

DÁIL ÉIREANN

AN COMHCHOISTE UM IOMPAR AGUS LÍONRAÍ CUMARSÁIDE

JOINT COMMITTEE ON TRANSPORT AND COMMUNICATIONS NETWORKS

Dé hAoine, 29 Eanáir 2021

Friday, 29 January 2021

Tháinig an Comhchoiste le chéile ag 1.00 p.m.

The Joint Committee met at 1.00 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	Seanadóirí / Senators
Joe Carey,	Jerry Buttimer,
Cathal Crowe,	Gerard P. Craughwell,
Michael Lowry,	Timmy Dooley.
Steven Matthews,	
James O'Connor,	
Darren O'Rourke,	
Ruairí Ó Murchú,	
Duncan Smith.	

Teachta / Deputy Kieran O'Donnell sa Chathaoir / in the Chair.

General Scheme of the Merchant Shipping (Investigation of Marine Casualties) (Amendment) Bill 2020: Discussion

Chairman: The purpose of our session is to undertake pre-legislative scrutiny of the general scheme of the merchant shipping (investigation of marine casualties) (amendment) Bill 2020. On behalf of the committee, I welcome Mr. Michael Kingston and Mr. Ciaran McCarthy. I thank them and the members for participating in this meeting at such short notice. I wish to make Mr. Kingston aware that his additional briefing was received yesterday evening. I refer not to the review of the Bill itself but the actual briefing note. The committee has considered the briefing note and has agreed to accept Mr. Kingston's documentation but with two passages, namely, paragraphs 3.82, 3.83 and 3.84, as well as 3.12.1, redacted due to their content.

Witnesses are reminded of the long-standing parliamentary practice to the effect that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. If their statements are potentially defamatory in respect of an identified person or entity, they will be directed to discontinue their remarks. It is imperative that they comply with any such direction. For witnesses attending remotely, outside of the Leinster House campus, there are some limitations to parliamentary privilege. As such, they may not benefit from the same level of immunity from legal proceedings as a witness physically present does. Witnesses participating in this committee session from a jurisdiction outside the State are advised that they should also be mindful of their domestic law and how it might apply to the evidence they give.

Members are reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable.

I also remind members that they are allowed to participate in this meeting only if they are physically located in the Leinster House complex. In this regard I also ask all members, prior to making their contributions to the meeting, to confirm that they are on the grounds of the Leinster House campus. For the information of anyone watching this meeting online, Oireachtas Members and witnesses are accessing the meeting remotely. Only I, as Chairman, and the staff essential to the running of the meeting are physically present in the committee room. Due to the unprecedented circumstances of Covid and the large number of people attending the meeting remotely, I ask everyone to bear with us should any technical issues arise. When people are not speaking, I ask them to mute their microphones. It benefits the broadcasting enormously.

I now call on Mr. Kingston to make his opening statement.

Mr. Michael Kingston: I thank the Chairman and all members of the committee for the opportunity to appear today. I thank the committee secretariat for its enormously hard organisational work and for affording me such courtesy and assistance amid the difficulties of the Covid-19 pandemic. I deeply commend the committee members on the earnest manner in which they are continuing the business of Ireland on behalf of Irish society. The fact that we are here today is symptomatic of that work and that desire to ensure that our citizens are afforded the opportunity to be heard in the development of important legislation. The committee has read my correspondence dated 4 January 2021 and, I hope, had a chance to look at some of the briefing note. I am accompanied today by barrister Ciaran McCarthy.

We come here with solutions in order to help the committee and indeed the Government, through the Department of Transport, to get this legislation right. The Department must take a step back and listen in order that collaboratively, we learn from the mistakes of the past and work together for a better future that will save lives in the maritime community - our merchant seafarers, pleasure craft users, fishers and emergency services - and protect the environment and save millions in wasted resources surrounding unnecessary tragedies. I wish to make it clear that, although at this stage I have quite a lot of experience working with multiple world governments, international organisations and the United Nations' International Maritime Organization, as I set out in my letter, I appear here today in my personal capacity. I also come here with a very heavy burden on my shoulders, one that I did not ask to carry, but that has become my life's work, given the circumstances I evolved into, following my own father's tragic death in the Whiddy Island disaster in 1979. This led to many people contacting me to help them, people from all over Ireland, from all constituencies, who have lost beloved relatives or been involved in accidents, and who have not got to the bottom of what happened or were confused by the investigative process. They have heard me explain continually the importance of implementing maritime safety regulation correctly in Ireland, including the issue that is before us today. Mr. Ciaran McCarthy has echoed those sentiments.

I have also been contacted by a multitude of Department officials, MCIB investigators, former MCIB investigators, and former Department surveyors, who have deep reservations about the current system and its shortcomings. The EU judgment of 9 May 2020 has affirmed what was being said. I pay tribute to their bravery in putting their trust in me, and I would like the committee to know that they, like me, appreciate its engagement and vest their faith in it, in our democracy. Until the committee acted, there had been a very serious democratic deficit in the manner in which the Department of Transport has pursued maritime casualty investigations. That includes the unwitting misleading of this very committee and the Oireachtas by successive well-intentioned Ministers and MCIB chairpersons, regarding the independence of the MCIB, now confirmed by the EU judgment and more recently the findings of that judgment in respect of impartiality.

This legislation must be fit for purpose, given the very serious consequences in the past of the Department's determination to ignore international best practice and, as we know, ultimately, ignore mandatory international law, first the United Nation's 2008 Casualty Investigation Code and then the 2009 EU directive, resulting in the EU judgment. The Department knew this to be wrong, and despite clear direction to rectify it by the then Minister, Noel Dempsey, in 2009, it was not brought to the attention of the incoming Minister in 2011, who unwittingly signed off on the incorrect transposition into Irish law of the EU directive in July 2011. How this happened is a very serious matter for the Oireachtas, given the consequences for Irish citizens, and not least the faith we as a society place in public officials and the standard of ethics expected of them.

The simple fact is that the MCIB was doomed from the start, because, despite the 1998 Report of the Investigation of Marine Casualties Policy Review Group, initiated by the then Minister, Seán Barrett, in 1996, which analysed international best practice and recommended that it was imperative that the MCIB be independent, it then went against its own findings in its conclusions to say that, "because we are a small country" we can ignore international best practice, and it accordingly advised that the chief surveyor and the Secretary General or her or his nominee should be on the board. We now know that international best practice has finally caught up with the Department through our membership of the European Union. The 1998 report also set out the required competence investigators should have in seafaring, engineering

and naval architecture, and that of the MCIB chairperson in maritime experience, and it set out that investigators must have adequate resources, including technical and financial. That has not happened. So many other findings of the 1998 report have not been implemented and now is our chance to rectify this.

For reasons that I have explained in my briefing note to the committee, the proposed Act does not address these issues sufficiently and, in particular, among several other issues set out, we need an independent investigative unit headed by a full-time principal investigator, with full-time assistance from qualified maritime professionals, in line with the aviation and rail sectors, in an office independent from the Department of Transport, finally decoupling the investigator from the regulator and bringing us in line with international best practice.

I, with the advice of Mr. Ciaran McCarthy, am here to discuss all these issues and elaborate on further detail as per my briefing note, and any other issues the committee wishes to raise, to the best of our ability. We are all proud of Ireland and want to help our nation to get things right. Now is our chance, with the leadership of the Minister, Deputy Ryan, if he so wishes, for the maritime community, and for that we are indebted to the committee for this opportunity.

Chairman: I thank Mr. Kingston. We will now proceed to take questions from members.

Deputy Darren O'Rourke: I confirm that I am on the Leinster House campus. I thank Mr. Kingston for his submission and the huge amount of work he has put into this issue. Given the limited time, I want to give him the floor and an opportunity to expand on the points he has made. Will he address the point that many of the issues he raises are not specifically relevant to this legislation? They are more broadly relevant, and it is suggested that they will be dealt with at a later stage. What is Mr. Kingston's specific ask of the committee as it relates to this legislation? Is it the wrong legislation? Should it be expanded and why so?

Mr. Michael Kingston: I thank Deputy O'Rourke. I think the issues I have raised do relate to this Bill, which is amending the legislation that was put in place in 2000 following the findings of the review group in 1998. The Secretary General's nominee and the chief surveyor have been removed from the board, but the whole problem surrounding the failures also needs to be addressed. I refer to the mere fact that this is a part-time board with panel investigators and the whole mechanics of the MCIB are failing. Now is the opportunity to change that. For example, as I set out in my briefing note, we have a part-time board and part-time investigators with investigators appointed to a panel on a short-term basis with minimal support, co-operation or training. By the very nature of their work, they are also mainly compromised. The quality of reports has been poor, the recommendations poorly thought out and, on the whole, are regarded by the maritime industry as poor. This is to be expected where there is no investment or motivation to set high standards. The proposed Act will effectively be a continuation of the current system.

