

DÁIL ÉIREANN

AN COMHCHOISTE UM THALMHAÍOCHT, BIA AGUS MUIR

JOINT COMMITTEE ON AGRICULTURE, FOOD AND THE MARINE

Dé Máirt, 20 Iúil 2021

Tuesday, 20 July 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,	Tim Lombard,
Michael Fitzmaurice,	Rónán Mullen,+
Joe Flaherty,	Denis O'Donovan.
Paul Kehoe,	
Brian Leddin.	

+ In éagmais le haghaidh cuid den choiste / In the absence for part of the meeting of Senator Victor Boyhan.

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

Business of Joint Committee

Chairman: Good morning. No apologies have been received. Senator Mullen is substituting for Senator Boyhan. Before we begin, I remind members that, in the context of the current Covid-19 restrictions, only the Cathaoirleach and staff are present in the committee room. All members must join remotely from elsewhere in the parliamentary precincts. The secretariat can issue invitations to join the meeting on MS Teams. Members may not participate in the meeting from outside of the parliamentary precincts. I ask members to mute their microphones when not making a contribution and to please use the raise hand function to indicate. Please note that messages sent to the meeting chat are visible to all participants. Speaking slots are prioritised for members of the committee.

We have already had two meetings on issues in the horse racing industry. At no stage has a guillotine operated in this committee. We decided, as a committee, we would have three meetings on this issue. This is the third of those meetings, after which we will have a private meeting to discuss what, if any, action needs to be taken. As Cathaoirleach, I want to put that on the record.

Alleged Issues in the Horse Racing Industry: Discussion (Resumed)

Chairman: This morning's meeting is a discussion on alleged issues in the horse racing industry with officials from the Department of Agriculture, Food and the Marine. This follows on from our meetings with Horse Racing Ireland, the Irish Horse Racing Regulatory Board and Irish Racehorse Trainers Association. This series of meetings was called on foot of recent allegations made in the media. However, it must be stated, we are not a committee of inquiry, so we are not here to judge the veracity of statements made or explore any allegations of wrongdoing against any person. Our only objective is to establish what systems and processes are in place and to see if they are up to international standards and to discuss any policy issues arising.

I remind witnesses and members that I will not allow criticism of anyone in particular and anyone who is not here to defend himself or herself. I remind them of the parliamentary practice to the effect that 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.

I welcome the following officials from the Department of Agriculture, Food and the Marine: Dr. Kevin Smyth, assistant secretary general; Mr. Michael Sheahan, deputy chief veterinary officer; and Mr. Tim Drea, head of the investigation unit. They are joining us from a witness room in Kildare House. We have received the opening statement and briefing material which has been circulated to members. All opening statements are published on the Oireachtas website and are publicly available. Dr. Smyth will be given ten minutes to make the opening statement before we go into questions and answers.

Before we begin, I wish read an important notice on 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 relating to a particular matter and they continue to so do, 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.

I call on Dr. Smyth to make his opening statement.

Dr. Kevin Smyth: I would like to make my opening statement, but I would also like to say a few words afterwards about the “Panorama” programme. We should be able to do it within the limit of ten minutes. Is that okay?

Chairman: That would be helpful.

Dr. Kevin Smyth: I make the opening statement and my colleague, Mr. Sheahan, will speak about the “Panorama” programme but we are limited in terms of what we can say.

Successive governments have acknowledged the importance of the thoroughbred horse racing industry and have supported it through legislation and policy. The support provided by public funds through investment in the industry has enabled Ireland to develop a world-class reputation for excellence in thoroughbred horse racing and breeding. The most recent estimates provided by Deloitte in 2017 show employment from the core breeding and racing industry, off course betting and secondary expenditure resulted in 28,500 jobs and generated €1.84 billion. Ireland is the largest producer of thoroughbred foals in Europe and the third largest in the world, behind the US and Australia. Some 60% of Irish thoroughbreds born annually are exported, with 80% exported to Britain. Thoroughbred breeders are based in every county and 92% own five mares or fewer. The value of thoroughbreds sold at public auction in 2020 was €151 million. Britain accounted for €123 million of this amount.

Horse Racing Ireland, HRI, is a commercial state body established under the Horse and Greyhound Racing Act 2001. It falls under the aegis of the Department of Agriculture, Food and the Marine. The Horse Racing Ireland Act 2016 provides that Horse Racing Ireland is responsible for the overall administration, governance, development and promotion of the Irish horse racing industry, and for guaranteeing funding to the racing regulatory board to carry out its functions through an integrity services budget which is agreed annually.

Financial support is received from the State through the horse and greyhound racing fund under section 12 of the Horse and Greyhound Racing Act 2001. Some €96 million was allocated to that fund in budget 2021, of which €76.8 million was allocated to HRI.

Oversight of the role of HRI is provided through a shareholder’s letter of expectation, the HRI strategic plan, compliance with the code of governance for State bodies, and regular liaison meetings among other things.

Since 1 January 2018, the Irish Horseracing Regulatory Board, IHRB, is the regulatory body for all horse racing in Ireland. The IHRB is a company limited by guarantee set up by the Turf Club, which was established in 1790, and the Irish National Hunt Steeplechase Committee for the purpose of carrying out the regulatory and licensing functions for Irish horse racing. This body is responsible for protecting the integrity and reputation of Irish horse racing in Ireland. The Irish Horseracing Industry Act 1994, as amended, provides for the IHRB to have the following functions: to regulate horse racing; to make and enforce the rules of racing and in so doing to promote integrity and fair play in horse racing; to provide adequate integrity services for horse racing; and to license racecourses under the rules of racing. Legislation provides for the IHRB to be responsible for the “making and enforcing of the Rules of Racing”, including “making all decisions relating to doping control, forensics and handicapping in respect of horse

racing.” Funding is provided by HRI on the basis of an agreed annual budget.

In regard to welfare initiatives, HRI has an industry assistance programme in place called EQUUIP which provides education and upskilling with other supports through industry assistance programmes. The Irish Thoroughbred Welfare Council was formed in January 2020 to guide HRI policy in this area. This is a project working to ensure the widespread adoption of International Federation Horseracing Authorities, IFHA, basic standards. HRI and the Department of Agriculture, Food and the Marine work closely with the Irish Equine Centre, and its impending redevelopment is a future keystone of horse care in Ireland. HRI’s policy is reflected in the document Promoting Responsible Thoroughbred Ownership, to which bodies concerned with welfare within the horse racing and breeding industry subscribe. The key message is that those who own or keep a horse are morally and legally responsible for its health, welfare and safety. HRI directly supports the Irish Horse Welfare Trust which seeks to rehome and retrain thoroughbreds no longer active in training or racing.

In regard to the Department of Agriculture, Food and the Marine’s role in investigations, the Department is the principal regulator of the agrifood sector with regard to non-compliance with the illegal use of veterinary medicines and animal welfare issues. The IHRB regulates horse racing, as previously described. There are common compliance issues of interest to both regulatory bodies. The investigations division was established in 2014 as part of the ongoing modernisation of the structures of the Department of Agriculture, Food and the Marine and the wider public service reform process. The division’s mission is: to support the Department of Agriculture, Food and the Marine, its agencies and other relevant bodies by providing the capability to have investigations carried out as requested and to ensure that such investigations are carried out to a standard that will withstand legal scrutiny; to contribute to the Department of Agriculture, Food and the Marine’s capacity in horizon scanning and risk analysis; and to support the implementation of control regimes and the development of legislation underpinning these within the Department of Agriculture, Food and the Marine and its agencies, as required.

The Department of Agriculture, Food and the Marine’s investigations division supports the work of IHRB through a memorandum of understanding, and the Department’s principal regulatory activity involves risk-based inspection regimes and non-compliance generally, which attract financial and administrative sanctions. The Department carries out thousands of inspections annually in many diverse areas.

As members will see from my statement, the relationship between the Department, HRI and the IHRB is complex. The Department’s remit covers not just the issue of finance but also issues of governance and standards in areas such as welfare and inspection. The operation of the rules of racing and doping controls are clearly within the legislative remit of the IHRB, which is set in statute, to safeguard its operational independence. I am happy to take questions but first, with the Chairman’s agreement, I would like my colleague, Mr. Sheahan, to say a few words about last night’s programme.

Chairman: That is fine. I thank Dr. Smyth. Many of us saw the programme last night and it was extremely disturbing. It was not pleasant viewing for anyone who loves horse racing. I enjoy a day at the races, and am involved in horse ownership. It was not a nice programme, so we would welcome a comment from Mr. Sheahan.

Mr. Michael Sheahan: I will not comment on the programme in detail, as, like the members, I saw it for the first time last night. I will need to watch it again to pick up on some of the points in detail. Obviously, a few issues came up. For me the most striking issue was that of

horse slaughter, so I might say a few words on that point in particular. There are other points as well, but the horse slaughter and the footage from the abattoir in Swindon struck home with me most. I will say a bit about what happens in Ireland in regard to horse slaughter.

For background, until January of this year, there was a so-called tripartite agreement in place which effectively allowed for the free movement of horses between Ireland, Britain and France. That free movement meant that there was no need for a health certificate or any other documentation apart from the passport to move a horse from here to Britain or to France. That has changed since 1 January 2021. Since then, if you want to move a horse from Ireland to Britain, you have to go through the full rigours of involving a veterinarian, obtaining a health certificate and so on, so it is now more complicated than it was before. Until January, horses could be moved between here and Britain and *vice versa* without any difficulty.

In regard to horse slaughter, I have been involved in this area for about 20 years within the Department. At various times, we slaughter horses in Ireland. The number slaughtered varies from year to year. At one stage, we had as many as four slaughter plants in Ireland involved in slaughtering horses. Currently, we have only one slaughter plant. We have two approved plants, but one of them is out of action because there was a fire on the premises.

I am happy to say we are very satisfied with how the slaughter plant here operates, or how the plants operated in the past. They are operated and regulated in much the same way as beef or sheep slaughter plants. We have a full-time official Department of Agriculture, Food and the Marine veterinarian present at all times when slaughter is taking place. Ante and post-mortem inspection is carried out, and temporary veterinary inspectors carry out the post-mortem inspection, supported by technical staff. We have very detailed guidelines as to how the slaughter plant operates, and in fact we have a 51-page standard operating procedure detailing every aspect of how the horses are taken in, the documentary and identity checks, the ante-mortem and post-mortem and so on.

I have been in our slaughter plants, although not in the last two years due to Covid-19 restrictions but certainly in the past, and they operate to a very high standard, as do our other slaughter plants. Probably, for those who saw the programme last night, and for myself certainly, the single most surprising thing about it was the apparent method of slaughter of the horses. What we saw on the footage appeared to be horses being led into a room or ante-chamber, and we appeared to see a slaughter-man with a rifle. In some cases, it appeared that he was taking a shot at the horse from a distance and in other cases it looked like he was holding the horse by the halter with one hand and apparently trying to shoot the horse with the other hand.

I have to say it was, to put it mildly, very surprising for many reasons, including health and safety reasons, and from an animal welfare point of view. For the avoidance of any doubt, that is certainly not something that happens here. I do not know if it happened in the distant past, but it certainly did not in my time. That does not happen. When horses are slaughtered in a slaughter plant here, they are dealt with in the same way as cattle. I am sure members have seen how slaughter plants operate. The horse, bovine or sheep goes up along a shoot and into a restraining box where it is properly restrained, stunned and killed. There is no question that we would allow an animal, such as a horse, to wander around a room or to be held by an individual attempting to shoot it. That was a surprising element of the programme, and that is certainly not what happens here.

As recently as 2019 we were audited by the European Commission's DG for Health and Food Safety, which used to be called DG SANTE. It did a comprehensive audit of our whole

horse slaughter procedure, including the identification issues, residues, the ante-mortem, the welfare and so on. Their report is publicly available. In general, it was a very positive audit, as I would have expected. There are other aspects of the programme I can talk about, if the members so wish. However, for me, the aspect of slaughter was certainly the most striking.

Chairman: I thank Mr. Sheahan. I will move to questions, but I would like to ask Dr. Smyth some questions first. I return to the opening statement which states that legislation provides for the Irish Horseracing Regulatory Board, IHRB, to be responsible for the making and enforcing of the rules of racing, including making all decisions relating to doping control, forensics and handicapping in respect of horse racing and that funding is provided by HRI on the basis of an agreed annual budget. I have two questions on this and a third question for Dr. Smyth. Does he think it is appropriate that the membership of the IHRB is self-appointed from within the horse racing industry, given the fact that it is responsible for all surveillance of controls? In order to have proper governance and to restore public confidence in the system, is it time this legislation was revisited and the appointment of people to IHRB was re-examined? This has come up at our two previous meetings. It seems odd in the modern world, and in the context of proper governance, that the people who are in charge of the industry are appointed from within to govern the surveillance and the integrity of that industry.

The second question to raise its head is that the IHRB is funded by the HRI, with very significant State funding being contributed. Does Dr. Smyth believe it is correct that the salaries of senior members of the executive of the IHRB are not publicly available? What is his view on that? I cannot understand, in this age of computers and traceability, how there is not a proper traceability system for horses to enable us to know where they are all the time and all their movements. I am a farmer. If we take cattle to the mart, that movement is recorded. If there is movement from farm to farm, that is also recorded. It is done on computers and in a seamless fashion. I cannot understand how every movement of horses is not tracked and monitored by computer in such a valuable industry. If we had that type of modernised tracking of movement in place, I do not think we would have seen last night's programme investigating the movement of horses to slaughter.

An important issue was raised last night. Today may not be the day to address this aspect, and we might need another meeting in that regard, and I also do not expect Dr. Smyth to be fully briefed on it, but the programme last night dealt with the case of a horse being raced in Fairyhouse. The horse had an accident on the racecourse and had to be euthanised. Five or six years later, that microchip turned up in Swindon. That was a serious finding in that programme last night. Dr. Smyth may not have had enough time to have researched the details the programme last night and I respect that. This is an issue that the committee will be returning to in future. If we had a properly computerised and monitored traceability system for the movement of horses, I do not think we would be dealing with a situation such as this. I ask Dr. Smyth to address those questions first.

Dr. Kevin Smyth: I will deal with the first two questions and then leave the matter of the identity of horses to Mr. Sheahan. On the first question, it is clear in law where responsibility lies regarding the regulation of horse racing. The IHRB is legally responsible for making and enforcing the rules of racing. It makes all the decisions regarding doping control, forensics and handicapping, and the organisation is independent in respect of what the law states. Having said that, strict controls are imposed on the IHRB concerning corporate governance and financial accountability. The issue that seems to be arising, and the one the Chair has referred to, is the make-up of the committee. It has six members and one chairperson and there are two issues

in this regard. One concerns whether it is necessary to have an independent person or persons on that committee. A second issue which has come up is the gender balance of the committee. It is not for me to dictate its make-up, but a strong message is coming through in that regard.

Turning to the funding of HRI, the €9 million and the situation with the salaries, this is a complex issue and it does not just apply to the IHRB. Several State bodies do not report the exact salaries of their staff. That is permitted under the 2016 Code of Practice for the Governance of State Bodies in respect of provision 1.4 of the subsection on business and financial reporting requirements. State bodies covered by this provision are allowed to publish details of the number of employees within pay bands. From €60,000 upwards, it is necessary for such bodies to report in lots of €10,000 roughly what is being paid to their employees.

Generally, what is reported is just the amount paid and the number of employees in that band. That is perfectly permissible. It is being done by HRI and the Irish National Stud as well. It is allowable under the code of governance. The actual salary of the chief executive, for example, is reported to the Minister for Agriculture, Food and the Marine. Exact details are provided, but that information is confidential and commercially sensitive. It would be a breach of the general data protection regulation, GDPR, to disclose it.

Chairman: I am not asking Dr. Smyth to disclose the information. I accept fully that an agreement exists with the chief executive and I made that clear at the last meeting. I am asking Dr. Smyth if it is correct for there to be such a lack of transparency regarding public money in modern Ireland.

Dr. Kevin Smyth: There are two aspects to this matter. The Chair is absolutely correct that this is taxpayers' money and that it is accountable. What is paid to the majority of people by the Exchequer is known and the information will be disclosed. However, there are limited cases where it is not, and that is allowed for under the regulations. It is not just an issue with the IHRB, because many other State bodies also provide limited information. We are talking about limited transparency, but this is allowed under the rules.

Chairman: I thank Dr. Smyth. We will move on because many members want to contribute and then return to traceability and the movement of horses later. As he has an engagement later this morning, I call Deputy Flaherty.

Deputy Joe Flaherty: I will not take up too much time because my colleagues wish to comment as well, but I am thankful to be allowed to contribute now. I thank the officials from the Department for coming in. The Chair has touched on some of the issues already and the programme last night was harrowing to watch. However, not every horse going through that abattoir was a racehorse. Many of them were ponies and probably sport horses originating in Ireland and the UK. We have an issue regarding the traceability of horses in this country and the responsibility in this regard is spread across several regulatory bodies, including the HRI, Weatherbys and Horse Sport Ireland, HSI.

Mr. Finnian McLoughlin, a constituent of mine, contacted the Department last November and highlighted that 18 horses on the sport horse register were still registered in his name. Of those 18 horses, two were dead, two had been exported and were dead, another two had been exported, nine were sold, one he had never owned and two more had been sold and exported. When Mr. McLoughlin contacted Horse Sport Ireland, he was informed that it was the responsibility of the new owners to complete the transfer of ownership forms and not his. Department of Agriculture, Food and Marine permits were issued for at least two of these horses and Mr.

McLoughlin understood that at least two more of those horses were disposed of in one of the Department-approved abattoirs mentioned earlier. Mr. McLoughlin also understood that four more horses had been exported to the UK. In that instance, however, the new owners are not required to complete a change of ownership form with Horse Sport Ireland.

Therefore, we can see that there is a major grey area regarding the ownership of horses in Ireland and we have a responsibility in this regard. We are a horse-loving nation and we take great pride in and highly value our reputation as an equine nation. The onus in this regard must be on the Department of Agriculture, Food and the Marine to get to grips with this issue of horse ownership. As the Chair rightly said, and as my colleague, Deputy Fitzmaurice, stated at our last meeting, we know exactly where a calf has been from the moment it is born until the day it ends up on a plate. Unfortunately, the same cannot be said for horses originating in Ireland. This is a major grey area. I appreciate that the witnesses are not going to be able to wholly address this aspect with us here today, but we must get information on horse ownership, traceability of horses, where and how horses are sold and where they are exported to collated in one central database. In this modern age, it is inconceivable that we have not been able to hack this. I appreciate that other members have questions as well, but I would like the witnesses to address this issue before the close of this meeting and to state what the Department is going to do in this regard. I refer to going away, examining this issue and then trying to devise one central source of information on the ownership of horses and the tracking of horses post-sale.

Mr. Michael Sheahan: Does the Chair want me to address that issue of traceability now?

Chairman: We constantly get stuck for time in these meetings, but if Mr. Sheahan can give us a brief answer, I ask him to go ahead and do so.

Mr. Michael Sheahan: I agree with the Chair and Deputy Flaherty that traceability in the horse sector is nowhere near as good as it is in the cattle industry. I have no hesitation in saying that our system of traceability for cattle is, if not the best in the world, then definitely among the best in the world. It is a superb system and the envy of every other agricultural country in the world, and indeed of health systems. We really do have a Rolls Royce-standard system in place when it comes to the traceability of cattle. Having said that, it has taken us more than 50 years to develop that system. We started off with tagging and blue cards and since then we have slowly but surely built up the system over the years. A huge impetus came from the bovine spongiform encephalopathy, BSE, crisis, which basically forced Ireland, and other countries, to develop the exemplary system we have now.

We do not have such a Rolls Royce-type system for horses. We have come a long way in this regard, however. I was first involved in this area back in about 2007. There was very little traceability of any sort in respect of horses. Things have improved considerably since then. For example, we now have premises registration legislation, which, I believe, was introduced in 2014. There are now 27,000 premises registered in Ireland. At least we now know where the vast majority of horses are. We have the change of ownership legislation, which we did not have previously. We also have a central database within the Department of Agriculture, Food and the Marine. It is not as good as the cattle database, but it is good. It is a pretty good start.

Chairman: What percentage of all horses are microchipped?

