DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 17 Eanáir 2018

Wednesday, 17 January 2018

Tháinig an Comhchoiste le chéile ag 9 a.m.

The Joint Committee met at 9 a.m.

Comhaltaí a bhí i láthair/Members present:

Teachtaí Dála/Deputies	Seanadóirí/Senators
Colm Brophy,	Frances Black,
Jack Chambers,	Martin Conway.
Clare Daly,	
Jim O'Callaghan,	
Mick Wallace.	

I láthair/In attendance: Deputy Donnchadh Ó Laoghaire.

Teachta/Deputy Caoimhghín Ó Caoláin sa Chathaoir/in the Chair.

EU Directives: Minister for Justice and Equality

Chairman: As we have a quorum, we shall commence in public session. I remind members - and myself - to please switch off mobile phones as they interfere with recording equipment. I have received no apologies. The purpose of this meeting of the Joint Committee on Justice and Equality is to consider a Government motion to exercise the right to opt in, pursuant to Protocol 21 of the Treaty on the Functioning of the European Union, to a measure in the civil justice area. The proposal is to accept Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection. I welcome the Minister for Justice and Equality, Deputy Charles Flanagan, and his officials this morning. I will now invite the Minister to address the motion before us.

Minister for Justice and Equality (Deputy Charles Flanagan): As this is the first meeting I have had the pleasure to attend in 2018, I acknowledge the work of the committee over the past 12 months and I wish everybody a happy and productive new year. That said, I am pleased to be here before the committee today to present the Government's proposal that the State opts into the EU recast Reception Conditions Directive under the terms of Protocol 21, annexed to the EU treaties.

At the outset, I reiterate that the directive that is under discussion pertains to asylum seekers. An asylum seeker is a person who comes to Ireland seeking international protection status - refugee status or subsidiary protection status - under international law on grounds that they fear persecution in their own country for reasons of race, religion, nationality, membership of a particular social group or political opinion or where they would face a real risk of suffering serious harm if returned to their country of origin. When an asylum seeker comes to Ireland seeking international protection status, the person enters a legal process. Opting into this directive will align that process fully with European Union norms and it will be an important and progressive step that reaffirms our commitment to continue to implement our programme of reforms to Ireland's international protection system. Reforming the protection process began with inviting Judge Bryan McMahon and a group of experts to review our protection system, including supports for applicants. They made 173 recommendations and the Government committed to undertake a process of reform that has seen positive action across many Departments and services to improve what we do for people in need of protection and the way in which we do that important job.

The Government has made a strong commitment to playing its part in addressing the refugee crisis arising from the protracted conflict in Syria. The committee is also aware of our voluntary opt-in to the European Union resettlement and relocation programmes, which will see 4,000 people coming to Ireland to begin a new life here and the commendable work of our Naval Service, which has come to the aid of those fleeing conflict as they perilously cross the Mediterranean Sea to Europe. As a former Minister for Foreign Affairs and Trade, I am particularly familiar with our international aid programmes and the committee will be aware that since 2012, Ireland has contributed over €90 million to the humanitarian response to the Syria crisis. I want to clarify any misunderstanding that might arise in respect of those fleeing conflict in Syria. Those who come to Ireland from conflict zones have come under the Irish refugee protection programme. Some of those involved with the resettlement programme arrive with refugee status. Others are part of the relocation programme. They will have their status quickly, usually within a period of three months. Separately, based on the current situation, those who come to Ireland of their own volition and make an application for international protection upon

arrival, and often times spontaneously, generally come from different areas and regions and not from Syria. At the moment, for example, Georgia, Albania, Pakistan, Zimbabwe and Nigeria constitute the top five countries of origin for applicants for international protection who present, in a spontaneous manner, at our borders or frontiers.

Like many Members, I am concerned about the length of time that applicants spend in the protection process awaiting a final decision. To address this issue, the Government undertook the biggest single reform of our legislation by introducing a single applications procedure under the International Protection Act 2015 - the most significant reform of our international protection procedure in over ten years.

Ensuring that we have a simplified and efficient independent protection process is part of our commitment to reform. The other part is to ensure that we continue to improve the living conditions and the opportunities for regular family life, in so far as possible, for applicants and their families while they await a final decision on their application for protection. Many of the McMahon recommendations go to the heart of the issue. I am pleased that we have responded positively to enable enhanced family living in our accommodation centres and in the range of supports and services that we provide to international protection applicants.

