

DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE AND THE MARINE

Dé Máirt, 20 Aibreán 2021

Tuesday, 20 April 2021

Tháinig an Comhchoiste le chéile ag 9.30 a.m.

The Joint Committee met at 9.30 a.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Martin Browne,	Victor Boyhan,
Matt Carthy,	Paul Daly,
Michael Collins,	Róisín Garvey,*
Michael Fitzmaurice,	Tim Lombard.
Pádraig Mac Lochlainn,+	
Thomas Pringle,+	
Michael Ring.	

* In éagmais / In the absence of Deputy Brian Leddin.

+ In éagmais le haghaidh cuid den choiste / In the absence for part of the meeting of Deputies Matt Carthy and Michael Fitzmaurice.

Teachta / Deputy Jackie Cahill sa Chathaoir / in the Chair.

Business of Joint Committee

Chairman: Apologies have been received from Deputy Kehoe. Deputy Mac Lochlainn is substituting for Deputy Carthy. Before we begin, I remind members that in the context of the current Covid-19 restrictions, only the Chairman and staff are present in the committee room and all members must join remotely from elsewhere in the parliamentary precincts. The Chairman issues invitations to join the meeting on MS Teams and members may not participate from outside the parliamentary precincts. I ask members to mute their microphones when they are not making a contribution and to use the raise hand function to indicate. Members should note that messages sent in the meeting chat are visible to all participants. Speaking slots will be prioritised for members of the committee.

Before we begin, I would like to state for the record decisions made by the joint committee in private at its MS Teams meeting on 9 April. It was agreed that the committee would write to the Department of Agriculture, Food and the Marine to express concern that feedback from the committee and stakeholders about the new veterinary medicine regulation is not being taken into account by the Department and to seek further briefing on the matter. It was also agreed to invite the Irish South and West Fish Producers Organisation to a future meeting of the joint committee to discuss its submission to the Government's review and renewed consultation. It was further agreed to add the new rural environment protection scheme, REPS, to the committee's work programme.

There are two topics on the agenda for today's meeting. From 9.30 a.m. to 10.30 a.m., we will have an engagement with the Minister for Agriculture, Food and the Marine, Deputy McConalogue, on pre-legislative scrutiny of the sea-fisheries (amendment) Bill 2020. From 10.30 a.m. to 11.30 a.m., there will be a discussion with representatives of Macra na Feirme on the impact on young farmers of CAP negotiations and the good agricultural and environmental condition, GAEC, 2.

General Scheme of the Sea-Fisheries (Amendment) Bill 2020: Discussion

Chairman: We will now commence pre-legislative scrutiny of the sea-fisheries (amendment) Bill. I welcome the Minister, Deputy McConalogue, Dr. Cecil Beamish, assistant secretary at the Department of Agriculture, Food and the Marine with responsibility for fisheries, Ms Josephine Kelly, principal officer, sea fisheries policy and management division, and Mr. John Kinsella, principal officer, legal services division. The officials join us remotely from a witness room in Kildare House. They are all very welcome to the meeting.

We have received the Minister's opening statement and briefing material, copies of which have been circulated to members. As we are limited on time due to Covid-19 safety restrictions, the committee has agreed that the opening statement may be taken as read and the full session will be used for questions and answers. All opening statements are published on the Oireachtas website and are publicly available.

Before we begin, I have an important notice regarding parliamentary privilege. Witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their

evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Participants in the meeting from a location outside the parliamentary precincts are asked to note that the constitutional protections afforded to those participating within the parliamentary precincts do not extend to them. No clear guidance can be given on whether, or the extent to which, their participation is covered by absolute privilege of a statutory nature.

The legislative proposal we are discussing is a hugely important issue for the fisheries sector. Before I invite questions from members, I ask the Minister to comment briefly on how he sees the situation for the sector at this time and the necessity for this legislation.

Minister for Agriculture, Food and the Marine (Deputy Charlie McConalogue): I thank the Chairman and members for their very prompt response to our request for pre-legislative scrutiny of the sea-fisheries (amendment) Bill. I brought the heads of the Bill to Cabinet last week and sought approval for the scrutiny process and to proceed to general drafting. I look forward to the engagement with the committee and to members' feedback and comprehensive teasing out of the various aspects of the Bill, both in pre-legislative scrutiny and as it moves through the various Stages in the Dáil and Seanad.

These proposals follow on from the penalty points system that was introduced for licence holders, which was established by statutory instrument last August. Since 2012, there has been an obligation on us, as an EU member state and in accordance with the Common Fisheries Policy, CFP, to introduce a penalty points control system for both licence holders and masters. We are the only remaining member state that has not yet introduced both penalty points systems. While we were able to introduce the licence holder penalty points arrangements by way of statutory instrument, as there was a legislative basis at European level to do so, we require primary legislation to put in place a system to deal with masters. It is on this basis that I have brought forward these heads of Bill. I look forward to the committee's full engagement with, and communication on, the provisions as we go forward.

Chairman: I thank the Minister. Deputy Mac Lochlainn has indicated that he has questions.

Deputy Pádraig Mac Lochlainn: As the Minister knows, we sought to annul SI 318 of 2020, which he introduced. We debated the proposal in the Dáil and I have to accept that it was voted through. I remind the Minister that when he was Fianna Fáil spokesperson on agriculture, food and the marine, he had a very different view on this matter. His colleague and former Deputy, Pat the Cope Gallagher, when he was spokesperson on the marine, introduced an annulment motion.

There are a number of points I want to reintroduce today in regard to the heads of this Bill. Specifically, I want to raise again the four key and reasonable bones of contention the industry has with these proposals. I have read the Minister's opening statement and, remarkably, what is missing in his assessment is an acknowledgment that the draft penalty points have been challenged in the courts and the Supreme Court has ruled on the matter previously. Everybody recognises that the European Commission is demanding that Ireland introduce a scheme. It is agreed that there needs to be a penalty points system, and oversight of that system, and that we must ensure our fisheries are operated sustainably. Unfortunately, the schemes that have been introduced on a number of occasions have not been fair and just. I will go through the cor-

respondence that was issued to the Minister by the various fishing organisations in September 2020.

Point 9 in the draft general scheme, which is on page 10 of the document, shows that the Minister has not addressed the four main areas of concern for the industry, and I am sure that will continue through the scheme. The four major producer organisations in the State, namely, the Irish South and West Fish Producers Organisation, the Irish Fish Producers Organisation, the Irish South and East Fish Producers Organisation and the Killybegs Fishermen's Organisation, have written to the Minister to raise the four key issues. The first of these concerns the decision to be made by the determination panel on the balance of probabilities. This is very serious stuff because we are talking about potentially taking away somebody's livelihood. The threshold for conviction for all Irish citizens and, indeed, European citizens is beyond a reasonable doubt. That is the threshold a director of public prosecutions and a jury looks at - beyond a reasonable doubt. That is the accepted threshold yet we are going with a threshold of "on the balance of probabilities", which I think is very dangerous. I reiterate that this type of approach has been rejected by the courts and it is the reason that it has taken so long for us to bring in legislation. With all due respect to the senior officials in the Department, they keep getting things wrong when drafting this legislation and, unfortunately, they have been turned around in the courts, which is what has delayed this process.

Having spoken to people across the industry I want to take this opportunity to say the following. There is an attempt to present the fishing industry as some kind of a mass illegality or an industry that does not like to follow laws, is up to skulduggery and so on. We only have to see that the funding and number of staff for the Sea-Fisheries Protection Authority have multiplied tenfold since it was brought into place so one has an organisation or regulator that has been seriously resourced. Any fisherman with whom I have spoken talked about how determined these officials are in terms of doing their job so I do not think anybody doubts the determination of the SFPA to implement the law. If some mass illegality did take place then how come we have not had a mass number of people convicted in the courts? It is very dangerous for the State to allow a narrative to go out that mass illegality is happening in the fishing industry.

Let us remember that the fishing industry is being squeezed out of its rightful access to the fish in our seas. We had 12% of the seas in the European Union yet we only get 4% of the quota across the European Union. We get one third of what should be our natural right so we should stand up for fishermen rather than allow a narrative of criminality and illegality to be placed on our fishing industry. Of course there should be oversight, and people should fish sustainably, not over fish and where over fishing is found to happen then people should be taken to task but there must be due process and it has to be fair. Every citizen is entitled to that fundamental pillar of our democracy and I find it astonishing that we allow legislation to again be presented to us that accepts a ban that removes any reference to "the balance of probabilities" and replaces it with "beyond a reasonable doubt". I appeal to the Minister to do that today and I draw his attention to the language again used in section 9, page 10 of the general scheme.