In 2019 we spent €27,000 on investigators in the field on ten incidents, including six deaths, which is €2,700 per death. If we compare this with investigators in the field in the aviation and rail industries, there are investigative units with a full-time investigator. A total of €750,000 was spent on aviation, where there were no deaths, and €350,000 was spent on rail. That is the amount spent on investigators in the field, leaving aside the clerical staff. That is the problem. This Act is just continuing the same board structure of part-time investigators. It is not fair to them. They are not getting proper resources or training. It is not fair to the chair to have to run all of this. We need an independent investigative unit. That is what this Act should be doing. The Bill is amending the previous system but it is just a continuation of a failed system.

Senator Timmy Dooley: I thank Mr. Kingston for the very extensive documentation he has provided to us. It is most helpful. We are not always experts in various aspects of our work and it is really helpful when we have somebody of Mr. Kingston's background and knowledge to provide information to us. Like Deputy O'Rourke, I am more interested in hearing to the broadest extent possible how we might proceed from here because there is a concern that we are in effective breach of a European law because of the structure of the committee. I ask Mr. Kingston to respond to that point. Resignations have taken place and it is not possible to appoint others until the Bill passes. From Mr. Kingston's knowledge and experience of the landscape of investigations that are out there, or potential investigations in the event of any accidents in the interim, are we creating a lacuna where an investigation might fall or might fail to be heard because we have not effectively filled the board, albeit with the limitations it currently has?

Mr. Michael Kingston: I thank Senator Dooley for his question. I have addressed this in my briefing note in paragraph 2.1. It is very important that it is understood that although the chief surveyor and Secretary General, or his or her nominee, have had to resign from the board, that does not mean it cannot technically function in the interim while this legislation is being dealt with. A rush, therefore, will only create another mess, which I have just explained to Deputy O'Rourke. To assist the committee, I refer to section 16 of the current Act where "The Board may, from time to time, engage such consultants, advisers and investigators ... as it considers necessary for the performance of its functions". I suggest, and obviously funding needs to be made available by the Minister, that we second an experienced investigator to assist the board, which is under enormous pressure in fairness to the chairperson and the other two board members, and ensure that in the event of the incapacitation for any reason of another member of the board, the Minister would, under his powers, immediately appoint someone else. We would continue as is in the interim while we sort out this legislation.

On this proposed legislation, I am aware that the Department has suggested in the documents that there will be a review after the legislation. We have, however, already had reviews. There is the 1998 review and we know exactly what we need to do. It is quite clear. We need an independent unit with a principal investigator and two assistants who are competent: a master mariner, a chief engineer and a naval architect. They would have the ability under the legislation to draw on any other expertise that is necessary, depending on the incident. That is not difficult legislation to put together and it should not take that long. Now is the time to fix this. On the Senator's question, the lacuna can be dealt with under section 16 of the Act.

Senator Timmy Dooley: I thank Mr. Kingston. I just needed him to put it in a very succinct way, which he has done.

Deputy Joe Carey: I welcome Mr. Kingston to this pre-legislative scrutiny on this very important Bill. I recognise Mr. Kingston as an international expert in the field. I thank him for his interaction with the committee in recent weeks and for his submission today.

In the short time available to me I want to discuss two issues. The independence of the Marine Casualty Investigation Board, MCIB, is of critical importance. Perhaps Mr. Kingston will explain why. The other issue is the importance of having a special investigation unit within the curtilage of the MCIB. From an international perspective, is this what other jurisdictions do? Do they have a principal investigator and the different personnel around them? Is that the way it is in maritime affairs in other jurisdictions?

Mr. Michael Kingston: I thank Deputy Carey for his assistance on the committee. The simple answer to that question is that it is a legal obligation. It must be independent of the

Department. That is what the European judgment has adjudicated on. It is based on an International Maritime Organization code of 2008. Not only must the Marine Casualty Investigation Board be independent, but it must also be competent. We did not ratify that particular international regulation but we had no choice but to address it when the EU issued a directive in 2009. We then transposed it into Irish law in 2011, incorrectly as I mentioned in my opening statement, when we left the chief surveyor and the Secretary General's nominee on the board. That is the legal position. It has been recognised international practice for decades. The 1998 report I referred to in my briefing note established this and said that this was the international best practice. They cited several examples, the leading example being that of the United Kingdom's Marine Accident Investigation Branch, MAIB, which was established following the sinking of the *Herald of Free Enterprise* at Zeebrugge, which many of the members will remember. Following that ferry tragedy, the judicial findings of the inquiry cited the obviousness of the fact that investigations need to be separate from the regulator or else one is analysing one's own regulations. The Department sets the regulations. In any accident, it needs to analyse whether the regulations were correct, were fit for purpose and were enforced correctly. Effectively we would be investigating ourselves. That is recognised international practice. Unfortunately, the review group contradicted itself and went against its own findings in the draft legislation. That is inexplicable. I do not know why that happened. The 1998 report that gave rise to this Act found that the MAIB physically moved its inspection unit from London to Southampton so there was a physical divide. This is why it is so important. We are dealing here with the investigation of the regulatory framework. The ideal position would be to have a chief inspector with a team independent from Leeson Lane. This is the internationally recognised best practice. It is precisely the position in Iceland, which is a much smaller country.

Chairman: I thank Mr. Kingston.

Deputy Ruairí Ó Murchú: I am speaking from the Leinster House precinct. I thank Mr. Kingston for the material he has provided and for his input today. I thank Mr. Ciaran McCarthy for attending also.

In fairness, Mr. Kingston has said already that a review has occurred, that independence of the investigative unit is required, as per best practice, and that the investigative unit needs to be resourced. Now is the time to deal with this in legislation and to bed it down. Is there anything beyond this that Mr. Kingston wants to add? I now have in my head everything that is necessary. Obviously, Mr. Kingston's information has been quite detailed, but are there any questions we need to put to the Minister for Transport who will be at the next session?

Mr. Michael Kingston: I thank Deputy Ó Murchú. That is it in a nutshell. There are other issues under this proposed legislation. Mr. McCarthy and I have provided comments on those under the heads of the Bill. There are other issues surrounding some of the draft legislation, for example where it says there should be a 60:40 gender split. This is unrealistic in the maritime world. Most of the students coming out from the National Maritime College of Ireland currently are male. Across most of the members of the maritime community, there is a heavy weight towards male at the moment. That is not to say it is not being addressed, but we cannot have a provision like that in the Act at the moment because it would preclude most of the experience. This is something the whole maritime community is working on. It is also being worked on by the International Maritime Organization. I have involved the head of academics at the National Maritime College of Ireland, Captain Sinéad Reen, in those discussions. Anyway, it is unrealistic to preclude a provision like that in the Act. It should be left to a bottom-up approach so that we can change it to the other way around rather than what is in the Act. This is because it

could have an adverse consequence.

There is also a provision in the legislation to the effect that members of the Department should be precluded from being a part of the board or investigation unit, as hopefully it will be, having heard the evidence today. That is fine for current members but the legislation also refers to ex-members. That is not a sensible approach because there are excellent individuals who are well-qualified in the Department of Transport. When they leave, they are entitled to seek and earn a livelihood. Not only would it be perhaps unconstitutional to prevent them from being able to earn a livelihood, but it would be shooting ourselves in the foot in terms of great maritime experience. I suggest that be changed.

There are several other specific issues in the commentary. There is something that I may discuss further with other members, if asked. However, we must remember that proper regulation saves lives, as does a proper implementation of regulation. I set out examples of that in my briefing note. That that is what these changes, if they are done correctly, will achieve. We need to focus on the proper implementation of regulation in Ireland, starting with this legislation, to set the analysis of the regulatory framework for when accidents arise.

Chairman: Deputy Crowe has three and a half minutes.

Deputy Cathal Crowe: I join others in welcoming Mr. Michael Kingston to our virtual committee meeting and thank him for being a champion fighting for greater transparency and higher safety standards in the marine sector.

I have some comments and then I will put a question or two to him. I was struck by the lack of parity in money invested in marine accident investigation with the figure of €2,700 per death. It is an awful thing to quantify. At the heart of everything that the Marine Casualty Investigation Board works on is marine accidents, which leave bereaved families wanting answers. They want to know that measures will be put in place after an accident to ensure others do not lose loved ones at sea or on the water. It is alarming to see the figure of €2,700 compared to €750,000 for aviation accident investigations.

I will conclude my remarks because I want to hear from Mr. Kingston. I looked up the EU Directive 2009/18/EC. Page 2 sets out the requirement for independence of marine investigations throughout EU member states: “Such investigations should therefore be carried out by qualified investigators under the control of an independent body or entity endowed with the necessary powers in order to avoid any conflict of interest”. The Department of Transport is telling us that this is procedural and we need to tighten up a loophole so that the work of the Marine Casualty Investigation Board can continue. Mr. Kingston is saying that the structure of the board, despite all the flaws that he has identified, can continue its work in the short to mid-term. Can he clarify that further for the committee?