I want to inform the committee that the McMahon group continues to be actively involved in the process of reforming direct provision, including, for example, by playing a role in the standards development process that is currently under way. This process is being led by senior officials in my Department. Those who participated in the McMahon process are giving of their expertise to ensure that the standards under development for direct provision centres result in concrete improvements and greater consistency across the system. I want to take this opportunity to thank them for their ongoing contribution.

When the Supreme Court gave its judgment in the N.*v*.H. case on 30 May last, the outcome was that the court declared section 16(3)(b) of the International Protection Act, which prohibits access to employment without any temporal limit for applicants, to be unconstitutional in a protection process. The Government could have chosen to interpret this decision narrowly. We could have simply amended the provision prohibiting access to the labour market in the Act by way of primary legislation. Instead, the Government listened to the calls from Deputies and Senators, members of this committee and others, the McMahon group and NGOs that Ireland should align its bespoke system with European norms. It decided that the State would give effect to the judgment by way of opting into the EU recast reception conditions directive. In doing so, the Government has chosen to be ambitious and to enhance and protect the rights of international protection applicants and their families. We are using the opportunity afforded to us by the Supreme Court's decision to continue our programme of reforms undertaken since 2014. The directive not only provides a framework for effective access to the labour force but reaches into many other areas, which the Government feels it is timely to have validated by the European Commission so that we do reach and comply with European standards.

In addition to labour market access, the directive also includes important provisions on children's rights, health, education and material reception conditions for applicants, which includes housing, food, clothing and a daily expenses allowance. Participation in the directive will place the provision of material reception conditions for applicants, which are currently provided under the executive system of direct provision, on a statutory basis, underpinned by EU law, for the first time. I am aware that some of the committee members have called for this action publicly in previous debates in the Houses. I do not wish to predetermine the outcome of the Oireachtas approval process as part of the opt-in procedure to the directive but, if approved,

the State will be required to fully demonstrate its compliance with all of the provisions of the directive to the European Commission before it confirms our participation in the directive. This will be a rigorous and transparent process, which will allow us to align the supports and reception conditions provided to applicants with the norms across the rest of the European Union's member states. I can assure the committee members that we will make any changes required of us by the European Commission in order to confirm our compliance. We are committed to this process. My Department is leading an implementation group, established by the Government, to oversee the opt-in procedure and the compliance process within the timeframe set by the Commission, which is a period of four months.

The directive provides for access to the labour market for applicants who have not had a first instance decision within nine months of making their application, provided that the delay cannot be attributed to the applicant. In determining the level of access to be provided to applicants, the implementation group, membership of which is drawn from across a wide range of Departments and services, will be cognisant of a number of important factors.

The State already has a functioning employment permits system for third country nationals, which we must be careful not to unduly interfere with and certainly not to undermine. Nor must we take any action which would be detrimental to our legal migration system and the court's judgment acknowledges our role in setting these parameters. However, we all recognise that the Supreme Court has adjudged that protection applicants have constitutional rights, one of which is to seek employment, a right that is not conferred on other third country nationals who legally reside in the State.

While the court was also clear that this is not an unfettered right, the Government and I consider that it is appropriate to apply a balanced approach under the scope of the directive where access required will be in excess of that provided under our employment permits system. Once the State's participation in the directive is confirmed, I intend to provide for access for eligible applicants by way of an immigration permission, which would exempt applicants from the employment permits system and the associated fee. In determining the list of sectors of employment to which access will be granted, regard will be had to labour market gaps, as well as the skills set of applicants and the expert advice of front-line Departments. We must also be cognisant of any potential pull factors this might create, including consideration of the impact of the withdrawal of our nearest neighbour, the United Kingdom, from the European Union.

The outcome of the current review of the employment permits system by the Department of Business, Enterprise and Innovation, which is expected to be finalised in April, will be an important consideration and will also inform these deliberations. Government has agreed that eligible applicants will also have access to self-employment and eligible applicants will now qualify for further vocational training, which was previously unattainable.

At the Supreme Court hearing in November last, the State outlined its plans to the court to opt into the directive, subject to the approval of the Oireachtas, and the four-month process necessitated by the European Commission to confirm the opt-in following formal notification of our wish to be bound by the directive. We, respectfully, asked the court to adjourn making its final order until this process was completed. However, the court was not minded to grant this request and decided that the prohibition on international protection applicants accessing the labour market, under the International Protection Act 2015, would be struck down on 9 February of this year. The participation of the State in the directive will not be confirmed by the court's deadline as we await the committee's support and approval by the Oireachtas. As a result, access to the labour market for applicants will now take place under a two-stage process.