As the Minister will recall from correspondence he received from the four producer organisations, POs, last September, it states: "Where points remain on a licence even in the event of an appellant being exonerated of any offence." This provision is very objectionable. This is where a person has the right to take his or her case to a court of law if he or she feels that he or she has done no wrong yet, even if successful in that court of law, those penalty points remain on the licence. Can one imagine a situation where a person pulled over by the Garda for speeding is adamant there was no speeding and goes to a court of law where the case is won yet the

points remain on the licence? Such a situation would not be tolerated by citizens yet we expect fishermen to find it acceptable.

The third point of contention is that fisherman are only allowed to apply to the High Court on a point of law. Again, the fishing community finds that objectionable.

The final point of contention, and I have no doubt that it is replicated in this legislation, is “where points attached to capacity multiply in the event of that capacity being subdivided”. In other words, those points flow throughout even if one sells and subdivides one’s capacity.

The Minister must agree that these are four reasonable grounds of concern for the fishing industry. As he knows, with all legislation that is presented to the Oireachtas one would expect that he would consult the stakeholders and invite them to make submissions. I know that he has rejected these grounds. I cannot see how any Minister can stand over the balance of probabilities being a threshold for conviction, having to go to court yet still be unable to remove points and being only able to apply “on a point of law”.

Finally, I am pretty sure that every Deputy and Senator on this call today, and every fisherman I know that is worth their salt, understands that there needs to be a penalty points system. We all understand that we must have oversight and laws and that we must protect the precious amenity and natural resources in our seas but there is a plethora of staff in the SFPA, and there is the Naval Service and An Garda Síochána. There is a wide range of people to enforce the law but citizens have a right to due process and to be considered. Most important, a citizen has the right under law to be considered innocent until proven guilty. In my opinion, one must prove one’s innocence as one is presumed guilty under too many of these processes. I put all of that to the Minister and look forward to his engagement.

Deputy Charlie McConalogue: I have previously discussed this matter with the committee in terms of the licence penalty points statutory instrument and licence holders. Also, I met and discussed the matter in great depth with fishermen’s representatives.

A number of proposals or suggested amendments were put forward on the licence holder statutory instrument, which my own party put forward in opposition, that we felt should be considered. The amendments were considered in great detail and some were incorporated such as additional time for the appeals process, etc. For some of them, given the legal advice following a full assessment, it was found that if they were to be accepted it would mean that the statutory instrument and the licence penalty points system would not pass muster or meet the expected thresholds. At that time they were examined in massive detail, given exceptional hearing and fully examined as to the capacity for them to be absorbed and incorporated into the statutory instrument.

The masters penalty points system requires legislation. The same approach and the learnings from all of that full examination and assessment is followed through in the approach being taken now with the masters penalty points legislation. It is very similar to and consistent with the approach taken in terms of the licence holders.

As I mentioned at the outset, the regulation requires each member state to have a penalty points system for licence holders and for masters has been in place since 2012. We are very late to the table and are the last member state to put this legislation in place. The initial licence statutory instrument was legally challenged and found not to be appropriate in some regards so a new SI was required. There was a significant examination of the amendments put forward by

my own party and a new SI was introduced last August.

Overall, the two penalty points systems must achieve a system that is dissuasive, proportionate and effective, which are the key thresholds.

I will touch on the three points the Deputy raised. On the issue of the standard of proof to be used by the determination panel and the appeals officer, balance of probabilities is the approach that is being taken. The legal standard of beyond a reasonable doubt is almost entirely confined to criminal trials and is not applicable to proceedings that are civil in nature. For any civil proceedings that end up in court, the standard used is on the balance of probabilities. It is a standard that is used for the licence holders points system and for the masters system we are discussing. Our legal advice is that it is the appropriate legal standard for the penalty points system to ensure we are compliant with our responsibilities as a control authority and as a control member state.

The Deputy asked about cases where there is no guilty verdict in criminal proceedings. Where the master or owner is found not guilty in criminal proceedings, this proposal would involve both systems being interlinked. They would not stand alone from each other if the proposal the Deputy is making were to be adopted. They are separate systems involving separate standards of proof between the points and a criminal prosecution. It would lead to confusion and conflation of evidence, and render elements inadmissible. In addition, the legal advice is clear that points under the EU regulation are intended as additional to criminal prosecution. I will repeat that. The legal advice is that points under EU regulation are intended as additional to criminal prosecution. Accordingly, it could not be argued that Ireland has both criminal and points systems as required under EU regulation if we operated this system in a manner whereby criminal proceedings completely eclipsed the points system.

That is the legal advice we have on the matter. The overarching point I would make is that it is my objective to introduce a system which is as balanced and proportionate to all of our responsibilities and, indeed, to the fishing sector as it possibly can be while meeting our legal obligations to comply with European regulation. There is no point in any of us going through this process and introducing a system that then falls flat on its face and does not meet our legal obligations. That adds no value. We need to deal with the facts and deal with the issue.

We certainly should tease out the details as we are doing today and over the next period but, ultimately, what we introduce must ensure that, as a member state, we are compliant with our obligations under the 2012 EU regulation. At the moment, Ireland is the only member state that is not compliant. We would all be wasting our time if we fool ourselves by introducing a system that does not bring us into compliance with our European obligations as a control member state authority. That is ultimately where we need to be at the end of this process, having introduced this legislation.

Regarding a licence holder having a full right to the rehearing of a case before the High Court, the legal advice is clear that under the Constitution the High Court has full original jurisdiction and can hear all matters of law brought before it. The legal advice is that it would be highly anomalous, if not unprecedented, to provide such a full High Court rehearing of a matter first governed in procedures set down in the previous statutory instrument or, indeed, in this legislation. In addition, it would delay the application of points which would run up against the timelines stipulated in the EU regulation that points apply for three years from the commencement date following detection. To that extent then it would hinder the effective implementation of this EU law and would not meet Ireland's obligations to implement these EU provisions.

Similar challenges would have been teased out regarding the licence holder penalty points system. They were given great examination at that time when amendments were considered and ultimately decided upon. The same considerations apply to this masters penalty points system which is very much based on the licence holder one.

Deputy Michael Collins: I thank the Minister and his officials for appearing before the committee. I have a number of questions. The Minister may not be able to answer them all in the time we have allocated, but he might come back to me in writing.

This is another blow for the fishermen and fisherwomen in this country. It could not come at a worse time, regardless of when it should have been implemented. The statutory instrument, SI 318/2020, is linked to this Bill. It was signed into law by the Taoiseach in August 2020. That was a grotesque and deeply damaging act by the Taoiseach, who was the then caretaker Minister for Agriculture, Food and Marine. What is worse was that it occurred without any consultation with the fisheries sector. Does the Minister believe it was handled well?

The Minister's first meeting with the fisheries sector via Webex was on 16 September 2020. Representatives of the sector raised their deep concern over the introduction of SI 318/2020 at that meeting. Why did the Minister not listen to the representatives of the sector that day, rescind the statutory instrument and go back to the drawing board, including the sectoral viewpoints, in redrafting a more appropriate statutory instrument?

Why did the Minister vote against the same statutory instrument in 2018 when his Dáil colleague from Donegal, Pat The Cope Gallagher, brought a rescinding motion before the Dáil? What changed between the summer of 2018 and 2020? The statutory instrument did not change. Was it that the opportunity for power changed the Minister's mind and blinkered where his loyalties lay? It appears to me and to many fishermen and fisherwomen, including many in his county, that he is doing one thing in opposition and another thing when in power. Has the Minister consulted with the man who proposed having the original statutory instrument rescinded, namely, the former Deputy, Pat The Cope Gallagher, for advice and guidance? Surely that should have been his starting point given that he had been advocating for the industry back in 2018 on this very issue.

Why is the burden of proof, under SI 318/2020 and this Bill, on the balance of probabilities and not, as required in criminal cases, beyond a reasonable doubt? Why is the Minister degrading the civil liberties of fishermen and fisherwomen in this way? Why do the statutory instrument and the Bill not allow fishermen and fisherwomen a right to appeal a sanction arrived at on the basis of balance of probabilities? It makes no sense and undermines the civil and human rights of the entire fishing sector. Would the Minister not agree that this is dictatorship territory?