Mr. Michael Sheahan: We do not know exactly, but we do know it is very high. In the thoroughbred sector it is 100%. There is no question about that. With regard to the non-thoroughbred sector, I will give an example. We started going to the Ballinasloe horse fair. Everybody

knows that the Ballinasloe fair is the biggest of its kind in Europe. We started going there about ten years ago when we first started making a move to improve traceability and identification. We set up a number of checkpoints with the co-operation of An Garda Síochána around the entrance and exit to the Ballinasloe fair. During the first year we did this, it is fair to say that the number of horses with passports and microchips was very low. We are talking about 10% to 15%. Obviously, these were not thoroughbreds. During that first year of checkpoints, we advised people that if they turned up the next year without a passport and microchip for the each horse, they would be turned away. The second year the compliance level was very high and the third year we had nearly 100% compliance. This was even among the horses belonging to the Traveller community who would frequent the fair at Ballinasloe, and including a lot of horses at the lower end of the market as well as the top-class sport horses.

Even at the Ballinasloe fair end of the market, the compliance levels are now light years ahead of where they were. We have come a long way, but there are still a few more pieces of the jigsaw to be put in place before we have the sort of traceability in the horse sector that exists in the cattle sector. There are plans in place for that. My colleagues on the equine identification side are working on having an equine census in place before the end of the year. This will be another bit of the jigsaw to improve the traceability. There is still a way to go. The sector is on a journey. It is clear that this committee is of the view that more should be done and perhaps it can give the issue of traceability a further push.

Chairman: I thank Mr. Sheahan. I now call on Senator Mullen.

Senator Rónán Mullen: I thank the Chairman and support in full the questions he asked a few moments ago.

The intersection between doping in horse racing and what emerged from the “Panorama” documentary shown last night is the matter of animal welfare. Doping often involves considerable cruelty to the horses involved. Obviously, what we saw on the programme last night was extremely disturbing. As a person who sees horse racing on television every week, I am always struck that in the presentation of it to the public, and the reason people like it so much, a great love for the horse is projected in all the talk around the sport and in the commentary about the animals. The picture we are getting in recent times in Ireland, however, is that while we might be a horse-loving nation - to use Deputy Flaherty’s phrase - and while there might be many people in horse racing who do love horses, there seem to be many people in the horse racing industry who do not love horses and who see them as machines and entities to be used for making money. One of the reasons we are so concerned about the possibility of a massive drug problem in Irish horse racing is because we know what is going on in America where horses have been broken down and given drugs to mask pain so they can be used to death. We have now seen a documentary that tells us 4,000 horses are being slaughtered in Britain.

I thank our guests for coming in. My questions for them today really come down to whether they are being too conservative in approach to their work and whether they are actually pursuing an animal welfare agenda. I will start by asking the officials whether it is against the law in the State to transport over a long distance injured animals for slaughter? If this is not against the law, why is that the case? While the officials cannot comment here because they cannot criticise policy, and their answers here today are very guarded, they are the people responsible for encouraging policy-making and urging legislation. The officials are behind the legislation that is brought before these Houses. If such a practice is not against the law why is it not? If it is against the law how is it that the Department is not enforcing the law? With great respect to the officials, it is hard for us to believe that they are very surprised by what was on the documentary

last night. Most people would feel that the Department had a fair idea for some time that this kind of thing is going on. Am I being unfair?

Dr. Kevin Smyth: I will leave the aspect of the welfare and transportation of injured animals to my colleague, Mr. Sheahan. I can state quite categorically that I knew nothing about this until I saw what was on last night. I had no inkling. There is a legitimate way of dealing with injured animals or animals that require euthanasia. It can be done in a humane way in this country and there are abattoirs for that. Some of the 4,000 figure includes animals that have been put down humanely in this country for legitimate reasons. I had no inkling whatsoever of what was in that programme.

Perhaps Mr. Sheahan will clarify the regulatory position on the transportation of injured animals.

Chairman: I would like to clarify one thing. To be fair to the thoroughbred industry, of the 4,000 horses no figure was given in last night's programme as to how many of those were thoroughbred. We must be clear on that. All classes of horses are being exported. I would have serious concerns about the amount of microchipping there is in the non-thoroughbred horse industry. To be clear and on the record the 4,000 horses are not all thoroughbreds.

Mr. Michael Sheahan: Senator Mullen asked if it is illegal to transport horses over long distances if they are injured. Absolutely. There is no equivocation about it. This is in European legislation, Council Regulation (EC) No 1/2005 is the regulation that deals with the transport of animals. There is no doubt about it whatsoever. It is absolutely illegal to transport animals if they are injured if it is judged to add to the pain and suffering. On last night's programme we saw pictures of a couple of horses that were obviously very lame and one in particular was clearly holding its leg and was visibly lame. There is no doubt that if this animal was loaded on a box and transported in that condition, it would clearly be against the law. To be fair, I do not know if that was the case. Perhaps-----

Senator Rónán Mullen: I am sorry to interrupt Mr. Sheahan, we are very stuck for time and I have a limited amount of time. I am interested to know whether he had any idea that this type of thing was going on.

Mr. Michael Sheahan: No. We know that horses get transported but of course we had no idea-----

Senator Rónán Mullen: It was mentioned that-----

Chairman: Please let Mr. Sheahan answer.

Mr. Michael Sheahan: To be clear, if it was the case that this one horse who was very visibly lame was loaded onto a box and transported 200 miles - or whatever it was - this was clearly illegal and the person who transported-----

Senator Rónán Mullen: I thank Mr. Sheahan.

Mr. Michael Sheahan: To be clear, I am not sure that this was the case. The horse could have been injured en route, it could have got injured-----

Senator Rónán Mullen: Did the officials have any idea of this stuff going on?

Mr. Michael Sheahan: That injured animals were being transported?

Senator Rónán Mullen: Yes. Did the “Panorama” documentary tell the officials anything they did not know?

Mr. Michael Sheahan: As I said at the start, the most surprising thing for me was the fact that horses were being killed in the manner they were. They were shot, seemingly-----

Senator Rónán Mullen: And not the transportation?

Mr. Michael Sheahan: I did not see anything specifically that I could say was wrong. If it was the case that the lame horse was transported with that injury, then clearly it was wrong.

Senator Rónán Mullen: Mr. Sheahan told us that-----

Chairman: Please let Mr. Sheahan finish. Is Mr. Sheahan finished answering that question?

Senator Rónán Mullen: I want to pursue this issue if I may. Mr. Sheahan told us we had a Rolls Royce system which he extolled at length and he said it took 50 years to build it up.

Mr. Michael Sheahan: Yes, for cattle.

Senator Rónán Mullen: Precisely because we have a system like that, it would not take 50 years to adapt that across the equine sector.

Mr. Michael Sheahan: I agree with Senator Mullen.

Senator Rónán Mullen: Is it not an indictment of the Department that having such a Rolls Royce system for cattle that it has not been applied to horses? Is it not the case that the Department has not been pursuing an animal welfare agenda with vigour?

Mr. Michael Sheahan: On the cattle side, there is European legislation that requires us to have a traceability system. For better or for worse, the same does not apply to the horse racing system. Also, for better or for worse, on the horse side, European legislation has been much slower and, even now when things have improved, the requirements are much less onerous than they are for cattle.

I do not disagree with the Senator; there is a need to move forward. There are plans to have one of the final pieces of the jigsaw in place before the end of the year. We have the premises’ registration in place. We also have the central database in place and the plan is to have the equine census carried out before the end of the year. We have come a long way. One could always argue that things should have moved faster. Even though the number of horses is far fewer than the number of cattle, there are arguments as to why things are a bit more complicated with horses.

Senator Rónán Mullen: If I could turn to the question of doping, one of the problems with the claims being made about the fear that drug taking is a major problem in Irish horse racing is that it is very difficult to catch. Those who do this kind of thing are very skilled at staying ahead of the investigators. We know how they had to be brought down in America and that has brought changes, including to governance and the make-up of governance bodies of the horse racing regulatory sector.

I understand what happens when the Department sends people to seize imported products from the customs authorities. My source for this is Mr. Louis Riordan, a name the witnesses will know, a man from within the Civil Service. He pointed out to me that often when customs

seize imported products they write to the consignee giving him or her a warning and sometimes asking for permission to destroy the product seized. Given that it is unlikely generally that customs will seize a consignment, when that happens it is a rare opportunity to find out who is using drugs, but very often there are not controlled deliveries. Is it the case that the Department sometimes sends people out who have no pharmacological qualifications and not a lot of experience in the area and sometimes they do not carry out controlled deliveries, therefore frustrating our ability to know who is importing the drugs? Has that been happening?

Mr. Tim Drea: I cannot comment on the individual speaking to the Senator, but in terms of the way this operates, in the past three years the customs seized very large amounts of unauthorised animal remedies. Most of them constitute people buying veterinary medicines on the Internet. The administrative process Senator Mullen describes addresses that. We take the product from customs, write to the consignee and we destroy it. That happens in circumstances where the product is not of significance. The vast majority of the products in that category are for small animals. The risk in terms of food safety or public health is minimal. That is seen as an administrative approach to dealing with the large numbers we had a few years ago.

Senator Rónán Mullen: Could I stop Mr. Drea there? He referred to food safety and public health. Equine doping is not primarily about either of those things.

Mr. Tim Drea: No.

Senator Rónán Mullen: Is Mr. Drea in a position to tell me, first, that he has the expertise on site to know if the drug that has been seized by customs could be used in horse doping and, second, where that happens he does not warn off the consignee and seek permission to destroy the drug but that a controlled delivery is done in all of those situations in order to find the wrongdoers? Could he guarantee that he does that in those situations?

Mr. Tim Drea: No, I cannot, and the reason is that controlled delivery was only used in a small number of very specific instances in the past. Controlled delivery basically means identifying a product when customs seize a dangerous product and allowing it to be delivered to farms and end users and then carrying out an inspection or raid to find the product after it has been delivered.

Senator Rónán Mullen: Is Mr. Drea saying-----

Chairman: Senator Mullen should please let Mr. Drea finish.

Mr. Tim Drea: There are a number of very significant risks with that approach. The principal one is that one does not find the product so there is a judgment call around releasing product of that nature. Those judgment calls are made on a case-by-case basis. We have full support from the veterinary medicine division, which is the expert in this area. I have three vets in my division who are involved in this work as well.

Senator Rónán Mullen: Mr. Drea said first of all that they have to be dangerous. That suggests to me that if it is being used in equine doping it is not regarded as dangerous. Is that what Mr. Drea is getting at there?

Mr. Tim Drea: No. It is if there are items of significance.

Senator Rónán Mullen: Mr. Drea stated that the controlled delivery has complexities attached because one would not necessarily find the product. I am talking about a situation where

drugs have been seized. Is there expertise on the spot when that happens to know that they could be used in horse doping? Serious allegations have been made affecting the reputation of the Irish horse racing sector, which is extremely important to the economy. We have heard all of that. Is Mr. Drea in a position to know when he is dealing with horse doping drugs? Surely a controlled delivery then is about managing the delivery of the drugs and being on the spot when they are taken in. Therefore, one knows the wrongdoer because the consignee has been linked with the drugs imported. Why is that not being done?

Mr. Tim Drea: We have done it in the past in a small number of instances over a 20-year period.

Senator Rónán Mullen: Why was it done in only a small number of instances?

Mr. Tim Drea: The number of products we intercept that are being used for doping horses is very small. In fact, in the past, in some of the instances where controlled delivery has been carried out, the prosecution afterwards was on the basis of product found that was not part of the delivery. We have carried out controlled deliveries and the product has not been recovered. This must be done in a careful way on a case-by-case basis.

Senator Rónán Mullen: Does the Department have the pharmacological qualifications? If I understand it correctly, Mr. Drea is in a role that was previously a veterinary role. I know there was some change to the system. I also understand that a lot of people with veterinary and related experience have left the investigations division and that there is a small number of veterinary inspectors with relatively recent experience. Is there a danger that the Department does not have the experience it needs in order to police this issue aggressively?

Mr. Tim Drea: I would like to have more staff with more experience, but I have three veterinarians. There were never more than three for the past ten or 15 years in my division. The former head of this division and his predecessor are both working in the Department in the veterinary medicine section. They are available and they do assist us.

Senator Rónán Mullen: Okay. What happened in the Zilpaterol case? This is a case that we have discussed at previous meetings. It relates to testing done in France and the withdrawal of certain horses from races by Ballydoyle. There was a report that there was a contaminant in material produced by Gain Equine Nutrition. We were told by the Irish Horseracing Regulatory Board that it was satisfied that it could not have detected this because the French laboratory had a more refined way of testing. I did not get a chance to ask a further question I wanted to ask. I understand that time was limited. I wanted to ask whether that ended the IHRB's interest in the subject. I am not at all clear whether an investigation was done to establish that whatever contaminant was in the feed was not there for a nefarious reason. I do not know whether it was a contaminant that got into particular horse feed or whether it got into horse feed used by certain stables or yards. Did the Department chase that down and did it act in time to take samples? What did it do in that case involving Zilpaterol and what did it find?

Mr. Tim Drea: I welcome the opportunity to put this on the record because the Senator is not alone in his understanding of the Zilpaterol issue. Zilpaterol is a beta-agonist that is illegal in Europe. It is used in the USA, South Africa and other countries as a growth promoter for beef cattle. When discovered in Ireland, it is treated as a food or feed safety incident, which triggers our incident management plan. The Department's response is governed by the official control of foodstuffs regulation, namely, Regulation (EU) 2017/625, which requires all member states to have the capacity to respond to these types of incidents. In practice, all the relevant

staff in the Department, the Food Safety Authority and associated agencies would have been brought together in a small group. This all happened over hours and days so it was all done very quickly; as quickly as the laboratory results could be generated. It is a requirement of the official controls regulation that the animal feed industry has full traceability from raw material to finished product and out to the customer, and Ireland has that. Once this issue was identified, Department staff would have gone to the feed mill, gone through its feed milling process and sampled the raw materials, and then gone back to the importer. Within a very short period - from memory it was a matter of a few days - the origin of the problem was discovered.

The origin of the problem was a molasses mixing plant in South Africa. It was the first shipment from that plant to Europe and that plant had a mixing system that allowed it to incorporate Zilpaterol into molasses as a growth promoter in beef cattle, which can be done legitimately in South Africa. That is the practice in America as well. Unfortunately, an importer, a Belgian multinational company, bought molasses from that plant. The level of Zilpaterol identified in the samples was very low. We got samples and tested feed and raw materials. We communicated with the European Commission and other agencies. The level of Zilpaterol in both the feed and the raw material was low enough for us to conclude that there was no feed or food safety issue, which is our focus. However, the fact is Zilpaterol was there and that is also an equine doping issue. We and the equine industry have no tolerance for Zilpaterol. You cannot have it so when it is there our focus is around food and feed safety. We were satisfied that it was not a food or feed safety issue. All the product was withdrawn and taken out of the feed chain as a precaution. The conclusion of that investigation is that this was what is described in the legislation as a contained isolated incident of external cause. We are absolutely satisfied that this was not deliberate. There was no logic to the possibility that there could have been a deliberate cross-contamination here and there was no line of sight between the raw material importer and the end user. The zilpaterol came from South Africa in a load of molasses.

Senator Rónán Mullen: Did the Department take samples from the end users?

Chairman: We have to move on to other members. The Senator has had a number of opportunities to ask questions.

Senator Rónán Mullen: I appreciate that. Could I ask one last question?

Chairman: Okay.

Senator Rónán Mullen: It echoes the Chairman's own. It seems to me that our guests are the ones who are going to shape policy. Will they take steps to bring forward legislation, or whatever measures are necessary, to bring about more independence in the body that is responsible for the regulation of something as sensitive as equine doping?

Dr. Kevin Smyth: This issue has come up as regards the make-up of the central committee within the IHRB. This message has been coming through from a number of people. It is not for the Department to dictate the make-up of that committee. My understanding is that the message coming through from this committee is that it would like to see more independence and a better gender balance on the IHRB committee.

Deputy Martin Browne: I hate to be critical, but nearly an hour has been spent on one contributor. I see on the screen that there are an awful lot of people looking to get in.

I have questions for the Department following up on what we have heard and I also have questions about last night's television programme, though I do not know if the witnesses are

in a position to answer them at this stage. Some €96 million was allocated to the horse and greyhound racing fund in budget 2021, and €76.8 million of that went to HRI. According to the Department's submission to the committee, an investigation division was established in 2014, with three of the main purposes being:

1. To support [the Department], its agencies and other relevant Bodies [like the IHRB] by providing the capability to have investigations carried out as requested and to ensure that such investigations are carried out to a standard that will withstand legal scrutiny.
2. To contribute to [the Department's] capacity in horizon scanning and risk analysis.
3. To support the implementation of control regimes and the development of legislation underpinning these within [the Department] and its agencies as required.

What does the Department have to say to the whistleblowers who have been critical of the IHRB's handling of these allegations? If they were to contact the Department directly, what would its course of action be? Have such allegations come across the witnesses' desks directly? If so, what actions have they taken? Since this controversy arose, I have been refused details about the number and nature of concerns that have been submitted to the IHRB's hotline. Much of what we have heard from the IHRB we have to take on good faith. Would the Department consider demanding a full account of the allegations that have been made to the IHRB and how these allegations have been assessed? Has the Department considered holding an inquiry into the operations of the IHRB and HRI to ensure full transparency at this stage and to ensure that all allegations are being fully followed up?

There seems to be a difference of opinion between the IHRB and the Irish Racehorse Trainers Association about whether authorised officers should conduct inspections without the presence of a vet. Is the Department aware of this difference of opinion and what is its view on that? Why were the results of the PRISM Leadership and Change Consulting employee survey? These have not been made public. Millions of euro of taxpayers' money are given to the industry each year, but we are not allowed to see the issues that report may have uncovered. Are the witnesses comfortable with the lack of transparency there?

Those are just my questions on what we have dealt with already. I would like to come back in later to ask about last night's programme, but I know there are more members wishing to get in. Maybe we can get those answers first.

Dr. Kevin Smyth: With regard to whistleblowers and allegations, the Department is more than happy to meet with anyone. There is a particular prominent person who has been in contact and has been in the newspapers. They have not met the agriculture committee. They have spoken to the heads of the IHRB and HRI but if they wish to speak to the Department we will be more than happy to arrange that. We have a method of dealing with whistleblowers and protected disclosures and if there is evidence or details we can get we would be more than happy to deal with them. I will respond to the question of an inquiry into the activities of Irish Horseracing Regulatory Board, IHRB, and Horse Racing Ireland, HRI. I would like to know what the basis of that inquiry would be and what exactly we would inquire into? I leave the other questions to my colleagues.

Chairman: Could Mr. Sheahan or Mr. Drea respond?

Mr. Tim Drea: I know the question of the authorised officers came up before. There are no formal qualifications necessary for authorised officers. The Minister authorises officers to carry

out regulatory functions across all of our areas. We treat IHRB authorised officers like our own authorised officers. There are couple of important points about authorised officers. Authorised officers in the context of the IHRB act as part of a team. While there are concerns about individual qualifications, the legislation underpinning this authorisation is the veterinary medicines legislation. It requires people who carry out any of the functions of an authorised officer are authorised to do so. I think in the last session there was a discussion around an example of five or six people arriving to a racing premises to carry out an inspection. All those people need to be authorised officers. For example, the man who stands at the back gate to make sure a lorry does not drive out needs to be an authorised officer. He does not need to be a vet. That is how my division functions, and has functioned for years. The division I manage has all four streams of Department staff. All of them are authorised officers. Basically, the requirement to be an authorised officer is to have the capacity to fulfil the duties of the job. In the case of IHRB, that would be to have a knowledge of horse racing and to have experience in a role in the IHRB. Maybe this information will help members understand about the qualifications and the authorised officers.

Chairman: Would Deputy Martin Browne like to respond?

Deputy Martin Browne: I would like to ask about the “Panorama” programme. Can we ask questions on that?

Chairman: We should go through the original agenda. We can see at the end if we can get back to it. However, there were most definitely serious questions. I raised the question of the microchip that appeared on a horse that had been euthanised five or six years previously. There are serious questions there, but we might have to have a separate session. If we have time at the end, I will let the Deputy back in.

Deputy Martin Browne: I accept and appreciate that. I want to ask questions, but like I said, I am aware that other members want to come in.

Chairman: I call Senator Paul Daly.

Senator Paul Daly: I welcome the officials from the Department. Deputy Browne mentioned the “Panorama” programme. I could go on for the full remaining hour about last night’s “Panorama” programme. Without being flippant, I am conscious that we convened today with a different agenda, which was formed prior to the airing of last night’s programme. However, I would hate to miss the opportunity to get the bottom, or as close to it as possible, of the accusations of doping. I will concentrate on that. We may have to have a separate, stand-alone meeting on last night’s programme. There are many unanswered questions. As a horse owner, I had a pit in my stomach last night watching the programme. I could only visualise my own horse. The vast majority of owners would look at it in that way. There are questions to be answered on last night’s programme. If there is time at the end, the Department might comment on how horse agents are registered. Are they registered or licensed? There are many questions to be answered which were not asked of horse agents, hauliers, and both the proprietors and management of the abattoir in question.

