the Government insists on pushing the Bill through. The Bill, as it stands, fails to protect workers from the cross-class cram-down, unlike similar legislation in New Zealand, where workers are excluded as a protected class of creditor. Under section 558N, any equality claim should be excluded from the court's power to stay proceedings, and under section 558L, unpaid awards for workers should be excluded from write-down without the need for a worker to actively assert that right as a creditor.

The voting majorities may need to be changed. We are worried that workers' terms and conditions could be attacked or undermined as part of the defence against onerous contracts, as was threatened recently in a dispute relating to the aviation industry.

The workers affected by the terms of this Bill will be mostly under-represented by a union and many of them will not have practical access to exercise their rights and protections because they will not have the legal representation to even know that they can or should enforce them. Without explicit protection as a unique class of creditor and union representation to defend the few rights they have, we fear that workers will be subject to exploitation.

In summary, we wish we could join in unqualified support for the Bill. There is no doubt that cheaper access to a rescue plan for smaller companies would be preferable to liquidation, but we remain to be convinced that this Bill is ready and that what may seem to be minor flaws will end up being exploited at the expense of workers. At a very minimum, the Government should extend the period for considering the Bill and make sure that it is subject to proper legislative scrutiny.

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Deputy Catherine Murphy: This Bill is intended to provide a rescue mechanism for small and micro businesses facing difficulties. The situation has been exacerbated by the pandemic, but it is something that was needed in advance of it. We know that SCARP will be available to all small and micro companies, those which have a turnover of less than €12 million, a balance sheet of less than €6 million, and where the number of employees does not exceed 50. This covers 95% of companies in Ireland. It has already been stated that it involves 788,000 workers, so it is very significant in terms of the number of people it impacts.

The need for a similar scheme to examinership was highlighted by the Company Law Review Group in 2012, and every Government since has promised to deal with this issue. The pandemic has exposed significant weaknesses, and this is just one of them. A significant number of small and medium-sized businesses will collectively be under pressure at the same time. I agree with the previous speaker about the time provided for debating the Bill, which will be going through Committee and Remaining Stages next week.

3 o'clock

There is a reason for a lengthy legislative process. It gives time to think, evaluate, consult and to put together amendments. This is not in any way ideal. I understand why the Government needs to get this in place quickly but it is important we put on record how unsatisfactory this is. It could end up producing problems which could be overcome in advance of the legislation being passed.

Examinership was introduced in unique and pretty incredible circumstances. When the Iraqi Republican Guard crossed into Kuwait on 2 August 1990, leading ultimately to the Gulf War, it also triggered a crisis here. Within days, the then Taoiseach and leader of the Minister of State's party, the late Charles Haughey, recalled the Dáil from its summer recess to amend the Companies Act in order to keep one of our largest companies in business, the company being Goodman International. Its assets in Iraq were frozen, leaving it on the hook for €215 million owed by Iraqi customers. It was declared too big to fail and the Companies (Amendment) Act 1990 was rushed through the Dáil in less than a week to create what we know today as examinership. Regardless of the origin story, we know from years of experience with examinership that it does work. It saves jobs and is a vital lifeline for struggling businesses and a successful tool for restructuring.

The problem is that examinership is completely out of reach of the vast majority of businesses in Ireland. Over recent years, the number of companies that enter examinership in Ireland has typically ranged between 15 and 30 annually. Of the nearly 600 Irish businesses that commenced an insolvency process last year, only 5% went through for examinership. Examinership is overseen by the courts from beginning to end and as others have said, is therefore prohibitively expensive for the standard small and micro enterprises, costing as it does between €80,000 and €120,000 at a rough estimate. Companies of that size cannot afford it and possibly would not have the credit to enter the process.

Under the proposed new mechanism, small firms facing insolvency will be able to cut debt with support from a majority of creditors without the costs of a High Court examinership and would be able to do it in 70 days. The rescue process being proposed in this Bill is a long overdue and welcome process for small businesses that are facing difficulties. With the limited court involvement, it will hopefully massively reduce the costs involved in what has been described as an examinership-lite process. The estimated costs given for this process are between €20,000

and €50,000. That is a big reduction but is still incredibly expensive for any business, let alone a small business which is in dire straits anyway. Its owners may well think again about whether or not to enter the process. I am not dismissing the importance of it but for many it will not be possible. In the public consultation process for this Bill, was an indication given as to what would be a manageable cost for a small business? Was that something that was discussed? The Minister of State might reference that because it does seem like a great deal of money. Indeed, businesses I have talked to in the past year really do not want to take on debt. They are already struggling and unfortunately I have seen many of them close.

