DÁIL ÉIREANN

AN COMHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

JOINT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 6 Feabhra 2019

Wednesday, 6 February 2019

The Joint Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Jack Chambers,	Senator Frances Black,
Deputy Jim O'Callaghan,	Senator Martin Conway.
Deputy Mick Wallace,	

In attendance: Deputy Donnchadh Ó Laoghaire.

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR.

Business of Joint Committee

Chairman: I remind members to switch off their mobile phones since they interfere with the recording equipment. Deputy Peter Fitzpatrick has sent his apologies and we formally note that. We shall go into private session to deal with housekeeping matters.

The joint committee went into private session at 9.05 a.m. and resumed in public session at 9.40 a.m.

International Protection (Family Reunification) (Amendment) Bill 2017: Discussion

Chairman: The purpose of this engagement is to conduct detailed scrutiny of the International Protection (Family Reunification)(Amendment) Bill 2017, which is a Seanad Bill. The Bill is sponsored by Independent Senators, comprising Colette Kelleher, our own Frances Black, Lynn Ruane, Alice-Mary Higgins and John Dolan, and Senator Grace O'Sullivan from the Green Party.

We are joined by Senator Kelleher who will present the Bill on behalf of the co-sponsors. We are also joined by Mr. Nick Henderson, chief executive officer, and Ms Rosemary Hennigan, policy officer, from the Irish Refugee Council, IRC. They are both very welcome. Representing Nasc Ireland and appearing before the committee again, I would like to extend a welcome to Ms Fiona Finn, chief executive officer of the Irish Immigrant Support Centre, and Ms Fiona Hurley, legal services manager.

I will shortly invite the witnesses to make their opening statements in the order in which they have been introduced but I first must draw their attention to the matter of privilege. They should note that they are protected by absolute privilege in respect of the evidence they give to the committee. However, if they are directed by the committee to cease giving evidence on 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. Members are reminded that under the salient rulings of the Chair, they should not comment on, criticise or make charges against a person outside the House or an official in such a way as to make him or her identifiable.

I invite Senator Colette Kelleher to deliver her opening statement.

Senator Colette Kelleher: I thank the Chairman and the committee for making time for detailed scrutiny of the Bill. I thank Senator Frances Black, my co-sponsor of the Bill who is sitting at the other side of the table, for being a very supportive person, along with other members of the Civil Engagement group.

There is much common ground regarding the importance of family reunification and where we differ with the Government, it is more about the means than the end. I recognise the actions of the Government and the Department of Justice and Equality in support of refugees and their families, including the introduction last year of a temporary Irish humanitarian admission programme, IHAP. The Minister and I are united in what we intend to achieve in this area.

I also recognise the work of Nasc, which is a wonderful organisation doing great work in Cork, as well as the Irish Refugee Council and Oxfam Ireland and I say a big "Thank you" to Dr. Róisín Hinds, who is in the Gallery. I thank the people who have shared their stories with us, those directly affected by the law. The statement by lzzeddeen Alkarajeh outlines the struggles he is experiencing as he tries to reunite with his mother. It is an important story because it shows that there are human beings at the heart of all of this. Those stories have driven us to keep going, even in the face of Government opposition. There has been significant political support in the Seanad and the Dáil for the Bill.

The scale of the human catastrophe that is unfolding around the world is unprecedented. The UN Refugee Agency identified that, by the end of 2017, more than 68.5 million people were forced to flee, 25.4 million of whom crossed borders in the search of safety. The scale of the response in Ireland and elsewhere has to be commensurate with this. The Government states that it is doing a lot, and this is true, but it has to match the scale of the catastrophe. There are 5.6 million people seeking safety in Turkey. In South Sudan, there are 2 million internally displaced people, while hundreds of pregnant women, unaccompanied children and survivors of torture are being abandoned in refugee camps on the Greek islands. It is unimaginable. Some 2,275 people died or went missing in the Mediterranean Sea, an average of six deaths a day. Approximately 84% of displaced people live in low-income countries, where some of the poorest communities in the world are providing refuge. I was in Beirut when my son lived there. A total of 1 million people have travelled from Syria to Lebanon, which is the size of Munster. We need to measure our response against what some very poor countries are doing.

A common thread that unites the experiences of all refugees is family separation. In the desperate search for safety, families can become separated and scattered, forced to follow different routes as they flee. When a person reaches safety, finding and reuniting with their loved ones is often their number one priority. Each one of us who has a family will understand that. The Council of Europe Commissioner for Human Rights has identified family reunification for refugees as a "pressing human rights issue". Members will be able to imagine the anxiety of refugees. How can one possibly settle, knowing that loved ones are in danger or under threat? The lack of family reunification has an impact on people's ability to get on with their lives.

My current studies in family therapy reaffirm what I expect we all know to be true, that is, the centrality of family in people's well-being and ability to live well in the world. Family reunification, which is what this Bill is all about, will put that on a firmer footing in order that people can have their families by their side. This is a modest proposal. When it was debated in the Dáil, it was criticised by Deputy Clare Daly, who moved it, for being too modest and she was right in many ways. I would have liked the Bill to go further. It puts the right to apply to reunite with dependent family members on a statutory basis. It proposes to revert to the definition of "family" that existed under the Refugee Act 1996, and it gives applicants a more realistic timeframe to apply for family reunification. The legislation also provides for it to come into force three months following the date of legislative approval.

There is substantial political support for the Bill and it enjoyed substantial majorities in the Seanad and Dáil. The small changes represented by the Bill are necessary because of restrictions introduced in the International Protection Act 2015, which mean that refugees, or persons with subsidiary protection, currently have a statutory right to apply to reunite with a very restricted category of family members. The 12-month time limit is also posing major difficulties and Nasc and the Irish Refugee Council will be able to elaborate upon that.

When we think of our children, who here believes that they are fully independent of us at 18?

I have a 28 year old daughter and we are about to put her on our insurance. My son is studying and we are still helping him out. I am sure that we all know of parents who rely financially on their adult children. Do we know of elder brothers and sisters who, through circumstances and chance, are the carers of their younger siblings? Relationships of dependency do not fit into the neat confines of the 2015 Act. The Irish Human Rights and Equality Commission, IHREC, supports our view and, in its comprehensive analysis, it describes the removal of the right to apply for family reunification for extended family members and the introduction of a statutory time limit as a "retrogressive measures". Our Bill is in line with the recommendations of IHREC's report of last year.

I have heard the Minister's arguments that our Bill would deny discretion but we do not believe this. Our Bill sits well alongside discretionary programmes, such as IHAP, and it does not in any way preclude them. Reliance on discretion alone creates uncertainty for refugees and for their family members and that is why we make the proposals that are in the Bill. This is not an either-or situation. There can be rights and discretionary programmes but they are not counter to each other. I would welcome a broadening of IHAP but it has critical limitations. It is a temporary scheme and is only applicable to people coming from ten countries.

A major concern, which was introduced into the debate on later Stages by the Minister, was that moves on migration were problematic *per se*. I want to challenge arguments that migration and diversity are problematic *per se*, and that they are divisive. Specifically, I challenge the suggestion made by the Minister in the debates on the Bill that the arrival of more refugees to Ireland could provoke a political and social backlash similar to what we have witnessed in some European countries. My own lived experience challenges that. I was an emigrant in London for 17 years and I was a net contributor. I signed on at the beginning but I paid far more taxes in the long run. My children went to a state primary school in not-very-affluent Tottenham. Some 31 languages were spoken at the school that my children attended. The children, including my own, had parents from, and with roots in, all parts of the world. We were people escaping danger, poverty or mass unemployment in my case. As we discovered, Ms Finn and I lived in a similar part of London.