I want to move back to the agenda, which was on the recent articles with accusations of doping. I have a few questions for the Department. It was in its submission to us, and it is a historical fact, that the Turf Club was founded in 1790. That was under a different administration. Which came first? Was it the chicken or the egg? We had a Turf Club and we had horse racing before we had an Irish Department. If it is the monitoring and controlling body, how did

that relationship evolve? It had a stronger foundation. The Department might comment on how it thinks things evolved there. Who has control of the situation?

I want to go back to the well-documented issue of the quarter tonne of nitrotrian that came in. That was an equivalent of 62,500 doses. Did the Department pursue where that went? Where were they administered? Does it have any idea in what establishments the horses were based? Where were 62,500 doses going? Where did they possibly even get to?

On the question of the zilpaterol, who brought the horse to France? If nobody brought the horse to France, would we have ever discovered that within our system? For how long could it have been going on? For how long could it have been prevalent? If the horse had not gone to France and if the French had not detected the drugs, for how long could it have been an issue here? How far behind the curve are we?

I presume the Department has a regulatory role for feed contact. Maybe it is a different section of Department but is it not analysing feed? It would be the source of the drug. We seem to be looking at the blood and urine samples of the horse. If the feed had been tested, the problem would have been solved straight away. How long would it have taken if the horse had not gone to France?

With a view to solutions to the issues at hand, to the issues highlighted by some people or to the accusations that have been made, what changes can we make going forward? What changes can the Department make? Could the Department comment on the role of the Irish Equine Centre in Johnstown. What role does the Department have there? A major capital development project has been put forward in plans by HRI. Does the Department believe we could possibly do our own testing on a national basis in the Irish Equine Centre in Johnstown? How well would that improve the control of doping, or suggestions of doping, here? We would not be exporting samples or using labs outside of Ireland if we had our own national lab in the Irish Equine Centre.

As I said, I do not mind questions on last night's programme being deferred to the end. It is important we deal with what was on today's agenda.

Chairman: I kindly appreciate that Senator. Hopefully, we will have time. I call Dr. Smyth.

Dr. Kevin Smyth: I will deal with two of the questions. The first question was on what has changed about the Turf Club. The Senator was correct that the Turf Club was set up in 1790 and the Department of Agriculture was set up in the 1 April 1900. These entities are a great deal older than us. However, there has been a sea change since 2018, both in corporate governance and in accountability. The IHRB has a strong relationship with HRI. It explains how it spends money, its integrity budget, its regular meetings, and how its accounts for it. It is still independent with regard to the rules of racing. Its accountability, from a financial and corporate governance point of view, has moved greatly.

The second area I want to deal with is the issue of the Irish Equine Centre. The Senator is correct that there is a commitment in the programme for Government for a major overhaul of the Irish Equine Centre. We are expected to invest €24 million in upgrading the facilities there. I have no doubt that it will have a role to play in testing in the future. I will pass over to my colleagues on the nitrotrian and zilpaterol issues.

Chairman: Would Mr. Sheahan or Mr. Drea like to come in?

Mr. Tim Drea: I will comment on the question of nitrotain. The figure, which is well documented in the media, is about 225 k of nitrotain. That figure came from the supplier who provided the 6 k that were seized in, I think, 2012. It was imported by a vet who was subsequently prosecuted. The evidence, which is not disputed, was that individual had purchased 225 k of nitrotain over at least ten years. It was over a long period, but it was still approximately 25 k per year, on average. I do not have the historic data on when that started and finished, but I know it was a ten-year period.

In terms of the Department's follow-up, it was well before my time. I know a little bit about the case. There was one prosecution and there may have been a second. A number of premises were visited. The person who imported the Nitrotain refused to reveal where he had used it. The only evidence I am aware might have existed at the time was certain weak material that investigators tried their best to use to arrive at a point where they could take it further. I had no knowledge of the case beyond that, other than what I know from colleagues who are no longer with our division. A significant effort was made at the time.

There are real evidential problems. If residue, the physical product or something else that has evidential value is not minded that is always a challenge with this type of things in terms of getting to court. The national residue control panel in the Department tests for zilpaterol. Under that plan, I understand that approximately 900 animals are tested, including cattle, sheep, horses and anything that can end up in the food chain. Zilpaterol is one of the things for which tests are carried out. Testing is carried out with a view to identifying food or feed safety issues. We have never found zilpaterol under the national residue control plan. Would we have found it if it had not cropped up in France? I cannot honestly say that we definitely would have found it. The level that was found in that sample would not have indicated a food or feed safety issue. We might not have found it. That is all I have to say on those two issues.

Senator Paul Daly: I ask Mr. Drea to speak a small bit about the role the Department plays, albeit perhaps a different section, in feed regulation or testing.

Mr. Tim Drea: The functions of the feedstuffs division in the Department are covered by the official controls Regulation (EU) 2017/625. It carries out sampling of raw materials and finished products. All feed compounders in the country are obliged to keep samples and have their own HACCP plans in place to prevent or identify these kinds of problems. Would it have found zilpaterol? I cannot say it would have, given the levels it was at. That system is in place. It was really useful when we became aware of the problem because we were able to get the samples of finished product and raw material and run it back to source very fast. The focus of the whole structure is around food and feed safety.

Chairman: Okay. I thank Mr. Drea.

Deputy Matt Carthy: I thank the witnesses for coming before the committee. Dr. Smyth described the relationship between the HRI, the IHRB and the Department as complex. On the basis of the evidence we have heard over three meetings, I would describe the relationship as being far too cosy. On a number of occasions, Dr. Smyth described the IHRB as an independent body. Part of the difficulty in terms of building public confidence is that it is not seen as independent. Rather, it is seen as being an organisation run for and by the industry and there is no independence in terms of the board. Everybody on the board comes from within the industry. Dr. Smyth answered a query from the Chair on the salaries of the CEO and senior staff members. In response to a question as to why a derogation is provided regarding the publication of high-level salaries, Dr. Smyth said that this happens in other places. Why has the Department

provided a derogation to the IHRB not to publish the salary of the CEO?

Dr. Kevin Smyth: With regard to the salary, it is based on a personal contract for the CEO. The salary is disclosed to the Minister. What he received in 2018 and 2019 is known to the Minister. I have seen that letter. It is commercially sensitive and private information. I believe it would be a breach of GDPR and his contract if we disclosed that salary. We are aware of what he is paid.

With regard to the banding of salaries, it is permissible under the 2016 code of governance. A number of other State bodies have the same arrangement, with permission. It is a relatively common practice. HRI and the Irish National Stud follow that practice as well.

Deputy Matt Carthy: Why is that in the contract? Why is the head of the IHRB, a body charged with regulating the sector, not being transparent enough? It is the most simple of processes. Why was it agreed that the contract should be clouded in a veil of secrecy and who agreed to that?

Dr. Kevin Smyth: This is a private contract. The person has been given a guarantee in that contract. We have respected that. We would be in breach of the GDPR if we disclosed that information. The salary is known to the Department and has been disclosed to the Minister for Agriculture, Food and the Marine.

Deputy Matt Carthy: Dr. Smyth is speaking to a platform where everybody's salary is published on an annual basis, usually multiple times, in national various national media publications. The GDPR is a cop-out in my view. I do not know whether there is an appreciation within the Department of the damage that is being done to a sport that everybody in this meeting has a great affinity for due to a lack of transparency.

I accept that I will not get an answer to that question, but I want to put on the record that it is something I will not drop. Does Dr. Smyth accept, in respect of the regulatory board, that the make up of directors is not good practice and does little in terms of building public confidence?

Dr. Kevin Smyth: I go back to what is permissible under the code of governance. There is limited transparency with regard to the payment of certain employees. I have explained the situation with regard to the contract with the CEO. In these cases, there is a reporting arrangement and it is possible to deal with that. What was the second aspect of the Deputy's question?

Deputy Matt Carthy: I asked about the directors, in that they are essentially self-appointing. The industry appoints its own regulatory board. Does Dr. Smyth accept that is not best practice?

Dr. Kevin Smyth: The message that is coming through to me clearly from this committee is that the Deputy does not see it as best practice. We do not dictate who is on the board, but the message that is coming through clearly is that the committee wants a better gender balance and more independence within the board.

Deputy Matt Carthy: The taxpayer is paying for this. Should the taxpayer not be represented on the board?

Dr. Kevin Smyth: That is an issue for the board. It has regulatory independence with regard to racing and its own set-up. A clear message is being sent.

Deputy Matt Carthy: Reference was made to the programme last night in terms of the

quantity of Irish horses are slaughtered in Britain, and the circumstances in which that happens. Dr. Smyth or another witness stated that there was no inkling within the Department of this practice. It was referenced in a couple of cases that there were large stables in which one in six racehorses have died since 2015. Considering the average lifespan of a horse is 25 to 30 years, is there no mechanism within the Department whereby that would raise alarm bells and warrant further investigation?

Dr. Kevin Smyth: With regard to the no inkling comment, that was made by me. I was not aware of this practice. What I saw last night was the first time I had seen anything like that. With regard to the mortality rates within horses, I will pass that comment over to Mr. Sheahan.

Mr. Michael Sheahan: I understand that the Deputy's question was about the mortality rates in certain large stables. I do not know about that. Generally, in the Department we do not keep records of mortality rates in trainers' yards. I am aware that the IHRB has in recent times been doing more in terms of statistics of horses dying on the racetrack or whatever, but I am not aware of a system for keeping a record of the number of horses in a particular trainer's yard that might have died over a period. We have records in our central database of horses that die. We have records when a horse is euthanised, goes to a knackery or whatever. That passport is returned to the Department of Agriculture, Food and the Marine. There is a system of keeping tabs on horses that die, are euthanised or are slaughtered in the country. It is supposed to be the case that, when horses are slaughtered abroad, the passport is returned. Whether that is working to the extent it should be with regard to horses being slaughtered in England in that particular abattoir, I do not know. We can follow up on that.

There is a certain amount of record-keeping as regards mortality levels, but down to the level of individual stables there is not, to the best of my knowledge. Within the Department, there is no system of recording the mortality rate over a period in a specific stable. Whether there should be is another question.

On the traceability question we talked about earlier, on the cattle front it would be possible relatively easily to work out mortality rates because, as I said, we have a Rolls-Royce system for cattle.

Chairman: We have an investigation when we have a second set of twins, never mind the mortality rate on cattle farms. While I accept last night's programme raised a huge number of questions, I kept other speakers to the agenda for today.

Deputy Matt Carthy: I will move back to that then.

Chairman: I accept people are anxious about last night's programme but I want to keep to today's agenda.

Deputy Matt Carthy: Okay. Going back to Dr. Smyth, we know HRI receives a substantial level of State funding and we know how important the horse racing sector is to many rural economies. This year there was an increase in HRI funding from the Department from €84 million to €96 million. That is a €12 million increase, which is substantial at a time when many sectors would have given their right arm for something similar. With that extra funding, were there any additional conditions with regard to regulation, monitoring, enforcement or with regard to the distribution of that funding?

Dr. Kevin Smyth: Yes, the funding was increased from €84 million to €96 million. Some 80% of that funding goes to HRI. The €12 million extra was given to the horse and greyhound

fund as a response to the devastating economic effects Covid had on horse and greyhound sectors. It was a financial support to enable those sectors to deal with losses. The horse racing industry lost catering and spectators. The income numbers were affected very badly and it was a support mechanism. That was the simple reason the money was put in.

Deputy Matt Carthy: In 2014, Exchequer funding was €54 million. It went to €68 million in 2015, €74 million in 2016, €80 million in 2017 and €84 million in 2019 and 2020. The funding is increasing all the time. I accept there is an economic rationale for that but I am asking if the additional funding is matched with additional conditionality. I take it from Dr. Smyth's response the answer is "No".

Dr. Kevin Smyth: I would not take that from my response. Look at the money going in and the return we get from it. It provides 28,500 jobs and is a €1.8 billion industry. We have had possibly the most successful year for Irish racing in terms of track. The taxpayer is getting a good bargain for €84 million, or €96 million last year.

Deputy Matt Carthy: I accept there is an economic benefit. Are we sure it is the maximum economic benefit? We know from our previous hearings that HRI distributes that money largely through prize money. Almost pound for pound, the Exchequer funding is paid out in prize money. Look at how that money is distributed. In terms of the top ten trainers for flat all weather, it is about 50%; for national hunt, it is over 60%; and for flat, it is over 60% again.

A very small number of trainers draw down a substantial amount of the funding delivered through the taxpayer. Has an economic appraisal taken place as to whether the money is best spent to ensure the sector provides, as Dr. Smyth says, an economic benefit, is robust and distributed regionally? Smaller trainers and breeders have contacted members of this committee to say they essentially get no support. It is all diverted to the big boys through the prize funds. Has an economic appraisal been carried out by the Department to ensure the money is being well spent?

Dr. Kevin Smyth: We have jostled on this point before. I think this is the third time we have come to it. No economic appraisal has been done on that basis but 60% of the income of HRI goes towards prize money. The Deputy is right that it is done in a way that the more valuable races tend to go to the bigger trainers. It does not always happen. Some 70% of people who ran horses at racetracks last year picked up some form of prize money, which is not a bad return. The other thing is that smaller breeders and trainers are capable of selling their horses on. It is the way the market operates. Internationally, prize money is the basis on which the markets operate. In Australia, Ireland, England and France, it is the exact same system.

I have asked the Deputy before what alternative he is putting forward to the use of prize money as it is done at the moment.

Deputy Matt Carthy: The difficulty I have is when we talk about prize money, international practice such as the United States is put to us. When we talk about regulation, we should be looking at the United States model but we are not. If we will approach this from an international best practice point of view, we should do so across the board.

The only question I have asked, and I have asked it repeatedly, is whether the Department has carried out an economic analysis to ensure the money is distributed in the most effective way from an economic and a social point of view. I take it the answer is that has never been done.

Dr. Kevin Smyth: The Deputy is correct on that final point.

Deputy Matt Carthy: I will ask a question on doping. It touches on last night's programme but is relevant to the agenda. Last week, I asked a representative of the industry if it was possible for an animal that had been treated with bute to make it into the supply chain. The committee was told in categorical terms it was not. However, one finding of last night's documentary seemed to indicate this commonly occurs. Will the Department respond to those allegations and engage with all parties, including the IHRB, to ensure this concern is addressed as a matter of urgency?

Chairman: As I said at the start, how a microchip from a horse euthanised six years before could appear at an abattoir is a serious question. Who wants to take the last question from Deputy Carthy?

Mr. Michael Sheahan: I will make a few comments on it. The Chairman mentioned the horse which was shown in the race at Fairyhouse and whose microchip apparently showed up some years later. From what I picked up from the programme, the system worked in that the animal was detected when something fraudulent was attempted. At least the system appeared to pick up the animal and it did not enter the food chain. I did not particularly pick up the point Deputy Carthy made about bute in the programme last night. I will have to watch it again to see exactly what point he is making. We have said all along that if there are lessons to learn from the programme, we have only seen it once. We will look at whatever we can learn. My colleague, Mr. Drea, might comment on that.

Chairman: I assure Mr. Sheahan that we have a full list of questions from last night's programme.

Deputy Michael Collins: Many questions which I had have already been asked. I thank our witnesses for being here. Regarding identification of horses, the manual passport system was introduced in the 1970s. Surely we have to bring the system up to some standard. The witnesses are talking about the Rolls-Royce standard. We as farmers have a system called animal identification and movement, AIM. Why have the witnesses been lagging behind and not bringing this system from the 1970s up to standard? This passport system is costly for horse owners. It costs about €100 or €150 for a passport. The system that is there for farmers is cost-efficient. The witnesses say that they are bringing this up to standard. What kind of standard are they bringing it up to? What will the cost be for horse owners registering a horse? Will it be the same as for a farmer registering a cow or a calf?

The Department of Agriculture, Food and the Marine is responsible for racing. Is it comfortable that the IHRB, a private limited company with directors appointed by a self-elected club, should receive €10 million from the Exchequer each year? Should HRI not be responsible for all regulatory matters?

Dr. Kevin Smyth: Regarding the receipt of the €10 million, €9 million goes to the IHRB from HRI. There is a two-year memorandum of understanding dealing with the matter. It runs to 24 pages and goes into some detail about how Irish horse racing is regulated. It explains exactly what the money is for and how it is accounted for. There are codes of governance and financial standards.

Certain issues that we are dealing with here do not just relate to HRI. The Department also has to deal with welfare and other concerns. I will hand over to Mr. Sheahan to address the

question on the identification of horses.

Mr. Michael Sheahan: Deputy Michael Collins asked a good question about why we are still dealing with passports, markings of horses and so on. That is what EU legislation requires. EU legislation on this has been updated a number of times and extra safeguards have been built into the system so there is now a more standardised system of passports. The reality is that in Britain, for example, there are 90 different passport-issuing bodies. Germany has a similar number. We have a relatively small number of passport-issuing bodies but they are all governed by EU legislation. That dictates that horses have to be accompanied by a passport in a relatively standard format. They have to be microchipped and so on. There is room for improvement regarding traceability, as I talked about at the start. While we have a central database, which is required by EU legislation, it is not as slick an operation as the AIM system, which the Deputy mentioned earlier. There is a worldwide system. Horses travel all over the world for competition for the passport and microchip system is the internationally recognised standard.

As already stated, there are moves towards more digital systems. Those who are involved in the sector will know that this year, for the first time, Weatherbys in Ireland and, presumably in Britain too, has started to issue the so-called smart card in addition to the standard paper document. That is something that will develop further over time. We will probably move more towards electronic systems. At the moment, nationally, at EU level and indeed internationally, your book, passport and markings taken by a vet, as well as microchipping, are the standard system. It has improved a lot. It is not foolproof but over the years, many extra safeguards have been built into it.

Chairman: Does Mr. Sheahan have a figure for what percentage of horses are not microchipped?

Mr. Michael Sheahan: I answered this question earlier.

Chairman: Mr. Sheahan did not give a figure. In a previous session of the Dáil, representatives came before us to talk about horse welfare. At that stage, we were told that 19% to 20% of horses were not microchipped. Every county is the same. We still have welfare issues regarding horses. When there is a welfare issue and that horse is picked up, the horse is not microchipped in 90% of cases. Has that figure of 19% or 20% improved in the last two to three years or are we still at that level of non-compliance?

Mr. Michael Sheahan: That seems high to me. We are all clear that in the horse racing and sport horse sector, lack of microchips is not an issue. It is really a matter of other sectors, such as the leisure horse sector, urban horses and so on. The places we check are at ports, when horses are sold and, as I mentioned earlier, even Spancill Hill and Ballinasloe fair. Ten years ago, the level of compliance in places such as Ballinasloe at the lower end of the market was low. Over the course of a couple of years, that compliance got very high. I cannot give a figure about the total level of non-compliance, no more than I could say how many dogs do not have a dog licence but 20% seems high to me. When we get the census done later this year, that will probably give us more information and we will be in a better position. It is not 100%.

Chairman: Comparing it with dogs is not exactly fair. There is a food safety issue. We had a scare with horse meat before in the food industry. We will move on from this, because I am getting away from the agenda myself. Horses can leave this jurisdiction and be slaughtered without any traceability. In this modern age, that is not acceptable and it is happening with a significant number of horses. This legislation has been in place for a number of years. I cannot

understand how compliance has not been insisted on. It baffles me. That is an argument for another day. We will move on. I am breaking my own rules.

Deputy Paul Kehoe: I thank the witnesses for attending. There have been a number of high-profile busts by the Department's special investigations unit which have led to prosecutions. Two notable cases come to mind which have been highlighted, the Philip Fenton case and the Pat Hughes case. Those involved speak of long hours, sometimes days or weeks, spent outside vets' premises or in trainers' yards, with people from the Department gathering evidence and intelligence. I understand that the unit does not just investigate the equine sector but also other matters. According to figures reported by RTE, it carried out at least 115 investigations in 2012, 34 in 2018, and eight in the first half of 2020. Will Dr. Smyth give details and confirm how many investigations were carried out in 2020 and to date in 2021?

Dr. Kevin Smyth: This is Mr. Drea's area.