Mr. Michael Kingston: I thank the Deputy for his questions. He has identified the pertinent points in the legislation. It is good that they are on record from the directive. It is a matter for each member but the committee will agree unanimously with him that €2,700 for the field work in an investigation into someone’s death is a staggering failure when we compare it with aviation and rail. We can see the figures set out in my briefing note. The figures speak for themselves. One need only analyse the rail set-up and the aviation set-up. They are professional and, therefore, they are preventing death. Then we get to the marine sector. It is a little like what the review group found in 1998 and 2000. The view was that we should have international best practice and that was what should be established. They spent a great deal of taxpayers’

money flying all over the world. Then, at the end of the report, the view was that, given Ireland is a small country and the maritime community is a small part of it, we should forget about all of that and simply have a different system here. That is not good enough. Iceland is a far smaller country but those involved work properly. We must remember that our maritime sector is extremely important at the moment in the context of Brexit. Moreover, with renewable energy, the footprint of Ireland is ten times the size of our landmass. It is critical that we invest in this area.

In the meantime, to answer the question from Deputy Crowe about the current system, the set-up is part time, amateur and not good enough. We can provide funding to get an experienced investigator to help the board in the meantime. That is not difficult. They are out there. We could second an official from the Marine Accident Investigation Branch in the United Kingdom or from another European nation. That would keep the show on the road for the time being.

Deputy Cathal Crowe: I am sorry to cut across. The work can continue. We do not want a lacuna, as others have suggested. The work can continue but a comprehensive root-and-branch scrutiny of how the board functions has to be undertaken given the extraordinary shortcomings identified by Mr. Kingston. Is that fair to say?

Mr. Michael Kingston: Yes, we need to give the board direction and sit down with the chairperson and help her. She has innocently found herself in the middle of these difficulties. I am sure they are doing the best they can in the circumstances in which they find themselves. They are decent people trying to do their best in the circumstances. However, the circumstances they find themselves in are not good enough. We need to get a case of money to get someone to work alongside the board. Then, on each occasion there is an incident we should give that person the ability to bring some assistance in, depending on the type of incident. It is not the most difficult plan to come up with and it would deal with the situation while we amend the legislation.

I reiterate that the amendments to this legislation are straightforward. We should have an independent principal investigator with assistance in an independent unit. These amendments are not difficult. There should be proper resourcing, not only for the board but also for the Marine Survey Office and the safety side of the board. We are spending €50 million on the Coast Guard and €4 million-----

Deputy Cathal Crowe: I think what is being asked for is clear.

Mr. Michael Kingston: I am sorry to run over.

Senator Jerry Buttimer: I welcome Mr. Kingston to the meeting and thank him for his advocacy. Everything that has been asked has been answered by Mr. Kingston. He certainly spoke about the issue of transparency and safety.

What would failure to hold this meeting result in exactly? In the context of marine accident investigation, if Mr. Kingston had a wish list of what we should say to the Minister for Transport, Deputy Ryan, in three points, what would be on it?

Building upon the report by Captain Forde, we have an issue around investigation, impartiality and transparency. To the person listening in or watching us, this is the overarching message. This is an important matter. We must have confidence and safety. We must recognise the mistakes of the past and we must have impartiality regarding investigations and the issue around merchant shipping.

My last comment relates to the Title of the Bill. The expression used is “investigation of marine casualties”. This has a profound impact on people, as we know, and on the lives of people and industry. It is important that everything we do is underpinned by transparency, safety and legal certainty. We must also ensure that we do the right thing. I thank Mr. Kingston and Mr. McCarthy for being here and for their work in this area. I am glad that we were able to hold this meeting and Mr. Kingston’s presentation has been most interesting.

Mr. Michael Kingston: I thank Senator Buttimer for his kind words and his very helpful question about the direction of ministerial questioning. The first thing I would say is that we do not need another review. We already have the 1998 review, which was clear in its recommendations on what is needed. We need an independent investigative unit with competence. For whatever reason, the end of the 1998 report went against itself. It was clear following the *Betelgeuse* tragedy in 1979 that we needed to decouple the regulator from the investigation system. We were not as advanced then as we are now as a nation-----

Senator Jerry Buttimer: Is Mr. Kingston suggesting something along the lines of the Garda Síochána Ombudsman Commission?

Mr. Michael Kingston: Yes. We all know that we need to have an investigative structure that is separate from the system or institution being investigated. That is common practice across all disciplines and all nations and the same applies here. People need to understand that we cannot have the regulators, in fairness to them as well, investigating their own work. That just does not work.

We have great opportunities as a nation in so many maritime areas but the foundation stone for our maritime progress in things like offshore energy and so forth, is the regulatory framework. We must have proper regulation in place. I would say to the Minister, who is a member of the Green Party, that having proper regulations in place will protect the environment. It will prevent pollution and promote the environmental agenda of the Irish nation in terms of renewable energy projects. The investigative unit to which I refer will contribute to that by making sure that we always have proper regulation. I would urge the Minister to provide funding for this investigative unit. The amount involved is minimal, at approximately €300,000 to €350,000 per year. It would prevent helicopters being called out, massive Garda searches which cost millions and so forth.

I wish to defer to Mr. McCarthy on this question if there is time because the codification of all Irish maritime regulation is extremely important. The Bill attempts to amend the Convention for the Safety of Life at Sea, SOLAS. The 1998 report argued that we must codify Irish maritime regulation because it was haphazard and all over the place. That was 23 years ago and we still have not done it. The Minister should provide funding to the Department to help it to draft codified legislation.

Chairman: I will allow Mr. McCarthy one minute to respond as succinctly as possible on the question of codification.

Mr. Ciaran McCarthy: Mr. Kingston referred to the need for codification. If one looks at the draft heads of the Bill, one sees references to the Merchant Shipping Acts 1894 to 2020. That in itself is absolutely unacceptable. The fact that we have legislation on our Statute Book from a different country, dating from before this State was formed when the merchant shipping fleet would have been largely sailing ships, not even steam ships, not to mention the diesel or nuclear ships that we have today, is very stark. The effect of the lack of codification over

such a lengthy period is that the area is deeply complex and opaque. It is very difficult, even for lawyers like me, to untangle the web and find out what is required of regulators and what actors within the industry can achieve when we are advising them. The area is crying out for codification. In particular, Mr. Kingston referred to the SOLAS convention, which is basically shipping 101. It is the single most important merchant shipping safety legislation and it dates back to the time of the *Titanic*. We are on the fourth iteration of the convention now but our implementation of SOLAS, which is a particular interest of mine, is absolutely appalling. We have implemented this convention through a series of Acts and secondary legislation which amend and correct each other. It is absolutely opaque and really difficult for anybody to actually understand what is required under the convention.

In this post-Brexit era, we are so dependent on shipping. The fact that we are an island means that everything has to be shipped here. Almost everything got here on a ship, including the clothes I am wearing, the car that I drove in today or if I had cycled in, the steel used to manufacture my bicycle. Everything had to be shipped to this country and this is especially important post Brexit-----

Chairman: I am sorry to interrupt but we must move on. I will try to bring Mr. McCarthy back in at the end when members have asked their questions. Deputy Lowry is next.

Deputy Michael Lowry: I do not wish to be repetitive. I thank the two gentlemen for their attendance. They have been very informative and interesting and have given us a clear view of what we need to address with the Minister. Our current system has obviously failed. There is a lot of dissatisfaction out there, particularly among those who have been affected by it. Many questions have been left unanswered and this has caused grief and distress for many people. The key message is that we have to have independence. It is not satisfactory, going forward, to have the regulator involved in any way in the investigative process. Mr. Kingston referred to the importance of the regulatory framework. I ask him to elaborate on that. What should we be focusing on in terms of regulation? Mr. Kingston proposed a special investigation unit independent of the MCIB, the need for which is obvious. I ask him to outline the level of resources required to ensure that such a unit is effective, impartial and can do its job properly.

Mr. Michael Kingston: I thank Deputy Lowry. I will deal with the last issue first. The marine area deserves at least the same funding as rail, although I do not think it would cost as much as €750,000. My figures are approximate. I do not have precise figures but basically we are talking about a principal investigator with two full-time assistants, which would cost approximately €300,000, plus administration costs. In this new era, I am sure there are Government buildings that could be used in places such as Clonakilty in Cork, for example, or in Deputy Lowry's constituency - somewhere that is separate from the Department. That is the level of funding required but there is another issue of funding that relates to the Deputy's first question. He asked about the regulatory implementation needed. This has highlighted how we have failed to implement international regulation. It is unfortunate that we are here today, but in a very positive way we can turn a negative into a massive positive, which is what I believe we are doing.