Intensive work is under way to pave the way for the implementation of the directive pending its formal entry into force. I will announce further details in the coming weeks following further consultation with my Government colleagues. In making this process a success I want to engage with this committee. I want to work with the committee, NGOs, employers and all of the other stakeholders in this process.

In conclusion, I believe that participation in the directive would be a positive step forward in bringing our international protection system and supports for applicants more closely in line with EU norms and standards. It should be noted that there are some areas of the directive, particularly around health and education, where we already apply more favourable provisions than would be required and these will be maintained. The Minister of State, Deputy Stanton, and I are committed to ensuring that our protection process is fit for purpose, and that applicants are treated humanely and with the dignity that they deserve while their application is being decided. We also aim to reduce the backlogs and to issue a first instance decision within a period of nine months for the majority of applicants.

I hope that this committee and the entire Oireachtas will look favourably on the proposed opt-in and the benefits which it would quickly bring to applicants and their families. I look forward to the debate and my officials and I are happy to deal with any questions and queries.

Chairman: I thank the Minister for his presentation. I wish to make a point about the right to seek employment, which was one of the elements that was referenced. It is not only the members of this committee who have reflected on the issue in previous Dáil contributions. The committee made a substantive recommendation about the right to the Minister's office during the course of the previous 12 months.

Deputy Clare Daly was the first to indicate and other members may indicate. I shall call Deputies O'Callaghan, Chambers and Ó Laoghaire in that order but first to speak is Deputy Daly.

Deputy Clare Daly: I have a couple of comments and then a few questions. I welcome that we are finally opting into the reception conditions directive. However, we should point out that it was published 15 years ago. It was beefed up five years ago. Asylum seekers used to have the right to work in this State. It was taken away from them 20 years ago. For the guts of those 20 years we have been an outlier on this issue. We would still be, if it was not for the intervention of the Supreme Court. I welcome its decision because, without it, we would still be denying the right to work to asylum seekers as punishment for having the cheek to try to assert their rights under the Geneva Convention.

It is apparent that the Government seems intent on imposing the maximum wait period possible of nine months before an asylum seeker can have access to the labour market. This is in sharp contrast to Greece and Sweden who allow immediate access for asylum seekers to the labour market. Italy has a two-month wait. Germany and other countries have six months. I am not saying that those countries are perfect. However, I would like to hear a bit more on the maximum nine-month wait. We are doing the absolute minimum and I do not think that is good enough.

The Minister's statement says that those who receive a first instance recommendation within nine months of applying for asylum, and who avail of the right up to appeal or review, will have no right to access the workforce before a final determination is made in their favour. I note that the directive says "access to the labour market shall not be withdrawn during appeals process-

es". Can the Minister clarify whether this means that refugees who appeal a recommendation before nine months are up will not have the right to work? Does it mean that only a person who is in the labour market, gets a recommendation and then launches an appeal will be allowed to continue working? If the answer to that is "yes", how does this square with the spirit of the directive and the Supreme Court ruling?

Will I put all the questions together Chair?

Chairman: That is fine, if the Minister will note them or if the Deputy would like-----

Deputy Clare Daly: I do not mind.

Chairman: -----park there and we will bring her back in.

Deputy Clare Daly: I will ask a few questions and see how we go. The statement says that member states that have opted in can require the applicant to contribute towards the cost of accommodation, and so on, if the applicant has sufficient resources, including if they have been working for a reasonable period. The directive seems to set the bar of sufficiency as being to "enable their subsistence". I have a lot of concern that asylum seekers, who probably do not have very much at all, will be judged by the State to have sufficient means and then denied help.

I am looking for an assurance from the Minister in terms of what level of sufficiency we are looking at. We know at the moment, in direct provision, the bed and board deduction leaves the asylum seeker with €21.60. Dear God. In any case, when we go to this system, are they going to be paying that cost plus a contribution to the profit of the provider? How will that be adjudicated? The direct provision allowance is not on a statutory footing. It is unclear how we intend to proceed in terms of the so-called sufficient criteria in a transparent way. Is there a plan to means-test all asylum seekers? How will that be done?

I will add to my last two points in my next question. Will those asylum seekers who do enter the labour market and are subsequently made unemployed be entitled to full social welfare payments, sickness benefit, maternity allowance and so on? Could we have some clarification?