Why is the statutory instrument, introduced by the Taoiseach and then acting Minister for Agriculture, Food and Marine, forcing the fishing licence holders to retain the penalty points on their licences even if their cases are cleared in court? Does the Minister believe this is fair and just in a liberal democracy? It is no longer that our courts are the highest law of the land. If a fisherman gets points under this administration scheme, they cannot be removed by any court.

I plead with the Minister, even at this stage, to see common sense and stop being influenced by the bureaucrats in Brussels. He should rescind SI 318/2020, go back to the drawing board and give the fisheries sector an input into the penalty points system.

Deputy Charlie McConalogue: Regarding consultation with the industry on the previous statutory instrument, it is clear there has been considerable engagement with the industry on this issue over the past couple of years in particular. As I outlined to Deputy Mac Lochlainn, there was significant engagement with industry on proposed amendments and these were then fully assessed and examined. Those that could be incorporated, while ensuring that we introduced a system that meets our obligation, were incorporated. Those that could not be without meaning that we were bringing in a system which did not meet our obligation were not incorporated. Great examination and consideration were given to that.

After I was appointed as Minister, I met representatives of the industry and engaged with them even further. We examined and discussed all the issues we are discussing here today. I explained that some of the proposed amendments have been incorporated - those that could be incorporated without undermining the capacity to introduce a system that met our obligations. Those that did not allow for that were not incorporated and overall it had tremendous examination. The two statutory instruments - the one that was rejected by the Dáil and the one that was introduced in August - were different in that they incorporated those amendments that were considered to be able to be incorporated without making the statutory instrument one which would mean we still would remain non-compliant with EU obligations for which we have had responsibility since 2012. I have listened a lot. We might not agree with the outcome and I am open to engaging in detail with the Deputy on the backdrop and the tactical and legal considerations around that and getting into the nitty-gritty of that. It is important we do that. We can talk in headlines or overarching rhetoric, but it is the nitty-gritty and bringing into place a system that brings us into compliance which will count. There is no point going through this process if, at the end of the day, we are no further forward and still have not met our obligations.

The other backdrop to this is that, given we are the only member state without a penalty points system in place, the EU Commission has moved in the past year or so to introduce a reasoned opinion against Ireland for failure to have, previously, a licence holder penalty points system and, now, a masters penalty points system in place. They have applied the pressure and moved through the compliance tools available to them to force us to get into line and bring in this system. The other thing they have done is suspended funding to us. There is €24 million in funding, which the EU has not released to the taxpayer because we have not met our obligations in this regard. That could go up to €37 million. That would be a loss to the taxpayer were we not to ensure we meet our obligations. It is important that we meet our obligations but, were we not to, the taxpayer would be out to the tune of €37 million. There is an obligation on us to tease this out in detail and bring in the most balanced and appropriate system we can, one that is as fair as possible to fisherman and at the same time ensures we are applying the law of the Common Fisheries Policy, as is our obligation and responsibility as a member state.

The Deputy mentioned the burden of proof. I have dealt with that and refer him to the response I gave to Deputy Mac Lochlainn. I have also dealt with the question on not allowing a full appeal to the High Court in my previous response. There is an appeals system within the legislation. One can appeal to the determinations panel. The statutory instrument, SI, that was introduced brought in some amendments around the appeal system, compared to what was in the previous SI. The Deputy asked why the penalty points still stand if a criminal prosecution does not lead to a conviction. As I mentioned to Deputy Mac Lochlainn, it is because there is a requirement on us to have civil and criminal strands to this. The burden of proof in a criminal case is beyond reasonable doubt; the burden of proof in a civil case is on the balance of probabilities. That applies to other laws in our land as well. Some are civil laws and some are criminal laws. If one was to make a civil law and the application of a civil approach subject to

the outcome of a criminal strand, it would nullify the civil strand. I think that answers all the questions the Deputy raised.

Deputy Martin Browne: I thank the Minister and his officials for attending. On the balance of probabilities, I do not think the Minister will find anybody who disagrees that everybody is entitled to due process and to have themselves tried beyond reasonable doubt. That has been a major concern for years when it comes to this Bill. I do not know if the Minister has tried to do anything about it. Is there anywhere in the audit to which he can point to show us he has taken on board the suggestions and concerns of the fishing sector?

The licence holder gets ten days to appeal and 20 days from the date of notification. Why is there such a short timeframe for making submissions or appeals? We all know how slow that process is and to have boats or fishermen tied down to such a short timescale is unreasonable, in my view.

There is an article in the *Irish Examiner* this morning about the derogation being withdrawn, which states that there are factories which are not fit for purpose for the weighing system. There are 33 suspected fraud cases and a figure has been thrown out of 40,000 tonnes----

Chairman: They are only allegations in the media this morning. I-----

Deputy Martin Browne: I am only asking the Minister for his opinion.

Chairman: I am under strict instructions. We will stick to the legislation before us, if that is okay.

Deputy Martin Browne: Okay. Go raibh maith agat.

Deputy Charlie McConalogue: I thank the Deputy. I have taken on board and engaged in great detail with the industry, following my appointment, on the statutory instrument, and previous to that on their proposals and concerns around the SI that had been annulled by the Dáil. There were amendments that were given great consideration coming out of that as to whether they could be incorporated while ensuring that the SI being introduced met our obligations. They were teased out and examined in detail, taking on board legal advice. Coming out of that, some amendments were incorporated. The majority were not but that is not to say there was not tremendous examination given to that. Likewise, I have looked in detail at the appropriate approach here and taken significant legal advice because I want to ensure the system we introduce is not only fair to everyone, balanced and proportionate but that it works as well and meets our obligations as a member state, which we have to take seriously and which other member states have adopted. The EU Commission, because we do not have both systems in place - one is and the other is not - has imposed fines on us. It is important to ensure we have these systems in place. There has been strong consideration given to all aspects of this and that informs the approach being taken in this Bill.

Deputy Thomas Pringle: I thank Deputy Fitzmaurice for allowing me to deputise for him at this meeting. I thank the Minister for his comments so far on the Bill. I will not rehash answers he has given. He outlined that we are the last member state to implement these conditions and rules in respect of this aspect of the penalty points system. How many member states have both the penalty points system and the system alongside? Has the Minister looked at that and compared us to other member states? Are we the same? The Department is very quick to point out we are dealing with EU waters rather than Irish waters. How are we in compliance with EU regulations across that or are we an outlier?

Deputy Charlie McConalogue: I thank the Deputy. Other member states have an administrative law system alongside their civil system. We are the only member state that has a criminal law system. Regarding the approach required for us to meet our obligations under the regulation, it is appropriate to our legal system.

Deputy Thomas Pringle: We are the only member state that has a criminal system in operation.

Deputy Charlie McConalogue: No, we are the only member state that has a common law system. The UK and Ireland were the only two member states that had this type of common law system. The other EU member states have an administrative system, which is how they apply their criminal law. Our legal system is based on common law.

Deputy Thomas Pringle: We are the only member state in the EU where a person can get a criminal conviction for breaching these regulations.

Deputy Charlie McConalogue: The other member states have a different law system but a person can still get a criminal conviction.

Senator Tim Lombard: I thank the Minister and I welcome the opportunity to contribute to this debate. This is a serious issue and it has been a very interesting debate so far. I ask the Minister about the criminal versus civil law issue. It is my understanding that even where a criminal prosecution fails, a person could still end up with penalty points. That is an issue. Where else in the Department does that approach apply? I have not come across it before in legislation. Does this happen in agriculture appeals or in other parts of the system? Will the Minister give examples of where it happens in the Department?

Deputy Charlie McConalogue: The obligation on us is set by the EU regulation. It is specific to that and applies to all EU member states. It requires a penalty points system to operate alongside a criminal system. That is the obligation on us under the regulation.

Senator Tim Lombard: The question I was trying to ask is whether this approach applies in any other part of the Department, either agriculture appeals or other sections. My knowledge of fishing is not as good as my knowledge of agriculture but I have never come across this previously.

Deputy Charlie McConalogue: Under the basic payment scheme and other schemes, farmers get particular penalties and must sometimes leave a scheme altogether. Those schemes are administered within the Department. It is not a criminal system and it is not directly comparable to this. This approach is unique in that it is an EU regulation and we have a legal obligation to have a civil penalty points system in place operating alongside a separate criminal system. It is not necessarily that both systems would always conclude but certainly the penalty points would be a stand-alone system.

Deputy Pádraig Mac Lochlainn: Deputy Pringle asked about the approach in other EU member states. The European Parliament published a report last year which examined the penalty points systems in all EU member states and how they applied. Has the Minister read that report?

