



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Dé hAoine, 6 Samhain 2020*

*Friday, 6 November 2020*

Chuaigh an Cathaoirleach i gceannas ar 9.30 a.m.

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*Machnamh agus Paidir.*  
***Reflection and Prayer.***

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### **Gnó an tSeanaid - Business of Seanad**

**An Cathaoirleach:** I have received notice from Senators Lisa Chambers and Eugene Murphy that, on the motion for the Commencement of the House today, they propose to raise the following matter:

The need for the Minister for Climate Action, Communications Networks and Transport to make a statement on the Government's plan to support Ireland West Airport Knock through this pandemic to ensure its survival.

I have also received notice from Senator Paddy Burke of the following matter:

The need for the Minister for Climate Action, Communications Networks and Transport to make a statement on the problems associated with the collection and disposal of farm waste plastic; and whether the law in relation to section 60(3) of the Waste Management Act 1996 needs to be reviewed.

I have also received notice from Senator Rónán Mullen of the following matter:

The need for the Minister for Foreign Affairs and Trade to make a statement on Ireland's participation in election monitoring under the auspices of the Organization for Security and Co-operation in Europe, OSCE.

I have also received notice from Senator Shane Cassells of the following matter:

The need for the Minister for Education to provide an update on the development of a new school for St. Mary's Special School, Navan, County Meath.

I have also received notice from Senator Robbie Gallagher of the following matter:

The need for the Minister for Rural and Community Development to make a statement on the status of the local improvement scheme.

I have also received notice from Senator Seán Kyne of the following matter:

The need for the Minister for Health to make a statement on the policy and practice in Irish hospitals regarding do not resuscitate or do not attempt resuscitation orders.

I have also received notice from Senator Malcolm Byrne of the following matter:

The need for the Minister for Justice to make a statement on the recent High Court judgment in the Schrems II case and its implication on Ireland's reputation for overseeing the regulation of European citizens' data.

I have also received notice from Senator Martin Conway of the following matter:

The need for the Minister of State with responsibility for special education and inclusion to outline her plans to carry out a review of visiting teachers services for visually impaired students at second level.

I have also received notice from Senator Joe O'Reilly of the following matter:

The need for the Minister for Housing, Local Government and Heritage to consider an extension of the pheasant shooting season until February 2021.

I have also received notice from Senator Mark Wall of the following matter:

The need for the Minister for Climate Action, Communications Networks and Transport to provide an update on the progress of the new Athy town distributor road, County Kildare.

I have also received notice from Senator Garret Ahearn of the following matter:

The need for the Minister for the Environment, Climate and Communications to make a statement on the roll-out of the national smart metering programme.

I have also received notice from Senator Jerry Buttimer of the following matter:

The need for the Minister for Finance to clarify whether travel agents qualify for the Covid-19 restrictions support scheme.

I have also received notice from Senator Timmy Dooley of the following matter:

The need for the Minister for Education to provide funding for the construction of a physical education hall as part of the school extension at Gaelscoil Mhíchíl Cíosóg, Ennis, County Clare.

I have also received notice from Senator Victor Boyhan of the following matter:

The need for the Minister for Finance to make a statement on his plans to reform the local property tax.

I have also received notice from Senator Lynn Boylan of the following matter:

The need for the Minister for Agriculture, Food and the Marine to outline the measures to be undertaken to ensure the responsible sale of dogs in the lead-up to Christmas.

I have also received notice from Senator Fintan Warfield of the following matter:

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The need for the Minister for Enterprise, Trade and Employment to examine contractual issues for the owners of mobile homes in holiday parks.

I have also received notice from Senator John McGahon of the following matter:

The need for the Minister for Housing, Local Government and Heritage to allocate urban regeneration funding for the Bridge Street and Linenhall Street areas in Dundalk, County Louth.

I have also received notice from Senator Micheál Carrigy of the following matter:

The need for the Minister for Health to outline the timeline of the change in organisation status, from section 39 to section 38, of St. Christopher's Services, Longford; and if he will make a statement on the matter.

The matters raised by the Senators are suitable for discussion and I have selected Senators Chambers and Murphy, who are sharing time, Burke, Mullen, Cassells, Gallagher and Kyne and they will be taken now. The other Senators may give notice on another day of the matters that they wish to raise.

## **Nithe i dtosach suíonna - Commencement Matters**

### **Regional Airports**

**An Cathaoirleach:** The first matter will be Senators Chambers and Murphy on the issue of support for Ireland West Airport Knock. Before they arise to talk on the issue, it would be remiss of me not to mention the great Monsignor Horan for making sure that the dream became a reality, and all of the people who were involved in putting the airport together and making sure it continues. Brian O'Dwyer, who was on the first pilgrimage flight from the United States of America, is now the international chairman. He landed in the first pilgrimage flight that arrived and maybe he will arrive in another aeroplane that will be coming, which might be Air Force One.

**Senator Lisa Chambers:** I thank the Cathaoirleach for outlining just how special is Ireland West Airport Knock, known to us locally in Mayo as Knock Airport. It first opened its doors in 1985 with just three chartered flights to Rome. Since then it has grown to become Ireland's fourth busiest airport after Cork, Shannon and Dublin airports. In 2019 more than 800,000 passengers passed through its doors. The airport directly employs 100 people and indirectly employs 3,000 people across the region due to its impact in the tourism and hospitality sectors. It was stated in 1985 that it could not be done and that an airport could never be a realistic option on a hill in the foggy and boggy grasslands of Mayo. Monsignor James Horan proved them wrong and in five years he built that airport, opened its doors and there it stands today going from strength to strength. It has not, however, been untouched by the pandemic and, like the aviation sector right across the country, has sustained massive losses this year. It is looking at losing approximately €4 million in 2020, a colossal loss the like of which the airport has never seen and which cannot be sustained. It has seen its passenger numbers drop by 90% and will

close its doors for the second time on 14 November for four weeks. The airport will not survive if it does not receive the funding it needs from the Government, and that is why I raise this today. I am asking the Minister of State directly to provide to Ireland West Airport Knock the money it needs to cover its losses, just to break even and make sure it survives.

I cannot stress enough the importance of the airport not just to County Mayo but to the entire north-west region. It is our connection to the world and to the rest of this country. We need this airport. Its impact on jobs locally and right across the region cannot be overestimated. Will the Minister of State give a commitment that the Government will provide to Ireland West Airport Knock the money it needs to sustain itself and ensure it can survive post the pandemic?

**Senator Eugene Murphy:** I thank the Minister of State for being here to discuss what Senator Chambers has described as probably the most important issue for the west of Ireland. Connacht is often the Cinderella province. The most vital infrastructure in Connacht and the wider north west is Ireland West Airport. As Senator Chambers has outlined, it is vital we get as much Government support as we can for the airport. It is without question in crisis. I understand the Taoiseach is today meeting some of the staff from Knock Airport. I understand that representatives of the airport will be before the transport committee next week as well. We cannot state strongly enough how important this is. This was and is the people's airport. As Senator Chambers rightly said, Monsignor Horan drove this project. He was criticised for doing so, but there was enthusiasm in the west for the project, which, by the way, without being offensive to anybody, was criticised not alone by politicians in the east of the country but also many people in the media. It was described as a crazy project, but that point of view has been proven absolutely wrong.

Knock Airport is without question the most important piece of infrastructure in the west. We must maintain it. The local authorities in Galway, Mayo, Sligo, Leitrim and Roscommon have contributed €8 million towards the airport, so the CEOs and the local authority members in those counties are aware of its significance and importance. I hope we will get the proper support for the airport and I hope the Minister of State will bring back a strong message, as I have been giving to the Taoiseach, that it has to be supported, not alone for the jobs but for the future of the whole economy of the west.

**Minister of State at the Department of Foreign Affairs (Deputy Colm Brophy):** I thank Senators Chambers and Murphy for providing an opportunity to speak about the Government's plans for the continuing support for Ireland West Airport Knock through the Covid crisis. I am happy to speak today on behalf of the Minister of State, Deputy Hildegard Naughton.

At this stage there can be no doubt about the impacts of Covid-19 on the aviation industry and the knock-on effects this drop in activity is having on domestic tourism and our regional economies, particularly in the west. It is of great concern to me that Ireland West Airport, like all our airports, has been fully exposed to the consequences of Covid.

The Government is also acutely aware that the situation in Ireland West Airport Knock has been further compounded by Ryanair's most recent decisions to cut its winter capacity at the airport and to cancel all services for a four-week period from the end of next week until mid-December. The airport is a strategic player in delivering high-quality international connectivity to the western region, so the devastating significance of this latest news on the airport is fully appreciated. The decision by Ryanair was a commercial one in light of poor forward bookings for the period in question and forms part of a wider move by the airline to cut its capacity on

flights across Europe. This does not detract, however, from the disappointment being experienced by Ireland West Airport and other regional airports that have been impacted, namely, Cork, Kerry and Shannon airports.

As the situation unfolds, I know that the Minister of State, Deputy Naughton, fully appreciates the growing concerns about the future survival of many airports, particularly enterprises such as Ireland West Airport. I assure the Senators that the continued viability of these airports is very important to the Government. This is why, at the outset of this crisis, the Government took strong and immediate action to assist business and protect employment. A comprehensive suite of generalised supports for all companies has been put in place. These include wage subsidy schemes, grants, low-cost loans, a waiver of commercial rates and deferred tax. In this way, a significant level of Exchequer support has been made available to the aviation sector, including Ireland West Airport.

That aside, I know that the Minister of State, Deputy Naughton, is fully aware that Ireland West Airport is still experiencing an unprecedented strain on its financial resources and has taken very difficult and responsible decisions to manage those resources since the Covid crisis began. The airport's efforts in this respect are acknowledged. Where lay-offs have arisen, the Government has ensured that employees were supported through the pandemic unemployment payment.

I have also been informed and wish to remind the Senators that Ireland West Airport is one of a number of airports receiving ongoing Exchequer support as part of the Government's regional airports programme. Last year, for example, I understand the airport received €9.4 million in funding from the State. The majority of that funding went towards its runway overlay project. This year, Ireland West Airport has received capital support of over €1 million and is also eligible to apply for operational supports from an available budget of €3.5 million.

In keeping with the Government's priorities for regional development, I have been advised that the Minister of State, Deputy Naughton, is finalising a new regional airports programme for 2021-25. This will give funding certainty to Ireland West Airport over a five-year timeframe, helping the airport to remain viable as it transitions through the various phases of recovery from the Covid pandemic. I am also pleased to advise Senators in that context that the Government has confirmed its commitment to the continuation of the programme in budget 2021 by securing more than €21 million for airports such as Ireland West Airport.

I am advised by the Minister of State that all support mechanisms for the aviation sector will remain under active consideration. In the context of the forthcoming national economic plan, the Government will consider further measures to support the industry to ensure that its core capability is preserved in order that it can recover quickly and be in a good position to support wider national economic recovery when circumstances allow. I am confident that the range of supports that are in place, coupled with those in development, will help Ireland West Airport to weather this crisis in the short to medium term.

**Senator Lisa Chambers:** The funding that has been available to date is welcome but not sufficient. My concern is that while budgets are being made available to regional airports, we are all looking to get money from the same pot and that the pot is not infinite. There needs to be a direct commitment for Ireland West Airport Knock to meet the losses it has suffered this year. Let us be very clear, the airport is closing its doors for the second time on foot of a Government decision basically to close down the aviation sector and to stop flights in and out of the country.



The Government has advised people not to fly. That Government decision has impacted the airport through no fault of its own. It has carried out aggressive cost-saving exercises. It has reduced its staff, made 43 people redundant and reduced its costs across the board. There is a limit to what it can do. As has been said, this is the people's airport. The people of Mayo will not countenance anything happening to it because it was directly funded and built not just by the State but by the people of Mayo. We will make sure the airport survives but we need the Government to step up to the plate and do its job as well.

**Senator Eugene Murphy:** I welcome what the Minister of State has said but, as Senator Chambers rightly said, we need special supports. Not alone will the people of Mayo not stand for this, the people of Roscommon are adamant that this airport must survive and be supported by the Government, as are the people of Leitrim, Sligo and Galway. It should be remembered that Galway lost its airport. It is vital that we support totally Ireland West Airport Knock.

**Deputy Colm Brophy:** I acknowledge the Senators' comments. We have listened carefully to them. To give further assurance, the Government understands absolutely the intrinsic value of airports such as Ireland West Airport Knock to our economy, particularly in facilitating tourism and economic activity. We acknowledge in particular the difficulties facing our airports and the wider aviation industry at present. Again, that understanding is reflected in the level of supports being provided by the Government throughout budget 2021. This extensive suite of measures continues to be in place to help to mitigate the effects of the crisis. I know that there is a perception among the aviation industry that more needs to be done. I understand that companies - airports and airlines - have had to take very difficult commercial decisions to reduce costs. Such decisions, including temporary lay-offs and reduced working hours, have a devastating impact, particularly for close-knit enterprises and communities like Knock Airport. I would like to take this opportunity to reassure the Senators that more is being done by the Government. The House will be aware that the Government recently agreed to develop a framework around the traffic light system for air travel which was adopted at EU level on 13 October. Under this system, different rules will apply to passengers arriving from regions designated as green, orange or red, depending on the prevalence of the virus there. Some of these changes have already been implemented. More are scheduled to commence as soon as this Sunday in respect of people. This is just one example of the ongoing efforts by the Government which will hopefully be a catalyst to restarting our aviation industry. I thank the House.

### **Recycling Policy**

**Senator Paddy Burke:** I support the points made by Senators Chambers and Murphy during the discussion on the previous Commencement matter. It is vital that the funding is provided to Knock Airport. I welcome Minister of State, Deputy Brophy, to the House and wish him well in his portfolio. I have not had an opportunity to do this previously. I will be sharing some time with Senator Buttimer.

The recycling of plastics is a very significant matter. We may not be able to do justice to it in the short time available to us today. There are many facets to the recycling of various types of plastic, including farm waste plastic, builders' plastic and plastic bottles. People tend to think there is just one type of plastic. It is hard to tell them that there are different types of plastic. We all think that plastic is just plastic. However, some plastics can be recycled and others cannot. What happens to the plastic that cannot be recycled? Where does it go? Does it go to landfill?

A number of representations have been made to me on the recycling of builders' plastic, such as that used to wrap pallets of cement or blocks. This type of plastic can also be seen at fuel depots, where materials like briquettes are bound in plastic. Those who use it have no place to send it to have it recycled. There is a difficulty there. What role does Repak play in the collection of this type of plastic industrial waste? Where does it go? Is there a levy? If so, who collects it? What happens the levy? How is it distributed?

A very significant levy for the collection of farm waste plastic is paid by every farmer who uses such plastic. Some of that levy is distributed, and more of it is not. I understand that there is €3.7 million somewhere that has not been distributed. Some collectors have difficulty in getting the farm plastic off to recycling. There was a big market in China at one stage, but that seems to have dried up. I ask the Minister of State to look into all of these matters. A factory in Littleton, County Tipperary, was going to carry out some of the processing of farm waste plastic.

The Government needs to rethink how it sees this matter going forward. There is a great need for fencing and garden products, all of which can be made out of recycled plastic. I hope the Minister of State will be able to shed some light on some of these issues. I refer particularly to section 60(3) of the Waste Management Act 1996, which relates to the export of plastics by local authorities.

**Senator Jerry Buttimer:** I congratulate the Minister of State, Deputy Brophy, on his appointment as I have not seen him since then. I thank Senator Burke for sharing time with me.

Section 60 of the Waste Management Act 1996 is very important, but it urgently requires clarity. As Senator Burke has eloquently outlined, a myriad of plastics is used for business, commercial, building and farm purposes. A uniform approach on the part of the Government is required, but that has not happened. This is having profound implications for everybody. A regime change is required to assist the collection of plastic from a variety of holdings which is now deemed waste. I hope the local authorities and the Government will work with the waste farm plastic facilities that will be created, and the Irish Farm Film Producers Group, IFFPG, will be able to achieve an outcome by having that plastic collected. This is important because we are all committed to recycling and reducing waste, but this waste is now being stored or housed. We need a facility, we need action and we need an amendment to section 60 of the 1996 Act.

**Deputy Colm Brophy:** I thank my party colleagues, Senators Buttimer and Burke, for raising this issue. I am delighted to have an opportunity to reply on behalf my colleague, the Minister, Deputy Eamon Ryan.

In September, the Minister launched the Waste Action Plan for a Circular Economy, which sets out an ambitious new roadmap for waste planning and management and seeks to shift the focus away from waste disposal to how we can preserve resources by creating a circular economy. The plan sets out a range of aims and targets for the State and the measures by which they will be achieved, including increased regulation and measures across various waste areas such as those that have been mentioned. It deals with plastics and packaging, municipal waste, construction and demolition, consumer protection and citizen engagement.

One of the functions of the Department of the Environment, Climate and Communications with regard to waste management is to set the policy and legislative framework for the extended



producer responsibility, EPR, model in Ireland, across various waste streams. Ireland uses the EPR model for dealing with a number of waste streams, including farm plastics, electrical equipment, tyres and batteries. These schemes have been developed on the basis of the producer pays principle. To date, they have operated very successfully and have enabled Ireland to reach its domestic and EU recycling targets. They have also successfully contributed to Ireland meeting its overall environmental goals and have diverted substantial amounts of waste from landfill.

The Department is not responsible for and has no role in the operational, day-to-day matters of any of the schemes. The primary role of the Department on farm plastics matters is to provide the legislative framework. Under the legislation, the IFFPG operates under an approval granted by the Department as the national farm plastics recycling scheme and has been doing so successfully since its establishment in 1998. The company is a not-for-profit body, which is owned by its members and the Irish Farmers Association.

Since its establishment, the IFFPG has been responsible for the recycling of over 350,000 tonnes of farm plastics waste and is currently recycling in excess of 30,000 tonnes of waste per annum. Under the approved scheme, producers pay an environmental protection levy to the IFFPG based on the quantity of product they place on the market. The environmental levy applies to all product placed on the Irish market. The levy, together with other sources of income, is used by the IFFPG to fund and provide for the collection, transportation and treatment of farm film plastics. The Department is not responsible for and has no role in the operational and day-to-day matters of the IFFPG, which include details regarding the levy. As required under its current ministerial approval, the IFFPG submits an annual operational report and audited accounts which are published on its website.

In 2018, the IFFPG's annual report outlined the impact of the then decision by the Chinese authorities to cease importing plastics waste. The European market was subsequently flooded with surplus material which precipitated a price collapse in the farm plastics market. The IFFPG therefore faced increased recycling costs which caused it to have to increase its levy and collection charges, albeit with a commitment to reverse those increases when the market recovered. The difficult market situation, characterised by reduced demand and the reintroduction of gate fees by European recyclers, continued to be a major challenge for the IFFPG in 2019, with approximately 12,000 tonnes of material carried over into the 2020 collections season. The IFFPG remains committed to managing farm plastic waste and meeting national targets as required under its approval.

The collected material is split between European recyclers and Irish recyclers. In the case of Irish recyclers, the majority is supplied to a pretreatment facility in Portlaoise where some contamination is removed before onward transport to European recyclers. The legal framework for the import and export of farm plastics is derived from EU law. The National TransFrontier Shipment Office, which oversees this work, has determined that used farm plastic intended for export falls into two main categories: green and amber waste. This classification between amber and green waste has consequences for where one can export to. This classification difference is a clearing mechanism to make sure that pure farm waste plastics are being exported. In late 2019, the IFFPG also began supplying material to a new recycling facility in Littleton, County Tipperary.

This facility, which is currently being commissioned, is expected to recycle 20,000 tonnes per annum. It will greatly assist farm plastics recycling in Ireland.

The IFFPG has committed to supporting a greater circularity in the farm plastics sector to ensure more sustainable use of resources. It has a number of initiatives under way in this regard, including an extensive farmer survey to be carried out in 2021. It has also begun working to act as a facilitator between the various stakeholders in the farm plastics sector supply chain, with a view to encouraging greater use of recycled content from farm plastic waste in new farm plastic products.

**Senator Paddy Burke:** The Minister of State outlined some of the difficulties but did not address many others. The industry needs support and we should have a proper structure in place whereby we do not export our problems. We should be able to use this waste plastic to manufacture products that can be used throughout the country. The Minister of State did not address the issue of private contractors either, many of whom, along with other contractors, have a build-up of plastic. Where will it go and what will be done with it? Something needs urgently to be done and the Minister of State needs to reconsider the levy of €3.7 million, something he made no reference to. I ask him to relay this matter to the Minister for the Environment, Climate and Communications in view of the difficulties. I have no doubt he knows quite well what difficulties are involved in the industry.

**Senator Jerry Buttimer:** I support Senator Burke and thank the Minister of State, although I acknowledge it is not a matter for the Department in which he has responsibility. The industry needs support. The collection, holding and recovery of this material urgently needs a new way of thinking and a new model that can assist private and public contractors in working together.

**Deputy Colm Brophy:** I acknowledge the contribution of both Senators and will relay their points to the Minister.

### **Election Monitoring Missions**

**Senator Rónán Mullen:** I welcome the Minister of State. Election counts are to the fore of most of our minds at the moment as we watch the continuing drama in the United States, and we hope this will resolve itself sooner rather than later. There are many countries, however, in the Third World and the former Soviet bloc where, sadly, we can never be certain the democratic process will be carried out freely and fairly. Ireland plays its part in helping to ensure that elections are conducted properly by taking part in election monitoring conducted by, among others, the Organization for Security and Co-operation in Europe, OSCE. The Department of Foreign Affairs maintains a list of approved election observers for this purpose, as the Minister of State will be aware. I understand that Ireland generally sends between 12 and 18 observers abroad per year but that this practice has been curtailed due to the restrictions on international travel because of Covid-19.

I have a particular interest in the area because I have had the privilege of being involved in election monitoring during my time as a member of the Parliamentary Assembly of the Council of Europe as a parliamentarian. What is done under the auspices of the OSCE involving volunteers - non-parliamentarians - is an even more significant and worthwhile activity, and those involved are very much to be commended on what they do.