I recall with real fondness my children's friends and schoolmates, all learning and playing together. Crowland primary school was the London borough of Haringey at its best. Our home and school were in a constituency which, although poor, voted overwhelmingly to 'remain' in the Brexit referendum. The notion, therefore, that diversity and migration automatically cause people to pull up the drawbridge is not the case in that situation. Government action in doing all that is possible to respond to refugees and their families in a generous and welcoming way, as the International Protection (Family Reunification)(Amendment) Bill 2017 proposes, is the strong and the moral thing to do.

It can also be the popular thing to do. Some 70% of those surveyed in research by the Social Change Initiative agreed with the statement "If I were from another country and fleeing terrible circumstances I would want Ireland to offer me protection" and only 7% disagreed. We need to challenge and not follow the dog whistle often used in conversations about refugees and migration. I was very surprised and disappointed by the Government's decision to deny a money message for this legislation, particularly as it came so early into the legislative process, in October 2017 as I recall. I hope the Government has now given this Bill due consideration and has listened to the debate. The Bill does not appropriate public funds, does not compel the Government to make expenditure and does not set up a new Government agency or create a new body.

I have heard this Bill described as "openended" and that it will "open the floodgates" but

that is a fundamental misunderstanding of the legislation. This Bill does not give people an automatic entitlement to bring dependent family members to Ireland. As was also pointed out to me, Standing Order 179(1) states a Bill cannot be initiated and taken to Second Stage if it appropriates revenue in the most meaningful sense of the words "significant charges". Standing Order 179(2) then states a Bill cannot go forward to Committee Stage if it includes incidental expenses beyond this. By letting this Bill take Second Stage the Bills Office, therefore, has already accepted the Bill does not involve the appropriation of revenue as dealt with in Standing Order 179(1) and the only cost issues here have to be incidental, such as administration. That tallies with the argument that an increased administrative burden for the Department of Justice and Equality is the real issue here.

The Bill changes existing regulations. It gives refugees and people with subsidiary protection a statutory right to apply to reunite with dependent family members. Applicants must still comply with the rigorous requirements of the application. The Department of Justice and Equality will still have control of accepting or rejecting applications. This is a managed system. My colleagues from the Irish Refugee Council, IRC, will be able to speak further on this. Any costs related to this Bill would clearly be incidental. Should this Bill require a money message, it is difficult to think of a piece of legislation that would not.

The International Protection (Family Reunification) (Amendment) Bill 2017 is a timely, humane and modest piece of legislation which falls well within the resources the Government has available to it. I am thankful to Members of both Houses for their continued and overwhelming support for this legislation. I am hopeful we can resolve the money message issue as soon as possible and enact the urgent change so desperately needed for refugee families. I thank the committee for hearing me.

Chairman: I thank Senator Kelleher. I appreciate very much her strong and detailed opening statement. It is most welcome. I call Mr. Nick Henderson to present the opening statement on behalf of the Irish Refugee Council.

Mr. Nick Henderson: I thank the committee for the opportunity to present. The members of the committee have our written statement so I will not repeat it completely. I am going to talk about two issues in particular. First, I will give a reminder of what the Bill does and does not do. I will then speak on the money message and cost issue. On what the Bill does, as Senator Kelleher stated, we are submitting that this is a modest law which does three things. It broadens the definition of family from child and spouse to include child, spouse and dependent relatives. It takes us back to a definition that existed in Irish law for over a decade.

The Bill creates an internal review mechanism. It does not create a new body, instead it creates an internal review mechanism reporting to the Minister for Justice and Equality. It also removes the 12-month time limit. In our experience, that limit is important because refugees struggle to prepare a family reunification application within 12 months of the granting of refugee status. Refugees have to prepare themselves to transition out of direct provision and they may have difficulty in identifying and finding their family member in the country from which they have fled.

With the greatest of respect to the Minister of State, Deputy Stanton, we submit that he, arguably, overstated the power of the law when spoke in the Dáil. It does not create the right of family reunification. It creates the right to apply for family reunification. That application could be refused or it could be accepted. The application will turn on whether the evidence submitted establishes whether there was dependency between the refugee in Ireland and the

family member outside of Ireland.

The Bill does not remove existing provisions that allow the Minister to refuse an application. The Minister can still refuse an application on the grounds of national security, public policy, whether the applicant has been excluded from the protection of the refugee convention or if the applicant put forward information during their application that was found to be untruthful. Ms Finn may speak on this in more detail, but in our experience establishing dependency under the old Act was not at all easy. It required a lawyer, usually a good lawyer, to assist the applicant in preparing evidence that would show there was emotional and financial dependency and that dependency had been existing prior to the granting of refugee status and after it.

It must also be remembered that these issues have been considered by our courts and, indeed, by the Supreme Court in the decision of AMS *v* Minister for Justice and Equality, as referenced in our submission. In that case, the court again found that there is a balancing act the Minister has the right to apply in all such cases. He has to balance the rights of the individual against the power of the State to regulate immigration. A court, including the Supreme Court, will be slow to intervene in that process unless it can be established that weighing up process was unreasonable. What I am trying to say in all of this is to emphasis this is a modest proposal and the Minister will still has considerable power to control this process. That is perhaps contrary to the perception that developed in the Dáil. The Minister has also said people could apply to the administrative scheme. In our experience, and in our submission, and I think Ms Finn will also mention this again in more detail, that is a very arduous and difficult process for an individual to apply through.

Turning to the issue of the money message, in forming our perception of what the relevant Standing Orders state and in developing our analysis we have considered the Oireachtas Library and Research Service's note on Private Members' Bills. That has been quite helpful. As Senator Kelleher said, as we read it Standing Order 179 refers to it not being possible for a Bill be initiated and taken onto Second Stage if it appropriates revenue. We argue this Bill does not appropriate revenue. It does not create a tax or charge. As Senator Kelleher suggested, that it has already moved to this point in the legislative process possibly suggests the Ceann Comhairle agreed with that analysis. We are now at the point where we have to consider whether there is an incidental expense. I note that the Standing Order does not define "incidental". We have asked the committee to be mindful that the Bill, on a literal reading, does not create any public expenditure or a tax and does not necessarily even create incidental expenditure. If it were to be enacted tomorrow, it would merely give the opportunity to an individual to apply for family reunification. It would not require the State to create a body to consider applications because there is already a body that does this, namely, the Department of Justice and Equality. We also have to be mindful in our submission that "incidental" must mean something more than simply the printing of paper, for example. It is not defined, but for the Oireachtas to use the word "incidental", it must mean something more than the consideration of applications which, as I said, are already processed by the Department of Justice and Equality.

Even if we continue to have concerns about this issue and within this area the money message, we ask the committee to be mindful of the fact that there is no legal aid in seeking family reunification. In other words, the burden is completely on the applicant to prepare the case. The measure only creates a right to apply. We are not aware of the Department seeing any reduction in staff, necessarily. There is an existing Department, or part of the Department of Justice and Equality, that considers applications. The review body carries out an internal review of the papers involving the Minister. If we believe there are costs, it could arguably reduce them

on the grounds that it would possibly reduce expensive and long judicial reviews involving the High Court.

We ask the committee to be mindful of the fact that family reunification, in our experience, is beneficial, possibly to everybody. The Minister has made reference to the family reunification directive, an EU instrument to which we have not signed up. In the instrument, in recital 4, it is stated family reunification is a necessary way of making family life possible and helps to create socio-cultural stability and promote economic development. As Senator Kelleher stated, in our experience, people who come here are often net contributors in the end.

There is not an appropriation. The measure does not create a tax or charge. With regard to incidental expenditure, the amount falls below the threshold the Oireachtas envisages in that regard. I ask members to consider the fact that it does not create an immediate right; rather, it gives a person the opportunity to apply for family reunification.

Those are my views on what the Bill does and does not do. I have also outlined the associated money message issues. We will be happy to take questions.

