



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

TUAIRISC OIFIGIÚIL—*Neamhcheartaithe*
(OFFICIAL REPORT—*Unrevised*)

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SEANAD ÉIREANN

Déardaoin, 10 Meán Fómhair 2020

Thursday, 10 September 2020

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Teachtaireacht ón Dáil - Message from Dáil

An Cathaoirleach: Dáil Éireann passed the Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020 on 3 September 2020, to which the agreement of Seanad Éireann is desired.

Resignation of Minister and Assignment of Department

An Cathaoirleach: I must inform the House that letters dated 24 August and 2 September 2020 have been received from the Secretary to the Government regarding the resignation of a member of the Government and the assignment of the Department of Agriculture, Food and the Marine to a Minister. The correspondence will be published in the Official Report and the Journal of the Proceedings of the Seanad. The first correspondence is as follows:

Roinn an Taoisigh

Department of the Taoiseach

24 Lúnasa, 2020

Cléireach an tSeanaid

Tá orm a chur in iúl duit

(1) gur thairg Dara Mac Giolla Laoire, T.D., a éirí as oifig mar chomhalta den Rialtas don Taoiseach ar 21 Lúnasa, 2020, agus gur ghlac an tUachtarán, ar chomhairle an Taoisigh, leis ar an lá chéanna;

(2) go ndearna an Taoiseach, 21 Lúnasa 2020, i bhfeidhmiú na gcumhachtaí a thugtar dó le fo-alt (1) d'alt 4 den Acht Airí agus Rúnaithe (Leasú) 1946, an Roinn Talmhaíoch-

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ta, Bia agus Mara a shannadh dó fhéin.

Rúnaí Cúnta an Rialtas

The second correspondence is as follows:

Roinn an Taoisigh

Department of the Taoiseach

2 Meán Fómhair, 2020

Cléireach an tSeanaid

Tá orm a chur in iúl duit go bhfuil

(1) an tUachtarán, ag gníomhú dó ar ainmniú an Taoisigh, le comhaontú Dháil Éireann roimh ré, inniu tar éis Cathal Mac Conall Óg, comhalta de Dháil Éireann, a cheapadh mar chomhalta den Rialtas, de bhun Airteagal 13.1.2^o den Bhunreacht; agus

(2) an Taoiseach, i bhfeidhmiú na cumhachta a thugtar dó le fo-alt (1) d'alt 4 den Acht Airí agus Rúnaithe (Leasú) 1946, inniu tar éis an Roinn Talmhaíochta, Bia agus Mara a shannadh do Cathal Mac Conall Óg.

Ard-Rúnaí an Rialtais

Resignation of Leas-Chathaoirleach

An Cathaoirleach: Senator Jerry Buttimer has informed me, by letter dated 21 August 2020, of his resignation as Leas-Chathaoirleach of Seanad Éireann. The election of a Senator to fill the vacancy is by way of motion made after notice.

An tOrd Gnó - Order of Business

An Cathaoirleach: In July, Members stood in the Seanad in silence to remember Dr. Syed Waqqar Ali and seven other front-line workers who lost their lives in the service of others during this pandemic. This week, Dr. Ali's daughter, Dr. Samar Fatima Ali, spoke of her unending grief at the loss of her father, one of those front-line workers. The heroism of Dr. Syed Waqqar Ali and the grief of his family throw the events in Clifden in August into sharp focus. I raise the issues of that event and the heroism of the Ali family and our front-line workers to remind Senators of our duty as representatives to redouble our efforts to restore the trust of the public. The event in August has undermined public faith in public representatives. This has led to citizens of this State questioning if there is one rule for them and another rule for the lawmakers. In this country, all citizens are equal. Nobody is above the rules. That is the case whether one is a Minister, a Senator, a Commissioner or a judge. The contrast between Clifden and the sacrifices that hundreds of thousands of people are making every day has been corrosive on the public

trust in politicians at a time when we need all the moral authority possible in asking people to make life-altering sacrifices. At this stage, Members of this House who attended that dinner in Clifden have acknowledged their mistake and expressed their regret. They have been sanctioned by their parties. I know that they will be at the forefront in regaining the public trust over the coming years. The reality is that as politicians and representatives we owe it to Dr. Ali and his family and all families affected by Covid-19 to work together over the coming days, weeks and months to support our communities and our country as we continue to fight this pandemic.

Under the powers conferred on me by Standing Order 22(2) of the Standing Orders of Seanad Éireann Relative to Public Business, I summoned Seanad Éireann to meet at 10.30 a.m. on 10 September 2020 for the purpose of considering the Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020. Under Standing Orders, today's business is confined to the subject matter set out in the summons dated 7 September 2020, specifically, No. 1 on today's Order Paper. Directly related to No. 1 is No. 2, the earlier signature motion to enable the Bill, if passed, to be signed by the President at an earlier date. No other business can be taken today. Contributions on the Order of Business will, therefore, be strictly confined to the arrangements for the taking of the two items of business, and any amendments proposed to the Order of Business must relate only to those arrangements. Contributions by Members to the substance of the Bill should be reserved for the debate on the Bill and should not be made on the Order of Business.

I invite the Leader to propose the arrangements for the taking of Nos. 1 and 2.

Senator David Norris: I would like to speak briefly on the Cathaoirleach's contribution. I am taken aback by this measure he has taken. There are various, extremely important matters facing this country, one of them Brexit.

An Cathaoirleach: The Senator cannot debate it now.

Senator David Norris: We are in a terrible situation. There are two views in Britain, one of which is that an Englishman's word is his bond, which was my father's attitude, and the other Mr. Johnson's view, which seems to go with the French view, *perfidie Albion*. How can we trust a country that violates international law? This is a really serious matter and we should not be precluded from discussing it.

Senator Timmy Dooley: Hear, hear.

An Cathaoirleach: I intend to enforce strictly what I have outlined. As Senator Norris is father of the House, I have given him leeway and I will call him again on the Order of Business.

Senator David Norris: When we have an Order of Business.

An Cathaoirleach: This is the Order of Business, which, as I have outlined as per Standing Orders, is confined to the arrangements which I now ask the Leader to outline.

Senator David Norris: May I say on that point-----

An Cathaoirleach: I will allow the Senator to comment as he is the father of the House.

Senator David Norris: I appreciate that. As the father of the House, I feel a certain responsibility to the democratic traditions of this House. We have domestic situations around fobbing in. We are told we must fob in. We are also told that we must stay at home, observe social distancing and stay out of the office. The messaging is contradictory.

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An Cathaoirleach: That is a matter for the Committee on Procedure and Privileges, CPP, where Senator McDowell will represent Senator Norris.

Senator David Norris: Thank you. I want to serve notice that I will be seeking an opportunity to pay tribute to the late Desmond Guinness, who did so much for the culture of Ireland.

An Cathaoirleach: That matter is also one for the CPP. Many of the issues that Senators might raise today will be matters for the CPP. I will indicate when that is the case and ask the Senators concerned to sit down accordingly. As I outlined, the Order of Business is strictly in regard to the arrangements that the Leader will now outline.

Senator Regina Doherty: The Order of Business is No. 1, the Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020 - all Stages, to be taken at 1 p.m., with the contributions of groups' spokespersons not to exceed eight minutes each and those of all other Senators not to exceed five minutes each on Second Stage, and with Committee and Remaining Stages to be taken immediately thereafter, and No. 2, earlier signature motion on the Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020, to be taken at the conclusion of No. 1 without debate.

Senator Lisa Chambers: I support the Order of Business and will reserve my comments on the substance of the Bill until the discussion later.

I wish to put on the record of the House that there was an attempt by the Government to have the Seanad sit yesterday and to have a longer sitting today to accommodate the Minister for Education and Skills yesterday and the Minister with responsibility for higher education today-----

An Cathaoirleach: I am sorry now-----

Senator Lisa Chambers: -----but the Opposition was not forthcoming in agreeing to that and also-----

An Cathaoirleach: Senator, that is being brought up at the CPP. This is a special sitting.

Senator Niall Ó Donnghaile: A Chathaoirligh-----

An Cathaoirleach: We have only had three special sittings in 13 years. It is a special sitting and I again ask Senators to confine themselves to the arrangements that the Leader has outlined.

Senator Niall Ó Donnghaile: On a point of order, a Chathaoirligh-----

Senator Lisa Chambers: If I might finish-----

An Cathaoirleach: I am sorry but-----

Senator Lisa Chambers: I am still on my feet and I would like to finish, if that is possible.

Senator Niall Ó Donnghaile: Surely I can raise a point of order.

Senator Lisa Chambers: Surely I am entitled to finish what I am saying.

Senator Niall Ó Donnghaile: You have to take a point of order.

An Cathaoirleach: What is the point of order?

Senator Niall Ó Donnghaile: As I understand it, and you could advise me, a Chathaoirleach, as a point of order-----

An Cathaoirleach: I am sorry, can I just outline the rules of the House? If you want to intervene while a Member is speaking, the Member has to give way and she-----

Senator Niall Ó Donnghaile: Not on a point of order. I am entitled to raise a point of order.

Senator Lisa Chambers: Out of respect to other Members, if somebody is on his or her feet-----

Senator Niall Ó Donnghaile: So nobody is allowed to raise a point of order any more.

Senator Lisa Chambers: Of course one can, but I should be allowed to finish.

An Cathaoirleach: Ask the Senator if she wishes to give way.

Senator Lisa Chambers: With regard to the Order of Business, some Members of the House have expressed dissatisfaction that all Stages of the Bill are being taken today. If we had been facilitated in sitting yesterday and in having two sitting days, and to have the Ministers with responsibility for education and higher education before the House, we would not have had to take all Stages today. We were trying to accommodate those views and the Opposition-----

Senator Gerard P. Craughwell: We do not have to take all Stages today.

Senator Lisa Chambers: If we had sat yesterday, we would have avoided that.

Senator Gerard P. Craughwell: It is an affront to democracy-----

Senator Lisa Chambers: Some Members of the House were not willing to accommodate that, and they were not on this side. It is important that information is put on the record today.

Senator Victor Boyhan: It is not true.

Senator Lisa Chambers: We tried our best, but that was not forthcoming on the other side of the House.

Senator Alice-Mary Higgins: I wish to raise a point of order, a Chathaoirleach, which relates directly to the Member speaking about putting things on the record.

An Cathaoirleach: Does this relate to the Order of Business?

Senator Alice-Mary Higgins: It is related to the Order of Business and to the question of what is being put on the record. It is in the discretion and power of the Government to convene and to have other sessions. The suggestion is that other Members of this House have somehow stopped the Government from having a session with the Minister. As somebody who has strong views on higher education, the return to higher education and education in general, to suggest that we have stopped that from happening is an inaccuracy. Given that the previous speaker said she would like to put that on the record, I would like to have it expunged and withdrawn from the record. Then I am happy to proceed to discuss the Order of Business with due process.

An Cathaoirleach: Can I just-----

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Senator Lisa Chambers: Can I reply to the last speaker?

An Cathaoirleach: You cannot. It is not a procedural issue.

Senator Lisa Chambers: We had an agreement from the Minister to attend yesterday, but we could not facilitate it because we had nowhere to sit and we could not get agreement to sit without votes. That is accurate.

An Cathaoirleach: Let me clarify. Regarding the sitting yesterday, this will come up at the CPP. It relates to the Order of Business before us today, the sitting of the House and the arrangements. We made an attempt to facilitate a sitting in the Seanad Chamber. We needed agreement from everybody and we will discuss this further at the CPP. We could not get the agreement of Members not to call for divisions yesterday. We would not be in compliance with public health guidelines if we had a sitting in the Seanad Chamber-----

Senator Gerard P. Craughwell: How is the House of Commons organising votes? Obviously, that is no excuse. The House of Commons managed to put three or four-----

An Cathaoirleach: Senator, we either comply with public health guidelines or we do not.

Senator Gerard P. Craughwell: Public health guidelines are a different thing. It can be arranged.

An Cathaoirleach: It can, and there was no agreement. I could not get agreement and because of that we could not sit yesterday.

Senator Gerard P. Craughwell: We are turning this House into a rubber stamp.

Senator Lisa Chambers: On a point of order, a Chathaoirligh, I ask that the comment that my remarks were inaccurate be withdrawn from the record.

An Cathaoirleach: I have outlined exactly the situation. As outlined by Senator Chambers, I wanted to correct what was said. Senator Chambers said that agreement could not be reached and that is correct. Agreement could not be reached yesterday-----

Senator Alice-Mary Higgins: It is-----

An Cathaoirleach: -----for a safe sitting of the House.

Senator Alice-Mary Higgins: I was-----

Senator Gerard P. Craughwell: We can put 30 kids in a classroom but we cannot-----

An Cathaoirleach: Sorry, Senators.

Senator Alice-Mary Higgins: Again, I am happy to agree to meet in the Seanad and so forth. Nonetheless, let us be clear that the initial statement was that we wanted to bring in the Ministers, but agreement could not be reached. I thank the Cathaoirleach for the clarification as to the point on which agreement could not be reached. To use a sweeping statement such as agreement could not be reached with regard to Ministers coming to the Seanad to speak and to answer questions was inaccurate. It has been clarified by the Cathaoirleach and it has been clarified in relation to the vote. That was not in Senator Chambers's initial statement.

Senator Lisa Chambers: If that was the Senators' interpretation of what I said that is not

my issue. What I said was completely accurate, as has been confirmed by the Cathaoirleach of this House. I never suggested it was Senator Higgins. I said that we could not reach agreement. That is 100% accurate. It needed no clarification.

Senator Michael McDowell: First I want to observe that having stated that the business of this sitting of the Seanad was solely concerned with the Government's Bill, the Cathaoirleach himself then breached it by making remarks about Clifden.

Senator David Norris: Hear, hear.

Senator Michael McDowell: I do not agree with some of what was said and I do not believe it is the function of the Chair to make remarks of that kind. I do not believe it is the function of the Ceann Comhairle to make far more trenchant remarks in his Chamber.

An Cathaoirleach: Does the Senator have a point in relation to the-----

Senator Michael McDowell: Excuse me, a Chathaoirligh. If we are here to discuss one item only, which is the Bill and the Order of Business relating to it today, then the Cathaoirleach himself led off by breaching that. Just remember that. It is not the Cathaoirleach's function to talk from that seat about Commissioners or judges. It is not that at all.

An Cathaoirleach: Can I make this point-----

Senator Michael McDowell: I am making the point that it is none of the Cathaoirleach's business to talk about judges and Commissioners from that seat on this occasion.

An Cathaoirleach: On the point raised by Senator McDowell, that issue will obviously be coming before the Committee on Procedure and Privileges, as the Senator is aware. It is about the ordinary running of this House. That is the function of the Chair.

Senator Michael McDowell: Yes, and it is not your function-----

An Cathaoirleach: This issue-----

Senator Michael McDowell: It is not your function to-----

An Cathaoirleach: This issue has undermined the ordinary running of the House-----

Senator Michael McDowell: It is not your function to speak about judges or Commissioners on this occasion.

An Cathaoirleach: Has Senator McDowell a point on the Order of Business?

Senator Michael McDowell: The Cathaoirleach is an impartial chairman and it is not his function to make announcements of that kind.

An Cathaoirleach: Has the Senator a point to make on the Order of Business?

Senator Michael McDowell: I am just pointing out that if the Order of Business is to be adhered to, then the Cathaoirleach should do it himself.

I do not believe that the measure before us is of such urgency that it must be dealt with in one day. I do not believe we should be in a position that there is pressure on us not to call votes because of the cumbersome nature of votes being called.

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Senator Michael McDowell: Hear, hear.

Senator Michael McDowell: I do not believe we should be in a position that there is pressure on us not to call votes because of the cumbersome nature of votes being called.

An Cathaoirleach: As Senator McDowell is well aware, I attempted to get agreement from everybody that there would be no votes yesterday. I outlined specifically to Senator McDowell and to others-----

Senator Michael McDowell: I am not talking about yesterday-----

An Cathaoirleach: -----the reason we could not have votes is that there was no agreement in this House on taking votes in the Seanad Chamber.

Senator Michael McDowell: A Chathaoirligh-----

An Cathaoirleach: I am-----

Senator Michael McDowell: I am not talking about yesterday. I am talking about today and whether this Bill is of sufficient urgency to justify having all Stages dealt with in one day, putting us under pressure not to call votes on amendments, etc., in order to rush the Bill through.

An Cathaoirleach: We are quite free to call votes on amendments because we are in this Chamber.

Senator Michael McDowell: That is the point I make. I am opposed to the idea that this Bill needs to be rushed through in one day. Some of the measures in it are good, some are excessive and some need to be amended. There is no need for us to rush it through. This is not an emergency. In my view, and I may be in a minority on this, it is not a matter of tremendous urgency that the particular powers to close pubs in circumstances that are envisaged by the Bill, either temporarily or for longer periods, must be rushed through without adequate consideration. We are supposed to be a revising Chamber. We are supposed to be a Chamber that looks carefully at legislation that comes before us. It is simply not acceptable that the House is reduced to the state of being a rubber stamp. I fully accept that the staff of the Houses of the Oireachtas are doing their level best to marry the idea of public health guidelines to the sitting arrangements of these Houses. I fully accept that there are pressure points and difficulties involved in both. However, as I will be raising at the Committee on Procedure and Privileges later, there is the Mansion House around the corner which, in my youth, could accommodate 2,000 or 3,000 people at an Ard Fheis and certainly could-----

An Cathaoirleach: That is not relevant to the arrangements on the Order of Business.

Senator Michael McDowell: It is relevant.

An Cathaoirleach: It is not. It is a matter for the Committee on Procedure and Privileges. We had a discussion on the arrangements on Wednesday and Thursday.

Senator Michael McDowell: Would you allow me speak and stop interrupting me, please?

An Cathaoirleach: I could not get agreement from the Senator or from others to sit yesterday and today-----

Senator Michael McDowell: I am not talking about yesterday. I am talking about today.

Senator David Norris: I suggest, a Chathaoirligh, that we agree to meet tomorrow. Then we could have a proper Order of Business today. There would not be the rush and we could have votes tomorrow and today. Would that not solve it, if we met on Friday?

An Cathaoirleach: Senator Norris is entitled to propose an amendment to the Order of Business in respect of the proposals outlined. I call Senator McDowell.

Senator Michael McDowell: I am merely saying that we are putting unnecessary pressure on ourselves not to have votes, to curtail discussion and all the rest of it due to social distancing and public-----

An Cathaoirleach: If we had got agreement on the proposals that were being put forward we could be sitting for two days but we could not get agreement.

Senator Michael McDowell: For the third time, Chairman, I am not talking about the education debate. I am talking about the attempt today to rush through in one day without adequate consideration the criminal justice Bill which is before us. I am not talking about the education statements at all. I am saying I object-----

An Cathaoirleach: Nor am I. I am talking about-----

Senator Michael McDowell: You keep raising it every time I speak. You have raised it three times. You have said that yesterday and today various things could have happened. I am talking about today.

An Cathaoirleach: Absolutely. We could have taken Second Stage yesterday and Committee and Remaining Stages today.

Senator Michael McDowell: And no vote on Second Stage.

An Cathaoirleach: We could have had votes because we would have been in this Chamber.

Senator Michael McDowell: On Second Stage?

An Cathaoirleach: On Second Stage we could have delayed the vote until today, which is done in the Dáil by arrangement. We could not get agreement. That is why we are doing it today.

Senator Michael McDowell: That is all part of a plan to get this Bill rushed through into legislation and not adequately considered. It is a phony urgency that attaches to this Bill. For that reason I am not content to agree to the Order of Business.

An Cathaoirleach: Fair enough. I will outline to the House one more time that there was a lot of effort put in over the last couple of weeks to try to get agreement that we would sit for two days, but on one of those days we could not have votes because we did not have arrangements to sit in the Seanad Chamber and have votes at the same time. We could not get agreement among the Members of the House. We can only do it safely by agreement. That is why we did not sit yesterday as had been proposed. That is why business is confined to today as it stands. I call Senator Ó Donnghaile.

Senator Niall Ó Donnghaile: The Cathaoirleach stated in his remarks to us that this is a special sitting of the Seanad. The point I want to make is that it should not be. It should have been the business as scheduled and presented to Members at the end of last week. I do not know

where this issue of not agreeing to the two days sitting is emanating from. I was asked as leader of the Sinn Féin group and gave our consent to the proposal as outlined by the Leader. I think it is a fair accommodation. In his address to us before the Order of Business this morning, the Cathaoirleach rightly spoke about reinstilling public confidence in this Chamber. The best way for us to seek to do that is to be meeting regularly, actively and in a way that deals with the big issues.

An Cathaoirleach: I ask the Senator to address the Order of Business.

Senator Niall Ó Donnghaile: In terms of the Order of Business, perhaps the Cathaoirleach could advise me. I think part of his role is to advise and protect us in terms of our entitlements to ask questions and get guidance. I have flagged consistently over the past couple of weeks, as I am sure all Members will acknowledge, that the consistent approach of rushing all Stages of a Bill, and sometimes two Bills, through the Seanad in one day is not good practice and should be a cause of deep concern for Members. It is not a good way to do business.

11 o'clock

I do not agree that this is how we should approach today's sitting. What happened to Commencement matters? Why are there no Commencement matters? No one needs a vote on Commencement matters.

An Cathaoirleach: I wish to be of assistance. This is a special sitting, and we do not have Commencement matters at a special sitting.

Senator David Norris: We have an Order of Business but it is not an Order of Business.

Senator Niall Ó Donnghaile: We have an Order of Business. We have Standing Orders. As I understand it, those Standing Orders give the Cathaoirleach ultimate discretion in terms of how the protocols and procedures of this House operate.

An Cathaoirleach: I wish to point out one more time in respect of special sittings that it is not precedent to have Commencement matters.

Senator Niall Ó Donnghaile: I do not think any of this has precedence, to be honest. There is no precedent for any of it.

An Cathaoirleach: There have only been three special sittings in 13 years. This is a special sitting. It is different for that reason.

Senator David Norris: What about the Order of Business?

Senator Niall Ó Donnghaile: I will say this. I have made my point. I am deeply concerned that, when we look at the approach in the round, we can see we have gone from being called back early and having three-day sittings, to having a two-day sitting and now to having a one-day sitting with one item. That does not bode well.