Mr. Tim Drea: I do not know the origin of those figures. There have been more than 30 investigations to date in 2021. The figure was somewhat lower for investigations in 2020. It is important to note that the definition of an investigation changed a few years ago so one will see statistics that were very high a number of years ago. The definition of a special investigation was, for example, an investigation assigned in circumstances where an unauthorised animal remedy was bought or something was seized by Customs and Excise. The Department does not assign investigations on the same basis that it did in the past when there were more staff in the special investigations unit. In 2010 or 2011, there were more staff in the division. There are fewer staff now. Currently, there are eight and the number of prosecutions taken has been static. That is, more or less eight or ten prosecutions for the last ten years. There is a change in the way that we do the work compared with how it was done. There is a deliberate effort by the Department to change that, which is to move from a model that existed 20 to 30 years ago when we had-----

Deputy Paul Kehoe: That is okay. How many investigations were carried out in 2020?

Mr. Tim Drea: It was in the low 30s. I do not have the figure in front of me. It was a little more than 30.

Deputy Paul Kehoe: Perhaps Mr. Drea can come back to me on that. The horse population in Ireland has very much increased over the years so it does not make sense that Mr. Drea would say there are fewer people staffing the investigations unit. That does not make sense to me.

Mr. Tim Drea: If one looks at the numbers in our division in isolation, then it would look that way. Compared with a few years ago, however, the way we work now is a lot more with line divisions in the Department. The regional veterinary offices in the Department are putting more focus on taking prosecutions and carrying out investigations themselves. A couple of my new vets in the past few years came from those regional veterinary offices. They spend a fair bit of time in support of regional veterinary offices in trying to deal with these things at that level. Currently, we do more work in the food safety space than we used to. We are reconfiguring but I do not believe we are any less effective.

Deputy Paul Kehoe: Mr. Drea would find it very hard to convince me. Will he come back to me with a number for the investigations carried out from 2012 to 2021?

Mr. Tim Drea: I can.

Deputy Paul Kehoe: Is the Department satisfied with the horse racing industry that can regulate itself as it is constituted under the current structures? Perhaps Dr. Smyth will answer that question.

Dr. Kevin Smyth: Deputy Kehoe is correct. There is regulatory independence from the IHRB, however, and for good reason. As stated earlier, in my view there are difficulties in the make-up of the committee, such as a lack of independent members and a lack of gender balance, which is a problem. The independence of the IHRB is guaranteed by statute.

Deputy Paul Kehoe: Has the independence and gender balance of the board only come to light since we have raised this issue?

Dr. Kevin Smyth: They appoint a member of the committee, but the Deputy is absolutely right-----

Deputy Paul Kehoe: No. I am asking Dr. Smyth if he has shared concerns about the independence of the board and about the gender balance on the board, or has he only raised these concerns with us now because he is appearing before the committee? Has he raised these concerns with the IHRB previously?

Dr. Kevin Smyth: It would not be appropriate for me to raise it with the IHRB. I am reflecting what this committee is telling me.

Deputy Paul Kehoe: The Department oversees it on behalf of the taxpayer. Dr. Smyth is being paid by the taxpayer to oversee the goings-on in HRI and the IHRB. Am I right in stating that the Department has not said anything to them about the independence of the board or the gender balance on it?

Dr. Kevin Smyth: That would be correct, but I remind Deputy Kehoe that there is a strong governance code with regard to HRI. It is different for IHRB. HRI, as a semi-state body, is fully accountable to the Minister.

Deputy Paul Kehoe: They do not have to publish salaries. Under what regulation is this provided? It was referred to earlier but I missed it.

Dr. Kevin Smyth: It is the 2016 code of governance provisions, subsection 14. It applies to all non-commercial State bodies.

Deputy Paul Kehoe: Okay. Given that they are receiving more than €9 million in taxpayers' money, has Dr. Smyth ever thought that perhaps they should publish the salaries of the staff within the IHRB? Dr. Smyth has said there is commercial sensitivity but who are they comparing themselves with commercially?

Dr. Kevin Smyth: There are two sides to this. There is no actual right answer. The Deputy is absolutely right that it is taxpayers' money, and we must look after taxpayers' money and be accountable. At the same time, however, there are commercial sensitivities, there are the GDPR issues, and they have the right with permission to report in bands what employees receive. We are looking at limited transparency-----

Deputy Paul Kehoe: I accept that but when Dr. Smyth says "commercial sensitivities", who are they measuring themselves against?

Dr. Kevin Smyth: I cannot answer that. Commercial sensitivity applies across the board.

That is the basis on which permission is given for the limited reporting mechanism.

Deputy Paul Kehoe: My thinking on commercial sensitivity would be if there were similar companies who did not want to publish salaries because they did not want their competitor to know. I am not sure who the IHRB's competitors are when it comes to commercial sensitivities.

Dr. Kevin Smyth: That is a moot point. If one is aware of what somebody else in another company is being paid, then offering them €10,000 or €20,000 extra would be an easy way to get them. The commercial sensitivity provision is a general one for non-commercial State bodies.

Deputy Paul Kehoe: On animal identification, Mr. Sheahan stated that we have the Rolls Royce of such models and that Ireland is renowned right across the world when it comes to cattle movements and so on. How does Ireland compare itself when it comes to horse movements. I do not wish to compare racehorses with cattle, but in the context of their movements, passports and so on, how do we compare with the rest of the world when it comes to horses?

Mr. Michael Sheahan: As I said earlier, without a doubt the traceability system for horses in Ireland is nowhere near as good as the cattle system. Those involved have come a long way from when they started this journey to improve the traceability in 2007, but there is still has a long way to go. I am most familiar with the British system. Our system is broadly similar to the British system in the context of standards. It is also broadly similar to the French system. From what I know of the Hong Kong system, ours is arguably not as good. Hong Kong is a very different operation. It does not have trainers dispersed all over the country and it does not have the same level of movements. I am not as familiar with the American system. It varies but the Irish system is broadly similar to what I know of the other European countries. There is European legislation governing the whole identification and traceability of horses. It does not set the bar as high as it does for the traceability and identification of cattle. There is not too much doubt that there is a need to further improve the traceability. They have been on a journey in that direction and there are also moves such as the work on the equine census that will take place.

Deputy Paul Kehoe: To paraphrase someone, there is a lot done but more to do. Would I be right in saying that?

Mr. Michael Sheahan: Absolutely. I could not argue with that.

Deputy Paul Kehoe: I am very disappointed. I am of the view that the Department has been dragging its feet on this matter. The ordinary farmer driving cattle cannot move anything without reporting it, yet there are horses worth millions of euro on the move and we can see what is happening within that industry. We are very lax on some of the rules and regulations.

Have the Department investigators ever had any trouble accessing yards or stud farms? I am specifically thinking of the gated premises. It is probably an awful lot easier to get into Mountjoy Prison than it is to get into some of these studs.

Mr. Tim Drea: I can take that. In the past 12 months my staff have encountered a gated premises but they were not delayed very long. We can go around or get over the gate. The gates are closed as we arrive unannounced. As the Deputy mentioned about the long hours in the past, there is still an element of that. It is part of the job. When teams from our division go out, or go with Irish Horseracing Regulatory Board now, quite often we go with no notice and we are clued into the fact that we have to get in quickly.

Deputy Paul Kehoe: Why does the investigation unit not go on its own? Why does it have to bring IHRB officers?

Mr. Tim Drea: We do not bring them with us normally. Since IHRB's officers are authorised, they are not new at the role of authorised officer. Part of the commitment we gave them was that our staff would accompany them and work with them so that they could get up to speed on aspects of the job, such as searching and seizing products. We intend that the authorised officers from IHRB will serve as extra authorised officers for the Minister and that this will give us more scope to be on more premises and to have a better chance of finding product. We often must find product before we can go down the legal route.

Deputy Paul Kehoe: I note Deputy Fitzmaurice wants to contribute. I have one further question for Dr. Smyth. Has he or any of his staff in that section of the Department of Agriculture, Food and the Marine ever received any hospitality from the Horseracing Ireland, HRI, the IHRB or any horse trainers?

Dr. Kevin Smyth: The answer to that is "No". I think I once got a couple of tickets for Leopardstown but that is about it.

Deputy Paul Kehoe: Can Dr. Smyth absolutely assure me here today that no hospitality was received from the HRI, IHRB or, for that matter, horse trainers?

Dr. Kevin Smyth: Correct, no hospitality whatsoever.

Deputy Paul Kehoe: That is okay. I thank Dr. Smyth and the Chairman. It would be important that we return to last night's programme, perhaps in September or October, when we get a chance to reconvene.

Chairman: I agree fully. I call Deputy Fitzmaurice.

Deputy Michael Fitzmaurice: I thank the Chairman. At long last, I got in.

I thank the witnesses. I concur with Deputy Kehoe that we need to go back to last night's programme. I am not going down that road now.

Let me go back to the previous questions Deputy Kehoe asked in relation to authorised officers. Am I correct in saying that the Department handled all this years ago and then there was a change that it was basically put out to HRI?

Mr. Tim Drea: Sorry, IHRB.

Deputy Michael Fitzmaurice: Yes.

Mr. Tim Drea: IHRB enforces the rules of racing. They were not authorised officers until recently. That recommendation arose from an anti-doping report, I believe, in 2016. One of the recommendations there was that the IHRB staff would have the powers to search and seize.

Deputy Michael Fitzmaurice: Are they direct employees of IHRB?

Mr. Tim Drea: That is my understanding, yes.

Deputy Michael Fitzmaurice: I would query authorised officers. I would have seen them with the National Parks and Wildlife Service and other State bodies such as Inland Fisheries Ireland, IFI. However, the IHRB does not have the same liaison with the State the Department

of Agriculture, Food and the Marine has.

When the authorised officers go to a place, have they a warrant in their pocket or must they go for a warrant if they are refused access?

Mr. Tim Drea: An authorised officer has the power of entry onto a premises.

Deputy Michael Fitzmaurice: That is not correct. There is legislation. I went through this fairly well previously on a different issue in regard to bogs. If they are refused entry, am I correct that they can get a warrant from a judge?

Mr. Tim Drea: Correct, but they have powers of entry. It is an offence to prohibit them from entering. There is an offence in the legislation on veterinary medicines around obstruction of an authorised officer and somebody refusing entry would be putting himself or herself in the position where he or she could be charged with obstruction.

Deputy Michael Fitzmaurice: Can they, not the Department but the other authorised officers, get a warrant or is it a Department of Agriculture, Food and the Marine officer who must get it?

Mr. Tim Drea: An authorised officer in IHRB has exactly the same powers as an authorised officer in the Department. They are authorised under the legislation to use the powers.

Is the Deputy referring to a search warrant?

Deputy Michael Fitzmaurice: A search warrant, yes.

Mr. Tim Drea: It is a warrant to enter a dwelling. That is for entering a dwelling.

Deputy Michael Fitzmaurice: It is actually for entering property because I have seen it previously in regard to bogs. I will move on because my time is limited.

Several members spoke about taxpayers' money. We need to get it into our heads that everyone here supports the horse racing industry but we do not want bad news going out about it and it needs to be investigated. Dr. Smyth stated earlier that the IHRB, HRI, etc., run the whole show. Is it not the case that it is the Department of Agriculture, Food and the Marine that writes the legislation, which comes in to us, as Deputies, and that, at any stage, the officials in the Department can propose a new statutory instrument or new legislation to change the format of whatever we want?

Dr. Kevin Smyth: That is a very open question. What exactly is it that the Deputy wants?

Deputy Michael Fitzmaurice: Dr. Smyth stated earlier on about where we, as Deputies, have concerns about the set-up of these groups or where I have concerns about wages not being discussed or transparent. Bear in mind that if a farmer gets €3,000, €4,000, €10,000 or whatever from the EU, it is there for everyone to look at regardless of data protection. I am asking whether the opportunity is there to change legislation if it is not transparent. It is the Department that writes the legislation for the Minister and if there is willingness on the part of the Minister and the Department, am I correct that it can say that 50% or 70% of the board has to be one sex or the other, that the wages have to be transparent and that it can put in whatever preconditions it wants in the legislation if it involves taxpayers' money?

Dr. Kevin Smyth: I do not believe the Deputy is correct on either. First, if we dictate what

the make up of the board is, we will fundamentally take away the independence of the IHRB. If it was the decision of Government to change the policy with regard to IHRB, it would be fine but we would not unilaterally do that. It is independent and it is guaranteed.

The second issue, the disclosure of the remuneration of people, is a wider one than the Department of Agriculture, Food and the Marine and the State-sponsored bodies. If we were to change the law, we would have to change it for all Departments.

Deputy Michael Fitzmaurice: Yes, but we can change it. It is legislation.

Dr. Kevin Smyth: The Deputy is correct on that.

Deputy Michael Fitzmaurice: That is open to all Deputies to discuss. If they want to change that, is it fair to say they can bring a Bill in or whatever?

Dr. Kevin Smyth: That is correct, but you would be changing it for all Departments and all State bodies.

Deputy Michael Fitzmaurice: I compliment Mr. Sheahan who spoke about the animal identification and movement, AIM, system for cattle. If it takes me 50 years to build something, and if I move it on to something else, doing so is not that complex. With the horse industry, why have we not brought in a chip, DNA and AIM system where there is a card set up for each horse? If a farmer wants to move a calf, a weanling or a bullock, he or she can go online and do it in a matter of five or ten minutes. It is no big deal. If it goes to a mart, the mart will do it automatically. If an animal is exported it basically tells them straight out so you can write them off. If an animal dies and goes to a knackery, it is the same system.

There was talk of the EU wanting this and the EU wanting that, in the line that we are sort of doing what the EU wants. For an industry that is so important, why is Ireland not leading the way ahead of everyone else? Mr. Sheahan talked about Hong Kong but he also mentioned the UK, France and other places. When we have probably one of the best systems brought in for cattle why are we not leading the way? Will we lead the way in the next six months because of the controversies and the dangers involved with the talk at the moment about all of this? There was a programme last night but I did not see it. That programme covered the investigative side of it, the doping side of it and all the different angles. Why are we not European leaders on this? Forget about EU legislation; we should ensure Ireland is out there in front and has the transparency. That system is on our right hand because we have had it done for some time. Fair play to the Department, over the years it is one of the best systems ever seen.

The witnesses talked about horses going outside racing or whatever and it is very easy to prove something if someone goes to a site. However, at the moment it has been admitted that when the veterinary girl, I forget what she is called, goes out to a site-----

Chairman: Dr. Hillyer.

Deputy Michael Fitzmaurice: Dr. Hillyer, yes. When she and others go out to a site, they do not know for definite how many horses are there. Are the officials telling me that the Department can go out to any farm around the country and have a list of everything they have, in cattle, calves, sheep and whatever else, but it has not got this for the industry that is being questioned at the moment?

Should the first move by the Department not be to say that within six months we are going

to have this foolproof system and we will be able to say where every horse is? To be quite frank about it, it could be done over a six-month period provided everyone is told. Everyone has an equine number if he or she has a horse, at least, or he or she has a herd number. Generally though, it is an equine number. If everyone were told he or she had six months to regularise that animal, that it must have a chip in it or he or she must have a card for it, and we got that up and running, would it not be a massive step towards putting Ireland to the fore first of all? It would cut out a lot of this stuff that is going on, sort of under the breath, about what is happening in Irish horse racing. We hear it day in and day out that horses can go out the back door when the boys or girls come to the front door.

There is an onus on the Department to lead the way on this. It is not as if we have 2 million horses born every year like we do cattle, and we are able to fly through the cattle situation. I am asking the officials if they will give a commitment that within the next six months this system will change, that it will be foolproof and that we will have DNA sampling. In my understanding that registering a horse is pretty expensive at the moment. I know DNA costs but they would have a DNA sample, we will have a chip in them and we will have the card like on the AIM system, which is foolproof. Will the officials give us that commitment to tidy up this whole horse industry once and for all?

Mr. Michael Sheahan: I will answer that one, Chairman, if that is okay. I will answer most of it anyway. I do not disagree with most of what the Deputy has said there. It is important to say an awful lot of the building blocks are already in place. The Deputy talked about DNA sampling, which is already part of the process when a person is registering in a stud book, as the Deputy well knows.

Deputy Michael Fitzmaurice: Yes.

Mr. Michael Sheahan: The microchip is already part of the system. The passport, or now the smart card, indicates whether the beast is part of the system. We already have a central database. As I said, it is part of our AIM system. It is not as sophisticated as the cattle one but it is there. Thus an awful lot of the building blocks are already there.

As I said earlier, it took us a long time to get to where we are with cattle but we have gradually improved it. In fairness to the horse sector, it has come a long way in a fairly short space of time as well and, as I said, a lot of the building blocks are there. That final step, that is, the movement thing, is the one step that is missing. As the Deputy said, on the cattle side, when a person's calf moves to the mart, that is recorded electronically, and when it moves to another farm, that is recorded. The movement side is the one piece that is missing in the horse sector. The other parts of the system are in place so it is not going to take an awful lot to move it on and to have it be something like what we have in the cattle sector.

Deputy Michael Fitzmaurice: Mr. Sheahan has much work done and I have praised the cattle system. There is a fairly big cloud over this between comments that have been passed in the media and then this programme last night, which I hope we will look at later on. For the sake of an industry that is pretty big in this country, can we not give a commitment to be the leaders in Europe? We were the leaders at stopping people smoking in a pub. Can we not be the leaders in this, in such a way that we will go down this road within the next six months and say there is an amnesty or whatever you want for the next six months? After that, for each horse, the Department or whatever authorised officer will have a backup for everything belonging to that horse in this country. Can we not be given that commitment today?

Mr. Michael Sheahan: As I said, one of the final pieces in that jigsaw is the census which, as I mentioned earlier, we are proposing to do or will do before the end of the year. That may be the final step on the journey. I cannot personally give a commitment but I would say there is no doubt about this, given the mood of this committee and the bit of soul-searching the industry will be doing. There is much support in the industry for moving to a better traceability system. We will be pushing an open door, to be honest. Many in the industry have been calling for this.

Deputy Michael Fitzmaurice: I cannot fathom this word “census”, and I heard Mr. Sheahan say it earlier on. We are going down a road that means we are going to have DNA chipped and a card registered online. You then have your number and you can pop it into your iPad and can do a movement or whatever. That whole system is set up and the officials basically have that put together there. What then are we doing censuses for? Why do we not just say there is six months or eight months - a window of opportunity - in which we want everything registered and after that the animal is going to a knackery?

Mr. Michael Sheahan: I do not think the problem is that horses are not registered. We talked earlier about what percentage of horses are not microchipped or whatever. That is certainly not the problem in the thoroughbred sector. There is no question they are not all registered, microchipped, passported and all the rest. What is missing is the movement system. It is the fact that when they move farm to farm or whatever, while there is an onus on the trainer, farmer or whoever to keep a record, an electronic record is not kept of it. That is where the system falls down. As I said, there are plans to try to address that though I cannot personally give the Deputy a commitment it is going to happen within six months. However, that is definitely the journey we are on. There is no question we are moving towards having a similar system for horses as we have for cattle. That is where everyone wants to get to. How quickly we will get there remains to be seen but there is quite a mood for that sort of thing at this stage, I would think.

Deputy Michael Fitzmaurice: Will Dr. Smyth give us a commitment the Department will drive this on within the next six to eight months?

My last question is to Mr. Sheahan on sport horses. I understand the Department is sorting this at the moment, but over recent years, if you had a horse and you brought it to the stallion, seemingly there was a body appointed for this book that you get and they were sending it out to the guy that owned the stallion. Why would that be? Why would it be allowed? It is the person who owns the foal who should get the book. I understand the Department is aware of this and is sorting it at the moment. Is that not an unusual situation?

Mr. Michael Sheahan: From what I know of this, in the past it would not have been uncommon for the passport to be sent out to the stallion owner. I am only guessing that it was probably to do with there being a sense at one stage that whoever owned the book, that is, the passport, owned the horse or had some hold over the horse. I can only guess that this practice was in place some years ago to get paid a covering fee or something like that. That does not happen now to the best of my knowledge. The legal system is that it is the keeper of the horse that has to get the passport. I am aware that we had one complaint earlier in the year of a case where it was alleged that the passport was not sent to the keeper. We looked at that and there was nothing in it. If the Deputy is aware of cases where the passport is not being sent to the keeper then that is something we can look at but to the best of my knowledge that does not happen. The passport issuing bodies are clear that they have to send them to the keepers of the horses.

Deputy Michael Fitzmaurice: Was a direction sent to the passport issuing bodies that the

Department would have approved in the last six months to make sure to send the passports to the keepers?

Mr. Michael Sheahan: I am not sure if a direction has been sent in the last six months but in the one case we were asked about and which we checked out, it was not the case. The only case I am aware of where the passport is sent to a person other than the keeper is where the owner of the horse has specifically written to the passport issuing body and given it permission to send it somewhere else. It happens in a limited number of cases if the passport issuing body get something in writing but other than that I am not aware of any cases of it happening. If there is a particular case the Deputy is aware of, we can look at it but the passport is supposed to go to the keeper.