Nasc, the Irish immigrant support centre, and others who have been hugely helpful to this committee in terms of our recommendation that the right to work should be delivered as quickly as possible to asylum seekers, points out that another huge area of concern is the temporary scheme that will be set up until the directive is in place. Applicants' access to the work market is going to be incredibly limited. They have to apply under the Work Permits Act 2003. In short, that means that applicants will have to attain employment with an annual salary of €30,000 a year. There are huge excluded categories. On top of that, the cost is €500 for a six-month permit and €1,000 for an annual permit. It might be temporary but there is a lack of clarity in the briefing note and in the opening statement. I refer to whether the retrospective application of the right to work will still apply to all asylum seekers regardless of the date of their application once the directive is in. It is the phrase "during this period" on the last page of the Minister's remarks that raised this concern. Can the Minister clarify what the final right to work will look like and what the Government is considering in terms of the excluded categories mentioned?

Deputy Charles Flanagan: I want to acknowledge the support of Deputy Daly. In respect of the questions raised, the position of nine months was a decision that Government took having regard to the situation across Europe. The Deputy mentioned a number of countries that have a different timescale. We were conscious here of the situation in our nearest neighbour in Britain. I refer in particular to Brexit and having regard to the common travel area and the

common travel arrangements that we intend to see continuing after the withdrawal of the UK from the European Union. Nine months was considered appropriate in order to ensure that we were in a position to manage that situation adequately and properly. I refer to our numbers and the new regime.

There will be an appeal process. Once a decision has been made, and once that decision is under appeal, it is not considered likely that during that appeal process the right to work will be applicable. The decision has been made within the period of nine months. I would like to keep the timeframe to an absolute minimum and ensure that every effort would be made, in the context of the legal position, to have a decision made within a period of nine months. That decision would be conclusive. After a period of nine months, should a decision not be forthcoming, then the right to work would apply.

There is no requirement on foot of the Supreme Court decision to extend access to the social welfare system to applicants for international protection. However, the Deputy will be aware that, under the existing arrangements, international protection applicants with a right to seek employment may have an entitlement to the following social protection supports. That is the family income supplement for families with children, payment of PRSI by persons in employment, leading over time to eligibility to other benefits such as jobseekers benefit, illness benefit, invalidity and access to public employment services.

I refer to the question of working applicants making a contribution toward the cost of the direct provision. There is the implementation group that I have mentioned. This issue is currently being examined by that implementation group. The intention is that a reasonable approach would be adopted, taking into account the position of applicants in direct provision accommodation. I refer also to the needs of the wider workforce. Should this committee wish to make a submission to the implementation group, I am sure that will be given due consideration. I would be happy to keep the committee informed.

On the matter of the payment or the entitlement, this will be examined by the implementation group.

Deputy Clare Daly: I refer to the cost of the work permits on the temporary scheme, the one that will be set up until the directive is in place.

Deputy Charles Flanagan: As soon as we opt in, there will be no fee. We will be waiving the work permit fee.

Deputy Clare Daly: Is there a list of the excluded categories? Are they being developed or looked at?

Deputy Charles Flanagan: It has not been decided yet. There is a review under way which will be completed by April. I will be happy to let Deputy Daly know by way of correspondence should any decision be taken on that.

Deputy Clare Daly: That is a little vague. I do not want to hog the time and I know that other Deputies want to speak. I refer to the implementation group and our submissions to it. We all have a different view of what is reasonable and what is not. Is there a timescale for that? I am sure the committee would like to have an input into that, as would other groups.

Chairman: That query is noted. It is something we will address subsequently. I will repeat the query to the Minister. Is there a timescale?

Deputy Charles Flanagan: The overall timeframe for the opt-in will be a period of four months from the date upon which the Oireachtas makes the decision. I understand that is a fairly rigorous timeframe, so we will be working intensively with the European Commission.

Deputy Jim O'Callaghan: I welcome the Minister. I welcome the decision to opt in. I think it is the right thing to do. When is the legislation seeking to transpose the directive to be brought before the Dáil?

Deputy Charles Flanagan: That is not going to happen in the immediate future.

Deputy Jim O'Callaghan: Obviously the decision of the Supreme Court was taken on 30 May 2017. The court made its declaration then and gave the State six months to get its act together. The response came on 30 November. From what the Minister has said in his speech, it appears that the court was not receptive to the idea of waiting until the legislation was in place, and ruled that on 9 February 2018 the law will be struck down. What will applicants be able to do on 10 February that they cannot do now? Will they be able to look for work? How is the change going to manifest itself on 10 February, the day after the declaration of unconstitutionality becomes operative?

Deputy Charles Flanagan: We will have a transitional arrangement in place by way of directive. This will act in the interim period between 10 February and the date upon which we formally opt in. That will not allow for the right of an applicant to seek work.