An Cathaoirleach: It is a special sitting.

Senator Niall Ó Donnghaile: It should not have been a special sitting. That is the point. I know of the Cathaoirleach's interest in the issue of Brexit and our collective well-being and future. The members of the British Government are on their feet in their parliament telling us that they are going to break international law.

An Cathaoirleach: That is not an issue for the Order of Business.

Senator Niall Ó Donnghaile: We are being told that we cannot come to this Chamber and talk about that matter.

An Cathaoirleach: It is not an issue for the Order of Business.

Senator David Norris: It should be.

Senator Niall Ó Donnghaile: It should be an issue for the Order of Business. That is the point.

An Cathaoirleach: Since this is a special sitting-----

Senator Niall Ó Donnghaile: This has gone beyond the realm of being disrespectful to Members of this House to bordering on being undemocratic in terms of what is being done. It should give everyone in this House cause for concern. If this is to become the precedent, then it is deeply worrying. I am confident in saying that those of us on this side of the House would be highly reluctant to participate in business that reduces and demeans the House and amounts to a rubber-stamping exercise involving racing through all Stages of a Bill in one fell swoop. It is a disgrace.

An Cathaoirleach: I understand that Senator Ó Donnghaile agreed to the arrangements that were being proposed for Wednesday and Thursday. Not everyone did. The issue with regard to bringing up Brexit and other matters does not relate to a special sitting. The only person who asked me to bring back this House to address any item was the Taoiseach. No Senator wrote to me to ask that we discuss Brexit or any other item.

Senator David Norris: We never do.

Senator Niall Ó Donnghaile: We thought, up until I got a telephone call to say that the schedule had suddenly been changed, that we were being afforded the opportunity to speak on that.

An Cathaoirleach: I am not in charge of the schedule.

Senator Niall Ó Donnghaile: I understand that too. The point I am making is that people should not try to blame us for the change in the scheduling.

An Cathaoirleach: I will say it one more time for the benefit of the House. The only person who asked me to bring back the House earlier than scheduled was the Taoiseach.

Senator Niall Ó Donnghaile: To do what? Was it to have a full and proper scheduled sitting?

An Cathaoirleach: No, the only thing that I was asked to bring the House back for, in a letter from the Taoiseach, was for the Senators to consider the Bill that will soon come before us. No Senator asked me to bring back the House for any other reason. This is why I do not accept some of the statements that have been made. If Senators would like us to come back earlier than they all agreed and voted on, they must communicate that to me. As I have said, it is a power under Standing Order 22.

Senator Martin Conway: It is a fair point.

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An Cathaoirleach: Please stick to the rules of the House. I now call on the leader of the Labour Party to talk about the item before us.

Senator Ivana Bacik: I would like to speak about the Order of Business. I suggest, with the greatest of respect, that the Cathaoirleach might stop digging and stop dominating the Order of Business. He has spoken, with respect, more than anyone else this morning on the Order of Business.

(Interruptions).

Senator Ivana Bacik: I did not interrupt anyone. I have not made any points of order. I simply want to set out my position and that of the Labour Party - I believe it is a fair and reasonable one - on the Order of Business. First, it is disingenuous to suggest that either Opposition Senators or any other Senators have some sort of obligation to recall the House. As someone who did seek to recall the House, the Senator will know it is a power that is available, but it is not used lightly and is used rarely.

In fairness, when we knew that the Seanad was being recalled early, we all supported that. We all anticipated, as Senator Ó Donnghaile, Senator McDowell and others have said, and saw from the draft schedule that there would be debates on education in this crucial week, when we see thousands of children back to school and thousands of our school leavers getting their leaving certificate results. It was reasonable for us to assume that would take place, and that we would debate education along with the Covid Bill, which we were looking forward to debating over a reasonable period. When contacted for the Labour Party group last week, I was happy to agree on behalf of my group that we would sit over two days, that we would forgo the calling of votes on the Order of Business on the Wednesday, that we would have the Second Stage debate on the criminal justice Bill and that if any of us had an issue with that Bill we would call a vote in the knowledge it would be adjourned until Thursday when we would have a sitting in the Dáil Chamber. I thought that was a reasonable accommodation. We sought to be co-operative with the Leader and everyone concerned. I am very disappointed that a two-day sitting did not happen, and, as Senator Ó Donnghaile said, I thought it was until there was a change of tack at very short notice.

I appreciate that agreement was not forthcoming from everyone. However, it is the obligation of the Government to ensure there is sufficient time to debate a Bill that is not as urgent as it might appear. I have just done a major review of criminal justice and police enforcement powers under Covid and we could have waited a little longer. It would have been perfectly possible to have the debate on the criminal justice Bill today and tomorrow in the Dáil Chamber thereby giving all of us the opportunity to debate it in the usual timeframe.

The Labour Party has amendments in. My colleague, Deputy Howlin, put those amendments in in the Dáil. There was a lengthy debate on them and they were put to a vote. We are anxious to do the same today but not on a day when we have all Stages of the Bill. I have placed the Labour Party's position very clearly on the record. It is a reasonable position and I am very disappointed that it has not been within the capacity of the Government side to ensure that we would have a two-day sitting this week, notwithstanding there was not agreement about the use of the Seanad Chamber and that we could not have sat in the Dáil Chamber over two days.

I propose an amendment to the Order of Business, and the Cathaoirleach can guide me if I am not entitled to do so, to remove Committee and Remaining Stages of the criminal justice

Bill and replace them with the statements on education that we were promised, on which my colleague, the Seanad spokesperson for education, Senator Hoey, had prepared comments on and about which all of us were anxious to discuss in such a crucial week for education.

We want to have a fair debate on the Covid Bill. We supported it in the Dáil so it is not that we are looking to oppose it for its own sake. We have real concerns about it, which Deputy Howlin raised and which I hope to raise today. We do not believe that it is appropriate to debate all Stages of that Bill today.

I propose the amendment to the Order of Business - I think I am entitled to do so - and I hope there will be strong support for it. It is bad practice in the Seanad to rush all Stages through and it is unseemly and unedifying that we are having such a big row about procedures on our first day back when the country faces so many crucial challenges, with Covid, Brexit and rising rates of infection. It is really unfortunate that we are in this position. We sought to be constructive and co-operative. I am sorry that agreement was not possible but there could have been another way to sit Thursday and Friday, or indeed sit today and Monday when the Dáil will not be using this Chamber.

The Committee on Procedure and Privileges will sit later. I express my disappointment that it will coincide with the criminal justice Bill, on which I am leading for the Labour Party group and therefore must shuttle between two venues. That is not ideal and others will be in the same position. I would like the committee to be able to come to a good compromise where we can ensure we are sitting and debating in a way that ensures everyone has a right to vote and Bills are not being rushed through at all Stages when this is not necessary.

An Cathaoirleach: The Senator may put forward an amendment that Committee Stage be taken on a different day. It cannot be proposed to put another item of business in its place. If the Senator wishes to propose that and get another Member to second this, we can deal with it at the end of the Leader's contribution.

Senator Ivana Bacik: I thank the Cathaoirleach for the clarification. I propose an amendment to remove Committee and Remaining Stages.

An Cathaoirleach: I call Senator Mullen on a point of order.

Senator Rónán Mullen: I have listened with concern from my office to what is going on here this morning. There are two issues on which I would like the Cathaoirleach to comment. There is ongoing concern among Members, myself included, about the rushing of legislation and the taking of all Stages in one day is clearly within the Cathaoirleach's understanding of what the Order of Business discussion today may entail because, as he said, it is about deciding the arrangements for taking the criminal justice Bill today.

The other issue causing concern which I want to ask about is the right of Members to raise other important and pressing issues, as has been mentioned by Senators McDowell, Norris and others.

An Cathaoirleach: I clarified that earlier.

Senator Rónán Mullen: I have a specific question for the Cathaoirleach about the order and the basis for it. Mr. Martin Groves's letter to each member of the Seanad, which I only saw this morning, states that the Cathaoirleach asked him to remind Senators that this is a special

sitting and that the purpose, therefore, of the Order of Business is simply to decide the arrangements. What is the Cathaoirleach's basis for telling us that the fact that this is a special sitting somehow curtails or limits the right of Senators to raise issues on the Order of Business which they believe need to be discussed today or any other day? Mr. Groves's letter to us does not cite any Standing Order of this House. I heard the Cathaoirleach say that the Taoiseach requested this sitting and that, therefore, this sitting is somehow to be understood as being different from any other sitting. It is not clear to me the basis upon which the Cathaoirleach is saying that only certain issues may be brought up on the Order of Business. My understanding is that the Order of Business provides the opportunity for Senators to raise issues which they believe need to be discussed urgently or otherwise.

Senator David Norris: Hear, hear.

Senator Rónán Mullen: I do not see any basis in the letter we received this morning for saying that the fact that this is a special sitting should somehow curtail our discretion as to what issues to raise on the Order of Business.

An Cathaoirleach: We have only had three special sittings and, at the request of the Taoiseach, this sitting relates specifically to this item. The Order of Business we are discussing and the items we are discussing relate to the arrangements for today. In that context, I ask Senator Mullen to confine his statements to what the Leader has outlined.

Senator Rónán Mullen: Where is that-----

An Cathaoirleach: Senator, please-----

Senator Rónán Mullen: This is merely a request of us on the part of the Cathaoirleach. It has no basis in Standing Orders, proper procedure or anything of that nature.

An Cathaoirleach: In the context of Standing Orders, Senators are to address their remarks to the item outlined by the Leader.

Senator Rónán Mullen: On which Standing Order is the Cathaoirleach relying?

An Cathaoirleach: I am relying on the advice of the Clerk in respect of-----

Senator Rónán Mullen: The Cathaoirleach is telling us that it is the advice of the Clerk that the regulations provide that where there is a special sitting, the Order of Business debate must be confined to the items that are ordered for that day, regardless of whether the items ordered are unanimously agreed.

An Cathaoirleach: On an ordinary day, the convention of the House is that Senators can raise items that are not related to the Order of Business. However, that is not strictly within the rules of the House. A practice has developed over time whereby people bring up items that are not related to the matters that have been raised by the Leader on any sitting day. This issue can be raised at the meeting of the CPP later today but when we sit on an ordinary day next week or any other week, strictly speaking the Members should stick to the legislation or proposed legislation that is before the House. As this is a special sitting, I am strictly adhering to those rules. Next week, Senator Mullen and every other Senator will be able to raise the issues they want to raise today. This is a special sitting of the House and Members are here for a specific purpose. We are sticking to the rules of the House that all Members have agreed to over time. If Members want to change those rules, I am happy to hear about any such changes at the CPP

or any other forum. If Members wish to write to me, they can do so and we can change the rules to accommodate people.

(Interruptions).

An Cathaoirleach: Senator Mullen will be given an opportunity to come back in at his allotted time. We are dealing with group leaders now. I ask the-----

Senator Rónán Mullen: If I have a problem with the actual business that is ordered, it is open to me during that business to raise a point of order about that business.

An Cathaoirleach: Correct.

Senator Rónán Mullen: The only possible logical reason for having an Order of Business debate prior to the taking of the proposed business of that day is to allow for the possibility that there might be disagreement about what business is being taken on that day or how.

An Cathaoirleach: Correct.

Senator Rónán Mullen: The Cathaoirleach is telling us, without citing any particular authority, that the Order of Business on this particular occasion, namely, arising on foot of a special sitting, precludes us from discussing whether this is the business to be taken today or whether any other business ought to be considered today. To my mind, this is an absurdity. You must do more than merely speak about the conventions of this House allowing us on other occasions to raise what you appear to regard as extraneous matters when the only basis for having an Order of Business is to allow for proposed changes, even radical alterations, to the business.

An Cathaoirleach: Correct.

Senator Rónán Mullen: By proposing to preclude, for example, what Senator Norris and others raised about developments in the British Parliament and with the British Government, you are making a mockery of the notion of an Order of Business. You would therefore be preventing us, where there is something of tremendous and urgent public importance arising, from advertent to it with the very flimsy excuse that this is a special sitting and somehow the Order of Business debate cannot have its ordinary meaning.

Senator David Norris: On a point of order-----

An Cathaoirleach: May I address what has been said? The business outlined today is based on a letter from the Taoiseach to the Cathaoirleach and it is different from any other day because it is normally the Leader-----

Senator Rónán Mullen: That does not fetter us.

An Cathaoirleach: What fetters us are the rules of the House, which are strict. There has been a convention to allow matters such as those that Senator Ó Donnghaile and others wished to raise but such convention is not strictly within the rules of the House.

Senator Rónán Mullen: Will the Cathaoirleach read the rules for us so we can discover together-----

An Cathaoirleach: The Senator is here as long as I have been and he has a copy of Standing Orders. Those Standing Orders specifically state with reference to the Order of Business that

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we are to discuss the item being outlined by the Leader.

Senator Rónán Mullen: You are referring to this in round terms but have not exercised your right - at this point I would say your duty - to point out to us why the rules specifically preclude us from raising important other matters on the Order of Business.

An Cathaoirleach: It is a special sitting of the House, with a direct request of me by the Taoiseach under Standing Order 22(2). It is a special sitting and different from one where the business is outlined by the Leader.

Senator Rónán Mullen: What is the basis for the distinction? It is like saying, as my mother said to me many times over the years, "That is the why". You are not outlining a basis.

An Cathaoirleach: As the Senator is aware, the convention for the Order of Business is that Senators are supposed to confine themselves to what has been outlined to the House.

Senator Rónán Mullen: Have you the reference?

An Cathaoirleach: It is in the Standing Orders.

Senator David Norris: I would like to raise a point of order and seek clarification. The Cathaoirleach has said the long-standing tradition of the House, which I have seen over 33 years and more, and which has never been challenged, is that only the legislation or business proposed by the Government can be discussed and we cannot move to other matters. It seems to suggest that any time in future, regardless of whether there is a special sitting of the Seanad, the Cathaoirleach has the capacity to close debate on anything other than the specific items of legislation on the Order Paper. That is a very draconian power and is one I never thought resided with the Cathaoirleach.

An Cathaoirleach: I was not in the House at the time former Senator Kiely was Cathaoirleach but I know if anybody brought up anything aside from the items before the House on the Order of Business, he would stop it. I have not done that and previous occupants of my position have not done it. We have developed a custom now-----

Senator David Norris: I do not remember former Senator Kiely behaving like that.

Senator Gerard P. Craughwell: On a point of order, custom and practice have changed the rules of the House and people can, as my colleagues have pointed out, raise urgent matters during the Order of Business that need debate or discussion, or which require a Minister to be called to the House.

An Cathaoirleach: There are Standing Orders for that too.

Senator Gerard P. Craughwell: It is not open to the Cathaoirleach or anybody in the House to change a long-standing practice. Furthermore, we have been in recess while urgent matters such as the opening of schools and the inability of people to get answers to legitimate questions have been evident over the past number of weeks. It is an affront to democracy that the Cathaoirleach or anybody else would seek to shut down debate in this House and not allow those of us with urgent matters that need addressing to have those matters brought before the House.

The public is watching. My colleague, Senator McDowell, made the point that we have

been turned into a rubber stamp today. It is not what we are here for or why I was elected.

An Cathaoirleach: The Senator raised with me a month ago that he wanted a debate on the issue of higher education but he did not follow-up on it.

Senator Gerard P. Craughwell: I would have expected that when the Lower House was recalled, the Cathaoirleach would have taken a leadership role and recalled the Seanad.

An Cathaoirleach: I remind the Senator-----

Senator Gerard P. Craughwell: When does the Cathaoirleach propose to recall the Seanad? It has been recalled for a special sitting today. What is the plan for next week?

An Cathaoirleach: The Seanad will return on the date agreed when the House recessed in July, which is 16 September 2020. The Senator agreed to it.

Senator Gerard P. Craughwell: I am proposing an amendment to that today.

An Cathaoirleach: The Senator agreed to that proposal. I remind members that it is open to any Senator to write to me under Standing Orders, which Senator Craughwell undertook to do in regard to the Minister for Education and Skills coming before the House, but he did not do it. Had he written to me, I would have followed up on the matter. The Senator chose not to do so.

Senator Gerard P. Craughwell: I have reviewed-----

An Cathaoirleach: It is open to the Senator and anybody else to do so at any time.

Senator Gerard P. Craughwell: I am doing it now.

An Cathaoirleach: The Senator chose not to do so when he had the opportunity. It is unfair of him to suggest today that the Seanad should have met sooner.

Senator Gerard P. Craughwell: In fairness, we were all under the impression that the Seanad would meet yesterday and that we would have an opportunity to meet the Minister for Education and Skills and the Minister with responsibility for higher education to raise urgent matters. We were under that impression, but all of a sudden the possibility of that happening disappeared.

An Cathaoirleach: We could not get agreement from the Independent Senators and others.

Senator Gerard P. Craughwell: The Cathaoirleach needs to show leadership and recall the Seanad. Today, I will disagree with the proposal to rush through the Bill in one day. I believe the Seanad needs to return next week and it needs to meet three days per week.

An Cathaoirleach: The Senator may propose that amendment in his contribution on the Bill. The same amendment has been proposed by the leader of the Labour Party. I call the leader of the Green Party to make her contribution.

Senator Róisín Garvey: We have spent 50 minutes debating the need for more time to debate the Bill, which is a joke. We need to focus on the Bill. If we have to remain here and work overtime - God forbid, we are paid enough to do that - we might get through it in one day. Let us not waste any more time asking for two days to debate it when we have not even started the

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debate on it. The Bill is very clear. I would be optimistic about getting it through in one day if Senators would stop arguing about it.

With regard to the Order of Business, we should show respect to the Clerk and the Cathaoirleach who know better than anybody else, especially the Clerk. I say that with no offence to the Cathaoirleach as he has not been in his position very long. If the Clerk directs the Cathaoirleach on how to proceed, that is how it is. We are lucky in that we get to raise other points outside of the Bill before us during the Order of Business.

Senator Rónán Mullen: That is an authoritarian perspective.

Senator Róisín Garvey: I ask Senator Mullen not to interrupt me. He should also direct his comments through the Chair. We should show respect to our fellow colleagues, in particular the Clerk, Martin Groves, who is the wise man of the House. I say that with respect to the father of the House, Senator Norris. We should also respect the rules of the House. If we are not careful, we could bring about a situation where we will not be allowed to raise on the Order of Business issues not pertaining to the Bills before us. Let us be careful.

I personally believe we should focus on the Bill before us today. Let us see how we get on. If we require a second day, so be it. Let us start the debate. I understand people's annoyance because the education issue is really important. I wanted to raise the maternity issue and fathers banned from attending at their children's births, but I did not get an opportunity to do so.

Let us start the debate on the Bill.

(Interruptions).

Senator Róisín Garvey: We have so much to debate, but let us first start the debate on the Bill before us.

An Cathaoirleach: To be of assistance to Members, all of us in this House work in a collaborative way. Arrangements for a two-day sitting did not work out, which will be explained in detail at the CPP. I understand that there are conventions and rules in this House that have developed but are not in writing. I understand that. It would be better if they were in written format. I have had colleagues raise with me the possibility of raising issues during statements or debates. I am speaking about people who, like me, have been Members of this House for up to 15 years. I have read the Standing Orders and I have told them that under Standing Orders they can intervene during a debate or on statements by asking a colleague to give way. That is set out in the rule book. There are many issues covered in the rule book, which has been circulated. I accept what Senators Mullen and Norris stated regarding conventions having developed over time. I wish for those conventions to be codified and put down in writing in order that people can understand the rule book.

Senator Rónán Mullen: It is because it is self-evident that it is a convention. It is self-evident to the elected Members of this House that it can decide to debate-----

An Cathaoirleach: I thank the Senator for his contribution. I wish to make the point that if Members write to me to ask for the House to come back in for a special sitting, I will accommodate them. We will put that into the rule book. I guarantee that I will accommodate such requests if we can get the relevant Minister to come to the House. If Members wish for the House to reconvene earlier than planned, they should read the rule book and follow the proce-

dure therein.

Senator David Norris: The fact that it is a special sitting should not preclude having a proper Order of Business.

An Cathaoirleach: If we wish to codify that, we can include a provision relating to the Order of Business, but I am guided-----

Senator Rónán Mullen: Am I right in stating that there are no provisions relating to the Order of Business in the Standing Orders?

An Cathaoirleach: What about Standing Order 16?

Senator Rónán Mullen: Does Standing Order 16 state that on certain occasions only certain issues may be discussed?

An Cathaoirleach: Under Standing Orders, Members are confined to dealing with the business before the House. This is a special sitting. There is one specific item before the House. I call the leader of the Civil Engagement Group.

Senator Alice-Mary Higgins: Several important points have been raised. Unfortunately, the debate has become more serious and the points that have been made are ever more concerning. Yesterday, representatives of human rights organisations appeared before the Special Committee on Covid-19 Response. At the meeting, the head of the Irish Human Rights and Equality Commission made the point that emergency legislation should be the exception and not the rule. There is a real and significant concern that emergency legislation seems to be becoming much closer to the rule. There is concern regarding everything being declared to be emergency legislation in the absence of standards in respect of what constitutes emergency legislation. I will come to that matter when speaking to the Order of Business.

There is also a real concern that the Government decided, and the Cathaoirleach agreed, that the Seanad should be recalled to sit in special session rather than in normal session. We have heard that the rules governing special sessions have only been invoked three times in the past 13 years. It is a very serious issue if the Government is deciding to use useful new powers that curtail debate whenever it can. As matters have evolved or dissolved over the course of the morning, a much more worrying message has emerged, which is that Senators are being told we are lucky to ever get to speak about anything and may only do so at the discretion of the Cathaoirleach. In the normal course of events, it has not been for the Cathaoirleach of the day to determine the Order of Business in his or her kindness or benevolence. Rather, it is for the House to set the Order of Business. The Order of Business is proposed by the Government and it is discussed and agreed. It is the prerogative of Members to put forward other items on the Order of Business which they believe should be discussed. In the course of a normal Order of Business, Members have that prerogative, but I am afraid that is not what we have heard today. The Cathaoirleach has stated that the legislation should be the only subject of discussion, but the Order of Business is about the topics that Members wish to discuss and how the Order of Business today is to be used. For example, Senators may wish to call in a Minister to address urgent issues such as Brexit which may not relate to legislation but do relate to the business of the House.