Deputy Charlie McConalogue: I have not read it in detail but my officials have. It has informed our approach.

Deputy Pádraig Mac Lochlainn: This Bill will go through the Dáil and Seanad. The Minister's senior officials are on this call. Are they advising him that this legislation is in line with legislation in place in other member states, in other words, is the threshold for conviction similar to the thresholds in place in other EU member states? Is that the advice to the Minister?

Deputy Charlie McConalogue: I have been advised, not just by my officials but also in the legal advice I have taken, is that the approach taken here, which is very much based on the approach taken on the penalty points system for licence holders, is required in order for us to meet our responsibilities as an EU member state and member state control authority. We are required to put in place a system which is effective, dissuasive and proportionate. The whole approach and the terms and conditions around it are structured to ensure we meet those thresholds and that what emerges from this process brings us into compliance. We are the only member that is not in compliance. This legislation is designed to achieve that and it is the minimum required to ensure we do that.

Deputy Pádraig Mac Lochlainn: For the record, the report I referred to is titled, Implementation of the current EU fisheries control system by Member States (2014-19). The study was carried out by the European Parliament's development committee. I will ask the question again. Is this legislation, as presented to us, and the onerous threshold that it sets for our fisherman based on the normal practice and the normal threshold throughout the European Union, as reported in the study I have referred to?

Deputy Charlie McConalogue: The committee will consider and deliberate on this legislation and report back to me as Minister. If there are any valid or reasonable points in the report or any other report that the Deputy wishes to have considered, the option is available to him to put them on the table. There has been a great deal of legal examination and consideration given to this penalty points system and the previous one. The previous system received close examination, as we have just discussed, through engagement with the committee and the many amendments that were proposed and considered in detail and great depth. This approach, with the masters penalty points system, follows on from that. It is framed in this way because it is what is required to ensure we introduce a system that is compliant. The option is available to Deputy Mac Lochlainn to bring any specific suggestions he wishes into the mix and have them examined. Much consideration has been given in advance of this Bill to ensuring that it introduces a system that brings us into compliance.

Deputy Pádraig Mac Lochlainn: The reason I asked the question is, as the Minister has acknowledged, that the Department's previous drafts of what would be a scheme were, unfortunately, rejected in our courts. We would expect, therefore, that senior Department officials would find out what is the acceptable European Union norm for this type of scheme. There is an important question to be asked. I appreciate that the Minister has a wide range of responsibilities with a brief covering agriculture, food and the marine and that he cannot be expected to read every single report from the European Union. I am not going to be unreasonable. It is, however, the responsibility of his senior officials to have read the report, Implementation of the current EU fisheries control system by Member States (2014-19). From the Minister's response, it is not clear if his officials have read the report. It is absolutely critical that they do so. Have they read this report? Is the legislation they have drafted for the Minister based on normal practice in the European Union? This is to meet the responsibilities under the EU directive. There is a range of examples within the European Union with regard to the implementation of a penalty points system. This proposition has been rejected a number of times. One would imagine they would now want to find a system that is acceptable, that is the same as that in place in

other member states and that seeks to do what is right. If the Minister does not have an answer to that question, I would appreciate it if the senior officials of his Department who correspond with the committee would follow up with the committee after this meeting confirming that they have read the report and also setting out how this legislation is in line with that report and with other European member state examples.

Deputy Charlie McConalogue: In-depth legal advice has been sought and obtained on this. The threshold that is being used is the appropriate threshold based on the legal advice we have received. If there are specific points the Deputy would like to raise today in regard to the report, he should by all means do so. The Deputy referenced the report, not specific points from it. If there are any points he would like bring into the mix today, he should do so. I can assure him that the matter has been examined in great detail. The thresholds set out in the Bill are the appropriate thresholds based on the legal advice to Government.

Chairman: I call Deputy Michael Collins.

Deputy Pádraig Mac Lochlainn: My apologies for coming back in again, but can I ask that the senior officials of the Department would confirm that they have read the report and set out how this legislation is aligned to the recommendations of that committee?

Deputy Charlie McConalogue: To which recommendations in particular is the Deputy referring?

Deputy Pádraig Mac Lochlainn: There is a range of recommendations from the committee at the end of the report. Perhaps the officials could respond to all of them.

Deputy Charlie McConalogue: Is there any recommendation in particular on which the Deputy would like a response?

Deputy Pádraig Mac Lochlainn: I would like a response on all of the recommendations included in the report. As I said, the report includes a range of recommendations and a comprehensive study of how this system is applied across all member states. It includes case studies, of which Ireland is one. I am asking that in respect of all of the recommendations at the end of the report - which I have in front of me but I do not propose to read all of it now - the Minister's senior officials would correspond with the committee outlining how this legislation is aligned to those recommendations.

Deputy Charlie McConalogue: There is an EU regulation which obliges us to introduce this system. This legislation has to be compliant with that regulation. We have examined the regulation in detail in the context of putting in place a system which would be effective, dissuasive and proportionate and meet those thresholds. We have to respond to and operate under that regulation. There is tremendous attention on Ireland as a member state from the Commission. In particular, given it is the only member state to have not yet complied with the regulation. As I said, the regulation sets the framework for the legislation and penalty points system to be introduced.

Deputy Pádraig Mac Lochlainn: With the Chairman's permission, I can read the recommendations into the record.

Chairman: No. We are close to our finishing time on this matter and Deputy Collins has been waiting a while to come in.

Deputy Michael Collins: It was such an interesting line of questioning by Deputy Mac Lochlainn, I might have stepped aside to give him an opportunity to continue.

Chairman: That is a matter for Deputy Collins.

Deputy Michael Collins: I have a number of brief questions. I still do not understand the situation with regard to the fishing licence holder. Under this legislation, the fishing licence holder is being forced to retain the penalty points on his or her licence even if the case is cleared in court. No fair or liberal democracy would allow this. How are we going to vote this into place? Do the control agencies have the power to command the captain, skipper or master of the vessel to act against his or her better judgment aboard a vessel he or she commands? If so, who then has the right to instruct the commander of a fishing vessel, a certified, competent, highly skilled learned person, to act against his or her knowledge, only then to be sanctioned by this system for obstruction?

Deputy Charlie McConalogue: I thank Deputy Collins. I refer to the point I made earlier about the requirement for the criminal and civil penalty points systems to be separate. There was a very indepth examination in regard to the licence holder statutory instrument. If we are to have a penalty points system which is implementable and effective then it has to stand separate to any criminal proceedings that might arise. Otherwise, we would not have a system that meets our obligations under the European regulation.

I acknowledge Deputy Mac Lochlainn's earlier comments as well. In Ireland's case, we also have a reasoned opinion taken against us by the European Commission in regard to our non-application of this regulation. That reasoned opinion from the Commission sets out the requirements we must fulfill to become compliant. It is not a consultancy report but the reasoned opinion that threatens enforcement actions against us to force us to comply. It sets the terms with which we must comply if we are to meet the terms of the regulation. It is also the key guidance in regard to the legislation before us as well.

Chairman: Does Deputy Mac Lochlainn's still want to read the recommendations into the record?

Deputy Pádraig Mac Lochlainn: I will direct the Minister and his senior officials to pages 185 and 186 of the report and reference one recommendation in particular. It states that the points system should not result in disproportionate and severe sanctions or the permanent suspension of fishing licences. In particular, it is seen by some in the industry as an extreme measure and a double sanctioning on top of the national sanctioning system and due consideration should be given to the effectiveness of the sanctioning system. That is just one of the recommendations. The Minister can read all of them on pages 185 and 186 of the report. I totally accept that we are under pressure and that the process of complying with the regulation has taken far too long in Ireland. The reason for that, in part, is the very strange relationship between the fishing industry and the Department of Agriculture, Food and the Marine in relation to these and other matters. We are the outlier in failing to bring in a system that is proportionate and fair. This has been done across all member states of the European Union. The fact that it has not been done here is a reflection of the strange relationship between the industry and the Department of Agriculture, Food and the Marine, which we have to work on together.

Deputy Charlie McConalogue: There has been tremendous engagement and consultation around this issue. I do not believe anyone can argue that this issue has not been examined in great detail. I also do not believe that anyone can argue, by virtue of the fact that we do not have

a masters penalty points system in place alongside the licensing penalty points system, that we are not putting ourselves in a very challenging position with the European Commission or in terms of protecting our own taxpayer funds owing to the €24 million not paid thus far. We are at significant risk of losing that if we do not live up to our obligations in terms of compliance with the regulation. As Minister, I am in contact with the sector at all times and I will continue to be. I have no doubt that members will agree with me that it is important that we introduce this system and masters legislation; ultimately, the system we introduce has to pass muster in terms of meeting our legal obligations. There has been exceptional thought and assessment around the introduction of legislation that will address that issue. As the Bill moves through the Oireachtas and the committee examines it and continues its deliberations, that is the objective we wish to achieve in the best timeframe possible. The legislation I am bringing forward does that.