Chairman: I thank Mr. Henderson. The issue of money messages haunts the committee. Unfortunately, there is nothing we can do about it, except protest, but Mr. Henderson can be certain that we will continue to do so. I invite Ms Finn to deliver an opening statement on behalf of the NASC.

Ms Fiona Finn: I thank the committee for giving me the opportunity to make a presentation to it.

The NASC has over two decades of experience in supporting refugees and beneficiaries of international protection in applying for family reunification. In 2017 we provided for 347 consultations on family reunification for refugees. A total of 43 of our clients who were beneficiaries of international protection were successful in their applications to bring family members to Ireland. Our contribution today is directly informed by the issues that present at our legal clinics and in our direct work with refugees who are seeking to be reunited with family members.

Since the commencement of the International Protection Act 2015 at the end of 2016, the NASC has seen at first hand the impact the restrictions on family reunification has had on refugees. In particular, both the time limits and the removal of dependent family members have caused fierce hardship for the refugee families with whom we work. The affected individuals are not able to fully settle into their lives here knowing that their family members remain in conflict zones or at risk of persecution. We have seen families split up because only some family members are eligible. We have seen individuals descend into deep depression because they are forced to leave family members at home in the midst of horrific conditions. We adamantly believe modest but critical amendments to the International Protection Act 2015 would go some significant way towards improving the lives of refugees living in Ireland and help to fulfil our obligations to support people who are seeking safety in Europe.

I recognise and commend the Minister of State at the Department of Justice Equality, Deputy Stanton, for his commitment and dedication to providing solutions for refugees through the Irish refugee protection programme and initiatives such as Irish humanitarian visa programme and refugee community sponsorship. I commend him for his statement in the Dáil on 6 December in which he confirmed the Government's commitment to proactively assisting family reunification. It seems, therefore, that we have achieved broad consensus and that our views

may not be as divergent as they first appear.

During the debates in the Seanad and the Dáil the Minister of State raised a number of concerns which I would like to address. Concerns were raised that the current proposals would legally oblige the State to reserve resources for unquantifiable numbers of potential applicants. It must be noted that the Bill only provides the right for refugees to apply for some extended family members. This right, as is the case with all rights, is not absolute and not open-ended. It is highly conditional. It is further limited by the fact that sponsors are required to prove that the subjects of the application are dependent on them or that they are suffering from a mental or physical disability to such an extent that it is not reasonable for them to maintain themselves fully. All applicants must provide evidence and documentation of a very high level to support any application.

In any one year between 2014 and 2016, inclusive, under the family reunification provisions contained in the 1996 Refugee Act which allows an application to be made in respect of extended family members, only between 200 and 400 family members were granted family reunification. There were 229 in 2014, 328 in 2015 and 406 in 2016, with an average of 2.8 family members per sponsor. They are not overwhelming or unmanageable numbers and provide us with a very solid basis to quantify the numbers of potential future applicants.

In our experience, refugee families prioritise their more vulnerable family members who, for the most part, are their older unmarried children or their parents. They also tend to wait until they have secured housing and employment prior to submitting an application in respect of extended family members because they want to be ready for them when they come. This further illustrates the need for the removal of the 12-month time limit. Since the new Act has been in place, only 272 persons have been approved for family reunification. This is a very low number and one that should cause us some shame given the scale of the current global refugee crisis. We can and must do more to provide durable solutions for these families and this modest proposal in the Bill will help to undo the harm and suffering that has been caused to refugees. We must also be mindful and guided by Article 41.1.1° of the Constitution, which "recognises the Family as the natural primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law" and guarantees its protection by the State. This Bill is giving clear effect to both the spirit and text of this constitutional provision.

During the debates, it was argued that this provision would substantially curtail the State's ability to respond to ongoing and future crisis. There is nothing in this modest provision that in any way curtails the State's ability to respond to the ongoing and future crisis. This is evidenced by the fact that during the lifetime of the old Refugee Act, which contained the broader definition of family, the Government introduced the first humanitarian admission programme for Syrian refugees and nationals living in Ireland. We would also submit that by broadening the definition of family, it would see a reduction in the need for and additional cost of operating once-off *ad hoc* limited schemes such as the current Irish humanitarian admissions programme. The introduction of broad, clear and rights-based family reunification laws brings with its certainty for both the State and refugees. The fact that the Government introduced the humanitarian admissions programme, laudable as that was, which afforded a limited number of refugees and Irish nationals the ability to apply for extended family members, could be viewed as a clear admission by the Government that our current family reunification law and policy are inadequate and in need of reform.

During the debates, claims were also made that the Minister for Justice and Equality proac-

tively applies discretionary permission under the Irish Naturalisation and Immigration Service, INIS, non-EEA policy document on family reunification. Unfortunately, that has not been Nasc's experience of supporting families to apply for visas for their loved ones. In the Department of Justice and Equality's policy document on family reunification for non-EEA nationals, it is stated that the "default position" for applications for visas for elderly parents is "a refusal". It is difficult to see how a policy with such a harsh default position could be construed as a viable alternative for refugees seeking to be reunited with family members. It also requires persons who wish to apply for a visa for elderly parents to have income - after taxes and deductions - for three successive years in excess of €60,000 to apply for one parent and €75,000 to apply for two parents. Realistically, this allows for only the wealthiest in our society to even make an application. Even then with substantial earnings, applications may still be refused. It is simply unrealistic to expect that a person newly granted international protection status will be in a position to earn anywhere near these income thresholds.

The Minister also noted that the current limited provisions are in line with the EU family reunification directive. First, when considering the directive, it is critical to note that, as Mr. Henderson noted, we have not opted into it but, additionally, this is a unified document that provides a legal basis for both refugee and non-refugee family reunification and sets down minimum standards for member states to implement. On its face and when viewed in isolation, the current definition of family falls within the minimum standard set out in the directive. However, we should look at the directive as whole and in particular, the preamble which sets out the clear purpose and objective of the directive. It provides that:

> Special attention should be paid to the situation of refugees on account of the reasons which obliged them to flee their country and prevent them from leading a normal family life there. More favourable conditions should therefore be laid down for the exercise of their right to family reunification.

Also, the directive provides more favourable family reunification rights for unaccompanied minors granting them the right to reunite with their legal guardian. It provides member states with clear guidelines on extended family members stating positively which family members member states may include. Additionally, it sets down clear time limits for the processing of applications and grants family members an autonomous residency permission and provides in law for the right of family reunification for non-refugees, all of which are absent in our current family reunification laws. It is, therefore somewhat disingenuous to state that Ireland is in compliance with the directive when we have cherry-picked certain limited provisions to justify a removal of the rights for refugees to apply to reunite with extended family members.

Concerns were also expressed that we cannot go beyond EU norms. However, a 2016 report on family reunification in the EU compiled by the European Migration Network on behalf of the European Commission highlighted the fact the average percentage of permits issued by member states for family members was 30%. Ireland came in second last at 7% just ahead of Poland, so it would seem that we have some way to go before we are in line with current EU norms, let alone exceeding them.

It is overwhelmingly clear in Nasc's experience that refugee families rarely fit into nuclear family arrangements, and the precariousness of life in the midst of conflict means that our understanding of what constitutes family cannot be overly rigid or prescribed. In our work, we have come across any number of refugees who are now forced to make "Sophie's Choice" type decisions when applying for family reunification. One woman had to decide whether to

apply for her husband because he was the sole carer of her elderly and unwell mother who would not be eligible. One man applied for his minor daughter but was not eligible to apply for that daughter's child, his grandchild, who was born as a result of rape. An aged out minor, so-called, who has waited years for his application for refugee status to be processed in Ireland is now not eligible to be reunited with his parents and siblings. These are the real unintended consequences of our current laws. What becomes clear from working day in and day out with beneficiaries of international protection is that there are no norms as to how human lives operate in the context of persecution, war and displacement.