We need to be clear that these rights are not gifts that are kindly given to us. Rather, they are part of having a functioning State which has a Parliament and a Government. Our system is not

Government without Parliament or the Government kindly allowing Members of Parliament to make statements and get some local press releases and so on. It is a system of Government and Parliament. They are separate functions with separate rules and it is very worrying if those lines are blurred.

The Cathaoirleach made the point that Senators did not ask him to recall the House. Nonetheless, Senators who have returned very willingly to the House have the reasonable expectation that normal rules of parliamentary process will be in place. At 7 p.m. last night, Senators were reminded that this would be a special session. Special sessions are not normal practice. It is a concern that needs to be looked at with regard to their use. We look right now across the world, in Belarus there are concerns about democracy. There are issues around the postal system in the United States of America. There are very concerning issues for the Uighur people in China. Democracy and parliamentary process are precious. During the interval I wrote to the Minister for Foreign Affairs and Trade and he told me that international electoral observation has been suspended during Covid, for example. We really cannot be complacent, dismissive or clever about pulling strokes on how we move things around, or in how we get things done with more efficiency. I raised on the Order of Business today the question of taking all Stages of this legislation at once. It is not allowing us. When we talk about Standing Orders, let us go a level up and talk about the Constitution. My constitutional obligation, and that of everyone in the House, is to scrutinise legislation. I am being blocked from doing my job properly if I do not get to scrutinise legislation. I cannot scrutinise legislation properly in a way that gives the Government its opportunity to respond. The Government does not have to agree with me, it may think I have a valid point or it may not. That is the Government's prerogative and we each do our piece. Legislation should not be taken at all Stages at once. That cannot continue. With emergency powers, and with Ireland on the Security Council, we must hold ourselves to standards.

I second the amendment to the Order of Business put forward by Senator Bacik. I also propose a different amendment to the Order of Business. I am happy, whichever is successful. I am absolutely open, as I was open to any of the arrangements for this week. There is an idea that there are deals and that one should have written here or there. Of course we should try to work together but, crucially, the Government has the ultimate responsibility and prerogative for where we sit. My additional amendment is that perhaps we might instead take just the Report Stage, either tomorrow or on Monday.

An Cathaoirleach: What Stages was the initial amendment?

Senator Alice-Mary Higgins: The amendment from Senator Bacik was, I believe, for Committee and Report Stages. I second Senator Bacik's amendment. I suggest that if it is not possible to take Committee and Report Stages tomorrow or Monday that we take just Report Stage, which might be a valid option.

Senator Ivana Bacik: On a point of order, I am happy with that proposal from Senator Higgins.

Senator Alice-Mary Higgins: Those two amendments to the Order of Business have been proposed. Perhaps the Leader may need to consider the timing of the debate given the clash with the Committee on Procedure and Privileges. That is, clearly, emerging as a very important meeting that Senators need to attend. Those are my proposals. Let us not start making very serious mistakes with how we do business.

An Cathaoirleach: To be of assistance, there is a motion before the House. This is a special sitting and we are confined to the issue of the motion. This is why I asked the rules on that to be circulated for the benefit of Members. I clarify that this is a special sitting. When we have the Order of Business next week-----

Senator Alice-Mary Higgins: I wanted to clarify my amendment.

An Cathaoirleach: Next week it will be normal business because it is normal business. This is different. That is why we are doing things differently.

Senator Rónán Mullen: The Cathaoirleach drew my attention, very helpfully, to Standing Order 16 when I asked. It refers to the Leader of the House as opposed to the Order of Business. It refers to normal circumstance but it is clear from that that the Leader shall propose the purpose of the business of the day and it is silent on anything else. Quite clearly, when something is proposed it is obvious that it may be discussed. The Cathaoirleach continues to insist on this being a special sitting and therefore the Order of Business has some kind of different meaning or different scope. I must ask, if the normal position is as set out in Standing Order 16, what is the basis for saying that things must be any different in the context of the Order of Business taking place during a special sitting?

An Cathaoirleach: In relation to this, the Taoiseach had written to me, and therefore I was proposing the business.

Senator Rónán Mullen: Where does it follow from that that the Order of Business has a different scope?

An Cathaoirleach: We are confining it to the issue before the House.

Senator Rónán Mullen: The Cathaoirleach is here to propose an Order of Business that is confined, but by definition we must be allowed to comment on that.

An Cathaoirleach: I am asking the Senator to comment on-----

(Interruptions).

An Cathaoirleach: The business has been proposed in the summons and the Leader is proposing the arrangement.

Senator Regina Doherty: On a point of order, I recognise I am new here and things are being espoused in my name which I am not even sure were requested. This is the logic of my brain. I do not know how Members can say they disagree with the proposed Order of Business without saying they would rather talk about something else or proposing an alternative Order of Business. That leads to the practice we have always had whereby Members raise other issues. I do not believe Standing Order 16 applies to special sittings in a different way from ordinary sittings. I really believe in the mantra of giving respect and getting respect. With the greatest respect to Members I must point out that we are now an hour into discussing what we want to discuss. We have not even really started discussing the Order of Business. Unless we come to an agreement in the next few minutes I do not know how we will proceed. We will get to the end of the time allocated to the Order of Business without agreeing on an Order of Business. We will end up with proposals before the House to which I will unfortunately not be able to accede. That is not because I disagree with some of the comments made today. It is because I do not have access to a Chamber where we could vote tomorrow or on Monday. More important,

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I do not have access to a Minister in order to proceed with the legislation tomorrow or on Monday. I wonder if we could all agree that we have not gotten off to a great start.

Senator David Norris: I certainly agree.

Senator Regina Doherty: There are issues that need to be ironed out and we must agree to iron them out at the Committee on Procedure and Privileges. We must agree on how to proceed with very important business such as Brexit, maternity issues and access to school buses. The list is long and varied for all of us. It would not be fair to say they are constituency-based issues. We all want to raise very important national issues in this House, but we must have a House in which we can conduct our business. We have to come to an agreement to proceed on *pro rata* rules, or if we cannot do so, we must work with our officials to find a mechanism that will allow all of us to access voting rights. I do not say this lightly because the points that have been raised are very important. We are going to go around in circles until a bell is rung in a few minutes. We will all be deeply dissatisfied with the outcome of this morning's sitting. I wonder if we can find some way to get back to common ground and find a proposal allowing us to proceed with today's business. We can discuss the very important issues that have been raised in the Committee on Procedure and Privileges. I am sure we can change the timing of that committee if it does not work for some Members.

Senator Gerard P. Craughwell: I thank the Leader for her intervention. We could have saved ourselves an awful lot of trouble by proceeding with a normal Order of Business. As the Cathaoirleach noted at the opening of today's sitting, there are people on the front line. They have desperate concerns. People are working in schools, or are not sure whether they can return to school because of the health and safety rules that have been introduced. There are questions around Medmark, the treatment of children who become ill in school and the mixed messages from the HSE and the Department of Education and Skills. Principals are struggling to understand the rules. Important issues needed to be raised today and we were unable to raise them. We should never shut down the Order of Business because of any one item. Vital national issues must be discussed and debated. It is deeply regrettable that in recent months this House has been turned into a rubber stamp. We are literally passing legislation in a couple of hours. I understand the State's need to get certain emergency legislation through, but non-emergency legislation is also being passed. For example, I refer to the Civil Law and Criminal Law (Miscellaneous Provisions) Act 2020, that went through under the cover of Covid-19 in the last days of the Dáil and Seanad's last term. Things like that should never be allowed to slip in under the rubric of emergency legislation. I think I have made my point. It will be difficult to agree the Order of Business. I support Senators Bacik and Higgins on how we might proceed with the Bill.

An Cathaoirleach: Does someone wish to second the amendment put down by Senator Higgins? I wish to clarify this because of how it was proposed that both amendments have been proposed and seconded. I wish to check with the Clerk so that it is not ruled out on a technicality.

Senator Ivana Bacik: To be helpful, in order that we avoid having two divisions, I am happy to amend my original amendment so that there is only one amendment before the House, that is, to adjourn Report and Final Stages of the Bill from today.

Senator Alice-Mary Higgins: I am happy to second that.

An Cathaoirleach: When we get to the proposals on the votes, Members may withdraw them then. Does anyone else wish to contribute on the Order of Business? Does the Leader wish to say more?

Senator Regina Doherty: I thank everyone for making that proposal. Unfortunately, I cannot accede to it on the basis that I do not have the ability to make the alternative arrangements to have a second sitting tomorrow or on Monday. It is because I do not have permission to have access to the Dáil but probably more importantly because I do not have a Minister to conduct the legislation. I hear Members very loudly and clearly. I recall how standing here some six weeks ago I told the House that we would not do all Stages of Bills again and I find myself in a very uncomfortable position this week of having to ask Members to do it today. I give my solemn word today that except in the event of an emergency, by which I hope Members understand what we mean, namely, a real emergency, I will not accede to having all Stages of a Bill on a same day sitting in future. There is a caveat; we must find an agreement this afternoon at the Committee on Procedure and Privileges on how we run and order our business. We have access to the Dáil Chamber probably one day a week but that will not last. There is a real argument that the Dáil should be sitting in the Dáil for three days a week. If that is the case the Seanad should be sitting in the Seanad Chamber for three days a week. I encourage agreement this afternoon but unfortunately, we cannot accept the proposal today.

An Cathaoirleach: Senator Bacik has moved an amendment to the Order of Business: “That Committee and Remaining Stages of the Criminal Justice (Enforcement Measures) (Covid-19) Bill 2020 not be taken today”.

Senator Ivana Bacik: I will withdraw that in the interests of Senator Higgins’s amendment.

Amendment, by leave, withdrawn.

An Cathaoirleach: Senator Higgins has moved an amendment to the Order of Business: “That Report and Final Stages of the Criminal Justice (Enforcement Measures) (Covid-19) Bill 2020 not be taken today”. Is the amendment being pressed?

Senator Alice-Mary Higgins: It is.

Amendment put:

The Seanad divided: Tá, 18; Níl, 33.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Blaney, Niall.
Boyhan, Victor.	Burke, Paddy.
Boylan, Lynn.	Buttimer, Jerry.
Craughwell, Gerard P.	Byrne, Malcolm.
Flynn, Eileen.	Carrigy, Micheál.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Chambers, Lisa.
Keogan, Sharon.	Clifford-Lee, Lorraine.

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McCallion, Elisha.	Conway, Martin.
McDowell, Michael.	Crowe, Ollie.
Mullen, Rónán.	Cummins, John.
Norris, David.	Currie, Emer.
Ó Donnghaile, Niall.	D'Arcy, Michael.
Ruane, Lynn.	Davitt, Aidan.
Sherlock, Marie.	Doherty, Regina.
Wall, Mark.	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	O'Sullivan, Ned.
	Seery Kearney, Mary.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Ivana Bacik; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Order of Business agreed to.

Sitting suspended at 12.05 p.m. and resumed at 1.05 p.m.

Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020: Second Stage

Question proposed: "That the Bill be now read a Second Time."

Minister for Justice and Equality (Deputy Helen McEntee): I am pleased to have the opportunity to present this important Bill. I welcome the broad support it received in the Dáil last week. The purpose of the Bill is very clear from its Title. It is about new enforcement powers for the Garda Síochána for the duration of the Covid-19 pandemic. More specifically the Bill relates to commercial premises where alcohol is sold or supplied for consumption on the premises under a licence or in a registered club. Let me be clear from the outset that the enforcement powers in this Bill do not and cannot apply to people's homes. Last week I made the point that having the powers to close licensed premises temporarily would, in my view, allow for the wider opening of more licensed premises in the very near future. That has turned

out to be the case. On Tuesday the Government took the decision to reopen wet bars that do not serve substantial meals from 21 September with the possibility of some local restrictions. This is another important step in getting our lives back to some semblance of normality, albeit in a term I do not like, the “new normal”. The enactment of this Bill and the possibility of strong enforcement powers will allow for the reopening of wet bars. This State has an absolute duty to preserve and protect public health and this Government, and the previous Government, have not been slow to introduce tough and extraordinary measures to prevent the spread of Covid-19 and to minimise the risk to our citizens. One of those measures has been to keep licensed premises closed where they do not serve substantial meals. There has been some commentary that we have treated publicans like second-class citizens, but nothing could be further from the truth. The Government is aware of how extraordinarily difficult the past six months have been for publicans. It has been our goal at all times to ensure that whatever measures we take will lead to a safe and gradual reopening of society with as few restrictions as possible. The Government is also aware that the vast majority of publicans whose premises have been open continue to comply fully with the Covid-19 restrictions. As Minister I am very grateful for the high levels of compliance from the bars and restaurants that are going through a very difficult period and want to thank them sincerely for their support. These are good, decent employers who accept that the Covid-19 regulations are necessary for the greater public good. That being said, there are always the few who will not comply with the regulations and who will continue to put their employees and customers at risk. This is not acceptable and is not fair to those who are fully compliant either. Ensuring that everyone is playing their part in complying with the public health regulations is the most sure way of keeping us all safe.

As the law stands, a Garda member who suspects that a licensee is contravening the penal provisions of the Covid-19 regulations can issue a direction to that licensee to take steps to comply. The vast majority will do so, but for those who continue to flout the regulations, we need some way of enforcing them and that is what this Bill provides. This Bill will encourage the small minority of licensed premises that are acting contrary to public health regulations to bring themselves into immediate compliance. Senators will be aware that An Garda Síochána has been carrying out extensive work in support of the range of public health measures since the onset of the pandemic. An Garda Síochána has been widely praised for the graduated policing approach which has been adopted in all of its actions since the beginning of the pandemic, whereby Garda members engage, educate and encourage and only as a last resort enforce. The enforcement powers in this Bill will continue to be a last resort for those who fail or refuse to come into compliance. In an ideal world, of course, the powers will never be used, but at most I believe they will be required infrequently.

An Garda Síochána identified a total of 198 potential breaches between Friday, 3 July and Sunday 6 August, including a number of licensed premises at which multiple potential breaches were identified. We will have to wait and see if that number increases once wet pubs reopen later this month. This is an unacceptable risk to public health. It undermines the efforts and sacrifices made by so many in our society, including the licensees who are being responsible and doing the right thing. That is why I am introducing a range of enforcement powers ranging from on-the-spot closure for the rest of the day to a maximum of a 30-day closure for repeated non-compliance with Garda directions. My firm belief is that by providing these additional enforcement powers to gardaí, we will see an immediate improvement in compliance with Covid-19 regulations by publicans, restaurateurs and operators of private clubs in the interest of public health and in a way that will protect the gradual reopening of our society.

I will briefly outline the contents of the Bill to the House. Sections 1 and 2 are standard and relate to the interpretation and the application of the Act to licensed premises and clubs selling or supplying liquor to members or visitors for consumption on the premises. Section 3 provides for entry without a warrant of a member of An Garda Síochána to such premises for the inspection and other purposes under the Bill and creates an offence for a person who prevents, obstructs or attempts to prevent or obstruct a garda from doing so.

Sections 4 to 7, inclusive, set out the key new powers which I am proposing. Under Section 31A of the Health Act 1947, which was introduced to deal with Covid-19, a member of An Garda Síochána can give a direction to a person who, in the garda's view, is failing to comply with penal regulations made under the section. If the person does not comply with the Garda direction, he or she is committing an offence. In addition to the offence under the 1947 Act, these sanctions provide that where a licensed premises fails to comply with the direction of An Garda Síochána in relation to the public health regulations, a Garda member of at least superintendent rank may in the first instance make an immediate closure order for the remainder of the day once he or she is satisfied, based on the information provided, that there has been a failure to comply with the direction given and it is appropriate to do so.

Second, An Garda Síochána may apply to the District Court for an emergency closure order for a period of up to 72 hours where there has been a failure to comply with more than one direction on more than one occasion. Third, An Garda Síochána may, where there has been a failure to comply with a direction, issue a compliance notice to a relevant premises ordering it to comply forthwith and warning of the consequences of a failure to comply with the notice. An Garda Síochána may apply to the District Court for a temporary closure order where there has been a failure to comply with the compliance notice issued under section 6 and this failure is likely to continue or recur. This order could be for a period of not more than seven days in the case of the first order made and not more than 30 days in the case of a second or subsequent order made in relation to a premises.

I wish to state unequivocally that the enforcement measures provided for in these sections may only be taken where a direction of a member of An Garda Síochána has not been complied with. We wish to ensure that all persons have an opportunity to comply. Where a mistake is made or a person does not realise that he or she is not in compliance, the person will have an opportunity to comply. This is in line with the approach taken by gardaí to date, that is, to direct an individual to comply with the regulations in the first instance and to take further action only where there has been a failure to comply following that direction. The whole purpose of the provision is to achieve compliance and not to close down businesses. These sections also create a number of new offences where a person fails to comply with an immediate closure notice or permits a business to be open in contravention of an emergency or temporary closure notice.

For the avoidance of any doubt, I wish to repeat my comments in the Lower House that the approach taken in the Bill is to provide for Garda enforcement of criminal law provisions and not public health assessments. The approach taken in these sections is to establish the power for Garda members to make directions and enforce the penal provisions of the Covid-19 regulations and offences provided for under the Bill and the Health Act 1947. An Garda Síochána will only need to be satisfied that a relevant provision of the criminal law has been breached, not the likely impact of that breach on public health.

Sections 9 and 10 provide for, respectively, appeals against a compliance notice and a temporary closure order. This is in addition to provisions allowing an application to be made to

discharge an emergency closure order under section 5 of the Bill.

An appeal may be made to the District Court in respect of a compliance notice within seven days of such a notice being issued by a member. The court may confirm, vary or revoke the notice. Any decision of the District Court in this regard can also be appealed to the Circuit Court, adding an extra important safeguard for publicans or other licence holders. An appeal may also be made to the Circuit Court against a temporary closure ordered by the District Court. These are important safeguards in the Bill.

Sections 11 and 12 provide that conviction of offences under this Act or the making of a closure order under the Act may be a basis for an objection in respect of a renewal of a license or, in the case of a private club, a certificate of registration.

This Bill is closely related to the new Covid-19 regulations prepared by the Minister for Health, and section 13 is a necessary amendment of section 31A of the Health Act 1947. This amendment provides that the Minister for Health may prescribe penal provisions of regulations made under the Health Act 1947 to which the provisions of this Bill, in particular, will apply. He may do so following consultation with me and any other Minister as he considers appropriate.

Sections 14 to 16, inclusive, contain necessary technical provisions around liability for offences by bodies corporate, exercise of jurisdiction by the District and Circuit Courts, as well as service of documents.

Section 17 is primarily a technical section setting out the Title and operation of the Bill. I would, however, particularly draw Senators' attention to the provisions of section 17(3), which contains an explicit sunset clause. The section provides that, if enacted, this legislation will continue in operation only until 9 November 2020, subject to a resolution approving its continuation being passed by both Houses of the Oireachtas. This is to reflect the expiry date contained in Part 3 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020.

I fully recognise that the powers I am proposing are significant. The Bill is necessary and proportionate and represents a carefully balanced approach to addressing the small minority of licensed premises which are showing disregard for public health regulations. None of the provisions can be triggered unless a person fails to comply with a Garda direction in the first instance.

I remind Senators that the legislation is temporary and contains a sunset clause such that it can only be extended with the approval of a resolution passed in both Houses. Providing for these additional, limited powers will enable gardaí to move swiftly to address those cases in which licensed premises and private clubs breach public health regulations, in the context of the grave threat to human life and public health that we are facing. As I stated, I am confident this will encourage greater overall compliance and will support the hard work and good faith efforts being made by the vast majority of licensed premises to operate within the law.

I commend the Bill to the House.

Senator Barry Ward: Cuirim fáilte roimh an Aire ar ais arís go dtí an Teach. This is important legislation. The Minister has outlined the basis on which she has brought it before the House. In the first instance, as was raised on the Order of Business, several Senators are

concerned that the legislation is being taken through all Stages in one day. I think the Minister will acknowledge that so doing is not desirable, but in the case of this legislation, it is necessary. The Minister remarked on how section 17 contains a sunset clause that will bring the legislation back before us to possibly conclude it in less than two months, on 9 November. This is an important provision. It goes back to what the Minister said about there being both important powers but also safeguards in the legislation to protect the people who might be the subject of the legislation but also empowering these Houses to reconsider what is proposed when the time comes.

From my perspective, the most important aspect of this legislation is that it represents a stepping stone to a possible reopening of pubs. Some Senators have expressed reservations and dismay about the fact that pubs have not been able to open. I agree with that. We can all say that it is a bad thing for the country generally that people are not able to socialise or meet in the way in which they could in the past. However, we also recognise why it is the case. I say that as someone who has family members who are publicans in a rural area. I very much understand the plight of, in particular, areas with low populations where the pub was the centre of activity and of opportunity for people to come together, meet and socialise. There is definitely a gap for those rural communities. This legislation represents a potential stepping stone to returning to some normality in that regard. If only for that reason, it is very welcome.

The Minister has noted that the legislation contains important powers which she described as necessary and proportionate. That is exactly what they are. I do not purport to be an expert on licensing law but I am aware of some of the provisions involved. The Bill introduces important new powers for gardaí to step in where they can see that breaches have occurred. I welcome particularly the Minister's statement to the effect that there is a necessity to afford an opportunity to every person to comply with the law in the first instance before there would be any prosecution. That is a very important message.

I watched the debate in the Dáil and was most disappointed by the manufactured hysteria generated by some Deputies, one of whom described the legislation as draconian. I do not think that is a fair or accurate description of the powers provided in the Bill. Those powers will allow gardaí to go into licensed premises which are subject to very particular conditions to ascertain whether the licensed premises are following the rules that have been set down. They are not insignificant rules; they are rules that are in place for very good reasons. They establish a particular set of protocols that must be observed in the normal course to protect society in general but also, in the particular circumstances we face whereby there is a specific public health emergency and without overstating the point, to save lives.

The provisions put in place by the Department of Health and other regulations are there to protect the community at large at a time when we know that numbers are rising. In that context, far from being very draconian, these powers are proportionate and necessary to safeguard public health. They are in contrast to the powers the Garda now has, which is not to shut down premises but, rather, to pursue prosecutions in respect of matters such as the sale of alcohol to minors or offences under the Equal Status Acts. They must come in that context before gardaí can actually take the ultimate step of closing a premises on either a temporary or permanent basis. This allows action to be taken much more quickly which is appropriate in the context of the public health emergency where breaches of these rules are not merely undesirable but dangerous and must be taken in hand. That is why it is appropriate for gardaí to have powers to inspect and to act where they think it is appropriate to do so.