The lack of court involvement is of course conditional on the agreement of the creditors and where agreement is not found, the court involvement kicks in. Experience suggests at least one creditor will object to the rescue plan, forcing the company into court and greatly inflating the cost. I am aware there are safeguards provided in this regard. The rescue process will be commenced by the resolution of directors, rather than an application to court and will be concluded within a shorter period than the existing examinership process. A rescue plan will be drawn up by the process adviser within about 49 days and can be passed with a 60% majority vote from the creditors. A previous contributor talked of further trimming that time period and if that can be done it would be welcome.

Time is of the essence when it comes to putting recovery plans in place. For any restructuring option to work, management needs to act quickly and decisively, with early analysis of the status of the business and engagement with the critical shareholders. In this regard, the Bill provides for a cross-class cramdown of debts, in the name of reducing cost. As I understand it, in the examinership process this means that if one class of creditors votes in favour of the scheme, then the scheme can be presented for approval to the court and can be imposed on other classes of creditors. Will the Minister of State outline exactly how this will work in practice in this rescue process? The Irish Congress of Trade Unions, ICTU, has requested employees be explicitly excluded from any such process. Has consideration been given to this request?

Under section 558R concerning leases, the Bill states the rescue plan or order of the court cannot contain proposals for a reduction in rent. Obviously issues with the constitutional right to private property are at play here. This is another reason we must take another look at Article 43 of the Constitution. For the past ten or 12 years, we have had many complaints about upward-only rent reviews that drove rents very high without the prospect of their being reduced. One must ask about the common good here. This is just another instance that merits that article being examined further and possibly going to a referendum.

The Small Firms Association, SFA, has pointed out the largest risk of insolvency comes as the result of onerous contracts, particularly leases with rent exceeding market rents. This will be particularly important in the aftermath of the pandemic when it can be estimated that some categories of property rent may fall as less fortunate businesses close up. This might put existing businesses, which may be struggling with extortionate rents, at a major disadvantage to new entrants to the market, as well as larger companies who have availed of the examinership process. One of the most valuable features of examinership is the facility to repudiate onerous contracts, including leases at above-market rents. When faced with the alternative of repudiation, most landlords will agree to reduce rents to market levels. The new process will offer little respite to these businesses if they cannot exit unaffordable leases that are at above-market rents.

There is another ethical issue that arises here. I commend the owner of the George's Street Arcade, who showed great leadership in how the tenants of the units there were treated during

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the pandemic. It is the kind of thing that would make me want to shop in that type of location. Public sentiment will appreciate that sort of ethical approach. While one could not make that appeal to many landlords, there will be some who feel that kind of sentiment would be valuable. We should not dismiss that as something that may be possible in terms of people being very public about how they have treated their tenants. The public will appreciate it and it may be a badge of honour some businesses can wear. Many businesses will be in rent arrears or will have made agreements to defer payments and many landlords want to be paid rent and service charges in full from the date of reopening.

There is a need for tenants to be able to agree meaningful arrangements related to high rents in order to sustain businesses since cash flow has plummeted. The current High Court list is full of disputes between retailers and landlords. A number of business lobby groups, including Retail Excellence Ireland, have called on the Government to put in place a formal arbitration process for rent disputes. I would happily support that as it would make sense.

The Company Law Review Group report states that some members of the sub-committee felt repudiation was too complex an issue to be dealt with in a simplified process aimed at smaller companies, while others felt that repudiation should be available where it is necessary to ensure the survival of a company. It seems glib to suggest that repudiation is too complex for the 98% of companies for which the new process is designed. The alternative is to preserve a situation where repudiation is reserved for larger businesses that can use it to gain a competitive advantage over smaller competitors. The variety in our town and city centres is something that we want to try to re-establish. There is a cumulative advantage in doing that. It is important that small businesses that give a distinctive flavour of our towns and cities survive as much as they can. They are likely to be the companies most under pressure and they will have fewer options available to remain viable.

Without significant change, the proposed procedures are unlikely to be a viable alternative to liquidation for companies that face problems with rents. The proposed legislation will allow a rescue scheme for creditors to vote on. In many cases where landlords are the largest creditor, that could give them a power of veto. Perhaps I am wrong about that and the Minister of State might refer to that point when he is summing up.