It is overwhelmingly clear in Nasc's experience that refugee families rarely fit into nuclear family arrangements and the precariousness of life in the midst of conflict means that our understanding of what constitutes family cannot be overly rigid or proscribed. In our work, we have come across any number of refugees who are now forced to make "Sophie's Choice" type decisions when applying for family reunification. One woman had to decide whether to apply for her husband because he was the sole carer of her elderly and unwell mother who would not be eligible. One man applied for his minor daughter but was not eligible to apply for that daughter's child - his grandchild - born as a result of rape. An "aged out minor" who has waited years for his status is now not eligible to bring his parents and siblings. These are the real unintended consequences of our current laws. What becomes clear from working day in and day out with beneficiaries of international protection is that there are no "norms" to how human lives operate in the context of conflict, persecution and displacement.

As part of our membership bid for the UN Security Council 2021 to 2029, Ireland placed empathy as one of our core pillars. The campaign brochure recalls "the great compassion and open doors shown around the world to Irish emigrants fleeing famine as they sought refuge". It then goes on to state that "we reflect on that as we work to assist today's refugees". We would ask members here today to reflect upon this and upon the impact the erosion of family rights has had upon refugees and how this modest proposal will go some way to ameliorating the harshness of our current law.

Chairman: Does Ms Hurley have something that she wishes to read into the record?

Ms Fiona Hurley: I will read into the record a statement by Izzeddeen Alkarajeh, a Palestinian refugee living in Ireland. Izzedeen's situation is representative of those who lost their rights to family reunification when the International Protection Act was commenced and is typical of the situation facing refugees accessing our services.

> Dear Members of the Justice Committee, thank you for giving me the opportunity to express my problem. Sorry I am unable to make it here today but I have work commitments and I am happy for Fiona Hurley to read my statement. I'm a Palestinian refugee, living in Cork with my wife and our 4 children. I'd like to thank Ireland for the protection and safety that my family is enjoying. And I would like to thank the department of justice for taking only 11 months to decide that we qualify for protection, after we spent 15 years waiting Israeli justice system to recognize our family status, with no answer.
>
> When we lodged our protection application in September of 2016, our interview was scheduled to be on the 1st of December 2016. Unfortunately, all interviews were cancelled by then, to facilitate the new law and procedures enforcement, and I lost a great opportunity to be reunified with my mother that was possible in the old system. In August of 2017, I had my interview according to the new law after ORAC has become IPO.

In order to keep my statement short, please allow me to identify the issues that I see in the current regulations:

-Although Palestine has the oldest continuous conflict, with one of the largest refugee crisis, it's not among the 10 countries benefiting from the IHAP.

-Before obtaining protection in Ireland, I was living in Saudi Arabia, and I was able to visit my mother in Palestine from time to time. Unfortunately, after being protected in Ireland, I'm no longer allowed to visit her until I obtain full Irish citizenship.

-The only option remaining to bring my mother here is by sponsoring her. The financial requirements needed for me to qualify to sponsor my mother is so high and unrealistic, because even if I earn half of the current required amount of €70,000, I would still be able to sponsor her living. The current system sets a fixed figure, regardless of the number of family members to be sponsored, and regardless of the family members potential health care cost. In my case, it's only my mother, and she is not so old that she may cost me so high to take care of. In addition to that, I must prove the above income for three years, which adds unfair complexity of the regulation.

-Even if I become desperate of bringing my mother to live, and decide to invite her for a visit, the current system makes it so hard if it's seen that we attempted to apply for family reunification.

I have great confidence that justice in Ireland has a room to fit Palestinian vulnerable people, and I have a great hope that new laws or amendments would make it easier for me to be with my mother again.

The letter is signed, "Sincerely, Izzeddeen Alkarajeh".

Chairman: I thank Ms Hurley. We turn now to the members, four of whom have indicated. The first is Deputy Mick Wallace.

Deputy Mick Wallace: I thank the witnesses for their presentations. We are unlikely to fight with them given that we are on the same side. We will save the fight for the Government. I have to leave shortly for agriculture questions and ask that when I leave it is not taken as disrespect. We are very interested as a committee in this issue and have been very involved with it. Deputy Clare Daly and I have been to the camps in France and visited Syria twice. We have also been to Iraq and Lebanon. I do not want to bore the witnesses. While I will make a couple of points, we came here to listen to them. It is very good to hear what they have had to say. It will be taken on board and used to the best of our ability to make things fairer.

Mr. Henderson spoke a great deal about money messages and went through the technical nature of that process. The truth of the matter is that they can do whatever they like. They can twist that money message around and make almost any decision. They can decide to apply the money message rule just about every time if they so feel. As Senator Black can explain, they even used the rule in the very first minute of their submission against her recent Bill it in the Dáil, which is a complete nonsense. Our challenge is not to decipher and break down the money message, it is to break down their attitude and change their mind about how they see things. While some good things have happened, for which we are very grateful, and while the Department of Justice and Equality has made some good decisions, it is important to remember that it has been dragged kicking and screaming to this point. People will have seen that if they

had been watching events here over the last few years.

The 4,000 figure is small but it has not even been reached. The obstacles to family reunification are unreasonable and do not stack up. I know a lot of the refugees for different reasons. I know one man from Afghanistan very well who is seeking family reunification but is probably not going to qualify. He saw his father, who was working for the Taliban, shot in front of him by the Americans. A couple of weeks later, the Taliban came for him. At 14, he was kidnapped and taken to their camp for training. He escaped and actually made his way to Ireland without money and landed in Dublin despite not even knowing that Ireland existed. It is just the way the lorries went. His mother is alive and he has two brothers aged 15 and 13 years for whom the Taliban are searching. They are in hiding. The notion that we should not help them is hard to defend. We know another kid from Afghanistan whose father was working for the Americans and who was shot by the Taliban in front of his son also. He left a mother and two sisters behind him and has had no contact with them since. It has now been a couple of years. Obviously, he would like family reunification, but it is not even possible for him to contact them. They have not been able to contact him either. Both these kids are 18.

We agree that a different attitude is required. Some points might have an impact on the Government. Considering that the case law of the European Court of Human Rights holds that the right to family life in Article 8 extends beyond the nuclear family to include grandparents, uncles, aunts, nieces, nephews and adult siblings, there is an argument to extend the definition of "eligible family member". Perhaps, it could be done along the lines of the IHAP eligibility requirements for those over 18 who cannot necessarily prove dependency. These are arguments we can make. The witnesses have made them, which is good. The International Protection Act 2015 was a serious rowing back on the provisions of the Refugee Act 1996, which allowed at the discretion of the Minister for any dependant to be eligible. That included any grandparent, parent, brother, sister, child, grandchild, ward or guardian of the refugee who was depending on the refugee or suffering from a mental or physical illness or disability to such an extent that it was not reasonable for him or her to maintain himself or herself fully.

There are many good reasons for us to take a different position and for the Government to be more accommodating of Senator Kelleher's Bill. Mr. Henderson and Ms Hurley made the point about the number of net contributors who come here, which is obvious. All of the kids I have met and some of the parents will, God help us and save us, contribute a great deal to this country. It is a no-brainer. Before my building company went bang, I was employing 85 eastern Europeans. There was a great deal of racism in the city at the time, but they were amazing. They had a very good attitude and the notion that they would not be welcome here is obvious nonsense. I am speaking to the converted saying that to the witnesses. It is a bit like the priest giving out about people not coming to mass to the ones who are there. We will work hard on our end to make the Bill happen. When Deputy Clare Daly was critical that Senator Kelleher's Bill did not go far enough, it was not a criticism of the Senator. We know that if one asks for too much, sometimes one gets nothing. We know we have to be very measured in what we seek. A great deal more should be sought, but we will take things one step at a time. I say "Well done" to Senator Kelleher.