Another Deputy suggested in the Dáil that this is all about a moral opprobrium associated with the people sponsoring the legislation and their dislike of either public houses or alcohol consumption. This is a preposterous notion given, I suspect, that there is probably not a Member of either House who has never been to a pub or enjoyed the time they spent in a pub with friends or family. There is no such opprobrium nor could there be as there is very clearly a public will for these establishments to operate.

I return to the point that this is an opportunity to see a pathway to reopening pubs. Some of the concerns that have been expressed are quite manufactured. For example, it has been claimed that this legislation might enable gardaí to go into a publican's home or somehow break into a private dwelling. The inviolability of a dwelling is supremely protected by Article 40.5 of the Constitution. This is manufactured hysteria on the part of people who may well have legitimate concerns, but are trumping up issues with this legislation to make them more sensational or claim the legislation does more than it does.

Nor does this legislation seek to target publicans or people engaged in this business. This House will know from the pronouncements of Ministers that there is a desire to bring this feature of our society back into operation. That is something we all want to do. There is no way we can reopen pubs if we cannot take action against the very small number of pubs that do not comply with the legislation. One Member of the other House described this legislation as so serious that we are now like the dictatorships of Russia, which was the most extraordinary statement I heard in the course of the debate. The populist desire to be seen to be taking a firm line is all very well, and I understand that Members have to represent the views and concerns that have been made known to them. However, the notion that anything in here equates to that level of authoritarianism reflects more on the Member who said it than anything in the legislation. It also indicates how little the actual contents of this legislation are understood. The Minister set out the case very clearly and went through the various sections and what they do. We are empowering An Garda to safeguard the population in the context of a global pandemic. If there is one thing we have learned during the pandemic it is that An Garda has used those powers sparingly. This is a reasonable and proportionate piece of legislation.

Senator Robbie Gallagher: I will be sharing my time with Senator Lisa Chambers. Cuirim fáilte ar ais go dtí an Teach roimh an Aire.

I would like to thank the Minister for outlining the Bill before us this afternoon. There is no doubt that we live in strange times. This piece of legislation underlines that again if it needed to be underlined. I can say on behalf of the Fianna Fáil group that we are happy to support the legislation this afternoon. I anticipate and sincerely hope that the number of times this legislation will be used will be minimal. The Minister has said the same. It is important to note that the vast majority of the people of this State have done themselves and the country proud in how they reacted to this pandemic. When talking about licensed premises it is important to acknowledge the fact that owners of what are now commonly known as "wet pubs" have had to keep their doors closed for the last six months. They and, by extension, their families have paid a price. The financial and mental impact of having to keep their doors closed has been serious. It is important to acknowledge the great sacrifice they have made, and in that regard I am delighted that they will be allowed to open their doors again from 21 September. That is not coming a day too soon.

I note also that the restart grant and restart grant plus schemes were made available to publicans. More recently a top-up scheme was announced by the Minister for Business, Enterprise

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and Innovation, Deputy Varadkar, whereby 40% of the restart grant plus will be made available to help publicans reopen their premises. I have been in contact with my own local authority in Monaghan. It is still awaiting directions from the Department on the administration of that funding. I would like to bring that to the Minister's attention and ask for it to be expedited. I understand that the local authorities are ready to write cheques, but they need criteria from the Department. I respectfully ask that this would be fast-tracked as soon as possible because work will have to be done between now and 21 September.

It is also important to acknowledge the role the Garda has played during this pandemic over the past six months. From what I witnessed and from speaking to people, both gardaí and members of the public, it has been an opportunity for the Garda to reconnect with many communities. That has been welcomed by the communities and by the gardaí. Yes, the gardaí are stopping people on the road, but it is an advisory role and it is an opportunity for gardaí to have a conversation with people. That has gone down very well. The gardaí tell me that they are now operating on a 12-hour shift, which has allowed a greater number of gardaí to be on the streets during peak hours. From what I have detected, that has proved to be a great success. There are large numbers operating and the shifts have been changed to accommodate that. In my view, it has been a success. I ask the Minister to be cognisant of that. The 12-hour shift has facilitated an opportunity for more gardaí to be on the streets at the times they are needed. I would certainly like to see that continue if the majority of the Garda representative bodies was in favour of it.

The other section of our society that deserves great credit is our communities. The Irish people have done themselves proud. They have looked out for one another. A unique aspect of this Covid-19 disease is that it is not just about ourselves but about those around us, be they family or friends. There have been many examples of community sporting organisations and voluntary organisations coming together to help each other through this difficult time. It is important that we recognise and applaud the great sense of togetherness that Covid-19 has brought out in us. It is something we should nourish and cherish because it makes this country unique among others in that regard. Local GAA clubs are delivering groceries and other things. It is great to see that. I am happy to support the Bill.

Senator Lisa Chambers: I thank Senator Gallagher for sharing time. I read with interest Sarah McInerney's article in *The Sunday Times* last Sunday, and I agree with the sentiments in the article. We have been talking about the reopening of pubs too much given that there are other, more pertinent, issues for the country to deal with, such as the reopening of the schools, the safety of children, the increasing death toll from the pandemic and many other pressing issues. However, we must deal with it. Some of the publicans I have spoken to in my constituency in Mayo want this legislation. For the most part, they are doing things by the rules and doing them well. They do not like to see the very small number of publicans who are flouting the rules and taking the opportunity to open for longer and have people on the premises for longer, whereas others are not doing that. It is okay that some publicans are not serving food and do not wish to serve food and they should be allowed to open. I certainly welcome that date.

There has been a particular issue with smaller pubs in rural communities. We have spoken a great deal about pubs in the context of drinking, nights out and socialising, but the local pub in a small rural community can be far more than that. It is a meeting place. We all have felt the impact of the Covid-19 pandemic differently. Some of us experienced a positive lockdown as we had more time with family and children. I got to stay at home with my family and I have a back garden, but things are very different for other people. It was not the same for everybody.

I think of the person who is a bachelor farmer in the west of Ireland who, perhaps, is living alone and does not have social interaction. There was a point when there were no funerals, no mass, no access to the local pub and the mart was closed. For some people that is their social scene. That is where they meet their friends. They get out of the house and that is where they have conversations and interact with other people. There was a huge void when all those things were taken away. It has exposed the great level of isolation and loneliness in many parts of our society and country.

We must be careful not to be too flippant and dismissive of the real need to reopen these pubs. They are not just a place for people to have an alcoholic drink, but a place to socialise and connect with people. They are community meeting rooms. They are places where the local community often come to have their community council meetings or where somebody goes to meet neighbours. There is an awful lot more to it than has been acknowledged by some people in this debate. I disagree with the commentary of some public representatives that these laws are draconian. It is opposition for opposition's sake. Anyone who engages with the publicans that are abiding by the rules will know that they welcome this measure and do not fear anything from it. They want a level playing field for all and for everybody to abide by the same rules.

Acting Chairman (Senator Ned O'Sullivan): I call Senator Keogan. The Senator has eight minutes.

Senator Sharon Keogan: I welcome the Minister, Deputy McEntee, to the House. I was taken aback by the Minister's remarks in regard to private homes. This is not hysteria. I read in today's *The Irish Times* that a couple in my county was fined €2,000 because two gardaí had looked in the window of their house and seen a considerable number of people inside. I thought the private home was off limits. We need clarification on that today. To my mind, the private home is off limits to An Garda Síochána. There is legislation in place in the form of the environmental Act in regard to noise pollution, the use of which I welcome in respect of parties in houses but as far as I am concerned gardaí looking through the windows of people's homes at this time to determine how many people are inside is not on. It is important to put that on the record.

I was delighted to hear that wet pubs will be permitted to open on 21 September. These pubs have been closed for six months at this stage. Given that September also marks the end of the moratorium on mortgages this is timely action as many pubs may be facing the possibility of mortgage default or eventual permanent closure.

While I welcome this Bill in a general context there are many aspects of it, particularly the how and the why of its coming about, that I find worrying. There has been a distinct lack of clarity surrounding the Bill as it progresses through the Houses. I am concerned about the scale of the powers in this legislation. They are very broad-ranging. The legislation sets out mechanisms of enforcement for An Garda Síochána and the penalties to be applied but it does not appear to go into any detail about the crimes involved. We are being asked to accept the Department of Justice and Equality criminal sanctions as laid out while the actual offences are to be set out in regulations from the Department of Health. This is a failure of process. It is a dangerous path to accept such legislation. We cannot know what will end up being criminalised by the Department. We cannot and should not allow legislation to pass with such vague information, especially when people's livelihoods are at stake.

It is also concerning that this Bill is being rushed through. I am not oblivious to the time

constraints involved but it is often the case when the appropriate processes are not followed that the legislative outcome is of poor quality. There have been inadequacies in the process relating to the legislation, particularly in that the legislation has been extremely rushed. Publishing a Bill in advance and giving people time to consider it and further time to debate it properly are necessary processes. I recognise that the Department is working within time constraints but we must then accept that the proposed legislation is not likely to be of the desired standard that is achieved when the appropriate processes are undergone.

I understand that as this is emergency legislation the sunset clause will bring it to an end in November, barring any extensions granted by the Oireachtas. These regulations must remain temporary in nature, especially because in reality they will only be relevant to a minority of operators within the licensed trade sector that breach the regulations set in place. I would hope that it will also provide clarity and assurances to licensed traders who will be allowed to open soon. The Minister appears to have recognised the excuse of keeping pubs shut is not valid anymore given that this legislation would ensure the pubs that do not serve the €9 of food to customers, which the Government deemed essential in the fight against Covid-19, can operate to the same standards and guidelines as those pubs that do serve food.

This sector was left behind by Government policy and was forced to remain out of operation far beyond what was asked of publicans in other parts of Europe. Unfortunately, our pubs have not received the necessary supports up until this point. The Minister for Employment Affairs and Social Protection must immediately look to address this issue, which would future-proof this sector. I suggest a once-off grant of €25,000 to each publican to diversify their business. This grant would allow them to put in an alternative source of income, such as installation of a kitchen, a deli, a coffee shop, an off-licence, accommodation, or any other business from which they could derive an income.

Having a functioning business is what keeps the economy going. We must support them in this transition. Currently, Ireland is the only country in Europe that still has its pubs closed. We must remember that for many towns and villages across Ireland the local pub is an important gathering place for local communities. They are a place where communities can come together to celebrate special occasions and holidays, for sporting events, and to have community meetings and other events. While I do not suggest these things should be ongoing in the current climate, it is our duty to ensure that these pubs get the support they need to open and be active within their communities. The failure of the Government to act appropriately could result in the collapse of the sector. Such a loss would be felt in every village and town across the country. I hope the legislation will follow on from that. The legislation concerns a very small minority of operators within the licensed trade sector.

The Government continues to pick and choose where to implement legislation, such as with this Bill before us today, rather than focusing on the sectors that have proven to be responsible for significant outbreaks of Covid-19, for example in the meat factories. It is baffling that the Government has yet to take control of that situation. Those factories are still only obliged to adhere to guidelines. The suspension of testing at these meat factories will come back to haunt NPHE and this Government. All factories where large numbers of employees gather for the production of food, or for any other product, are Petri dishes for this virus. Such lack of action only serves to deplete the public's confidence in public health restrictions.

Building public confidence needs to be a priority right now. As our economy slowly opens it seems there are some people who find it all too easy to forget that Covid-19 remains rampant

throughout the world. It can still cause inordinate damage in our health, our economy and in our society. We need to continue to remind ourselves of the necessary precautions to protect ourselves and to combat the risk of rising figures. Let us not forget the sacrifices we have made already to allow us to get to this point. We do not want to find ourselves in the position we once found ourselves back in March. It is unthinkable that we would find ourselves dealing with a second surge of cases and yet every day the numbers grow increasingly concerning. We now have the knowledge we need to proactively manage the threat posed by the virus, while allowing our businesses to operate. I am happy that pubs will now join those businesses in operating, while at a reduced capacity. The legislation covering this must be clear, precise and as transparent as possible. This is not the case here.

Senator Ivana Bacik: I thank my colleague, Senator Gavan, for giving way as I have to be at the meeting of the Committee on Procedure and Privileges.

I welcome the Minister, Deputy McEntee, to the House. I reiterate the concerns, as raised by others already, about the timeframe within which we debate this legislation. It is most unfortunate that we are taking all Stages of this important Bill just in one day. I made this point earlier on the Order of Business. It is also unfortunate that the debate coincides with our meeting of the Committee on Procedure and Privileges. I apologise in advance for having to leave the Chamber for that meeting straight after speaking.

Deputy Howlin spoke on the Bill in the Dáil. On foot of what he said, Labour will not be opposing the Bill. However, we still have concerns about it and we have proposed two amendments to it arising from those concerns. Our concerns derive specifically from the fact that this is emergency legislation. It creates criminal sanction and imposes draconian measures. I listened with interest to Senator Ward, who spoke about something being either draconian or proportionate. Of course, a measure can be draconian and yet proportionate depending on the circumstances.

Over two days, on 19 and 20 March, emergency legislation was passed. Under the provisions of this legislation, a great number of statutory instruments have since been implemented. I refer to the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. Everybody accepts that this Act facilitated the imposition of draconian provisions via its amending of primary legislation, the Health Act 1947. We all accepted then, as we do now, that, in the context of the Covid-19 emergency, it is necessary to enact laws that would otherwise be deemed unacceptable. We all accept and support the need for sunset clauses in these laws. I appreciate that there is a sunset clause in this Bill which refers to the date of 9 November, which is the same sunset clause as in the earlier preservation and protection and other emergency measures Act.

Grave, justified concerns have been expressed about the extension of penal sanction to certain measures through the plethora of statutory instruments that have been signed by the Minister for Health. We saw recently SI 326 of 2020, which contained a number of different rules, some of which are not stated to be penal provisions and therefore do not carry a threat of penal sanction. Yesterday, at a meeting of the Special Committee on Covid-19 Response, this matter was raised by a number of entities, including the Irish Council for Civil Liberties, the Irish Human Rights and Equality Commission and my colleague from Trinity College, Dr. David Kenny. Concerns were expressed about the way in which public health guidelines have crossed into the criminal law domain by use of the mechanism provided initially in the Health Act 1947, which was enacted to deal with a different public health crisis, although it was in some ways

similar. That public health crisis related to tuberculosis. Under the Act, we saw this crossover being permitted.

Where we all accept there is a public health emergency, we must also ensure there are democratic checks and balances on processes. SI 326 of 2020 is currently the subject of a motion before the Lower House, and it gave rise to concerns because of what looked like constructive ambiguities or fudging of what were guidelines and what were to be penal provisions. Some Ministers suggested that civil offences may be introduced, although we know that there is no such thing in Irish law. Something is either a penal provision or it is not.

The Labour Party accepts that there is a major need for public buy-in in respect of public health guidelines. We would go further and say that we promote the concept of policing by consent. We think, and most people would accept, that public health guidelines are far more effective when they have public buy-in and people comply out of goodwill and belief in efficacy or effectiveness. That is what guarantees a level of compliance that is far greater than anything that could be achieved through the use of blunt powers under the criminal law. I say this not to suggest all our public health guidelines should carry criminal sanction - far from it - but we must trust that there will be compliance even without penal sanction and that where penal sanction is attached, it must be imposed in a clear and consistent way. It should be proportionate, even when the powers proposed are draconian.

Under the powers provided to the Minister for Health, over 20 statutory instruments have been introduced. There is confusion regarding which of these provide for penal provisions and which do not. It is clear that some have been revoked, having carried penal sanction, while others have not. Deputy Howlin provided some examples arising from SI 326 of 2020. These are well known to people. Others are perhaps not so clear. People are generally aware that they must, subject to penal sanction, wear face coverings on public transport. There was less certainty about the rules around the green list and travelling and compliance with the restrictive movement requirements on return from abroad from countries that are not on the green list. These types of issues have created some level of confusion and, within the Garda, may make it harder to enforce laws and ensure there is compliance.

I looked at a Garda police union survey conducted by the Association of Garda Sergeants and Inspectors in June. The survey reported certain difficulties among gardaí on how to enforce certain measures. We need to ensure there is clarity. It is unfortunate that SI 326 of 2020 was introduced in a setting where perhaps there was confused messaging from Government around the measures to be introduced.

We should take heart from the fact that in general we have seen high levels of compliance, even where penal sanctions have not been attached to public health guidelines. Let us consider some of the figures around the checks that have been conducted by the Garda on licensed premises, which is the subject of this Bill. Since 3 July as part of Operation Navigation, the Garda has been checking licensed premises for adherence to previous regulations under SI 234 of 2020. Between 3 July and 23 August the Garda identified 165 potential breaches, but the force has reported a drop in breaches and a high level of compliance in general. Last week there were only 13 breaches, down from 21 the previous week. That bears out the point that, since lockdown rules were first announced internationally and here in Ireland, the experience everywhere, including here, has been that effective compliance in terms of dropping transmission rates is better achieved through soft mechanisms like consent, co-operation and the strong spirit of solidarity that we have seen. This includes solidarity with our front-line workers and

the many people who have been bereaved through the awful incidence of Covid-19.

We support this Bill. We have put in amendments. We are keen to ensure that we give it proper and rigorous parliamentary scrutiny. However, we accept that in a time of Covid-19 crisis these measures are necessary.

Senator Paul Gavan: Cuirim fáilte roimh an Aire. I wish to begin by placing on the record of the House my unhappiness at conducting legislative scrutiny in this hurried manner. It is not how we should be conducting the business of this revising Chamber. We are waiving pre-legislative scrutiny and there has been no regulatory impact assessment. The decision to take all Stages in one sitting is all for practice. It means, for example, that no amendment, no matter how perfect or valuable it may be, has absolutely any chance of being considered or passed by Government. That is highly disrespectful to all of us. I cannot understand why, for example, we could not have taken Committee and Remaining Stages on a day next week, as suggested this morning. That would still have been timely in terms of the opening of the pubs.

The rigorous focus on this emergency legislation, while arguably necessary, stands in stark contrast to the complete absence of Government action in tackling actual existing causes of Covid-19 clusters in meat factories and other agri-processing sectors. Where is the emergency legislation to protect our meat factory workers? Why is the Government requiring publicans to follow a rigorous set of rules and procedures while not even requiring meat factories to have to report instances of Covid-19 to the Health and Safety Authority? The public would be shocked to realise that there is no requirement on meat factories to report instances of Covid-19 to the Health and Safety Authority. That is the case because of a change made by the then Minister for Health, Deputy Leo Varadkar, in 2016. It beggars belief, given the track record of meat factories in recent months, that this requirement is not in place. I call on the Minister for Justice and Equality to address that issue in her response.

Where is the emergency legislation to give statutory sick pay to all workers? That is already the norm across much of Europe.

Some 25 years after the beef tribunal it would appear that the beef barons remain untouchable when it comes to the rules and regulations that the rest of us have to follow. They can enjoy the benefits of bonded labour thanks to the disgraceful work permit system operating by the Government. They can pay poverty wages. They can sack anyone who dares to join a trade union. They can threaten their largely immigrant workforce with impunity and with the fact that if they do not like the terms and conditions on offer, the factory will get another planeload of workers in to replace them. That is an actual quote from one factory, as exposed on Claire Byrne's radio show last week. There is no emergency legislation for those workers or special sitting of the Seanad. I guess in the big scheme of things, these workers - so many of them new to our country - just do not matter to this Government. I should also cite the dreadful experience of direct provision residents with regard to Covid-19. Again, I will not hold my breath for the Government to line up emergency legislation or a special sitting for those poor people either.

This Bill will give additional enforcement powers to gardaí with regard to licensed premises and certain private membership clubs. It has a sunset clause, which as the Minister has said, is essential. It is important to say the vast majority of licensed premises and clubs have behaved very well and gone to significant effort and no little expense in ensuring Covid-19 protocols are followed. All those premises have been let down by a small minority of pubs and premises that have not complied, and a number of these premises have been highlighted across various

media in recent weeks.

The additional powers being given to gardaí in this Bill are significant and, under normal circumstances, Sinn Féin would not support such a significant increase in powers. However, these are not normal times and the truth is enforcement powers are a necessary step on the road to getting our pubs open again. There is a real incongruity in the current *status quo* as some pubs can open because they serve food or have managed to procure a supply of pizza while other so-called wet pubs must remain closed and watch as their customers go elsewhere. There is something fundamentally unfair about this. As my colleague, Deputy Martin Kenny, pointed out last week, if every pub in a village or town could open, there would be fewer people in each premises.

The powers in this Bill to enter and, where necessary, close a licensed premises are, on balance, necessary to give gardaí the power to make enforcement a reality and tackle that small minority of premises that would seek to disregard Covid-19 protocols and guidelines.

I will briefly go through the key sections of the Bill. Section 3 provides for entry without warrant of a member of An Garda Síochána to a relevant premises for inspection and other purposes. Again, in these special circumstances, Sinn Féin is prepared to support this. Sections 4 to 7, inclusive, as explained by the Minister, set out the new powers for immediate closure, emergency closures and compliance notices. Perhaps most significantly, sections 11 and 12 set out grounds for objection to the renewal of licences. Again, I stress that these are measures we only support under these special circumstances and for a strictly limited period.

I hope that the Government, health authorities and vintners can work out better medium-term arrangements to replace this emergency legislation in the coming months. In the meantime, we are reluctantly prepared to facilitate the passage of this legislation as a means to ensure compliance and facilitate the broader reopening of pubs in a fortnight. There are some thoughtful amendments to work through on Committee Stage, most of which we are prepared to support. However, we already know this process is effectively a charade, as the Government has no intention of giving any consideration to them.

Before finishing, I will briefly reference the idea of hysteria. We should be clear that there has been no hysteria in the Chamber this afternoon. Like Senator Ward, I was struck by some of the quite bizarre statements made in the Dáil last week by a minority of so-called populist politicians very much on the right wing of the spectrum. It is a concern as there seems to be a conflation of ideas and a kind of anti-State, anti-mask and anti-immigrant movement. Sinn Féin will be steadfast in opposing that level of hysteria and it is regrettable that we had to see that hysteria in the Dáil last week. Sinn Féin will support this Bill, although we are very disappointed with today's process.