Deputy Michael Fitzmaurice: In fairness, on the cattle side of it the veterinary practice is good and I must compliment the Department.

I want to ask Mr. Smyth about what I have said already about the traceability of these horses. Is he prepared to drive this on with the rest of his team to make sure this is delivered rapidly in the next six to eight months? My understanding, and everything I have researched and learned from talking to people, is that basically we have the model and everything in place and all we have to do is move it across the table and get the horses' side of it up and running for the traceability and for all the other advantages we have with the cattle.

Dr. Kevin Smyth: I do not mean to give a cop-out of an answer but I am trying to be as candid with my answers as possible. I am not responsible for the ID and welfare areas. They are not my areas of expertise so I cannot give the Deputy such an assurance.

Deputy Michael Fitzmaurice: Who is responsible? Is it the Minister?

Dr. Kevin Smyth: There is an assistant secretary in charge of that area.

Deputy Michael Fitzmaurice: Can we write to that assistant secretary?

Chairman: We will have a private meeting in the morning to discuss the outcome of these three meetings and we will be making various recommendations. I am sure traceability in the horse industry will be one of the matters that comes up so we will discuss that in the morning. We have had our three meetings and we will have to sit down as a committee and see what recommendations we want to make and what observations we have had as a result of those three meetings.

I thank the officials from the Department of Agriculture, Food and the Marine for engaging with us. The "Panorama" programme influenced the meeting. It was not on the agenda but serious questions were raised in that programme last night. That is something the committee will be revisiting as quickly as possible. The witnesses said earlier in the day that we have two abattoirs in this country. There is a question over how many horses are euthanised there and various questions were asked but I keep going back to the fact that a microchip appeared in an abattoir in Swindon in a horse that had been euthanised six years beforehand. That really brings the authenticity of microchipping into question. The Department will investigate that.

In the "Panorama" programme last night it was stated that there were numerous cases of horses with two microchips appearing in that abattoir. Do we have any instances of horses appearing in an abattoir in Ireland with two microchips? Will there be correspondence between the abattoir in Swindon and the Department to get further information from that abattoir and

from the officials there about what the incidence of horses appearing with two microchips is and how many of those have involved Irish horses? I will not go back to the witnesses for answers today but there are a lot of questions arising from last night's programme and it did not do the reputation of horse racing any good.

As I said previously, it is not all thoroughbreds that are going into that abattoir. I would like to get the figures on how many are thoroughbreds and there are a lot of other horses going in there as well. Horse welfare is universal and it is not just confined to thoroughbreds. Any horse being mistreated is completely and utterly unacceptable. As Senator Paul Daly said previously, one would be abhorred to be a horse owner and see the way horses were being treated in that abattoir. It raised questions. We will be returning to that programme and we will be coming back to the Department to get answers on how Ireland operates euthanasia. Unfortunately, when a horse has a serious injury or has certain ailments, euthanasia is the most humane way to treat that animal but it has to be done under veterinary control and in a supervised manner. Last night's programme left an awful lot of questions to be answered and it is something we will return to with the Department in the near future.

Sitting suspended at 11.46 a.m. and resumed at 3.30 p.m.

Impact of Peat Shortages on the Horticultural Industry: Discussion

Chairman: From the Department of Agriculture, Food and the Marine, I welcome Mr. Barry Delany, chief plant health officer, and Mr. Declan Harty, agricultural inspector. From the Department of Environment, Climate and Communications I welcome Mr. Philip Nugent, assistant secretary, and Ms Leslie Carberry, principal officer. I also welcome Mr. Brian Lucas from the Department of Housing, Local Government and Heritage. All the witnesses are joining the meeting remotely. They are very welcome. We have received their opening statements, which have been circulated to members. We are limited in our time due to Covid-19 restrictions so we will take the opening statements as read and will use the full session for questions and answers. The opening statements will be published on the Oireachtas website and will be publicly available. As with all meetings, members may not participate from outside the parliamentary precincts.

Before we begin, I will read an important notice on 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 relating to a particular matter and they continue to so do, 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. Those participating in the meeting from a location outside the parliamentary precincts are asked to note that the constitutional protections afforded to those participating from 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.

I thank the witnesses for coming in. To say there is huge frustration among the horticulture and nursery industries would be an understatement. Representatives from those industries have made representations to us and we had a briefing from them a few weeks ago. They are facing

huge financial difficulties as they find themselves facing importation of peat for their industries. In my view, and I do not think anyone on the committee would argue with me, that is both environmental and economic madness. Organic industries in this country, both horticulture and nursery, including our mushroom industry, which is financially competitive, could be forced out of business. Some of them are even considering relocating. There will be robust questions for the witnesses. As a committee we want a solution to this impasse. We feel it is nonsensical. Hopefully the witnesses will enlighten us as to when we will get over this impasse at which we find ourselves. Until there is a viable economic alternative to peat we cannot see the logic of why we cannot have a licensing system for the limited amount of peat that would be needed for these organic industries.

I call Deputy Fitzmaurice.

Deputy Michael Fitzmaurice: I thank the witnesses for coming in. I will get straight to the point. The working group that was supposed to come back in May has now met. Has that group found a solution for the people milling peat on sites over 30 ha? I spoke to all parties earlier and I outlined the issue of the habitats directive that Michael D. Higgins signed in, whereby people have to have appropriate assessments, AAs, environmental impact assessments, EIAs, and all of that. Is that the big block, to cut it down to simple language?

Mr. Brian Lucas: I thank the committee for the invitation to speak on behalf of the Department of Housing, Local Government and Heritage. The working group was established by the Minister of State, Deputy Malcolm Noonan, in March. It comprises representatives from the three Departments here today, as well as industry and environmental non-governmental organisations. Its remit was to address the issues identified during the review of the use of peat moss in the horticultural industry. It was appropriate, in the circumstances in which the horticultural industry found itself, that it consider that as well. Its meetings in March and April were effectively devoted to the preparation of an interim report and discussions and deliberations on that report, which was presented to the Minister of State in May and to which I referred in my opening statement.

On the legislative provisions, all developments require planning permission unless specifically exempted under the Planning and Development Act or associated regulations. Under the planning and development regulations 2001, peat extraction in a new or extended area of less than 10 ha or a new or extended area of 10 ha or more where the drainage of the bog commenced prior to 21 January 2002 is an exempted development. This exemption is subject to-----

Deputy Michael Fitzmaurice: Is Mr. Lucas saying that if the drains were put up in the middle of the bog before 2002, that is an exempted development?

Mr. Brian Lucas: Yes. I was just going to come to that. That exemption is subject to a restriction under section 4(4) of the 2000 Act whereby that exempted development status is lost if an EIA or an AA is required under the habitats directive in respect of that development.

Deputy Michael Fitzmaurice: Basically, it is what I said a few minutes ago.

Mr. Brian Lucas: All these requirements under the Planning and Development Act and integrated pollution control licensing stem from EU law. The key requirement is whether a site loses its exempt development status. It would lose that status if an EIA was required so one would have to do a screening for an AA. Depending on the results, if that screening showed that a full EIA was required, the exempt development status would be lost and that would move it

into a requirement for planning permission. In addition, peat extraction involving a new or extended area of 30 ha or more requires an EIA and, therefore, planning permission. If the site is 30 ha or more, that automatically requires an EIA and, therefore, it automatically requires planning permission. Peat extraction of an area greater than 50 ha requires both planning consent from a planning authority or An Bord Pleanála and integrated pollution control licensing from the Environmental Protection Agency, with reference to the Environmental Protection Agency Act 1992. Both of those regimes require EIAs to be carried out by their respective competent authority, which is the planning authority or the EPA, as well as an AA, if relevant. An AA or an EIA may not be required if the site is under 30 ha but the best thing to do would be to carry out the EIA screening and an AA screening as well.

Deputy Michael Fitzmaurice: I met Mr. Lucas fairly often in his former life, when he was with the National Parks and Wildlife Service. In fairness, he is pretty sensible. He is aware of the type of work we had to do. Consultants in hydrology, ecology and compensatory habitats were brought in. Articles 6(1), (2), (3) and (4) were involved. He knows the habitats directive inside out. Can something like that be achieved in the horticulture sector to resolve this issue?

My question for the Department of Environment, Climate and Communications is whether it has gone to Europe at any stage to talk about what we call a just transition and whether such a transition should be over five years or ten years. It is obvious that we do not have the solutions at the moment. Has the Department talked to Europe? Has it tried to prepare any legislation that would resolve this issue in the interim or wind things down as part of a just transition? I will tell both Departments represented here today that I do not buy into this idea. In Germany, 3,000 ha, including land on which there is housing, can be blown out for lignite up until 2039 or 2040. Other EU countries are sending peat and peat briquettes here. We seem to be the gatekeepers of Europe, if not the world, in the context of this type of legislation. How are they able to work around it while we are not? How are they able to keep working while we are not? How can they do so under their own legislation when we are in the same EU? I want the two Departments to answer the second question and I want Mr. Lucas to answer the first question about our previous work.

Chairman: I will let Mr. Lucas finish first and then I will call on the Department of Environment, Climate and Communications.

Mr. Brian Lucas: By way of background, as I have said already, the planning and development regulations as regards exempt development and peat extraction have been in place since 2001. The provisions in the Planning and Development Act 2000 as regards environmental impact assessments and appropriate assessments have been in place since 2011. The regulations have been in place since 2001 and the Planning and Development Act provisions have been in place since 2011. Each provision has to be looked at separately. You have to ask yourself whether the exempt development provisions apply. You are looking at whether it is a new or extended area of less than 10 ha or a new or extended area of 10 ha or more where the drainage of the bogland commenced prior to 21 January 2002. You would then need to carry out an environmental impact assessment screening and an appropriate assessment screening. If these show that no environmental impact assessment or appropriate assessment is required, an application can be made under section 5 of the Planning and Development Act 2000 for a declaration to the planning authority that it is exempt development. As I said earlier, however, if a new or extended area of 30 ha or more is involved, an environmental impact assessment and planning permission are automatically required. The applicant would have to apply to the planning authority for planning permission. If the area involved is greater than 50 ha, planning permission

and an integrated pollution control licence from the EPA are required. The law has been there for quite a while. There is no ban on peat extraction. The type of peat extraction you engage in does not matter. The law is the same across the board. I have tried to summarise the various legislative provisions. I believe I have answered the question Deputy Fitzmaurice asked.

Mr. Philip Nugent: I thank the Chair and the members for the opportunity to speak today. May I clarify something for the record? At the discussion on 6 July, there were some suggestions that Departments had failed to respond to an invitation to attend which had been extended by the committee. We received no such invitation. I just wish to put that on the record. I do not believe any Department was invited.

With regard to the position on integrated pollution control, IPC, licensing, Mr. Lucas has hit the nail on the head. There is no ban and no restriction. There is just a clear requirement, which is common to all types of development, for operators to meet their legal obligations and to have the necessary consents in place. That is not the case and has not been for some time. The requirement to have an IPC licence is not new. In fact, peat extraction on sites of 50 ha or more became an activity subject to Part IV of the Environmental Protection Agency Act 1992 in 1994, meaning that it required an IPC licence. It has been a requirement for 27 years. I regard that as a fairly long transition.

Deputy Michael Fitzmaurice: I asked whether there had been any consultation with Europe. Let us face it; with regard to the Departments in this country, forestry - which is a total fiasco - roads, bogs, bridges, ports and anything else you want to mention are in bother due to this European legislation. Legislation was drafted before. Has the Department liaised with Europe? Let us look at Germany and many other European countries which are supposed to have the same legislation. They are supposed to have the same rules in respect of the 10 ha area and the 30 ha area and the same screening-out process if you are to go by the legislation. How are they able to resolve their issues while our Departments are not able to resolve ours? This is my second time asking the question. Has the Department liaised with Europe with regard to what we call a just transition? Has any Minister or anyone from the Department gone over to Europe about a just transition in horticulture or any other area? Has anyone liaised like we did years ago? We were over with those in Europe, not that I have great suss for them or anything. We were over to DG XI on numerous occasions. Deputy Carthy would be well familiar with it. The Department could then draw up legislation, which would basically have been blessed by Europe, that would bring about a just transition. Have any of the Departments done that?

Mr. Philip Nugent: We have a system that is compliant with the EIA directive. It is a dual-consent regime. Other countries might have different systems. Our problem is based on non-compliance rather than on the system itself. The dual-consent system works. The competent authorities that operate that system, the EPA and An Bord Pleanála, say that the system is open for business.

Deputy Michael Fitzmaurice: Can I be honest with Mr. Nugent? I am not into milling peat but I know bogs better than anyone because I was reared in the middle of one. If any person with 80, 100 or 200 acres goes through the screening-out, EIA and appropriate assessment processes that apply to works over the 30 ha threshold, the council will be afraid to give him or her planning permission. That is the reality. Our Departments are not doing anything to make sure that this blockage is resolved for a transitional period. No one is talking about 20 or 30 years. We are talking about a five to ten-year transition period for the milled peat sector for the sake of jobs, for the mushroom industry down in Monaghan and all those areas, for the horticulture sector and for people who want to buy flowers, whether in cities or rural areas. Why are

we not doing something? There is no point in coddling ourselves. Councils around the country are afraid of the consequences of all of this different planning stuff. Something has to be done at a high level within one of the Departments.

Senator Victor Boyhan: I welcome our guests here today. We have had a lot of debate and discussion on the production of milled peat at this stage. We need to talk about solutions. As someone who has studied horticulture and who has worked in the horticultural sector most of my working life, I acknowledge that soft fruit production, forestry propagation and even nursery stock can manage without the same amount of intervention with regard to peat. There are loams and soil-based composts. There are other alternatives but there are no alternatives suitable for mushroom production. With regard to mushroom production, there are no alternatives. I do not know if anyone heard or listened to “CountryWide” on Saturday. Mr. Dermot Callaghan, head of horticulture, Teagasc was on. It was a really good interview. He again convinced the audience there was no short-term alternative. We will need a transitional period, as Deputy Fitzmaurice talked about, of a minimum of ten years. We look at counties Monaghan and Cavan where most of the mushroom production is, though it is around the country but it is predominantly there. We know we have about 2,000 directly or indirectly involved in the industry. One of the first things I did when I was elected here was to go to visit County Monaghan and spend a day up there with Monaghan Mushrooms and go through all the various cycle of mushroom production. What struck me about it was from the very beginning, right out to transport and the fact they were sending mushrooms to the UK. Some 90% of our mushrooms go abroad. It is a vast industry with a sort of farm gate value in excess of €120 million in 2019. This is a wonderful industry. It needs to be protected.

One of the things I have been told by the people in this sector is that labour is cheap in Poland and other places for this industry. Many Polish, Latvian and other people worked here in the industry ten years ago, went back home and are now in this sector. The availability of peat there is easier. The costs of peat, production and wages are lower. It will clearly be a real alternative to move this industry out of Ireland. We have to wake up to that. We have to look again at Bord Bia and the amount of money it is spending. I am in support of Bord Bia but they are branded in Bord Bia with regard to Irish produce in mushroom production and it stands over it. Our demand for our production could increase. The market is huge. It has not been fully developed.

It is back to this medium of milled peat. Really, what I would like to hear today is what the alternatives are. What research is going on? Can the Department share with us where we are in terms of funding for research and innovation and alternatives? It will not happen in the next ten years. That is clear. We know that peat will be at the centre of various mediums for horticulture production but especially 90% for the mushroom centre. I want to hear where we are in terms of research. What funding has been put into that? Is there an international or European dimension to this innovation and research? Clearly we have to do something.

In the short term, we are told by the sector, and I can only go by what we are told, that we will be out of milled peat - forget about all this stockpiling - appropriate for mushroom production this autumn. That is what we have been told. What will we do about it? I want to hear what we will do about it? Deputy Carthy represents that constituency of those employees whose jobs are on the line. Deputy Fitzmaurice talked about just transition. We have to support these people and support this farm gate industry.

My real concern is where we are today. Can we put the pressure on to agree that we will have to accept peat will be there central to this food production but especially for mushroom

production for the next ten years? Remember what our remit is in this committee. We are involved in the agrifood sector. We want to support the agrifood sector. We want to retain the jobs here. We want to support rural communities. It is a win-win-win for us if we can get some sort of movement on allowing milled peat to continue to be milled, albeit at a slightly reduced level. Let us call a spade a spade. We want free access to milled peat, especially for the mushroom sector over the next ten years. I am interested to hear what is happening and what negotiations are going on in the past few weeks especially with the mushroom sector in order that we can protect the industry, the product and the jobs.

Chairman: Will anyone give us an answer?

Mr. Barry Delany: I apologise. I was waiting to be let in. I hope the committee can hear me clearly. I am the head of horticulture and plant health. I thank the Senator for his questions and I take many of his points on board in terms of the importance of the sector. There is a difference between the peat that is used in mushrooms, black peat, as opposed to that which is used in the amenities sector, brown peat, which is harvested in a different way, comes from different bogs and is approached slightly differently. In terms of the peat for the mushroom sector, it is a matter of compliance. When one looks at the figures the horticulture sector is putting forward to us in terms of what is required domestically each year to produce that €120 million that is traded, it is 113,000 cu. m or ten to 15 ha. in total. The reality is it is a compliance issue here and we should be able to work towards that with the appropriate parties which are extracting. There does appear to be a route for that given what Mr. Lucas has said earlier on in explaining the approach that can be taken there.

In terms of the peat alternatives, as the Senator has said, the head of horticulture in Teagasc gave an interview on Saturday and outlined some of the issues and proposals it has done. We actively looked to alternatives on peat and we funded a number of research projects through the producer organisation scheme of which commercial mushrooms are part, as well as Monaghan Mushrooms. Within that, they are looking at stabilisation and peat-casing reduction, spent mushroom compost and the potential for blends and substitutes and partial peat replacers. That is ongoing. The Department of Agriculture, Food and the Marine is supporting that via the implementation of the producer organisation scheme. We also issued the 2021 research call. Within that one of the areas of research was to find alternatives to peat-based growing media for horticulture production which are available, affordable, sustainable and meet quality, environmental and productive requirements.

One is looking at evaluating each sector because, obviously, what will work in the ornamental sector is different to what will work in mushrooms at the amenities side in the vegetable sector as the Senator has outlined. One is looking at options around coir, green waste compost, rock wool and then further diluting and blending. That is all ongoing. Within all of that, there are further considerations around research beyond that as well. We hope that the research call will issue its approvals shortly and we will come back and let the committee know what is approved and update it on that. We are actively involved in that space but as the Senator pointed out, a period of time is required to get to the use of all these alternatives.

On the amenities side in particular, blends are already being used. When growing, peat with blends of 10% to 20% including wood fibre, coir and rock wool are being used. It is moving and steps have been made in that direction and it is conscious of needing to make a transition towards peat-free and has committed to doing so.

Senator Victor Boyhan: In terms of the other witnesses' engagement in these past two

weeks, what is the level of engagement with the big mushroom producers? What is the current level of engagement that is going on? The witnesses might share that with the committee.

Mr. Philip Nugent: I will go first and jump in ahead of Mr. Lucas. We are due to meet with representatives from the mushroom industry next week. In addition to that, we typically would not have a direct relationship anyway. I met with a number of representatives from Growing Media Ireland, GMI, back around November until January on a fortnightly basis. Separately, the three Departments have been in discussions around possible recommendations or actions that might supplement some of the recommendations that are in the draft report that is gone to the Minister of State, Deputy Noonan.

Chairman: I know it is a huge, important industry in Deputy Carthy's constituency.

Deputy Matt Carthy: Members and the Department officials will know I have been concerned about this issue, as all of us have been, especially since the early part of 2020. I have to say I am getting to the point where I am frightened for the mushroom industry in my county, as has been referenced. It is hugely important to our local economy and I am frightened because the opening statements we have before us appear to point to inaction and procrastination and I fear that will result in the mushroom industry in Ireland, as we know it, moving somewhere else. Probably across the water. I am also frightened as to what that will mean in the long term for anyone who is genuinely concerned about climate action because the position we are in, as I have said on countless occasions, is built upon tokenism and hypocrisy because this is not being done to preserve or protect the environment. This is to give a semblance that we are doing something. To summarise the statements we had, in fairness to the Department of Agriculture, Food and the Marine, its opening statement outlines in a very fair way the crux of the issues. It recognises that there is difficulty but, essentially, it says the Department cannot do anything about it. The statement from the Department of Housing, Local Government and Heritage acknowledges that there are issues at play and goes through in detail some of the steps that have been taken in terms of working groups and review reports. It mentions that an interim report indicates that there is general agreement among the members that peat should be available for the professional horticultural sector until the target date of 2030 and a maximum date of 2035. The Department of the Environment, Climate and Communications essentially says that there is no problem at all and that this is an issue that is 27 years old. If I was depending on a job in the sector and I saw that on my laptop, the laptop would be out the window. It is frustrating that the Department is basically saying that this is all the industry's fault and there is nothing to see here in terms of the Department.