The Minister of State spoke previously about efforts that are made to refresh and replenish the list of volunteers through a periodic recruitment process. Is this enough and is it being done often enough? My understanding is that the existing Irish roster largely comprises retired per-

sons who sometimes cannot be deployed for medical reasons. Observers require a GP to sign them off for duty and this will not happen in the current climate. Should more be done?

The Minister of State issued a reply to a parliamentary question from Deputy Connolly on 15 October, which was repeated in a reply to a question from Deputy Richmond earlier this week, on 3 November. The reply stated that OSCE missions for upcoming elections in Ukraine, Georgia and Moldova “have been reconfigured as limited election observation missions not requiring volunteer observers due to the difficulty which OSCE members have in nominating volunteers given the extent of the pandemic.” I have copies of two lists published by the OSCE that give the names and nationalities of what are called long-term observers being sent to each of these countries. A total of 117 long-term observers from 14 countries were sent to observe these recent or upcoming elections. Clearly, these countries have had no difficulty in nominating volunteers notwithstanding the pandemic. It is my understanding that all these long-term observers are volunteers.

In view of this, why did the Minister of State tell the Dáil twice in recent weeks that OSCE member states are not sending volunteers when it seems they are? I am not for a moment imputing dishonesty to him but it seems there is a crossed wire in respect of the issue somewhere in the Department and it is important that be clarified. If 14 other countries are sending observers even with the Covid pandemic ongoing, why is Ireland not taking part? I hope Covid is not being used to shirk or dodge our responsibilities in this area.

Should we not offer Irish volunteer observers the opportunity to travel if they wish to do so, even if this meant they would have to quarantine voluntarily as a result? The Department has travel insurance in place for observers it deploys, which should cover the costs.

**Deputy Colm Brophy:** As the Senator noted, the Department maintains an election observation roster comprising highly qualified volunteers who are competitively selected. The roster is a demonstration of Ireland’s contribution to the promotion of democracy, human rights and the rule of law as a member of the EU and the OSCE. Roster members are expected to discharge their responsibilities to a high standard. There are currently 199 appropriately qualified and trained volunteers on Ireland’s election observation roster. The number of observers on the roster is more than adequate as the numbers deployed do not usually exceed 60 in any year. The current roster will expire at the end of 2023.

As the Senator will be aware, due to the Covid-19 pandemic, public health advice is to avoid non-essential travel. This obliges the Department to pay particular attention to the risks to volunteer observers and to the many people they will be in contact with arising from overseas travel, compounded by the extensive interactions with local populations and observers from many other countries. Having said that, and taking account of his contribution, I presume the Senator, being fully aware of the various stages of risk we have gone through with Covid-19, would not advocate anything that would be necessarily damaging to public health or our efforts to tackle Covid-19. I, like the roster members, look forward to public health circumstances enabling the safe nomination of members from the Irish roster for consideration by the EU and the OSCE for participation in observer missions. When we can do that safely, we will keep it under active review to ensure it can be done. I commend to the Senator a detailed note on the operation and mustering of the roster, which the Department sent to the Oireachtas last year.

I will take this opportunity to set out for the House some important considerations regarding the effective operation of Ireland’s roster. In 2013, the Department decided to professionalise

the membership of the roster through introducing competitive mustering of rosters and limiting the lifespan of a given roster, which has greatly improved the quality of Irish election observation. One individual, however, and recently a second individual, who failed to be selected in an open competition for the roster have, through their actions, actively tried to undermine the credibility and smooth operation of the roster. Both individuals generate considerably more correspondence than that from actual members of the roster, taken together, with the Department. One of the individuals has sent 120 messages to the Department since the lockdown began in March, which averages at about one per working day during the pandemic. The burden this creates, by voluminous correspondence and transparency requests and appeals, has significant implications for operational efficiency. This has also substantially increased the cost to the State of the operation of the roster. An additional full-time staff official has been employed to deal with the workload generated by these individuals. The cost last year of dealing with the volume of work generated by individuals significantly exceeded the annual budget of €180,000 for Ireland's participation in international election observation.

Given that there have been so many parliamentary questions and freedom of information issues relating to this, it is important to state we owe enormous thanks to the volunteers whose membership of the roster does Ireland such honour. We will continue to work with them to ensure that when they can be safely deployed and we can take part in a way that is safe for the people taking part but also in a way that will not damage our policy of having no non-essential travel overseas to reduce our exposure to Covid-19, we will do so and return to that. This is not only for the people taking part. We must ensure they can safely take part in a way that does nothing to damage our policy of having no non-essential travel outside the country. The reasons are obviously to do with lowering our exposure to Covid-19. We will of course do this and return to it.

**Senator Rónán Mullen:** The Minister of State has not addressed the contradiction between what has been said in the Dáil already about OSCE member states not sending volunteers and the fact that I have demonstrated that they have been sending volunteers. They are also facing the challenges of the pandemic.

It is to disrespect the important work of election monitoring to suggest that the pandemic would be a reason for putting a stop to Irish people going abroad on this important work. It amounts to colluding in a situation where, because many people are unable to do so for medical reasons, the Government would not expand it.

The next review of observers is in 2022, as I understand it. This issue needs to be prioritised. There needs to be a change of criteria and outlook. There is also potential for doing some of this work online. That has to be looked at.

There is something wrong here. I take the point of the Minister of State. If people are raising significant concerns and generating voluminous correspondence, it may be because something is wrong or something is rotten in what is going on. A further reply is needed to this because I do not believe the Minister of State has addressed the particular issue. Other countries are doing it. Other countries are facilitating volunteers and it is important.

**Deputy Colm Brophy:** I will start by putting something immediately on record. There is not something rotten going on. That is a regrettable choice of words by Senator Mullen.

It is a key cornerstone of the way in which we operate that we are conscious of ensuring the

well-being and safety of members of the Irish roster when selected. We are also conscious of ensuring the safety and health of everyone in our country. People who engage in international monitoring have to engage with large numbers of people in the country they visit. They have to engage with many international people when they are there because there is an international set of monitors. They will then return to our country.

Like almost everything else in our country at the moment, we must consider the primacy of healthcare, which I presume Senator Mullen is supportive of, to ensure we tackle Covid-19. This is always at the heart of everything we do. I thank Senator Mullen for his comments.

**Senator Rónán Mullen:** I want to clarify one point. I have no wish to say something is rotten but I did mean to say something may be rotten. I am concerned because, as I said, other countries are doing it and they are facing the pandemic. There is something unexplained that needs to be dealt with.

**Deputy Colm Brophy:** Other countries have different ways of doing things. The Government in this country puts the health and safety of our citizens first.

### **Schools Building Projects**

**Senator Shane Cassells:** The Minister of State, Deputy Butler, is welcome and I thank her for being here. I rise to raise with her the important topic of St. Mary's Special School in Navan. It has a requirement for a new building. A promise was made to provide one. It has been in existence for 43 years in Johnstown in Navan. The school has had a long-running battle to acquire this purpose-built building to educate the near 100 children who attend there from all across Meath and different counties. These children face the greatest challenges in life and have to rise early in the morning to ensure they are transported to their place of education. They were overjoyed in 2011, nine years ago, when the school was at last sanctioned for a purpose-built building to meet the needs of the pupils. Nine long years later they are still in temporary accommodation.

What makes this worse is that St. Mary's Special School was to be part of a three-school educational campus in Johnstown. It was an ambitious plan by the Department and a welcome one. What is annoying is that the other two components of that educational campus, the primary school and the secondary school, accommodate 1,000 students each. They flew through the planning, approval and architectural processes in the Department in Tullamore. They are built and open, thank God. What does it say that, nine years later, the most urgent component of the campus, St. Mary's Special School, is nowhere on the radar of the Department? Those students are being left behind.

A year and a half ago in March 2019 I stood on this spot to raise this particular issue with the then Minister of State, Jim Daly. It is frustrating that, a year and a half on, we are no nearer completion. The Minister of State at the time, Mr. Daly, referred to how it was part of the Department's six-year capital programme from 2015-21. Even at that, we should be welcoming the opening of the school next year but we are nowhere near there.

Let us roll back two years ago to 2018. The then Minister for Education and Skills, Deputy Richard Bruton, led a troop of Ministers to the site. He met students and there were colourful pictures on the front page of the newspaper - fair play to the *Meath Chronicle* - and calls to build



the school immediately. They have been listening to this for nine years. Yet, two years on from that visit there is still no movement on this particular project.

The parents of the children there now know their children will never see or realise the dream of being educated in the new facility. Hundreds of children, unfortunately, have gone on during the past nine years. They have been unable to enjoy a proper educational facility. I think of the many children over 43 years of the existence of this school. They are angry. They do not believe what is said anymore. They are looking for hope. Their children might not get the opportunity to enjoy this facility.

I hope the Department will not toy with the emotions - I am directing this to the officials - of the people involved anymore. They have had enough of that. They are looking for a clear pathway with a timeframe on when this will be delivered.

**Minister of State at the Department of Health (Deputy Mary Butler):** I thank Senator Cassells for raising this issue. I understand his frustration. I have heard him raise this issues on many occasions previously. I hope I will be able to give a little clarity on behalf of the Minister for Education, Deputy Norma Foley, who is unavailable and unable to be here this morning. I thank the Senator for giving me an opportunity to outline to the Seanad the current position relating to the major building project for St. Mary's Special School in Navan, County Meath. The new school, when complete, will be part of a shared campus with Coláiste na Mí and the already completed St. Stephen's National School.

The project will deliver the phase 2 completion for Coláiste na Mí and a new 11-classroom special school building for St. Mary's with associated ancillary accommodation to cater for pupils with a range of learning disabilities. Senator Cassells referred to the almost 100 children we are talking about.

In December 2018, the project completed stage 2(a), developed design, and was subsequently authorised to proceed to stage 2(b), detailed design, which normally includes the applications for planning permission, a fire certificate and a disability access certificate as well as the preparation of tender documents. Planning permission for this particular project was sought earlier than usual in the architectural planning process during stage 2(a) as a means to identify any potential planning issues which might arise.

Earlier this year, the Department reviewed and approved a brief change request relating to traffic management and this has now been incorporated by the design team into the tender documentation. In June 2020 the Department received further brief change requests and the stage 2(b) submission for this project. The review of the stage 2(b) tender documentation is currently nearing completion. When this review is complete, the project will be progressed to tender and construction stages.

In order to expedite the progression of this major building project, the Department has authorised the school and its design team to commence the pre-qualification process to select a shortlist of contractors while the Department is reviewing the stage 2(b) submission. The design team submitted a draft pre-qualification report to the Department last week and the Department has this week authorised the design team to complete the pre-qualification process. Subject to the review of the stage 2(b) submission, no issues arising and completion of the pre-qualification process, the Department of Education, on behalf of the Minister for Education, Deputy Foley, will contact Louth and Meath Education and Training Board and the board of



management of St. Mary's Special School with regard to the further progression of the project to tender and construction stages.

**Senator Shane Cassells:** I thank the Minister of State for the response. I am sure that she can understand my frustration when one looks at the detail in the reply from the Department and the painstakingly slow progress that it has taken in respect of this matter, including the referenced move to phase 2 of the secondary school that is on the campus for Coláiste na Mí. Meanwhile, 43 years later these children are still in temporary school accommodation and many thousands of them have passed through.

I welcome the advancement whereby the design team submitted its report to the Department last week. However, I will not let up on my pressure on the Department. I will liaise with the Minister of State because through her portfolio she has a particular interest in this issue, and with the Minister for Education to make sure that this project receives priority, as promised, and is delivered in the coming year and that we are not back here in a year awaiting an update from officials.

**Deputy Mary Butler:** The Senator has articulated the position clearly and passionately. I understand his frustration and that of the hundreds of children, their parents and guardians on a daily basis, especially as other schools on the campus have been completed. I will convey the Senator's concerns to the Minister and speak to her about it.

I reiterate that to expedite the progression of this major building project, the Department authorised the school and its design team to commence the pre-qualification process. Unfortunately, it is a slow process, which I know having been involved in many building projects. I have no doubt of the Senator's commitment and drive, and I am happy to meet him at any time. As the Minister of State with responsibility for mental health, I am aware that school accommodation has a knock-on effect on children and parents alike.

### **Local Improvement Scheme**

**Senator Robbie Gallagher:** I welcome the Minister of State back to the House. I thank her for taking time out of her busy schedule to attend.

I would like to talk about the local improvements scheme, LIS. LIS funding provides works for small roads and laneways in rural Ireland that do not come under the normal maintenance performed by local authorities. These lanes are used to access people's homes, farms and businesses. They also allow people to access local attractions such as lakes, rivers, parks and so on.

The previous Government allocated €10 million in both 2019 and 2020 for the LIS. Unfortunately, as the Minister of State will be well aware, the funding is totally inadequate. The funding for my constituency of Cavan-Monaghan means that each county got approximately €250,000, which I am disappointed to say is totally inadequate based on the number of people who are waiting to get lanes done.

Previous Ministers have referred applicants to local authorities for discretionary funding but they do not have the luxury of discretionary funding because the road budgets for local and regional roads have been cut year-on-year. Discretionary funding simply does not arise. This has reached the stage where funds must be ring-fenced for the LIS. We need a decent amount

that will go some way to addressing the long waiting lists in every county, and I am sure the Minister of State's county is no different in that regard.

These lanes are used to access homes, business and local amenities. At the moment there is much talk of rural regeneration, which is positive, even more so now because of Covid-19 where people have been forced to work from home. Many businesses have discovered that people can work from home without having a negative effect on the business or, indeed, the employer. One basic right for anyone is to access one's home or business on a private laneway but access is a serious problem. I have heard of stories of emergency vehicles being unable to access their destinations because the local roads were in such bad condition.

I plead with the Minister of State to use her good offices to impress on Government the need for us to return to the way this scheme used to operate where X amount was allocated each year for the LIS. Unfortunately, due to a lack of funding down through the years, the lists have become very long and if one lives in counties Monaghan or Cavan one might have to wait up to 15 years to get a lane done, which is crazy. I ask her to send a positive signal to rural Ireland and inform us that the Government will take the LIS and the people who live along these roads seriously by allocating a decent amount to address the long waiting lists for the scheme.

**Deputy Mary Butler:** I thank the Senator for raising this important scheme. We are all familiar with the scheme in our constituencies. I am responding to this matter on behalf of the Minister for Rural and Community Development, Deputy Heather Humphreys, as she is unable to attend.

As the Senator rightly said, the local improvement scheme is a programme for improvement works on small private or non-public roads in rural areas that are not under the normal maintenance of the local authorities. The scheme is funded by the Department of Rural and Community Development and is administered through the local authorities.

The statutory basis for the LIS is set out in section 81 of the Local Government Act 2001. Since the LIS was relaunched in its own right in 2017, which we all welcomed at the time, more than €58 million has been allocated to local authorities for improvements work on approximately 2,350 roads. The scheme is important to many people in rural areas as these roads provide access to agricultural lands, homes and amenities such as graveyards and beaches.

The Department of Rural and Community Development provides an allocation of funding each year to the local authorities for work on LIS roads. The selection of roads to be funded under the scheme is then a matter for each local authority based on the priority or condition of particular small private or non-public roads in their county. The local authority may rely on existing lists of eligible roads and-or advertise for new applicant roads.

As outlined in the legislation, eligible road projects are those that provide access to parcels of land involving two or more persons engaged in separate agricultural or harvesting activities, including turf or seaweed. Applicants should provide documentation to verify that they are engaged in agricultural or harvesting activities on the parcel of land. This can be a herd or flock number, documents from the Department of Agriculture, Food and the Marine or any other equivalent documentation. The onus is on the individual applicants to submit to their local authority the required documentation in support of their eligibility.

As the Senator will be aware, individual applicants make a contribution towards the roads project. This can vary from 10% to 15% depending on how many beneficiaries are on the par-

ticular road. This contribution was capped at €1,200 for 2020 but the majority of beneficiary contributions were well below the figure. Works can also be carried out on amenity roads, which are non-public roads that lead to important community amenities such as graveyards, beaches, piers, mountain access points and other tourism or heritage sites.

To get to the nub of the Senator's question, an allocation of €10 million was made available for 2020 for the LIS. I understand that most works under the scheme have now been completed. The Minister expects a full drawdown of the 2020 allocation by year end and that 345 roads will have had works completed.

Recognising the value of the scheme for people living in rural Ireland, the Minister is pleased to note that there will be an increase in the allocation for the LIS in budget 2021. Funding for the scheme next year will increase by 5% to €10.5 million. The distribution of this funding to each of the relevant local authorities will be announced early next year when the scheme is formally launched by my colleague.

**Senator Robbie Gallagher:** I thank the Minister of State for her response on behalf of the relevant line Minister.

I welcome the additional funding because any day one gets additional funding is a good day. Nevertheless, I am disappointed because the amount of funding being talked about is totally inadequate. For example, in my own county of Monaghan, and in many others, it is not possible for people to put their lanes on a list because the local authority has closed the list because the list so long and it does not have funding to do the work. Unless and until the Government changes its thinking on this issue, many people will be waiting 15 years or longer to get lanes done and this is not the situation to be in at present. I welcome the comments on behalf of the Minister but more funding is needed so the long lists of local authority lanes that need to be done are done.

**Deputy Mary Butler:** I thank the Senator for his comments and for welcoming the additional funding. I agree that the scheme is well oversubscribed. I know from my local authority area that it is a hugely successful scheme and it is a great opportunity for people and landowners to work in co-operation with local authorities to improve poor access roads to amenities such as beaches and piers. I will speak to the Minister directly and I will raise the Senator's concerns. He acknowledged that the funding has been increased by 5%. This is a significant opportunity for all local authorities to improve very poor roads and road access for people, particularly those who are farming. I will certainly come back to the Senator on this.

## **Healthcare Policy**

**Senator Seán Kyne:** I welcome the Minister of State, Deputy Butler, to the Chamber and I thank the Cathaoirleach for selecting this important matter. It is an issue that has grown in prominence on account of Covid-19, and it was raised with me by the family of a woman who spent more than six weeks in intensive care in a Dublin hospital battling Covid-19 and its significant after-effects.

The woman in question underwent a cancer operation, which, thankfully, was successful, but she contracted pneumonia in hospital and spent almost eight weeks on that occasion in ICU. Following the excellent care from the team in the hospital, she was transferred from ICU

and was on the road to recovery when, unfortunately, Covid-19 struck. Like so many people, she contracted the virus in hospital and had to be moved back to ICU and placed on a ventilator again. I understand that in most cases a ventilated person has to be kept heavily sedated, including in paralysis, due to the body's natural tendency to reject the ventilator. One can only imagine the worry and concern the family experienced as their loved one made it through ICU and into recovery only to be rushed back to ICU on account of this new and unknown virus.

On this second occasion, the patient was in a weakened state and gravely ill. It was at this time a nurse in the ICU mentioned to the family there was a do not resuscitate, DNR, order on their relative's file. This came as a complete shock to the already anxious and worried family. It led to several days of attempting to establish what the DNR order meant in practice at a time all hospital visiting had ceased and all communication with families was conducted over the phone. Very often, the staff member assigned to liaise with a family was a retired person who worked not from the hospital but from home. The family was told the nurse should not have mentioned the DNR order in the manner in which it was done. The family received an apology and an explanation regarding the reasons for a DNR order.

The family was told that over the previous 18 months, the HSE had wanted to be very clear on how far treatment was to be taken. The family was told that in the event of cardiac arrest, the DNR order would come into effect because cardiac arrest in ICU represents a failure in terms of the treatment. In the event of a cardiac arrest the quality of life of the patient would be negligible. This may all seem rational as I stand here now but at a time when a relative is seriously ill in ICU on account of a new illness and all hospital visiting had been suspended, it is a difficult concept to understand or accept.

Thankfully, in this case the woman overcame Covid-19 and has made a strong recovery in spite of the odds, which were stacked very much against her, and she is at home now with her family. However, the family's experience raises serious questions over the use and practice regarding DNR or do not attempt resuscitation, DNAR, orders. From my limited knowledge of the issue, I understand there is no strict definition of what a DNR order constitutes, although it generally it is taken to mean an order that no intervention be made when a person suffers cardiac arrest. There are no written guidelines for hospitals, although I stand to be corrected. There is no specific legislation in operation to guide this sensitive area.

The Assisted Decision-Making (Capacity) Act 2015 provides a legal framework for advanced healthcare directives but, to the best of my knowledge, the relevant section in Part 8 of the Act has not been commenced. In May, the Irish Hospice Foundation highlighted the need for the commencement of the legislation on account of Covid-19. I understand the national office for human rights and equality policy in the national quality improvement team of the HSE has oversight of guidance on DNAR orders and has been working to help prepare for the commencement of the legislation.

We need clarity in the use of DNR and DNAR orders in Irish hospitals and healthcare facilities. We need clarity on how patients' wishes are respected and we need clarity on the role of families and next of kin. We need an information campaign to raise awareness of DNR orders and the wider area of advanced healthcare directives. We need to spark a national conversation on these issues. It is never easy to discuss end-of-life matters because it forces us to confront our own mortality and the pain and loss caused by bereavement. The best time for such a conversation is before a pandemic. The second-best time is now. These issues are relevant at any time but particularly as we challenge and continue to grapple with the unprecedented challenge

of Covid-19.

**Deputy Mary Butler:** I thank the Senator for raising this very important issue. He is definitely right that the conversation needs to be had. I am delighted to hear the person involved, who brought it to the his attention, has recovered.

The HSE's national quality improvement team in the office of the chief clinical officer prepared and published guidance on this important matter earlier this year, with specific reference to the Covid-19 pandemic. This guidance is for healthcare workers regarding advance care planning and cardiopulmonary resuscitation decision-making, including making DNR decisions. The guidance is applicable to all care environments where services are provided for and on behalf of the HSE, including acute hospitals, the ambulance service, community hospitals, residential care settings, general practice and home care.