Senator Vincent P. Martin: I thank the Minister for finding the time to address us in the House this afternoon. The context of this emergency legislation is very important. The first sentence of the Bill states: "An Act to make exceptional provision, in the public interest and having regard to the manifest and grave risk to human life and public health posed by the spread of the disease known as Covid-19". Those powers, to be candid, are extensive. Section 3(1) of the Bill states: "Any member, whether in uniform or not, may enter without a warrant any relevant premises at any time and there make such inspection, examination, observation and enquiry as he or she may think proper". We should make no mistake about it - these are extensive powers. I welcome what the Minister said in the House this afternoon in respect of the intention

behind the Act and that powers will only be invoked on the basis of enforcement as a last resort. However, they will soon be on the Statute Book and I am hoping that members of An Garda Síochána will be fully trained. The general secretary of the Garda representative body recently expressed concern about their understanding and the legislative import of their duties. Perhaps that is for another day in terms of the most appropriate place in which to make the comment. I feel those concerns should go directly to the Garda Commissioner and the Minister in the first instance. Notwithstanding that, Garda training is at the heart of this and the gardaí have to be brought up to speed very quickly.

A few weeks ago we had a publicised, attempted illegal eviction in Dublin city. It transpired that there was no determination from the Residential Tenancies Board, RTB, nor was there a court order, yet members of the Garda found themselves in the middle of that eviction and actually entered the private dwelling in question. I wrote to the Commissioner about it. I want to make it clear that we are very grateful to the Garda, especially in a pandemic, for its tremendous, heroic work to protect us in these unprecedented times. We cannot thank the Garda often enough for that. People are prone to mistakes but this is an example where members of the Garda are not fully appreciating and understanding their duties in certain circumstances. Arriving at what seems to be an eviction, they are indirectly and inadvertently aiding and abetting an illegal act. The Policing Authority spoke on that incident two weeks ago. It intervened and came out with a nice statement saying “we are only there to keep the peace”. However, they are arriving and giving credence to what could be an illegal eviction by observing and supervising it. In the case of the incident a few weeks ago, which was higher on the scale of a lack of understanding of their role, gardaí actually involved themselves in the illegal eviction and entered a private dwelling.

In 95% of those evictions the tenant is served with the notice and leaves. However, in the 5% of cases where the tenant refuses to leave, unregulated people in uniform with sunglasses, or bailiffs or whoever it may be, should not force an eviction on foot of a possession order. They should return to the court and say that the order is not being adhered to. Then there might be an issue of attaching and committing the person who is in breach of a court order. At that stage only should the forces of law and order have a legal role to play in such evictions. They should not be there at the outset when there is not even a termination order or a court order. I know they are doing it with the best of intentions but it is something that has been going on for years. I believe there is a misunderstanding of the actual law and the Garda is at times finding itself in places where it may not want to be. It is not in accordance with law.

I welcome the fact that there is a sunset clause in respect of the legislation in section 17. That should allay fears, despite the extensive powers that the Legislature is giving to An Garda Síochána. I note that during the debate in the Lower House, the Minister reassured Members that there will be no renewal without a resolution of both the Lower and the Upper House. There will be no automatic rolling over unless there is a resolution from both Houses to extend what are wide-ranging powers.

I welcome the contribution by Sinn Féin’s Senator Gavan calling out hysterical comments made in discussions of this Bill in the Lower House and identifying this as populism. We must always be on our guard against populism from any direction, be it the extreme right, the centre or the left. I concur with Senator Ward’s view that there was some scaremongering about the Bill. The dwelling expressly enjoys special protection in the Constitution as a place of repose in which no one should have anything to fear. I take Senator Keogan’s point expressing concern

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about what happened yesterday as reported in a newspaper of record. I did not get a chance to read about it yet but that would be a cause of concern for me too.

Taken in the round, this legislation is draconian in a sense but it is also proportionate and necessary. It will be a catalyst in the context of providing the vast majority of publicans with a roadmap to get their businesses up and running again. Pubs are so much more than premises licensed to serve drink. They are social nerve centres, as one Senator stated. They are also the heartbeat and headquarters of communities and are availed of in so many ways. Pubs often allow essential community meetings to take place free of charge. For some people, especially those in rural areas, they are vitally important to maintaining connectivity, morale and wellness. The Green Party will be supporting the emergency legislation, but we emphasise that we welcome the sunset clause.

Senator Eileen Flynn: I thank the Minister for taking the time to come here and listen to our concerns about the Bill. Today is World Suicide Prevention Day. If I had not learned the importance of these social connections from living in rural Ireland for the past two years, as a Traveller woman I would probably not be so supportive of the pubs reopening. Publicans are not always very nice to the Traveller community. However, I will do the right thing and support their reopening on 21 September.

I live in Donegal and I support the reopening of rural pubs, but I have some fears around this Bill. I refer to people living in apartments above pubs. If there are six people living in a residence above a pub, how will they be affected by the provisions of the Bill? If possible, I would also like the Minister's word that the Traveller community will not be impacted upon by the rules relating to gatherings of six people in houses. Even though I am a Senator, last night I was in a house with ten people who are all members of my family. That is how the Traveller people live. I was not breaking any rules or regulations. How do we protect people from the Traveller community living on halting sites and other ethnic minority groups with big families?

I would also like a discussion on how discrimination and racism affects the pre-booking of pubs. If more than six Traveller people are looking to enter a pub, can the Minister guarantee that they will not be discriminated against because they are members of the Traveller community? It is great to reopen pubs and support publicans and young people who have jobs. I have seen that especially in Ardara in County Donegal. At the weekend, I went out for something to eat. I could see the sense of community and what pubs bring to communities, especially in light of the level of mental health difficulties among younger and older people in Ireland. My husband does not drink and he regularly went to the pub before Covid. While I support the pubs, I want to be sure that people will not be discriminated against and that there will be fair access for people from the Traveller community, Roma people and people of colour.

Acting Chairman (Senator Ned O'Sullivan): That concludes the lead group spokespersons. All other spokespersons have five minutes. I call Senator Seery Kearney.

Senator Mary Seery Kearney: I welcome the opportunity to speak on the Bill and address the requirement to legislate to put these powers in the hands of An Garda Síochána. In this most unusual time, we must remember that the virus - not publicans, the gardaí, the public or even the Government - is the enemy. These legislative provisions are brought about to embellish the State's armoury in fighting the virus. I believe they are proportionate and temporary.

We observed a bacchanalian scene at one pub which was circulated on social media. It

was to our great surprise that there was an inability and impotence in our ability and that of the gardaí to respond. For that reason, this is a necessary provision at this time. I welcome the graduated sanction commensurate with the degree of carry-on that presents itself to the gardaí and to which they are required to respond.

I sincerely hope these powers will not require use but their existence serves as a deterrent. We police by consent. For us to continue to be successful, we must continue to do so with buy-in to the guidelines as many have noted. Should the powers be used, we should stress that it is for a very small, exceptional number of publicans who are not adhering to the requirements. It is for them and members of the public who engage in activity on their premises that a sanction is necessary. I am glad the measures are temporary and I hope they do not need to be renewed or extended.

I hope that having these powers in place will reinforce, support and give further impetus to the reopening of the remaining pubs on 21 September. It is necessary and urgent that those involved with these so-called “wet pubs” get back to earning their livelihoods and supporting their families. I have received calls from people in my local area who are fearful of gatherings in garages where big televisions have been erected. If socialising or gatherings can occur in premises that are supervised and subject to legislation and guidelines, we are all safer. It is important to emphasise the good working relationship between the gardaí and publicans, which is not adversarial and should be maintained. This additional power does not suddenly pit gardaí against publicans. Publicans are put in an invidious position when they have to deal with the frustrations of customers. When there is a lack of co-operation on the part of belligerent customers, publicans turn to the gardaí. Gardaí have told me that this excellent relationship will continue and that their support of publicans will not be undermined or otherwise affected by this Bill. The public has a duty to respond in kind.

As an employment lawyer who has been instructed by unions, I will address some of Senator Gavan’s comments. I also heard the radio reports of the plight of workers in meat factories. Certainly, I agree that it was harrowing. However, I disagree that there is a need for emergency legislation on their behalf. We have an Unfair Dismissals Act that does not require the 12-month threshold of service in instances where somebody is threatened with dismissal for trade union membership, race, religion or otherwise. Wearing any of my previous hats, I would relish the opportunity, and I have no doubt that there are groups and solicitors who have stepped forward, to assist in what is a horrible bullying situation. However, it is isolated and there is no need for emergency legislation for that.

I welcome and support these measures.

Senator Gerard P. Craughwell: I welcome the Minister and I will support the Bill, but reluctantly. It is a measure that should never have been required. I do not know what has happened since this Government was formed but for some peculiar reason it appears to be losing more and more of the public support that the last Government had. The last Government was hanging on by its fingernails after the general election while we awaited the formation of a Government, yet it had the confidence of all the people all of the time. In recent weeks the mixed messages that have been emerging have left everybody confused. The number of people who say to me, “The Government has no bloody clue what it is doing, so I am going to do my own thing anyway”, has led to a need to start considering statutory instruments and emergency legislation, and we are tucking things into emergency legislation that should never have been introduced under the cover of Covid-19.

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I listened to Antoinette Cunningham, the general secretary of the Association of Garda Sergeants and Inspectors, AGSI, and her concerns about the way in which legislation is being drafted. Could the Minister reassure me that in drafting this legislation she sat down with the AGSI, the Garda Representative Association, GRA, and the superintendents and asked them how the powers they already have are meeting their needs with respect to dealing with Covid-19 and what they need in legislation? We need legislation that has teeth and is capable of doing the job we want it to do. We do not want to publish legislation for the hell of it. We also want Ministers to liaise with each other before they go on national media so they have the same story all the time. It makes it difficult for this Minister if another Minister is saying something different from what she says. Even if the difference is only a slight nuance, it causes concern in the public domain. We must take that on board.

I have always believed that the rural pubs got a raw deal. If one went to some of the rural pubs in my home town of Galway and out into Connemara and in my wife's home place in Kilkenny, one would be lucky to find four or five people in them on any day. Social distancing was never a problem because people all sat in their respective corners. The problem is the urban pubs that have no interest in their colleague publicans or in the Government's efforts in public health. They are grabbing what they can. I was on holidays in a certain part of the country and my five year old granddaughter said to me: "Grandad, we cannot go in there because there is no social distance". A five year old could tell me that people were inside abusing the public health. The people who were in there were happy in themselves. They did not give a continental damn - they were having a night out and to hell with everybody else.

I was delighted to hear the Taoiseach, Deputy Micheál Martin, say that we are now talking about living with this condition rather than fighting it. We cannot beat Covid-19. The best brains in the world cannot do it, so we are learning to live with it. That is the important thing into the future. We need to close down the greedy publicans who want to pack their pubs. They are not doing anybody a service. However, there is another thing we must do. I have watched Members of the Dáil and of this House stand up and demand that we allow more people to attend this, that or the other. The last Government was led by the science. It listened to the scientists and it implemented what the scientists were saying. For God's sake, let us get back to that stage. Let us start listening to the scientists and obeying or agreeing with what they are trying to do. It is in all of our interests to so do. I fully support what the Minister is trying to do but I ask her, when she goes go back to the Cabinet, to advocate for having one voice telling one story. There should be clear and simple rules for everybody.

Senator Eugene Murphy: Is deas an rud é go bhfuil mé ábalta cúpla focal a rá ar an plé seo. As we get into the real debate, we can see how concerned everybody is and how all Senators are linked in to the reality that we are in the middle of a pandemic. That was not the case during the debate on the Order of Business. The pandemic is not just an issue for Ireland, it is an issue for the world. I am glad that Senator Craughwell is now supporting the Bill.

I welcome the Minister to the House and commend her on her work on the Bill, but to a certain extent she contradicted herself. I make that point in a friendly manner because we have a very good working relationship. She spoke about the rogue pubs. The very reason we are here today is that publicans in my county, Roscommon, which the Minister knows well, and other counties have told me that they have kept to the law, been good and are very concerned about public health. They told me, as a legislator, to come into the House and to work with my party, the Taoiseach, the Tánaiste and the Green Party in order to bring in legislation to deal with the rogue pubs. I count on one hand the number of rogue pubs in County Roscommon. There are

only four or five of them, a very small number, but those people have enraged other publicans.

We should get rid of the phrase “wet pubs”. I do not know who invented it. I worked in my cousin’s pub for many years and I worked in other pubs while I was in college. The only time I ever saw a wet pub was when a radiator burst. It is a crazy use of language that somebody has brought in. That is an aside.

We must realise that the pandemic was easier to handle during its first three or four months because every Member of this House and many medical professionals believed that it would have disappeared by August or September. What has happened in the meantime? We have discovered that some of the medical professionals disagree with each other. Some of the most eminent medical people in the world cannot get to the bottom of the pandemic.

This is unquestionably the biggest challenge with which all governments and parliamentarians in proper democracies face. Members who state that we must live with the pandemic are correct. I, like the Minister, Senator Seery Kearney and most Members of the House - there are some eminent lawyers among them who will dissect the Bill inside out and are far better able to address the issue than I am - know that the reality is that things are changing from week to week. That is a challenge for everybody. The leaders, deputy leaders and health ministers of every country in the world have a significant burden on their shoulders when they go to bed at night and when they wake up in the morning. The reality of Covid is that people are dying and getting sick. Unfortunately, there were three deaths yesterday in Ireland. Do the people who state that Covid is not a threat to our health, communities and families, who tell us not to wear a mask and who demonstrate in the most appalling way realise what has happened to families in this country and across the world?

Some people may refer to the Bill as draconian legislation but I do not believe it is. We could use the word “draconian” to describe the virus. Of course, the longer it goes on, the more likely people are to lose patience. They say that they cannot continue and that we need to get our pubs reopened, go back to our football matches and so on but personal responsibility on the part of everyone, both inside and outside this House, from families and communities must be the number one priority. We all have a responsibility here. When very eminent medics, many of them brilliant people, are disagreeing with each other on radio and television, what are ordinary people to think? What are they to think when they hear such disagreements? There is confusion everywhere and that gives rise to massive challenges.

As Senator Seery Kearney said, the enemy is the virus. There is a sunset clause in this Bill. I know the Minister and most members of the Government personally and I know that they do not want to introduce draconian legislation, but we must act now.

Senator Fiona O’Loughlin: I thank the Minister for being with us today to go through this important and necessary Bill. My colleague, Senator Murphy, outlined the necessity of implementing legislation to ensure that we live in as safe a society as possible. The numbers are concerning, with 30,164 cases and 1,781 deaths to date. We are all very concerned at the number of cases to date and at the daily increase in new cases we are seeing, particularly here in Dublin. It is only right that we introduce a long-term plan for living alongside Covid-19. The most important issue for society, now that we have reopened our schools, is to keep them open. We also want to see people getting back to work. We want to protect lives and livelihoods. We are engaged in a very delicate balancing act, with the overarching aim of ensuring the health and safety of our population, particularly the most vulnerable members. We must try to effect

as much compliance as possible so that we can continue to reopen society.

The measures in this Bill are proportionate and, most importantly, temporary. Let us hope that the powers provided will be used judiciously. Notwithstanding the public health concerns, we must bear in mind those in the pub trade who have suffered a huge blow to their livelihood over the past six months. Indeed, coming from Kildare, which has suffered greatly in the last few weeks, I am particularly conscious of the hammer blow dealt by Covid-19 to our pub industry. We have 179 pubs in our county, many of which are family owned and some are run by more than one generation of the same family. Up to 400 families have been impacted by pub closures. As of today, pubs have been closed for 178 days. The news that our pubs are going to reopen on 21 September is very welcome. Many of the pubs in our country have been driven into mortgage default and are at real risk of not reopening.

Our pubs are the hubs of our communities. They are an integral part of the social fabric of communities and towns. For many, pubs are a vital meeting point. In many ways, they are also part of our rites of passage. We were talking earlier about young people not having the same rites of passage in the context of leaving school. I remember going for my first drink with my dad to a family-owned pub in Rathangan, Fullam's, and what a rite of passage that was. So many people have not had the opportunity to have that rite of passage. People have not had the chance to meet neighbours, to have social conversations or to have small meetings. The reopening will be very welcome indeed but I hope it is too late for the whole pub trade.

It is important to remember that the vast majority of pub owners have been compliant with existing restrictions. This legislation is only needed for the tiny minority who do not observe public health guidelines. As I said earlier, I have huge empathy for pub owners. I am in favour of this legislation, as are the pub owners, having spoken to many of them over recent days. They themselves believe that the Garda needed additional enforcement powers to deal with breaches of the Covid-19 regulations. We have all heard of shebeens operating and people gathering and travelling to where they know drink would be available and where we know that people have not been observing social distancing. This is completely wrong. It is only right and fair that those who are operating within the law know there will be consequences for those who break it.

I do not believe that pubs have received the necessary supports they needed. They needed to have more supports given to them. It is unfair that the so-called wet pubs have been put into the same bracket as nightclubs.

We have to live with Covid-19. We must take personal responsibility and we have to trust people and situations. We must be careful of not going down the road of over-regulation.

Minister for Justice and Equality (Deputy Helen McEntee): I thank all Senators for their comments and especially for their broad support for the legislation. I did not say it at the outset but, to be clear, I am very grateful to all Senators for their support and for allowing the Bill to go through and bypass the pre-legislative scrutiny. I understand and fully appreciate that this is not the way we should be passing legislation. Unfortunately, this is the second time I have brought legislation in a short space of time in this manner. I do not want to be doing it this way but both of these pieces of legislation are very relevant to the current situation and there are time constraints, particularly given there is a sunset clause on this for 9 November. I appreciate the Senators' efforts on this and their support in waiving the pre-legislative scrutiny. We have not brought forward this legislation lightly. It is not anti-pub legislation, as some people have

suggested while maybe not in this House. As someone who has spent a third of my life working in pubs in my own family pub or while in college and beyond college, it is not something I would do.

This legislation is here to support publicans, as all Senators have outlined, and especially those who have been compliant and who put a huge amount of work, effort, time and money into making sure they are compliant. This legislation looks at certain small numbers of publicans who are not adhering, who are bending the rules and who are breaking the Covid-19 regulations. The legislation is to ensure that where people do that, there are penalties.

Senator Craughwell asked if we had engaged with An Garda Síochána. The Garda itself has said there is a deficiency where people are breaking the rules in terms of gardaí being able to come in to ensure there is enforcement and compliance. This is why we are doing this. Obviously it is done with the engagement and support of An Garda Síochána.

I will address some of the concerns around the sunset clause. I am aware there is an amendment to this later. We put in 9 November, which is based on the fact that other regulation finishes on that date. On the suggestion that we would not allow an ability to extend that, given the uncertain times we are in and that we do not know what will happen next week, never mind in two months, it is important that we allow the potential for a rollover, but only having gone through both Houses, being debated in both Houses, and with the permission of both Houses. That needs to be very clear.

There are concerns and perhaps questions around the fact that some instruments are guidelines and some are law, and that some are penal and some are not. I understand that this can be confusing for people. There is a very clear outline in the statutory instruments as to what is penal and what is not. I understand that some measures that were guidelines have now become penal. Senator Bacik mentioned the provision of penal measures for face coverings while on public transport and in shops. That had not been the case but, unfortunately, while many people have been wearing face coverings when asked, many others were not. When introducing the penal measures, we have seen compliance shoot up to between 90% and 100%. These penal provisions are for a reason and it is not because we are trying to catch people out. We do see, however, that where those measures are brought into place, compliance increases. In the past week we saw non-compliance in the pubs going down. Perhaps that is because we have been debating this very publicly and publicans know that these measures are potentially coming in as well. There has been mention of meat plants and factories. I think Senator Seery Kearney addressed that in her own contribution. There is legislation in place and a huge amount of work has gone on between the relevant authorities. The Department of Agriculture, Food and the Marine is working not just with meat plants but also with food production plants across the country to ensure their premises are safe and the work can be carried out in a safe environment. On direct provision, from the very outset a vast array of measures were put in place, everything from cocooning for those over 65 to testing and the ability for people to self-isolate where they have tested positive or have been in close contact with someone who has tested positive. As of this Saturday, I am informed by the HSE that in direct provision centres 7,500 people, residents and staff, will be tested initially and then tested again in two weeks' time. This is to ensure we are working with and protecting them as much as possible.

Senator Keogan mentioned the provisions around entering the home. To give absolute clarity and assurance, there is nothing in this that would provide for or allow a member of An Garda Síochána to enter somebody's home. It is always the case that where they are invited or

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admitted into a home, or where there is a search warrant or arrest warrant, they can certainly enter. That is not being addressed in this Bill. I am not aware of the article to which the Senator refers so I do not know at what stage of the pandemic that was or what was used to convict them. I will certainly look into it.

The sunset clause was mentioned. I would like to join Senator Flynn in acknowledging World Suicide Prevention Day. It is a very important day and I am glad she mentioned it. There should be no impact by this legislation on anybody in a discriminatory way. Everybody is going to be and should be treated the same, whether that is going into a pub, booking a table for six people or where a member of An Garda Síochána is coming into a pub and engaging with citizens. Everybody should and will be afforded the same treatment. If a mistake is made and somebody is in breach of regulations or the law, in the first instance the Garda should always engage with that person. It might be an accident and the person might not realise he or she is in breach of the law. That will be the case for absolutely every member of our community and our society. Where there are ten people living in a home, a large family or people living over a pub, once it is a family unit, that number is allowed. We are asking and encouraging people, while it is not a penal provision, that outside of the people living in the house they have no more than six people from three other households within their home and no more than 15 outside. I really would ask that people adhere to that. I am afraid I do not know who came up with the term “wet pubs” but I agree that it is not the best term.

I thank Senators for their support of this legislation. I anticipate that it will be used in very limited circumstances and very sparingly over the coming weeks. The fact that the pubs are opening is very positive. It will create an outlet for a lot of people who have not been able to get out to enjoy themselves and engage with friends, particularly those who are living on their own. That can be very positive. However, we have to remind ourselves that we are still in the middle of the pandemic. We need to make sure there are rules and regulations and that for those who breach them, there is a mechanism by which they can be held accountable. This legislation will help us to do that.