The Governor of the Central Bank has stated that many businesses will fail as business supports are withdrawn. Banks and non-bank lenders have been warned to support viable businesses and engage with borrowers proactively. There is a serious lack of competition for SME lending now that Ulster Bank has exited the sector. Larger SMEs in particular may wish to and have used multiple banks in the past. That is a new dynamic. Banks need to engage with borrowers that they think need the greatest level of support. While we cannot expect banks to be anything less than pragmatic, there is a need to be flexible and sympathetic and to think about the long-term future of those businesses. If we are looking for a job-rich recovery and if we consider the number of people employed in this sector, any supports that keep viable businesses going will be essential to the broader recovery.

A paper published in April by the Central Bank and the ESRI showed that more than 30% of Irish SMEs recorded a loss in 2020, while a further 30% just broke even. Some 5% of the businesses that made a loss last year were already struggling before the pandemic hit, while almost 20% of those that made a loss in 2020 were merely breaking even before Covid-19 hit, making them more vulnerable to liquidation. There will be a variety of situations. Many would be newer businesses which are just starting to establish and maybe like is not being compared

with like, since others may own the premises and rents would not be an issue. They may have a difficulty with the banks in making sure that mortgage payments can be restructured.

In contrast, the report showed that 42% of the SMEs that struggled last year were profitable in 2019, before the pandemic, showing a promising sign of their ability to trade back to viability. In the first quarter of this year, the number of companies entering liquidation fell by two thirds compared with last year. It is probably due to directors being reluctant to begin insolvency procedures while Government intervention keeps them afloat. In the normal life of a business, every single one will experience ups and downs but the pandemic has put unprecedented obstacles in the way of small businesses and the true impact of the economic fallout of Covid-19 is not yet known.

When dealing with struggling businesses, our first instinct has to be to identify how and whether the company can be saved. The restructuring of businesses saves jobs and saves businesses and should always be the first option considered. Liquidation is the last route for any business and I doubt many want to go down that route. As the Minister of State knows, it costs so much to create new jobs, whether it is done by IDA Ireland, Enterprise Ireland or even local enterprise offices. Retaining those that are viable makes economic sense.

Under this proposed system, Revenue and the Department of Social Protection have the option to opt out on specific grounds, particularly if they feel the process is being abused for tax avoidance reasons. I imagine that ensuring that VAT debts cannot be run up as cash flow would be a concern in this area. I believe there is a similar system in place for personal insolvency arrangements and Revenue has engaged in over 90% of debt restructuring, as the Minister of State said in his opening statement. It is important to recognise that it is needed but we can already see that Revenue has engaged honourably and I hope that this will continue. It is logical to assume that it will take a similar approach here. The main debts of struggling businesses would be owed to Revenue, especially with the tax warehousing scheme offered by Revenue last year. Rents are also an issue. It is essential that the rescue scheme is one that Revenue is willing to engage with in the vast majority of cases and I think it will be.

This Bill also includes a provision to include an employee representative to the five-person committee of inspection for the winding up or liquidation of a business. This is a welcome addition, especially in light of the controversies of Debenhams and Clerys in recent years. It is important to ensure that workers' voices are meaningfully heard and included in these proceedings, and are not outvoted at every turn.

I reiterate that I do not like the idea of this measure being rushed. That is something that should be avoided. There are a number of other areas and one of them, namely, the aviation task force has been referred to in respect of looking at ways to retain jobs on a sectoral basis. I am told that Ryanair is employing cadets who pay a substantial amount of money for training themselves. Pilots who are only paid on the basis of the hours that they fly are now not getting hours. I am told that they are being replaced by newer recruits who have paid for their training. If that is the case, it needs to be considered seriously and quickly because we want to avoid that kind of thing, with the pandemic being used for all the wrong reasons.

Deputy Matt Shanahan: The small company administrative rescue process, SCARP, has been proposed. I am a member of the Committee on Enterprise, Trade and Employment and was glad to waive the pre-legislative scrutiny of this Bill because it is important that it be enacted. It applies to small and micro companies, which represent 98% of all companies in Ire-

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land. These companies support almost 800,000 employees in the State. As other Deputies have alluded to, recent Central Bank and ESRI reports have shown the significant pressure that the SME sector is under. When Government supports are reduced, a number of them undoubtedly will have a difficult time of it. The insolvency process that has been proposed would allow a practitioner to act as a process adviser to assist company directors in coming up with a rescue process framework. For people who are unaware, the administrative process in the country to date would generally require an application to the High Court. This means a minimum expenditure of €100,000 to try to get protection from creditors while company directors seek support. This is not a viable avenue for small businesses. That is why I and other members of the Regional Group are supporting this legislation.