Chairman: On behalf of the committee, I thank the Minister, Deputy McConalogue, and his officials for briefing us on this important legislation.

Sitting suspended at 10.31 a.m. and resumed at 10.32 a.m.

Proposed Amendments to the Good Agricultural and Environmental Conditions: Discussion

Chairman: The topic of our second session today is the proposed amendments to the good agricultural and environmental conditions 2, GAEC 2. I welcome the representatives of Macra na Feirme: Mr. Tom Duffy, national president; Mr. John Keane, president-elect; Mr. Derrie Dillon, head of policy; Ms Gillian Richardson, policy officer; and Mr. Shane Fitzgerald, chairman of the agricultural affairs committee. Mr. Duffy is coming to the end of his term as president of Macra na Feirme. It has been two years well served representing the organisation and the young farmers of Ireland. I wish Mr. Keane the best of luck in his incoming two years as president. He is following in a good family tradition of lobbying and fighting for the cause of farmers. I wish Mr. Duffy and Mr. Keane the best of luck in their future endeavours.

We have received Mr. Duffy's opening statement, which has been circulated to members. We are limited in our time due to Covid-19 safety restrictions and the committee has agreed that the opening statement is to be taken as read so that we can use the full session for questions and answers. All opening statements are published on the Oireachtas website and are publicly available.

I have an important notice regarding parliamentary privilege. Witnesses are protected by absolute privilege in respect of their evidence to the committee. However, if they are directed by the committee to cease giving evidence on a particular matter and they continue to do so, they are entitled thereafter only to a qualified privilege in respect of their evidence. They are directed that only evidence connected with the subject matter of these proceedings is to be given and they are asked to respect the parliamentary practice to the effect that, where possible, they should not criticise or make charges against any person, persons or entity by name or in such a way as to make him, her or it identifiable. Participants in the committee meeting from a location outside the parliamentary precincts are asked to note that the constitutional protections afforded to those participating within the parliamentary precincts do not extend to them. No clear guidance can be given on whether, or the extent to which, their participation is covered by the absolute privilege of a statutory nature.

I invite members to ask questions of the Macra na Feirme delegation. As I stated, our guests are most welcome.

Deputy Matt Carthy: I thank the Chairman and our guests. I commend Mr. Duffy on his role and period as president of Macra na Feirme. I wish Mr. Keane all the best. I am sure the Chairman will agree that, for a Tipperary man, trying to follow in the footsteps of a Cavan man is always an unenviable position to be in. However, I have no doubt Mr. Keane will manage very well with the guidance and support of-----

Chairman: I do not know whether Mr. Keane would fully agree that he is a Tipperary man. We will leave that to him. He is from very near the border. I do not know whether he would fully agree that he is a Tipperary man. He participates in a Tipperary Macra na Feirme club of which I know many of the members but if he was in Croke Park, I do not think he would be shouting for Tipperary.

Deputy Matt Carthy: In my end of the country, we consider everyone down there the same. Through our deliberations, all members of the committee agree that if we do not create the conditions to allow young people to enter farming and be sustainable and profitable in that endeavour, the Irish family farm as we know it will not be in place in a generation. The work of Macra na Feirme is crucial. The outworkings of the current Common Agricultural Policy, CAP, negotiations are pivotal in ensuring that young farmers have a viable avenue into farming. In that regard, the opening statement provided by Macra na Feirme and its ongoing work are crucial.

I have a few broad questions regarding the current negotiations on CAP. Does the delegation believe the proposals as they stand and the general thrust of the discussions are fit for purpose in terms of their objectives and priorities? Do they believe there is scope within the current CAP template to address issues such as the forgotten farmers, for example, and other cohorts that did not receive the supports that were required in the previous CAP? Will there be a provision within the next round of CAP that will allow the Government to address their particular concerns? I refer to the issue of the GAEC proposals. I do not know whether our guests were listening to the committee's deliberations on this issue with other farm organisations last week. Are the GAEC proposals fit for the challenges that have been outlined?

There is always a balance to be struck between encouraging older farmers to retire and providing the supports that are in place, and encouraging young people to come in and fill that gap. Do the delegates believe we have the balance right in terms of the policies and financial packages that are in place? If not, what needs to be done to address that? What should the committee be proposing to the Department and the European institutions with regard to the next round of CAP that would address the clear deficiencies in terms of the age profile of farmers?

Chairman: Which member of the delegation wishes to reply to the questions asked by Deputy Carthy?

Mr. John Keane: I will respond to the questions. I thank the Chairman, a man from my end of the world, for his kind words. In a broad way, the negotiations and dialogues are still ongoing, which means there are, essentially, three positions that we have to consider, that is, those of the European Commission, the European Council and the European Parliament. From our analysis, the position of the Parliament is the closest to one with which we would agree on two key aspects for young farmers. First, the Parliament has supported having a minimum of 4% of direct payments for young farmers. We believe this is essential. The current allocation

of direct payments in Ireland was up to a maximum of 2%. We commend the Department on having that in place. However, now is the time to increase the amount of funding that is made available for young farmers under direct payments and Pillar 2 payments. We may return to that issue shortly.

On the question of the forgotten farmers, but also, more broadly, the many young farmers under the age of 40 who are currently going to be excluded from supports going forward - we have already seen them being excluded from supports - the key area is the so-called five year rule under which supports are primarily focused towards young farmers entering the industry. We are incredibly supportive of supports for entry into the industry but the issue now, particularly in Ireland where we have seen a change in the entire model of farm succession and planning, is that this directly discourages young farmers who are taking on the role at an earlier stage. Both I and Mr. Fitzgerald, the chairman of our agricultural affairs committee, are in such a position. In spite of the fact that we are under the age of 30, we are no longer considered young farmers, going by the Department definition, because we have been farming either as part of a partnership or a joint herd number for more than five years. The position of the European Parliament is that this should be moved to a minimum of seven years. That is at least some positive movement to address the situation.

Outside of that, in terms of potential in the current negotiations to address the issue of forgotten farmers who have been farming for more than ten years, unfortunately the only area in which it appears this could be addressed is that of the allocation of the national reserve. Again, that ties back into the total allocation of funds under direct payments. The allocation of direct funds or payments can either go to young farmer top-up, which would only be available under the current proposals for either five or seven years from establishment, or it can be allocated to the national reserve, which would allow sufficient for young farmers and new entrants and potentially for those farmers who are farming longer than that in a so-called third category. This third category has only been used a single time. The legislative position is very clear that all demands from young farmers and new entrants have to be satisfied before there can be a third category.

On GAEC 2, I will try to be brief and run through some of the elements because there is overlap. Our concerns with GAEC 2 are under two elements. First, we have seen the definition of what exactly this will change and appropriate management versus protection of wetlands. This is a significant issue for Ireland because the country has some of the highest organic matter soils. Second, there is the question about the definition of peatland soils and exactly what that will mean, because there is a variation in Ireland which is not seen in other countries. We have some drained farmable lands and others with high organic matter. Then we have the very extreme element, appropriate management of uplands and full peatland or bog-type soils. This is the essential element. The question here becomes the appropriate management. We strongly feel that high nature value farming, which is normally practised on the uplands in these areas, is the most appropriate management to protect these from a biodiversity and carbon protection point of view. Unfortunately, and this is an element that has been raised, under the biodiversity strategy there is a question about strictly protected definitions of designation. The strictly protected definitions essentially would block all farming activity. It would be a very extreme form of designation. We believe it would be detrimental not only to the rural economy in these areas but also very significantly to the protection of farmland birds and other forms of farmland biodiversity.

On the balance of support in terms of financial packages, there appears to be a willingness

to continue, and we strongly support that. The young farmer top-up payments have been excellent and a major support. We would like to see them extended to seven years rather than five. However, the legislation that is currently under consideration in the negotiations allows for an installation aid type of package. We have encouraged the Department of Agriculture, Food and the Marine, and it has agreed, to assess the potential for that in the CAP strategic plan. This would be under Pillar 2 funding. We believe this is significant.