Deputy Jim O'Callaghan: As such, an applicant will not be entitled to seek work on 10 February?

Deputy Charles Flanagan: They will not be entitled to seek work until we have completed the work with the European Commission, which will be some time in late spring or early summer, following the expiry of the period of four months.

Deputy Jim O'Callaghan: Is there any possibility that this will entitle applicants to damages from the State, on the basis that they have a constitutional right to seek work but they are being prevented from doing so?

Deputy Charles Flanagan: They will have a right under the work permit scheme, and a right to self-employment.

Deputy Jim O'Callaghan: What is the Minister doing to speed up the process of review? It was indicated that people cannot apply if they are in the appeal process or the review process. Is the Government doing anything to speed up the review process at present?

Deputy Charles Flanagan: I had the opportunity to raise this issue in the context of a meeting with the Courts Service. I believe it is important that every effort is made to ensure that the process is as streamlined as possible and the delays are minimised. A period of nine months is considered not undesirable. I am very keen to ensure that every application is dealt with within that period of time. I am also keen to ensure that we look at how best to reduce that period, having regard to the legal entitlement of any applicant to engage in a process of appeal or judicial review, should the applicant or their legal advisors deem that appropriate. Within a period of nine months, I would like to see all applicants dealt with and initial decisions made on their cases.

Deputy Jim O'Callaghan: That is the initial stage. Everyone wants to have the initial

decision made within a period of nine months. Can we do anything to speed up the review process that follows if somebody decides to seek judicial review before the courts? Has the Minister contemplated appointing more judges to deal with this, given the lists of asylum seekers outstanding?

Deputy Charles Flanagan: I am very keen for the tribunal to be adequately resourced in order to do its work. I am also anxious to continue my engagement with the Courts Service on the various stages, having regard to the legal rights and entitlements of everybody who wishes to avail of the avenues under the system.

Deputy Jack Chambers: I wish to expand on some of the questions from Deputy O'Callaghan. Part of what the Minister has discussed is still unclear. There will obviously be a vacuum after 9 February. How long will the projected timeframe for the implementation of these measures be? That is unclear. For how long does the Minister expect the interim arrangement he has proposed to be in existence?

Deputy Charles Flanagan: The Government has set up an implementation group which will oversee the Oireachtas approval process. I would expect that to happen pretty shortly. Following that will be the four-month compliance procedure with the European Commission. That will commence following the formal notification of our wish to enter into the directive and be consequently bound by it. Approval is a matter for the Oireachtas, but it would be on my recommendation. If it is approved, I would expect the scheme to be in operation by June.

Deputy Jack Chambers: There are obviously many delays for applicants through the Minister's Department and the process within it. Does he think that the projected nine-month application process is achievable? Can the Minister give the committee an indication of some of the current wait times? The experience of many of my own constituents, who apply for various visas and other immigration matters, is that the period is in fact beyond a year in many cases. I have concerns that the nine-month timeline the Minister is proposing will not be achievable, based on other examples I have seen.

Deputy Charles Flanagan: I hope to ensure that we have a streamlined system and that people are aware of the likely timeframes involved. Currently, the International Protection Appeals Tribunal, IPAT, has up to 80 tribunal members, as against the former membership of 30. There is a backlog in the International Protection Office, IPO, of approximately 5,000, which is not inconsiderable. However, everybody associated with the project is anxious to make sure that this is dealt with. I am most anxious to ensure that the nine-month period is achievable, and that is my intention.

Deputy Jack Chambers: When it is transposed, will the legislation be time-bound? Could somebody take a case if a decision is not made within nine months, or is that just the Minister's preferred period?

Deputy Charles Flanagan: We should work on that. Obviously, to be bound by legislation would not allow for particular situations which may, from time to time arise, on the basis of an application; be it a technical issue or special circumstance that might involve a timeframe which is not within the nine-month period. The stated aim is to have applications dealt with within that timeframe.

Deputy Jack Chambers: To ensure an applicant gets a decision within a reasonable time, legislative timeframes should be set down and the technicality should be the exception. Across

the Minister's own Department we see that people face serious delays which is having an impact on their capacity to live a normal life in the State. We should set down a legislative timeframe in the context of the transposition of this directive.

Deputy Charles Flanagan: It must be borne in mind that in the directive, a period of nine months is specifically set out. That will be the target timeframe. On the matter of Oireachtas approval, I note that the formal notification letter to the Council and the Commission will be sent immediately after the Oireachtas makes its decision, if, indeed, it does. The four-month compliance procedure will then commence. If the notification letter is sent at the beginning of February, we can expect our participation under the directive to commence towards May with formal entry into force in early June. I assure the committee that this will be an intensive piece of work with the Commission to ensure we demonstrate that we are compliant with all of the articles of the directive.