We recognise the process is designed to streamline examinership, allowing communication with creditors and employees, and the proposing of a restructuring plan, including write-downs and write-offs of debt. There is a question with respect to Revenue and how it proposes to deal with historical debt, particularly in light of the warehousing that has been allowed in the last year due to Covid, for example, the warehousing of VAT and Revenue claims. I hope that Revenue will take a proactive stance on this issue. Otherwise, it will be very difficult to find a restructuring process that will work for many small SMEs.

I also raise the question of the treatment of rental agreements and leases, particularly upward-only rental agreements. It has been said that these are protected by the Constitution. I, and others, have seen legal questioning of this, which shows that these agreements are actually not protected by the Constitution. Something will have to be done. It is ridiculous to think that companies will engage in a rescue process in which they are faced with an immediate increase to their rental costs. I applaud the work of ISME in particular with respect to this process - I know the Minister of State has liaised closely with it - in addition to its work on insurance. These are two key areas for the small business sector in getting back on its feet and trying to reduce these significant headwinds.

As I asked the Tánaiste at the enterprise committee the other day, I ask the Minister of State to consider the inclusion of ISME on the labour-employer economic forum. The Tánaiste referenced the fact that IBEC, the Small Firms Association and Chambers Ireland are on it, but this does not represent the full gamut of SME companies. I ask the Minister of State to look at the work ISME has done and to lobby hard for it to be included in this arbitration process. It is very important that the voice of microbusiness is heard in this country.

Members of the Regional Group have supported the recent passing of perjury legislation, which we promoted as a Private Members' Bill and was unanimously accepted by the House. At present, under the proposed small business administrative rescue process, SCARP, legislation, false or misleading statements by a company director are a category 2 offence. I ask the Minister of State to ensure that these offence categories in the new legislation are in line with the recently enacted perjury Bill. As I said, the Regional Group has built upon the fine work of Pádraig Ó Céidigh who promoted this legislation.

On SMEs and microbusiness, I will talk about the macro policy that affects the small business sector. We do a lot of talking in Ireland about micro business and small business and yet we enact large-scale policies that actually reflect what should be happening to macro companies rather than the micros. I am talking about the recent expansion of paternity leave and a sick pay scheme, the discussion on a universal living wage, potential increases to the minimum wage and the increasing regulation coming down the pipes for many businesses. As someone who

ran businesses for a long time, I can tell the Minister of State that these are very hard costs to achieve. Everybody would like to pay their employees more and to offer sick pay schemes, pension schemes and all of that, but these are mainly the preserve of large business. Small businesses, micro businesses and family-owned businesses, are not that profitable in the main. I can assure the Minister of State it is often the case that company directors and owners take less remuneration in a year than some of their best employees. We have to look at some of these schemes and what we are proposing around future taxes on employers.

Again, we have the issue of rates, which will come in to play this year, and insurance. Despite the Covid supports in the business space at the moment, many companies have not been trading, especially in the hospitality sector, but continue to have to pay insurance. They are continuing to pay employer insurance, which makes no sense because they are not open. Yet they have no choice because they cannot find an underwriting option outside the one they are in. This, again, is something Government must take up.

I will also talk for a minute about entrepreneurship because I am not sure that many in this House understand the difficulty of trying to start a business, employ people and make it profitable. We do a lot of work in the enterprise space in this country, talking about investment and local enterprise office, LEO, supports and all of that, but at the end of the day it is down to the hard graft of individual promoters to get up and make it happen. For example, if tomorrow you wanted to open a chip shop anywhere in Ireland, the very first thing you would be faced with is finding a suitable premises and location. That will bring you into a rental agreement and no landlord will enter an agreement for less than 12 or, possibly, 18 months. You will have to come up with the fit-out costs yourself. Before you get to trade, you will have to apply for a health certificate. Health inspections and their requirements will probably result in close to €100,000 in set-up costs before a penny is taken. You then have to make sure there is adequate insurance to cover your premises, begin the employment and sales processes and then look at your revenue and try to build it up. All the while you will be faced with rates and demands for employer taxes.

Ireland is fast becoming a non-benign place in which to run a small business. A large number of owners and promoters of small businesses in this country are now approaching 50 and 60 years of age. If they could get out and sell out they would be gone because it is not profitable anymore. The stress we are seeing across the enterprise space is reflecting that. It behoves all of us in this House, as public servants, to understand how well remunerated we are at the expense of many of these people who are hard-pressed, paying taxes and getting very little from the State for it. I welcome the supports the Department of Enterprise, Trade and Employment has provided to small business, namely, the temporary wage subsidy scheme, TWSS, employment wage subsidy scheme, EWSS, and the Covid restrictions support scheme, CRSS. However, we are still going to need further supports, particularly for the hospitality sector, since the deferral of reopening. I again hope this is something Government will look at.