The question has been asked a couple of times and it has not been answered yet. We are facing an immediate problem in August. This is not a problem that we were not aware of; we have been aware of it for some time. The action that was warranted has not been taken to deal with the potential crisis we face. What do each of the three Departments see as the solution for them to resolve the crisis we face in the short term?

Mr. Philip Nugent: I disagree with Deputy Carthy's characterisation of my opening statement. We acknowledge that there is a difficulty here. I stated in the second paragraph----

Deputy Matt Carthy: I acknowledged that the Department of Agriculture, Food and the Marine----

Mr. Philip Nugent: No, I am not from the Department of Agriculture, Food and the Marine.

Deputy Matt Carthy: I am sorry.

Mr. Philip Nugent: I am from the Department of the Environment, Climate and Communications. We acknowledge straight up that we are conscious of the supply difficulties that are being experienced by the horticulture sector. We are acutely conscious of that. What we are conscious of is the distinction in the horticulture sector between those who have found themselves in this position through no fault of their own and those in commercial peat extraction who have found themselves in this situation, in large part, through non-engagement with the regulatory regime. That is an important point to put on the record. We are and have been extremely active in trying to find solutions. We have been active members of the group established by the Minister of State, Deputy Noonan, and we continue to take part in the discussions at senior level between the three Departments.

What we have been saying all along is that it is not open to the State to simply remove the requirement that operators must regularise their past unauthorised development. This derives from the EIA directive and we cannot get away from that. It was addressed in a High Court judgment of 2019. What we have said is there is a pathway to regularise activities and the route to reactivating peat extraction is through engagement with the dual consent regime. Actions may be required in the short to medium term, but the long-term solution is through engagement with the dual consent regime.

Deputy Matt Carthy: Does Mr. Nugent think it is the sector's fault that the substitute consent was continuously struck down? To go back to my question, what are the proposals of the Department of the Environment, Climate and Communications to resolve the short-term crisis we face?

Mr. Philip Nugent: I do not want to prejudge the actions in the proposed supplemental measures that will go before the Ministers very soon, but they are focused on forensically looking at the potential for what would have been regarded as sub-optimal grades of peat in the past to see if they can be mixed or blended to tide us over for a further period. We are also looking at the existing expertise within various organisations around using their supply chains, international or otherwise, to try to source other peat in that way.

I am also conscious that other operators in the sector are looking at the possibility of identifying suitable sub-30 ha sites that could be brought on stream in a reasonably short period, subject to achieving all of the necessary consents.

Deputy Matt Carthy: Does Mr. Nugent understand my point about the frustration of people listening? Regarding the sub-30 ha sites, is Mr. Nugent aware that stakeholders have indicated to us that unrelated bogs on which harvesting occurs, perhaps by the same operator, are being linked so that they are not considered to be sub-30 ha? That again is presenting a challenge in terms of getting peat to where it is needed.

Mr. Philip Nugent: If I understand Deputy Carthy correctly, what he is referring to is regarded as project-splitting, or salami-slicing. As far as the EIA directive is concerned, those sites would be considered as part of a larger complex. I understand Deputy Carthy's frustration, but does he understand that the State simply cannot set aside its requirements under the EIA directive?

Deputy Matt Carthy: I understand that there are 17,000 jobs at risk and what I see in response to that from the Department is flippancy. That is why I am frustrated and angry. We

have called this meeting to try to get solutions. Reading between the lines of the opening statements from the other two Departments, I sense that there is at least a recognition that something needs to be done. What I get from Mr. Nugent's opening statement and response is that it is nothing to do with the Department and it needs to be specifically addressed by the sector.

Mr. Philip Nugent: If Deputy Carthy perceives flippancy on my part, I certainly do not intend that. We take this matter extremely seriously. I am not trying to be unhelpful; all I am pointing out are the facts in terms of the legislation.

Deputy Matt Carthy: Mr. Nugent referred to salami-slicing. Does he see how that would appear a bit strange when in some instances we are talking about several kilometres of a distance between one site and another, yet they are being linked and the analysis that has been carried out says they are essentially the same site? Nobody who is in the area would consider them anywhere close to the same site.

Mr. Philip Nugent: I am not familiar with any specific sites that are under discussion. They may or may not be suitable. I am just saying that in general where there is a difficulty identified with a site that is linked to a larger complex, it is referred to as salami-slicing or project-splitting and has fallen foul of the EIA directive in the past. I have no knowledge of any specific site to which the Deputy may refer.

Deputy Matt Carthy: Okay. Chair, could I ask Mr. Lucas a question?

Chairman: Yes, they are Deputy Carthy's constituency matters.

Deputy Matt Carthy: What can we do in the next month to provide a short-term solution, which is essentially where we need to see progress?

Mr. Brian Lucas: As Mr. Nugent said, all three Departments are part of the working group. From the perspective of the Department of Housing, Local Government and Heritage, we provide secretariat services to the group as well as participating in it. We assisted the chairman of the working group with the interim report that was sent to the Minister of State, Deputy Noonan.

As Mr. Nugent also said, and as I indicated in my opening statement, following on from the interim report, the three Departments have been working on a suite of measures to address the short-term needs of the sector. My understanding is that the measures are being finalised at assistant secretary level in the three Departments with a view to going to the political level as soon as possible.

As Mr. Nugent said, it is difficult for any official to go into detail on something that has not been signed off at political level, but he has already outlined what is envisaged in the suite of measures and I do not think there is anything I can add to what he has already said in that regard.

Deputy Matt Carthy: Does Mr. Delany have any words of comfort in terms of the Department of Agriculture, Food and the Marine's interactions on these issues?

Mr. Barry Delany: Again, we point to the requirement for the domestic production of peat. If we look in particular at the area Deputy Carthy is most concerned about, mushrooms, they suggest that they need approximately ten ha to 15 ha per year. Mr. Lucas has outlined the possibilities that are there to get through that process. We would hope that the extractors or the parties are trying to expedite that.

The amenities side is a little bit more difficult but, again, they are looking for approximately

126,000 cu. m. That totals approximately 262 ha. Again, the figures there are not enormous. The trade would say to us that accounts for 0.12% of total Irish peatlands.

As we pointed out, it is back to a regulatory issue, in particular on the mushroom side. The Bord na Móna piece and the exit of the party from supply is slightly different and that has been more difficult. We have, however, been working very closely with the Horticulture Industry Forum, the Irish Farmers Association, IFA, the Kildare Growers Group and the Commercial Mushroom Producers organisation. In addition to that, we have the horticulture grant aid funding and the producer organisation funding to try to help parties to maybe adjust some of their systems to accommodate some of the new material they are trying to work through. Again, I am afraid there are no easy solutions.

Deputy Matt Carthy: I am not suggesting there are any easy solutions but can any of our three guests point to a resolution within the next number of weeks? As I said, this is a unique situation for me to be in. I have listened to several members and representative organisations tell us in very vocal terms for the past two years, and certainly for the past year, that an entire sector can and will be wiped out unless action is taken. I see this merry-go-round. We all accept that every action has a consequence but we are facing a perilous moment. I need to know, and this committee needs to hear, that there is a drive within each of the witnesses' Departments, or at least one of their Departments, to actually sort this out. Is there any confidence among any of the three witnesses that this will be resolved in the next short while?

Mr. Philip Nugent: I will come in again. There is absolutely a drive and commitment to delivering feasible measures to address the supply issue. They will not be easy and I anticipate that import will be a part of that. Beyond that at this stage, to go back to what Mr. Lucas said and what I said previously, we cannot really get into the specifics at this point because the supplemental measures we are talking about have to go to the political system for endorsement first.

Deputy Matt Carthy: Okay, so what is the timeframe for that?

Mr. Philip Nugent: I would say that would be a matter of days.

Deputy Matt Carthy: Okay. I propose to the Chairman that we bring these guys' political masters in before us. I know members might not be too eager to hear of another meeting during the recess but if that is what it takes to actually get answers then that is what I propose we do.

Chairman: We will be having a private meeting in the morning and we can discuss that in detail.

Deputy Matt Carthy: I will leave it at that for now, Chairman. I will come in at the end if there is time available.

Chairman: I thank Deputy Carthy. I call Deputy Leddin.

Deputy Brian Leddin: I thank the Chairman and welcome our guests. At the outset, I will repeat the point I have made a number of times that I believe it is remiss that we do not allow our guests to read their statements into the record. We are unique among committees. All committees are operating under the same Covid regime with the two-hour limit but guests generally are allowed to read their statements into the record. We are skewing the discussion by not allowing that.

With respect to his characterisation of the statement from the Department of Environment, Climate and Communications, Deputy Carthy said its view is that “there is no problem at all”. That is absolutely not true in respect of Mr. Nugent’s written statement. I have significant sympathy for Deputy Carthy and his constituents in County Monaghan. It is a serious issue and a crisis that requires all hands on deck. To be fair to our guests, we should accurately represent what they have sent into us.

What I am reading in Mr. Nugent’s statement is that the Department is “acutely conscious of the supply difficulties being experienced by the horticulture sector.” It goes on to state that its remit “relates to one aspect of the existing regulatory regime that applies to peat extraction on sites of over 50 hectares.” It talks about:

A history of widespread non-compliance with this dual consent process, with many operators in the peat extraction sector lacking planning permission and / or an IPC licence while others have failed to engage or been slow to engage with these regulatory processes at all.

It goes on to state that:

Industrial scale peat extraction absent planning permission constitutes unauthorised development, [and] the onus has been on operators to first regularise their past activities and then secure the necessary consents before any recommencement can take place.

It states further that:

Not all of the relevant peat extractors have engaged, as required, with the planning system as they are required to do initially before seeking an IPC licence if successful in obtaining the necessary planning permissions.

The next point in Mr. Nugent’s statement is perhaps the most important and I would like him to elaborate on that, if he could. He said that:

It is not open to the State to simply remove the requirement that operators must regularise their past unauthorised development, as this requirement is derived from EU law.

That is perhaps the bind that we are in. If I am to take Mr. Nugent’s words at face value, the situation appears to be that there has not been a proper engagement between the sector and the regulatory system and that is the principle reason why we have the advice that we have. Our guests so far have suggested that there are interim solutions, particularly with regard to the sub-30 ha possibilities. Perhaps, however, Mr. Nugent might elaborate further on the bind the State is in with respect to its obligations under EU law.

Mr. Philip Nugent: I thank the Deputy. He characterised it really well and laid it out very clearly. Essentially, there is no way for the State to remove the requirement that operators regularise their past unauthorised development. This is the substitute consent requirement. Substitute consent is how it has been dealt with through Irish legislation. This is something that is derived directly from the environmental impact assessment, EIA, directive and was very clearly addressed in the judgment of the High Court in 2019. That is why we I keep coming back to this point. The route to reactivating peat extraction is through the exiting dual consent process, which provides for the regularisation of past activities and then the authorisation of the prospective activity or the prospective development under both the planning and licensing systems. It is not, therefore, through a policy choice on the Department’s part or through the introduction of a ban or a restriction. It is because of a requirement, which is common to almost all types of development, to have the consents in place.

I should also say that the dual consent aspect that applies to industrial heat extraction is not unique. More than 800 Environmental Protection Agency, EPA, licences are held by operators across all sections of the economy and with all those 800 plus licences there would also be a planning permission associated. There are, therefore, 800 licences issued by the EPA that also have planning permission attached. In other words, they have been subject to the dual consent regime and those operators have successfully navigated that system. We do not, therefore, accept that the dual consent regime is uniquely onerous. Industrial peat extraction is a significant intervention in the landscape and it is right and appropriate that there should be a reasonably proportionate bar for authorising that activity. The dual consent regime is not, therefore, unique and, as the Deputy said, it is not open to the State to walk away from its obligations under the EIA directive.

Deputy Brian Leddin: May I ask Mr. Lucas a question, Chairman?

Chairman: Yes, of course.

Deputy Brian Leddin: I thank Mr. Lucas for appearing before us again. I understood he was going straight into retirement. If he has come out of retirement to meet with us, I thank him for doing so.

Can Mr. Lucas speak about the possible solutions to this crisis relating to the sub-30 ha possibilities? Does he see major obstacles on plots of those sizes?

Mr. Brian Lucas: As I said, under the planning development regulations, peat extraction in a new or extended area of 10 ha or more where the drainage of the bogland commenced prior to 21 January 2002 is exempted development. The best thing to do is to give a practical example. If I wish to engage in peat extraction and if I have a site which I think fits into the exempted development category, for example, an area of 10 ha or more where the drainage of the bogland commenced prior to January 2002, then I would first conduct an environmental impact assessment screening and an appropriate assessment screening. If the results of those screenings show that an EIA and AA are not necessary, then I would go to the planning authority and seek what I referred to earlier, namely, a section 5 declaration. My recollection of the Planning and Development Act 2000 is that the planning authority must respond to such an application within four weeks. It is open to anyone to pursue that process. However, it would be necessary to at least do an EIA screening and an AA screening and then provide the outcome of those to the planning authority as part of the application for a section 5 declaration.

During my time working in the area of peatlands, although it was for domestic turf cutting, as I mentioned, the planning regime and the law is the same no matter what type of extraction is involved. The Department sought section 5 declarations from planning authorities for peat extractions in the circumstances which I set out and received such section 5 declarations. In addition, for two sites where we felt there was a need for a full EIA, we applied for and received planning permission to develop those two sites for domestic peat extraction. To complete the picture, we applied for planning permission for one more site and we were refused. We appealed that decision to An Bord Pleanála, but it also ruled against us. Therefore, that there is still a requirement to go through a process of seeking consent and a section 5 declaration. It is then a matter for the planning authority to decide whether to grant that declaration.

Deputy Brian Leddin: I thank Mr. Lucas.

Chairman: I call Deputy Martin Browne.

Deputy Martin Browne: I also welcome our guests. Some of them have said that they are conscious of what is going on in the sector and that there is a journey under way. After what we heard at several of our recent meetings and from talking to people in the sector, it does not appear that there is much of a drive going on between the different Departments.

I have some comments and questions. A major factor in this whole mess is timing. The Department has admitted that finding peat-free growing media alternatives is a challenge and that wood production is a particular challenge. The future of the sector is in the hands of the three Departments represented here today, but no workable solution has been forthcoming from any of them regarding the problem this sector faces. The Departments might have all the time in the world to deal with this issue, but the sector does not. The point has often been made, and especially since April, that time is running out fast.

Ultimately, if there is further resistance to reaching a resolution that works for all, then jobs, exports and communities will suffer the consequences. Recent comments from the Minister of State, Senator Hackett, encapsulate the problem. On one hand, she has told us that the harvesting of horticultural peat must stop in favour of alternatives, while, on the other hand, she has also stated that a stockpile of peat can be used during the time while research is being carried out into these alternatives. No one seems to be able to tell us what these alternatives are or if they will even work. This process could take years. We are being told that the stockpile of peat that the Minister of State has spoken about is unsuitable due to its age and that the source will run out at the end of September. That is according to those in the industry.

Meanwhile, the Department of the Environment, Climate and Communications seems to be totally resistant to amending the planning rules which could be tweaked to save jobs. The representatives of the industry have proposed the introduction of a fair and workable licensing system, similar to the single consent process that has been in operation elsewhere. It has also been proposed that an interim period be allowed for the phasing out of horticultural peat harvesting over a transitional phase to allow the alternatives to be developed. The sector is involved in trying to devise alternatives to what is being proposed and it is seeking to secure a supply of a growing media up to 2030, which is the period that has been suggested. Can the representatives from each of the Departments outline the obstacles which are delaying this approach for the sector?

Mr. Philip Nugent: I am happy to go first. It is important for me to reiterate that we are not opposing viable solutions. We are not standing in the way of them. A suggestion was made at the meeting of 6 July that there was a dispute between the three Departments regarding solutions. There is not. We are working constructively together to try to develop solutions. The Deputy mentioned-----

Deputy Martin Browne: Time is running out for the sector while the Departments are in discussions.

Mr. Philip Nugent: I understand that, and, as I said, we are very conscious of the predicament in which the horticultural sector finds itself. Returning to my opening statement, from which Deputy Leddin quoted, the reason we have ended up in this situation is because of a history of non-compliance by commercial peat extractors. It is also important to state that we do not have responsibility for the planning system. Mr. Lucas may wish to speak about that matter.

The Deputy spoke about the possibility of replacing the dual consent regime with a single consent regime. We do not regard that as something that will accelerate this process at all. A

new consent regime would require primary legislation, which obviously takes time to prepare and get through the Oireachtas. It would also require the introduction of new systems and processes in whatever statutory body was given responsibility for such a new system. Only at that point could the regularisation process commence, that is, the application for leave to apply for substitute consent. That would then be followed by the application for substitute consent and then the application for the prospective consent. It is also important to bear in mind that, as we have seen in recent years, the process is very likely to be challenged along the way, possibly at several stages. It is for this reason that we think that following the route of a single consent regime would not allow for an earlier resumption than would engagement with the current system.

Chairman: That is fine.

Deputy Martin Browne: Can I pose a question to the representatives from each of the Departments?

Chairman: Yes, that is fine.

Deputy Martin Browne: Starting with the representatives from the Department of Housing, Local Government and Heritage, I noted with interest the second last paragraph of the opening statement. It acknowledges the opinions of the working group in respect of a phasing out to be undertaken up to 2030. Is this something that the Department sees as a possible solution to the problem we are facing?

Mr. Brian Lucas: I am not quite sure if I understand the question. What was being said in the working group was that there was a consensus on a phasing out of peat extraction up to 2030 and possibly 2035. It would depend on the success of the research and development programmes. Mr. Delaney has gone through the research work being done by the Department of Agriculture, Food and the Marine.

Deputy Martin Browne: I do not think that anyone here believes that there is going to be an alternative in place by September, at which point this sector will be in serious trouble. Is it possible that the date for this change can be stretched out to 2030 to let the sector come up with the solutions and alternatives that have been referred to? I wonder could such an approach be adopted instead of bringing materials from halfway around the world, with the resulting carbon footprint. What has been discussed so far is a crazy situation.

Mr. Brian Lucas: Yes, it is clear there will not be an alternative to peat in place by September of this year. In the working group, however, the representatives from the Department of Housing, Local Government and Heritage outlined the current legislative provisions. I have gone through those already and Mr. Nugent has also spoken about them. We made it clear what those provisions are at the working group. Mr. Nugent referred to the dual consent system. This features in the report of the working group. The report in question states that any system of regulation would need to provide for EIAs, AAs and subsidy consents in respect of previously unregulated peat extraction. The undertaking of an EIA will be mandatory in an application for consent to undertake large-scale peat extraction on a site of 30 ha or more. As a result of this, there has to be a consent system in place. It has to provide for EIAs and AAs. As already stated, in some cases, screening for AAs and EIAs would be possible. Both Departments have outlined all this in the current legislative provisions. I quoted directly from the interim report about an alternative system. There has to be consent system in place.

I listened back to the discussions the committee had with the industry representatives on 6 July 2021. There were discussions about emergency legislation. Again, the Department had made clear at the working group that if there is emergency legislation, there will be no EIA, no AA, no screening for EIA and no screening for AA. The view of both Departments is that would not be possible. Mr. Nugent has already outlined the requirements that Ireland is required to follow under EU law. It is not possible to have no consent system. It is not possible to do away with EIA and AA. At the very least, screening has to be undertaken. I have gone through this already. It is not possible to have a free-for-all with no consent system in place. That is the view of the Department of Housing, Local Government and Heritage. It is fair to say that it is the view of the Department of Environment, Climate and Communications also.

Deputy Martin Browne: I have a question for the Department of Environment, Climate and Communications on this so-called stockpile of peat. Can the Department comment on the actions of the EPA regarding a certain company that sought to prevent it from accessing that? Does the Department see this as an appropriate way to act in light of the circumstances right now?

Mr. Philip Nugent: I thank the Deputy for his question, but I cannot comment on that matter. Under section 79 of the Environmental Protection Agency Act, 1992, the Minister and the Department have no function in respect of the performance of the EPA under the particular circumstances of a function assigned to it under the Act. This relates to IPC licensing or any enforcement matter.