Section 4 of the HSE national consent policy, which has been in place since 2013, on DNAR orders, and the HSE guidance regarding cardiopulmonary resuscitation and DNAR decision making during the Covid-19 pandemic, apply to all HSE and HSE-funded agencies and give explicit guidance on when and how a DNAR decision can be made. Part 4 of the HSE's national consent policy has been in place since 2013. However, DNAR clinical decisions had been in place for many years before this, guided by the Irish Medical Council's code of professional conduct and ethics. The HSE guidance regarding cardiopulmonary resuscitation and DNAR decision-making during the Covid-19 pandemic was developed in May 2020. The purpose of the guidance is to affirm existing good clinical practice and guidelines regarding CPR and DNAR. The guidance did not change any of the principles addressed in the HSE's national consent policy of 2019.

The development of the HSE National Consent Policy 2013 included service user representation and there was wide consultation on this policy, which also included a large number of service user groups and individuals. The national consent policy states with respect to individual DNAR clinical decisions that where a person has capacity the clinical lead should discuss options with the person in the first instance. This is very important. If the person is unable to participate in discussions after being given appropriate supports to do so, discussions with those close to them can provide insight into their previously expressed goals and preferences. However, the role of those close to the person is not to make the final decision regarding CPR or to consent to a DNAR decision as this authority does not exist under current law. The purpose of these discussions is to help the senior clinical decision maker make the most appropriate decision, having regard to the goal and preference of the person.

Decisions about CPR must always be made on the basis of an individual assessment of each individual case and not, for example, solely on the basis of age or disability. Any distinction based solely on such criteria is discriminatory and contrary to human rights principles. DNAR decisions are made in the context of the person's overall goals and preferences for treatment and care as well as the likelihood of success and the potential risks and harms.

**Senator Seán Kyne:** I thank the Minister of State for that comprehensive reply. The most important point is that the lady in question received excellent care in the hospital in question and there is no question about that. The second most important point is that the lady in question has made a full recovery. The issue at stake here is with regard to her making a decision, or the family being informed and consulted, which they were not in this case. The nurse in question made the very welcome call to the family and stated that there was a DNR order, which came



as news to the family. Subsequent calls from people said she should not have informed the family. That is worrying because the family have a right to know what is happening with their loved one in terms of a DNR. I will bring this information back to the family and if they need to follow up, I am sure the Minister of State will be happy to liaise with them. It is important that lessons are learned and better procedures are followed in life and death issues like this.

**Deputy Mary Butler:** I thank the Senator for raising this important issue and thereby providing the opportunity to discuss this matter in the House. The fundamental principles of good clinical practice in sensitive policy issues are non-discriminatory decision-making, advanced care planning and assessment of the balance of benefit and harm. The Covid-19 pandemic presents new challenges in making advanced care plans and in cardiopulmonary resuscitation decision-making.

The Senator has made two good points at the start. An information campaign would be hugely important. I will make a suggestion because this is an area that needs more discussion and we will not be able to solve it in eight minutes in this House. It might be worth writing to the Oireachtas Joint Committee on Health to suggest it takes a look at the issue. It is only when a family is in that situation that they realise there is something on a file they are not comfortable with. I welcome the fact the Senator has raised the issue and I will bring it back to the Minister for Health and raise the Senator's concerns.

*Sitting suspended at 10.41 a.m. and resumed at 11 a.m.*

### **An tOrd Gnó - Order of Business**

**Senator Lisa Chambers:** The Order of Business is No. 26, motion 6, postponed division on the amendment to the motion on biodiversity, to be taken on the conclusion of the Order of Business; No. 1, motion re arrangements for the sitting of the House on Tuesday, 10 November 2020, to be taken on the conclusion of No. 26, motion 6, without debate; No. 2, third report of the Committee of Selection, to be taken on conclusion of No. 1 without debate; No. 3, motion regarding section 6(5)(a) of the Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2020, to be taken at 12.30 p.m. or 15 minutes after the conclusion of No. 2, whichever is the later and to conclude after 45 minutes, with the time allocated to each group spokesperson not to exceed five minutes and the Minister to be given no less than four minutes to reply to the debate; No. 4, Investment Limited Partnerships (Amendment) Bill 2020 - Report and Final Stages, to be taken at 1.15 p.m. or immediately on the conclusion of No. 3, whichever is the earlier, and to be brought to a conclusion after two hours by the putting of one question from the Chair, which shall, in relation to the amendments, include only those set down or accepted by the Government; and No. 5, motion re the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020, to be taken at 3.30 p.m. or 15 minutes after the conclusion of No. 4, whichever is the later, and to be brought to a conclusion after 90 minutes, with the contributions of all Senators not to exceed six minutes and the Minister to be given no less than eight minutes to reply to the debate.

**Senator Regina Doherty:** I agree with the Order of Business. I raise today the ongoing and deeply distressing situation of hundreds of Aer Lingus employees. As we are all aware, over the last five months I along with many colleagues in this House and the Dáil have raised



issues regarding Aer Lingus workers accessing the short-term income supports backdated to March 2020. Due to the management of the temporary wage scheme by Aer Lingus, I believe a disservice was done to the employees leaving them on less - much less in many cases - than the €350 pandemic unemployment payment that was envisaged by the last Government and carried on by this one.

These employees have had to turn to the Department of Social Protection for assistance given their reduced hours and pay. Many of them have applied for the short-term working scheme, allowing them to claim jobseeker's payment for the days they were not working when they were on 50% or 30% of their salary. For five months from March until the end of September not one of these applications has either been awarded or rejected. They have just been put on a red flag file.

I know how hard Intreo officers work and I have great respect for them. In recent months they have been frustrated in dealing with the queries both online and in person. They are doing their absolute best, but they are awaiting instructions from the Department and the Minister. There are ongoing negotiations between them and Aer Lingus as to how best to manage.

In the middle of all this, I am aware that we have more than 2,000 applicants for the short-term working scheme waiting for backdated payments and for their applications to be processed. We are now seven or eight weeks away from Christmas. These people have been living on buttons since March. It is not acceptable that an agency of the State, or indeed a blue-chip employer like Aer Lingus, would continue to stand over the mistreatment of its employees as is happening.

I call for the Department of Social Protection to intervene with a communication directly to the more than 2,000 applicants outlining when and how they will be dealt with, and what kind of outcome they can expect. While there are people who are entitled to the short-time working scheme and will get what they are entitled to, an expectation has been created among far more employees in Aer Lingus that they are also entitled to access the scheme and I fear they are not entitled to do so. This needs to be brought to an end today with a clear statement from the Department but also direct communication to every one of those 2,000 and more applicants.

**Senator Michael McDowell:** I wish to move an amendment to the Order of Business, that No. 8 be taken before No. 1. This concerns the Children (Amendment) Bill 2020. On the issue of voting for business next Tuesday, I appreciate the problems we face with accommodation, votes and the like. I have tried to be constructive, as has my group, on all of these matters. Some people feel that in these Covid days, we must make concessions on parliamentary procedure to facilitate the doing of business in safe circumstances in Leinster House. The recent experience with legislation on house parties shows that we cannot suspend the function of parliamentary scrutiny. I know these are matters for the Committee on Procedure and Privileges, which is addressing these matters as a matter of urgency, but the Seanad must function constitutionally in the way it is intended. We must be in a position to look at legislation, not at a leisurely pace but in a businesslike way, by getting through our business. We must be in a position where the ordinary processes of this House function well. I know the Leader has run into difficulty because of a few deadlines in recent times, despite commitments that were made to the House on previous occasions, and that legislation has been guillotined and motions for early signature and the like have suddenly been put before us. We have a constitutional function to discharge. The rules and procedures of this House must reflect the urgency of our constitutional function. We cannot continue to keep cutting corners on the pretext of there being a Covid emergency. Therefore,

the work that is being done by the Committee on Procedure and Privileges to normalise our voting and sitting procedures should be expedited and this House should reach the position where it can use its Chamber in the civilised way we have been doing - sharing the accommodation in it but doing our work of scrutiny in a way that allows us to call votes on matters we think are of considerable importance.

**Senator Ivana Bacik:** I echo what Senator McDowell said about the work of the Committee on Procedure and Privileges. I am glad we had a productive meeting this morning. I thank the Cathaoirleach, his staff and colleagues. We have all been working constructively to try to reach the position where we can use our Chamber and engage in voting in the normal democratic way thereby fulfilling our constitutional function. I am glad, therefore, that we have had progress on that this morning.

I ask for a debate on the extension of citizenship to healthcare workers on the front line who are caring for patients with Covid in many cases but, as we have seen in recent weeks, still face uncertainty as to their legal status in Ireland. I commend Labour Youth on launching a campaign yesterday entitled “Born Here Belong Here”, which seeks in particular to extend citizenship rights to children born in Ireland but who have uncertain legal status because their parents are not entitled to be Irish citizens as a result of the 2004 referendum and the legislation brought in subsequent to that. Colleagues may recall that in 2018, the Labour Party brought forward a citizenship Bill that was passed on Second Stage with support from our colleagues in Fianna Fáil and the Green Party. It would have expanded the right to apply for citizenship to children born in Ireland. We will bring this Bill back on 2 December as part of this Labour Youth campaign to extend citizenship rights. There is a groundswell of public support for greater generosity in terms of citizenship rights, particularly when we see reports of people who have been working in healthcare in Ireland, in some cases for many years, and are facing a threat of deportation. I ask the Leader to facilitate our debate in Private Members’ time and that the Government see fit to support the legislation. We would be bringing it back on Committee Stage and are very much open to having amendments from the Government side. I look forward to working constructively with the Leader and other colleagues to ensure we have some expansion of our citizenship law for children born in Ireland and persons working in healthcare who are on the front line and facing deportation. I look forward to that debate.

Like everyone else, I have been riveted by the US election. I express my hope and that of my party that Joe Biden prevails and is elected today and that we see a declaration being made. I also condemn the outrageous comments made by the outgoing US President about the democratic process casting aspersions and undermining people’s belief in the integrity of the democratic process in the US. It is shocking to see those comments being made by an outgoing US President.

**Senator Pauline O’Reilly:** I also welcome the work we did on the Committee on Procedure and Privileges this morning. We will find a resolution to the issues around voting very shortly. I thank the staff for their engagement. It is very important that the Seanad continues to operate effectively and that we do our duty and what we were elected and are paid to do.

As a member of the Organization for Security and Co-operation in Europe, I would probably have been observing the US election this week. I watched with horror all of the demonstrations that have been taking place. There does not seem to be any indication of voter fraud despite what the current President says. I would have welcomed the opportunity to observe the election. I hope that sense will prevail and that following this, we will have a coming together

of the people of the US with a common interest in peace and reconciliation between all sides because that is the most important thing.

**Senator Lynn Boylan:** I urge my colleagues in the House to support the vote this morning on the Sinn Féin amendment to the motion on biodiversity brought forward by the Green Party. I reiterate the point I made yesterday that supporting farmers to farm sustainably and protect nature is not the same as allowing nature to be traded on markets to facilitate emissions. It is a shame that some of my Green Party colleagues did not understand the difference. Maybe they should listen to their colleagues in the Just Transition Greens group.

Later today, we will discuss the enforcement powers for Covid level 5. The Government must use the time during lockdown to get its house in order. Covid-19 has exposed fundamental weaknesses in our health system. One of them is how the health service plans its workforce and staffs its services. Staffing levels are not based on best practice or evidence-based policy. Instead they are based merely on the idea of what the ward has always had and essentially looking to history to set the staffing levels. The framework on safe staffing is a scientifically tested tool to set staffing levels based on the number of patients and their specific needs. When trialled in Irish hospitals, it cuts costs, particularly agency staffing costs; decreases the length of patient stay; improves patient satisfaction rates and staff morale and well-being; and cuts mortality rates. The tragedy of Covid-19 has touched many families throughout Ireland but for nurses that tragedy is a daily experience. They are on the front lines day in, day out. The trauma of what they go through for all our sakes is difficult to fathom. Yesterday, a nurse from a Dublin hospital, Jennifer, called into “Liveline” and put into words her experience of the Covid ward. She read a poem she had written about the ten minutes that she gives to those losing loved ones in ICU to say their final goodbye. I ask each Member to take a moment to listen to that poem today because we owe it to the nurses to do everything in our capacity to support them in their work. In the words of the Irish Nurses and Midwives Organisation, we must take care of them so that they can take care of us.

**Senator Frances Black:** I express again the grave concerns of hundreds of musicians who have contacted me since the budget, many of whom are struggling to meet their financial commitments. I have raised the crisis in the music industry several times and have offered my ongoing support to the Music and Entertainment Association of Ireland, MEAI. It is an amazing organisation which works voluntarily to help struggling colleagues in every way, including mental health in some ways. Workers in this sector have been in lockdown since March without any income. They have relied on the pandemic unemployment payment, PUP, and payment breaks to get by. Now, with a reduced PUP and no guarantee of payment breaks, many face the realisation that their homes may be at risk. Many are forced to sell equipment and their tools of the trade which are essential for their business to survive. This is such an unfair position in which to leave workers who want to work but who simply cannot do so.

The Covid restrictions support scheme announced in the budget benefits only premises owners. The majority of musicians do not operate from a premises or pay rates and their annual turnover does not reach the threshold for VAT. Schemes announced in the July stimulus package do not apply to these individuals. The VAT reduction was not given to the music industry. That reduction would have helped survivors in the industry when it reopens. These are self-employed people in microenterprises who raise families, pay mortgages, enrich the social fabric of our existence and culture and whose livelihoods have been put under threat by this pandemic. Their livelihoods have been put under further threat by the lack of supports by this Government.

These sectors need individual supports for the workers who have been on PUP since March. They want to work but their ability to work has been taken away by Government guidelines and the lack of clarity about those guidelines. Even under level 5 restrictions, wedding bands and private music teachers have been left in doubt about their ability to earn an income and honour private contracts. I ask that the Minister come before the House to address the concerns of these workers and then to arrange a meeting with their representatives to hear their views on the failure of Government responses so far to reach out to them in any effective or meaningful way.

It is also essential that support comes the way of these musicians as we fast approach the Christmas period. They have sacrificed their right to work and earn an income for the greater good of the nation. The Government should now reward the heavy burden they have borne for more than seven months. This burden of financial uncertainty is a risk to their future livelihood and even to their homes. It is not good enough. Music is the heart and soul of who we are in Ireland. It is our duty to afford protections and honour the artists and musicians who contribute so much to Irish culture and society. Now is the time to do that.

**Senator Emer Currie:** Next Monday is equal pay day. We look forward to the #WorkEqual campaign run by the Dress for Success group. Equal pay day underlines the inequality between men and women and their pay. The average pay gap in Ireland is 14.4%. Technically, Monday, 9 November is the day on which women stop being paid for the work that they do. Women are disproportionately over-represented in lower-paid positions and under-represented in the labour market. They take on the bulk and burden of care and domestic roles and the struggle to juggle everything. Deeper issues are at play around gender stereotyping and discrimination, especially for women from minority groups.

This Government is deeply committed to changing this, as was the previous Government, and to encouraging the share of care between both parents. Paid paternity leave and a new paid parent's benefit were introduced in this year's and last year's budgets but there is still more work to do. Yesterday, the Department of Public Expenditure and Reform announced a new spending review which noted that the uptake of paid paternity leave stands at 50% and that of new parent's benefit is relatively low. These low rates are associated with the failure by employers to top up salaries. This also reflects other challenges I often see with parental leave, including employers not being sufficiently flexible and insisting that parents take all their parental leave in one go instead of giving them the flexibility to take it as part of a three-day or four-day week over a period. These are the practical issues that hinder our progress in sharing the care. The EU work-life balance directive is an opportunity for the Minister to review all these issues - access to parental leave, work flexibility, and the right to request - together.

**Senator Catherine Ardagh:** I raise again the untimely death of Shane O'Farrell. This tragic killing has been discussed twice in this House and the Dáil since 2017. Shane O'Farrell died in a road traffic accident nine years ago in August. He was hit by a car driven by Mr. Zigimantas Gridziuska, who had 42 previous convictions and was at large while on bail. He should have been in prison for breaching many bail conditions but was dangerously out on this day, killing beautiful young Shane O'Farrell, aged 23 years, in August 2011 near Carrickmacross, County Monaghan. This matter received cross-party support when it was discussed in both Houses. Two years ago, the then Minister for Justice and Equality, Deputy Flanagan, established a scoping inquiry headed by Judge Gerard Haughton. I understand the family have met the judge and are working well with him. It is expected the report will be completed in December. I ask the Leader to seek an update from the Minister on that. When the report is published, I ask that the Leader make time in the House early in the new year to discuss it. We

need justice in this case, not only for the family but also the public generally. We need facts. We need to give some solace to the family, who need to know the truth so that they may finally put the matter to rest and get on with their lives in some sort of normality.

The Oliver Bond flats complex in Dublin has a serious rat infestation. I have been asked to name a lady whose flat is infested. Lindsay O'Brien has rats in her bathroom and her kitchen. It is a disgrace that people are living like this in this day and age. None of us here would put up with that and no one living in council property should put up with it either.

**Senator Gerard P. Craughwell:** I second Senator McDowell's amendment to the Order of Business.

**An Cathaoirleach:** Will Senator McDowell clarify whether he proposes that No. 8 be taken before the vote?

**Senator Michael McDowell:** Yes, I suppose so.

**Senator Gerard P. Craughwell:** This weekend is very special for all of us who wore uniforms, irrespective of where we wore them. It is the weekend on which we would commemorate the armistice and the loss of Irish lives in the First and Second World Wars.

More importantly, 8 November, this weekend, will be a very poignant day in Irish military history because we will remember 60 years since the Niemba ambush, when Lieutenant Gleeson, Sergeant Gaynor, Corporals Kelly and Dougan, Privates Farrell, McGuinn and Killeen, and Troopers Fennell and Browne all lost their lives. If it is not inappropriate, I ask that we hold a moment's silence today in the House. We had expected the Niemba ambush to have a particularly poignant remembrance this year, given that it has been 60 years since those men lost their lives. Unfortunately, however, because of Covid-19, there will be no such commemoration. It would be fitting of the House to remember in particular those who died in Niemba and, at the same time, to remember the thousands from Ireland who gave their lives in the First World War and Second World War. I am not sure whether it would be appropriate to take a minute's silence but it would be a noble thing for the House to do. I ask the Cathaoirleach to consider that at the end of the Order of Business.

**Senator Timmy Dooley:** As every day of the level 5 lockdown goes by, more and more issues arise that are clearly not consistent with what is being attempted to suppress the virus. Many of them attach to rural pursuits. It is difficult to justify why a small number of cattle buyers cannot attend cattle marts to assist in the trade of livestock, which is part of the food chain. Rural men and women who are interested in hunting normally take their guns and dogs to shoot pheasants at this time of the year, mainly alone or sometimes with one or two others, in the wild countryside. There are also issues with hare coursing. Again, it is usually a couple of men or women and their dogs. These are not just sporting pursuits. For some, the breeding of a dog is an important source of income. It often goes on to pay for the college fees of a son or daughter. It is an essential component of the income of those families, yet with the wave of a hand or the stroke of a pen, certain people in government and in the National Public Health Emergency Team, NPHET, seem to suggest it is better to suppress everything for the greater good of all.

When that kind of blanket approach is taken, however, very quickly people start to be lost, group by group, individual by individual, club by club. It will become more and more difficult as time goes on to get the support of the people. We need to learn to live with Covid-19. I have talked in the House about the necessity to give some sense of hope to people who will want to



come home for Christmas. We need to do that now. We need a debate in the House on living with Covid. If one talks to the experts off the record, they will say very clearly that even with the emergence of a vaccine or some therapeutic cure for Covid, we will still have to live with it for many years to come. We need to get real now while we still have some chance of retaining the support of the people. I suggest we have a debate in the House as soon as possible.

**Senator Micheál Carrigy:** I raise the issue of the recent application for strand 2 of the just transition fund. I believe that evaluations are under way and it is expected that applicants will be contacted this month in respect of their applications. More than €11 million in funding has been put in place to help fund these projects, create employment and re-employ workers who have lost their jobs, especially in Longford and Offaly. I refer in particular to the Lough Ree power plant in Lanesborough, County Longford, the closure of which has had a significant effect on the people of Lanesborough and the surrounding areas of Killashee, Keenagh, Newtowncashel and workers in nearby Ballyleague in County Roscommon.

I asked the Minister, Deputy Eamon Ryan, to follow up on his commitment to me in the Chamber during the summer that he would prioritise funding for these specific projects in our county. A number of such projects in which I have been involved include: Access for All, which is aimed at providing outdoor recreational pursuits for wheelchair users, with tours of Lough Ree and the River Shannon, and will provide alternative employment for dozens of Bord na Móna workers; a food hub, which is a joint venture between the local community, Longford County Council and Bord na Móna, a venture that has previously received funding from Enterprise Ireland and is anticipated to employ in the region of 40 workers; and Lough Ree Distillery visitor centre, which is on the banks of the River Shannon. When in full production, the distillery will have a capacity for 50,000 cases of whiskey, gin and other spirits. It is expected the visitor centre will attract more than 25,000 tourists to the area and create 20 jobs locally.

I am concerned about a commitment given with regard to the just transition. When the bogs were being rehabilitated by Bord na Móna, a commitment was given to re-employing the workers who had lost their jobs. I would like assurances from the Minister and Bord na Móna that they will commit to re-employing these workers and not use external contractors, which may take place. If we are to deliver a just transition for the midlands and the workers, it is imperative that the funding be delivered without delay.

**Senator Mark Wall:** I raise two issues, the first of which I have raised a number of times previously in the House with a number of colleagues. It concerns the campaign by John Wall to expand medical cards to terminally ill patients. I listened to John earlier on my local radio station, KFM, on my way to the House. He informed everyone listening that he will hold a further meeting with the Minister for Health, Deputy Donnelly, on this deeply important matter at 6 p.m. today. I appeal to the Minister to have the political will to listen to John on behalf of all those who need this comfort so much, and to change the current guidelines. I am sure this would be welcomed by everyone in the House and, most important, by those who need such a support at such a difficult time in their lives.