On the other question that is often raised about older farmers, getting the balance right and encouraging land access, there are no proposals on that at present. The reason for that and the complexity is that countries vary. Countries such as Finland and Germany have a designated older farmer pension scheme which has been in place for many years and which provides increased financial support. When we discussed the appetite for an older farmer retirement scheme or something similar with our members, their major concern has been, and will continue to be, the financial viability of some of those farmers. We prefer, and we have been a major force for, moving the question away from a succession model into a partnership model, which we find is a far more suitable method for encouraging access to land and with regard to the inheritance of land.

Thank you, Chairman, for your kind words in welcoming us here today.

Chairman: I have a question relating to what you said and to a paragraph from your opening statement in regard to young farmers stamp duty relief. It is due to expire on 31 December 2021. You gave different figures on the stamp duty relief which are interesting. Is there an issue with the ceiling that exists at present in respect of the availability of stamp duty relief? Is the ceiling high enough that it is not causing an issue? Obviously, I will be lobbying for the stamp duty relief to be rolled over again for another three years because it is a very important incentive for young farmers to get land transferred into their names. In representing young farmers, what do you believe is the position with stamp duty relief and are there any innovations or improvements you would like to see in the relief?

Mr. Thomas Duffy: There are two elements. One is that it is absolutely essential to retain stamp duty relief. That is being considered by the Department of Finance. That support is vital and the opening statement gives the exact details of how much has been taken up. However, we have suggested some minor changes to it to encourage what we have called a steeped approach, addressing a set of separate taxation measures which would encourage and support young farmers entering into the system from the beginning. We feel the extension needs to include succession partnerships - there is currently a cut-off there - and extension up to the age of 40 years, but only where there are additional measures such as taxation relief on the leasing of land to young farmers up to the age of 30 years and limited to five years. Our logic on this is very clear. We are seeing a particular issue in the handover of land. It is a major lifestyle and financial change for many farmers. Many farmers are asking, essentially, how they can test the water here. What we have proposed is a measure whereby a farmer might encourage a young person to get on board in a limited way, which would not affect the person's application for both stamp duty relief and the young farmer top-up payment in the future.

In terms of the limit, there are concerns about the limits to state aids. We engaged with the Department of Finance when this was announced as to whether it would impact on the total lifetime aid which a young farmer could draw down. There are a small number of farmers who might be affected, who would be inheriting extremely large holdings and also drawing down 100% of grant aid under schemes such as the targeted agricultural modernisation schemes, TAMS, and so forth. However, we are satisfied at present that, broadly, the stamp duty supports

and the other taxation supports should be in line for the European Commission not to raise any objections to them.

Senator Paul Daly: I welcome the representatives of Macra na Feirme and I wish to be associated with the good wishes to Mr. Duffy. It is always a pleasure to work with him. I also wish Mr. Keane the best in his forthcoming term of office.

I wish to elaborate a little on a couple of matters. We will all lobby for, and hopefully we will be successful in, getting the extension to the current stamp duty laws. While they are vital, they are not cash in hand. They are a net saving. I refer to where Macra na Feirme would like to see more capital expenditure funding coming on stream. We are very much aware of building costs. There is the percentage of funding that is available in TAMS, the capping of expenditure that is allowable to receive TAMS funding and a combination of the percentages that are available to young and older farmers. Will Mr. Duffy elaborate on that with regard to investment?

Moving on to the partnership company model, while it is a great model and works well in certain areas of the country, there is an element of partnership which will most likely require the enterprise to be in a position to support two families. This is not feasible everywhere. I am a Westmeath man and the further north one goes, the smaller are the holdings and enterprises. While it might work on a large dairy set-up in the south or elsewhere, where there is a steady cash flow, it is not a runner in the majority of cases further north and west in the country. What is the alternative to that? What consideration has Macra na Feirme given to, what lobbying has it done for or how would it look on something similar to the old retirement scheme? If the current farming generation was prepared to step aside to avoid the situation I mentioned where two incomes would be required from the holding, would Macra na Feirme welcome, or what is its opinion on, something similar to the old retirement scheme?

I will conclude on the land mobility scheme that Macra na Feirme piloted or introduced. I know Macra is lobbying to get this included under the CAP and to get European support. How is it going down in Europe? How is the model being accepted there? What feedback has the organisation had from Europe on the scheme? Is it something that could be included in the European model?

Mr. Thomas Duffy: Not only has the land mobility service been exceptionally well received, it is the extent to which many other member states are coming to Ireland to learn exactly how we succeeded with it. I would like to put on record the incredible work of Austin Finn, who is the lead facilitator in that role, and highlight the support we received from sponsors and co-ops to establish the service, including seed funding from FBD early on. There are two elements to this. One is the consideration for the entire EU to look at this as a system. We engaged with groups such as UK Young Farmers, prior to Brexit, which was trying to roll-out a similar model while facing challenges which were unique to themselves. It will have to be adapted and changed to each country. Specifically for Ireland we have a clear ask, namely, that there be continued funding from the Department of Agriculture, Food and the Marine - which has been supportive of the service from the very beginning - and to move away from annual support to the entire term of the new CAP, directly supporting the land mobility service under the CAP strategic plan. We have seen this grow very significantly over time. I will ask Mr. Dillon or Mr. Duggan to cover some of the key figures around the number of partnerships and arrangements that have been put in place.

On smaller farm holdings and the challenge in that regard, we mentioned this in our opening statement but, unfortunately, the amount of detailed evidence on which we are working is

very limited in the context of what interventions have been successful. The EU's recommendations are still based on 2016, as are its assessments when we know that there have been very significant changes since then such as the young farmers top-ups and the taxation supports we have had in Ireland. Our best figures for the challenges of young farmers entering the different enterprises come from the national farm sustainability report, which is compiled by Teagasc. That report shows a very clear delineation. Sheep and beef farms are significantly higher as a percentage of those who are more than 60 years in the enterprise. Currently, there are no strict proposals which state that a retirement scheme would be introduced under the CAP. There are rules in member states such as Finland where you cannot receive single farm payment and a pension at the same time. There is very little appetite in Ireland and among young farmers, with whom we have discussed this, for such a scheme to be introduced. The best supporting mechanism may be through the tax code. That is something that we are working on with the Department, trying to identify potential taxation reliefs that would facilitate farmers who are willing and interested. The likes of land-leasing taxation reliefs have been significant in allowing farmers to take a step back. That is the only aspect that we can at the moment.

The Senator mentioned geographical spread. Looking across the country, there is a very clear geographic issue with land fragmentation and farm viability. It is not simply that many farms do not have the total land needed to become viable without external economic input in the form of a part-time job, it is also that a large number are simply too fragmented to become viable. That is something that we, through the Land Mobility Service, have been working on and have had very significant success in trying to assist farmers. The taxation measures which would allow the sale of land without the tax implication to allow farm consolidation is quite significant.

Chairman: There are members wishing to come in so I ask Mr. Duggan to be as brief as he can, please.

Mr. Denis Duggan: Our opening statement outlines the key figures for the land mobility service. We have facilitated 700 partnerships since the foundation of the service - totalling 55,000 acres of land - where an older farmer may have wished to step back or somewhat retire yet remain involved and they have maintained a stake. They are not selling the land, it is about shared farming arrangements. They are all non-familial arrangements. We tend to stay away from family farm partnerships although we do receive queries on them and we provide information where necessary.

The Senator asked about the appetite for the scheme at European level. To put it in context, we have made a number of presentations to the European Network for Rural Development, which is part of the European Commission. We have also been part of several Erasmus and European Commission-funded projects, such as the Polish Farm Advisory Service, the University of Bedfordshire in the UK and other European partners which are looking for similar types of solutions, including the National Farmers Union in Northern Ireland and the Ulster Young Farmers, who are working in collaboration on a similar land mobility service. We have given those two organisations a lot of support in setting up the service in Northern Ireland. There is an appetite. It does need a little tweaking from jurisdiction to jurisdiction because of the various different local issues which arise but it is recognised at European level as being a critical tool in the tool box to support generational renewal. A key tenet of our lobbying, through the European Young Farmer network in the Conseil Européen des Jeunes Agriculteurs, CEJA, and to the Commission, has been to have a mechanism included in the next CAP to support at member state level a land mobility service from member state to member state.

Senator Tim Lombard: I welcome our guests and acknowledge the president and CEO and other members of Macra na Feirme. I also acknowledge Macra na Feirme's great input in the social and economic aspects of agriculture in Ireland. They have had a great input over the past 40-plus years which we should acknowledge.