I will also mention the European travel certificate, which is to come into place on 19 July. Anybody looking at the news yesterday would have seen the pandemonium caused in airports in trying to harmonise quick response, QR codes, etc. I ask that whenever we get a travel certificate up and running, we do not emulate what we saw yesterday. We will have a lead-in for this. We must have time to get it right so that whatever travel there will be will happen as easily as possible.

With respect to the announcement today of a working group on antigen screening, I raised

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the issue of antigen screening with the National Public Health Emergency Team, NPHE, in April or May 2020. We are still talking about implementing it. We are now talking about another body, on the back of two reports on how antigen screen testing will be delivered. We now have the Delta variant and do not have time. We need to start putting some momentum behind these initiatives. On the green certificate, the Tánaiste referenced the other day that, in Europe, it will cover those who are vaccinated, those who have recovered and those who have been recently tested. In this Parliament we now need to look for a green certificate that will take account of antigen tests, so people may have some access to hospitality while they are awaiting vaccination.

With regard to macro policy and political posturing, I will reference a High Court decision to refuse An Taisce leave to appeal a decision on the development of a cheese plant in Belview, Waterford. This project has been held up for more than two years. It was passed by An Bord Pleanála and has had independent reviews and a number of examinations by the Environmental Protection Agency, EPA. The decision to obstruct that project was a policy that was largely built in south Dublin and is essentially, what I would call, political posturing. It is basically trying to make a philosophical political point about the green agenda. It has delayed the dairy and food agri-sector in the south east for two years. Again, Government will have to look at how State-subsidised actors can involve themselves in obstruction of processes that have already been cleared by other regulatory frameworks.

We are facing many challenges in the SME sector. One of the main ones that will come, as soon as supports are reduced, is solvency. As I said, Revenue will have to take a benign look at business. Businesses will find their cost bases are not competitive any more in light of the revenues they will be receiving. Government and the Department of Finance will have to be aware of this. I thank the Tánaiste for recently receiving a Regional Group delegation I led on buying genuinely Irish products, supporting an Irish campaign and for the commitment by Government to start a new buy local campaign in July. This is very important in order to support indigenous food agri-manufacturers, Irish companies and Irish jobs.

I also point out that recruitment is still a major obstacle, believe it or not, as the economy opens up. Government needs to look at the provision of the pandemic unemployment payment, PUP, particularly in lower-paid sectors, which is now acting as a disincentive to re-engaging with employment. This must be looked at. It is a significant problem. As I said, the Regional Group welcomes this legislation and we hope to see it enacted as soon as possible. We look forward to further support from Government for our critical SMEs and indigenous Irish manufacturing. I hope to see a benign attitude taken by the Department of Finance and Revenue in relation to hard-pressed entrepreneurs and sole traders who are trying to get back on their feet after what has been, and still is, a cataclysmic period of economic uncertainty. I look forward to the support of the Minister of State, Deputy Troy, for that agenda also.

An Leas-Cheann Comhairle: I remind Members who may be in the Leinster House campus that the debate is moving very quickly. As the speakers for the next slots are not here, I am moving on to the Independent Group.

Deputy Michael Fitzmaurice: I welcome the opportunity to speak on this Bill and I support it. It is good that we are shining a little light on small and medium sized businesses around the country. When a person decides to start up a small business in which only he or she or three, four or five other people are to be employed that person is taking a risk. Many people put their houses and their families at risk until such time as the business takes off. We hear a great deal

about the supports available for small businesses. At the end of the day, most of them have to get their finance from a bank. In that regard, they are required to have a set of books and a business plan but, generally, they will need securities to get the businesses off the ground. They slog hard and for long hours to get a business up and running. It can take up to three years for a business to get a return. Unfortunately, some fail as well.

In terms of the last 18 months that we have been through, I hope I am wrong, but if some of our SMEs stay closed for much longer I fear for next winter. Many SMEs, in particular those in the hospitality sector, are reliant on summer trade for the income they need to enable them to withstand the winter. Often, a business is workable but one particular creditor might move on it. The new system that is being introduced is a good one. It provides an alternative plan. It is another way of doing the business for our small businesses to keep them going, taking into account assets and liabilities, what is owed and the viability of the business going forward. I welcome that.

Like the previous speaker, I note that a judge makes the final decision. I would appreciate clarification on the position in regard to Revenue debt. For example, is it so many cents in the euro? What happens in the line of Revenue? There is another issue that needs to be looked at, that is, the number of small businesses that are going bust. We have seen enough, especially in Dublin, of what can happen to workers. In fairness to Governments, at one time there was a cushion in place to help the workers. I understand that currently where there is an inability to pay - the Minister of State can correct me on this if I am wrong - the Government steps in. The Minister of State might provide clarification in relation to this sector.