Chairman: I could not find a question there, at all. There we are. I call the co-sponsor, Senator Frances Black.

Senator Frances Black: All I can say is "Wow". Those presentations were amazing; they were absolutely fantastic. I know how hard Senator Kelleher and Mr. Meany have worked on this. They put their heart and soul into this and I thank them for that. They have made the case

for this Bill very clearly. Even though we know what is going on, when one hears the reality of the situation from listening to the presentations it is still quite shocking. There is a humanitarian crisis going on. I think of the trauma people are going through and the importance of family. That is an area with which I am very familiar from my other work. I am also a member of a family, and I know how important my family and my adult children are. My mother has passed away, but my sisters and brothers are so close. Family is the heart of everything. It is so important.

I could go on but I will try to keep my remarks short. I have two specific questions to ask. Senator Kelleher noted the importance of retaining discretion in the Bill. I understand that the Government's opposition to the Bill is partly based on the idea that it would introduce an open-ended structure for family unification. Could Senator Kelleher expand on why discretion has been retained in the Bill and how this meets the Minister's concerns?

I must highlight the money message. It was lovely to listen to Deputy Wallace talking about his experiences of meeting people who really touched his heart. Mr. Henderson was very clear on the issue of the money message and I thank him for that. It illustrates a very worrying anti-democratic precedent which could be set today. As Mr. Henderson stated, the Bill would not appropriate public funds. It does not compel Government expenditure. It does not set up a new Government agency or create a new body. It also does not give an automatic right to reunification. It simply enables more people to apply. That is all this Bill does. It is not rocket science; it is very modest. Essentially, it would mean that Department officials might have more applications to process. Am I right in saying that? The idea that this extra administrative burden is enough to require a money message is absolutely ridiculous; it is crazy. The standing orders have always been read with a sense of elastic public service so that a new responsibility does not necessarily mean that the budget must rise or fall. With this new reading of the rules, whereby an administrative cost alone is enough to require a money message, the Bills Office is handing the Government an effective veto in respect of any Bill.

My concern is that the need for a money message is constantly used to block legislation. It is very frustrating. From the Opposition's point of view, why even bring forward legislation if it is going to be constantly blocked? I am obviously very passionate about this because my own Bill just went through the Dáil a couple of weeks ago. I would like as many of the witnesses as possible to expand on this as much as possible. I am sure they are very frustrated. I am sure a lot of people in the Houses of the Oireachtas are very frustrated by the requirement for a money message. We have to highlight and talk about this more. As far as I am concerned, it is highly undemocratic.

Senator Colette Kelleher: I thank Senator Black. I will address the issue of discretion. The Bill proposes a right to apply the extended definition of a family member as per the Refugee Act 1996. In that sense, there is a little less discretion for the Minister but it does not preclude the Department or the Minister from introducing all manner of additional schemes in response to unfolding crises. For example, I am of the view that there is a strong case for us to act in response to events in Yemen. That is not one of the ten countries because of the scale of the catastrophe. I would welcome the Department doing that. The Bill as we propose it does not preclude the Department from doing any of that. It was suggested in the debates that it might. I challenge that. Discretion and rights are not either-or propositions. They are "both-and" propositions. The line of argument put forward in the Seanad and Dáil debates concerning the Department's ability to act does not hold up.

In the context of the money message, as has been said the Bill does not appropriate public

funds, compel the Government to provide for expenditure, set up a new Government agency or create a new body. I am really concerned about the constant use of phrases such as "open-ended" and "opening the floodgates". This is really worrying language. This is the language that is always used in respect of migration and I am really concerned about it. It is incumbent upon us as Members of the Oireachtas to challenge that kind of argumentation and language. It is a fundamental misunderstanding of the legislation. As we have all stated, the Bill does not give people an automatic entitlement to bring their dependent family members. It simply gives them a right to apply. Any cost related to this Bill would clearly be incidental. If this Bill requires a money message it is difficult to think of a piece of legislation that would not, as we have all said. I note what the Senator says about a sense of elastic public service. Perhaps some of my colleagues wish to respond and expand on that and other matters.

Mr. Nick Henderson: I will take the point about the money message and perhaps Ms Finn can speak to the point concerning discretion.

Ms Fiona Finn: I would like to make a small point on the money message. We can really forensically look at the cost and whether an additional cost arises. Some 908 applications were received for the first round of IHAP alone. Such numbers have never been received for a family reunification process in a normal year, even under the 1996 Act. I cannot see where the additional cost would come from. There are enough resources to deal with 908 applications, which is an extraordinarily high number. The number we are looking at in the context of family reunification is between 300 and 400, which is significantly less.

Mr. Nick Henderson: I will repeat and clarify what I stated earlier. The Bill creates a right. It is likely that there will be applications, the number of which we can project. However, the number of applications will depend on the number of refugees recognised by the State. We can project that as well. As Ms Finn just indicated, there is an existing infrastructure within the Department of Justice and Equality that considers these applications. It is considering applications made under the two IHAP schemes, the first in June and the second closing on Friday. The burden is on the applicant. There is no legal aid for the applicant. The State incurs no expense. There is a clear test to be met, which is laid out specifically in the Bill, namely, "dependent on the qualified person or is suffering from a mental or physical disability". The burden is on the applicant to show that they are dependent on the person or that there is "a mental or physical disability to such extent that it is not reasonable for him or her to maintain himself or herself fully". That test would have to be met.

To conclude, I will refer to the long-term benefits of family reunification to the individual. This would require a hearing on its own. It is often said that the final part of a refugee's integration into a country and protection against the persecution that he or she fears is family reunification. It is that piece that allows the person to finally and properly settle for a period in the country that is giving him or her protection.

I understand the points made by Deputy Wallace and Senator Kelleher about the wider use of the money message in the Dáil. Even with that in mind, when we consider the standing order and the guidance stated in the note provided by the Oireachtas Library and Research Service, we maintain that it is not appropriate for a money message to be given as there are no grounds for doing so and no tax is created. In addition, we argue that the incidental cost is questionable, particularly if one takes a literal reading of the Bill.

Ms Rosemary Hennigan: On the money message, interpretation comes down to Standing Order 179, which is based on Article 17.2 of the Constitution. In some ways, the purpose be-

hind the money message gets lost in these discussions. Its purpose is to prevent legislators from introducing a financial Bill that would have major financial implications for the State. That is a power which is supposed to rest with the Executive. In this instance, the concept of incidental has been used to cover any policy change that would happen. It is hard to see how any policy change introduced by an amendment would not result in some cost, even it is just printing the legislation, retraining staff in the Department or whatever else. We argue that the money message has been bent out of shape and misapplied to block legislators from being able to bring amendments such as this one. This particular case is a good example of how the money message has been used too broadly because we can only see a minor incidental expense in the form of more applications crossing the desk of a departmental official. It is important to consider the provision in that sense because, if that is the case, a money message may not even be required and, therefore, the Government does not have a say in whether a money message is given.

Chairman: It would be reasonable to note that the Select Committee on Justice and Equality only last week took a very strong but justifiable stance against the practice of denying Members the opportunity to make a worthwhile contribution that was clearly in the interest of those who should be the net beneficiaries of the legislation we were discussing. We very much, as a committee, have echoed all of that.

Ms Fiona Hurley: I echo everything Senator Kelleher said. In terms of dependence, before this meeting I perused our family reunification files for the number of applications submitted and the number of successful applications. Historically, we provided a staggering amount of evidence, which often encompassed hundreds of money transfer receipts dating back years. Every week, people in direct provision centres saved up the weekly allowance of €19.10, as it was at the time, to send to family members. The level of evidence in many medical reports was staggeringly high. Our files show that the majority of applications are for members of the applicant's nuclear family. Often, one person lived in the family unit who was not a nuclear family member, for example, a brother or sister aged under 18 years of age or a parent. The new legislation means that such persons are left behind, which means one loses the person who is often responsible for bringing up the children left behind. That issue needs to be considered because it breaks up rather than reunites families.