I ask the Leader to request a debate with the Minister for Housing, Local Government and Heritage on an issue highlighted to me in recent months. I ask for that Minister to come to the House because of the urgent need to change the building regulations to make it mandatory to include what are called changing-place toilet facilities rather than the standard accessible toilets in public buildings. In Ireland, there are estimated to be only 15 changing-place toilets, whereas I am told there are more than 1,500 in England, which recently introduced legislation to make



such toilets mandatory in new public buildings from 2021. There are 40 in Northern Ireland and the Assembly has given a commitment to amending its regulations. There is currently an online campaign, which I urge Senators to support, to change the Irish building regulations to ensure that changing-place toilet facilities will be mandatory in public buildings. I am aware of a number of families who simply cannot use the facilities currently on offer in this country. Their children and loved ones have grown into young adults and the small baby table in these facilities is simply not good enough. These families are left having to change their children's clothes in the back of their cars or on the cold floors of whatever changing rooms they can find.

I hope we can make a change for these families. Having just 15 changing-place public toilets in this modern republic that we all call home is simply not good enough for those who need our help most.

**Senator Malcolm Byrne:** I echo Senator Black's comments on the need for continued support for musicians, and those of Senator Bacik, who stated we should send our congratulations, we hope, to US President-elect Biden. I have no doubt the Cathaoirleach will happily welcome him to counties Mayo and Louth, should he decide to make a visit in the coming years.

**Senator Gerard P. Craughwell:** We could send him to Galway too.

**Senator Malcolm Byrne:** I return to the questions on the clarity of the guidelines under level 5 and the position on the shooting of pheasants. As the House will be aware, recreational shooters play an important role in managing vermin, pests and predators in country areas. Due to level 5, however, recreational shooting has been stopped. I ask that we get clarity on that and in particular on the possibility of an extension to the pheasant shooting season.

On the question of living with Covid, I raise the issue of how our young people are coping with the virus. We need to consider our response. While we are all impacted in many ways, young people have been particularly affected. There was a peak of youth unemployment at about 45% over the course of the summer. Those who went through the nightmare of the leaving certificate this year and those who will face it again next year will not have the same first year college experience many of us in this House have been fortunate to experience. The joy of going to nightclubs - I am not sure how many in the House have spent their time clubbing - is certainly not available to teenagers and young people. These are very important rights of passage. We need to consider ways in which we might ensure we have a debate about not only how young people have been dealing with Covid, what supports we can put in place and how we can support young people's mental health but also the contribution, welcomed by the Chief Medical Officer, CMO, this morning, that young people have made to fighting this Covid challenge.

**Senator Paddy Burke:** I presume that by now most Members of the House have received a copy of a letter sent to the Director-General of the World Health Organization because of the exclusion of Taiwan from the World Health Assembly meeting that will take place between 9 and 14 November. I ask that the Leader of the House request the Ireland-Taiwan Parliamentary Friendship Society to write to the World Health Organization for the inclusion of Taiwan in these talks. Taiwan seems to be the most successful country in tackling Covid-19 and has also been very generous in giving its products to other countries right around the world. It has only had 544 confirmed cases and seven deaths up to October of this year. That is an incredible record. It has given generously to other countries around the world, including member states of the European Union. It has given 54 million surgical masks, 35,000 thermometers, 227 sets of protective clothing, 600,000 isolation gowns, polymerase chain reaction, PCR, test devices and

medical gloves to more than 80 countries around the world over the past few months. That is very generous. As I said, given the number of cases in Taiwan, with a population of 23 million people, it is the world leader, yet it is being excluded from the World Health Assembly talks taking place in November. We have not heard the World Health Organization or even the Irish Government or many of the European governments expressing what is best practice around the world. They always state we are following best practice. Best practice seems to me to be what is being done in Taiwan. I ask that the Leader contact the Ireland-Taiwan Parliamentary Friendship Society to discuss supporting Taiwan in this case.

**Senator Niall Ó Donnghaile:** I cannot endorse enough Senator Wall's suggestion in respect of the changing-place facilities. We opened one in Belfast City Hall in January last year. For families caring for people with profound disabilities, just the knowledge that such a facility is there for them affords them an opportunity as families to do things together, to plan their day and to plan recreation and important family time together. It is an important issue to raise in the House but, more important again, it is one we should all take on in our own spheres of influence and help to drive forward in support of families and those with profound and severe disabilities. These facilities really make a difference.

Colleagues have spoken about the level 5 restrictions. We are where we are, and I respect fully and champion the medical and scientific advice given to the Government. However, we need to consider the issue of fitness and gym access in the context of people's mental and physical well-being. We all remember in the summer the great craic and novelty people enjoyed in working out in the back yard or in the living room and encouraging their families and communities to take part in that. We are now into the winter months, however, and that option is just not available to everyone. I appreciate the fact that we will have a debate later today and indeed statements on this issue next week. I do not have the answer and I do not expect the Deputy Leader to have it either. I am just calling for a discussion and a debate on this in order that we can hear from the Minister the rationale, which, I hope, can evolve and be reviewed as we come into the winter months to make a real, tangible, positive impact on people's health.

**Senator Aidan Davitt:** I echo the sentiments of Senators Byrne and Dooley. I have discussed with the Deputy Leader herself the matter of shooting since the season has come in on 1 November and I acknowledge she will raise it with the relevant Minister. I appreciate that. She indicated that to me earlier.

As for Senator Burke's comments and the WHO stance on Taiwan, and other Senators have echoed those thoughts, I see it as very strange in our modern world that the WHO is still taking such a stance on Taiwan, particularly as it is to the fore in the fight against Covid. I ask that we make our feelings known in that regard.

Lastly, on 1 January, as the Deputy Leader knows, Brexit will be at our door. A lot of our exporters are not up to speed with the new regulations, regardless of whether the EU will do a deal with Britain. This is very important. Perhaps this is the relevant forum to which to bring the relevant Minister to discuss the wide implications and see what we can do to encourage businesses to be ready for the large changes that will come in on 1 January. I thank the Deputy Leader for her time.

**Senator Vincent P. Martin:** The past couple of days have demonstrated, if anyone needed reminding, how precious democracy is and how much it matters. Every vote counts. It is quite improper for any government to involve itself in another country's election, but as individuals

who care about democracy and the free world, the last few days have been little short of incredible in our lifetime. It has also been a salutary lesson for President Trump that bullying does not pay and that the road of peddling fake news runs out and is a cul-de-sac. His despicable references to Detroit and Philadelphia, appealing to his base last night, in his anything-but-gracious speech were a disgrace. His invoking of and reference to the US judiciary is from a different planet. Democracy in Ireland has a very proud tradition of respect and separation of powers for our Judiciary. It is in sharp contrast with what the leader of the free world said in referring to the US Supreme Court. He welched on the Paris Agreement, and that withdrawal happened only yesterday. Soon-to-be-president Biden - does that not sound good? - has said he will ensure America takes its place again as a part of that agreement. He has strong Irish connections. It is not my place as a Senator, but sometimes it is good to be first out. I know that the Cathaoirleach is respected in America.

**An Cathaoirleach:** Unfortunately, the Senator's time is up.

**Senator Martin Conway:** Mr. Biden is highly regarded in Clare.

**Senator Vincent P. Martin:** My final point is that Mr. Biden should come to Mayo and Galway and that perhaps the Irish Government should consider, after all we have been through, inviting President Biden to address the Houses of the Oireachtas.

**Senator Eileen Flynn:** I wish to take this opportunity to thank all the healthcare workers who work in our healthcare system, including all the front-line workers, from the cleaners to the consultants. I thought of them very much this week. I also heard the shocking story this week of two women care workers who worked in a nursing home throughout the pandemic and have been denied leave to remain in Ireland. These are healthcare workers being sent from Ireland in the middle of a pandemic. It is absolutely ridiculous. These women put their lives on the line in this country. If that does not show determination and commitment to this country, what does? Despite this they were told to leave voluntarily or face deportation, according to RTÉ. We stood outside in March to clap for our healthcare workers, including migrant healthcare workers. The Taoiseach and Tánaiste also stood and clapped for all healthcare workers, including migrant healthcare workers. I call on the Taoiseach, Tánaiste, and Ministers for Health and Justice to be supportive of all our healthcare workers, including migrant workers, to work with migrants who are treated as lesser people in the Irish system and to ensure they are not deported from the country during this time and are granted leave to remain. Those who live here belong here. Migrants make this country a better place.

**Senator Jerry Buttimer:** I join Members in asking that we support Taiwan's participation in the World Health Organization. Lawmakers in most European countries are in favour of Taiwan joining the WHO. It makes no sense, if we are collectively trying to defeat Covid-19, that Taiwan cannot participate in the WHO. I urge the House and the Minister for Foreign Affairs to lend Ireland's support to its participation.

I ask the Cathaoirleach and Leader to arrange a debate on the forthcoming decision of NPHET on moving from level 5 to a different level, whatever it may be. It is important we have a debate on moving from level 5, including on issues such as places of worship. I support Senator Dooley's remarks this morning on rural pursuits, be it coursing or pheasant shooting. That is an issue we need to look at. It is important we have an informed and meaningful debate on how we can collectively address and live with Covid-19. We, as parliamentarians, must have a role and a say in that debate and contribute to public discourse on living with level 5. In particular

it is important we stand with our hospitality sector which has suffered enormously as a result of Covid-19, especially small restaurants and coffee shops in many of our cities and towns. If we move to level 3, small and medium enterprise owners must be given an opportunity to pursue indoor dining.

**Senator Erin McGreehan:** I echo Senator Wall's call for more changing places, toilets and facilities. He is dead right that the northern part of this country does these things an awful lot better than we do and we need to improve. It would be remiss of me, as a Member of this House and proud County Louth woman, not to mention our proud son, Joe Biden. I must also take umbrage at the fact that County Mayo is getting ownership of all his genetics when we all know the Biden clan came from Owen Finnegan and Ms Kearney from Templetown in Cooley. We must be very proud of our son, or perhaps cousin, Mr. Biden, and hope we can welcome him home as President of the United States. I fully agree with Senator Martin on the importance of democracy and how we work on, encourage and improve our democracy.

In light of Brexit, which I think is only 49 days away, I ask the Leader that we have a debate on an all-Ireland economy post Brexit. We need to ensure the Northern Government and the Government here work to create a Border economic zone in light of Brexit. North County Louth, Dundalk, the Newry and Mourne district and the entire Border region, North and South, are going to suffer. I would appreciate a debate on how we are going to support both sides of the Border after Brexit.

**Senator Martin Conway:** I join colleagues in calling on the Minister for Foreign Affairs to engage with the World Health Organization in support of Taiwan. It is a most hospitable country and one which does its business right, as we see in its record in dealing with the Covid-19 crisis. We can all learn a thing or two from it.

Speaking of Covid-19, I hear Members calling for exemptions for various activities and many of the cases they are making are strong. However, I suggest that there will not be any changes or any further dilution for the next four weeks of level 5. It is appropriate that we look at how to deal with any future level 5 lockdowns because even if a vaccine is developed, I suspect unfortunately that we will be moving into further phases of level 4 or 5 restrictions in the first half of 2021. As for rebuilding our economy, it is fair to say that the Cathaoirleach's county and my county would have seen tourism kick-start their economies after the last recession. Between 2010 and 2013 in particular, we saw the tourism numbers grow. We saw hundreds of thousands of people working in tourism when there were not jobs in other sectors of society. I earnestly believe tourism will be the first industry that will kick-start our recovery. With that in mind, I suggest to the Leader that we have a considered debate on tourism with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media in the not too distant future. We need to invest in gold-plated tourist facilities across the country. In addition, each county should have at least one gold-plated facility like we in County Clare have with the Cliffs of Moher visitor experience. We also need to develop silver-plated facilities because people will come to the area for a day, visit the Cliffs of Moher and then leave. We want to keep them in the area for two or three days. We need to invest in other facilities that would feed from the gold-plated facilities.

**Senator Fiona O'Loughlin:** I fully endorse the views of my colleague, Senator Flynn, who called for support for our healthcare workers. When President-elect Biden takes office the first thing we will do is look for support for the undocumented Irish. It is about time we faced up to the undocumented here and showed them similar respect. The migrant healthcare workers who have given such service, compassion and support in our hospitals, care homes, nursing

homes and private residences for those who need extra care are living a very difficult existence because of the legality of their situation. It is about time the State faced up to the debt we owe these people and regularised their situation.

I propose an amendment to the Order of Business, that the Criminal Justice (Hate Crime) Bill 2020 be taken. The purpose of this Bill is to make provision in law for hate crime against persons on the basis of their asylum or refugee status, race, colour, religion, nationality, ethnicity, disability, sexual orientation or transgender identity. It essentially seeks to tackle hate crimes in a very effective and robust manner.

Ireland is behind the curve in not having specific hate crime laws and such legislation should also improve the reporting and recording of hate crime, which is generally considered to be under-reported. There is an onus on us to make it very clear that hatred will not be tolerated in our society. I hope my colleagues will support my proposal to amend the Order of Business.

**Senator Robbie Gallagher:** I second the proposal by Senator Fiona O'Loughlin in regard to the hate crime Bill. I compliment her on the great work she has done in bringing this forward and in her role as a Deputy in times gone by. I am delighted that we are bringing forward this timely and much-needed legislation and I again compliment her on bringing it forward.

**Senator Rónán Mullen:** One of the older members around here is going into storage today. I want to compliment the people from the Office of Public Works, the Natural History Museum and the National Museum of Ireland who are removing the skeleton of an ancient walrus. I just saw this going on outside. In fact, they had to open up and expand the window space to remove this walrus by way of a window because of its size. It struck me that at least one former Taoiseach would approve because he was reputed to have invited a member of his party on one occasion to exit by the window.

More seriously, I support what Senator Jerry Buttimer and others have said in regard to Taiwan and its membership of the World Health Organization. China continues to be a big issue to which we must pay attention. Colleagues will know that a motion introduced by myself and seconded by many Members passed unanimously in this House a few weeks ago. That motion condemned China's treatment of its Uyghur Muslim minority and it called on the Irish Government to use "all available trade and diplomatic channels" to put pressure on China. The motion was not opposed by the Government. Although we know the Government is concerned about undermining our trade relations with China, it cannot be a nod to human rights in Geneva and a wink to Beijing on trade. This motion having unanimously passed the Seanad, it is timely to ask that the Government come to the House and, having reflected on the unanimous vote of the Seanad, tell us what it is going to do about the issue.

**An Cathaoirleach:** Before I call the Deputy Leader to respond, Senator Gerard Craughwell has made a proposal that the House would stand for a minute's silence in remembrance of those who lost their lives in the Niemba ambush over 60 years ago. I agree with the Senator that it is worthy for this House to reflect on the sacrifice of Irish soldiers in the service of peace with the United Nations. I ask the House to stand after the Deputy Leader has responded to the Order of Business.

**Senator Lisa Chambers:** I accept the amendments proposed by Senator McDowell and Senator O'Loughlin to the Order of Business.

Senator Doherty raised the issue of Aer Lingus workers. It is a failing of our system that



over 2,000 applicants have yet to be responded to by the Department. The Department is there to serve the citizens and the people. I will certainly raise it with the Department that it expedite its work in that regard and give a response to those people.

Senator McDowell raised issues around the suspension of parliamentary scrutiny and our work as parliamentarians because of Covid. Covid has, in some respects, become an excuse to not do certain things and we have to be very cautious of that approach. I note the comments of Senators O'Reilly and Bacik around the progress we made today at the Committee on Procedure and Privileges in terms of the ongoing accommodation of this House. We are moving closer to a resolution that I hope will allow us to resume our work as parliamentarians and to give proper scrutiny of all matters that come before the House.

Senator Bacik raised the issue of front-line workers and their legal status, and I join with her and Senator O'Loughlin on that issue. It is morally wrong that we would send away workers who have been risking their lives to protect our citizens and not look at their legal status. I commend Labour Youth on the campaign it has started, "Born Here, Belong Here". It has taken the action of children to bring these campaigns to the fore in order to protect their classmates who were at risk of being deported. We have seen many instances of this; it is morally wrong and should be addressed. I believe there would be broad support for that and it certainly has my support.

I thank Senator Bacik for raising the issue around protecting our democracy. The US election has been raised by many Members. When we look at the coverage of the US elections, from Fox News to CNN, it makes us appreciate our national broadcaster. For all its faults, for the most part and almost all of the time it is very good at providing impartial, objective and unbiased information to our citizens and it is a trusted news source. We should never forget how important that is in terms of having a functioning democracy because, from what I can see, there is no news source in the US where one can go for that impartial and balanced information. I believe that has led to some of the polarisation we have seen.

Senator Pauline O'Reilly raised the suggestion by the sitting President Trump around voter fraud and the fact there is no evidence for this. Senator Martin said that as an outside jurisdiction and another country, we should not be commenting on the electoral process of another country. However, I think it is important to appreciate that an important democratic process is taking place and the eyes of the world are watching. It is important that as parliamentarians, we acknowledge the importance of the democratic process. Nobody is above that and nobody should seek to undermine it at any level, let alone the sitting President of the United States. I think we would all be in agreement on that.

Senator Boylan raised the issue of our health system being exposed by Covid and, in particular, by level 5. There is no health system in the world that has not been challenged by this pandemic. However, we should acknowledge the fact we are doing quite well in terms of keeping the numbers of deaths down and protecting people. We have not reached the situation seen in other countries where there has not been an ICU bed for somebody who needs it. That has not happened. Permanent capacity is one thing, but there is surge capacity. The message should go out to citizens that if they need a bed, there is a bed available and care will be provided. It is important that we do not frighten people. We commend our health service on managing to cope up to this date, although that is because we have taken on these restrictions and limited so many aspects of our society to make sure our health system can cope.



Senator Black raised the issue of the music and entertainment sector and commended the Music and Entertainment Association of Ireland on the voluntary work it is doing on behalf of musicians and entertainers. Music and entertainment is the heartbeat of Irish culture and society but it is a fact we cannot go to live gigs any more. I have heard stories of musicians selling their equipment, and it is very sad they find themselves in that situation. The Minister with responsibility for the arts has to do more to help that sector because people really have nowhere to go and their livelihoods have been taken from them, with no real prospect of that sector opening up for quite some time. It could be 2022 before we see ourselves back in large-scale venues and they cannot sustain a further full year of what they are going through.

Senator Currie raised the issue of Equal Pay Day and I am glad she did. Monday, 9 November marks the day on which women in this country stop getting paid because of the gender pay gap. We in this House are committed to working on that and I have been working directly with the Cathaoirleach on the issue. It is something we, as a House, hope to address this month more formally in order to try to work on it. It is a problem in every country, and the gender pay gap exists across the board at differing levels. The gap in Ireland is 14.4% and we must work to close it.

Senator Ardagh raised the very sad case of the loss of Shane O'Farrell at the age of 23. I am sure many of us have worked with Shane's mother, Lucia. The fact the person who took his life was in breach of bail conditions and had 42 previous convictions was a failing of the system. The system failed the O'Farrell family and failed Shane. I look forward to that report being published. We should have an opportunity in this House to consider that report and, hopefully, to learn from those mistakes to ensure this never happens again.

Senator Craughwell raised the issue of Armistice Day and the loss of life at the Niemba ambush. I thank him for taking the time to read onto the record of this House the names of the men we lost at that ambush, lest we ever forget the huge sacrifice the men and women of Óglaigh na hÉireann give to this State on a daily basis and on all of the missions they are involved in across the globe. Given our outstanding record as UN peacekeepers, I believe we need to do more, as a country, to highlight to the general public the great work the Defence Forces do, and take more pride in the Defence Forces' past and current serving members. I thank the Senator for his continuing work on behalf of the Defence Forces.

Senator Dooley raised a number of issues around rural Ireland and the impact of Covid. I agree with him in terms of the restrictions at marts. I know this is not an issue in every constituency. We do not have broadband in many parts of rural Ireland and operating online is genuinely difficult for many traders. I do not see any great difficulty in a small number of traders being at a cattle mart, properly distanced, for short periods. That is essential, as they are part of the food chain and the current restrictions are impacting on an element of that process. Meat factories can stay open but traders cannot go to the mart in small numbers.

I have also had representations on hare coursing and the hunting season. I have been contacted by many gun clubs in my constituency of Mayo. The pheasant shooting season was due to start on 1 November. The shooting season had already been in operation for other game in September and shooting had commenced. It is a reasonable ask by gun clubs that if people comply with the 5 km rule and they go alone, they should be able to participate in shooting. Running is a professional sport, but nobody is saying one cannot run within 5 km of one's home, by oneself. We must have some degree of flexibility. I understand where the Garda is coming from. Shooting is not on the list of exemptions. We should not be asking An Garda

Síochána to interpret what the Department is telling it. We need clear direction and guidelines from the Department of Justice on this issue. We should not be afraid of being somewhat flexible. Senator Ó Donnghaile referred to gyms and the need to be flexible for reasons of mental health. It is one thing to be running and training outside in March and April when the weather is good, but it is a very different thing in November and December when it is freezing. It is not practical. We must have some degree of flexibility.

Senator Dooley called for a debate on living with Covid. A number of Members have touched upon that. Senators Byrne, Ó Donnghaile, Buttimer and Conway all raised issues around how we get to live with Covid because it will be here for the next year in some shape or form. I will certainly request a debate on living with Covid. That title is quite good because it gives us an opportunity to discuss all matters relating to living with Covid.

Senator Mullen referred to places of worship. Again, that is something we need to look at because it is an outlet for people and it is somewhere that people get great solace and comfort. Such a debate would be welcome and we can deal with a number of matters under its auspices.

Senator Carrigy referred to strand 2 of the just transition fund, and the Lough Ree power plant in Lanesborough in County Longford. It is an important employer in the region. In a county and region where employment is scarce, the loss of 100 jobs is significant, as it would be anywhere in rural Ireland. It is akin to losing 1,000 or 2,000 jobs in the capital. That is the scale we are talking about. I hope alternative employment can be found for those workers. I agree with him that we should not outsource the job to external organisations. The work should be done by the Department and the State.

Senator Wall referred to medical cards for the terminally ill and the campaign by John Wall. I listened to Mr. Wall on the radio. My heart sank to hear that we are still making terminally ill patients fight for a medical card. It is disgraceful. I know the Minister for Health, Deputy Stephen Donnelly, is working hard on this issue. I expect there to be a resolution shortly. It goes without saying that people do not really have the time to wait for such issues to be resolved. They should be focusing on looking after themselves, not fighting the State for basic services.