Deputy Donnchadh Ó Laoghaire: I have a question and a comment. Some of the questions so far have already clarified the situation insofar as it can be clarified. Certainly, until the legislation is in place, things could be quite messy. Much of the language in the notes gives the appearance of enthusiasm for and anxiousness to reform the area whereas in reality the Government is seeking to put a brave face on the fact that it was defeated in the courts and was, in essence, forced to legislate. In doing so, it appears the minimum possible is to be provided for. I agree with Deputy Clare Daly on the times involved and I am concerned, while there is no specific note, at the Minister's statement that in determining the list of sectors of employment to which access will be granted, regard will be had to labour market gaps as well as the skills sets of applicants and the expert advice of frontline Departments. We should not be doing this to plug gaps in the labour market. This is a matter of human rights and the ability of people seeking international protection to integrate into our community. We should not be looking at restricting access to the labour market to a small number of sectors and there should be a wide right of access to work. If there are to be restrictions, they should be absolutely minimal.

Other questioners have received answers on the timescales. The interim arrangement sounds potentially messy. Is the Minister aware of whether transposing the directive will require legislative changes beyond access to the labour market? Will there be other primary legislation beyond legislation on access to the labour market to transpose the directive?

Deputy Charles Flanagan: This will be a very positive and progressive action. We spoke about labour market access but the directive includes important provisions on the rights of children in respect of health and education. The Government has decided to go beyond what is simply required of it in the matter of the Supreme Court decision. As part of the opt-in procedure, we are going beyond the parameters of the Supreme Court in order to incorporate the directive, which will be seen as a very positive move. The issue of sectors of employment is one the implementation group is carefully considering. Under the directive, member states must provide for what is described as "effective access to the labour market". I do not disagree with what Deputy Ó Laoghaire said. While regard will be had to what are described as "labour market gaps", there will also be consideration of the skills sets of applicants and those seeking employment. I am anxious to ensure that every effort is made to create a broadly based scheme. We are anxious to ensure that the temporary scheme in the interim period will reflect as closely as possible what the directive allows. We will not be required to introduced primary legislation because of the opt-in which will be done by way of statutory instrument. The implementation group is working on these areas. Obviously, this goes beyond the Department of Justice and Equality and there is also an important role for the Department of Business, Enterprise and In-

novation. The current review is expected to be finalised in April. I assure the committee that eligible applicants will also have access to self-employment. I mentioned in my speech the importance of vocational training which is not currently available.

Chairman: Does Deputy Ó Laoghaire have a supplementary?

Deputy Donnchadh Ó Laoghaire: The question I asked has not been answered completely. The directive does not deal solely with labour market access and, as the Minister said, there are a number of other areas including children's rights to health and education. Some of those areas may well be covered by existing Irish legislation, but my question is whether any of the directive's requirements other than labour market access will require new legislation.

Deputy Charles Flanagan: No, because that can be done satisfactorily by way of statutory instrument rather than through primary legislation in the areas mentioned.

Senator Frances Black: There is no doubt that this is a positive step in the right direction albeit we could probably do a good bit more. I do not have a question but I record my slight disappointment that the period from which asylum seekers can work will be set at nine months. The Minister said he wanted to align fully with European norms on this, which is great, but research from the Irish Refugee Council shows that most EU member states provide for a right to work after six months or less. I ask the Minister to consider in particular the huge mental health benefits of being able to work, in particular where a person is in direct provision.

Chairman: No direct reply is expected, but would the Minister like to say something?

Deputy Charles Flanagan: I understand fully the point Senator Black has made. While there are different regulations across different EU member states it is very important in this instance that we be particularly mindful of the situation in the UK where the period is set at 12 months. Having regard to the fact that when the UK leaves the European Union our relationship with the UK will still be very much governed by the common travel arrangements, I would be concerned if there was a significant divergence between our regime and a set of laws in the United Kingdom. That is why I am anxious to keep the period here as close as possible to that in the UK with respect to nine months and 12 months.

Deputy Mick Wallace: To follow on from Senator Black's point, I do not believe we should accept the UK as a role model in how refugees should be dealt with. We would have had a fair degree of contact directly with people in direct provision. With respect to the Minister's temporary measure whereby people will be able to apply under the Work Permit Act 2003, we have not met any people who will be able to avail of that. As for the notion that they would be able to get jobs that pay €30,000 a year or come up with €500 for six months, they must be hiding somewhere because we certainly have not seen them.