Senator Frances Black: I wish to ask Ms Hennigan about the money message. Is the money message for this legislation related to incidental costs? For example, could the requirement to print a few pages be used to refuse a money message and block the Bill? Does it go down to that detail?

Ms Rosemary Hennigan: It is our understanding that the fact that the Bill has come this far means it has been taken for granted that it is not an appropriation of revenue or public expenditure in that sense. That leaves a question mark over whether there is an incidental expense, as Standing Order 179 also refers to "including incidental expenses". Incidentally, this wording is not used in Article 17.2. Standing Order 179 does not explain what "incidental expenses" could mean. Taking one view, it could mean anything, for example, recruiting an extra member of staff or setting up a large agency to oversee a new point of law. Nothing in this Bill suggests this should be done. We anticipate a minor and modest increase in the number of applications. In light of the point made about the elasticity of the public service, such matters would normally be subsumed into the work of a Department in any case. The Department of Justice and Equality will not be allocated an additional amount of money to cover this work. Were that to happen, it would occur in a future budget, which would be the preserve of the Government. In that sense, any possible incidental expense would be minor. We could not quantify it because

we are not the State but we imagine it would be minor.

Chairman: Before I call Deputy Chambers, I wish to share two points with the meeting. First, I am advised that a determination was made yesterday that a money message would be required and that an application had been sent by the Ceann Comhairle seeking a money message to issue. Second, Senator Conway received a notification that he was required in the Seanad and asked that I record his apologies for leaving and note his support for the passage of the Bill. We welcome that from a Government Senator.

Deputy Jack Chambers: I will be brief. Comprehensive presentations were given by Senators Kelleher and Black and the witnesses, whose expertise is welcome. I support this legislation. Deputy Clare Daly might have wanted it to go further, but any mechanism to narrow discretion and provide impetus and hope for people is important.

Money messages are being used to prevent many Bills from proceeding. Someone needs to take a stand, possibly by seeking legal advice and challenging the decision-making process in the Bills Office and the interpretation of Article 17. The interpretation of incidental administrative costs is ridiculous and extends beyond Standing Orders and the Constitution. It is outrageous.

Last week, I agreed with the Chairman's decision to allow an amendment to be introduced that was agreeable, would not have incurred significant levels of expense and was important for the Disability (Miscellaneous Provisions) Bill 2016. If external legal advice was sought and formalised to take a challenge, we could have this issue addressed. In the past, Governments could block legislation by using their majority, whereas the current minority Government is using Standing Orders to block legislation.

I have concerns about the changes to the pre-legislative scrutiny phase. I am not speaking specifically to the Bill, but this issue relates to its progression. We have created another layer of pre-legislative scrutiny and address. Despite members agreeing with the Bill, its sponsors will face the roadblock that many other Bills have faced. Under the new mechanism, Bills collapse if the Government does not agree to a money message within a short period. As such, this Bill will vanish from the legislative programme despite advancing to this stage. The new business changes that the Business Committee agreed will mean this Bill will be removed from the Order Paper, which would it be reintroduced. Is that the position?

Chairman: That is under the so-called memorandum of understanding.

Deputy Jack Chambers: I have difficulties with that too. Perhaps it is time to challenge the legal basis for this. There are issues with the memorandum of understanding and the interpretation agreed by the Government and Oireachtas via the Ceann Comhairle which need to addressed. I wish the Senators well with the Bill, which I support. It is unfortunate that we are discussing a technical device that should not be used here. It shows the nonsense of new politics. The politics blocking this legislation are anything but new. This is the use of old politics to circumvent legislation by using an old interpretation of a constitutional article which is outrageous and undermines Members' ability to have a Bill such as this passed. It flies in the face of all the rubbish we have heard about new politics. It shows new politics at their worst.

Senator Frances Black: It is undemocratic.

Deputy Jack Chambers: Yes, it is outrageous. I have nothing to add other than to express my disgust at what we have seen in respect of this legislation. We are regularly criticised by the

Government for not agreeing to certain amendments to legislation but here we have the Government technically blocking genuine Bills that do not fall within the remit of the constitutional article. Perhaps a legal challenge to that practice is required.

Chairman: I do not need to field Deputy Chambers's contribution either. We are all on board. I congratulate the Deputy. Does Senator Kelleher wish to respond?

Senator Colette Kelleher: In response to Deputy Jack Chambers and the information the Chairman shared with us, it is extremely disappointing that the Government has made up its mind. We received notification in respect of the money message in October 2017 after we moved the Bill in July 2017. None of the arguments or cases we made was listened to. That in itself is undemocratic. Large majorities have been recorded in the Seanad and Dáil in support of this Bill. It is a modest proposal and it does not fit within the measures that cover money matters.

I will go back to the scale of the catastrophe. We are discussing technicalities while people are in trouble in their lives. When we do not do enough in this country, we impose burdens on others, for example, the Greek islands and parts of Italy. We see horrific situations when we travel. I saw a little boy of about seven years in a doorway in Paris two Sundays ago. He was with another child, possibly his brother. We could give out about France not doing enough but when we do not do enough, we are complicit because we are in dereliction of our duties as a country and we are failing to show solidarity as a member of the European Union by acting when people are in the most desperate of circumstances.

I am disappointed beyond belief and I will certainly consider the advice Deputy Jack Chambers has given us on taking a challenge to this ruling. I am deeply disappointed, not just on my behalf given the work that has been put in to this Bill, but for the people who are being let down as a result of the use of this technicality. None of the arguments has been listened and we have not even been dignified by an appearance by the Minister. The Government did not even wait until tomorrow to make the decision. It is extremely disappointing, not just to me but to people such as Izzeddeen Alkarajeh and others all over Europe and the world whom we have a moral responsibility to respond to.

Senator Frances Black: Would the practice not be for the Bills Office to consider today's debate before making a decision on whether a money message is required? I am surprised that a money message was provided before this meeting.

Chairman: It has not been provided; a decision has been made.

Senator Frances Black: That is what I mean. A decision has been made before this discussion took place.

Chairman: Yes, before Committee Stage.

Senator Frances Black: Is that normal?

Chairman: The Government could change its mind based on today's deliberations but the information I have given is the factual position, as I am advised this morning.

Deputy Jack Chambers: The Government will always impose its position by linking legislation to a money message. The issue is with the interpretation of the Standing Order and the Constitution by the Bills Office.

Chairman: That is correct.

Deputy Jack Chambers: The Government will always try to avoid advancing or progressing Opposition Bills. We know that from the past three years. The issue is the interpretation of the Bills Office.

Senator Colette Kelleher: I hope the Bills Office is listening.

Chairman: Let me expand a little on what I shared with members earlier and which Deputy Chambers confirmed. Last week, the select committee dealt with Committee Stage of the Disability (Miscellaneous Provisions) Bill 2016. The Chairman of a committee is often given a direction to disallow certain amendments tabled by Opposition Members when, in the opinion of the Bills Office, the passage of those amendments could constitute an additional charge on the Exchequer. Let us recall what the Bill we discussed last week was about, namely, miscellaneous provisions in the area of disability. The first amendment on which I received a direction to refuse to allow debate was to include in the Bill a provision that all polling stations be wheelchair accessible. I heard the words "democratic" and "anti-democratic" used, but the fundamental aspect of democracy is the right of all citizens to be able to exercise their franchise. I was being directed to refuse an amendment on the basis that if any of the facilities currently employed did not have wheelchair access, it could mean having to find an alternative that would cost more or having to put in wheelchair ramps at schools, halls or other facilities. My view, as Chairman, is that the utilisation of a school or any of these other facilities once in five years is not the basis for requiring it to be wheelchair accessible. It just damn well should be - full stop and end of story. I could be in a big bucket of hot water over all of this but that is the position that we took. I thank the members of this committee who stood by me in making my judgment in the matter last week. Deputy Jack Chambers has talked about interpretation. I have shared that example to show how bizarre interpretation can be at times.