I apologise that I cannot stay for all of the debate. My colleague, the Minister of State, Deputy James Browne, is going to take my place.

Question put and agreed to.

Acting Chairman (Senator Ned O’Sullivan): When is it proposed to take Committee Stage?

Senator Barry Ward: Anois.

Acting Chairman (Senator Ned O’Sullivan): Is that agreed? Agreed.

Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020: Committee and Remaining Stages

Section 1 agreed to.

SECTION 2

Senator Lynn Ruane: I move amendment No. 1:

In page 5, between lines 8 and 9, to insert the following:

“(2) This Act shall not apply to a residential unit within a licensed premises or a residential unit in the same building occupied by a specified person.”.

This amendment would prevent gardaí from entering a residence in which someone who manages, owns or works in a pub or nightclub lives. It makes a clear distinction between someone’s home and a licensed premises.

It is important that there is a clear legal protection for those who live in a building which has a partial or full licence to sell alcohol. Without this distinction there is a concern that the residents would not have the full legal protection afforded to their home. Gardaí should not be able to enter an individual’s home without a search warrant. Section 2 of the Bill does not set that out in concrete legal terms so this amendment would ensure that a person’s right to due process is upheld.

Acting Chairman (Senator Ned O’Sullivan): I welcome the Minister of State, Deputy Browne, to the Seanad. I am not sure if it is his first time in the Seanad since his appointment but it is his first time here while I am presiding and he is very welcome. I congratulate him on his recent elevation. Would the Minister of State like to respond to amendment No. 1? Excuse me. Senator Richmond has indicated. It is my first time presiding over Committee Stage of a Bill.

Senator Barry Ward: I want to address briefly what Senator Ruane said. I understand, and it was expressed in the debate in the Dáil also, that there were concerns about the protection of dwelling places in this legislation. I understand also where the motivation for this amendment is coming from but I disagree that it is not clearly set out in the Bill. Section 2 clearly defines the relevant premises to which the legislation applies. It refers to any premises where intoxicating liquor is sold or supplied for consumption on the premises. That comes in tandem with two things. First, definitions within the Intoxicating Liquor Act specifically define the difference between the premises that is the subject of a licence and other functions that may happen in the same building or on the same site. As is the case in my family, for example, where the family lives above the pub, the residential section of that building is not part of the licensed premises. There can be no doubt whatsoever but that the law is absolutely clear that there is a distinction between the licensed premises that is part of a building and any other part of the building. The law in respect of the Intoxicating Liquor Act does not apply to anything other than the licensed premises.

In addition to that, there is a very clear and much-litigated provision in Article 40.5 of the Constitution, which refers to the inviolability of the dwelling. That is something I have stood by as a barrister for many years. The point Senator Ruane makes about gardaí not being able to enter a premises without a warrant is right but I say that is already a constitutionally enshrined provision and this Bill neither does nor could change the supremacy of that provision within the Constitution.

I understand the motivation behind this amendment. It is well-intentioned but it is simply not necessary. My concern, if it were to be accepted, is that it would introduce more confusion.

It would suggest that there is somehow a way in which gardaí would be entitled to interfere with that inviolable dwelling place. It might be attached to a pub, above a pub or in the same building. There is not, and the clearest way we can make that obvious is by not changing the way the section is currently framed.

Senator Alice-Mary Higgins: I am a co-signer and initiator of this amendment. That was a very useful intervention from Senator Ward. One of the problems is that there is not great clarity on it and concerns have been raised. We know that across Ireland, and particularly in rural Ireland, many family members live on the same premises. The language used in the Bill refers to a premises on which intoxicating liquor might be served. There are situations, for example, where it is regarded that a building or a pub is licensed but there is a separate dwelling space within it. I am not necessarily keen to press this amendment but I want to flag it as an issue.

It is important that clarity is reinforced in the regulations because there is a sense that this is an emergency power so we need to be crystal clear on the measure and not rely on, for example, the question of another relative who might live in an apartment above a premises and so forth. People are very reluctant to say that a warrant is needed to go into a building in case they be perceived, because they want to co-operate, as blocking access to the premises. I am looking to those who will want to co-operate but who are very clear that there is a distinction between that part of a building which is used for the selling of intoxicating liquor and their residence as a specified person. I am proposing the amendment because of the circumstances in which the Bill is being taken. It is being rushed through the House with all Stages being taken today. We have not had the normal process of a Second Stage debate to tease out this issue. I hope the Minister of State can confirm that the regulations and the guidance to An Garda Síochána will include clear specifications as to what this law does and does not entitle gardaí to do with regard to premises. That would give reassurance and clarity to many people.

Acting Chairman (Senator Ned O'Sullivan): Before we go further, I apologise to Senator Ward who I think I referred to as Senator Richmond. I do not know why I did that but Deputy Richmond and Senator Ward are from the same neck of the woods. That may be an omen.

Senator Barry Ward: It is.

Acting Chairman (Senator Ned O'Sullivan): The Senator might follow Deputy Richmond to the Lower House.

Senator Timmy Dooley: Like other speakers, I also have some concerns about this area. It is important that at this stage a full explanation is given of what these measures are expected to achieve. The great success to date in containing the virus has not been necessarily due to the actions of An Garda Síochána or the authorities but due to the willingness of the Irish people to follow the public health guidelines, as set out. We have to be very careful in introducing these measures that we do not lose that level of public support and these are not seen as Big Brother measures.

I am taken to some extent with the way the public have moved in recent weeks and months. I am concerned that the authorities are not allowing people to attend matches. That is public health advice and we must be conscious of it but members of the public are starting to drift, and I understand the reason. Many people who do not get into the grounds where matches are being played are sitting on walls or climbing ladders and trees if they have a vantage point. That indicates to me that people are starting to move on so we must be careful because we will not

restrain people with more laws.

We will have to accept that some people recognise that they will have to live with the virus for a protracted period. We do not want to subject people to the law in a manner that deters them from buying in to the public health message. There is a history of that in our culture. In a bygone era, when people were prevented from holding classes and religious services, the hedge school and mass rock developed. We have to ensure that when we bring forward more laws and measures in this House we do so cognisant that the vast majority of people will do what is right and what is expected of them and that the laws should only be in place for enforcement on those who show scant regard for them. There are people who are doing that, and it is right that we bring forward these measures to address that. However, we cannot make criminals of the population at large. Having read the Bill, I do not believe the intention is to do that but my comments send a signal with regard to other rules and regulations being planned that we approach them in a careful manner that brings the people with us on this very difficult journey.

Minister of State at the Department of Justice and Equality (Deputy James Browne): I welcome the opportunity to give clarity on this issue. The amendment put forward by Senators Higgins, Ruane and Flynn seeks to add a subsection to section 2 to provide that the Act will not apply to a residential unit on a licensed premises or a residential unit in the same building occupied by a specified person. I am aware that concerns were raised in the Dáil last week in respect of this very issue and the application of the provisions of this Bill to private homes.

The decision was taken not to put in place any measures to enforce Covid-19 regulations in private residences and this Bill is in keeping with that decision. The provisions of the Bill do not and cannot give An Garda Síochána powers to enter a person's home to enforce penal regulations. The Bill very clearly limits the application of the provisions to a licensed premises and clubs where alcohol is sold or supplied for consumption on the premises.

I assure the Senators that this amendment is not necessary. The licence for the sale of intoxicating liquor is confined to the place expressly mentioned in the licence and identified by a map lodged in court. The Circuit Court Rules 2001 provide that the applicant shall produce a map or plan upon which the premises the subject matter of the application are outlined in red, with the area to be licensed clearly delineated. The plan requires the layout of all floors on the premises sought to be licensed, including areas not intended to be used for business, such as residential accommodation, which do not then form part of the licensed premises and, therefore, the provisions of this legislation will not apply.

Section 18 of the Intoxicating Liquor Act 2003 and section 3 of this Bill empower any member of the force to enter a licensed premises for the purpose of detecting an offence under the Licensing Acts or under prescribed regulations in the case of this Bill. It also provides that any member of An Garda Síochána, whether in uniform or not, may enter, without warrant, any licensed premises at any time and there make such inspection, examination, observation and inquiries he or she may think proper for the prevention of detection of offences under the Licensing Acts. Therefore, An Garda Síochána may only enter the licensed premises identified in the licence attached to the premises. This power cannot be used to enter a residential unit, whether or not it is attached to a licensed premises.

I have outlined the reasons the proposed amendment is not necessary. I would also like it to be noted that it is not desirable as it could cause unintended consequences for other legislation where such wording does not appear. On that basis, I urge the Senators not to press the

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amendment. In my own practice, I have dealt with a number of licensing applications and I can assure the Senators that when making a licensing application it is very clearly delineated what is and what is not a licensed premises. This provision will only apply to the licensed premises section of a building. I assure the Senators that there is no issue but I welcome the opportunity to clarify that. Clarification is welcome and necessary. I also assure the Senators that An Garda Síochána will only ever rely on this legislation, when enacted, as a last resort and it will always work with publicans, as is currently the case.

Senator Alice-Mary Higgins: I thank the Minister of State for the clarification, specifically in regard to the use and reference to the maps which are lodged in respect of licensed premises. In the interests of continuing and further clarity, will the Minister of State indicate if, in respect of the regulations, which I am sure everybody will be referencing in order to ensure compliance because many pubs will be looking to open, the clarification provided might be incorporated therein, made available as part of the regulations or, at least, referenced in the regulations?

Deputy James Browne: I will clarify the matter with the Minister. I would be concerned that any further clarification would lead to confusion. As I said, the maps that are lodged with the courts in terms of licensing areas are exceptionally clear. They are detailed maps. For example, they provide more detail than is required for a planning application. Areas are clearly delineated in red. I have seen this issue arise in the Criminal Courts in terms of, for example, search warrants in regard to whether an area is a licensed premises or not. It is very clear. I would be concerned that if further clarification were to be provided in the regulations, it would lead to confusion. Also, the regulations have to be in compliance with the legislation.

Senator Alice-Mary Higgins: I am satisfied that, legally, there is sufficient security but I am concerned about the communications aspects of this provision and I believe it is a matter that we need to keep under review. I ask that the Minister of State seek to monitor if there are circumstances whereby, for example, persons accept entry into a private residence because they believe they must under the law and that there is clarity in that regard. I believe more needs to be done in terms of communication on this issue. I accept that, legally, it is clear. I will not press the amendment because I do not think that legislation is the place to express my concern on this matter. I thank the Minister of State for his reassurance. I hope that others are made aware of the clarification he provided.

Amendment, by leave, withdrawn.

Section 2 agreed to.

SECTION 3

Acting Chairman (Senator Joe O'Reilly): Amendments Nos. 2 to 4, inclusive, are related. Amendments Nos. 3 and 4 are logical alternatives to amendment No. 2. Amendments Nos. 2 to 4, inclusive, may be discussed together.

Senator Ivana Bacik: I move amendment No. 2:

In page 5, to delete line 14.

I welcome the Minister of State to the House and I thank the Minister, Deputy McEntee, for the full response in her closing remarks to some of the points I had raised in my Second Stage speech.

The issue on which I spoke most on Second Stage was the lack of clarity on the distinction between penal provisions and guidelines that are not enforceable through the criminal law. Amendment No. 2 speaks to that point. It seeks to amend section 3, specifically section 3(1)(a), to narrow and make clearer the power that is being provided to An Garda Síochána. It is an extensive power already in that it is a power to enter a relevant premises, which is, of course, a licensed premises under section 2, without warrant, to inspect, examine, observe and make inquiries and so on for the purposes of giving certain directions. The Bill, as drafted, references the purpose of giving a direction under section 31A(7) of the Act of 1947, which is the Health Act 1947, whether in relation to a relevant provision or otherwise. The amendment seeks to delete “whether in relation to a relevant provision or otherwise.”, because section 31A(7) is already, in our view, broad enough to encompass all the necessary powers that the Garda should have.

My colleague, Deputy Howlin, put this point very strongly in the Dáil and I am conscious that there was extensive debate on this specific amendment in the Dáil, but its purpose is to be constructive and to provide greater clarity. We did support the Bill but we did so reluctantly, recognising it is necessary, as we did in respect of other emergency legislation. We think it is important when a Bill of this nature is providing additional Garda powers that we give it adequate scrutiny. We are not satisfied that there is a need for this very broadening provision through the use of the words “or otherwise” because this significantly expands the power under which a garda can enter a licensed premises. We do not believe this is necessary.

I read the Minister’s response to Deputy Howlin in the Dáil. I note she said at a particular point in the debate that the reference to “or otherwise” is only with regard to section 31A(7) of the Health Act 1947. If that is the case, why include the words “or otherwise”? We are seeking clarification on that and to ensure we are not creating an over-reach in the policing powers provided. As I said in my Second Stage speech, this is an issue about which concern was expressed by a number of people and institutions giving evidence before the Special Committee on Covid-19 Response yesterday in the Dáil Chamber. I am conscious it is a real concern.

There is a particular concern with this legislation where we see section 1 defining the direction given under section 31A(7) of the Health Act 1947 in regard to a relevant provision. In section 31A, the section which we are seeking to amend, there is another definition of a direction which restates the definition in section 1 but adds to it the phrase, “whether in relation to a relevant provision or otherwise”. We do not understand the need for this. If, as stated by the Minister in the Dáil, it is unnecessary because what the Government is seeking to do is give the power with regard to section 31A(7) of the Health Act 1947, why include “or otherwise”? We believe it is unnecessary. It is drafting that may cause difficulty because it appears to provide an over-reach in law.

I made the point on Second Stage that already we are seeking very significant powers provided, not just to the Garda but to the Minister for Health. We saw in SI 360 of 2020 extensive use of this power through the creation of 14 different guidelines, some of which are stated to be penal sanctions under section 31A, and some of which are not but which, as I said, were somewhat fudged in the sense that there was this reference to the bizarre entity of a civil offence which, of course, is not known to our law. In order to secure public buy-in, in order to ensure we continue with the sort of social solidarity we have seen and with high levels of public compliance and goodwill, as Senator Dooley has said, we need to ensure that we are acting with respect and trust and that we are neither antagonising nor undermining the spirit of solidarity. I do not see the use of the phrase “or otherwise” as being helpful in that regard.

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We have seen immense sacrifice made by people across the country and yet we are seeing alarming rates of transmission rising, particularly in Dublin in recent days. That is a real concern. We all recognise the need for this sort of legislation in that context but we also need to ensure we have continued public goodwill and buy-in. Mixed messaging, confused messaging and overreach of criminal powers are not helpful in securing that sort of social solidarity. That is why I am pressing the amendment.

Acting Chairman (Senator Joe O'Reilly): Given that amendments Nos. 2 and 4 are grouped, does Senator Higgins wish to speak to amendments Nos. 3 and 4?

Senator Alice-Mary Higgins: I support the amendment put forward by Senator Bacik. In fact, I would prefer the amendment put forward by Senator Bacik to my own. I recognise that this is work that Deputy Howlin very much brought forward and I commend the Deputy for the rigorous debate he brought to this issue in the other House.

The preferable option would be the deletion of this line. It is at a minimum unnecessary in that the definition of "direction" in the Bill, as was said, is already explicitly direction given under a relevant provision. The Bill states: "'direction" means a direction given under section 31A(7) of the Act of 1947 in relation to a relevant provision;". The word "direction" already covers it. It is at a minimum unnecessary but the greater concern is it sends a signal of ambiguity.

There has been reference to compliance. When all of the countries were being reviewed in April or May last as to how different countries were doing in their response to Covid, it is important to note Ireland fell down on certain areas. Our testing and tracing was not up and running, as it should have been. We did not have the ICT capacity that we needed. There were certain other areas, particularly, as we have seen, congregated settings which was well-flagged as a serious concern. Congregated settings, like direct provision centres and residential homes, were areas where we were being told Ireland was behind in terms of addressing them.

The area where Ireland scored highest in terms of response to Covid was on public engagement, and that was important. That was what brought our average up in terms of our response to the crisis in May. It is important that we keep that sense of public trust and part of that is clarity and a signal, such as a message on the words "or otherwise". My amendment supports the removal of the line as a whole but I focused on the two words which are a key concern for us, namely, "or otherwise". It is not clear what is meant by "or otherwise". It sends an unhelpful signal of ambiguity. It is a relevant provision or otherwise. If it is the case that "or otherwise" means the exact same as the relevant provision, which is simply measures under section 31A(7) of the Act of 1947, then we should be removing "or otherwise" as it sends a signal. However, "or otherwise" does not only mean that. It could mean anything. It is vaguely worded. It is open to different applications.

What I propose, in my amendments, is more wide-ranging. Perhaps the intention was to encompass some of the other regulations that were made under section 31A beyond subsection (7). If it is, for example, other aspects of section 31A that are envisioned as being subject to direction, that creates some concerns because section 31A involves regulations made by the Minister and it is wide-ranging, but at least we would know that it was related to section 31A and perhaps, for example, subject to the sunset clauses in respect of that section.

My amendment simply states that we replace "or otherwise" with a narrowing to section

31A of the Act of 1947. As I say, the relevant provision covers section 31A(7). My additional text covers the wider parts of section 31A.

Moreover, I have another version of the amendment - one which I think is preferable - which clarifies that it should only cover the regulations that have already been made under section 31A. Obviously, under section 31A, the Minister may make new health regulations. It is difficult for us in this House to give *carte blanche* powers to the Garda to implement regulations that do not even exist, that might be made under section 31A and the contents of which are unknown to us. My preference would be to remove this and narrow this Bill to the purpose for which it is set out, which is in relation to Garda actions in licensed premises and the specific areas under section 31A(7). My second preference would be that we would narrow it to section 31A(7) and other regulations which have already been made and are in the public domain and known under section 31A. A third, far less favourable option would be to narrow it to section 31A to encompass such regulations as are made under that Act on an ongoing basis. All of those options at least give some sense of what we are referring to whereas the vague use of language, such as “or otherwise”, could mean anything. It could mean regulations under any area. There is no limit on what “or otherwise” might be. It simply says, under section 31(7), “whether in relation to a relevant provision or otherwise”. We need clarity.

To be honest, Deputy Howlin probably argued it much better and clearer than have I. The Deputy was very clear on the “or otherwise” language. It is unnecessary language. If it was removed, it would give assurance. If not, I would ask that they would accept, if they do not accept the amendment from the Labour Group, to consider my amendments as at least adding some narrowness or clarity.

There are other relevant issues, for example, the health and safety standards within licensed premises for staff. I do not know if these are intended to be covered by the “or otherwise” provision, but I imagine not. We are hearing about these new enforcement powers that we need to give the Garda but, before we broke up for the summer recess, we highlighted the fact that there were only 67 health and safety inspection officials under the Health and Safety Authority for the whole country. There were only 67 staff in charge of inspecting every workplace including licensed premises - a large number of new workplaces that will now come into play. In order to enter a premises, those health and safety officials rightly require a warrant and they require to be accompanied by the Garda. I would like the Minister to indicate, as we are giving these additional powers to the Garda to enter premises in respect of these regulations, whether there will be additional resources - perhaps even secondment - or designated resources, even including Garda resources, allocated to the Health and Safety Authority to ensure that the normal and necessary practices around workplace standards and health and safety standards and inspections are proceeding as usual because I would be concerned at the redirection of Garda resources towards these regulations at a time when the tools we already have are not properly being used. I urge the Minister of State to accept either Senator Bacik’s amendments or my own.

Acting Chairman (Senator Joe O’Reilly): Senator McDowell has indicated, followed by Senator Ward.

Senator Michael McDowell: I did not have an opportunity due to the Committee on Procedure and Privileges meeting to participate in the debate earlier today. I do not want to make a Second Stage speech, but I am concerned that this measure is, in fact, overly complex to deal with a reaction to the Berlin D2 bar incident in Dublin and is not as necessary as might be

thought. It certainly is not as urgent as might be thought.

One element that worries me is that because of the pressure on this House, we have now arrived at the position that one of our functions under law is to consider statutory instruments made under the Health Act 1947, especially the type of statutory instrument mentioned by Senator Higgins. As a result of the peculiar way in which work is being done in this House and the pressure to either sit, or not sit or to fix its business in one way or another, the regulations that were most recently made by the Minister, SI 326 of 2020 relating to various matters particularly covering the consumption of alcohol, have not been subjected to adequate scrutiny.

I echo the comments of Senator Higgins. Here we are giving the Garda powers to implement, supervise and enforce regulations, penalising those who do not implement, contrary to their duty, regulations that we have not really had the opportunity to consider or debate in this House. I can give an example. SI 326 of 2020 was made by the Minister for Health, Deputy Stephen Donnelly, on 31 August and it states, among other things, that the carrying on of certain businesses or services in certain relevant premises must be regulated in a particular way.

Looking through regulation No. 11 of that instrument, I made a shocking discovery. The regulation operates in respect of a casino or private members' club at which gambling activities are carried out and which is operated on a commercial basis. There is no such lawful activity in this country, full stop. One may not carry on commercial gambling in any private members' club. It is against the law and specifically the 1956 Act. One may not operate a casino under any circumstances, as it is plainly and simply illegal. There is no provision for casinos to open in this country.

This brings me to a slightly different topic and I hope it is not too distant from the subject of this debate today. There has been a scandalous failure on the part of the prosecuting authorities to implement the law relating to gambling in this city of Dublin. Under the Gaming and Lotteries Act 1956, no gambling type of casino or amusement arcade may operate without a resolution having been passed to enable it to happen. Nevertheless, surrounding us in this city and within a mile of here today there are many gambling casinos and establishments masquerading as private members' clubs where gambling is done on a commercial basis. The Garda Síochána is ignoring this development and has done nothing to stop it.

This strikes me as particularly horrific as the law has been there for donkey's years. Dublin City Council revoked the authority of anybody to have such a premises in its area 20 or 30 years ago. I remember former Deputy Pat McCartan as a Workers' Party councillor proposing the revocation of this in Dublin city. The law is being flouted for very big money in this city. Moreover, there are automated teller machines located in these establishments to facilitate the expenditure of money, usually by vulnerable people, in these wholly illegal operations. What have we found? The Minister for Health, Deputy Stephen Donnelly, is suggesting by inference that this is a lawful activity and members of the Garda can attend at these premises to ensure people are having a meal, while they gamble and drink. This is grotesque.