As Mr. McCarthy mentioned, we cannot continue to not take international regulation seriously in the maritime sector. I am currently working with the Government of Iceland on the guidelines for the implementation of the Cape Town Agreement on fishing vessel safety. This nation has not ratified that. Officials flew to South Africa and signed it in 2012. It is for international fishing vessels. It will prevent our emergency services having to fly 250 miles to the west of Ireland to an injury on a fishing vessel if we step up to the mark and help other nations

by playing our role to get that implemented. We have not implemented it. We have not implemented the ballast water convention, the removal of wrecks convention or the amendments to SOLAS discussed by Mr. McCarthy for ships carrying hazardous substances that could have major environmental impacts in Ireland, as well as additional requirements for international passenger vessels. It does not give us the legal ability to inspect these vessels properly. That requires resources.

In fairness to the Marine Survey Office which is working on these, it is under-resourced. The same Department spent €7 million, as reported in the *Sunday Independent*, on a garden in Dublin Port and we spent €200,000 commissioning a song for christening a foreign vessel that was not even Irish flagged. That is money that could have been put to getting these regulations implemented and also on enhancing safety and our society. There must be a radical rethink of the importance of maritime regulation in Ireland. There is €50 million for the Coast Guard and €3 million for the Marine Survey Office. We are paying for the reaction instead of the prevention. Prevention is better than cure. We must examine this, review our regulation and get our house in order. It is critical for modern Ireland.

Deputy Steven Matthews: I thank Mr. Kingston and Mr. McCarthy for their assistance in scrutinising this legislation. I will confine my questions to the legislation we are examining and I would appreciate if the witnesses would confine their answers to that legislation too. I have a number of direct questions to which they can probably give short and direct answers. Will this legislation address the European Court of Justice decision?

Mr. Michael Kingston: It will address the European Court of Justice decision insofar-----

Deputy Steven Matthews: Okay, that is the answer.

Mr. Michael Kingston: Excuse me, I have not finished. It will address the decision insofar as the chief surveyor and the deputy are no longer on the board, but we are in breach of another part of the directive, which is the competency that was read out by Deputy Cathal Crowe. It is not addressing that issue. We can address that issue in the legislation, but we are not dealing with the other issues of which we are in breach.

Deputy Steven Matthews: Will the legislation allow the composition of the board to be independent?

Mr. Michael Kingston: Yes, it will.

Deputy Steven Matthews: Would Mr. Kingston accept the Minister's statement that this is not the final step in the process to review the structural framework that applies to marine casualty investigation in Ireland?

Mr. Michael Kingston: I have not read the Minister's statement but if that is what he is saying, the Deputy heard my response to the Deputies, Senators and the Chairman of this committee in which I said I have absolutely no faith in another review and do not see the point in another review. This needs to be resolved urgently. The 1998 review is clear, and the Minister needs to read that review. All the findings are there. One should read, in particular, paragraphs 3.28 and 3.29 of the 1998 review. The example of the Marine Accident Investigation Branch, MAIB, in the United Kingdom is what we need in Ireland. The review group knew that, but, for whatever reason, it went against itself in the eleventh hour of the finalisation of the report and we did not have what we should have had in the current Act.

Deputy Steven Matthews: I thank Mr. Kingston, and I will be happy to recommend to the Minister in the next session that he review the 1998 report.

Mr. Michael Kingston: I thank the Deputy.

Deputy Steven Matthews: I agree with Mr. Kingston. It makes sense to have an independent investigation unit, such as the rail accident investigation unit or the air accident investigation unit. It is perfect sense that it should apply to the marine as well. Could a fully constituted board pursue that matter or would it be a matter for the board?

Mr. Michael Kingston: No, the board must be disbanded. It is a matter for the Department to establish an independent unit through legislation. I am sure there is legislation that governs the aviation unit and the rail unit. Potentially, it would be a cut and paste, tweak job that would take half a day. It is as straightforward as that. The board must be disbanded. That is no disrespect to the members of the board or any previous members of the board who have served. They have done their best within the system in which they operated. However, as a nation, we did not put an appropriate system in place. That is not fair to them or to the investigators who have done their best, but if they are getting €2,000, €3,000 or €4,000 per investigation, they cannot do a great job. It is inadequate. Also, they must be full-time to build up corporate knowledge, and training has been a big issue. This nation has not attended the Marine Accident Investigators International Forum since 2008, even though the review group in 1998 recommended that it was essential.

To answer the Deputy's question with a point, after going the long way around, the board cannot do this. The board must be disbanded and we need a principal investigator with two assistants.

Deputy Steven Matthews: I thank Mr. Kingston and Mr. McCarthy.

Chairman: Apart from the independence of the board, and the number of members has now gone down to three, did the European Court of Justice make any other ruling in July?

Mr. Michael Kingston: No, it did not. It restricted itself to ruling specifically on the issue of the presence on the board of the two civil servants. It did not look at any other issues. It did not look at the partiality or impartiality of how reports were carried out. Ireland offered in its defence to show examples of reports, as is cited in the judgment, and the court dismissed those issues and said it was only ruling on that specific point.

Chairman: Was the hearing of the European Court of Justice on foot of a request or complaint by you, or how did it arise?

Mr. Michael Kingston: No, it was not.

Chairman: How would it have arisen?

Mr. Michael Kingston: I have continuously and repeatedly written to the Ministers in charge and I am assuming they did not even see the correspondence saying-----

Chairman: How did this case arise?

Mr. Michael Kingston: -----that we needed to rectify this so we would not have a judgment against us. As a proud Irish person, I certainly would not have instigated a judgment against our nation.

Chairman: How would it have arisen? You are an expert in the area. How would the European Court of Justice have held a hearing on this aspect?

Mr. Michael Kingston: It is public knowledge and well known in the international community, and a matter of deep embarrassment for me, that we were operating like this as a nation by investigating our own regulation. The maritime community is a small community. DG MOVE, the Directorate-General for Mobility and Transport, not marine or energy, interacts with our officials. There is a body known as the European Maritime Safety Agency - we have to report what we are doing to Europe - and it was well aware that this was happening. Everyone in the community could see the failures and, therefore, it wrote to Ireland in July 2015, half a decade ago, and asked Ireland, knowing this, how it was implementing the directive. Instead of putting our hands up at that point and sorting out the matter, we as a nation fought that position, which was an indefensible one, and arrived at the judgment we have arrived at. I do not know how much that cost but it was money that would have been well spent on what I have just discussed with Deputy Lowry.

Chairman: I will ask just a few quick questions. First, is there a blueprint in another country for what Mr. Kingston is proposing? Second, we ask that he and Mr. McCarthy send us a succinct one-page outline of what is required and what should be in the legislation. They are the two key aspects. Finally, in the context of the ruling of the Court of Justice of the European Union being abided by and the legislation being amended, can the board function at the moment with only three members? Has it a huge body of work in place such that it is imperative that its membership be increased to five in the context of this pre-legislative scrutiny? I am trying to find a way in which we can move this forward so I ask Mr. Kingston to deal with those matters. First, we will take it that the witnesses will submit to us a one-page outline of what is required. Second, will Mr. Kingston address the aspect of the Court of Justice of the European Union ruling? Can the board operate at the moment with only three members? How heavy is the workload of the board? Is there a practical measure that this legislation has to go through as currently put forward by the Minister?

Mr. Michael Kingston: Of course we would be happy to assist and will assist in any way we can. We want to get this sorted out in a positive enterprise for Irish society and will assist wholeheartedly.

Chairman: A very brief summation or submission would be good for us.

Mr. Michael Kingston: Second, my explanation to Senator Dooley is the way forward, whereby the board can technically work going forward but can bring in an experienced person full time. When I say “full time”, I mean full time on a short-term rolling contract to assist the board. That will sort out the problem in the meantime while we fix this legislation.

In fairness to the Minister, Deputy Ryan, it takes a lot to get on top of one’s brief and he may not have had a chance to understand all these issues fully. I would like that message to be conveyed to him, that we have a huge opportunity here to turn this negative situation into a huge positive.

Chairman: Where is the precedent for this being done? What is the blueprint Mr. Kingston is looking at? What other country?

Mr. Michael Kingston: We just have to look next door. We do not always like looking next door, but on this occasion we can look next door at what the UK is doing, as well as Iceland,

Finland and several other countries. Nearly every other country in Europe is operating this system.

Chairman: I ask that the witnesses make that submission to us on foot of all our hearings today. We thank Mr. Kingston and his colleague, Mr. McCarthy, for attending and engaging with the committee. Due to Covid limitations, we will now suspend for a few minutes to allow for the technical set-up for our next session with the Minister, Deputy Eamon Ryan. We hope Mr. Kingston and Mr. McCarthy will view it and give us feedback. That will form the basis of their submission to us. I ask members to leave this call and join the call with the Minister.

Sitting suspended at 2.04 p.m. and resumed at 2.09 p.m.

Chairman: The purpose of our second session is to continue our pre-legislative scrutiny of the general scheme of the merchant shipping (investigation of marine casualties) (amendment) Bill 2020. On behalf of the committee, I welcome the Minister for Transport, Deputy Eamon Ryan, and his officials.