Senator Frances Black: I am very confused because our office was told that the Bills Office would watch the detailed scrutiny before it made a decision. Did that not happen? Was it not meant to be watching this discussion today before making a decision? Is that the norm?

Chairman: I cannot shed sufficient light on that or confirm the Senator's understanding of the position. I can only advise again that it is the information I was given this morning.

Deputy Jack Chambers: Is it not the case that the decision is taken after Second Stage?

Chairman: I think that is the case.

Deputy Jack Chambers: The Bills Office will make a call on the issue before a Bill can be discussed on Committee Stage.

Senator Frances Black: Is it afterwards?

Chairman: It is a matter for the Government to take on board the views of the committee. I remind members that this is detailed scrutiny, not Committee Stage. It is important to bear that in mind. There are many questions and doors to be knocked upon. I call Deputy Ó Laoghaire.

Deputy Donnchadh Ó Laoghaire: I thank all of the speakers and proposers of the Bill for bringing this forward. I will touch briefly on the money message but also I have some questions on the specific content of the Bill.

On the money message, this has been very valuable because one could reference this ongo-

ing discussion on radio, on television or in these institutions. I believe the public might ask what are they talking about as this is just a procedural matter and they should just get on with it. This has been useful, however, in underlining in the first instance the real implications for people's lives when valuable legislation is blocked. It also has underlined clearly, and we are not under any illusion, that this issue has not arisen previously because we have operated with majority Governments. Since we are operating with a minority Government at present, it is longer in the same position to prevent Bills it did not like from getting through as had been the case previously . It has found another way through the non-provision of money messages. It is unfortunate that the Bills Office has taken decisions in some circumstances that a money message must be provided when that was a debatable point. Many of these decisions can be quite arbitrary. Although I am unclear as to the basis for it, there seems to be a higher threshold for the provision of a money message to go to Committee Stage than for a Bill to be put forward at Second Stage. There seems to be a threshold somewhere in between the two to put forward an amendment that may have some incidental cost. There is a lack of transparency in this regard and I believe Deputy Jack Chambers is correct that an action potentially could be taken on the basis of Article 17.2 of the Constitution. It has never arisen before because previously, a clear Government majority existed. I agree with everything that has been said to the effect that it is anti-democratic of a minority Government foisting its will on the majority through a procedural trick and that lack of transparency is unfortunate. That has been well ventilated but it is useful and if people want to respond, they can. If they have additional points that they wish to offer on this, they can. My questions go back to the substance of the Bill.

The first concerns a useful briefing document from the Oireachtas Library and Research Service on this legislation, in which a point identified referred to research conducted by Götzelmann on the legislation as it was prior to the most recent change to the Refugee Act 1996. The point that this was making was that one of the primary difficulties that existed at that stage was what was described as the nebulous definition of dependency. This was a point, I cannot quite recall, that may have been raised at Second Stage as well. My question is whether we will see the full benefit of this; and we may. If there are difficulties where it may favour the applicant or the Government's current position, that is, if it is insufficiently clear as to what is a dependant or what qualifies as dependency, will that potentially hamstring the intent of this Bill? Alternatively it may lead to a more expansive understanding of it, I am not entirely sure.

Chairman: Would Ms Finn like to respond?

Ms Fiona Finn: Section 18(4) of the 1996 Act, which talks about dependancy, has been in place now for almost a decade. It also has brought with it quite a strong body of jurisprudence on the issue of dependency. The courts have looked at it. While there is an element of discretion inherent in it, the courts have set down fairly clear guidelines as to who would be considered dependants. It is not just a financial issue, there is an element of emotional dependency and the nature and type of dependency, which must be continuous and ongoing. As that section of the Act has been in operation for ten years, there is quite a clear understanding of what we mean by dependency. There is a lot of settled law behind that and I do not think this would present itself as a particular issue or barrier.

Ms Fiona Hurley: On a practical level, Deputy Wallace raised earlier the issue that there is no legal aid for family reunification applications. Refugees themselves may not know what the definition of dependency is. That may lead to someone applying without knowing what standard of thresholds he or she must meet. If someone has access to a practitioner or comes to an organisation like the Irish Refugee Council or to Nasc Ireland, he or she can get that advice.

One issues that arises widely with the Department of Justice and Equality is that it is reluctant to put in place detailed policy or information as to what it is actually looking for. It is up to the applicant to bring information and at that stage a decision is made. That could go hand in hand with the Department being more transparent about what it would consider dependency to be. That would resolve a lot of the issues and help people to access family reunification in a better manner.

Mr. Nick Henderson: It is a good question and I would only add to what Ms Finn has said which is that there is jurisprudence, which goes to the most senior court, the Supreme Court, where the AMS case has considered this in detail. I suggest this is the next best thing to dependency actually being spelled out in the Bill, in that we have a body of jurisprudence that includes a Supreme Court decision and practice of more than a decade.

Senator Colette Kelleher: There is case law, as Ms Finn and Mr. Henderson have stated and there also is clarity, which makes it easier to understand what the concept of dependency is. I have been following the whole disgrace of the way in which people from the Windrush generation have been treated in the UK. The desire of the current Prime Minister when she was Home Secretary was to create a harsh environment for immigrants who would seek to settle in a country.

It is a case of how one does things. One can create, through obfuscation or lack of clarity, a position whereby one may have the law but the access to that law can be made as difficult or as easy as possible. There is also the issue of the spirit in which regulations and laws are put in place and interpreted.

I am very disappointed with the way the Department has responded to this Bill since it was introduced. Its spirit has been defensive and it has not given a listening ear to the arguments made. I think that also is the case on the ground for people who would apply. That is another worrying trend that has been evidenced through the progress of this Bill. While this possibly has been noted by this committee, it might also be reflected upon in any report issuing from today's proceedings.

Chairman: Before I come back to Deputy Ó Laoghaire, would Ms Hennigan like to add anything? No, that is fine. I will come back to the Senator in a moment. Would Deputy Ó Laoghaire like to pick up on any of the points?

Deputy Donnchadh Ó Laoghaire: It is well known that one could write a script on any issue regarding migration or asylum in which the Department of Justice and Equality would come in and talk about push and pull. Everyone and his or her mother would come to Ireland if we were to change X, Y, or Z - be that the right to work or family reunification - and all these vague allusions are made to the pull factors. We need to stay away from pull factors. It has been well noted and we are more than familiar with the general outline of the objections the Department of Justice and Equality gives to virtually any adjustments in this regard. Would the witnesses agree that the Department's argument about the number applying for family reunification being unquantifiable is undermined by the fact that there is a more expansive definition of reunification categories under IHAP, which covers the ten most significant sources of refugees?

Ms Fiona Hurley: One of the issues with the ten countries from which applications are eligible is that we have not received asylum applications from several of them. These are global rather than Irish statistics.

Deputy Donnchadh Ó Laoghaire: Could Mr Hurley provide an example?

Ms Fiona Hurley: Iraq was not included in the list, yet it is a country from which we receive a relatively high number of applications for asylum and give grants of refugee status. Iraq had the highest number of applications for IHAP that were refused because they were from an ineligible country. Many Iraqis applied under IHAP, gave their circumstances and argued why they should be considered but were refused. Another example is the Central African Republic, CAR. It is extremely rare to meet anyone from that country in Ireland. The countries covered by IHAP were not picked with an eye to what was happening in Ireland or reflecting those who needed family reunification here.

Chairman: The CAR is one of the ten.

Ms Fiona Hurley: Yes.