It brings us back to the point made by Senators Higgins and Bacik. We should not in this House, on an emergency basis and without full consideration of all the implications, be passing legislation that brings into statutory effect regulations that we have not even had the chance to consider. I challenge the Minister for Health and the Minister for Justice and Equality to come to this House and defend the designation of casinos and premises where gambling is being done on a commercial basis as premises where gardaí can arrive and inspect to ensure meals are be-

ing consumed in combination with the service of drink. It is against the liquor licensing law to permit gaming in licensed premises.

I object to the fact this is being made up on the hoof by people who have never considered what is the law. I say it here that it is a crime to operate a casino in Dublin or to operate an establishment masquerading as a private members' club where gambling is carried on for commercial purposes. Instead of having a decent debate on all these regulations on the gambling laws and all the rest, here we are being told for the reasons set out by Senators Higgins and Bacik that we are giving gardaí the right to attend such premises not to close them, take away equipment or prosecute the people criminally operating these places, but to ensure they are handing out meals with alcohol, which they are not allowed to serve either in such premises. No licensed premises can permit gaming on its premises.

This is the nonsense of rushing through legislation of this kind and not allowing this House to meet while this statutory instrument was being produced by the Minister for Health, Deputy Donnelly. One of the problems is that today's sitting, as I understand it, sets the clock going for this House to consider whether the regulations made under the Health Act should or should not be revoked. This is a sitting day and the clock is now running on these regulations.

It is a crime to operate a members' club for the purposes of commercial gambling in this city. It is a crime to operate what is called a casino or even a gaming arcade with or without ATMs in this city. The Garda Síochána, the Minister for Justice and Equality and the Director of Public Prosecutions should prosecute those involved but, curiously, they seem to be protected by a kind of "do nothing, say nothing, shrug of the shoulders" culture, which I find deeply alarming. I wonder if money is talking in the political system. Is it the case that people with a lot of clout seem to be getting away with murder, breaking the ordinary rules of this State?

Many District Court judges have the wool pulled over their eyes all around Ireland in that because the Revenue Commissioners issue licences for gambling machines, betting terminals and the like, it is somehow legitimate to operate them without the say of the local authority. The people of Carlow, for example, are perfectly entitled to say they do not want casinos in their county. The process may be reversed if people adopt for part or all of their local authority area a resolution under the 1956 Act. Unless they do, it is criminal to carry on that activity. However, we find ourselves this afternoon being asked without due consideration at all to empower gardaí to go to these premises, ignore all the gaming machines and the rest, and the question is not whether it is lawful to serve alcohol in the premises, as it is not, and no gaming is permissible in licensed premises. The question they will ask is whether food is being served to an adequate extent. Gardaí will inquire into that utterly trivial detail. I find it deeply offensive that this is the way the Departments of Justice and Equality and Health are operating. The Department of Justice and Equality is the Department with overall responsibility for the Gaming and Lotteries Acts 1956 to 2019 and other laws relating to gambling. The Government, acting as a cohesive authority, is providing that gardaí can attend casinos to work out who is eating and who is not and is requiring that records be made regarding people who are engaging in criminal activity not to find out who they are or what they are doing, but to find out what they are eating. The Government is saying that it is a matter of great importance that all Stages of this Bill be passed today so that gardaí can carry out that function. I reject that completely. It is a sad day on which we have ended up having been so rattled and confused by events and so spangled by difficulties in holding sittings of the Houses of the Oireachtas and by rulings of the Chair in the Houses, to which I will not go back, that we cannot even consider the real issues which lie behind this kind of law.

I agree with Senator Higgins. It is very strange that we should be invited to grant, on a very expedited basis - I will not go further than that but I believe it is a matter of rubber-stamping the Bill - powers to An Garda Síochána to carry out functions which it should not be carrying out at all. It is wrong that we should be bamboozled into this position as if asking some questions in this House has now become a crime. One such question is what is the status of a casino or private members' club at which gambling activities are carried out and which is operated on a commercial basis? If that is illegal, why are gardaí going to visit these places to check whether people are eating meals in them? If it is not illegal, will the Minister of State at the Department of Justice and Equality stand up in this House and say so? Will he say that it is legal to operate a casino in Ireland in the absence of any statutory provision? Will he say that it is legal to operate a so-called private members' club where gambling is carried out on a commercial basis?

This goes back to what Senator Higgins said; we are being asked to provide legal powers to enforce regulations which may be made in the future. We do not know what will come down from the Department of Health next. I do not blame the Minister, Deputy Stephen Donnelly, for not knowing that it is a crime to operate a private members' club where gambling is carried out on a commercial basis and where drink is available to members. I do not blame him or his officials for not knowing that because they do not know the law as it relates to gaming, lotteries and licensing. They do not understand it. I do, however, blame the Department of Justice and Equality for asking us to give An Garda Síochána the authority to enforce laws in a manner which effectively recognises that criminal activity can carry on as long as food is served in the appropriate way and people do not stay on the premises after 11.30 p.m.

As is obvious, I support the amendment. I will not waste any more of the House's time on this but it is a real shocker to me that a Minister could make a statutory instrument recognising that it is somehow lawful to operate a casino or private members' club at which gambling activities are carried out on a commercial basis and that the only problem is that gardaí cannot knock on the door and ask to see the till rolls to ensure that everybody is buying a meal of €9 value at the same time. There is a law and rich people in this country who have become very much richer over the last ten years are increasingly and more flagrantly operating these places without any enforcement of the law by An Garda Síochána. They will look at this provision in this regulation as the Minister for Health making provision for gardaí to come to their casinos and private members' clubs to demand to see till rolls to see whether food is being served. The law is being deliberately flouted and wealthy people are making a lot of money out of it. For some reason, nothing has been done to stop it for the past ten years. As a result, all one has to do is to drive along the quays or O'Connell Street or out to the airport to see all of these casinos. In my area of Rathmines, there is a casino of this kind. Not one thing has been done to stop them and today they are getting a pat on the back and being told to tighten up their catering arrangements. That is scandalous.

Senator Barry Ward: Senator McDowell started his contribution by wondering if he might have strayed a little from the topic that is before the House. It is fair to say that he did given that the regulations to which he referred are not made under this Act, although they are made under a section which is referred to in this Act.

Senator Michael McDowell: This Act allows the enforcement-----

Senator Barry Ward: Senator McDowell had a lengthy and repetitive contribution on this issue. The time is now mine. He started by wondering if he had strayed from this amendment. He definitely had.

Senator Michael McDowell: I had not because the enforcement of the regulations is allowed under this Act.

Senator Barry Ward: The subject of the amendment has absolutely nothing to do with gambling legislation.

Senator Michael McDowell: It does.

Senator Barry Ward: What was most pointed about the Senator's contribution was a question he asked. He asked whether money was talking in the political system. That was an unfortunate question and I believe he should withdraw it and the associated comments he made. He asked this question as if these institutions did not exist when he was in the Department of Justice, Equality and Law Reform. It is regrettable that he would throw that around without a scintilla of evidence having been presented. It is merely a smear which he has thrown out as part of his contribution in the context of something that is not part of this.

Senator Michael McDowell: On a point of order, they did not exist when I was in the Department and I resisted their propagation in Cabinet and elsewhere. It is since then that they have mushroomed around Dublin.

Senator Barry Ward: I listened to the contribution of Senator Higgins and that of Senator Bacik when she moved the amendment. I entirely accept their legitimate concerns. I also watched the debate in the Dáil on the amendment brought forward by Senator Bacik's party colleague, Deputy Howlin. That debate was unfortunately hijacked by many others who had other agendas. The point the Deputy was making is sound and needs to be looked at.

Senator Bacik said that, when passed, this legislation will significantly expand the powers of An Garda Síochána. That is absolutely correct. There is no disputing that. It will significantly expand Garda members' entitlements to enter licensed premises to carry out inspections, observations and so on. I do not, however, agree on two other points. I do not agree that this particular paragraph of section 3(1) expands the powers beyond what is already in the rest of the Act because the Act as a whole seeks to empower An Garda Síochána to do things it might otherwise not be able to do, particularly under the Intoxicating Liquor Acts.

I also do not agree with the suggestion that it introduces ambiguity. I have complained for a number of years about the manner in which we manage legislation in the country. We do not consolidate it. This Bill refers to section 31A of the Health Act 1947, an amendment which was introduced in other legislation earlier this year. It can be argued that it is complicated and confusing to find the various regulations that are made but it is not ambiguous.

Senator Higgins made the point that she hopes this will only apply to the regulations already made. In passing the legislation, these Houses hand the Minister the power to make regulations. We devolve that power in a limited sense. It would not be reasonable to say this could only apply to regulations that have already been made. Part of the devolution of power from the Legislature to the Executive involves recognising that the Executive may make regulations in the future. For example, the regulations that have already been made under the Health Act, notwithstanding much of what has been said about them, do not introduce an ambiguity. It is fair, however, to say that it means this House cannot be certain what regulations will be made in the future. It may well be that Members think that is not an acceptable concession to make. I do not agree with that but it does not introduce ambiguity in and of itself.

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I will say two things about what section 3(1)(a) does in the phrase “or otherwise”, which is a broad phrase that introduces, as Senator Bacik has said, a broad, widened and expanded power to the Garda. It definitely does so but that is not necessarily a bad thing and I say that as somebody who appeared as defence counsel for a long time and who still does so in cases. I have a healthy scepticism about the expansion of Garda powers and I can see how sometimes quite old Garda powers are used in a particular way. I would say two things about how this particular paragraph of section 3(1)(a) applies.

First, we must remember that it only applies to licensed premises. A discussion has been had in this House already today about dwellings and other things. I appreciate what Senator Gavan said on Second Stage when he talked about the anti-State movement and that kind of dog-whistle politics we saw in some of the debate on this legislation already. I give credit to his colleague, Deputy Martin Kenny, who acknowledged that. In response to Deputy Howlin’s amendment in the Dáil, Deputy Martin Kenny acknowledged that the matter of dwellings is not an issue but many people have spoken about it, and while they may have legitimate concerns among themselves, those concerns are not borne out by the law. The point is that this is restricted to licensed premises. I strongly feel that licensed premises are already highly regulated environments, appropriately so, and any licensed premises owner or operator should not be afraid of the monitoring of that operation by An Garda Síochána. It is entirely appropriate that it would have the powers to go in, inspect and observe. That is doubled in the context of the Covid-19 crisis. This legislation creates an environment, which definitely gives the Garda expanded powers to go in and look at that but in that context, under the provisions of section 31A(7).

Second, the language used in section 31A(7) supports what the Minister, Deputy McEntee, said at the beginning of this debate. In the last line of the paragraph it says the Garda: “may direct the person to take such steps as the member considers necessary to comply with the provision”. That is much more the tenor of what is being provided in this Bill. It is policing by consent. Do we have an absolute guarantee that a garda will not act beyond that? No we do not but we have never had such a guarantee and the Garda operates separately from this Legislature insofar as it operates with the powers that are given to it by legislation. If it does so capriciously or in excess of those powers, there are other bodies that hold it to account for that. We must assume - and the evidence bears this out in the powers it has been given under emergency legislation this year and since this Seanad was formed - that the Garda will use them carefully, cautiously and with restraint. The Minister, Deputy McEntee, said this afternoon that every opportunity would be given to people to first comply with the regulations and then if they fail or refuse to do so, the consequences would flow from that. The language of section 31A(7) bears that out. The first action of the garda is to: “direct the person who takes such steps as the member considers necessary to comply with the provision.” That is the tone of this legislation.

I understand the concerns that are being expressed by the movers of these amendments and I am not saying those concerns are invalid but in the context of emergency legislation that is designed to give enhanced and expanded powers to the Garda and is the subject of a sunset clause for its renewal on 9 November, it is acceptable to expand these powers in that context. I fear the removal of the “or otherwise” provision would restrict the Garda. If under section 3(1)(a), for example, a garda were to go into a premises after the fact in any prosecution, he or she would then be limited to only making a direction under section 31A(7). That is an unnecessary fettering of what should be an action driven by public health concerns to safeguard everybody in the community. This is in the context of what Senator Higgins said in her contribution about

the strength of public compliance with these regulations in Ireland and she is right. Enormous praise should be heaped upon the Irish people for the manner in which they have reacted responsibly and with care for their fellow citizens to this crisis. This is not aimed at those people, however. It is aimed at the people who operate licensed premises inappropriately and unlawfully and who do so with impunity. This legislation is designed to give the Garda and the State powers to deal with those people through prosecution, only and if it is deemed necessary because they have refused or failed to comply with the regulations. While I might well have a reservation about a phrase such as this in other legislation in the ordinary course, looking at it through the prism of the crisis I feel it is proportionate and warranted.

Acting Chairman (Senator Joe O'Reilly): I invite the Minister of State to respond but before I do so I want to congratulate him on his appointment. This is my first occasion to do that and I wish him good fortune.

Deputy James Browne: I again welcome the opportunity to provide clarity on this matter. These amendments all propose to make a change to section 3 of the Bill. Amendment No. 2 in the names of Senators Bacik, Hoey, Moynihan, Sherlock and Wall proposes to delete the words: “whether in relation to a relevant provision or otherwise.” from section 3(1)(a) of the Bill. Amendments Nos. 3 and 4, submitted by Senators Higgins, Ruane and Flynn, seek to delete the words “or otherwise” in line 14 of the Bill and substitute: “or in relation to such regulations that have been made under section 31A of the Act of 1947 previous to the date of the passing of this Act” and: “or in relation to provisions under section 31A of the Act of 1947”, respectively.

Section 3, as the Minister, Deputy McEntee, outlined in her Second Stage speech, provides a power of entry for members of An Garda Síochána to “a relevant premises”, as defined in the Bill, namely a licensed premises or a registered club, in order to check for compliance with the various Covid-19 regulations and to enforce those regulations where enforcement becomes necessary. The Garda is relying on various statutory and common law powers of entry to check for compliance with the regulations and to issue directions to comply. Section 3 of this Bill will establish a clear and specific power of entry for An Garda Síochána for these purposes. This will remove any ambiguity around the appropriate powers of entry to rely on. The new power of entry will apply to all of the Covid-19 related provisions which require a Garda power of entry to a licensed premises.

A suggestion was made in the Dáil that the provision could be used to provide a right of entry for gardaí to enter other types of premises for the purpose of enforcing penal provision of Covid-19 health regulations. Let me be unequivocally clear in stating that this is not what is provided for in section 3. The provision states that a member of An Garda Síochána may enter, without warrant, any relevant premises, which is limited to the types of premises that are provided under this Bill. Section 3(1)(a) seeks to ensure that a member of An Garda Síochána has the right of entry into a licensed premises or a club for the purpose of enforcing any penal provisions of the Covid-19 regulations, not simply those penal provisions that apply to licensed premises, and will be prescribed for the purposes of the Bill.

While the general purpose of this Bill is to provide enforcement mechanisms in respect of the penal Covid-19 regulations prescribed for the purposes of this Bill, the purpose of the “or otherwise” clause in section 3(1)(a) is to make clear that in a licensed premises a garda is not prevented from giving a direction to comply with any penal Covid-19 regulations, even if not prescribed specifically for a licensed premises. Therefore, the “or otherwise” clause provides clarification for An Garda Síochána, rather than ambiguity. This is not about giving gardaí any

extra powers. Gardaí may already, under section 31A of the Health Act 1947, direct a person to comply with a penal Covid-19 regulation. We do not want to see an anomalous situation where a garda can, as now, direct a person on the street to comply with a travel restriction, for example, but will be powerless to give such a direction if the person entered a licensed premises because such a restriction would clearly not have been prescribed specifically in respect of a licensed premises.

On amendment No. 3, we can all agree that we do not know what impact Covid-19 will have in the coming weeks and months. There needs to be a degree of flexibility in this Bill to apply it to future regulations, if necessary. By including the words proposed in amendment No. 3, the application of these provisions would be limited to penal regulations enforced prior to the Bill being enacted only, which is not in keeping with the intention of the Bill.

Amendment No. 4, if accepted, would have the effect of significantly broadening the scope of the power of entry I have outlined above. At present, as I have explained, a member of An Garda Síochána may only enter a relevant premises without warrant for the purpose of giving a direction in respect of a penal regulation, as per section 31A(7) of the Health Act 1947. This amendment would mean that such entry could be for the purpose of any regulations made under section 31A of the Health Act, which would include non-penal provisions. I am of the view that this is unwarranted and would represent an unjustifiable extension of the powers given to An Garda Síochána. For these reasons, I ask the Senators not to press the amendments. I understand the amendments are well intended and I also understand where the Senators are coming from but, for the reasons I have outlined, I ask that the amendments not be pressed.

Policing in this country is governed by consent. We have, in effect, a community police force. It is unarmed. The purpose of this Bill is only to enforce the necessary regulations in respect of a very small minority of premises that fail to comply with them. One should remember the provisions apply only to licensed premises. It is appropriate that the Garda have the necessary powers, in the current emergency, to take the steps necessary to enforce all regulations.

Reference was made to resources. While this matter is not under my remit, I expect and hope that the necessary resources will be provided. I do not intend to get into a debate on gambling but it is proposed that I have specific delegated powers in this area. I am very much aware of the destructive nature of gambling, which is becoming more pervasive in society. I am happy to meet Senator McDowell at any time to discuss the serious issue of gambling.

Senator Ivana Bacik: I apologise as I should have congratulated the Minister of State on his recent appointment during my first intervention on Committee Stage. I am delighted to see him in here with us.

I have listened to the extensive debate on my amendment and I thank colleagues who intervened in support, namely, Senators Higgins and McDowell. I listened also to Senator Ward and the Minister of State but still do not see the need for the inclusion of the phrase “whether in relation to a relevant provision or otherwise”. I accept that the phrase “in relation to a relevant provision” might need to be included but I believe the phrase “or otherwise” creates the difficulty. Having read the speech and response by the Minister, Deputy McEntee, in the Dáil on this very point, I simply cannot see a rationale for the inclusion of the phrase. Deputy Howlin described it as a catch-all phrase and I believe Senator Ward appreciated that. It is a dangerous phrase to use in legislation of this sort, which needs to be precise and clear.

Senator McDowell gave a very extensive speech on SI 326 of 2020, which I talked about in my Second Stage speech, as did Deputy Howlin. It is clearly relevant to this matter. Senator McDowell pointed out a particular anomaly. The key ambiguity — I do not apologise for using that phrase — in the regulations and in the phrase “or otherwise” involves the fudging of the line between a criminal or penal power and what is simply a guideline. There is a point to be made about why we include public health guidelines in regulations if, in fact, they are not enforceable through penal powers. That is a bigger issue. What is the point? There is no such thing as a civil offence. These are not offences. There are only guidelines. We have seen remarkably high levels of compliance across the State, and this was achieved by guidelines and without the need for criminal sanction. More powerful public health messaging ensures that people buy in through compliance and a sense of solidarity, or a sense of our all being in this together. That has been really important and we need to embrace it. Anything that undermines it is dangerous and that is why I will be pressing the amendment. We want to ensure that people continue to comply and that there will be goodwill and buy-in. Where we see overreach or a catch-all phrase being used without any clear rationale for its inclusion, we have to disagree and point out the dangers.

Having examined the wording again in more detail, I note it already entails a very clear extension of Garda powers. The Garda is empowered to enter, without a warrant, a relevant premises, as defined in section 1, for the purpose of giving a direction, also defined in section 1, under section 31A(7), which we inserted into the 1947 Act. With regard to the use of “whether in relation to a relevant provision or otherwise”, “relevant provision” is defined in section 1(2) in reference to a new section 31A(6A), inserted by section 13 of this Bill. Therefore, there is already a very extensive network of authority under which the Garda is empowered to enter a premises without warrant, without the need to insert the words “or otherwise”. For us, that is the crux of the issue. It amounts to an unnecessary overreach. We have not heard a clear rationale for its inclusion. For that reason, we will be pressing the amendment. We support the Bill, however, and we support the Government’s efforts to ensure compliance. I have already expressed that, as have my colleagues in the Dáil. This is an attempt to be constructive to ensure we are not overreaching and thereby undermining what are, in fact, remarkable levels of goodwill and social solidarity in this country.

The Minister of State or Senator Ward referred to something the Minister, Deputy McEntee, said at the start of her speech. I regret the speed with which we are debating this and the fact that we have not been supplied with a copy of the Minister’s speech. I wanted to check whether I have misheard something. Again, it is unfortunate we are taking all Stages of this important Bill in one day at such speed and without certain supports, such as a printed copy of the Minister’s speech.

Senator Alice-Mary Higgins: I thank the Minister of State for his speech and congratulate him on his appointment to his role. It is still not clear what exactly is meant by the phrase “or otherwise”. If there is a specific intent in legislation, it is always better to state it.

The Minister of State mentioned amendment No. 4, concerning provisions under section 31A of the Act of 1947. He said it would potentially expand the intentions. That is certainly not my intention. What I sought to do was to set some limit. I would like to be clear about the Minister of State’s interpretation of the phrase “or otherwise”. The relevant premises is the subject of the first check, so we know already that it is only going to be relevant premises. My amendment would not change that; it would relate only to relevant premises. The Minister of State indicated that his interpretation of “or otherwise” is that it would relate to other public

health regulations that have been made. Presumably such public health regulations would have been made under section 31A of the 1947 Act. My amendment, such as it was, sought simply to codify what seemed to be the intent, which I presumed was the Government's desire to be able to take action on other provisions under section 31A in circumstances where it is seen that the wider health guidelines might be in breach. That is what my amendment would allow for and what the Minister of State describes the phrase "or otherwise" as doing. What does "or otherwise" achieve that is either encompassed by the general provisions under section 31A of the 1947 Act or that goes beyond them? It would be good to be really clear on what exactly "or otherwise" encompasses. Could the Minister of State clarify whether it encompasses something less or more than what the section encompasses? That would be useful to me in determining whether I should press the amendment. I will be supporting Senator Bacik's amendment. On the issue I raised, I would really appreciate clarification.

Senator Martin Conway: I did not speak this morning. I just want to make a quick note. On most occasions I find myself agreeing with Senator McDowell, my learned friend and good colleague. I am very clearly of the view, regarding his observations on Clifden-----

An Cathaoirleach: That is beside the point. I have got to apply the rules.