It needs to be recognised that in this country a massive amount of our jobs are created by small and medium sized businesspeople. As stated by the previous speaker, they go through so much rigmarole. We need to change our planning system. There is always someone who will object to everything. Even if one wanted to put a flag out, there would be someone to object to it. We have to get that situation sorted. In fairness to many of the councils throughout the country, it was a good idea to incentivise people to set up a new business 5 km or 10 km from an existing business by way of an exemption from rates for a few years. I recall bringing that up in Galway County Council during my time as a councillor there. We need to make sure the rateable system is fair. There are many small businesses in rural areas. In my area, in the 1980s and the 1990s people from a small farming background had two choices, that is, to emigrate to England or move to Dublin for work or to set up a business. Many people opted for the latter, which is great because they contributed to the local communities and the economy and they created employment. Small businesses are ferociously involved in local communities. It is important to mention that it is not the businesses that take out advertisements on RTÉ or TV3, for which they can pay thousands of euro per minute, that sponsor the local football teams or fundraise for the local community centre or a person in the area who is sick - it is the local business. Local businesses keep giving and they need to be appreciated for that.

My concern in regard to businesses small, medium and large is that we will lose competitiveness. The previous speaker spoke about a shortage of labour. It is true that there is a shortage of labour throughout the country. Not alone that, the theory test and driving licence fiasco is impacting on the agriculture sector. Previously, when a youngster passed a theory test he or she obtained a learner permit and could drive a tractor to bring in silage. There are contractors crying out for help. I know that the Minister of State is well tuned in to the rural areas because he comes from Mullingar. Someone needs to make a decision. There was much talk about the number of driving tests per month being increased from 25,000 to 50,000 but something has

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hailed that back. I know a young lad who wants to work. As someone once said to me, it would be a different thing if young people did not want to work. The young about whom I am speaking want to work. Yesterday, the young lad arrived at the test centre to take his driver theory test and just before going in he received an email about it on his phone. That is one of the most discouraging things we can do to young people. I ask the Minister of State to please sort out the theory and driving licence systems.

On planning, I welcome the judgment today from Mr. Justice Humphreys. We might be lucky and that will go ahead, but it is important to remember that businesses do not wait. We need to monitor that situation. In many instances, where people are blocked or stopped from creating jobs, they move on. I have previously raised on the record of the Dáil my concern in regard to the price we are paying for electricity. I heard yesterday evening on the news that all of the providers are to increase the price of electricity again. We have had a few amber warnings. I heard today that legislation is to come before the House next week or the following week to provide for a spend of €200 million and to bypass planning to put in place additional generators in Dublin to make sure the lights do not go out for the winter. The Minister of State has a great understanding of the lot of the rural areas. Is it not rather unusual that we are able to bring forth legislation quickly to bypass all planning to enable the installation of these generators so that the lights will not go out in Dublin next winter but we were not able to bring forth emergency legislation to sort out the Bord na Móna problem? The will to do that was not there because the Minister, Deputy Ryan, was not intent on doing it. He was clapping his hands when the jobs in Bord na Móna were being done away with. It is sad that I have to say that, but it is the reality. We have major problems because some plans are being drawn up. We hear all of this talk about data centres. I went through it yesterday and we had as high a peak in 2010 as we have at the moment but the power was there. We had more than enough power at the time. However, we have since chopped the likes of Shannonbridge, Lanesboro and Moneypoint. It is like putting the cart before the horse. We are ticking the box and telling everyone that we are mighty and that, Jesus, we are the cleanest in the world in what we are doing but, in actual fact, we are costing people their jobs. I talk to people in industry and I can tell the Minister of State that there is great fear among some of the big employers and, indeed, the medium-sized employers in this country about whether we will have power and where we are going as a country. If there is any doubt about that, they will move their jobs to other places. We can tick the box and say we have achieved 80% of this climate target but, in actual fact, a heap of people are unemployed and we have to start paying out social welfare. That is no good. All of this must be balanced. It must be done constructively. Businesses cannot be penalised. The electricity tariff businesses have to pay is ferociously wrong. We need to encourage them and to help them.