Given that the Supreme Court has ruled that it will be unconstitutional to bar those people from working after 9 February, has the Minister sought legal advice given that at least 99% of those people will not have any opportunity to avail of the ruling of the Supreme Court? Has the Government sought legal advice around that? Has it no fear of reprisal or of people seeking to have justice restored at a later date?

Deputy Charles Flanagan: I am keen that people will have an entitlement to work in our jurisdiction along the lines of the EU directive. I am also anxious that the entire process be as streamlined as possible and that people will know at any early date, in so far as possible, what the various timeframes will be. On 9 February, for the first time, applicants will come within

the term of "foreign national" for the purposes of our employment law. The normal fee is €500 for a general employment permit valid up to six months and €1,000 for a duration of six to 24 months and conditions of employment will apply as it will for all third country nationals. Once the directive is confirmed, I intend to provide for access to the labour market for applicants by way of immigration permission. That, in effect, would exempt applicants from the employment permits system and any associated fee, which, in the circumstances, will be helpful.

Deputy Mick Wallace: Did the Government seek legal advice around this?

Deputy Charles Flanagan: Yes.

Deputy Mick Wallace: It did. When this full scheme is operational, will the people in direct provision who have already been waiting for over nine months have immediate access to the opportunity to look for work, given that they will already have served their nine-month period? Does it kick in straightaway for those people?

Deputy Charles Flanagan: Under the directive, applicants will have access to the labour market nine months from the date upon which the application was lodged. If a first instance decision has not been taken within that period of nine months and if no delay can be attributed to the applicant, that person will be entitled to avail of the framework of the directive and apply for a job. Obviously, this is subject to the successful conclusion of the ongoing review with the Department of Business, Enterprise and Innovation and my own Department in respect of the categories of eligibility for work.

Deputy Mick Wallace: Perhaps I have not understood the Minister correctly but I take it that people who are in direct provision who have applied for refugee status will be able to work when a nine-month has elapsed. For example, if this is all done and dusted on 30 June, will the people who are in direct provision since 30 June 2017 automatically be able to get work there and then or will having already served their time, or will they have to wait nine months and apply for the opportunity to work?

Deputy Charles Flanagan: No, I would expect they would get it with immediate effect. We would not be starting the clock on the nine months from 30 June. I expect that anybody in the system who has their application in train for a period of nine months, without a decision having been made in the first instance, would immediately be in a position to benefit from the new regime.

Deputy Mick Wallace: I thank the Minister for that clarification. As the scheme will not be done and dusted on 10 February and it will not have gone through the Oireachtas, and given that the Minister is introducing a wall that these people will not be able to get over, what is the main thinking behind not allowing them to be able to avail of work there and then on 10 February? What is the main Government thinking behind this arrangement whereby it will make it impossible for them to get work until this is all done and dusted perhaps sometime in June?

Deputy Charles Flanagan: The Government intends to ensure that we opt in to the EU directive from 10 February to sometime in June. We will be working with the European Commission in order to ensure that we fully comply with that process. I would not expect that we would be making any premature decisions prior to our entry into the EU framework but I would expect that from June the new regime will be firmly established and people who have been in the system for a period of nine months will then be in a position to apply to work. Also, by the expiry of that time, we will have completed our discussions and deliberations across the

implementation group with the Department of Business, Enterprise and Innovation and other stakeholders and we will have arrived at a list of categories which will be available for all applicants to consider having regard to their own skills set.

Deputy Mick Wallace: Would it be true to say that if the Government had a mind to do so it could allow the those people to look for work in the normal fashion on 10 February, or would it legally be impossible to do that?

Deputy Charles Flanagan: It may be legally possible but we would need to have a proper and adequate framework with which people would be familiar rather than having it very much on an *ad hoc* basis. It is important that there would be a regulatory framework. It is unlikely that we would have that until we are satisfied that the European Commission is of the view that we have complied with and are in a position to opt in fully with the EU directive. That is the framework under which we intend to operate here.

Chairman: I call Deputy Clare Daly and ask her to be brief.

Deputy Clare Daly: The entire process seems to be deliberately confusing which is not a good development, but the impression is being given that nine months is the maximum amount of time anyone will have to wait before being able to access the labour market because the first instance decision will be made within that period and if he or she is allowed to stay, he or she will be able to work or, if not, he or she will be able to work after nine months. However, that is not entirely true because if the first instance decision is made within nine months and is under appeal, he or she will not be allowed to access the labour market. The point I made was that that was in contradiction with the directive, which states the appeals process should not impede a person's ability to access the labour market. Can we do something to sort out the anomaly or is it in place deliberately?