There are probably three or four questions around how we can ensure that the next CAP will benefit the agriculture industry and hopefully the young farming community. I spoke to Mr. Dillon some weeks ago about the old young farmer dynamic that has been somewhat forgotten. It is one of the issues in the CAP that we have to return to talk about how we will ensure that there is a fair, level playing field for the cohort of young farmers who have been missed, for lack of a better word. That is something that we need to look at in particular in the new CAP in 2023. How do Mr. Dillon or Mr. Duffy think we could try to work to accommodate this cohort of farmers which unfortunately has been forgotten about? They are moving into their 40s but still receive relatively low payments, through no fault of their own, merely because circumstances meant they fell between two stools.

I welcome the president's comments about how we can work with our farming community to move land from older to younger generations, particularly the retirement scheme in other countries. That is a very positive statement. The opportunity for the older generation to work off-farm or move away at a certain age is something that such people would welcome. We need to work with the Department to see what we can do to resume the retirement scheme of 20 years ago that, although successful, was taken off the books for some bizarre reason. It was a positive scheme that promoted the renewal of the farming community and got young farmers involved at an earlier stage in life. At that age, they have the potential to make major differences on their holdings whereas someone who takes over a family farm at 35 years of age probably has other commitments and concerns and his or her potential or ability to drive the significant changes required on some holdings is limited. Progressing a farm retirement scheme is a major issue for us.

Mr. Thomas Duffy: I might invite Mr. Dillon to speak about investment supports in a moment. We have asked the Department how many of what we would class as young farmers, namely, those under the age of 40 years, have missed out on drawing down as a direct result of the five-year rule. I do not believe I touched on the question of investment support that Senator Paul Daly raised. We view it as a significant issue. Land is not only a capital-intensive business, but also an investment-intensive one. Many younger farmers who have inherited, purchased or leased land must make a substantial financial investment. We commend the Department in recognising this under TAMS. It has been successful and met its limits. Under the next CAP, however, there must be recognition of the need for all young farmers under the age of 40 years to be able to access some level of funding. Currently, only those qualifying under the five-year rule can apply for 60%. The limit of €80,000 on qualifying spend is increased in partnerships, but this touches on the question of gender and the break-up of farms between siblings, which is generally a tragic event. Currently, if two young farmers enter into a partnership, the limit remains unchanged. We would like to see it expanded so that as many as possible young farmers who are entering into a partnership can embrace the opportunity. We would also like to see a third category being made available from 2023 under the legislation, one that lies between 60% and 40% investment support.

The numbers are substantial. Young farmers are often recognised for their considerable commitment to social sustainability. In terms of economic sustainability, they have invested €186 million as a direct result of the support they have received under TAMS alone. That in-

vestment was mostly loaded towards the past two years. We can clearly see that young farmers are the ones making investments on farms and generating economic activity in the wider farm economy.

I will now hand over to Mr. Dillon.

Mr. Derrie Dillon: Senator Lombard asked a specific question about old young farmers. When we were before an Oireachtas committee in June 2015, we outlined specific proposals on a solution to the issue of old young farmers. Mr. Duffy mentioned the national reserve in the next CAP. That is the primary mechanism for delivering for old young farmers. There are two mandatory categories and the potential to introduce an additional category. However, this is all contingent on us getting a minimum of 4% delivered to young farmers in the next CAP. If we do not have that level of funding available, the national reserve will, as Mr. Duffy outlined, have to provide for young farmers and new entrants, who comprise the first two categories, before it can provide for other categories. We had other proposals in the past, but we believe that the best mechanism for delivering for old young farmers is the national reserve in the next CAP.

I wish to make a comment on a point that was made about our proposal in respect of stamp duty relief. Mr. Duffy outlined the aspects of the proposal. We propose that the 35-year age limit in respect of stamp duty on general transfers of farms remain but that it increase to 40 years where succession partnerships and the purchase of land by young farmers are concerned. We would like to see the 35-year age limit for general transfers remain as is because most transfers happen where 34-year-olds are approaching their 35th birthdays and we fear that it would only move five years on to when they were approaching their 40th birthdays were it to change. There is a cliff edge at 40 years of age when the rate of stamp duty increases to 7.5%. Perhaps there should be tiering after 40 years of age so that people who just miss that date do not incur the full 7.5%.

Deputy Martin Browne: We all recognise that young farmers are the future of this industry. Therefore, they have an acute sense of what will be needed. The witnesses stated that the limitations placed on young farmers' supports directly discriminated against early entry into partnerships. Will they outline the implications of GAEC 2 and similar measures to do with protected lands? They referred to how the number of farmers under 35 years of age on uplands and peat soils was significantly lower than the national percentage. Are decisions being made that would put land use and inheritance or acquisition out of the reach of future generations?

I have spoken to Macra na Feirme about my next point previously and wish to raise it again. What do our young farmers see when they look at the technology that is currently available in terms of their ability to access and use it? What are their views on how they are being supported in accessing such technology?

I should have started by welcoming the guests and wishing them all the best.

Mr. Thomas Duffy: Regarding peat soils, the average age is substantially higher, particularly in the west and depending on the enterprises involved. There is no denying that. Unfortunately, this issue is often not considered in the overall encouragement. There are investment supports, but many of those are not oriented towards the extensive and high nature value farming that we tend to find on uplands and peat soils. The young farmers in question are able to benefit from the young farmers top-up payment and so on, but an element that we have consistently raised with the Department in the design of new environmental schemes is that there should be prioritisation and increased ceiling levels for young farmers. We say this because

these schemes have higher uptake rates in so-called disadvantaged areas and areas that are considered marginal. We have many members in some of those areas who are farming on commonage. They are progressive and driven young farmers who want to make a living and continue contributing to their local economies and societies. They are being undervalued and unconsidered. We have submitted proposals on the successor to GLAS, whatever that may be. There should be consideration of higher ceilings for farms or farm partnerships that include someone under the age of 40. The reason for this is simply that we know these young farmers are more driven and have more desire to do it but often they hit the limits of €10,000 under GLAS and €7,500 under the GLAS plus scheme. These are the key elements.

As we have said, the question about the final language in the agreed text will be with regard to protection and appropriate use. We all agree that appropriate use will look very different on peat soils than on mineral soils. Nonetheless, the idea of essentially abandoning our hills will not deliver for rural communities. More importantly, from the perspective of many of the people who are, unfortunately, pushing this idea, it will lead directly to land abandonment, which we know has a major negative impact on the biodiversity of these areas. If we want to keep the good environmental conditions we have and improve them, we need not only to keep farmers on the land but to get more young farmers onto the hills and peatlands.

Chairman: I call Senator Garvey, who is deputising for Deputy Leddin.

Senator Róisín Garvey: I thank the committee for having me. It is an honour to be here. If I could bilocate I would probably sit on this panel every week. It is great to hear the witnesses, some of whom I have met previously. They are an inspiration and well done to them on all their work. I do not know some of the other witnesses as well.

It is probably way outside my league to have a clue about what is being said about older farmers, the grant systems and the payments. I will not even pretend. I have a fair idea from my neighbours. It is something on which the witnesses will be dealing directly with the Minister, I hope. I will not even pretend to be involved in it in any way.

From my reading of the witnesses, from having met some of them previously and from listening to what they have been saying, I have a couple of questions. Does Macra regularly meet the IFA at local or national level? Is there much engagement between the two organisations? How do younger farmers feel about horticulture as a viable option? I am into diversifying. My happiest farming neighbours are those doing things slightly differently in some ways. My sister has a goat farm and several of my neighbours are making a good living out of growing food and employing people on a much smaller holding than many big dairy or beef farmers. Another friend is creating a glamping site as well as having a bit of dairy on the side. We have increased funding for horticulture and the number of organic farmers has doubled. Do the witnesses see this as an important part of where Macra and younger farmers are coming from as well as continuing traditional methods? I believe in the beef and dairy industries. We have to give people many choices based on the types of land they have. We want to keep people on the land as much as possible and make it as viable as possible.

I have seen at first hand many farmers turn to horticulture, creating far more viable incomes for themselves and creating jobs. A couple of my friends grow food on 30 acres and employ 15 people full-time. My sister is on 50 acres and has ten staff. The job creation side of it is huge and the farmers do not seem to have to borrow as much money as big dairy or big beef farmers. I am interested in this side of things. I am from Clare where we do not have hugely intensive farming so I am biased that way. I am putting myself in a little box. I would like to work with

the witnesses more on this and engage with the Minister of State, Senator Hackett, more on it also. She is a midlands farmer with good land. I am more concerned about subsistence farmers, small farmers and uphill farmers. I look forward to hearing from the witnesses again on this. It might not be appropriate for them to answer all of these questions today but we can take it out of the meeting, which is probably why I am here. I thank the witnesses for their time.