All witnesses are reminded of the long-standing parliamentary practice that they should not criticise or make charges against any person or entity by name or in such a way as to make him, her or it identifiable or otherwise engage in speech that might be regarded as damaging to the good name of the person or entity. Therefore, where statements are potentially defamatory in respect of an identifiable person or entity, witnesses will be directed to discontinue their remarks. It is imperative that they comply with any such direction.

Members are also reminded of the long-standing parliamentary practice to the effect that they should not comment on, criticise or make charges against a person outside the Houses or an official either by name or in such a way as to make him or her identifiable. I remind members that they are only allowed to participate in this meeting if they are physically located in the Leinster House complex. In this regard I call on all members, prior to making their contribution to the meeting, to confirm that they are on the grounds of the Leinster House campus.

I call the Minister for Transport, Deputy Ryan, to make an opening statement.

Minister for Transport (Deputy Eamon Ryan): I thank the Chairman and the members of the committee for inviting me here today to discuss the general scheme of the merchant shipping (investigation of marine casualties) (amendment) Bill. Clearly, it is not the final step in the process of reviewing the legislative and structural framework governing marine casualty investigation in Ireland. The Bill seeks to ensure the continued functioning of the Marine Casualty Investigation Board in the immediate term.

The Merchant Shipping Act 1894 provided the framework for marine accident investigation until the Merchant Shipping (Investigation of Marine Casualties) Act 2000 was enacted to establish the Marine Casualty Investigation Board and implement key recommendations of the investigation of marine casualties policy review group, which reported to the then Minister in 1998. The MCIB, in accordance with the 2000 Act, is composed of a five-person board, comprising three members appointed by the Minister and two other persons who, until recently, were the chief surveyor of the Department and a nominee of the Secretary General. Under 2011 regulations, the MCIB is also designated as the investigation body for the purposes of Directive 2009/18/EC, and this applies to a subset of the marine casualties that come within the remit of the MCIB.

In recent years, a formal process was undertaken with the EU Commission relating to the

implementation of the directive and the independence of the MCIB in the context of Article 8. My Department engaged with the Commission at all stages, and when the Commission lodged a case with the Court of Justice of the European Union, it was defended with the approval of the Government and having regard to legal advice.

The CJEU judgment on 9 July 2020 declared that, by failing to provide for an investigative body which is independent in its organisation and decision-making of any party whose interests could conflict with the task entrusted to it, Ireland has failed to comply with its obligations under Article 8.1 of the directive. The issue was the presence of two Department officials on the board who were seen as persons whose interests could conflict with the task entrusted to the MCIB. There was no court finding of wrongdoing on the part of any members of the board. Following the CJEU ruling, legal advice was received on legislative and administrative options to address the findings. To address the immediate issue regarding board membership, the two board members of concern were requested to resign from the board and did so on 30 July last year.

I made amending regulations in October 2020 to address the infringement findings and to provide for a revised board structure and operation whereby the chief surveyor and the Secretary General of the Department of Transport or his or her nominee are no longer board members for the purpose of investigations that fall within the scope of the directive. My Department wrote to the EU Commission regarding the actions taken to address this and the proposed Bill to amend the 2000 Act.

The strict requirement of independence on which the judgment is based does not apply outside Directive 2009/18/EC, and the court ruling only relates to the organisation of the board in the context of marine casualties that come within the scope of the directive. However, on the grounds of consistency, it is necessary to progress a further legislative revision of the board structure to encompass the broader spectrum of investigations that come within the remit of the MCIB under the 2000 Act.

On 8 December 2020, the Government approved the urgent drafting of a Bill along the lines of the general scheme that is now before the committee this afternoon. The objective of the proposal is to amend the 2000 Act to facilitate the appointment of new members to the MCIB and to revise some operational provisions in the interest of the continued and consistent functioning of the MCIB as the investigative body in the State.

Through a substitution of section 9 of the 2000 Act, as proposed in head 3, a revised board composition is proposed, consisting of a minimum of five members and a maximum of seven members, who will be appointed by the Minister for Transport, having regard to a list of desired skill sets. This facilitates the addition of further expertise to the board, including the membership, and confirms that serving or former officers of the Department will not be eligible for appointment. By including the skill set requirement in legislation, the current practice and approach through the Public Appointments Service recruitment system will be formalised.

The general scheme proposes amendments to sections of the 2000 Act that relate to the general operation and functioning of the board. I am conscious of time and so I will not go into the detail but my full statement will be published on the committee website. However, I would like to mention some details.

Head 7 amends section 18 to facilitate the engagement of additional expertise by the board and removes all references to investigators nominated by the chief surveyor from the Marine

Survey Office. This confirms the current situation.

Head 10 amends section 28 to confirm a specific requirement for persons to notify the MCIB of information regarding the marine casualty. Head 12 amends section 34 so that the board will endeavour to publish all investigation reports within 12 months of the occurrence of the marine casualty. Head 13 ensures that the Marine Survey Office will be aware of marine casualties in view of possible safety implications or compliance issues that may need to be addressed. Head 15 facilitates the transposition into Irish secondary legislation of recent amendments to the International Convention for the Safety of Life at Sea.

I again emphasise that the primary objective of the proposed Bill is to ensure the continued independent functioning of the MCIB in the immediate term. I am keen for the Bill to progress as quickly as possible to facilitate the appointment of new members to the MCIB as there are risks associated with the current reduced board.

I am aware of the correspondence that has been received by the commission regarding the operation of the MCIB. I reiterate that the MCIB acts independently of me and my Department and, for that reason, it is not appropriate for me to comment on individual incidents, MCIB reports and recommendations, or allegations and statements made. These issues are separate to the pre-legislative scrutiny of the current general scheme.

As outlined in my letter of 19 January 2021, I consider that the time is now opportune to undertake a fundamental review of the structures in place for marine accident investigations. This review will be carried out by an independent expert and concluded over the coming months. This is by no means a criticism of the MCIB board and its members past and present, its secretariat or its investigators and the valuable work they have undertaken. However, circumstances have changed since the 1998 report of the policy review group and the enactment of the 2000 Act. In light of the CJEU judgment, I consider it to be an opportune time to have such a review.

The review will look at how maritime accident investigation is structured overseas and how other modes are treated in Ireland. Therefore, this Bill is a transitional measure and not a permanent legislative framework for marine accident investigation. Further legislation may be required following completion of the review. Pending the outcome of the review, it is imperative that the State continues to have a functioning marine investigation body in place. This requires the amendment of the 2000 Act.

I thank the Chairman and the committee for taking the time to undertake pre-legislative scrutiny of the general scheme of the Bill and I look forward to hearing the views of committee members on the matter.

Chairman: My thanks to the Minister for being succinct.

Deputy Darren O'Rourke: My thanks to the Minister. I confirm that I am in the Leinster House complex.

The Minister likely heard the powerful testimony from Mr. Kingston in the previous hour. There were some fundamental criticisms in respect of many aspects of the Bill and of its entire premise. There were criticisms in respect of Ireland not following best practice and international examples, including some nearby, in terms of how we might approach these matters in a more comprehensive and independent manner.

There is a need to decouple the regulator from the investigation unit and establish an inde-

pendent full-time and permanent investigation unit. There is a need to resource it adequately. The point is that this legislation is the time to do all of this. There is no need for an additional review and the 1998 review set things out clearly.

I appreciate the opening comments of the Minister. Is he committed to addressing the issues that Mr. Kingston outlined in his comments in the past hour? Does the Minister accept those points? Will he outline how he will address them if he is committed to that? Will he do it in this legislation and grasp the opportunity, as Mr. Kingston outlined and as the Minister acknowledged? Will he take that opportunity in this legislative measure?

Deputy Eamon Ryan: If I recall, Chairman, at the end of the last session, you suggested that Mr. Kingston present a report or a note to the committee-----

Chairman: A summation.

Deputy Eamon Ryan: Yes, a summary of his views, which makes a great deal of sense. If the committee wishes to share it, that could further inform the review we intend to make, which I mentioned in my opening remarks, as would engagement with other stakeholders and relevant parties who would be interested in that. It is timely and important to have that review. It will take a certain amount of time, but I hope not an excessive amount. It would be several months rather than longer. I want that to take place. Any such issues are best addressed within that review.

More immediately, we need the Bill before the committee for pre-legislative scrutiny, with a view to it going to the House. In that interim period, and legislation takes time to draft and reviews take time for all views to be heard and so forth, I do not want to run the risk that we might not have a sufficient number of board members for the Marine Casualty Investigation Board, as it is currently constituted, to be able to do its work. That is a risk I do not believe we can take over any period. For that reason, I wish to proceed with this relatively simple measure within the context of all the questions raised. It is important legislation to ensure we are not at that risk, and in order that we can proceed quickly to appoint new members so we will not fall short under any circumstances should there be a need for the investigation unit. There is always an ongoing need. This is an ongoing risk to which I do not wish to leave us exposed. By all means, I look forward to seeing the committee's correspondence and to include that in the consideration by an independent reviewer, but that is not the purpose of this legislation. This legislation has an immediate, urgent purpose - to reduce the risk of us not having an effective board in the meantime.