Senator Wall also raised the issue of changing-place toilet facilities. To be honest, I was not aware of the full extent of the issue but it was also raised by Senators Ó Donnghaile and McGreehan. It is a very important point that they have raised on the floor of the House. It is something on which we should be doing better. If we can facilitate families that are caring for loved ones to get out and about a lot more and to enjoy all of the things we take for granted, then we should be doing that. We must all work towards building a more inclusive society.

Senator Byrne referred to the shooting season. I dealt with that matter already. In terms of young people living with Covid and coping with it, sometimes people dismiss how important it is to go to a nightclub or a pub, but when one is at a certain age it is an important rite of passage for young people to be able to socialise, meet people and have a relationship. It depends on the stage of life one is at. This is a really difficult time for young people. We can deal with the matter in the debate I will organise on living with Covid.

I echo Senator McGreehan's congratulations to the man whom, I hope, will be declared President-elect of the US, Joe Biden. Mr. Biden is also a son of Mayo. I had the pleasure of meeting him when he was Vice President because he visited County Mayo. He walked the streets of Castlebar with me, at one point hand in hand, if Members can believe that.

**Senator Rónán Mullen:** He is known for that.

**Senator Lisa Chambers:** Yes, he is known for that. He is an incredibly affable, friendly individual with great charisma and energy. I hope to see him in the White House in the near future. He has shown the grace and leadership qualities that we would like to see in the White House in terms of how he has handled recent comments by the current President.

Senator Burke raised the issue of Taiwan and its exclusion from the World Health Assembly. Those points were echoed by Senators Buttimer, Conway, Davitt and Mullen. Senator Mullen raised an important point about China. Sometimes, it may be politically convenient to turn a blind eye to what China is doing because it is such a large, global superpower because of the impact on trade, but if something is wrong we should say it is wrong regardless of where it originates. Recent events have shown us that as well. We should not be afraid to say something is wrong when it is wrong. Let us not demean ourselves by suggesting otherwise. I agree with Senator Mullen on that point.

I addressed Senator Ó Donnghaile's points about changing-place toilet facilities, level 5 restrictions and gym access. We need to look at how we can live better with Covid.

Senator Davitt raised the shooting season, Taiwan and also Brexit. The latter is a very important issue. I am pleased that we will soon be formally setting up the first meeting of the Seanad Select Committee on Brexit. Much work has gone on behind the scenes to get the committee up and running, with some challenges along the way, but I am pleased that we are finally there. The Committee of Selection met yesterday and members have been appointed to the committee. I hope we will have the first meeting of the committee very soon so that we can deal with the many issues that have been raised in terms of exporters. Senator McGreehan raised the issue of Border communities. This will impact massively on Border communities, North and South, and there must be an all-island approach. We all share the same island. We agree that the committee can do some good work on that topic.

Senator Flynn raised the issue of migrant workers. I have dealt with that. I thank her for bringing this important matter to the floor. I echo her sentiment to the effect that migrants make this country better. It is an important point to make. It is very simple and very straight to the point but with all of the division across the world, we must acknowledge the people who are working hard in communities here. They should be commended on it.

Senator Buttimer called for a debate on the forthcoming move away from level 5 restrictions. I hope we can tie that discussion in to the living with Covid debate. NPHET gives its advice independent of the Oireachtas so we do not have an influence there, as such, but we as politicians need to take the advice and guidelines and work with them, taking into account all the other social and economic factors.

I dealt with the issue raised by Senator McGreehan on changing-place toilets. I acknowledge her claim to Joe Biden as well. She also raised Brexit.

Senator Conway referred to Taiwan as well, but he also called for a debate on tourism. That could form part of the living with Covid debate. If a further debate is required specifically on the tourism sector I have no doubt we will be able to make time for it.

I commend Senator O'Loughlin on the hate crime Bill. I know this has been a passion of hers and she worked very hard on it in the previous term. She brought the Bill back before the

Oireachtas, into this House. It is welcome that the Seanad will get a chance to debate the issue for the first time in this Parliament. She has my full support for the Bill. She also raised migrant workers. What was said has been echoed by all parties across the House. I know Senator Gallagher has also been working behind the scenes on the hate crime legislation. I thank him for his work on it.

I am not sure what to say about the ancient walrus, other than to thank Senator Mullen for telling the House about it. I was not aware that it was going out the window today. I commend the OPW on its work. The work of the OPW is varied. It does fantastic work in protecting important structures and sites across the country to ensure they are there for generations to come. The walrus clearly falls into that category. We have an interesting piece of history to be appreciated and enjoyed by all citizens.

### **Minute's Silence for UN Soldiers Killed in Niemba Ambush**

**An Cathaoirleach:** I ask Senators to stand in recognition of the service and sacrifice of the UN soldiers who died in the Niemba ambush 60 years ago in the service of the United Nations and of peace.

*Members rose.*

### **An tOrd Gnó (Atógáil) - Order of Business (Resumed)**

**An Cathaoirleach:** Senator McDowell has proposed an amendment to the Order of Business, "That No. 8 be taken before No. 26, motion 6." The Deputy Leader has indicated she is prepared to accept the amendment. Is that agreed? Agreed.

Senator O'Loughlin has proposed an amendment to the Order of Business, "That No. 7 be taken before No. 26, motion 6." The Deputy Leader has indicated she is willing to accept the amendment. Is that agreed? Agreed.

Order of Business, as amended, agreed to.

### **Children (Amendment) Bill 2020: First Stage**

**Senator Michael McDowell:** I move:

That leave be granted to introduce a Bill entitled an Act to amend the Children Act, 2001 to permit the publication and broadcasting of reports and images identifying or likely to identify persons accused or convicted in proceedings for certain offences against children and to provide for related matters.

**An Cathaoirleach:** Is there a seconder?

**Senator Gerard P. Craughwell:** I second the proposal.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to take Second Stage?

**Senator Michael McDowell:** Next Friday, 13 November, since Tuesday is all blocked off.

**An Cathaoirleach:** The Senator's point is well made. Is that agreed? Agreed.

Second Stage ordered for Friday, 13 November 2020.

### **Criminal Justice (Hate Crime) Bill 2020: First Stage**

**Senator Fiona O'Loughlin:** I move:

That leave be given to introduce a Bill entitled an Act to make provision for hate crime; the imposition of a heavier penalty on an offender whose commission of a relevant offence (a list of which is contained in the Schedule to this Act) is accompanied by hate crime against an individual based on said individual's asylum or refugee status, race, colour, religion, nationality, ethnicity, disability, sexual orientation, transgender identity, sex characteristics, age or perceived age and to provide for related matters.

**An Cathaoirleach:** Is there a seconder?

**Senator Robbie Gallagher:** I second the proposal.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to take Second Stage?

**Deputy Fiona O'Loughlin:** Next Wednesday, 11 November.

**An Cathaoirleach:** Is that agreed? Agreed.

Second Stage ordered for Wednesday, 11 November 2020.

### **Biodiversity: Motion (Resumed)**

The following motion was moved by Senator Róisín Garvey on Thursday, 5 November 2020:

“That Seanad Éireann:

endorses:



- Dáil Éireann's declaration of a climate and biodiversity emergency on 9 May 2019, and the steps that have been taken since that date at local, national and European levels to address the ongoing emergency;

acknowledges that:

- nature and biodiversity, meaning the diversity of living things within ecosystems, are deteriorating globally at rates unprecedented in human history, thus steadily destroying the essential basis for our health, sustenance, prosperity and quality of life;

- scientists have warned that a sixth mass extinction event, labelled the 'Anthropocene Extinction', may currently be under way;

- nature and biodiversity provide essential life supports to humans in a variety of ways, including through pollination of crops, regulation of water, air and soil quality, regulation of climate, provision of resources such as medicines and building materials, mitigation of natural disasters such as flooding, maintenance of options for the future, and opportunities for learning, inspiration, aesthetic appreciation, spiritual development and the improvement of mental and physical health;

- nature is essential for human existence and happiness, that nature's contributions are difficult or impossible to replace, and that the future of humanity is inseparable from the future of nature;

- the decline of nature and biodiversity is primarily due to human drivers, including changes in land use such as agricultural expansion and urban growth, the direct exploitation of organisms via unsustainable harvesting, logging, hunting and fishing, the impact of climate change on species distribution and ecosystem structures, and its exacerbating effects upon the other drivers, pollution of the air, water and soil, and invasions of alien plant and animal species;

- the maintenance and improvement of current habitat conditions and natural heritage is as important as the generation of new ones;

notes with concern that:

- globally, around one million animal and plant species are already threatened with extinction, many within decades;

- the average abundance of native species in most major land-based habitats has fallen by at least 20 per cent, while at least 680 vertebrate species have been driven to extinction by humanity, with more than 40 per cent of amphibian species, almost 33 per cent of reef-forming corals, more than one-third of marine mammals, and approximately 10 per cent of insects threatened with extinction;

- biodiversity loss is not only an environmental issue, but a developmental, economic, security, social and moral issue as well, with current negative trends in biodiversity undermining progress towards the United Nation's Sustainable Development Goals in the areas of poverty, hunger, health, water, cities, climate, oceans and land;

- a lack of diversity, especially genetic diversity, poses a serious risk to global

food security by undermining the resilience of agriculture to threats such as pests, pathogens and climate change;

- land degradation has reduced the productivity of nearly 23 per cent of the global land surface, while pollinator loss increases the chances of crop failure;

- up to 400 million tons of heavy metals, solvents, toxic sludge and other industrial waste enter the world's rivers and oceans annually, while fertilisers entering coastal ecosystems have created over 400 dead zones covering a combined area of almost one quarter of a million square kilometres;

- the destruction of natural environments, in conjunction with poaching and wildlife trafficking practices, increases the likelihood of animal-to-human transmission of zoonotic pathogens such as Ebola, Rabies, Swine Flu, Avian Flu, SARS, and possibly SARS-CoV-2 (Coronavirus);

recognises that:

- most Irish habitats listed on the European Union Habitats Directive are in unfavourable status and almost half are demonstrating ongoing declines, while none of Ireland's grassland, heathland, bog, mire or fen habitats are in favourable status;

- almost 40 per cent of our active raised bogs in Ireland's Special Areas of Conservation network have been lost in the past twenty years;

- of 202 regularly occurring species of bird on this island, 37 have been placed on the red conservation list, including the curlew, corncrake, lapwing, barn owl and golden eagle, while a further 91 are on the amber list, including the robin, starling, swallow, swift, cormorant, gannet and puffin;

- 30 per cent of our bee species and 18 per cent of our butterfly species are threatened with extinction;

- according to the Irish Wildlife Trust, 48 of our marine species face extinction and require greater legal protection, including the basking shark, angel shark, Atlantic salmon, sunfish, turbot, halibut, purple sea urchin and kaleidoscope jellyfish;

- seismic testing, occurring at acoustic levels 100,000 times more intense than a jet engine, has regularly occurred over the past decade during the exploration process for oil and gas reserves in Irish waters, causing untold damage to whales, dolphins and porpoises by damaging their food sources, such as plankton, and causing displacement of species in some cases;

- invasive animal species such as the zebra mussel and the grey squirrel, and invasive plant species such as giant hogweed and Japanese knotweed, pose a growing threat to our native flora and fauna;

- biodiversity provides vital ecosystem services, free of cost, to one of our most important economic sectors, agriculture, with the value of nutrient cycling by soil organisms alone estimated to be worth €1 billion a year;

- the direct annual value of insects via pollination of human food crops has been

estimated as at least €53 million in Ireland, while the indirect value provided through pollination of forage crops such as clover and the maintenance of a functioning ecosystem, is likely substantially higher;

- alongside the intrinsic value of an intact marine environment, it has been estimated that recreational services provided by Irish marine ecosystems are worth €1.6 billion in value to the economy, that fisheries and aquaculture are worth €664 million, carbon absorption services €819 million, waste assimilation services €317 million, scientific and educational services €11.5 million, coastal defence services of €11.5 million, and seaweed harvesting €4 million;

- in many parts of Ireland, whether on their own or supported by the State, farmers have led the way on projects to protect biodiversity, habitats and species, including farmers involved in the Burren Programme in Clare, the Hen Harrier Project in six special protection areas, the Pearl Mussel Project in eight different river catchments, and the Biodiversity Regeneration in a Dairying Environment (BRIDE) project in the Bride Valley, Co. Cork;

- in a 2015 survey, Ireland's natural, unspoilt environment was cited by 86 per cent of visiting tourist respondents as a reason to visit Ireland, and that in 2018, out-of-State tourism generated €5.6 billion for the Irish economy;

calls on the Government to act upon the Programme for Government's commitments regarding biodiversity as soon as possible, and to:

- review the protection, including legislative protection processes, of our natural heritage and significant land use changes;

- ensure that the State can protect nature and enforce existing statutory protections of designated features of conservation interest by providing sufficient support to the National Parks and Wildlife Service and reviewing the Service's remit and structure;

- establish a Citizens' Assembly to examine and propose solutions to the biodiversity emergency, thus bringing the creativity and ingenuity of our citizenry to bear upon this crisis;

- ensure that environmental policy is strategy-led and biodiversity-focused by developing a new National Pollinator Plan, supporting the collection of biodiversity data, developing a National Soils Strategy, completing a national hedgerow survey, and carrying out a baseline biodiversity survey on Irish farms;

- ensure that farmers are recognised as the custodians of our land, and are financially supported in playing a vital role in maintaining and restoring habitats and utilising ecologically sound practices;

- seek to ensure the Common Agricultural Policy rewards farmers for sequestering carbon, creating habitats and restoring biodiversity, improving water and air quality, producing clean energy, and developing schemes that support results-based outcomes;

- secure improvements in soil health and water quality by delivering an ambitious

reduction in the use of inorganic nitrogen fertiliser over the next decade;

- advocate for a fair system of eligibility conditionality, under the reform of Good Agricultural and Environmental Condition rules, recognising that farmers should not be unfairly penalised for maintaining land that contributes to biodiversity principles, and thus allowing farmers to accrue benefits from managing land as wetlands or native habitats;

- implement the EU's Farm to Fork and Biodiversity strategies in order to increase environmental and biodiversity benefits to our economy and society, including the ambitious reductions in respect of pesticides and fertilisers;

- conserve and expand a diverse range of natural habitats by developing a National Land Use Plan, incentivising the rewetting of carbon-rich soils, supporting the planting or rewilding of native woodland on every farm, and adopting a close-to-nature, continuous cover approach to forestry so as to ultimately create permanent biodiverse forests containing trees of all ages;

- develop comprehensive legislation for the identification, designation and management of Marine Protected Areas in Irish territorial waters, aiming to ensure these areas cover 30 per cent of our waters by 2030.”.

Debate resumed on amendment No. 1:

To insert the following after the final paragraph:

“calls on the Government to recognise the integral role of biodiversity in regulating the climate and ensuring long-term resilience to climate change explicitly in the Climate Action and Low Carbon Development (Amendment) Bill 2020 and that all policy instruments resulting from that Bill and the Principal Act comply with, and actively support, the implementation of the National Biodiversity Action Plan; recognises:

- the need to transition to renewable energy but that this transition should enhance biodiversity and be consistent with the National Peatlands Strategy;

- that biodiversity is threatened by some of the same drivers that cause climate change; biodiversity is also under threat from climate change; and calls on the Government to legislate to prevent the development of future Liquefied Natural Gas terminals;

- that the findings of the report produced by the Department of Agriculture, Food and the Marine which showed Ireland's forestry industry is a net emitter of CO<sub>2</sub>; that the National Parks and Wildlife Service finds the model of forestry is one of the biggest pressures on biodiversity-rich EU protected habitats; and calls on the Government to implement a new Forestry Strategy that works for community and the planet;

- the significance of this Island to the Native Irish Honey Bee (*Apis mellifera mellifera*) and Ireland now has potentially the greatest reserve of *Apis mellifera mellifera* in the world, however, our magnificent bees are under threat due to the importation of non-native bees from all over the world leading to the hybridisation of our local native bees; and calls on the Government to develop a strategy for its conservation.”

(Senator Lynn Boylan)

**An Cathaoirleach:** On the motion regarding biodiversity, there is a postponed division. I have to deal with that division relating to amendment No. 1, in the name of Senator Boylan. The debate took place yesterday, Thursday, 5 November. On the question that the amendment be made a division was claimed and that must be taken now.

Amendment put:

The Seanad divided: Tá, 17; Níl, 32.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Ardagh, Catherine.
Boyhan, Victor.	Burke, Paddy.
Boylan, Lynn.	Buttimer, Jerry.
Craughwell, Gerard P.	Byrne, Malcolm.
Flynn, Eileen.	Carrigy, Micheál.
Gavan, Paul.	Cassells, Shane.
Higgins, Alice-Mary.	Chambers, Lisa.
Hoey, Annie.	Conway, Martin.
McDowell, Michael.	Crowe, Ollie.
Moynihan, Rebecca.	Cummins, John.
Mullen, Rónán.	Currie, Emer.
Ó Donnghaile, Niall.	Daly, Paul.
Ruane, Lynn.	Davitt, Aidan.
Sherlock, Marie.	Doherty, Regina.
Wall, Mark.	Dolan, Aisling.
Warfield, Fintan.	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Garvey, Róisín.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	O'Sullivan, Ned.
	Seery Kearney, Mary.
	Wilson, Diarmuid.

Tellers: Tá, Senators Lynn Boylan and Niall Ó Donnghaile; Níl, Senators Robbie Gallagher and Seán Kyne.



Amendment declared lost.

Motion agreed to.

### **Sitting Arrangements: Motion**

**Senator Lisa Chambers:** I move:

That, notwithstanding anything in the Standing Orders relative to Public Business:

The Seanad on its rising on Friday, 6th November, 2020, shall adjourn until 10.30 a.m. on Tuesday, 10th November, 2020 and the following arrangements shall apply:

- (a) The Order of Business shall be proposed at 10.30 a.m. in the Dáil Chamber;
- (b) Commencement matters shall be taken at 1.30 p.m. in the Seanad Chamber;
- (c) Business ordered to be taken subsequent to commencement matters, shall be taken in the Seanad Chamber.

Question put and agreed to.

### **Committee of Selection: Motion**

**Senator Joe O'Reilly:** I move:

That the third report of the Committee of Selection be laid before the Seanad.

Question put and agreed to.

*Sitting suspended at 12.41 p.m. and resumed at 13.01 p.m.*

### **Data Protection Regulations: Motion**

**Senator Malcolm Byrne:** I move:

That Seanad Éireann approves the following Regulations in draft:

Data Protection Act 2018 (section 60(6)) (Central Bank of Ireland) Regulations 2020,  
a copy of which was laid in draft form before Seanad Éireann on 28th October, 2020.

**Minister of State at the Department of Finance (Deputy Sean Fleming):** I bring the motion to the House to seek a resolution to agree the draft Data Protection Act 2018 (section

60(6)) (Central Bank of Ireland) Regulations 2020, as provided for under section 6(5)(a) of the Data Protection Act 2018. Senators will have gathered from the gist of this that it is a technical matter. I have a detailed script but perhaps the best thing I can do is to explain what this is about in simple English.

These regulations were prepared a number of years ago and involved the Data Protection Commissioner, the Department of Finance and the Central Bank. All parties agreed. A full consultation took place. The statutory instrument was agreed by both Houses of the Oireachtas and it was signed by the Minister as approved by both Houses.

It subsequently transpired, a couple of months later, when somebody was working on the printed copy of the statutory instrument that it did not fully tally with what had been passed, approved and signed by the Minister. An error occurred at the printing stage as a result of which some sub-paragraphs were indented after a particular line rather than before it. It could have resulted in a different interpretation of the regulations because the indentation of three sub-paragraphs happened in the wrong place.

The Department of Finance obtained legal advice and felt it was better to check the matter out. It was agreed that it would be better to redo the statutory instrument to be sure, to be sure. However, because it involved data protection legislation, it required to come before both Houses for approval. It is unusual that the correction of a statutory instrument has to come back before the House through a motion of approval before the Minister can get the printed version of it corrected.

That is the beginning and the end of it. There was a printing mistake but because it involves data protection, it requires a motion of both Houses to amend the statutory instrument. It is an unusual one. It is a minor but significant issue. I will perhaps pre-empt some questions when I say that when we went back through the process a second time, to get it right this time, we again consulted the Data Protection Commissioner, the Central Bank and the Department of Finance. They are all happy with what is in front of us today. It requires the approval of the House.

**Senator Malcolm Byrne:** I thank the Minister of State for coming to the House and explaining, in an honest and clear way, the hallmark of the way in which he operates, that this is simply a technical issue to correct a printing error. I am aware from the notes, but I would be grateful if he would put it on the record of the House that no individual has been adversely affected as a result of this. That is particularly important.

On the question of data breaches by financial institutions and the area to which this legislation relates, I continue to have particular concerns regarding the capacity of the Data Protection Commissioner to address some of the challenges relating to data breaches in our financial institutions. Three of the top four companies or organisations listed for complaints with the Data Protection Commissioner at the moment are financial institutions, namely, Bank of Ireland, Permanent TSB and AIB. The record is clear that there are serious concerns around data breaches by financial institutions.

This is an issue that I have raised previously in the context not only of the staff in the Data Protection Commission, DPC, but also the levels of expertise of those staff to be able to address these issues. As we continue to develop and data become the new currency of this century, to the great benefit of Ireland and public policymaking in general, the DPC is going to have an increasingly important role in protecting people's data. That has to be central to any policy

work we do in this area. I have no doubt that as we see digital banks such as Revolut and others emerge, there will be more challenges. Unlike domestic banks, these institutions will be based all over the world and it is going to be even harder to regulate in that area. I would like to know what guarantees we are going to have as we move towards digital banking on the role of the Data Protection Commissioner and the role for Ireland. That will be particularly relevant if some of the social media giants start to move into the provision of financial services. We must ensure that we have the necessary legislation to address data protection and that the DPC or any other agency is sufficiently resourced to be able to address it.

The fact that so many complaints are being raised about data breaches shows that there are challenges for our domestic banks. They have questions to answer in that regard. Our responsibility, as a State, is to ensure that the State agencies charged with this can do their jobs properly. This is a technical motion and I am fully supportive of it but it does speak to that broader issue, including the adequate resourcing of the DPC.