Deputy Martin Browne: We will not get an answer to that question. I have a question for the Department of Agriculture, Food and the Marine. The Department seemed to be at great pains in its opening statement to say that it has no role in the regulation of peat extraction or planning. They said that is for the Department of Housing, Local Government and Heritage. They then said that IPC licences fall under the Department of the Environment, Climate and Communications. Is there a problem in the fact that there are three different Departments working on this from different angles? Eventually, the sector will lose out from the collective failure of the Departments to come together for the benefit of the industry and the environment.

Mr. Barry Delany: We have been clear from the start that we fully acknowledge the issue at hand for the sector. We work closely with them. We have a role in their ongoing development. We have been working fully with the Department of Housing, Local Government and Heritage. We have been working closely on a daily basis with our colleagues in the two other Departments. The Deputy heard today about a short-term approach. He referred to the Minister of State at the Department of Agriculture, Food and the Marine, Senator Hackett, who has been clear on this as well. The immediate solution is to focus on small-scale extraction for the domestic commercial horticulture sector in the transition towards peat free. In the context of the larger-scale aspects, there could be a medium-term approach. We have come back to immediacy, a matter to which Mr. Lucas referred earlier. In the focus on small-scale extraction, we will find the solution.

Deputy Martin Browne: All the Departments have been speaking about buying time to develop these alternatives. They seem to be forgetting, though, the whole sector and professionalism in that industry. They are already in the process of looking into alternatives. They are the ones who know their industry. They know what works right now and what does not work. Instead of Departments trying to buy time for themselves, they need to get these professionals on board and give them the time to adjust. I do not know if they would deal this, but the Department has to be realistic with the time-----

(Interruptions).

Chairman: We have lost Deputy Martin Browne's sound.

Deputy Martin Browne: Apologies; I do not know where it went.

Chairman: It was only about ten seconds ago.

Deputy Martin Browne: The horticultural sector values the planet and all it offers. We have got that message any time we have spoken to those involved in it. Sustainability is of vital importance to them. So, work with them. Do not start dictating to them out of an idealistic stance that is in practice unrealistic. The Department needs to live up to its words and secure the thousands of jobs to which Deputies Carthy and Fitzmaurice and Senator Boyhan referred. There is a massive industry that needs to be looked after. Will the representatives from the Department say that they will actually do this? It does not seem to have been done up to this point.

Chairman: Deputy, there was no real question in your last statement, was there?

Deputy Martin Browne: No, there was not really. Instead of buying time, our guests need to work with the people who we have been talking to and who are involved in that sector on a daily basis in order that they can come to a conclusion. There will be a massive number of jobs at risk, if something is not done quickly. Buying time is not a solution.

Chairman: I thank the Deputy and call Deputy Michael Collins.

Deputy Michael Collins: We have been discussing this issue and many others. I appreciate the efforts that the Chair and committee staff have made to accommodate every party in respect of this issue. It is a crisis. I have been discussing this with the nurseries and the horticulture sector on a regular basis. They are pressurising us, as politicians, for results. I appreciate that we get ample time to question the witnesses and I welcome them here. I thank the Chair for not spending too much time on statements in order that we do not lose the valuable time we need to get our points across.

The point I want to get across is that I cannot understand for the life of me why this crisis has continued in the way it has. Who is in the wrong here? Why can it not be resolved temporarily until something is put in place? Somebody has got to put up their hand and take the blame. It is either Minister or the Department that needs to do so. Who in the name of God is going to take the blame? Will the buck be passed from one to the other? As Deputy Carthy said, maybe we will just have to come back here again to see if we can get to some kind of solution. I have no issue about coming back here; the nurseries are severely affected on the ground.

I only have a few questions. Many of those I was going to ask have already been dealt with. My argument is that there was a withdrawal from peat without a plan being in place. The nurseries have been left flat-footed. They were given no time to adjust. When other businesses are affected, there is some kind of compensation package put in place. Has the Department considered a compensation package? If it has, what kind of package is it?

The issue of the timeframe was raised. Can we have Irish peat for Irish growers? It is a simple question. The third question is whether some bogs can be redefined as no longer being peatland habitats. Is it possible to re-wet bogland and then have suitable peat that can be used for horticulture?

I have a fourth question and then I will leave it at that. Last week, the Minister of State at the Department of Agriculture, Food and the Marine, Deputy Pippa Hackett, released a statement to say that a stock of Irish peat will alleviate the immediate issue may have been secured. The industry would like to clarification on this stock of peat. If it is stockpiled peat, it will not be suitable for the casing layers used in mushroom growing. Is it stockpiled peat or is it not?

Chairman: Who wants to take the Deputy's questions?

Mr. Barry Delany: I can take the first question on the stock of peat. That matter was alluded to at the committee's meeting on the 6 July 2021 and in our engagements with the industry. We had understood that there were some indications of availability of peat stocks on hand but these were for the amenity side, not for mushrooms. Again, given that is a commercial matter, as Mr. Nugent outlined, we are not in position to comment further. However, as soon as there's anything clarified, we would be happy to come back to the committee and clarify that further. With regard to redefining bogs and the timeframe involved, I will have to leave that question to my colleagues.

Chairman: Who would like to take Deputy Michael Collins's other questions?

Mr. Philip Nugent: I can take a couple of the points mentioned. Mr. Lucas may want to talk about redesignation. To echo what Mr. Lucas said previously, the State cannot simply set aside its obligations under the environmental impact assessment, EIA, directive or the habitats directive. There is no way for extraction to take place legally on a site greater than 50 ha in 2021. The only way to reactivate sites like that is through engagement with the system. It may be difficult to hear that this is the case but the system is in place and has been for some time. The requirement to have an integrated pollution control, IPC, licence is not new. It has been there for a couple of decades at this stage. We are very conscious of the situation the horticulture sector finds itself in but the fundamental issue here relates to non-compliance.

Deputy Michael Collins: Unless someone else wants to come in, I would like to ask a follow-up question.

Chairman: I will let the Deputy finish. Senator Paul Daly is waiting but Deputy Michael Collins can go first.

Deputy Michael Collins: I asked about nurseries and other businesses that have been heavily impacted. Has any consideration been given to a compensation package for these people whose businesses have been almost destroyed? There was no withdrawal plan and no time given to adjust. These nurseries have been caught out. As with everything else in this country, they can bring it in from abroad as long as we are not seen to be making it in Ireland. That seems to be the new Irish solution. Are there any plans to compensate the nurseries or other businesses that have been impacted? I would appreciate it if that question could be answered.

Mr. Barry Delany: In the first instance, the way we support the horticulture sector is through the grant aid scheme. That has increased from €6 million to €9 million this year and offers strong support to the mushroom sector and to the amenities sector. These sectors receive a lot of funding through that route. To go any further than that, I would have to speak about the working group. I might leave that to Mr. Lucas to discuss. One of the areas for consideration related to just transition and so on. Again, that has not been fully teased out as yet. We are probably getting into the political realm at that point. I do not know if any of my colleagues would like to elaborate on that issue.

Chairman: Does Mr. Lucas have any comment to make?

Mr. Brian Lucas: I will just come in on the matter of the just transition. We have had discussions on this and the first thing one would need to do is to see whether the crisis the industry may end up in falls within the area of just transition. One would then need to see whether budgetary funding could be provided, with the just transition concept possibly fitting into that. I recall that, in the last session, Deputy Cowen referred to the just transition territorial plan. It is my understanding that this is being drafted by the Department of the Environment, Climate and Communications.

Senator Paul Daly: I thank the officials from the Departments for being here today. A lot of what I was going to ask about has been covered. I mean that loosely because, while the questions have been asked, they have not necessarily been answered to my satisfaction. I have a couple of questions. I note that Mr. Nugent has said there is no dispute between the Departments. We would probably be a lot nearer to a solution if the three Departments banged their heads together and if there was a bit of a dispute between them. That could be part of the problem. There is a bit of a *laissez-faire* attitude and a sense that it is everybody else's problem. Has anybody sat down and looked at what is happening on the ground? We can blame the High Court ruling and say that it caused a problem but the High Court ruling just set standards. What caused the problem was Bord na Móna walking off the pitch without bothering to follow through with the new standards for applications. That is accepted. Bord na Móna is now rewetting bogs. It walked away from them practically overnight. I presume many of these bogs will need manicuring before they are in an ideal position for rewetting. That manicuring may or may not require the removal of peat. Has anyone sat down with Bord na Móna and asked it to do an analysis of the bogs before wetting them to see if there is a surplus layer of peat that will need removal? Could that be used to solve, in the short term, the problem facing the horticulture people as part of a just transition while we are waiting for the development of these alternatives?

With regard to the applications for areas greater than 30 ha and areas greater than 50 ha, are there many, or any, applications in the system? If there are, how long have they been in the system and how long is it expected to be before a decision is made on them? How many applications from the private sector have been granted with the extraction now up and running? What kind of lifespan do they have? That is it for the moment. Depending on the answers, I might have a couple more questions.

Mr. Philip Nugent: The first part of the question, which related to Bord na Móna, is for me. I can talk about sites greater than 50 ha. I do not agree with the characterisation of Bord na Móna walking off the pitch. Bord na Móna was affected in the same way as every other operator by the 2019 High Court judgment. It is not true to say that it voluntarily walked off the pitch. It was quite severely impacted by that decision. Bord na Móna has been a very active member of the working group Mr. Lucas talked about and has done quite a lot to support the horticulture sector. Since 2019, Bord na Móna has not harvested any peat. It cannot harvest peat without further regularisation. Since the judgment, Bord na Móna has actively engaged with all customers of professional grade horticulture peat and their representative organisations. Bord na Móna has been clear and transparent in communicating its exit from peat harvesting and the impact this will have on the sector but, to assist the sector, it ensured that Irish customers of professional grade horticulture peat were supplied with 40% more peat in 2021 than the equivalent period in 2020. It has also formally ceased the export of horticulture grade peat, which resulted in 94% of pre-existing and planned shipments to all export customers being cancelled. Bord na

Móna is very active in this space and has been very supportive of the horticulture sector.

With regard to applications that are in the system, at the meeting on 6 July, the representative from Growing Media Ireland said that two or possibly three had engaged or had submitted applications to An Bord Pleanála. I am not entirely sure. That is a matter for it to address but it is a small number that have engaged with the system. With regard to sites greater than 50 ha that are operating at the moment, none are operating lawfully. Any that are operating are operating unlawfully because they do not have the required planning permission, IPC licence or either of them.

Senator Paul Daly: Does Mr. Nugent not believe that the solution to this problem, which would get us to the endgame as part of a just transition, is for Bord na Móna to engage with the system in respect of selected bogs? I am talking about a targeted tonnage specifically for the horticulture sector.

Mr. Philip Nugent: As I said, Bord na Móna was affected in the same way as every other operator. It took the decision in 2020 to suspend its peat extraction operation and, earlier this year, to-----

Senator Paul Daly: I am sorry. I know that. I am aware of the historical facts. I asked whether Mr. Nugent thought it would have been a solution, as part of a just transition and to get us through until alternatives are developed, for Bord na Móna to suspend operations and to engage with the system in respect of specific targeted bogs, which may even need some manuring before wetting, with a view to extracting a targeted tonnage of peat for the horticulture sector.

Mr. Philip Nugent: Bord na Móna is a semi-State body that operates on a commercial basis. That is its remit and it has to work within that mandate.

Senator Paul Daly: I do not get what that answer has to do with the commercial side of its operations. Ceasing to sell is not something that has to be done when a body considers itself a commercial entity.

Mr. Philip Nugent: It took the commercial decision to cease that activity, having regard to the 2019 judgment.

Senator Paul Daly: Does Mr. Nugent not see how a reversal of that decision, or how the initial decision was made, is what has caused the problem for the horticulture sector? A reversal of that decision could be an interim solution until we come up with some of the alternatives that are being researched. If three individuals in the private sector were trying to solve a problem, at this stage I, or somebody else, would have brought them together, along with Bord na Móna, to address the situation. Specific, targeted bogs for commercial purposes, in the interests of saving another sector, would be something that could be considered. It could engage with the system for production of horticultural peat in designated bogs in the interim until we have alternatives. Does Mr. Nugent not think that is something the Department could have discussed, addressed or explored as part of its tripartite effort to come up with a solution?

Mr. Philip Nugent: First of all, it is not open to any Department or Minister to instruct Bord na Móna to do one thing or another. It, like every other operator, was affected.

Senator Paul Daly: I said “discuss” not “instruct”.

Mr. Philip Nugent: Again, a Department would be brought into a space of trying to influence a decision taken by Bord na Móna which operates on a commercial basis. It was affected in the same way as every other operator. It does not make sense to isolate it and say it should have done something at that point to respond to the High Court decision. All operators then, and many years previously, should have engaged with the system so that we could have avoided being in the situation we are in today. I should also add that Bord na Móna started the process of seeking substitute consent specifically for the horticultural peat sites.

Chairman: Okay. Deputy Carthy has indicated.

Deputy Michael Fitzmaurice: I did as well.

Chairman: I know. You will get in in a second.

Deputy Matt Carthy: In case I am accused of misleading the committee, let me recategorise my review of the Department of the Environment, Climate and Communications. Its view is not that there is not a problem; rather, it is not its problem. I presume that would be a fair assessment of what it said.

Mr. Nugent said this is essentially the fault of the sector not engaging with the process. He can correct me if I am wrong about any of the information I have. I could well be wrong, because this is a complicated process. The EIA directive was agreed at an EU level in 1992. Is that correct?

Mr. Philip Nugent: I think it was actually before that. It was a long time ago. It was 1985, I think.

Deputy Michael Fitzmaurice: The habitats directive that has caused all these problems was agreed between 1986 and 1992.

Mr. Philip Nugent: The EIA directive was in 1985. It has been amended a number of times.

Deputy Matt Carthy: The transposition date I have is 1999. Would that be correct?

Mr. Philip Nugent: It is partially correct. The regulations were introduced in 1994 to bring sites above 50 ha within Part 4 of the EPA Act 1992, which required an IPC licence. At that point the EPA did not have competence to do EIA, but the licensing aspect requirement came in in 1994.

Deputy Matt Carthy: Okay. Did peat extraction during that period operate with a licence?

Mr. Philip Nugent: Bord na Móna obtained nine licences, as I understand it. Those licences were not subject to EIA.

Deputy Matt Carthy: Okay. Commercial peat extraction operated with a licence, but without an EIA.

Mr. Philip Nugent: Yes.

Deputy Matt Carthy: That was the case up until 2011. Am I correct?

Mr. Philip Nugent: I have to ask my colleague Mr. Carberry to come in. He is more familiar with the EIA directive and the timeframes.

Chairman: Could Mr. Carberry confirm that, please?

Mr. Leslie Carberry: I thank the Chair. As I understand it, a planning Act was passed in 2011. The trigger for the requirement for planning permission for peat harvesting over 30 ha was based on a series of decisions by An Bord Pleanála in respect of specific sites. I believe, though I am open to correction on this point from Mr. Lucas, that those decisions were triggered by a request for determinations from third parties, in this case environmental NGOs.

Deputy Matt Carthy: Okay. Until that point is it fair to say that commercial peat extractors were operating in line with the position of the Department and in line-----

Mr. Leslie Carberry: Without wanting to comment on any specific individual operator, there was a requirement, as Mr. Nugent said, from at least 1999 to have an IPC licence in place. The only operator that had such licences was Bord na Móna. I am not in a position to speak to-----

Deputy Matt Carthy: Is Mr. Carberry saying that all of the other peat extraction that took place did so illegally?

Mr. Leslie Carberry: I am saying that the only licences that were issued were issued to Bord na Móna.

Deputy Matt Carthy: I do not want to dance on the head of a pin. What does that mean?

Mr. Leslie Carberry: It appears that they were carrying out unlicensed activity, if operators carried out peat extraction over 50 ha during that period without a licence.

Deputy Matt Carthy: Who was responsible for monitoring and enforcing the EIA directive in that instance?

Mr. Leslie Carberry: In that instance, under the EIA the requirement for a licence is the simplest way of saying it rested with the agency to enforce.

Deputy Matt Carthy: The EPA.

Mr. Leslie Carberry: Yes.

Deputy Matt Carthy: The EPA was not doing its job, obviously.

Mr. Leslie Carberry: I cannot speak to that. I have no knowledge of the enforcement actions it may or may not have tried to take.

Deputy Matt Carthy: We are fairly straightforward in saying that the sector was not doing something. Why are we afraid to say that the EPA was not doing its job?

Mr. Leslie Carberry: I am not saying that I am afraid to say that. I simply do not know the history of any enforcement actions that the agency may or may not have taken.

Deputy Matt Carthy: Is it fair enough to say that not all Bord Na Móna lands where peat extraction took place had licences?

Mr. Leslie Carberry: To the best of my knowledge, all peat extraction under Bord na Móna was carried out under licence. Again, that is a matter for Bord na Móna and the agency to confirm.

Deputy Matt Carthy: Okay. Let us fast forward to 2018. If I understand the position, there was an 18-month derogation or time provided for regularisation. Is that a fair way of putting it? That was the subject of the 2019 Simons judgment. Would that be correct?

Mr. Leslie Carberry: Not quite. The 2012 decisions by An Bord Pleanála were challenged through the court by the peat operators. That legal-----

Deputy Matt Carthy: To go back to 2012, An Bord Pleanála approved licences in 2012.

Mr. Leslie Carberry: No. An Bord Pleanála ruled that planning permission was required in respect of peat extraction on specific sites. That was challenged through the courts up to 2018. In December 2018, as I understand it, that legal challenge was exhausted and at that point it was the law of the land that peat extraction over 30 ha would require substitute consent if the necessary consents were not already in place.

The Departments of Housing, Local Government and Heritage and the Environment, Climate and Communications brought forward the 2019 regulations, as they are referred to, which moved peat extraction from the planning system exclusively into the EPA licensing system. More importantly, that did away with the requirement for substitute consent. That is the key issue. It essentially tried to do what Deputies and the industry are asking for today. It got rid of that requirement for regularising previously unauthorised development and, as soon as the regulations were signed, they were promptly challenged by an environmental NGO. The case went to the High Court.

Deputy Matt Carthy: This was a regulation that was brought forward within the Department of the Environment, Climate and Communications.

Mr. Leslie Carberry: It was brought forward by the two Departments. The two regulations have to work in conjunction. The Department of Housing, Local Government and Heritage exempted peat extraction from the planning system and the Department of the Environment, Climate and Communications said it would be regulated exclusively through planning.

That was struck down by the High Court on the basis of two grounds. First, it was done by secondary legislation and the court ruled that it should have been done by primary legislation because it cut across the will of the Oireachtas. Second, and more fundamentally for the discussion here, the court was clear that, regardless of which consent process peat extraction was covered by at national level, it has to be regulated in compliance with the EIA directive. This meant that where there was previously unauthorised development it had to go through a process like substitute consent.

I can go to the process steps of what substitute consent requires. That is unavoidable.

Deputy Matt Carthy: This is helpful. On that judgment, who was the judgment against?

Mr. Leslie Carberry: The judgment was against the two Ministers, as I recall.

Deputy Matt Carthy: Not the sector.

Mr. Leslie Carberry: No.

Deputy Matt Carthy: It is hard to blame the sector for a judgment that was issued against the Departments.

Mr. Leslie Carberry: It is not a matter of apportioning blame to the sector for the judgment. It is simply that the onus is on the sector to comply with the law as set out by that judgment. That is all that the position is.

Deputy Matt Carthy: Okay. Prior to 2019, the Departments came together and tried to find a solution. I give credit where it is due. That solution met the court system and the court system essentially said what it did. Is it fair to say that the Department said then, or at least now, that it is not its problem anymore and stopped trying to find legal or other solutions to these matters?

Mr. Philip Nugent: Can I get back in there? This goes back to a point that I made earlier on a number of occasions when we talked about the possibility of removing either the planning element or the licensing aspect of it and what would be required in order to introduce that new regulatory regime which would be either planning or licensing. We are very much of the view that that would not improve the position in terms of the timeframes and that the fastest way to regularisation is through the existing dual consent regime.

The implication of the High Court judgment clearly was that one cannot get away with removing the substitute consent element. That needs to be part of either a single consent or dual consent regime. We are saying that legislating for a new single consent regime that also properly respects the environmental impact assessment directive and allows for substitute consent would not deliver decisions any more quickly than the existing dual consent regime.

Deputy Matt Carthy: Mr. Nugent mentioned earlier that part of the short-term solution will likely involve importation of peat. Does he accept in the first instance that provides no environmental benefit? As far as mother earth is concerned, whether the peat is extracted in Roscommon or Leitrim or in The Netherlands or Lithuania makes little difference.