Mr. Thomas Duffy: I thank the Senator. We engage with all of the other farm organisations fairly regularly and we are in communication with most of them and discuss various proposals. We have independence within our organisation, as do the other farm organisations, and we try to work together for common goals. Certainly when it comes to young farmers we do not shy away from demanding what needs to be demanded in CAP and under other supports.

Horticulture is a very complicated industry, not primarily because of the production method but because of market access, which is a major obstacle for many people. We do have young farmers who are involved in the horticulture sector but it is a very regional approach, primarily based on some of the best land in Meath and Louth with diversification.

On the question of diversification, the key area from where we would see support coming is under Pillar 2 of the LEADER funding for diversification and processing of on-farm product to try to capture more of the value in the supply chain. Areas with which the Senator is more familiar, which are outside prime farmland but have high levels of tourist flow, would see major benefits. An example is the Tipperary food project, with which the Chair is familiar. It has added value and it has been very successful.

Our major concerns around some of the language focused on horticulture is that in reality it needs to be farmer driven. Farmers know their land better than anyone else. For instance, I know my land is simply not suitable for cultivation over the longer term. It would lead to degradation of the soil. Senator Daly and Deputy Carthy are familiar with similar soils. Ultimately, they cannot be continuously cultivated. There is potential here and we support any measure that could return greater benefit to the farm. On this topic, I would like to hand over to the president-elect, Mr. John Keane, on the aspect of the food regulator. It is something on which he has had a keen focus.

Chairman: There was a bit of breaking news this morning that the witnesses will be interested in. The challenge to the Glanbia planning application has been rejected in the judicial review. I know the next speaker will be very interested in this.

Mr. John Keane: I thank the Chair for his kind words at the beginning of the meeting and to all of those who have also spoken. To pick up on the issue touched on by the Senator regarding horticulture and adding value, how the food regulator plays a role in terms of returning value to the farmer in the food chain is key. If we look at the issues and challenges our young farmers have brought to us, in particular with regard to what the Senator has raised regarding the horticulture industry, access to the market and the small nature of the retailers in the breakdown of the market have been highlighted as issues many times. It is something on which the food regulator must play a role. As Mr. Duffy has said, it must be farmer driven and farmer oriented.

With regard to other industries that play a role, I would not necessarily agree with the Senator that bigger dairy or beef enterprises do not necessarily have a role to play in employment or value.

Senator Róisín Garvey: I did not say they did not. I was not suggesting that.

Mr. John Keane: I appreciate that. Everyone has a huge role to play and it is important to acknowledge it.

Senator Róisín Garvey: What is the opinion of Macra on the indicator system being piloted, with regard to ten farmers being under an adviser?

Chairman: I would like to get Macra's views on several issues. What is Macra's views on a ceiling on CAP payments? What is the organisation's policy view on convergence? Senator Daly also wants to come in but perhaps the witnesses will deal with these questions first.

Senator Paul Daly: My question is very brief and the witnesses might be able to cover all of our questions together. What is the opinion of the witnesses on the aggregate food strategy that was published recently and on the agriculture action plan for 2021?

Chairman: Deputy Michael Collins was not there before and I do not see him on the call now. We will hand over to Mr. Duffy.

Mr. Thomas Duffy: On convergence, our priority as an organisation is addressing inactive farmers, namely, those often called armchair farmers or who are drawing down payments while not actively involved in the sector. Our priority is ensuring that there is a strong definition of "active farmer". We have engaged with the Department of Agriculture, Food and the Marine on matters such as minimum stocking densities and minimum cropping densities which would be appropriate in that regard and which would allow for such a definition.

There are certainly concerns that while we move to a more productive and environmentally-focused area that this situation could encourage an abandonment of land and, indeed, increase the number of farmers not actively involved in appropriate land management. As we have said, it is going to be a different form of land management depending on whether people are in Cavan, Laois or Tipperary. That is our key priority regarding that aspect.

Turning to the subject of capping, I will hand over to Mr. Dillon and he will run through some of the key aspects in that regard. I apologise, I omitted Senator Paul Daly's query on the agrifood strategy. Yes, we certainly find it a very challenging document concerning some of the elements it has proposed. We engaged throughout the process and, indeed, we gained key commitments regarding the role of young farmers, particularly concerning increasing the percentage of young farmers and moving towards a continuous professional development model, which we trialled through our Skillsnet programme, and developing a network for young farmers for recognition of their education, which is a key element.

The main aspect getting a great deal of focus is the 10% biogenic methane reduction target. We will not mince words. It is an incredibly challenging target for the industry to try to meet by 2030. If it is to be achieved, we will need to see major supports for the industry to adopt practice change and in that respect we are looking at the likes of the management of the national beef and dairy herds. In dairy, we know that extending lactations is a very successful way of reducing the number of replacements. Turning to the beef herd, changes in that area would include reducing the age at slaughter. Unfortunately, we have seen the age of slaughter increase as we have seen the increase in the percentage of dairy calves entering the beef sector.

We have welcomed the support for initiatives such as the sexed semen lab, which will allow higher quality beef semen to be used on the dairy herd and that will have a direct impact. As I said, it is still a very challenging situation. Regarding enteric methane, we simply do not have the silver bullet that other industries have available to us, such as moving to electric or renew-

able energies. We are some way from having market-viable feed additives. What we need to do in reality, therefore, is to look at what we have. Macra na Feirme has a position on the Ag Climatise document. We feel it is the appropriate roadmap, but we would like to see greater ambition in some targets, such as 100% of the herd being milk recorded and 100% of the national beef and dairy herds genotyped. Those are ambitious targets to set, but they are a way in which we can achieve this ambition.

We remain opposed to any limits on the national herds and certainly any mandatory culling. That is our position on the simple basis that any attempt at mandatory culling or herd limits will be fundamentally unjust. How could anybody figure out which herds are to be cut and what should be the percentages? Ultimately, such an approach would lead directly to lower farm viability and have a massive negative backlash. We are concerned about such a potential backlash from the farming sector and rural communities more generally against the climate action to which we are committed. I will hand over to Mr. Dillon now to comment on our position on convergence and capping.

Mr. Derrie Dillon: We made a proposal when we met with officials in the Department of Agriculture, Food and the Marine. I was trying to open that proposal, but my laptop has just frozen. Regarding capping, we had an initial proposal that I am trying to recall off the top of my head. I am sorry, but the document has just frozen on my laptop. Could I return to this question in a few minutes, if the Chair does not mind? I do not want to give inaccurate figures to the members of the committee because there are two thresholds, of €60,000 to €65,000 and then €100,000. I want to double-check the detail in the document, if I could have one second?

Chairman: We may not have time because we are on our own schedule. However, if it might be okay, I ask Mr. Dillon to send the exact policy document to us later, with an explanatory footnote, and we can have a read of it then. That will be grand.

Mr. Derrie Dillon: My apologies again, I just do not want to give inaccurate figures off the top of my head. I thank the Chair.

Chairman: No, that is fine. Modern technology does not always work as efficiently as some would tell us that it does. That is no problem at all. I ask Mr. Dillon to send the information to us, with an explanatory footnote, so that we will have the thoughts of the members of Macra na Feirme. We will then circulate that information to the members of the committee. This is going to become a contentious issue in the weeks and months ahead. We have a policy meeting this evening which Senator Daly and I will be attending, and I would appreciate it if Mr. Dillon could send us that document before then so we can have a read of it.

Mr. Derrie Dillon: That is fine.

Chairman: I thank Mr. Dillon. I thank the representatives from Macra na Feirme for giving us their perspective on this important issue. The organisation's chief executive contacted me some days ago and it worked out better that the witnesses had a slot of one hour to themselves this morning. While Macra na Feirme co-operates fully with the other farming organisations, it obviously has a different focus on policy because it represents young farmers in particular. It was most useful therefore to have had this separate session with the witnesses this morning. I reiterate that I wish Mr. Duffy the best after his two years as president of Macra na Feirme, and I am sure he will not be gone entirely from representing farmers. I also wish Mr. Keane the best in his two years as the incoming president of the organisation. I thank everyone for their engagement and we look forward to working together in future.

JAM

The joint committee adjourned at 11.27 a.m. until 6.30 p.m. on Tuesday, 27 April 2021.