**Senator Victor Boyhan:** I welcome the Minister of State to the House and thank him for setting out the matter simply. We can get caught up in the technicalities of issues. It is great that the Legislature showed foresight in requiring this to come back to both Houses. That is good in a democracy.

The Minister of State had a prepared script that he did not read into the record. I just want to make a few brief points on this motion to change the format of the 2019 statutory instrument, which contains three indentation errors, as he confirmed. We understand that this instrument allows for the Central Bank to restrict the GDPR. That is a concern, as the previous speaker touched on. The GDPR rights of citizens are necessary and important. We need to know about defending against improper conduct, which can be an issue, particularly in the financial services industry. The issue relates to GDPR, people's rights and what protections they have. I am somewhat concerned about this. I am more concerned about the number of safeguards. The Central Bank will be obliged to notify the data subject. I had a glance over the Minister of State's speech and he mentions this. The Central Bank will also have to provide reasons, and complaints may be lodged with the Data Protection Commission. I am interested to hear about the safeguards. The Minister of State speaks about the considerable safeguards provided for in the regulations. Perhaps when he is winding up, he might touch on them because they are the key issues. What safeguards are in place? I thank the Minister of State for recognising there was an issue with this, and for being open and frank and, more importantly, setting out in very simple terms with great clarity what the motion amounts to. Perhaps the Minister of State might put on the record of the House the issue with regard to safeguards for data protection and the obligations of the banks.

**Senator Seán Kyne:** I welcome the Minister of State to the Chamber to discuss this issue. As he has said, this is a technical tidy up due to an error and it is right and proper that we provide every safeguard and where mistakes are made that they are rectified and come to the Houses. I acknowledge that in his speech the Minister of State said the Data Protection Commission has identified no matter of significant concern in the proposed regulations and that the Minister for Justice has acknowledged her agreement with the proposed regulations. It is an issue that could have a very real effect as the regulations are vital to the Central Bank to investigate whether individuals and regulated financial service providers have committed wrongdoing to customers and to record where it has found breaches by individuals so they can be prevented from taking on similar roles in the future. These are very important areas that must be protected. Has the motion come before the finance committee? Has it had sight of it? Is there a need for this under

the regulations? I thank the Minister of State for his attendance.

**Senator Marie Sherlock:** I thank the Minister of State for bringing this before the House. We very much welcome the regulations as necessary. We understand the reason the motion has been brought forward today is because of a very technical ground relating to a formatting error, but this should not stop us from commenting on the purpose and implementation of the regulations. As was so eloquently articulated by Senators Byrne and Boyhan, there are very real concerns with regard to the appropriate safeguards put in place and the resourcing of the Data Protection Commissioner. In order to restrict individual access rights under GDPR, which is a very serious undertaking and matter, there needs to be a proportionate response by the Government in providing these assurances with regard to safeguards, and in resourcing the Data Protection Commission to make individuals aware that they have recourse to the Data Protection Commission in the event of a complaint and to process complaints. This is very important in terms of ensuring there is confidence in the banking sector.

Senator Byrne spoke about the revolution - and I do not want to use the name of one of the competitors - that is happening in financial services at this point in time in this country and throughout the industrialised world. It is very important that we send a very strong signal to consumers that protections are in place because my sense from speaking to people who have various grievances against the banks is that the power is very much stocked with the bank and against the individual. We need to send a clear signal that individuals can be empowered to make a complaint and that it will be processed. Whether the complaint is with merit or not is beside the point but there should be confidence that it will be processed in a timely and appropriate fashion.

**Senator Fintan Warfield:** It is good to see the Acting Chairman, Senator Pauline O'Reilly, in the role. I welcome the Minister of State to the House. As has been mentioned, the motion does not change the substance of the regulations. In fact, it does nothing more than correct an indentation error made in the printing process in the regulations that came into effect in October last year. The regulations themselves apply to personal data in respect of which the Central Bank is the controller and which are processed by the Central Bank in pursuit of what is defined as a relevant objective and pursued by the Central Bank in carrying out a relevant function. This is defined as an important objective of general public interest and is referred to in the Data Protection Act 2018.

Under the regulations, the restrictions of data subjects' rights or controllers' obligations must be necessary and proportionate. As we know, the restriction of data is a serious issue that must be justified and justifiable. As there is an opportunity to do so, I want to ask the Minister of State whether these regulations that permit the restriction of data access in prescribed circumstances are monitored to ensure they are necessary and proportionate. The regulations also provide that where data subjects' rights or controllers' obligations are restricted, the Central Bank must notify them in writing, except in very limited circumstances. It also gives the data subject the right to submit a complaint to the Data Protection Commission.

Will the Minister of State provide an update on the number of such complaints lodged with the Data Protection Commission since the regulations came into force last year? The motion before us is not one of substance but rather a technicality. It is, in fact, a formatting issue. I understand the Central Bank policy unit in the Department of Finance identified an indentation error in regulations Nos. 3 and 7, which were published last year. The effect of the indentation is quite significant. Due to an indentation error, financial services legislation would not relate to

the operation of the central credit register. This was an error in the regulations that the motion before us today seeks to address, specifically by reformatting regulations Nos. 3 and 7. Sinn Féin sees no issues with these changes but I ask the Minister of State whether the Central Bank, as a result of this indentation error, restricted data subjects' rights in a way that was in contravention of the regulations published last year and, as a consequence, could the Central Bank be open to legal challenge?

**Acting Chairman: (Senator Pauline O'Reilly):** I thank the Senator for his comments.

**Senator Alice-Mary Higgins:** As has been pointed out, the motion corrects an error but it points to several other key issues and I want to pick up on several of them. One is with regard to the points made by Senator Byrne. There is a concern about financial institutions and the quite disproportionate level of concern about data breaches with regard to financial institutions. I recognise the motion will make it easier to make appropriate investigations and act on them but it raises a related issue which, unfortunately, we will not be able to discuss in any great length when the Investment Limited Partnerships (Amendment) Bill comes through the House. I tabled an amendment which sought to ensure there would be a data protection impact assessment on how the register of beneficial owners would be used but I have just been informed that it has been ruled out of order. I have no doubt there is an intention to have a data protection impact assessment on how the register of beneficial owners might be used. It could be used in an inappropriate way. I have a particular concern because the register is being made a specified body under the Social Welfare Act 2004 and it is very important we would not have any inappropriate access to the single customer view data set, except for particular purposes which are important and necessary, such as investigation by Revenue and checking the confirmation of ownership. It is an example of how we need rigour with regard to all of the architecture of financial transparency. It has to intersect in a constructive and very transparent way with the architecture of data protection. This is an opportunity for the Minister of State to give assurance in this regard even though the amendment was disallowed.

As regards a slightly wider issue, this is a reminder that it is possible to amend the Data Protection Act. Specifically, it is possible under the procedure being laid before both Houses to amend regulations made under that Act. I want to highlight that because sometimes the data protection rules are seen as very stationary but in fact, as has been recently discussed, there is quite a lot of power of interpretation. Under the Data Protection Act 2018, Ministers have the power to make regulations relating to the processing of personal data where necessary and proportionate in the public interest. We have talked a lot about Article 15 rights and people's rights to seek their own data but a Minister might also have powers, for example, relating to data on burials, deaths and so forth, and where that is in the public interest, regulations might be made. I am just pointing out that we have a system for this. Section 198 of the Data Protection Act, which is the section that amended section 39 of the Commissions of Investigation Act, may need review in the future.

Senator Ruane and I successfully inserted a few different sections into the Data Protection Act 2018. One of those was section 30, which relates to the microtargeting and profiling of children. As I understand it, we are dealing with a technical error here. There was a technical concern around the definition of "company or corporate body" within section 30 and, as a result, it has never been commenced. I emphasise that because we have the capacity under the Bill and through the statutory instrument process to apply a relevant definition of "company or corporate body" to section 30 which would then allow it to be commenced. It is a crucial issue. It is a question of the extent to which companies can profile children, as they are defined



in section 29 of the Data Protection Act, and specifically target or even microtarget them. That section was a useful contribution. It may not have been perfect, much as section 60 may not have been perfect, but this is a useful reminder that motions could be brought by the Minister of State or another relevant Minister to fix this section in order that it can be commenced. It is an important issue and it has not been addressed in any other way since 2018.

**Senator Mary Seery Kearney:** I appreciate that this is a technical motion, but while the Minister of State is here, I will use this opportunity to raise a concern based on my experience over a number of years. I work with many families on a *pro bono* basis, assisting them when they have been done out of tracker mortgages, restoring them and going through that with various financial institutions. One of the provisions of the GDPR is transparency and modalities, meaning that data subject access requests should be responded to in the most convenient and quickest way possible. However, in my experience it takes a lot of work and many letters to ensure that transparency is put in place. To be fair, the Data Protection Commission is fantastic in supporting people and being very clear about this. The threat of recourse to the Data Protection Commission is always a paragraph within my letters. First, one gets the data on a disc or in some other form but it is programmed by the financial institution so that it cannot be unpacked or accessed. Then when one writes to the institution again, it provides a package to access the disc on one's own computer. By the time one goes back to it to talk about the provision for transparency and modalities in the GDPR, it is six months down the road. During that time people will still have been paying their mortgage or been caused hardship by not paying, and so there is an increase of arrears and further things to negotiate and talk about. We get there in the end but I wanted to put on the record the fact that we have that process at all. I would appreciate if the Minister of State could exert some influence on that process if the opportunity arises.

Financial institutions' data protection impact assessments, DPIAs, should be published as well rather than just a privacy notice. The privacy notice is the external mechanism by which the information about how people's data is handled is published and made available. That is not enough when it comes to the necessary and proportionate restriction of data subject rights. The DPIAs of both State entities and financial institutions should be made public. They should be transparent if institutions are going to restrict my rights, the rights of a constituent or anyone else. Generally, by the time people exercise their rights it is because they are engaged in some sort of an argument with the banks. People will not know and will not have looked for their statements because they have not had an argument with them in a while. People in that situation are already vulnerable, so the DPIAs should be made available in order that people like me and others who assist families in such situations have complete transparency. We can then measure expectations rather than having to go through the arduous process of eight months of letter writing before getting to the nub of why we are not getting the information. I thought I would take the opportunity to mention that while the Minister of State was here.

**Minister of State at the Department of Finance (Deputy Sean Fleming):** I welcome this opportunity and appreciate all the comments that have been made. As people noted, many of the comments were not specific to this statutory instrument. Data breaches in financial institutions are one big issue that has been mentioned here on a few occasions. Some asked about the resourcing of the Data Protection Commission and whether it has sufficient resources to do the job from both an Irish and an EU perspective. Senator Higgins asked when some of the data protection regulations that have not been implemented to date, as there are issues with definitions, will be commenced. There was also the question of the banks being quite slow and tardy in their method of disclosing information. I have noted everything Senators have said and I will

give this information to the Minister for Justice. Everyone here knows this legislation comes under the Department of Justice and I will be happy to pass on all the points that have been made. It is clear that this is very much a live issue.

We are here because of a minor technical issue of data protection which relates only to the Central Bank. It has nothing to do with the commercial banks. I can already tell that there is quite a debate to be had on many of these issues so I am sure the Seanad will take them up again. Resourcing will have to be dealt with in the forthcoming Estimates for the Department of Justice. That is where there should be a detailed thrashing out, and perhaps the Joint Committee on Justice will have a role in it as well. Those are my suggestions on that issue.

A couple of other points specific to these regulations were made. This motion was not discussed at the Joint Committee on Finance, Public Expenditure and Reform, and Taoiseach. It was decided that both sets of measures would be brought separately to the Dáil and the Seanad. The motion went through the Dáil a few days ago and it is now going through the Seanad. It was felt that it was necessary for both Houses to pass the motion in any event because of the data protection implications.

I want to make a point which I think everyone will accept. The right to data protection is not an absolute right. It must be balanced against other values, fundamental rights, human rights or public and private interests. There may be circumstances under which an organisation has grounds to refuse to grant an individual's request to exercise his or her data protection rights. That is enshrined and accepted and there must be procedures in place for it. These regulations are to facilitate that and they are vital to allow the Central Bank to investigate whether individuals in regulated financial services providers have committed wrongdoing to customers. It must be able to record where it has found breaches by individuals in order that it can prevent them from doing the same again in the future. In cases where the bank is processing personal information for a law enforcement purpose, it may withhold information from a requester if it believes doing so is necessary to avoid prejudicing the detection and investigation of criminal offences. I think everyone would accept that where the Central Bank is involved in a matter in connection with a criminal offence carried out by someone in a regulated institution, it goes without saying that the subject of the investigation cannot rock up to the Central Bank and demand to know what information it holds about him or her. The same applies if the Garda is investigating whether someone committed a criminal offence. The individual in question cannot simply walk into a Garda station and ask for the full file of the investigation. I think we understand that the right to data is not absolute. This provision applies only to those specific types of issues.

Since the 2019 regulations were made, the Central Bank has received 28 subject rights requests. The regulations were applied in five cases and in 23 cases the information was provided. Only in one case were the rules to withhold the entirety of the data requested invoked. That case focused on a request for three or four particular documents. After a robust evaluation of these documents, the Central Bank was satisfied that the decision to withhold the data would not result in any disproportionate detriment to the individual concerned. As such, no harm was done to the individual but it was necessary to withhold the documents because of the ongoing investigation. The Central Bank has a defined evaluation process for dealing with all cases where the regulations are invoked. These processes ensure the necessity and proportionality requirements are being robustly applied. This process also includes engagement with the Central Bank's data protection officer. To date, no complaints have been submitted to the Central Bank, nor is the Central Bank aware of any complaints submitted to the Data Protection Commission

relating to the use of these regulations. The Central Bank's data protection officer has reviewed each of the various access requests where the exemption was applied under the 2019 regulation, of which there were five, and is satisfied that there would not have been any different outcome to these requests or to the level of exemptions availed of by the Central Bank if the exemption criteria had been applied according to the correct text of the original legislation compared with the printed text.

I confirm also that there have been no complaints to the Central Bank of the operation of this section. There is no harm done and the Central Bank examined each of the 28 cases. On that basis, I ask the House to approve the motion.

Question put and agreed to.

**Acting Chairman (Senator Pauline O'Reilly):** I thank everyone for going easy on me today. This is my first time in the Chair.

**Senator Malcolm Byrne:** I compliment the Acting Chairman. As Senator Warfield said, it is good to see Senator O'Reilly in the Chair. It is long overdue that we have a female Chair for some of our sessions.

*Sitting suspended at 1.35 p.m. and resumed at 1.40 p.m.*

### **Investment Limited Partnerships (Amendment) Bill 2020: Report and Final Stages**

**An Leas-Chathaoirleach:** Before we commence, I remind Senators that a Senator may speak only once on Report Stage, except for the proposer of an amendment who may reply to the discussion, presumably in practical terms after the Minister replies. On Report Stage, each non-Government amendment must be seconded.

Does Senator Higgins wish to move amendment No.1?

**Senator Alice-Mary Higgins:** I move amendment No. 1:

In page 6, between lines 3 and 4, to insert the following:

“Report

4. Within 12 months of the passing of this Act, the Minister shall lay before both Houses of the Oireachtas a report in respect of the impact and use of the provisions in this Act, including a consideration of the use of Investment Limited Partnerships for tax avoidance, and their impact, if any, on the Revenue Commissioners.”.

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** This amendment builds on the discussion we had with the Minister of State on the OECD and the base erosion and profit shifting, BEPS, on Committee Stage. This is a somewhat wider amendment, however. I am asking that within 12 months of the passing of this Act - and I remind the Minister of State that he can agree to the action even if he does not agree to the amendment - the Minister would lay before both Houses of the Oireach-

tas a report on the impact and use of the provisions in this Act, specifically the investment limited partnerships for tax avoidance and the impact, if any, on the Revenue Commissioners.

We know that many millions of euro are lost each year globally due to tax avoidance. We discussed this on the previous Stage. There is a real concern around the lobbying on this Bill, as we have heard. Unfortunately, between Committee and Report Stages, we still have not received a copy of the lobbying documents that were sent concerning this Bill. There is one thing we know about certain groups because it is in the public domain. For example, the Maples Group law firm, which is one of the largest offshore legal firms in the world with two offices in Dublin, has publicly stated its aim to establish parallel European structures to its pre-existing Delaware or Cayman Islands funds for distribution to European investors via the alternative investment fund managers directive passport and that Ireland might be the location for that. We know the reputation of the Cayman Islands, for example, when it comes to tax avoidance is very poor and we know Ireland has been working extremely hard over a number of years to try to avoid getting a negative reputation when it comes to tax avoidance and to the question of whether Ireland is to be identified as a tax haven. I am concerned that the provisions and the kind of product and funds that will be set up by the Bill will do damage to Ireland's reputation. A lot of the international interest in these funds is not necessarily for investment in Ireland but it is in Ireland as a place where international asset investments can be sold to EU investors, be they individual or corporate. Many of the products they sell will not necessarily be Irish investments and it would be wrong to give that impression. In many cases, in fact, they may be investments in property and other assets that are based around the world. Some of those properties and investments in other assets will be listed and located in countries and spaces that are recognised as centres for tax avoidance or as tax havens. It is a real concern that this Bill will damage Ireland's reputation and that the products and activities that take place under this Bill will damage Ireland's reputation when it comes to tax avoidance and to the question of supporting activities or linking us to activities in recognised tax havens. The concern about this is particularly acute, given that at EU level, there is a new focus on tax policy and transparency.

That is why I suggest it would be a constructive, positive and advisable step to accept my amendment and to ensure we can address any potential damage to public perception and address any concerns on the impact these would have. I would hope this would allay those concerns but it would certainly address them if we ensured there would be a report within 12 months, or if it needs to be 18 months, I am happy to take that suggestion from the Minister of State, which will look at exactly how these investment limited partnerships are being used. Are they being used for tax avoidance, either in Ireland or abroad and what impact are they having on the Revenue Commissioners? I limit my suggested report to the impact on our Revenue Commissioners but I am concerned that we would also address the impact they may be having on the collection of revenue in other countries, including in developing countries, which have been so badly hit by practices of tax avoidance internationally.

I urge the Minister of State to recognise that there is a danger, be it in reality or in perception, with this suite of new products in the lack of clarity we have had on the lobbying basis behind them that has been seeking them and so forth. The Minister of State could address those concerns by ensuring we have a proper review process. I know the Minister of State has mentioned the BEPS process in the Committee Stage debate but we may need to have a specific and targeted report looking specifically at these investment limited partnerships, as set out by this Bill.

**Minister of State at the Department of Finance (Deputy Sean Fleming):** The amend-

ment proposes a report on the Act. It is my intention, which I stated on Committee Stage, to lay a post-enactment scrutiny note 12 months after the enactment, in line with Standing Orders of the House. There will be a report, therefore. I am not in a position to prescribe what will be in that report before it is prepared but the gist of what is being said, and I referred to this on Committee Stage, is that the OECD BEPS project developed 15 actions designed to equip Government with domestic and international rules and instruments to address tax avoidance, ensuring that profits are taxed where economic activities generating the profits are performed and where value is created. That is an underlying principle and Ireland has a strong record in taking action on these issues. These include the progress being made on the OECD BEPS process, along with the scheduled updating of the corporation tax roadmap, which will be published shortly before the end of this year.

The lobbying on this Bill was mentioned, as if that was something that should never happen. I have just come through the Finance Bill and the budget and I can hardly think of a voluntary organisation that did not lobby. Lobbying is part of life. We live in an open democracy-----

**Senator Alice-Mary Higgins:** I want to make a point of clarity because I would not want the Minister of State to accidentally misinform the record. I have not objected to the fact that lobbying has taken place. I have objected to the fact that the lobbying documents were not made available to the spokespersons. The fact of lobbying is not the issue. It is the transparency on it.

**Deputy Sean Fleming:** The normal process when legislation is going through the Houses is being applied. We are going through the deliberative process in respect of this Act and when that is completed the lobbying documents can be sought. All the documents in relation to lobbying on the Finance Bill and the budget, for example, can be made available in due course but not before they have been fully considered. That means consideration by the Oireachtas as well. I have to take issue with the Senator when she says this Bill will damage our reputation. I entirely refute that. This Bill is good for our reputation. The Irish Central Bank is deemed to be a good central bank internationally. Any suggestion that it will regulate and approve investment limited partnerships that would damage our reputation I do not accept for a split second. In fact, the Central Bank has often been accused of being too strict in its regulation. Our Revenue Commissioners are also very strict on tax compliance. They take on not just the biggest people in Ireland but also the biggest corporations in the world when they have to. We have seen that they have never been shy of doing that. I therefore do not accept for a minute that the Irish Revenue Commissioners or the Irish Central Bank would in any way allow issues to arise on their watch that would damage our reputation. I therefore do not accept that this legislation will damage our reputation. It will be strictly regulated by the Central Bank.

There will be a 12-monthly report. I cannot envisage what the content of that report will be at this stage, so far in advance. There will be an opportunity when the report is published to discuss it and its contents or perhaps issues that could be included in future reports. The commitment at this stage is a post-enactment scrutiny note 12 months after the enactment of the legislation, in line with Standing Orders. Accordingly, I cannot accept the recommendation made by Senators Higgins and Ruane.

**Senator Alice-Mary Higgins:** Again, it is very important to clarify that nobody objects to the fact of lobbying. It is a normal process. Many of us received lots of pre-budget documents, for example, from various bodies on the budget and the Finance Bill. The issue is the clarity. I note that the Minister of State at least believes the Houses of the Oireachtas should have ac-



cess to these documents as part of their process of consideration. I regret that this House of the Oireachtas has not had access to the documents because this is the consideration process. I am hopeful that the other House may be able to access relevant documents.

It is not simply the Executive that determines and make decisions on legislation. We all need to scrutinise legislation and give it our due consideration. Where documents are considered to be relevant to the legislative process in that way, it is appropriate that all relevant spokespersons have access to those documents. I am certainly not imputing anything to the Central Bank or Revenue. I am very confident that they will do absolutely everything as rigorously and appropriately as possible. I am not speaking to that. I am speaking to our duty as legislators. The tax avoidance mentioned in my amendment would not be illegal. No one is claiming it would be. This is about best practice and what is illegal.