Deputy Cathal Crowe: I thank the Minister for attending the meeting today and engaging with the members. Before the Minister joined the meeting, we heard from Mr. Michael Kingston. He put a number of points to us and outlined concerns relating to the Marine Casualty Investigation Board. As I understand it, the board has jurisdiction over investigating accidents at sea and on water, reporting back to the Department and, arising from that, making recommendations for action so such accidents, one hopes, would not recur. It is the latter part on which I wish to focus. I understand what the Minister is saying. He is talking about a relatively small legislative measure for the continuity that is required. What Mr. Kingston outlined this morning, and what we need to hear from the Minister, is what express actions can be taken parallel to that to ensure that concerns can be addressed.

In terms of follow-up and actions, that is a key part of what the Marine Casualty Investigation Board does. In 2016, there was an accident in my county in which a volunteer member

of the Irish Coast Guard, Caitríona Lucas, tragically lost her life off the coast of Kilkee. I will not go into that incident. However, arising from that, investigations occur. We have heard of many instances from Mr. Michael Kingston in recent days. An investigation gets under way and recommendations are brought forward to the Department. The fact is that in Kilkee there is still a 7.5 m Delta rigid inflatable boat, RIB. It is a perfect vessel and can take to the sea at any time. It is fully serviced, but it cannot take to the sea because the volunteer members of the Coast Guard are not fully trained. That recommendation was made to the Department in 2018 when all this was investigated.

We need to look at what Mr. Kingston said. The accident happens and it is a tragedy for a family. An investigation gets under way, it comes before the Department and an action should arise thereafter, but there are still too many units of the Coast Guard dotted around the country that have vessels which its personnel are not fully trained to take to sea, or if they take the vessel to sea they can only go 50 or 60 metres away from the harbour. They cannot go out to the outer waters. I respect what the Minister says about the minor details that this legislation requires, but we are all really hoping for some assurances that the Minister can take or promise actions that will deal with some of the concerns Mr. Kingston has outlined and also deal with the example I have given today, where there are still shortcomings in terms of recommended actions being followed up in the Department.

Deputy Eamon Ryan: To be clear, the Marine Casualty Investigation Board's recommendations are made independently of the Department. That is important for the reason the Deputy mentioned, that if there are recommendations that require the Department to take action, it must have that independence. That, in effect, was the underlying direction in Article 8.1 of the European directive, which is to require that independence. That is what we are addressing in this legislation.

With regard to the concerns in that case and other issues in respect of previous investigations, the European court decision did not relate to individual places or individual actions that had or had not been taken as a result of a report. That is something we should take into account as part of this review. It is to examine the wider process, and the review process will be the opportune time. It is more than 20 years since 1998 so it is timely for us to do it. The court decision and the need for changes to the board prompted the review, but it is only prompted from the issue of independence. The review allows us to look at a range of different issues with regard to the functioning of the board that can then be addressed in legislation. Indeed, if within that process we see that there are actions that need to be taken more immediately by the Department or others, I commit fully to making sure those actions are taken.

Deputy Cathal Crowe: At the centre is the family who loses a life. An investigation gets under way, but that family and the nation wait to see what remedial actions happen. That is the litmus test for how successful the investigation board and the Department are. That is the detail we would love to return to at a future meeting.

Chairman: Yes. I call Senator Buttimer, who has four minutes.

Senator Jerry Buttimer: I thank the Minister. I will not take up all that time because everything has been encapsulated. What we are trying to achieve collectively is to restore confidence in the independence and greater transparency of the Marine Casualty Investigation Board. Many people who have suffered the trauma of losing loved ones are unhappy. The European Commission referral of Ireland to the European Court of Justice for failing to uphold European law on impartial investigations of marine incidents is raising concerns. We heard

from Mr. Kingston and from other people who have given their testimony to us individually or to the committee today. I join other members in asking for that review and that independence be required to be achieved. It is important that we understand the rawness of this for many people. It is equally critical that we, as legislators, and the Minister - to be fair, his engagement with us has been positive - look at the entire operation in a manner that is timely and proactive, and that we ensure the concerns expressed to us are examined and that the Marine Casualty Investigation Board is fit for purpose. I hope we can do that together. Mr. Kingston made a fine presentation to the committee and we have heard him on other platforms as well. I am heartened by the Minister's contribution this afternoon.

Deputy Ruairí Ó Murchú: I take it from what the Minister has said that he is open to listening to and possibly addressing Mr. Kingston's difficulties as regards independence and the necessity for an investigative unit that is fit for purpose. This will be dealt with in the review to which he is committed. If I may, I will deviate in the question I will ask, given the set of circumstances in which we find ourselves with regard to tougher travel guidelines and restrictions being put in place, which we all support. It is possible that this all may go further into the future given the difficulty around variant strains and so on. We have all been lobbied by the aviation sector on securing the rehabilitation of a viable aviation sector beyond this. This is a very important issue for the committee. The necessity of connectivity is a huge factor in our economy. What interaction has the Government had with airlines, with airports, with workers and with other stakeholders in respect of any necessary supports, given the situation in which we find ourselves?

Deputy Eamon Ryan: I will be honest that most of the interaction with airports and airlines in recent weeks has been in relation to the management of the immediate crisis situation. I first wish to thank the airlines and the ferry companies. They have had a huge role. The Deputy referred to the airlines in particular, and one of the more immediate issues is that following the announcement of the UK variant on 19 or 20 December, we immediately introduced a ban on travel from the UK. That left a situation where nearly 1,500 Irish citizens, for a variety of reasons, found themselves in the UK and having to get home when we had stopped all air and ferry travel. For example, there was a mother who had gone to London to bury her son. I commend the airlines and the ferry companies on the support they gave to the State at that time. Ryanair and Aer Lingus especially set on a series of flights whereby the Department of Foreign Affairs was able to repatriate Irish citizens who were in difficult circumstances.

In the last ten days with the introduction of the polymerase chain reaction, PCR, test requirement, where all passengers coming to the island of Ireland must have a current negative PCR test, again we must work very closely with the airlines and the ferry companies to make sure they were carrying checks on passengers before they boarded to make sure they did have that negative test so as to minimise the chances of people arriving here without one. The airlines and ferry companies were very supportive of that and I thank them formally for the proactive co-operation they gave in managing this real crisis.

Before the Christmas period we had engaged more widely on the issue of supports, not just for airlines and the ferry companies but also for the airports, and in particular announced additional measures coming from the Covid emergency fund for Cork, Shannon and other airports. There has also been ongoing engagement with the airlines around lending supports and other mechanisms to help them. We agreed at the time that this was not just a fixed support and that we might have to come back to it. I will be honest that the immediate priority is getting through the necessary new legislation to introduce mandatory quarantine systems for those people com-

ing from certain countries or who have not undertaken the PCR test, as well as the other statutory instruments that manage how we police our efforts. I hate to put it in those terms but the Deputy is aware that we now have new Garda checkpoints on approaches to airports because we do not want people flying. We want to minimise flying at this time. That is the more immediate priority, while recognising it has significant consequences for people in the travel and tourism industries, and others, and that we must provide ongoing support for those industries because they will have a difficult next few months, like the rest of the country, but particularly because they bear the brunt of a dramatic reduction in travel.

Deputy Ruairí Ó Murchú: I agree with the Minister on the immediate priority being the restrictions. I welcome that the Minister said there will be ongoing engagement and that future supports will be needed, some of them possibly fairly soon. I would appreciate it were the committee to be updated on that level of engagement.

I add my voice to the call that if the Minister is committed to the review of the MCIB, it should happen relatively quickly and that the Minister would give an opportunity to deal with the issues that have been put in front of the committee today.

Senator Timmy Dooley: I thank the Minister for his presentation and for his engagement with us. Many of us have no expertise in this area, an area on which we depend to a great extent, and it is no different from the expertise the State has through its investigation units for air and rail accidents. We should be looking at the solution to the problem by putting in place a permanent investigation unit of a similar standard.

I recognise and respect the Minister's point on the review, but those of us who have had the honour and privilege to serve around these Houses for a number of years are well used to departmental speak. I am not accusing the Minister of it at all; he is new to this Department. Departmental speak when it relates to a review is, effectively, the long finger and to move on. In his written and oral presentation, Mr. Kingston has said that now is the time. The focus of the Oireachtas is on marine casualty and accident investigations. It is not a hot topic. It probably will not make it to the stocks any time soon again. Here is an opportunity to have a comprehensive solution and resolution to the problem. Yes, there is the issue that arose from the European perspective, and the issue of the independence of the board will be resolved, but Mr. Kingston has also highlighted the issue of the patchwork of investigations that do not necessarily have that common thread, and the haphazard approach to investigations, which are subcontracted out to individuals on a casual basis. This does not in any way cast anything other than respect for the people who do these investigations, but bringing together a unit that would develop and build corporate knowledge over time is something we should strive for.