Mr. Philip Nugent: The Deputy is asking me for my opinion as if there is a policy restriction in place; there is not.

Deputy Matt Carthy: I am only asking if Mr. Nugent would accept that premise that there is no environmental benefit from that.

Mr. Philip Nugent: Import will need to be part of the solution, and is already happening because of the shortage of supply. There is obviously a carbon footprint associated with import but there is also a carbon footprint associated with hauling horticultural-grade peat from one side of the country to another. I have not seen the numbers on it but there are environmental implications both ways.

Deputy Matt Carthy: Is Mr. Nugent saying it might be more environmentally beneficial to import?

Chairman: Sorry, Deputy Carthy.

Mr. Philip Nugent: I am saying I do not know because I have not seen the figures.

Chairman: Surely Mr. Nugent is not conceding that importation has to be part of this solution. Is Mr. Nugent saying that importation of peat into this country is part of the solution to this crisis?

Mr. Philip Nugent: That is what I said earlier and I am happy to confirm it. Import is already taking place and import is likely to be part of the solution.

Chairman: Just because it is taking place does not mean it is right. I thought I misheard Mr. Nugent earlier. I did not want to interrupt Mr. Nugent but to concede that importation is part of the solution is inexcusable from a Department official. I am horrified to hear that we will concede that we cannot produce peat here for organic industries. Mr. Nugent, you better go back to the blackboard because what you are saying here today is not a solution. I know we have to go to the Ministers but to them we will be going. What we are hearing today is totally unacceptable.

I apologise to Deputy Carthy for interrupting him.

Deputy Matt Carthy: I agree entirely with the Chairman. What is more concerning is that there is not an explicit agreement that brings no environmental benefit.

I was going to make a second point. Has the Department carried out an analysis of the planning and EIA regulations in those countries from which it is suggested that we would continue to import peat to see how they play against ours in terms of the practicalities of monitoring, enforcement and delivery?

Mr. Philip Nugent: The Department of the Environment, Climate and Communications is neither the competent authority for the EIA directive nor responsible for the planning system.

Chairman, I am sorry that you are horrified but I have outlined the steps. I outlined the way in which commercial peat extraction can be reactivated in Ireland and it is through engagement with the dual consent regime. That process takes time. Most members of the committee have stated that there is a requirement for solutions in the interim. Our responsibility is for the greater than 50 ha sites. The only way that they will be reactivated is through engagement with the dual-consent regime.

It is my opinion that import will probably be part of the solution. I would welcome other Departments' views on that but I do not think there will be any-----

Chairman: Mr. Nugent, you are not listening.

Deputy Matt Carthy: I have to say-----

Chairman: I am sorry, Deputy Carthy, for a second. Mr. Nugent, you are not listening to anything this committee has been saying here today. We have people who are representing the constituencies which are deeply affected by this. They are saying that the industries there are considering relocation. If we stay doddering about, we will end up with the industries gone from this country. We can issue what licence we want after that because the industries will be gone, with the loss of employment and a home-grown industry. If that is progress, I am baffled.

I am sorry, Deputy Carthy. I am after interrupting you again.

Deputy Matt Carthy: I will finish on this because Deputy Fitzmaurice wants to come in as well. Does Mr. Nugent think any substitute consent application will be challenged?

Mr. Philip Nugent: From what we have seen in recent years, the fact that the 2019 case was brought by Friends of the Irish Environment in the first place, I would expect that decisions coming through the substitute consent process one way or the other would be challenged either by those seeking consent if they fail to get it or by environmental NGOs if consent was given.

Deputy Matt Carthy: Does Mr. Nugent not see a problem here? Mr. Nugent has said that the onus is on the sector to engage with the process that is there but there is also an acknowl-

edgement that that process, if it is engaged with, will be challenged at significant cost. There will be a significant time delay.

Mr. Philip Nugent: Any planning decision can be challenged. That is the law of the land and has been for many years.

Deputy Matt Carthy: Absolutely. In this instance, does Mr. Nugent not accept that a substantial proportion of the challenges are being won and the problem must lie in the legislative basis on which the applications are made?

Mr. Philip Nugent: The Deputy asked my opinion as to whether they will be challenged. There is a likelihood either way that decisions would be challenged because of the sensitivity in both ways, for the jobs and the economic consequences and also because of the environmental consequences on the other side.

Deputy Matt Carthy: Perhaps I am not phrasing this correctly. I am saying if there are ongoing challenges on the premise of a particular type of application and if those challenges are routinely successful, does Mr. Nugent not accept that there may be a problem in the premise of the legislation as opposed to the people who are making the applications in the first place?

Mr. Philip Nugent: We have seen one form of regulation successfully challenged and it is too early to say that there is a problem with the dual consent regime if somebody challenges it. I might ask Mr. Carberry, if it is okay with the Deputy, to come back in here.

Chairman: Okay. We will go to Deputy Carthy after that.

Mr. Leslie Carberry: On that point about the underlying legislation and the soundness of it, that was addressed by the High Court in 2019. In setting aside the 2019 regulations, the court noted that that was quite a serious matter for the courts to do and the reason the court was comfortable doing so in part was because the court's view was that the pre-existing dual consent, substitute consent based system was broadly legally sound. While any specific decision can be challenged on its merits, that was taken into account in the 2019 ruling. I do not want to say specifically it is in the judgment but certainly, in his oral remarks, the judge's view was that the substitute consent process is fundamentally sound.

One of the issues with introducing a new system is it would open up another front for legal challenge because one would not only have individual decisions through the dual consent system challenged on their own but no doubt one would also have this whole new legislative framework challenged. Given what we saw in 2019, it would give real cause to say that there is a straightforward way in which one can move unauthorised development from one regulatory system and try and regularise it in another, and do that in a way in which the courts will not object to.

I take the point about the number of legal challenges but the Department's view - I think it is shared by the Department of Housing, Local Government and Heritage - is that the current system is fit for purpose.

Deputy Matt Carthy: Does the current system recognise exceptional circumstances or how is that being addressed?

Mr. Leslie Carberry: The current system requires the applicant to demonstrate exceptional circumstances that he or she did not have the proper consents in the first place.

Deputy Matt Carthy: What would Mr. Carberry see as being a valid exceptional circumstance?

Mr. Leslie Carberry: I cannot speak to that in that I am not a planner or a member of the Department in charge. My understanding is that each applicant must individually set out why there are exceptional circumstances in his or her case. An applicant cannot rely on a blanket ruling. Maybe Mr. Lucas has more information on that.

Deputy Matt Carthy: Maybe Mr. Lucas could point out if he is satisfied that the exceptional circumstances condition can be met, or if it has ever been met to his knowledge, and I will finish there.

Mr. Brian Lucas: I do not work on the planning side of the Department so it would be difficult for me to get into the details of the exceptional circumstance provisions of the legislation and whether they have been applied or not. I can take that question back to the Department and see if I can find an answer to it.

Deputy Michael Fitzmaurice: When Deputy Carthy was on about Bord na Móna walking off the pitch, Mr. Nugent said it did not do so. I would say it ran off the pitch. Every one of us have met Bord na Móna before and there was supposed to be this just transition to 2030. We were looking at a lovely book on it and then we got word about that High Court case. There was an opportunity for Bord na Móna to keep going if it wanted to but it was because of the threat of an injunction that it would not go any further. If I stopped at every threat I got in life then I would do nothing. Bord na Móna knew funding was coming to it for all the different things it is doing now so I do not accept that excuse.

Was it the Department of the Environment, Climate and Communications, under the former Minister, Deputy Bruton, that put together the legislation that got beaten in the High Court?

Mr. Philip Nugent: It was the two Departments, namely, the Department of the Environment, Climate and Communications and the Department of Housing, Local Government and Heritage.

Deputy Michael Fitzmaurice: I was watching that case when it went in. How were those cases not appealed on a point of law?

Mr. Philip Nugent: I ask Mr. Carberry to come in on that question.

Mr. Leslie Carberry: Without going into a post-mortem of the two cases, neither Department felt there was any realistic prospect of a successful appeal.

Deputy Michael Fitzmaurice: Was the legislation badly put together so? Was it just a matter of putting legislation together in a better way when that was the feeling after the first round of a case?

Mr. Leslie Carberry: The legislation was an honest attempt to do exactly what Deputies were asking for, namely, to absent the requirement for operators to go through a substitute consent process. The courts roundly rejected that approach. I mention the requests for emergency legislation or some form of setting aside of environmental assessments that we have heard about. That was tried in 2019 to some degree and it did not stand up to legal scrutiny.

Deputy Michael Fitzmaurice: The witnesses talk about not going down the route of a single consent system in legislation and they say the route we are on at the moment would be

better because one route would take as long as the other. I mention someone who has 50 ha and has to get an IPC licence and go through all of this. This is similar to the quarry situation that the Departments are involved in, which is a total fiasco and mess. Ordinary people do not have money to be running in and out given the cost that is involved in all of this. Is it the case that the Departments are basically trying to export things out of our country or that they are trying to look after big business alone? If you look at quarries, it is the big quarries that will survive and the small ordinary person will be thrown out on top of his or her head with the stuff we have in and with what it is costing to get all these licences.

We might have lost a court case but why were we not prepared to go back and bring it to a higher level? Ordinary people lose cases in the District Court and they head to the Circuit Court because they believe they are right. If the Departments believed they were right to put in the legislation, why was it not challenged?

Mr. Philip Nugent: The Department of the Environment, Climate and Communications is not responsible for the regulation of quarrying. That comes firmly within the remit of the planning system. Mr. Carberry has pointed out the reason the judgment was not challenged. It was because it was felt that there was not a realistic prospect of success, given the robustness of the judgment. It is certainly the case that-----

Deputy Michael Fitzmaurice: I want to go back to one thing-----

Mr. Philip Nugent: There is no policy decision taken in that vein to do one thing or another and no particular agenda is taken against peat extractors. I will come back to the point I made at the start that there is no ban or restriction but that there is a compliance issue.

Deputy Michael Fitzmaurice: The witnesses heard Deputy Carthy outline it well. The system that is there at the moment is loaded against you, to put it simply. The Departments are happy and the witnesses have admitted that there is some coming in from other countries.

Mr. Philip Nugent: I would disagree that the system is loaded against people. As I pointed out earlier, there are 800 EPA licences-----

Deputy Michael Fitzmaurice: We are talking about two different things.

Chairman: I ask Mr. Nugent not to interrupt Deputy Fitzmaurice. He will get his opportunity to answer.

Deputy Michael Fitzmaurice: There are certain EPA licences for which you do not have to go through the same rigmarole as when you are going through EIA and appropriate assessment on the bogs. I have done all this and Mr. Lucas can vouch for everything we have gone through on the bogs.

I have one question for all the witnesses and Mr. Lucas will be familiar with this. Under the habitats directive, you had to say whether a bog was degraded or restorable. Even though they are talking about rewetting bogs, there are an awful lot of degraded Bord na Móna bogs that it will not be possible to restore. That is my experience and anyone involved in bogs would agree. This system does not even give you the opportunity to state that the bog is degraded. The drains could be every 12 m apart and the bog would be a degraded bog. The projection under the EU habitats directive was - and Mr. Lucas can correct me if I am wrong on this - that the bog had to be restorable inside a period of 30 years. With the best will in the world, many of them would not have been restorable, including the likes of the Bord na Móna bogs, if we call a spade a

spade. From everything I have looked at in legislation under EIA, appropriate assessment and the whole lot, there is nothing to state that a bog can or cannot be restored inside a 30-year period. That is laid down in EU law. Why is there not something on that?

Chairman: Does Mr. Delany want to give the Department of Agriculture, Food and the Marine's viewpoint on that and then we will go back to Mr. Nugent?

Deputy Michael Fitzmaurice: This question is for the Department of the Environment, Climate and Communications.

Chairman: Mr. Nugent so.

Mr. Philip Nugent: I do not intend to pass the parcel but the habitats directive is more appropriate to the Department of Housing, Local Government and Heritage.

Mr. Brian Lucas: My understanding is that the sites which we are talking about and which are being or have been extracted from for horticulture are not designated bogs or sites in terms of the habitats directive.

Deputy Michael Fitzmaurice: I know that.

Mr. Brian Lucas: When it comes to restoring a bog, the requirement under the habitats directive is to restore the raised bog special areas of conservation. What you would need to do is block the drains and stop them emitting carbon in the first instance and then-----

Deputy Michael Fitzmaurice: I know all of that. I am saying that when the Department is judging a bog, it has to see if it is degraded or restorable within a 30-year period. That is set down by the EU. Am I right or wrong in that?

Mr. Brian Lucas: When the sites were designated as special areas of conservation, you would have looked at whether they were restorable or not. If we just take, for example, the non-designated bogs for a moment, even if they cannot become carbon stores, by blocking the drains we can still prevent more carbon from being emitted, so that is good from an environmental perspective.

Mr. Nugent and I have outlined the legislative provisions that are in place. I think I have answered the question, but I am not quite sure. The designated sites are being restored. My understanding is that at the moment there is not a requirement to restore the non-designated bogs and there are provisions under law for peat to be extracted from them.

Deputy Michael Fitzmaurice: What I am making very clear is that there comes a stage to make a decision on whether a bog is restorable or not, regardless of whether it is designated. A lot of those bogs are degraded, and they will never be restorable. We were better off getting a bit of milled peat off them and making sure that we saved the jobs in those areas and introducing whatever legislation was required to make sure of that rather than seeing boats coming in to ports in this country full of peat from other EU countries that do not appear to have to follow the same regulations or court judgments.

Mr. Philip Nugent: I will add to what Mr. Lucas said. If activity can be reactivated on those sites in a way that is compliant with the EIA directive then I do not think any Department would have an issue with that but, fundamentally, it must be compliant with the EIA directive.

Chairman: Is Deputy Fitzmaurice finished?

Deputy Michael Fitzmaurice: To be honest, the season is nearly gone. We are heading into August and all we had was a talking shop for the past three months. To be frank about it, it is putting a ferocious onus and probably a load against it because the environmental lobby, Government bodies and Departments seem to be more interested in closing things in this country than in keeping workers producing stuff. I do not accept that Germany and other countries can be working away and that the Department has not looked at peat coming here in terms of the environmental footprint and regulations in the same EU that they all love? We are looking at the boats coming in when we have the product here. If you tried to sell oil to an Arab he would tell you fairly quickly where to go.

The Departments must look at ways to resolve this by going to Europe. I asked the question earlier, but it was not answered, as to whether anyone has gone to the European officials and explained the situation we are in. Have they gone to DG 11, climate action or environment, about this situation? Could someone please answer the question?

Chairman: That is a direct question from Deputy Fitzmaurice. Who wants to take it?

Mr. Philip Nugent: The Department of the Environment, Climate and Communications has not, but I will leave it to the others to state whether they have.

Mr. Barry Delany: We have no remit to engage given that we have no competence in the legislation. We still think that the immediate solution here is the regularisation of the sub-30 ha sites and to have small-scale extraction for the domestic market. As Mr. Lucas has outlined a number of times today, that is the quickest way to get it regularised.

Deputy Michael Fitzmaurice: Has Mr. Lucas gone to the various authorities in Brussels?

Mr. Brian Lucas: No. Just to add to what has been said, there is a provision in the EIA directive which allows for limited exceptions to the full requirements of the directive in exceptional circumstances. These have been applied under Irish law in section-----

Deputy Michael Fitzmaurice: Could Mr. Lucas repeat what he said about the limited exceptions?

Mr. Brian Lucas: Article 2(4) of the EIA directive provides for limited exceptions to the full requirements of the directive in exceptional circumstances. These are provided for in section 172(3) of the Planning and Development Act 2000. I read the provisions and, to me, they seem to require, first, an application for planning permission to be in place. An Bord Pleanála may grant an exemption from the requirement to prepare an environmental impact statement. In doing so, An Bord Pleanála must consider whether the effects on the environmental development should be assessed in another forum and made available to the public. An Bord Pleanála must make available to the public relevant information, including the reasons to grant the exemption.

I do not know on what basis any of the three Departments would go to Brussels. Mr. Nugent, and to some extent myself and Ms Carberry as well, set out that what is specified in Irish law is in compliance with the directive and ensures compliance with the EIA directive. There is a provision in the directive for exceptional circumstances and they are also set out in Irish law in section 172(3) of the Planning and Development Act 2000.

Deputy Michael Fitzmaurice: Mr. Lucas is familiar with Brussels and with DG 11. He is also familiar with going back to the officials there to talk about different matters. Would it

not have been a good thing for the Minister for the Environment, Climate and Communications especially, to go to DG 11 and outline the serious situation we are in and also to outline a just transition system that we would be prepared to put in place and the need for it? As Mr. Lucas has outlined, it is in agreement with the terms of the working group that has been set up. Would it not have been sensible to outline the situation so that we would have Europe's backing? We should also find out how Germany is able to do it, and how other countries in Europe are able to produce as much peat as they want, yet here in Ireland production is being shut down. In all of those countries, they are well over the 50 ha limit.

Deputy Martin Browne: I have a quick question. Deputy Fitzmaurice's frustration is evident. We are totally frustrated that this has been going on since February. Three Departments are in today, but I do not know if we are anywhere near getting answers from them or a resolution. I can imagine those in the sector looking at today's meeting were hoping we would get answers or some resolution to how the situation could be moved on. I do not know if we are farther away than ever from a resolution.

Does the Department have any idea of how many licences and planning applications are in the system as we speak? I am not sure whether Senator Paul Daly got an answer to his question earlier. Could we be furnished with the information?

Mr. Philip Nugent: As I understand it, from the statement of Growing Media Ireland, GMI, at the meeting on 6 July, there are two or possibly three operators who have engaged with the planning system and sought leave to apply for substitute consent. We can come back to the committee with confirmation on that.

Mr. Brian Lucas: Based on my experience of many trips to Brussels on peatlands issues, in response to what Deputy Fitzmaurice asked as to whether I saw any point in a virtual delegation going there, the short answer is there would be no point. The first thing the Commission will say is that we have a dual consent system in place and that this is in compliance with the directive. It will then ask what we want to do instead. As I said earlier, if we try to say that we want to bring in a temporary system that would not be in compliance with the directive, with no appropriate assessment and no environmental impact assessment screening, the Commission would say, "There is the door, please leave". I do not think that would be a runner.

Deputy Michael Fitzmaurice: Has anyone from the three groups represented here looked at the German model and other European models whereby they are able to export it to our country?

Mr. Brian Lucas: Going by the interim report, the understanding of the working group is that the dual consent system is only in place in Ireland. Each country has to decide how it will comply with the directive. All member states must all comply with the directive, be it Germany, Ireland or any other country.

Deputy Michael Fitzmaurice: Okay. Am I correct in saying that the dual consent system is only in operation in Ireland?

Mr. Brian Lucas: That was the understanding of the working group as set out in its interim report.

Deputy Michael Fitzmaurice: Does that not tell us something is wrong?

Mr. Philip Nugent: It is important to note that the dual consent system is not unique to

commercial peat extraction. It applies to many other activities and development types.

Deputy Michael Fitzmaurice: I asked a question. When we look at Germany and other countries that are able to send peat here, the working group has stated that dual consent does not apply to them. Is that correct?

Mr. Leslie Carberry: Mr. Lucas might correct me if I am wrong on this point, but I believe that was based on information provided by the peat extraction industry. That is as far as the information goes on that.

Deputy Michael Fitzmaurice: Could the witnesses come back to us on that?

Mr. Brian Lucas: I can read what it says in the report. The interim report, which was sent to the Minister of State, Deputy Noonan, states: “It is understood that, within the European Union, the dual consent system applies only in Ireland.”

Deputy Michael Fitzmaurice: Okay. I thank Mr. Lucas.

Chairman: On behalf of the committee, I thank the officials from the Departments of Agriculture, Food and the Marine, the Environment, Climate and Communications and Housing, Local Government and Heritage for engaging with us today on this urgent issue for the horticulture and nursery sectors. We are not happy after our engagement. I am not throwing stones at the officials, but we are not happy. I am seriously worried for the future of those industries in this country. We will have a private meeting in the morning and we will have to discuss, as a committee, what we can do to advance the situation. At the moment, however, I am seriously concerned about the financial viability and survival of those industries. I know the members of the committee share my views. I propose that we hold a private meeting on Microsoft Teams tomorrow at 9 a.m. Is that agreed? Agreed. That concludes our proceedings for today.

The joint committee adjourned at 5.33 p.m. until 9.30 a.m. on Wednesday, 21 July 2021.