The other side to it is that we need to put jobs in sectors such as construction - and I have talked about this before - on a pedestal in a way we never have before. The old technical schools were great at one time. Unfortunately, many of them are now gone. There was a snobby attitude around the country that pipelayers, digger drivers or whatever never bothered their arse going to school. That is not correct. There are people who are gifted with their hands. Others are gifted at computers or nursing. There are people who are gifted at pipelaying, carpentry, blocklaying and stonemasonry. These are arts and skills which we should appreciate. Unfortunately, because of the boom-bang cycle we have had down through the years, people were like swallows. They headed off to wherever the work was. If the work was in Dublin, that was where they went. The next thing was that the work was in England, possibly London. What happened during this last lockdown - and I saw it because I know a lot of people in the sector - is that England kept going and a lot of the machine drivers headed there. This has a knock-on

effect and, unfortunately, if one cannot get people to do the work, the work slows down. We can blame governments, builders or anyone else in the world in this big debate on housing but, at the end of the day, if we do not have enough people with the right skill set, we can throw all the money we want at a project but it will not get done. We need to watch these things.

I ask the Minister for Further and Higher Education, Research, Innovation and Science to work with businesses. There are a lot of areas in which we could have apprenticeships. In Germany, there are 320 types of apprenticeship. Norway has 480 different types of apprenticeships. These mean that people do not have to go to college for three or four years, having a good old bit of craic. We need to look at courses to see how we can adapt them towards people working with a business for a while before going back to college for a while and striking a fine balance between the two. Employers taking on people are also genuinely worried that, having put resources into someone, that person can then leave. If an employer puts resources into somebody, there should be a year or two or three of payback. There should be some sort of a system so that it is not somebody else who gets the great benefit out of the money the employer has invested in somebody. I ask the Minister of State to consider that.

The electricity issue needs to be addressed in a big way. I will not harp on all evening. I know the Ceann Comhairle wants to head for the hills. In fairness, I welcome the Bill in general and I will support it. That is all I have to say.

An Ceann Comhairle: I could listen to Deputy Fitzmaurice for hours. Nobody else is offering so I invite the Minister of State to respond to the debate.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): I thank the various Members of the Dáil for contributing to the debate, which has been largely positive. I again thank those Members who sit on the Oireachtas committee that facilitated the waiving of pre-legislative scrutiny, enabling us to bring this Bill to the Dáil before the summer recess.

I acknowledge that Deputy O'Reilly had to leave but I will reply to some of the questions she raised. She mentioned the issue of costs. The costs will depend on whether any element of an application has to be referred to court. The Bill also requires that process advisers' fees be notified to the directors of a company in advance of the appointment of a process adviser. The fees are also notified to the creditors of a company as part of the provision of information concerning proposed rescue assistance. The creditors are entitled to question this and to object to any part of the plan, including the process adviser's fees. Protection is, therefore, secured.

Regarding whether a plan can be produced more quickly than within the 49 days specified, I do not believe it can because there are minimum requirements for notice during the various stages of the plan's preparation. If the required notice for each stage is given, there are only two weeks left at the end for the process adviser to bring forward a restructuring plan. To be fair, an adviser would need that time. That is the reason the time limit was set at 49 days.

With regard to virtual meetings, the Deputy may have missed it but there is an amendment included which allows virtual meetings to take place. With regard to liquidations, the Department is working on guidance for employees which will explain, in plain English, their entitlements with regard to redundancy and liquidations as part of the plan of action, to which the Irish Congress of Trade Unions has signed up. That will make sure that people can navigate this technical area and access the information they need. Reference was also made to the Duffy

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Cahill report. As I have said, a plan of action has been established and this is being supported by the Irish Congress of Trade Unions. As Deputy Catherine Murphy acknowledged, there are some minor amendments with regard to enhanced information and ensuring that employees can sit on that governing body. That is being addressed as part of this Bill.

Deputy Ó Murchú raised some of the same issues as Deputy O'Reilly but he also highlighted the issue of insurance. I agree with him wholeheartedly. It is an issue on which I was very vocal when I was on the far side of the House. To be fair, a lot of work has been done on this issue over the last 12 months. The judicial guidelines have been implemented. As the Minister of State with responsibility for the Personal Injuries Assessment Board, PIAB, I will say that, in the period since the guidelines were introduced, some 540 cases have been adjudicated by PIAB and there has been an average reduction of in excess of 50% in the awards being issued. In some instances, the reduction has been as high as 74%. The action plan on insurance reform will go to Cabinet before the summer recess and an outline of every action point, and where we are with it, will be given.

I thank the Deputy for acknowledging the small business aid scheme. The Minister of State, Deputy English, and I spearheaded that in the Department to ensure that businesses that inadvertently fell through the cracks were protected. I am glad that scheme seems to be working pretty well.