My other question is about the temporary period about which I am now even more concerned because it is obvious - I do not say this in a smart way - that nobody will be able to access the labour market on 10 February because no one is sitting around with money in the bank and no one will give him or her a job on a salary of €30,000. We do not know all of the jobs from which people are excluded. Most of the jobs for which they could apply will probably be excluded. The Minister has said that when the directive is in place, the fees linked with work permits will be removed, but will all of the other restrictions be removed? For example, will the exclusion list - we do not know what jobs are on it - still be in place? If it will, I accept that someone will not have to pay the fees, but we could probably count on one hand the jobs for which he or she will be able to apply. That is a concern.

Deputy Charles Flanagan: I do not agree that it is an exclusion list; rather, it will provide a framework or guidelines for those in the system on the type of employment that will be available. I would look at it as being a very positive step, rather than, as the Deputy described it, an exclusion list.

When an appeal is made after a period of nine months, there will be an entitlement to work. The issue will arise where an appeal is made within the nine month period. It is not envisaged that the appellants will be covered by our interpretation of the directive.

Deputy Clare Daly: That was precisely my point. I believe they should be and would like the issue to be examined. The Minister has drawn up a list and said if someone is a forensic scientist, a nurse, a vet, a doctor and so on, he or she can apply for a job, but if he or she is a

chef, an ordinary Joe or whatever else, he or she will not be able to apply for a job. That is an exclusion list.

Deputy Charles Flanagan: I would like to await the outcome of the deliberations and the report of those involved in them, but as I said in response to Deputy Donnchadh Ó Laoghaire, I am very keen that the list be as broad as possible.

Deputy Mick Wallace: As a matter of interest, when the scheme is put in place, will someone be able to apply for a job as a chef?

Deputy Clare Daly: That is the problem. We do not have the list and have not seen it.

Deputy Charles Flanagan: Under the current work permit regime, it will be possible to do so from 10 February, but the work permit regime is applicable.

Deputy Mick Wallace: After June, when the entire process will be done and dusted, will it be possible to apply for a job as a chef if someone is currently in direct provision accommodation?

Deputy Charles Flanagan: I cannot pre-empt the categories that will or will not be agreed on finally, but I hope it will be possible to do so.

Chairman: The Minister will note Deputy Mick Wallace's interest.

Deputy Charles Flanagan: Yes.

Deputy Mick Wallace: The Minister will find that it is easier to recruit forensic scientists rather than chefs; therefore, the notion that they might not be allowed to apply for jobs as a chef is outrageous.

Deputy Clare Daly: I used chefs as an example. If there is a shortage of chefs, presumably the Government will include them in the list, but my point is that that is what we are doing. We are allowing people to work in areas in which there is a shortage of people with a particular skill set, but many people will be excluded from applying for more ordinary jobs where a particular skill set is not required. However, they still need the money and the dignity that comes with having the ability to work.

Deputy Charles Flanagan: I expect that we will do more than that, that we will have regard to the skills and qualifications, as well as the interest, expertise and experience, of those who will be in a position to apply. That is welcome.

Chairman: The Minister will note Deputy Mick Wallace's interest.

Deputy Mick Wallace: I have a final question. Will they be allowed apply for the Garda Commissioner's job?

Deputy Charles Flanagan: I am sure the Deputy is considering his own application in that regard.

Chairman: He may very well be.

Deputy Mick Wallace: If I thought the Minister would consider it in a reasonable fashion, I might apply.

Chairman: Will the Minister please note members' concerns?

Deputy Charles Flanagan: As always.

Chairman: I thank the Minister and his officials for attending. The select committee will meet in 15 minutes to resume Committee Stage of the Judicial Appointments Commission Bill 2017.

Messages to Dáil and Seanad

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

> The Joint Committee on Justice and Equality has completed its consideration of the following motion:
>
> > That Dáil Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to accept the following measure:
> >
> > > Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast),
>
> a copy of which was laid before Dáil Éireann on 22nd November 2017.

In accordance with Standing Order 73, the following message will be sent to the Seanad:

> The Joint Committee on Justice and Equality has completed its consideration of the following motion:
>
> > That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to accept the following measure:
> >
> > > Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast),
>
> a copy of which was laid before Seanad Éireann on 22nd November 2017.

The joint committee adjourned at 10.10 a.m. until 9 a.m. on Wednesday, 24 January 2017.