The legislative framework within which Revenue, the Central Bank and all other parties operate is the framework set by us. That is really important because this is a legislative framework which, for example, reduces a lot of liabilities. We are reducing a lot of liabilities and removing them from a number of parties in this legislation. That is part of my concern. Again, it would be useful if the Minister were able to give some assurance on post-legislative enactment. It is a concern that we do not know if this will include the issue of tax avoidance. It really should. It would be an inadequate piece of post-enactment scrutiny if it did not consider the question of best practice in respect of taxation. I say this as somebody who wants Ireland to have a good reputation in this area and wants us to be able to show our bona fides in that regard.

I regret that the Minister of State is not able to accept the amendment. I recognise that he is putting forward post-enactment scrutiny but, if not in this House perhaps in the other House, he will really need to clarify what issues he expects to be covered within that because that will be important. I will press the amendment.

Amendment put and declared lost.

**An Leas-Chathaoirleach:** Amendments Nos. 2, 7, 17, 18, 24, 26 and 41 to 43, inclusive, are related and may be discussed together by agreement. Is that agreed?

**Senator Alice-Mary Higgins:** I object to amendment No. 7's inclusion in the grouping. It relates to a separate and different issue and should be dealt with separately, if that is okay.

**An Leas-Chathaoirleach:** I am happy to accept that.

**Senator Alice-Mary Higgins:** I move amendment No. 2:

In page 6, line 16, after "individual" to insert "or body corporate with or without limited liability".

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** Amendments Nos. 2, 18, 24, 26 and 41 to 43, inclusive, all relate to the same core issue, which is the fact that there is what I am concerned might prove to be somewhat of an omission in the Bill. The Bill refers specifically to beneficial partners throughout as individuals and does not give recognition to the fact that beneficial owners may be corporate entities, or bodies corporate. Especially given that we are looking to a very large new tool and product that will be made available and that we are reducing liabilities for limited partners and limited owners, if we only have beneficial owners and the beneficial owners con-

sist only of individuals and exclude corporate entities, I am worried that this could be a really substantial gap in the Bill.

It is particularly important given that the 1994 Act, in section 5(2), states, “A body corporate with or without limited liability may be a general partner or a limited partner and a partnership may be a limited partner.” We have in the past established that a limited partner may be a body corporate and that a general partner may be a body corporate. Similarly, in the Irish Funds Industry Association’s submission to the Government it made clear that investment limited partnerships are typically professional investors and include public pension funds, sovereign wealth funds, private sector pension funds, insurance companies, endowments and foundations as well as private investors. Given this is the case, the language in the Bill is a concern.

Quite a large number of amendments are grouped together under this point. One of the key points is that the term “beneficial owner”, as it relates to an investment limited partnership, means any individual. Therefore, I again respectfully suggest that the Bill will have a serious gap in it if there is any space for beneficial owners to consist only of individuals rather than body corporates. There may be an interpretive answer, but we need to be really clear. We certainly do not want to be at odds with how we chose to clarify these issues in the 1994 Act. That Act went to the trouble of specifying this. Now, however, we have a new phrase. While the 1994 Act deals with the terms “general partner” and “limited partner”, here we are talking about the term “beneficial owner”. Given that we are introducing this phrase, let us be very clear on it.

Issues of money laundering are very important. One of the elements in the Bill concerns a response to the drive against money laundering internationally, but it is not just individuals but also bodies corporate that launder money, and it is crucial that Ireland, in its  
*2 o'clock* register of beneficial owners, includes bodies corporate, which may be involved in such activities or may need to be investigated in the future in respect of such activities. Common contractual funds, for example, allow pension funds and other institutional investors to pool investments, sometimes for tax avoidance purposes. There is nothing illegal in that but it is one of the main uses of such funds.

Some of these funds, the investment limited partnerships, ILPs, will be geared towards institutional investors, pension funds, companies and corporate bodies. If the beneficial ownership register - I am speaking now to the later amendment specifically on the register - only includes individuals, effectively all those bodies will fall out of the function of the register and we would be at risk of not really fulfilling the spirit or perhaps even the letter of the obligations that have come from Europe. The beneficial ownership register comes from that imperative.

The stated primary purpose of the beneficial ownership register is to assist national and international agencies in their fight against money laundering and other illegal acts. Nothing under the Bill as it stands will stop an individual or a group of individuals setting up a corporate body and placing their assets within its legal structures in order to then go on to place those assets in a common consolidated fund or an investment limited partnership. Potentially this could be done by criminal organisations and no paper trail would link to the register in respect of that.

My amendments in this area try to address that issue by ensuring that the definition of beneficial owner is amended to include corporate bodies. At the moment we are providing simply for the PPSN of an individual. However, where the beneficial owner is a corporate entity, its company number or its equivalent business identification number needs to be included in the beneficial ownership register.

As an example of this narrow assumption about individuals throughout the Bill, in another amendment I deal with reference to “birth”. The Bill refers to the birth of a beneficial owner, when we might need to specify birth or incorporation.

The Minister of State will understand this is a very genuine concern in terms of not just the impact but also in terms of the extent to which the legislation fulfils one of its key stated purposes. I ask the Minister of State to address the suite of amendments and the wider issue.

**Deputy Sean Fleming:** I hope I can allay the Senator’s concerns on the issue. I understand her points. The legislation as drafted is remarkably strong and perhaps, inadvertently, the amendments would substantially weaken the beneficial owner framework and prevent full transparency in the beneficial ownership register. These amendments would allow an incorporated company to enter a date of incorporation or a company number, rather than the date of birth or a PPS number of the beneficial owner. The information which is delivered to the registrar must be of a natural person and the amendment goes against the purpose of the modernisation of the legislation to align with anti-money laundering developments, and I cannot accept these amendments.

This would block the registrar from looking through a company to see who the beneficial owner is. This could mean that only the surface level would be entered on the register, rather than the actual individual person. The Bill provides for the registrar to determine alternative forms of identification for those without a PPS number. We mentioned passports etc. on Committee Stage for both ILPs and common contractual funds, CCFs, in sections 52 and 18 of the Act, respectively.

No matter what mechanism is used to invest in an investment limited partnership, the purpose of the legislation as drafted is to identify the actual person or persons behind the investment, not a company or some other corporate structure, incorporated or unincorporated. The legislation goes further and mentioning a limited company there would prevent us getting through that. The whole essence of the Bill is that the actual natural real-life person who controls the company is the person to be identified here. We are taking everything beyond the company and right through the company into whoever controls the company if he or she owns more than 25% of the company or without 25% of the shares if he or she is in a position to control the company. When it comes to the taxation and following through who the real investor is, the real investor is not just a shelf company. The real investor in those cases is the person or people behind the shelf company. Everything in this legislation is to get at the people behind what can be a shelf company. Everything in this legislation is to get at the people holding shares in what can be a shelf company. I believe that is really what the Senator would want us to do. Inserting the reference to a limited company might restrict us to seeing the company and not being able to look through the company to see who controlled it.

The legislation as drafted allows it to get right back to the beneficial owner wherever they may be. That is why we have the reference to PPS numbers. If companies were allowed be in that position, we would be prevented from finding out who the individuals behind that company were. The legislation is stronger because we exclude a provision for company. We go straight through the company to the beneficial owner. I can understand that on the face of it, it looks as though we are excluding companies. However, that is because we have gone much further in the first place; we have gone to the people behind the companies.

**Senator Alice-Mary Higgins:** In an investment limited partnership, including where the

investment limited partnership is an umbrella fund with sub-funds, will a beneficial owner be identified for each company who is an investor in that company? I wish to clarify that it will not be simply one beneficial owner in respect of the investment limited partnership, but that persons relating to the sub-funds within the umbrella will also be identified.

**Deputy Sean Fleming:** Once they control 25%.

**Senator Alice-Mary Higgins:** I will come to the 25% issue in a moment; it is dealt with in a separate set of amendments. In that circumstance, there may be a number of beneficial owners in respect of a company or investor.

My wider concern is about the disappearance of the limited partners and the fact that the limited owners may effectively be in that corporate space. I think it would be better if a person were identified for each investor in that context. That would be the natural follow-through on it. Perhaps that can be looked at in the Dáil. I accept the Minister of State's bona fides on this matter. I still feel the problem is there, but I feel that my amendments might not address it in the right way and so I will withdraw my amendment.

**An Leas-Chathaoirleach:** Is the Senator pressing the amendment?

**Senator Alice-Mary Higgins:** Therefore, there will be no case where the beneficial-----

**An Leas-Chathaoirleach:** The Senator cannot continue the debate.

**Senator Alice-Mary Higgins:** I just want to clarify this. There will be no case of a company with a 25% shareholder where that individual is not identified. In that context, I will withdraw the amendment.

**Deputy Sean Fleming:** That is correct.

Amendment, by leave, withdrawn.

**An Leas-Chathaoirleach:** Amendments Nos. 3 to 6, inclusive, are related. Amendment No. 4 is a physical alternative to amendment No 3. Amendment No. 6 is a physical alternative to amendment No 5. Amendments Nos. 3 to 6, inclusive, may be discussed together, by agreement. Is that agreed? Agreed.

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

In page 6, line 18, to delete "more than a 25 per cent" and substitute "a".

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** These amendments deal with the issue of the 25%. These investment limited partnerships are potentially very large. An investment limited partnership could potentially have up to €100 million in capital. Under the Bill, an investor who might have €24 million in capital in an investment limited fund would not be listed as a beneficial owner. I am concerned that there is still effectively a mandate for secrecy for very large-scale investors, whether for individuals who come in under that 25%, corporate entities as described, or the kinds of structures of concern mentioned in respect of the issue of money laundering and so forth. At a certain level, 25%, which is a very blunt tool that is not attached to any other limitations regarding amount or volume, tens of millions of euros may be invested in an investment limited partnership without transparency attached. This figure of 25% seems somewhat

arbitrary. It does not speak to the wider need, which is the driver of some of this Bill, for greater transparency around beneficiaries, for individuals to be more accountable and for more capacity to investigate issues such as money laundering. If even €1 million, €2 million or €3 million of investment is not subject to potential investigation through the beneficial owners register, that is of real concern. Again, this is the core part of the Bill. I am concerned about the very large volume of money associated with limited partners, the considerable power given to them, as we will be discussing when we get to section 7, and the fact that their liabilities and their transparency under the register are extremely limited. This is our concern.

My amendments in this regard include both a main one and a compromise. In one I suggest that anybody who has a share in an investment limited partnership should be considered a beneficial owner. Although I felt it was something the Minister might want to address himself, an alternative would be to link percentages to different sizes of investment limited partnership. I do not believe anyone who is investing €1 million should not be recognised as a beneficial owner or actor. That is a potential solution. My solution simply suggests that the threshold of 25% be deleted and that all who have shares be considered beneficial owners. I have another alternative, which is to alter the figure to 10%. If we are talking about a fund of the scale of €5 million or €100 million, 10% is a very substantial amount of money. It is appropriate that the owners of such a proportion of a fund be regarded as beneficial owners and have the liabilities and transparency associated with that.

Will the Minister of State indicate whether he is inclined to accept these amendments or whether he has concerns or plans to ensure that we will not have a number of invisible large-scale investors in investment limited partnerships in the future?

**Deputy Sean Fleming:** I thank the Senator. While I understand the points she has made, we are concerned, to some extent, with money laundering and, possibly, some other areas. The definition of beneficial ownership in this Bill aligns with the definition in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010. The specific definition of “beneficial owner” in the 2010 Act is a person who:

(a) ultimately is entitled to or controls, whether the entitlement or control is direct or indirect, more than a 25 per cent share of the capital or profits of the partnership or more than 25 per cent of the voting rights in the partnership, or

(b) otherwise exercises control over the management of the partnership.

The threshold for control is therefore applied through two tests. If a person has a shareholding of more than 25%, he or she is included in the definition and he or she is also included if he or she can control the investment. A number of people may be defined as a beneficial owner. Even if a person only has 10% of the shareholding, he or she may control more because of the way it is constructed. There may then be three other people who each hold 25% or more of the shareholding but who might not actually control it. In that case, four beneficial owners would be captured by the definition. The beneficial ownership framework is also being introduced in Ireland and it follows the provisions of EU legislation. We want to ensure the highest international transparency standards apply to investment limited partnerships. It is therefore important to have consistency with existing legislation on money laundering and EU legislation. An alternative method of dealing with this matter would not align with the various elements of existing legislation. It is important that this legislation align with existing legislation dealing with money laundering and with EU regulations.



EU regulations use the definition I have just mentioned, which is that a person with 25% of the shareholding, or control over 25% even if he or she owns less, is a beneficial owner. If a different level was set in our legislation, say 10% or 20%, we would be out of sync, which might make it more difficult for people who want to invest under the funds structure we are setting up in Ireland. If our legislation was out of kilter with the rest of the EU, it would cause unnecessary difficulties and might make it less practical to operate. We should not choose to be out of sync with money laundering legislation and EU regulations. For that reason, I am not in a position to accept the amendments.

**Senator Alice-Mary Higgins:** I respect that 25% is the figure set out in the money laundering legislation but the concern is one of scale. As I see it, Ireland is keeping the same definition of a big fish while enlarging the pond very considerably. The concern is that investment limited partnerships are not of the same scale as an individual company. They are an amalgam of multiple funds. That is the case that has been made in favour of them; that there will be large umbrella funds with multiple sub-funds, a very large investment vehicle with governance measures attached to the top. It is a matter of the scale. That is where there is an issue. One will be able to invest €24 million and not be considered a key actor in the fund because it is a fund of €200 million. I appreciate the sentiment driving the money laundering legislation from Europe and that we are now seeking to comply with the letter of that legislation but I am concerned that the scale will make that measure less meaningful and less effective. This is an issue that needs to be addressed, whether individually or, given Ireland's key role as regards the finance ministers of the EU, collectively. Some 25% of a €4 million or €5 million fund is not the same as 25% of a €100 million or €200 million fund. In that context, I will press these amendments. I hope these issues will be addressed in another way elsewhere.

I recognise and appreciate the Minister of State's points as to the issue of control. Some of my later amendments touch on the issue of what constitutes control of a vote.

Amendment put and declared lost.

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

In page 6, line 18, to delete "more than a 25 per cent" and substitute "more than a 10 per cent".

**Senator Lynn Ruane:** I second the amendment.

Amendment put:

The Seanad divided: Tá, 13; Níl, 26.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Burke, Paddy.
Boylan, Lynn.	Buttimer, Jerry.
Flynn, Eileen.	Byrne, Malcolm.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Chambers, Lisa.
Moy尼han, Rebecca.	Conway, Martin.

Ó Donnghaile, Niall.	Crowe, Ollie.
Ruane, Lynn.	Cummins, John.
Sherlock, Marie.	Currie, Emer.
Wall, Mark.	Daly, Paul.
Warfield, Fintan.	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Gallagher, Robbie.
	Kyne, Seán.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

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

Amendment declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 5:

In page 6, line 19, to delete “or more than 25 per cent of the” and substitute “has”.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

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

In page 6, line 19, to delete “or more than 25 per cent of the” and substitute “or more than 10 per cent of the”.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 7:

In page 7, line 25, after “2005” to insert the following:

“or its international equivalent for individuals without a PPS number such as a passport number or national identity card number or national insurance number”.

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** This amendment deals with issues relating to the use of PPS numbers and so forth. I separated it out because it is a slightly different point to the one we were making about corporate bodies and how they are addressed in the Bill. Many of the internationally based, non-resident individuals who are beneficial owners may not have a PPS number. In order to ensure such beneficial owners can be identified on the register we may need to collect an equivalent international number such as a passport number, a national identity card or a national insurance number. Again, it is just recognising the fact that a number of the non-resident investors who may constitute beneficial owners in the investment limited partnerships may be based overseas and may not have a PPS number. I raised this issue on Committee Stage and the Minister of State suggested that the Bill will facilitate the recording of non-resident individuals for beneficial ownership reasons. He also stated that people will have to show their passports or prove they are beneficial owners. Actually, there is nothing I have seen in the Bill which requires them to perform such an act. The Bill specifically relates to PPS numbers and this is the only identification method that is identified or recorded. It is not clear what mechanism under the Bill will allow us have identification in respect of non-resident individuals who are beneficial owners. This amendment would clarify that.

**Deputy Sean Fleming:** I acknowledge the purpose of the Senator's amendment but the matter is well and truly dealt with and the position is clear. The Central Bank of Ireland is the body that will determine the position where a PPS number is not available and it will require a relevant identifier to its satisfaction. The normal procedure in place requires not just a passport number but actual copies of the passport to verify the individual. There may not be the equivalent of a PPS in several other countries and, in that case, everybody will have to produce a passport. The Central Bank has the authority to determine precisely what form of identification is required, whether a PPS number or a passport, depending on the nationality of the person involved. The onus is on the Central Bank to satisfy itself as to the identity of the person involved. I am satisfied the Central Bank will do the job it is required to do under the legislation.

The PPS number would be the most common identifier and it is mentioned. However, if we were to tie the Central Bank's hands by prescribing one, two, three or four particular forms of identification from across the globe, and try to put that into this legislation, we would inevitably leave out something. We are giving the authority to the Central Bank to determine the relevant identifiers in the absence of a PPS number. I am not in a position to accept the amendment.

**Senator Alice-Mary Higgins:** My concern is not just that the PPS number is the only identifier mentioned but that, in fact, it is quite a narrow definition of PPS number in the Bill, in that it is the PPS number within the meaning of section 262 of the Social Welfare Consolidation Act 2005. We are talking about Irish PPS numbers and that is what is specified in the Bill. I recognise there is reference to the "information to be delivered to the Registrar" and "such information as stands determined by the Registrar for the purposes of this section". I am not sure if that is what the Minister of State is referring to. Again, my concern is that it is not particularly clear and I believe the amendment would clarify the Bill.

The term "PPS number" is used throughout the Bill. Even though there is that small power in terms of referring to other information, consistently, the term "PPS number" is used in regard to how the register is to be operated and function. For example, the Bill states:

As respects a PPS number of a beneficial owner that has been delivered under subsection (2) to the Registrar-

- (a) the Registrar shall not disclose that number, and
- (b) that number shall be stored securely by the Registrar.

We do not have an equivalent for a passport or any other form of identification, which concerns me. I am not seeking to limit the discretion in terms of forms of identification, which is why my amendment suggests the national insurance number or passport number. I would be happy if language were inserted in the Bill to suggest such other forms of identification are appropriate or if the definition of PPS number were widened in some frame. I am concerned it is not simply in one place in the Bill but throughout the Bill that “PPS number” is used as a form of placeholder in terms of the functioning of this system. We want to ensure there is no ambiguity.

Amendment put and declared lost.

**An Leas-Chathaoirleach:** Amendments Nos. 8 to 11, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Alice-Mary Higgins:** I move amendment No. 8:

In page 9, to delete lines 7 to 39, and in page 10, to delete lines 1 to 11.

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** Section 7 gives rise to one of my most fundamental concerns in respect of the Bill. I will be pressing this amendment to a vote in opposing the section but I am also proposing a number of other amendments to extract some of the more egregious elements of the section.

On Committee Stage, no strong rationale was put forward for the section besides the question of what is a change and a shift in the current understanding of what constitutes a limited partnership versus a beneficial partnership. Effectively, this section inserts a new set of actions in which a limited partner can engage, including very significant actions, such as the following: serving on the board or committee of an investment limited partnership, including an advisory committee; appointing, electing or participating in choosing the representatives who will serve on the board of a committee; acting as a member of a board or a committee directly or through another representative; giving advice on, consenting or refusing to consent to any action that the general partner in an investment limited partnership might take; and exercising all of the powers, authorities or obligations that a member of a board will have.

This is a substantial decision-making role that is being accorded to limited partners under the protective cover of stating that they will not be subject to liabilities in respect of those actions. That is significant. Given, as we have discussed, the extraordinary scale of the investment limited partnerships, the substantial amounts of money at play, and the very substantial decisions at play, we are now in a position where we are effectively excluding these very active decision makers from liability. In the Minister’s response, he simply said that people may have an opinion and that everyone is entitled to that. There were provisions in the 1994 Act to ensure there are certain actions which it is appropriate for a limited partner to engage in that do not necessarily carry liability. However, I suggest that serving on a board, determining who serves on a board and making decisions on that board are not actions that are appropriate for exclusion from liability. It is a particular concern if we widen the exclusion from liability to include these

actions when we are effectively bringing in giant investment limited partnerships. We have a much bigger instrument, potentially, and we are giving people more control at the wheel of that instrument, yet we are lessening their liability. That is a serious concern.

I am opposed to the entire section. However, I want to oppose a few specific aspects of it as well. I oppose the specific aspect in regard to serving on a board in the introduction of this section. I would also like to specifically oppose a very extraordinary set of lines which state that not only are these acts excluded from the question of liability if something were to happen on one occasion, for example, but that this applies “irrespective of the frequency with which that holding out, or that purported doing of the act or acts concerned, occurs”. A person could be in there every day, could be at a board meeting every week and could be making decisions constantly. This is not a one-off, inadvertent question of whether a limited partner expressed an opinion and whether that has had an influence. This is literally a situation where the Bill states that it applies regardless of the frequency. Even if those lines are deleted, this section would still be a problem. However, it would state that being on a board, selecting a member of the board or participating in a decision on a board should not in and of itself be a breach of the liability protections. There are some protections for each action in itself, but if they are done frequently we allow a pattern of control, influence and steering of a company to occur. I will oppose this section and the Minister of State should delete it, but if he cannot, he should consider removing the proviso that allows people to do such things all the time. In that way, one action in itself would not be considered a problem. That protection would still be there but we would not have this idea of as many actions as one likes. There is a concern that a pattern will emerge of people who are only 10% or 20% shareholders effectively steering the policy and actions of a limited partnership without any liability.