Mr. Kingston referred to the funds spent by the State per death, which he said was a rather crude way to do it but it is factual, versus the cost to the State of investigations of accidents in any other way. Based on all the information that is available I suspect that we do not need a long review. We do this with the Air Accident Investigation Unit and with the Railway Accident Investigation Unit. I am aware that in recent years the State has really upped its role in the investigation of road accidents, which the Minister will be familiar with. At one time it was the case that after a road accident, even one ending in a fatality, the road would be cleared and swept by the fire brigade within an hour or two of the accident taking place and the cars would be moved. That does not take place any more because we have recognised there is much learning from every accident that takes place, which builds our ability to react and prevent future accidents. Obviously, the same should apply to our Marine Casualty Investigation Board.

I appeal to the Minister to give serious consideration to what Mr. Kingston has put forward. He does so with a vast amount of experience and I am sure he would be prepared to work with the Department if there was a view that it could be advanced quickly enough to form part of this legislation.

Deputy Eamon Ryan: I thank Senator Dooley. I recall that the original legislation in 2000 was preceded by the review in 1998, two years previously. In my general experience, and the Senator has had a very similar experience in the way the State operates, if we could implement a similar timeline to carry out a review, it does take time to draft appropriately because it needs to be right and one must listen to the various stakeholders. If we were able to carry out that review and introduce broader legislation on the back of it within one or two years, that would be the State operating in a way that is in line with what we have done in the past, which is appropriate. In the meantime though, we have a risk in not having a quorum for the existing board and that is not a risk we can afford to take. One of the benefits hopefully of good investigations is that one learns lessons and one reduces and manages risk, as well as trying to provide answers for families who are the heart of this, who might have lost someone. Managing and reducing risk is what good investigation systems are about. One of the risks we need to immediately manage is the risk of us not having an effective board should we, for whatever reason, lose one of the three existing board members. Therefore, just on a risk management basis, it is right to put through this legislation, enhance the board, maintain its independence and then carry out a review and introduce legislation to address some of the wider issues.

Senator Timmy Dooley: I know the Minister's track record and I put a lot of stock and faith in a commitment he might give. Perhaps he would write to the committee, which would be helpful to us. I accept he has given oral testimony, but it would help the committee if we have his commitment in writing, as to how he sees the situation proceeding. That is important. What we have all learnt here would indicate that we are seriously out of line with reasonable practice, let alone best practice, across the developed world.

Deputy Eamon Ryan: I hope the opening statement, which is on the record and is in written format, will do that. If any further commitment is required, I will have to give it, but the opening statement gives a very clear sense of direction and intent for me and the Department. I hope that helps.

Senator Timmy Dooley: I thank the Minister.

Deputy Joe Carey: I will follow a similar vein to that of Senator Dooley. We had an international expert before the committee. He made a written submission and a very strong verbal submission to the committee today. He has outlined the flaws that brought the country to the ECJ and resulted in a ruling. The Government had to act on that. I accept the Minister's fear is that the board might not function properly, but section 16 of the Act enables us to deal with that. Outside experts can be brought in to take on that role. Now is the time to deal with the issue. It is a long time since 1998. Since then, we have been operating in a space where the board was not independent. We had a situation where people from the Department were investigating themselves and setting down criteria. That is not best international practice.

We have an internationally renowned witness before the committee today, Michael Kingston. He advises other jurisdictions. He has pointed out to us the flaws in our current regime. These flaws have a direct impact on families on the ground. They have resulted in delays in reports and recommendations not being followed. Mr. Kingston is making a personal plea today based on his impeccable credentials and his personal involvement. He told the committee

that his own dad was lost in a marine tragedy. He has a vested interest in the matter. He comes across as very genuine. I strongly believe that now is the time to address this situation. There is a means whereby we can fill the gap on the board currently and deal with the legislation now. My fear is that this issue will be pushed aside and will not be addressed and people will lose out as a result.

Deputy Eamon Ryan: Experts can be brought in, by all means, but I do not think we can reconstitute the board. The risk would still remain that the board would not be quorate and that is the real risk that this legislation is seeking to prevent. I do not rule out the introduction of other measures and bringing in technical and other expertise, but we do need to sort one element of the risk to the board's structure. After we minimise the risk, we can deal with a variety of issues that a wider review will allow us to address. As I indicated to Senator Dooley, we will commit to doing that and be open to all the reports or other analysis the committee might forward on or share.

Deputy Joe Carey: I suggest that the detailed submission made by Mr. Kingston should be sent to the Minister and that the Department should respond by addressing the points that have been put forward on a point-by-point basis. This is pre-legislative scrutiny and it would be right and proper that that would happen. Will the Chairman ask the Minister to allow that to happen?

Chairman: Yes. We will forward on all the up-to-date submissions we have got from Mr. Kingston and his colleague, Mr. McCarthy, to the Minister and the Department. I expect he will respond to them as quickly as possible.

Deputy Eamon Ryan: Absolutely. I do not believe the review process should delay the introduction of the legislation, which is a very specific legislative task that we have. We will engage with the committee on the wider task.

Senator Gerard P. Craughwell: It is the first time I have addressed the Minister since his elevation. I thank him for agreeing to come before the committee for today's discussion. I am always wary when I hear that somebody wants to get legislation through without pre-legislative scrutiny because that is what leads to many of the problems that arise. When legislation is bad, it takes forever to correct it. I appreciate the Minister taking the time to listen to what has been said. I hope he will take it on board.

My colleague, Deputy Cathal Crowe, referred to the tragic accident in Kilkee in 2018 in which the life of a volunteer member of the Irish Coast Guard was lost. He made the point that as part of the outcome, a need for training was identified. In 2017, we had the loss of Rescue 116. It is three years on from 2017 but there is not a word about a final report or even an interim report. I consider it to be the role of the board to expedite the investigation as quickly as possible and to issue a report. I seek the Minister's view on that. I realise we are living in an extremely litigious country but air accident investigations take place all over the world and nothing stops the report being brought out in a timely way. A medical surgeon told me one time that if the same procedures were applied in a hospital theatre as are applied to air accident investigations, and hopefully marine accident investigations, there would be very few deaths in operating theatres. Does the Minister agree that immediately after the investigation, when the report is issued, leaving aside the sensitivities, there should be a plan of action statutorily built into the process to force the actions highlighted by the investigation board to be implemented and a timeline put on the implementation of any recommendations? That could then be subject to a review by an inspector appointed by the Department. It could possibly report back to the Oireachtas but it should certainly report back to the board.

We must learn from the mistakes and the accidents of the past. Putting a board in place to carry out an investigation and stopping at that stage would be a pointless exercise. There must be a complete series of events that will minimise the chances of a repeat of the accidents being investigated.

Deputy Eamon Ryan: I thank Senator Craughwell. First, the R116 investigation is obviously an air accident investigation rather than a marine investigation even though the accident occurred in the marine environment. It is the responsibility of the air accident investigation unit. Mr. Pat McCann, a barrister, is carrying out a specific review of one aspect of that which is provided for under the due process system. I have encouraged the Department and all relevant stakeholders to ensure that the investigation is really swift and thorough. I agree with Senator Craughwell and a number of other Deputies who have referred to the human aspect of this in terms of the need for families to receive detailed and fair reports quickly. As part of this review, we should look at the history of implementing recommendations. The purpose is to give answers to questions for families but also to reduce the risk of similar accidents occurring in the future. In that context, it is vital that recommendations are followed through. I agree with Senator Craughwell that this should form part of our review. We should look at the record so far in terms of implementing specific recommendations. If there is any gap there in terms of follow through, we should avail of the opportunity to tighten things up.

Senator Gerard P. Craughwell: I appreciate what the Minister has just said. He will understand that I used the R116 accident investigation as a glaring example of something that has dragged on in perpetuity. Very little can be learned from that accident until the report is finalised. I understand that there are difficulties with that but I was merely using it as an analogy.

Chairman: Deputy Matthews is next. He has four minutes.

Deputy Steven Matthews: I thank the Minister for attending in order to assist us with our scrutiny of the legislation. We discussed the legislation with witnesses at an earlier session. I will confine my questions to the legislation before us. I asked the witnesses if they agreed that this legislation addresses the European Court of Justice's ruling or decision and if it would give the MCIB the independence it requires in terms of composition and they were broadly in agreement with that. I also put the point in the Minister's statement to them that this Bill is not the final step in the process of reviewing marine investigations but the witnesses were of the opinion that we do not need another review and that further investigation is not required. They pointed out that a report was produced in 1998 and the recommendations therein would still stand. They argued that any review should be based on that report. I made a commitment to the witnesses that I would recommend to the Minister that his Department look at that report.

We discussed the issue of an accident investigation unit and the requirement for a separation between those who investigate and those who regulate. We already have a railway accident investigation unit and an air accident investigation unit. It makes sense, therefore, to consider setting up a marine accident investigation unit. Part of the remit of such investigation units is to consider near misses. When we consider near misses, we can often look at structures or process that can prevent accidents. That is an important part of any investigation unit. One hopes that these units are never busy but one likes to know that they exist.