A couple of Deputies mentioned the perjury legislation. I, too, will mention the former Senator, Pádraig Ó Céidigh, who was instrumental in ensuring that legislation was enacted. He deserves acknowledgment for that. The Government was happy to ensure this was enacted a number of weeks ago.

I do not and cannot accept the criticism that this legislation is rushed. It was examined by the Company Law Review Group, CLRG. Some 12 months ago, we asked it to examine this as part of a programme of work and it did so. People involved in that process included practitioners, businesses, unions and academics. Subsequent to that, a lot of work was done by the officials in my Department and the Office of the Attorney General. Subsequent to that, we went out for public consultation. We got 17 substantive submissions on this legislation. Work continued on ensuring that the legislation was robust and constitutionally sound. The Bill is not totally new. It is based on existing law. We are simply streamlining existing law and no one will be any less protected.

It is interesting to note that Deputy Catherine Murphy complimented the examinership process that was done over a period of a week when the Dáil returned from recess. It was okay, internationally recognised and good for the Goodman Group but, after a year's preparation, it is stated that we are rushing a Bill that will give protection to small and micro companies.

(Interruptions).

Deputy Robert Troy: That is what we are doing. After a year, we are bringing through legislation and honouring a commitment to give viable small and micro companies the opportunity to restructure. At least the Deputy sat in for the debate. Deputy Ó Ríordáin was critical of what we are doing and of the time allocated for the debate. He took five of his 20 minutes to contribute and then skipped off and did not participate in it. This is about ensuring small viable companies have the opportunity to enter into restructuring process to protect the company and, more important, the jobs that are dependent on it. I do not take the criticism the Bill is rushed

at all.

I thank Deputy Shanahan and the Regional Group of Independents for supporting the Bill. The Deputy mentioned a number of points. One was that ISME should have a place on the labour employer economic forum. I agree with him. I have made that point to the Taoiseach and the Tánaiste and will continue to make it. I also agree on antigen tests and I have continuously said that internally in my party. It is worth nothing that antigen testing is included in the return to work protocol published by our Department in May. It sets out how it can be used in various workplaces. It is being used well in workplaces and it should be rolled out further.

Deputy Shanahan also mentioned the hospitality sector. We were all bitterly disappointed that we had to press the pause button earlier this week but in acknowledgement of the difficulties the sector is experiencing because of that, there are enhanced supports for the next number of weeks, and rightly so. The Taoiseach, the Tánaiste, the Minister for Health, Deputy Stephen Donnelly and the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media, Deputy Catherine Martin, met with various representative bodies on Wednesday this week and extensive work is ongoing to come up with practical solutions to help get them open as soon as possible. I have engaged with some representative bodies on that. There is a willingness to come up with solutions but we have to be cognisant of the issue with the new variant and we have to ensure that we protect the overall economy and our health service. I do not think anyone would like to see the health service experiencing the difficulties it experienced in January.

Deputy Fitzmaurice made a number of points. He referred to Revenue debt and was asking, I think, whether it is so many cent in the euro. Every plan will vary but Revenue or any creditor must receive more than if the company went into liquidation. That is in the best interests of creditors. It will vary depending on how the restructure is decided upon.

The Deputy is right about small and microbusinesses. They are the backbone of the economy. A total of 788,000 jobs are in the sector. Any business with fewer than 50 employees and with an annual turnover of less than €12 million can avail of the scheme. Some 98% of companies registered with the Companies Registration Office fall into in that category. That is another reason it is important to get the legislation enacted before the summer recess. Businesses are at risk of failure. Businesses and the stakeholders that engaged in this do not want to see it pushed out any longer than it should be.

Deputy Catherine Murphy had a query on onerous contracts, particularly in the context of leases. This is the same as the examinership process in terms of repudiation and treatment of leases. There are two options. One is similar to examinership and involves going through the court process. The second is to come to a mutual agreement under the supervision of the insolvency practitioner. The Deputy was right to acknowledge George's Street Arcade for the manner in which that landlord engaged with lessees. That was done very publicly but there are many other landlords who have engaged practically and reasonably with lessees because they want to ensure the business survives and continues to trade.

I thank the Ceann Comhairle for facilitating the debate and I thank Deputies for their contributions. I look forward to working with Deputies on Committee and Report Stages. It is urgent that we get this legislation enacted before the summer recess.

Question put and agreed to.

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Teachtairacht ón Seanad - Message from Seanad

An Ceann Comhairle: Seanad Éireann has passed the Civil Law (Miscellaneous Provisions) Bill 2021 without amendment.

The Dáil adjourned at 3.57 p.m. until 2 p.m. on Tuesday, 6 July 2021.