Ms Fiona Finn: It is a clear contradiction, given that the State has introduced IHAP, which is a limited, but more expanded, programme. It allows for extended family members and has an additional category whereby one can apply for a vulnerable family member. There is no guidance on that. On the one hand, the State is talking about uncontrollable floodgates while, on the other, it is delivering two schemes that, albeit welcome, are temporary and *ad hoc*. That tends to be the problem with how policy is developed in the immigration and protection context - it is *ad hoc* and piecemeal. The Bill brings a level of certainty for the State and refugees who are seeking to be reunited with family members.

From our understanding, one of the key drivers behind introducing IHAP was the need to fulfil the 4,000 refugees quota that we had committed to under the EU resettlement and relocation programme. It was one of the mechanisms used to do that. It was not born out of a need to support the refugees then living in Ireland.

Deputy Donnchadh Ó Laoghaire: I will ask the remainder of my questions together. IHAP is a good programme, but I am not advocating it as a solution to all of our problems by any means. Rather, I am pointing out that the policy behind it is inconsistent with the Department's arguments against this Bill.

I will ask my final two questions. The Seanad amended the Bill to add a section 57A to the 2015 Act. I may have the number wrong, but it relates to the review. It has not been discussed much. Senator Kelleher or someone else might expand on this. Is there generally a need to review how reviews and appeals in the asylum and immigration field are handled? Do we need an overhaul of the legislation and the offices governing it?

Are the witnesses of the view that persons applying for family reunification should be entitled to legal aid?

Chairman: The Deputy said two, but I picked up on three questions.

Deputy Donnchadh Ó Laoghaire: The Chairman will allow me one supplementary.

Chairman: Would Senator Kelleher like to lead off?

Senator Colette Kelleher: In any legislation, a review mechanism is a useful and healthy element. For example, the Education (Admission to Schools) Act 2018 provides for a review to determine whether the measures contained in a number of its sections are achieving their intended consequences. In family reunification legislation, though, there are unintended con-

sequences. What drove us to introduce this Bill was the fact that, on the ground, live issues of access to family reunification were arising as a result. In Izzeddeen Alkarajeh's case, he missed an appointment. It was cancelled. Had he had that appointment, he might have been able to succeed in bringing his mother to Ireland but because it was cancelled and did not then happen until after the International Protection Act's introduction, he could not. That is how arbitrary the legislation is and explains why review mechanisms are important.

In light of the points that Ms Hurley and Mr. Henderson made, legal aid is important. It can steer people in the right direction within the parameters of what is legally possible in order that they avoid submitting claims that will never succeed.

Mr. Nick Henderson: I agree. I would not describe what is laid out in the Bill as an appeal mechanism. For something to be an appeal, we submit it would be an appeal to the International Protection Appeals Tribunal, which is a statutory body created by the International Protection Act. That Act would probably have to be amended to allow for appeals against a refusal of a family reunification decision. The Bill does not do that, though. All it really does is create an internal review within the Department of Justice and Equality, one that goes up the tree to a grade senior to the grade of the person who made the decision. An official would only have to be one step more senior than the person who made the decision to consider the review. This is consistent with changes that were brought about by the statutory instrument that was created last July to transpose the reception conditions directive into Irish law. That instrument creates an internal review mechanism for decisions around someone's reception conditions. The Bill's provision is similar in nature.

Legal aid is beyond the scope of this Bill but from our experience - I am sure it is the same with our colleagues in Nasc Ireland - it is essential that people get good legal advice at all stages of the asylum procedure. If they do not, they may not ventilate a point that should be made or bring forward evidence that they have. It can work inversely, in that someone may be pursuing an application he or she should not be because there is a remedy elsewhere. Legal aid helps people to rehearse and coral their evidence. As such, I agree with the points made.

Chairman: I thank the witnesses. Does Ms Hennigan wish to reply?

Ms Rosemary Hennigan: I agree with Senator Kelleher and Mr. Henderson. In general, outside of an appeal or review mechanism like this, the default is always judicial review, which can clog up the courts. This is a problem in the immigration-asylum area because the only remedy available to people often ends up being judicial review, which is expensive and causes delays for everyone involved. For the reasons outlined by Mr. Henderson concerning the need for legal aid, though, these are often not the types of case that should be developed. As such, the kind of appeals process contained in the Bill is in everyone's interests.

Chairman: If Deputy Ó Laoghaire is all right with those answers, the last word very appropriately goes to Senator Black.

Senator Frances Black: I am a little obsessed with the money message, so the Chairman will have to forgive me.

Chairman: I cannot do anything about that today.

Senator Frances Black: I just want to put two points on record. The new memorandum of understanding, MOU, for Private Member's Bills, agreed at the Dáil Business Committee in December and in place from the start of this month states:

> Under this MoU, the Bills Office will conduct a preliminary assessment in relation to Money Messages once the Bill has passed Second Stage. However the assessment will not be finalised until Committee scrutiny is completed, and Messages will not be requested from DPER until after the Order for Committee Stage is agreed.

The fact that the Bills Office has made that decision in advance of this discussion is totally contrary to the procedure in the MOU agreed by all parties at the committee. The remaining Bills awaiting Committee Stage should undergo scrutiny under the terms of the MOU. Under the terms of the MOU, it seems that a decision should not have been taken before this discussion. I wish to place that fact on the record.

Chairman: The right decision should always be made and, clearly, that is not what has happened.

Senator Frances Black: I agree with the Chairman.

Chairman: I say this very bluntly. I welcome what the Senator has read into the record. It is likely due to the fact that this Bill was in the process and referred before the MOU was adopted. I am only offering a possibility. The clerk advises me that the MOU only applies to Bills referred after 20 January, so we will not be able to use that argument as I was suggesting. As Senators Kelleher and Black know, we have had this for some time before. That is the fig leaf that will be used to justify having proceeded without waiting for our deliberations here today. It underscores all that has been said. Has Senator Black anything to add?

Senator Frances Black: No. I thank the Chairman.

Chairman: We will all endeavour to impact on the view given by the Bills Office. We need to concentrate on those who have the final say, which is the Government. We at least have one part of that in place today with Senator Conway's declaration of support. We will have to add to it. Is there anything further that Senator Kelleher would like to add without going down that road again?

Senator Colette Kelleher: There is an unprecedented refugee crisis. Ireland has to play its part alongside all of the other countries in the world. Family reunification is critical. Being blocked here today does not mean that the refugee crisis has ended and it does not end Ireland's moral obligations, so it does not go away. It is a shame that this avenue could not be pursued, because a small change would make a big difference to many people who have already suffered a great deal. I am disappointed that we are not lifting that burden for people who have already had such trouble in their lives. It is unimaginable trouble. I cannot imagine a situation where I would have to choose between supporting a son and a daughter. I do not think the committee has heard the last of us on this matter. We will regroup and see what we can do. I am disappointed that there has been such resistance to such a modest, humane and decent measure for people who have suffered in a way that we cannot even imagine.

Chairman: In the context of the Senator's closing remarks, we have not been blocked. This is the last committee at which that would ever happen. We have had the opportunity to fulsomely address the issue. The Senator stated that we have not heard the last of her. Reflecting on the fact that every member of the committee in attendance has recorded his or her support, I believe it is the case that we will be heard in every way that we can, going forward in support of the Bill. On behalf of the Joint Committee on Justice and Equality, I commend Senators Kelleher and Black and all the co-sponsors of the Bill. I thank the Irish Refugee Council and

our long-standing friends in Nasc Ireland for travelling all the way here. Deputy Ó Laoghaire was getting homesick and wanted people with Cork accents here. I thank Senator Ruane, who has just joined us, and say "Well done" to her. The Senators have all our support in progressing the Bill. Without any further ado, on behalf of the committee, I thank all those present for their contributions.

The joint committee adjourned at 11.30 a.m. until 9 a.m. on Wednesday, 13 February 2019.