Senator Martin Conway: I appreciate that.

An Cathaoirleach: The rule is that the Senator must confine himself to the subject matter.

Senator Martin Conway: I would be in agreement; that is all I would say.

An Cathaoirleach: The Senator should please confine his comments to the subject matter.

Senator Martin Conway: Well done to him for being brave enough to do it.

More important and appropriate, I congratulate the Minister of State, Deputy James Browne, on his appointment. I was delighted that he picked Lahinch in County Clare for his holidays this year. I hope he enjoyed himself and that hospitality was extended to him as we would hope.

It is a pity that Senator Bacik feels it necessary to press her amendment to a vote. The consensus in the Chamber is striking. The powers that will be vested in An Garda Síochána are appropriate. We are living in difficult, challenging and strange times during which we must protect the majority. We must give powers to An Garda Síochána sometimes in order that it can protect the majority against the small minority who choose not to take this situation seriously.

The problem with this pandemic is that the virus is contagious and very dangerous. Unfortunately, a much higher percentage of those who contract Covid-19 than we would wish experience difficult and challenging symptoms. The after-effects, of which we are only now becoming aware, are very serious.

In order to protect the majority, sometimes we must have challenging and difficult legislation and question ourselves. The debate on the Bill has been very positive in that regard but I believe we need to show consensus in this House and support this legislation in its totality. I listened very carefully to Senator Bacik, who is, to be fair, very supportive of the Bill. I genuinely believe that her concerns are not well-founded. We need to send a clear message from this House that we are in unison with regard to vesting these powers in An Garda Síochána in order to protect the majority from a very small minority.

Senator Michael McDowell: I, too, welcome the Minister of State. I congratulate him on his appointment. I thank him for his offer to discuss with me the question of gambling. I assure Senator Conway that I am not opposed to An Garda Síochána being given powers to enforce the law in general terms. I have no doubt that An Garda Síochána will apply the powers it is being given with discretion and reasonableness. All of those things go without saying. However, we must bear in mind that we are, in effect, giving powers to An Garda Síochána to enforce regulations we have not seen. There is something fundamentally problematical about that. It might have been half cured or remedied if it were the case that the statutory instruments under the Health Act, as amended, had to be approved in advance by the Houses of the Oireachtas. We are faced with a different situation whereby we will find out after a Minister has made a regulation on the recommendation of NPHEA or another relevant body, albeit with the permission of the Government, what that regulation is. We will be authorising and requiring the Garda to enforce regulations which the Houses will not have seen. That is the point I am making. It is unfortunate that it is being done in that manner and that is why I sympathise with the amendments that are before the House.

On the issue of gambling, Senator Ward made the point that this has nothing to do with the Bill. I contend that it does in the sense that the Minister for Health, Deputy Donnelly, has made regulations controlling or requiring casinos and private members clubs where gambling is carried out on a commercial basis to be operated on the basis that where drink is served, that should be done in accordance with the regulations. The point I am making is very simply this and I hope Senator Ward will appreciate it. Either those premises are licensed premises or registered clubs or they are totally criminal. Either we are dealing with powers for An Garda Síochána to visit those premises or the Minister for Health is making regulations in respect of premises which lie completely outside the law. There is no provision in Irish law for a casino to be operated in Ireland. God knows, some of us who have been here long enough remember when there were efforts to open casinos and that led to unfortunate consequences politically. There is no provision in Irish law to operate a casino or a so-called private members' club where gambling is operated on a commercial basis. Such premises, which are dotted all over Dublin city, are criminal establishments. No club or institution of that kind may legally serve alcohol to anybody. That is the law, as the Department of Justice and Equality well knows. If the Garda is being given the power to go to relevant premises which are licensed premises or registered clubs, as is the case under the Bill, either the Department of Health has created an entirely new entitlement to serve drink with food in gambling clubs and casinos or, alternatively, such a power does not exist. That is the point I am making.

I will make one supplemental point for Senator Ward's information. When I was the Minister for Justice, Equality and Law Reform, I strongly and resolutely opposed all of these matters and pointed out that it was unlawful to carry out gambling in casinos or casino-like institutions and private clubs where gambling is carried out on a commercial basis. The law in that regard has not changed one jot in the 13 years since I was Minister. On the other hand, all across Dublin city, significant sums of money are being made by people who are flouting the law clearly laid down under the 1956 Act. Somebody, be it the Minister for Justice and Equality, an official in that Department, the Director of Public Prosecutions, the Attorney General, the Garda Commissioner or the assistant commissioner for the Dublin region, should enforce the law and stop the poor of Dublin being fleeced of their money by these illegal casinos. I am sure Senator Ward would agree that there are probably such institutions even in the royal borough of Kingstown, now known as Dún Laoghaire.

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An Cathaoirleach: I call Senator Ward to respond on the amendment.

Senator Barry Ward: I hope that the Riviera county, as we now call it, does not have any such establishments. I have great respect for Senator McDowell and, in particular, his knowledge and experience in this area. I stated that this issue does not have anything to do with the amendment because it is not the case that the Minister's decision to make regulations somehow renders these establishments lawful. I make no comment on whether they are lawful as I do not know enough about the matter to do so and I like to restrain myself, where possible, when I do not know what I am talking about. However, I do not see the connection between the amendment and regulations - good, bad or ugly - that are made by a Minister who is not bringing this Bill through the House. I do not see how those regulations could in any way supersede the primary legislation from 1956 to which the Senator referred. Although there may well be a valid criticism of those regulations, I do not think the conclusion that can be drawn from them is that somehow there is an official acknowledgement of the lawfulness or otherwise of the kind of establishments mentioned by the Senator.

In an omission which I will put down to my newness to this Chamber, I forgot to congratulate the Minister of State, Deputy Browne, who is a professional colleague of mine and whose uncle is a friend and near neighbour of mine in Blackrock, although not a voter, I suspect. I am delighted to see the Minister of State in his position and I wish him well in his role.

An Cathaoirleach: Before the Minister of State responds, I too wish to congratulate him on his elevation to high office. I was delighted to share the third floor of Leinster House 2000 with him and am pleased that he has moved on to a portfolio to which he is entirely suited. I know he will bring about great changes in the Department to which he has been assigned.

Deputy James Browne: I thank the Cathaoirleach. This legislation specifically applies to relevant premises, that is, licensed premises. It only applies to penal regulations. I say that to address amendment No. 4. I am aware that perhaps this is not the intention but the interpretation of the Department is that this amendment would expand the powers of An Garda Síochána to non-penal regulations.

An Cathaoirleach: I am sorry to interrupt the Minister of State, but there are phones going off in the Chamber. I ask that Senators have respect for the Minister of State and put their phones on silent mode.

Senator Sharon Keogan: Apologies.

An Cathaoirleach: It is all right Senator. I know that people can have a bad hair day, but having a bad phone day is equally possible.

Deputy James Browne: The amendment would mean that such entry could be for the purposes of any regulations and, therefore, expand it beyond the penal regulations made under section 31A of the Health Act.

I appreciate that the intention of all Senators is to be constructive. It is not ideal that this matter is going through the Houses so quickly. Unfortunately, in the circumstances of the emergency, it is going through with the necessary haste, albeit a regrettable haste.

I now turn to the "otherwise" clause. The purpose of this is to bring clarity to the situation for An Garda Síochána. The concern is that An Garda Síochána could have certain powers at

the front door of a premises but once they step in they find their powers reduced because they cannot apply other regulations on the basis that perhaps someone would put up an argument that the specific regulations-----

An Cathaoirleach: Once again I ask that Senators switch their mobile phones to silent mode and to respect the Minister of State. The Minister of State must be allowed to respond without any interruption.

Deputy James Browne: Garda are concerned that once they step into the licensed premises they may be prevented from giving a direction to comply with any penal Covid-19 regulations, if not prescribe specifically other than for the licensed premises. It is an attempt to give clarification but, as Senator Ward pointed out, one of the issues we have in this House is that so much of our legislation is not codified and we are constantly trying to jump from one Act to another and interpret one Act in another. That can cause unnecessary difficulties.

Any regulations made by the Minister for Health prescribing Covid-19 penal regulations for the purposes of the Bill must be laid before the Houses. Either House has, within 21 days, the power to challenge those regulations if it so wishes. There is still parliamentary oversight. I am aware that it is an act of the Houses that is not used too often but it is allowed under section 5 of the Health Act to allow the Houses the power to raise issue within 21 days.

I appreciate that all Senators are attempting to be constructive. I understand the concerns of Senators around the term, “otherwise”. The term taken completely without the Bill has a very general application, but when taken within the context of the Bill and within the powers being given to An Garda Síochána it has a specific meaning and a specific application to the regulations. Yes, it will potentially apply to regulations that have not been made if they are to be made but in the circumstances that probably applies to any regulations given to a Minister, where the Minister has the power to make regulations, because he or she could always make future regulations. As I have already said, there is a power for either House to challenge those regulations within 21 days as they must be laid before the Houses.

Senator Ivana Bacik: I still have not heard enough of a rationale from the Minister of State, so I will press the amendment.

Amendment put:

The Committee divided: Tá, 14; Níl, 35.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Ardagh, Catherine.
Boyhan, Victor.	Blaney, Niall.
Boylan, Lynn.	Buttimer, Jerry.
Flynn, Eileen.	Byrne, Malcolm.
Gavan, Paul.	Carrigy, Micheál.
Higgins, Alice-Mary.	Casey, Pat.
Hoey, Annie.	Cassells, Shane.
Keogan, Sharon.	Chambers, Lisa.
McCallion, Elisha.	Clifford-Lee, Lorraine.

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Mullen, Rónán.	Conway, Martin.
Ó Donnghaile, Niall.	Crowe, Ollie.
Sherlock, Marie.	Cummins, John.
Wall, Mark.	D’Arcy, Michael.
	Daly, Paul.
	Davitt, Aidan.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O’Loughlin, Fiona.
	O’Reilly, Joe.
	O’Reilly, Pauline.
	O’Sullivan, Ned.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Ivana Bacik; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Senator Alice-Mary Higgins: I move amendment No. 3:

In page 5, line 14, to delete “or otherwise” and substitute “or in relation to such regulations that have been made under section 31A of the Act of 1947 previous to the date of the passing of this Act”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 4:

In page 5, line 14, to delete “or otherwise” and substitute “or in relation to provisions under section 31A of the Act of 1947”.

An Cathaoirleach: Is the Senator pressing the amendment?

Senator Alice-Mary Higgins: No. I will be withdrawing the amendment.

Amendment, by leave, withdrawn.

Section 3 agreed to.

SECTION 4

Senator Ivana Bacik: I move amendment No. 5:

In page 6, between lines 26 and 27, to insert the following:

“(6) Nothing in this Act prevents a licensee from putting in issue or a court from determining, in subsequent legal proceedings to which the question is or may be relevant—

(a) whether the member who gave the direction in respect of the premises concerned had reasonable cause for suspecting the contravention of a relevant provision in respect of those premises,

(b) whether the steps which the member directed to be taken were reasonably necessary to ensure compliance with the relevant provision,

(c) whether the specified person had lawful authority or reasonable excuse for failure to comply with the direction,

(d) whether the giving of an authorisation under *subsection (2)* was appropriate in the circumstances, or

(e) any other question related to the lawful validity of the immediate closure order.”.

I do not intend to press the amendment. It was raised and debated in the Dáil. It simply seeks to add an additional layer of procedure of due process for licensees. I have read the Dáil debates and I am happy not to press it at this stage.

Amendment, by leave, withdrawn.

Section 4 agreed to.

Sections 5 to 16, inclusive, agreed to.

SECTION 17

Senator Alice-Mary Higgins: I move amendment No. 6:

In page 14, line 34, after “such date” to insert “, which must not be later than the 9th day of November 2021”.

Amendment No. 6 relates to the question of a sunset clause. While it has been said that a sunset clause is provided for in the Bill, it is currently stated in section 17(3) that: “This Act shall continue in operation until the 9th day of November 2020, unless a resolution approving the continuation of this Act has been passed by both Houses of the Oireachtas before that date and, in that event, this Act shall continue in operation until such date as is specified in the resolution.” It has been stated that the powers being given under this Bill are very significant. Moreover, it has also been clearly stated, both on the Order of Business and throughout the course of this debate, that the time given to the scrutiny of the legislation and to debate on it has been

extremely curtailed. We have been looking at all Stages of this legislation in the course of one day in the Seanad, which is an extraordinary situation and not good practice. Moreover, these are very significant powers. A motion or resolution passed by both Houses of the Oireachtas, which again may be taken with or without debate and which, given we know there is a Government majority, we have no doubt will pass if put forward by the Government, will not afford the same kind of opportunity for scrutiny and examination that proper examination of legislation does. As such I am concerned that we must not have any situation whereby, on 9 November of this year, a resolution could come before both Houses with a date - it simply says "such date as is specified in the resolution" - that is one or two years or whatever length of time away. There is no limitation on the time period by which these powers might be extended. While it must be done by a resolution of the Houses, given this is legislation pushed through in a hurry with very extensive and unusual powers, it is simply not sufficient that it can be extended indefinitely by resolution. I understand that it may be needed to be extended for a period of time by resolution.

My amendment, which is an extremely conservative one - I certainly do not want to see that there would be emergency powers for An Garda Síochána for a year - simply seeks to set one year as an outside limit. It says that the resolution which goes before the Houses of the Oireachtas in November, if it goes before them in November, and frankly I have little doubt that it will, will specify a date which shall not be later than 9 November 2021. I am just trying to set an actual sunset clause, an actual outside limit, on how far and how long these powers can exist before they have to go through not simply a resolution of extension but proper scrutiny and primary legislation, as is normal and proper.

A lot has been asked from us as parliamentarians, public representatives, and members of different parties and none in terms of co-operation to ensure urgent action can be taken. It is a reasonable ask that the Minister of State and the Government would give us the assurance that there is a genuine outside limit on how long these powers we are giving will extend for. If this resolution were to be put in place, it would give a sense of assurance that this is genuinely emergency legislation and not legislation which we may live with for a longer period of time. Again, a resolution of extension is one form of sunset clause, but because it allows for indefinite extension, we need to make sure that there is a limit on the power of extension with that resolution.

Deputy James Browne: I thank the Senator for putting forward this amendment. Her amendment seeks to amend section 17 of the Bill to prevent the Houses of the Oireachtas by resolution from extending the operation of this Bill beyond 9 November 2021. The enforcement powers provided in this Bill are temporary measures to deal with issues of public health and public safety in licensed premises and clubs. As such the measures can only be used in respect of breaches of penal regulations made under the Health Act that are specific to Covid-19. The provisions of the Act will expire on 9 November. The reason for the renewable expiry date of 9 November 2020 is that this is the renewable expiry date for Part 3 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020. This inserts section 31A into the Health Act 1947, which is the basis of the Covid-19 regulations made by the Minister for Health. As the purpose of this Bill is to provide enforcement mechanisms for prescribed penal Covid-19 regulations the expiry and renewal provisions of this Bill must be the same of those of section 31A of the 1947 Act. It will be for the Houses to decide whether those provisions should be renewed at a future date. As we do not know how long the public health response to the pandemic will require us to restrict the operation of licensed premises, we cannot therefore know just how long the associated enforcement powers will be needed for. I, like everyone in this House, am hopeful that life will return to normal by this time next year.

However, we need to have flexibility to respond adequately and appropriately if that does not prove to be the case. This is a practical and necessary provision which places the decision to extend the Bill in the hands of these Houses. In short, this Bill can only be extended beyond 9 November 2020 where a resolution is passed by both of the Houses so in that respect the Houses can apply the brake at that point if they so wish.

Senator Rónán Mullen: I want to support Senator Higgins's amendment. Like others, I am not opposing the passage of this Bill. I certainly hope that one effect of the Bill is to help make it virtually impossible for the Government to defer the opening of pubs beyond 21 September, if it is to retain credibility, that is.

Senator Higgins rightly pointed out the context in which all of this is taking place. We have had a lot of necessary conversation already today about the rush with this legislation. Given that the pubs will not be reopening for another ten days, I do not understand it. We are at a stage where the Government needs to be very careful about how it is seen. Notwithstanding the emergency we are in as a country, the Government has to be very careful about how it is seen to operate. For that reason, the Senator is quite right to say that any extension envisaged by this legislation should be up front and should be understood to be for a defined period. While I accept what the Minister of State said about it being possible to put a date on it at a later date the Government needs to be seen to be conservative rather than excessive at this point.

It is a fundamental precept of democracy and the rule of law in any country that a government derives its legitimacy from the consent of the governed. It is also a fundamental principle that new laws should not be arbitrary, capricious, or unreasonable. We know all of that but there has been a direction of travel in what has been going on in this country with the Government's measures and approach and I worry we are getting close to the line where public trust in the measures is being put at risk. The public has shown forbearance in accepting the draconian powers granted by the Oireachtas to the Government and it is only right and proper that they should. The Opposition has given great latitude to the Government but there is a point where things get to their limit and it is in everybody's interest that we continue to all be in this together. That means that there continues to be public respect for what is going on. We all know the things that put at risk public respect, such as the arbitrary nature of the €9 meal requirement or the requirement that pubs retain records of meals, and the surreal report yesterday that when pubs reopen they will be forced to keep down the volume of their televisions as though that has anything to do with Covid. I am concerned about what the late Professor John Kelly called laughing stock measures, where there is a laudable public health goal but it could be reduced to a laughing stock because of the wrong approach being taken in the pursuit of those measures. We have moved in recent weeks from a change in tone from appealing to the better nature of citizens to act responsibly to maybe a more punitive approach that punishes behaviour that the Government wants to frown on. That is the wrong approach. It is with that dangerous drift in mind that Senator Higgins is absolutely right to insist on limits. Her proposal is reasonable.

Senator Alice-Mary Higgins: The Minister has mentioned the resolution that will be in place but it is the detail of the resolution and the constraints around it that my amendment seeks to address. I am not opposing the fact of the resolution and I recognise the reason for the date and the fact that the date is aligned with the other provisions. I am trying to set a clear signal as to how far these emergency powers can be pushed by simple resolution and where the actual limit of this legislation that we are pushing through is.

The latitude we have shown has been mentioned. In agreeing to this legislation, we are

agreeing to the enforcement powers on regulations that we have not seen. I seek assurances from the Minister of State that will be important. Will there be opportunity for discussion on the regulations? Will this House have an opportunity to discuss the statutory instruments, both those that have already been passed and those that are proposed, in regulations that are to be enforced under the legislation we are passing today? For example, live music was mentioned, and the question of live music outside where there is social distancing if it is not amplified. We are all getting questions on this. I am being asked if a lone guitar player who is not amplified can play outside. There may be regulations which we feel are not strict enough. I have very serious concerns about the 1 m issue because there is a very strong scientific basis for the 2 m rule and I worry about the slide towards 1 m. It is not about a gesture, it is about science and there is very significant research to support proper distancing.

Many people have raised the issue of ventilation as a core concern that does not seem to be addressed in the regulations. There are huge questions around the regulations which will be effectively enforced through the powers that we are giving today so we need to know that we will have an opportunity to address and discuss those regulations and that that opportunity will be afforded to this House.

Similarly, a simple resolution allowing for an extension that effectively sets another date, on 9 November, will not allow for the kind of nuance and debate and the questions on necessity, proportionality, sufficiency of the regulations and their enforcement. That kind of nuance is not available to us in a simple date setting mechanism but is available to us in actual legislation. If we do not know what the situation might be, and if we continue to need special powers, regulations, penalties and enforcement mechanisms after 9 November 2021, it would be within our powers as an Oireachtas to ensure new primary legislation is put through before November 2021. If we are looking to an extension beyond a period of one year, I would prefer that we seek to ensure that we are getting the legislation right. It is not simply about shifting the dates and the goalposts.

I would also like assurance from the Minister of State in respect of the proposed resolution in November. If there is to be a resolution in November, will adequate opportunity be given to all of us to discuss it? When representatives from the Irish Council for Civil Liberties were before the Special Committee on Covid-19 Response yesterday, they referred to proposed regulations being notified in good time to the Oireachtas. They also said that if there is a proposal to extend or amend the emergency health legislation in force now, the legislation should be put before the Oireachtas sufficiently in advance of 9 November to allow for proper scrutiny and consideration, including, if necessary, a debate in which Committee Stage rules would apply. It is important for us to know that such a resolution as may be put before these Houses on 9 November next is going to allow for proper and robust debate and not simply be placed as, say, an item to be taken without debate, with minimal debate or with group spokespersons speaking for five minutes and then a vote being taken. We need to be clear on this. I seek assurances from the Minister of State on the mechanisms of oversight that will be available to us. I also urge that he consider this reasonable amendment. I hope we do not have to extend these powers as far as November 2021 but, as an outside limit, that date is reasonable.

Deputy James Browne: I thank the Senators for their contributions. We all hope that this time next year we will not be not in a similar situation as we are now with Covid. It might be a forlorn hope that we would not be in this situation by November. Any extension beyond November would have to be accompanied by a date in respect of any further extension. I would expect that any such date would be conservative, and rightly so. I have no difficulty providing

further opportunity to discuss and debate any extension, especially due to the circumstances in which the Bill had to move so quickly through both Houses. I assume it would be a matter for the Business Committee. I understand the reasons behind the amendment, which is well thought out and well-intentioned, but I am opposing it because we do not know where we will be this time next year and because it would require both Houses to pass any extension. There are safeguards.

Amendment put and declared lost.

Section 17 agreed to.

Preamble agreed to.

Title agreed to.

Bill reported without amendment.

An Cathaoirleach: When is it proposed to take Report Stage?

Senator Barry Ward: Now.

An Cathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

An Cathaoirleach: When is it proposed to take Fifth Stage?

Senator Barry Ward: Now.

An Cathaoirleach: Is that agreed? Agreed.

Question, "That the Bill do now pass", put and agreed to.

Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020: Motion for Earlier Signature

Senator Barry Ward: I move:

That pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Criminal Justice (Enforcement Powers) (Covid-19) Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Robbie Gallagher: At 10.30 a.m. on Wednesday, 16 September 2020.

The Seanad adjourned at 4.40 p.m. until 10.30 a.m. on Wednesday, 16 September 2020.