Deputy Eamon Ryan: I appreciate Deputy Matthews' questions. The core purpose of this legislation is to address the European Court of Justice finding that a separation between investigation and regulation is needed. I do not believe we can rely on the 1998 review. We should look at what has happened in the intervening period. Our understanding of investigation struc-

tures, regulatory systems and the separation of same is an immediate issue in the air area at the moment, as we separate our air regulator into two distinct functions. This is an example of how this area continues to change and it is why I do not believe we can just rely on the 1998 review.

Senator Craughwell spoke about looking at recent cases and the follow-through on recommendations and, in that context, it is appropriate for us to conduct a further review. Even in terms of what Mr. Kingston is saying, some elements may relate to the period prior to 1998 but others relate to the period since then. Therefore, it is appropriate to conduct a review which we will commence shortly. We will include input from this committee in that review.

Chairman: Does Deputy Matthews have any further questions or comments?

Deputy Steven Matthews: No, I am finished.

Chairman: I have a few questions myself. Mr. Kingston appeared before us earlier today and I must say that he was a knowledgeable and compelling witness. He is an expert in the area and obviously also has a personal interest, given the effect of the Whiddy Island accident on his family. His knowledge of the issues was absolutely on point. There appears to be a general acceptance that there is a need for an overall change to the MCIB, but the question is how we get there. Mr. Kingston is of the view that the 1998 review is still relevant. He believes that there is a need to structure the new board in a way that is similar to the board in the UK and that there is a need for particular expertise in the investigations unit. His concern is that a review will long-finger the issue and delay the legislation. We will forward Mr. Kingston's comprehensive documentation to the Department.

As part of the pre-legislative scrutiny process, would the Minister consider amending the legislation to take into account some of the substantive elements of the 1998 review, accepting that it must be updated? Following on from that, what is the timeframe envisaged for the review and for bringing forward the legislation? The issue is not just the review but also the legislative measures that are required to make the necessary changes.

It is accepted by the Department, the Minister, Mr. Kingston and Mr. McCarthy that there is a need to reform the MCIB. The only question is how we get there.

Deputy Eamon Ryan: Most of the recommendations in the 1998 review were embodied in the 2000 Act. That Act was, in a sense, the legislative response to the 1998 review. I do not believe that the 1998 review is sufficient, particularly now that we are seeking to amend the legislation that resulted from that review. As I said to Senator Dooley, my intention is to initiate a review within months and not put it off. While I do not want to pre-empt the review, if there is a need for further legislation, I would hope it would be delivered in the same sort of timeframe as the 1998 review and the subsequent 2000 Act. To a certain extent, that will depend on the workload within the Department, the workload of this committee and the legislative timetable of the Dáil, but that is the sort of approach that I think we should take.

Chairman: Are we talking about six months?

Deputy Eamon Ryan: I think the review will take several months but no longer. That is my expectation having listened to the Department.

Chairman: We are getting much correspondence about the airline industry, although particularly in respect of Aer Lingus, and what is now unfolding as an effective ban on non-essential air travel. Does the Minister see a situation where the Government, particularly his Depart-

ment, will be providing further State support to airlines such as Aer Lingus? Many people are extremely worried about their livelihoods and work. Does the Minister see the State providing further funding, or State support, to ensure airlines like Aer Lingus and Ryanair can come through this unfolding situation of what is an effective ban on foreign air travel outside of essential travel?

Deputy Eamon Ryan: I do not want to predict the outcome of what is going to happen in the next six months or year. I think the Tánaiste was correct, although some people criticised him, to be honest about concerns around the variants and the fact that this is not going to be immediately resolved. I hope the arrival of the vaccine and its widespread uptake and distribution, not just here but in other jurisdictions and other countries, will lead to a much safer environment. We will continue to learn about this virus and see how we can manage it. However, I do not think we should give any false promise or timeline as to how that would happen. Hopefully, it will be sooner rather than later. We are working collectively towards that goal.

It is not just in respect of the aviation industry. There are huge consequences for the tourism industry, hospitality and a whole variety of different sectors that are particularly badly hit. I listened to the Minister for Finance, Deputy Paschal Donohoe, and the Minister for Public Expenditure and Reform, Deputy Michael McGrath, and we have made provision for some of the contingencies we will have to cover. That will include, in all likelihood, extending the periods for PUP, EWSS or other CRSS payments, many of which are benefitting the aviation, hospitality and tourism industries. However, there is a real challenge here. The fiscal capability of continuing to offer supports is going to be really tested but to date the Government has shown clear intent. We manage this by providing sufficient supports and by not leaving industries completely unprotected but we do not know the scale, timeline or nature of it and I cannot commit to it today.

Chairman: In terms of testing, the validated antigen testing is now going to be used in hospitals over the next number of days. The committee, in its aviation report, recommended that there would be fast-tracking of research on the use of antigen testing. What role does the Minister see for antigen testing for essential workers in air travel? What is the up-to-date position of the Government on quarantine, mandatory testing and PCR testing? When does the Minister expect the legislation will come through to put those particular measures into effect and how long does he anticipate they will last?

Deputy Eamon Ryan: We have mandatory PCR testing now. It is mandatory for anyone coming into the country. Many European countries and the UK have done something similar, so in effect there is mandatory testing, particularly on international air travel. We have also introduced antigen testing and not just in the hospitals. Yesterday was the first day of the introduction of antigen testing on truckers and hauliers going from Ireland to France. I know that for hauliers this is a further imposition in difficult times with Brexit and all the complications that it brings but one upside may be that it gives us exactly what the Chairman is suggesting. It gives us a clear model and example of how it is working, the timelines, the cost, the success and the pick-up rate. What we will see in part of the solution we are going to move towards is increasing testing like that. It is not foolproof and I would not give false confidence that it is going to catch every single thing. There will be false negatives-----

Chairman: The Minister is putting forward proposals on PCR testing when people leave, when they arrive and five days later. He is talking about quarantine, isolation and mandatory quarantine. When does the Minister think he will be at a point when legislation will be published to provide absolute certainty on what is going to be put in place? It is only one of the

elements in dealing with the virus. However, it is an element the public are very tuned into and interested in. I ask for certainty and full clarification on what measures will be brought in and when they will be brought in and when the legislation will be introduced.

Deputy Eamon Ryan: My recollection of the Attorney General's advice on this is that we can introduce fairly immediately regulations on passengers coming from outside the EEA, the wider European area. We need primary legislation for Irish citizens and people living in the EEA. I would imagine that legislation will be turned around in record time, although this is subject to the Whips agreeing to it, what Dáil time we can get and the Attorney General being able to draft and proceed with the legislation. I would imagine also the Cabinet will be discussing the legislation next week. I do not know whether it will come to the transport committee. Such legislation relates to the health Act. It will be probably the health committee that will have responsibility for bringing it through what will have to be a rapid pre-legislative scrutiny. I do not know if we could even call it pre-legislative scrutiny when the timelines are going to be so tight.

Chairman: When does the Minister think it will be in operation? The new mandatory quarantine and-----

Deputy Eamon Ryan: We are talking days. It will depend on what the Whips agree in terms of business-----

Chairman: Does the Minister believe it will be in operation within two weeks?

Deputy Eamon Ryan: I would expect so.

Senator Gerard P. Craughwell: Would the Chairman permit a question to the Minister on the quarantine issue?

Chairman: On the-----

Senator Gerard P. Craughwell: The quarantine issue.

Chairman: We have one minute because we have to be out of here in a minute.

Senator Gerard P. Craughwell: Last night on the "The Tonight Show" a Minister of State we were still at the stage of hoping people will self-isolate when they come home, if they have to quarantine. Surely we could have taken over one or two hotels in Dublin and bused people straight to the hotel similar to what is being done in Australia. When one arrives in Australia, one is brought straight to a hotel to isolate. It would cost €1,500 per month while there-----

Chairman: I call the Minister, Deputy Ryan.

Deputy Eamon Ryan: There are many people currently in the Citywest Hotel where we have such a facility and where people can isolate safely. It is very busy, unfortunately, because of the rate of incidence in the community. It will be mandatory to quarantine at home and the gardaí will have the ability to follow up and check if people are where they have said they will be for their period of isolation. That is a significant change. I remember talking to NPHE, the health advisers. That was one of the things they really wanted, namely, to strengthen the regulatory powers we have to check people are following the guidance. That, combined with quarantine in a hotel for those coming from certain jurisdictions and without a PCR test, is the key component in tightening up, which we need to do.

Chairman: I thank the Minister, Deputy Ryan, and his officials for attending today and engaging with the committee. We will follow up on the submission we get from Mr. Kingston and we will give the Minister the existing information. We would ask the Minister to work in co-operation with Mr. Kingston. He has key and very valid points to make.

The joint committee adjourned at 2.59 p.m. until 1 p.m. on Tuesday, 2 February 2020.