**Deputy Sean Fleming:** We have come to the kernel of what this legislation is about. To use a phrase that is well known to most people, this legislation does what it says on the tin. The legislation is called the Investment Limited Partnerships (Amendment) Bill 2020 and the essence of it is to give limited liability to limited partners. If we were to in some way take away a limited liability from a limited partnership, where would the legislation be after that? That is what it says on the tin or on the front cover and this section is copper-fastening what is stated in the Title. I find it hard to reconcile calling the legislation the Investment Limited Partnerships (Amendment) Bill 2020 while delimiting the limitations of liability of the actual partnerships. I would make that overall point. The Senator and I probably have different views on what the entire Bill is about. She says the right thing to do is to take out the section or if that is not possible to make some amendments, but everything she has said goes against the grain of what the legislation is about.

**Senator Alice-Mary Higgins:** What is the case for that?

**Deputy Sean Fleming:** As discussed on earlier Stages, the 1994 Act permitting a limited partner to participate on the board and committees related to an investment limited partnership. Section 7 of the 1994 Act allows that. This adds board participation to the white list of activities that can be undertaken by a limited partner and that will not be deemed as taking part in the conduct of the business and that will, therefore, not result in any loss of liability. The white list concept is common in many areas. The essence of the Senator’s argument is that participating in those activities, including serving on boards or committees of the investment limited partnership, choosing a person to serve on such a board or making a decision to approve a change of partnership agreement is so major that it makes people of influence more akin to a general partner. That is the essence of the argument being made. The clarification in this legislation



allows limited partners to serve on a board in a consultative capacity. That is the essence of it. They can be there in a non-decision-making capacity and can offer opinions but they have no role in the management of the partnership. They can be consulted and have their say but they have no role in decision-making. A person is entitled to participate and express his or her views but that does not make him or her a decision maker.

If such partners are deemed to be partaking in a decision of the investment limited partnership or breach their role as a limited partner, they will lose their limited liability. In effect, they will then become general partners with unlimited liability for the whole partnership. It is possible to have more than one general partner but some people only want to be there as passive investors who are consulted on issues and do not want to be involved in the decision-making process. They can be consulted on issues but cannot be brought into the decision-making process. If they were, they would lose their limited partnership protection and limited liability and would become general partners. As the regulator and registrar, the Central Bank will be always oversee and approve the schemes of all legislation being put in place. I must again revert to the fallback position that I am satisfied that the Central Bank is very thorough. It has a strong international reputation for being a good, strong, straight and effective regulator and it will not be any less so when it comes to this legislation. For those reasons, I am not in a position to accept the amendment.

**Senator Alice-Mary Higgins:** What time is the debate due to conclude?

**An Leas-Chathaoirleach:** Two hours after its commencement, which is 3.40 p.m.

**Senator Alice-Mary Higgins:** I am very concerned because I thought we were setting up new vehicles. The Bill was to set up investment limited partnerships, as the Minister of State said, and the limitation of liabilities between sub-funds under an umbrella structure. If the nub of this legislation is not accountability for beneficial owners but the expansion of what the Minister of State calls a “white list” into a set of new activities, that is a concern and the case has not been made for it. I have not heard the case for why it is so important to have limited partners on boards and decision-making committees. The Minister of State has said repeatedly that they would only have a consultative role but I must correct him because that is not what is in the text before me. The inserted section states that the white list of activities a limited partner can do includes:

(i) serving on any board or committee ... of the investment limited partnership

[...]

(ii) appointing, electing or otherwise participating in the choice of a representative or any other person to serve on any such board

[... and, crucially,]

(iii) acting as a member of any such board or committee either directly or by or through any representative or other person, including giving advice in respect of,

[that is the consultative piece] or consenting or refusing to consent to, any action proposed by the general partner on behalf of the investment limited partnership and exercising any powers or authorities or performing any obligations as a member of any such board or committee ...

That is a lot of power. That is not consulting or sitting there passively and throwing in one's tuppence worth. These people are consenting or not consenting. That is very significant. If the Government is saying that if they were to consent, not consent or interfere, they would be in breach and would become beneficial partners, it must be clear on that because it is inserting these activities into the section of activities protected from liability under section 6 of the 1994 Act. That is an issue.

There are many companies in Ireland with limited partners or people playing a role. Why would an Irish investment company or a normal Irish company be restricted in how certain investors might participate in the board and decision-making while the Government gives these huge investment limited partnership vehicles a disproportionate level of power, bearing in mind that a number of them may be international or commercial investors from around the world because these are international vehicles? I am concerned about why these particular partnership structures, with up to €100 million or whatever large amounts an investment limited partnership might be in control of, are giving so much power and freedom from accountability to their limited partners in a way that is not reflected in any other company structures and that is not normal.

The Bill directly suggests that they will refuse consent to any action proposed by the general partner on behalf of the investment limited partnership. That is straight up in the Bill. Those sections should be refused, rejected and reconsidered and I will call a vote in respect of that.

Amendment put:

The Seanad divided: Tá, 15; Níl, 27.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Buttimer, Jerry.
Boylan, Lynn.	Byrne, Malcolm.
Flynn, Eileen.	Carrigy, Micheál.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Chambers, Lisa.
Keogan, Sharon.	Conway, Martin.
McDowell, Michael.	Crowe, Ollie.
Moynihan, Rebecca.	Cummins, John.
Ó Donnghaile, Niall.	Currie, Emer.
Ruane, Lynn.	Daly, Paul.
Sherlock, Marie.	Doherty, Regina.
Wall, Mark.	Dolan, Aisling.
Warfield, Fintan.	Gallagher, Robbie.
	Garvey, Róisín.
	Kyne, Seán.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.

	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

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

Amendment declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 9:

In page 9, to delete lines 16 to 33.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 10:

In page 9, to delete lines 36 to 39, and in page 10, to delete lines 1 to 11.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 11:

In page 10, lines 9 to 11, to delete all words from and including “(irrespective” in line 9 down to and including “occurs)” in line 11.

**Senator Lynn Ruane:** I second the amendment.

Amendment put and declared lost.

**An Leas-Chathaoirleach:** Amendments Nos. 12 and 13 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Lynn Ruane:** I move amendment No. 12:

In page 10, between lines 11 and 12, to insert the following:

**“Amendment of section 7(4) of Act of 1994**

8. Section 7(4) of the Act of 1994 is amended by the insertion of the following paragraph after paragraph (a):

“(aa) the degree to which the investment limited partnership will make a positive contribution to civil, social, economic or cultural life within the State;”. ”.

**Senator Alice-Mary Higgins:** I second the amendment.

**Senator Lynn Ruane:** I have retabled amendments Nos. 12 and 13 from our Committee Stage debate. They relate to the introduction of important civil, social, economic, cultural and environmental clauses into the investment policies of private financial actors who come together to form a limited partnership under this Bill. Amendment No. 12 will empower the Central Bank to, when considering an application for the authorisation of an investment limited partnership, set important conditions for ensuring that the new fund must demonstrate that it will make a positive contribution to civil, social and economic life in Ireland through its investment policies. Amendment No. 13 would further empower the Central Bank to consider the degree to which the investment policies of the proposed limited partnerships would support global efforts to tackle the climate and biodiversity crisis. These are extremely reasonable amendments. I am not saying that such clauses are even a requirement for these new limited partnerships. I am simply giving the Central Bank the power, where it sees fit and deems it appropriate, to choose to set its own conditions for the granting of this new legal investment personality in return for the favourable legal and investment opportunity we are giving to them. The vast majority of Irish people want to know what we are getting in return for the extraordinary efforts the Government is making to facilitate the growth and accumulation of international capital here in Ireland. Amendment No.12 would allow for exactly that. These proposals are entirely in keeping with the climate and biodiversity focus of the programme for Government and could feasibly represent a real and tangible opportunity to address those crises. We had a lengthy and detailed debate on biodiversity in the Seanad last night where the lack of solutions presented by the Government to date was lamented. It is this kind of proposal that could cause a sea change in our crisis response. If every investment policy under this Act was designed to support even one specific biodiversity or climate project we could feasibly see all the ground lost in Ireland in recent years made up in a very short time.

I listened closely to what the Minister of State said when rejecting these amendments on Committee Stage. He said that the Central Bank is responsible for the authorisation and supervision of investment funds established here in Ireland and as such, “it is not a matter for the Oireachtas to set out the rules and conditions of any investment fund”. I fundamentally reject this assertion because we are doing exactly that here. We are setting out the rules and conditions by which investment funds are approved and operated. It is entirely within the powers of the Oireachtas to set out the kinds of conditions we expect from these funds. We are not making decisions on individual funds but setting the framework by which the decisions are made. The Minister of State has set out many conditions for authorising an investment partnership. They are detailed and set out in this legislation and I am simply proposing that we add more. As representatives of the public and their lawmakers, it is up to the Oireachtas to decide how this area is regulated. The Minister of State may not want to set out these kinds of social and environmental considerations but he cannot say that it is not our role or within our powers to do so. The Minister of State also referenced a number of very worthwhile and important European legislative instruments on social and environmental investment policies. However, I do not see how they can be presented as obstructing the need to include the kinds of provisions that I am proposing. Surely we should look to strengthen our laws to aid implementation of EU directives and increase our ambition and scope rather than just doing the bare minimum because it is a European requirement. I am disappointed that the Minister of State does not see this as an opportunity for Ireland to become a leader rather than a follower in this area and urge him to prove me wrong in that assertion by accepting these amendments.

**Senator Alice-Mary Higgins:** I will speak briefly as Senator Ruane has covered the arguments extensively. As I said, I second these amendments. The fundamental point is that we

are the Legislature and we are putting in place the framework under which these funds will operate. Indeed, extraordinary provisions have been made in this Bill to allow particular activities to take place that would not normally take place, for example, to allow a limited partner to exclude limited partners from certain liabilities. Many choices are being made in this legislation and a similar choice would be to include the possibility for the Central Bank to put in place measures in respect of benefits to the State, business and human rights, on which a UN treaty is being negotiated, and on climate and biodiversity which would be in sympathy with the State's policy of fossil fuel divestment, for example. There is nothing to preclude us from giving those powers to the Central Bank. The Minister of State spoke about the good offices of the Central Bank and these amendments seek to strengthen the hand of the bank so that it can perform to a high level in delivering on issues around business and human rights, climate and biodiversity sensitivity in these funds. This is very reasonable in view of how much is being given to those who are seeking to set up these new kinds of products and structures in Ireland. That should come with at least some positive conditionality.

**Deputy Sean Fleming:** Investment funds are established for the purpose of investing the pooled funds of investors in assets in accordance with the investment objectives and policies published in the proposed prospectus. A fund is established for a particular purpose and the objectives of that fund are set out in the prospectus. People in normal society are then free to invest in that fund. In the context of investment limited partnerships, the investment fund will be authorised as an investment if it meets the requirements of the Central Bank's rules and guidance. It will be an alternative investment, known as an "alternative investment fund" which is recognised across the EU and can be marketed across the EU's internal market. Nobody here wants to limit the free movement of people, goods and services within the EU. An investment limited partnership may seek investment exposures which are not limited to Ireland or even to the EU. The amendment makes reference to the degree to which a fund could make a contribution within the State but it is quite possible that some of the funds managed here will not be invested in Ireland. They could be invested anywhere in the EU or even outside the EU. It is not a requirement that the investment funds must be used solely in Ireland. That is not what this legislation is about because we are long past the position of trying to prevent the free movement of goods and services in the EU. This must operate in the EU context.

The European Social Entrepreneurship Funds regulation already provides the regulatory framework for funds with a social investment objective. Investment limited partnerships may be established under that regulatory framework and would be regulated by the Central Bank of Ireland. Furthermore, an EU regulation on sustainability disclosures in the financial services sector was recently agreed and will apply from March 2021. Under that regulation, it is a requirement that investment funds consider the environmental and social impacts of their investment. They are not obliged to solely invest in projects with environmental or social objectives. They will be obliged to consider such objectives as part of their prospectus but cannot be directed to invest solely in such projects. Funds will be obliged, before publishing any prospectus, to consider the impact on environmental and social objectives. That EU regulation will operate from March 2021.

It is for the reasons just outlined that I am not able to accept the amendments. They seek to limit investment to within the State but it is accepted that the scope of these funds should be broader than that. Further, these funds will be governed by EU processes and the new regulation on sustainability disclosures which comes into effect next year.

Amendment put and declared lost.



**Senator Lynn Ruane:** I move amendment No.13:

In page 10, between lines 11 and 12, to insert the following:

**“Amendment of section 7(4) of Act of 1994**

**8.** Section 7(4) of the Act of 1994 is amended by the insertion of the following paragraph

after paragraph (a):

“(aa) the degree to which the investment policies identified under paragraph (a) will support initiatives that contribute to domestic or

international efforts to address the climate and biodiversity crises;”.”.

**Senator Alice-Mary Higgins:** I second the amendment.

Amendment put and declared lost.

**An Leas-Chathaoirleach:** Amendments Nos. 14 to 16, inclusive, are related and may be discussed together, by agreement.

**Senator Alice-Mary Higgins:** I move amendment No. 14:

In page 16, lines 24 to 26, to delete all words from and including “calculated” in line 24 down to and including “made” in line 26.

**Senator Lynn Ruane:** I second the amendment.

**Senator Alice-Mary Higgins:** Amendments Nos. 14 to 16, inclusive, address the fact that the way a majority of limited partners is calculated under this Bill is not by a simple vote of all limited partners but according to a majority shareholding, that is, who has the largest amount of shares. Again, this comes to the question of invisible control. My concern is that one may have a single limited partner who has 51% of all of the limited partner shares and can, therefore, call the shots in terms of votes.

The Minister of State might address this because he seemed to indicate earlier that wherever anybody is found to be in control of a vote, he or she will be regarded as a beneficial owner. If that is the case, then perhaps amendment No. 16 is unnecessary and the Minister of State can clarify whether that is already his interpretation. I refer to an example where a number of limited partners in a company hold more than 25% of a partnership and then one individual constitutes a majority of those limited partners. Consequently, one individual controls 13% or 14% of the 25% and, therefore, is in a position to control the majority vote, that is, to control how that 25% or more is used or reflected. That individual constitutes a majority of limited partners in terms of shares and, therefore, controls the outcome vote of a majority of limited partners. Is that person considered to be a beneficial partner, because he or she is in control of 25% or more of a vote within an investment limited partnership?

The Minister of State has suggested that where anybody was found to be in control, he or she would be the beneficial partner. In this circumstance, an individual might only hold 14% of the shares overall but that would be enough for him or her to be in control of the outcome of a 25% share.

**Deputy Sean Fleming:** These amendments relate to the manner in which a majority of the limited partnership shall be calculated by reference to the value of their contributions made to them, at the time being, in the investment limited partnership. The structure of the investment limited partnership is not based on one partner, one vote. It is based on their contribution to the partnership as outlined in the partnership agreement when it was created.

What we did say is that the issue of control is separate from the beneficial owner. These are two distinct issues. If one has over 25% then one is a beneficial owner. One can be deemed to be a beneficial owner if one has under 25% but one can effectively have control. Even though one's shareholding is less than 25%, if one is in a position to exercise control then one becomes a beneficial owner in that situation. As I did say, obviously one could have more than three people with more than 25% so it is possible that three or four people could be beneficial owners but it does not mean that they actually control it because there can be other beneficial owners with equal shares as well. So the 25% rule does not come in here. Like in any company, voting rights depend on how many shares one owns. It is not a mutual society like a building society where one person has one vote. When one attends a company's arrangement or meeting the strength of one's vote is determined by the number of shares one holds. The principle of the one partner, one vote is not part of this legislation.

**Senator Alice-Mary Higgins:** I know. Can the Minister of State clarify if someone controls 25% of the vote is he or she a beneficial partner?

**Deputy Sean Fleming:** Yes, if such a person controls 25% of the vote in the limited partner. I am not talking about the general partner who runs the whole business but the limited partner. Yes, he or she is a beneficial owner but it does not give him or her control of the general partnership that is solely in the hands of the general partner because such people have limited control, they are limited partners and, as we said already, they can have a participating vote in an advisory capacity, which is certainly not control. They can make their recommendation but they cannot tell the general partner what to do. The general partner makes a decision. As soon as a limited partner tries to make a decision, he or she loses the limited liability protection and could be deemed to be a general partner but he or she does not want to go there at all.

There is a difference between the control of a limited partner versus the whole question of a general partner, which is the person who actually runs the operation. There can be several limited partners, or any number of limited partners, in the general partnership.

**Senator Alice-Mary Higgins:** I see a clash. The Minister of State has said again that it is an advisory capacity and so forth. Again, the legislation explicitly says, "consenting or refusing to consent to, any action proposed by the general partner" - that is not advice - "on behalf of the investment limited partnership and exercising any powers or authorities" as a board member. We need to be clear. The Minister of State has repeatedly stated this is a consultative role but the power, as given, is directly a power of consent or non-consent in that regard.

According to the definition of "beneficial owner", a beneficial owner is somebody who is entitled to, or controls, more than 25% share, or more than 25% of the voting rights. If limited partners own 30% or a large number of shares and so have those voting rights, and if an individual, for example, owns 20%, the fact that he or she owns 20% of the shares might not make him or her a beneficial owner but the fact that he or she controls 30% of the vote does make him or her a beneficial owner because of the rule we have on how a majority of limited partners is determined and the fact that the outcome of any vote - or the decision in terms of any majority

vote - is determined by the shareholder who has the majority of shares who is a limited partner. Again, that person with 20% will determine how the 30% of voting rights is used and, thereby, is effectively a beneficial owner. My view is based on the definition here. One cannot have a tautology where we say he or she is not a beneficial owner because he or she is not a beneficial owner. The definition of beneficial owner is based on the control of ownership of shares or the control of vote. The mechanism set out later in the Bill allows for an individual who might be a limited partner in terms of share level to, nonetheless, exercise a level of control of vote that tilts him or her over the 25%. Clarity is needed because one is really looking at somebody who is being a limited partner and if that happens then he or she needs to be treated with the same liabilities as a beneficial partner.

**Deputy Sean Fleming:** The only point of clarification is, the voting strength of all the people is determined in the original partnership agreement. That is where it is determined. People can have a majority of shares but the partnership agreement is the one that runs the partnership and they appoint the general partner to do the job on their behalf. So, the partnership agreement decides the voting strength and they sign up to that at the beginning, irrespective of the voting. One could have somebody with a lot of shares but who does not want to have any particular involvement and be totally passive. That is set out in the partnership agreement, not solely on the basis of shareholding and that is agreed when people sign up to the partnership agreement to start with.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 15:

In page 16, between lines 26 and 27, to insert the following:

“(2A) Where a single limited partner holds a majority shareholding a simple vote of limited partner shareholders shall be constituted as majority.”.

**Senator Paul Gavan:** I second the amendment.

**Senator Alice-Mary Higgins:** I can see that the Leas-Chathaoirleach is about to guillotine the debate. I wish to make a comment before he does so. There is one amendment that we have not reached, but if the Minister of State-----

**An Leas-Chathaoirleach:** We cannot do that now.

**Senator Alice-Mary Higgins:** That is a pity because-----

**An Leas-Chathaoirleach:** The Senator can make a submission to the Minister of State.

**Senator Alice-Mary Higgins:** It arises from our discussion earlier when I suggested that SIPO should be able to access the list of beneficial owners-----

**An Leas-Chathaoirleach:** The Minister of State can note that and you can raise it with him again informally.

**Senator Alice-Mary Higgins:** That would be a useful measure in terms of transparency, given the concerns around some of the opaqueness of the legislation.

**An Leas-Chathaoirleach:** As the time permitted for the debate has expired, I am required to put the following question in accordance with the order of the Seanad of this day: “The

amendment is hereby negatived, the Government amendment undisposed of is hereby made to the Bill; that Fourth Stage is hereby completed; and that the Bill, as amended, is hereby received for final consideration and passed.”

Question put:

The Seanad divided: Tá, 25; Níl, 9.	
Tá	Níl
Ahearn, Garret.	Bacik, Ivana.
Buttimer, Jerry.	Boylan, Lynn.
Byrne, Malcolm.	Gavan, Paul.
Carrigy, Micheál.	Higgins, Alice-Mary.
Casey, Pat.	Hoey, Annie.
Cassells, Shane.	Ó Donnghaile, Niall.
Chambers, Lisa.	Sherlock, Marie.
Conway, Martin.	Wall, Mark.
Crowe, Ollie.	Warfield, Fintan.
Currie, Emer.	
Daly, Paul.	
Doherty, Regina.	
Dolan, Aisling.	
Fitzpatrick, Mary.	
Gallagher, Robbie.	
Garvey, Róisín.	
Kyne, Seán.	
Martin, Vincent P.	
McGahon, John.	
Murphy, Eugene.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	
Wilson, Diarmuid.	

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

Question declared carried.

*Sitting suspended at 3.57 p.m. and resumed at 4.12 p.m.*

## **Criminal Justice (Enforcement Powers) (Covid-19) Act 2020: Motion**

**Senator Barry Ward:** I move:

That Seanad Éireann resolves that the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 (No. 14 of 2020) shall continue in operation for the period beginning on the 9th day of November, 2020 and ending on the 9th day of June, 2021.”.

**Minister of State at the Department of Justice (Deputy James Browne):** I thank Senators for the opportunity to address this resolution, the purpose of which is to extend the sunset clause in the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020. Senators will know that section 17 of the Act provides that it shall continue in operation until 9 November 2020 unless a resolution approving its continuation has been passed by both Houses of the Oireachtas before that date. A resolution was passed by Dáil Éireann on Wednesday evening.

Covid-19 continues to pose a grave threat to public health, as well as a threat to the economic and social life of the country. We are clearly in a second wave of the virus and the country is in lockdown under level 5. It is a time of great uncertainty for all our people, whether that concerns their health, their jobs, or their general well-being. We must live with Covid-19, at least until a vaccine is found and distributed widely throughout society. That is why in September, the Government brought forward its medium- to long-term strategy, Recovery and Resilience 2020-2021: Plan for Living with Covid-19, which spans a period of six to nine months.

At times, the Government has been accused of causing confusion and for not having clear and easy-to-follow rules and regulations. While it is very difficult in a pandemic to be certain about anything, the strategy document gives us a clear path forward. That strategy is due to take us forward to next summer. This House has already resolved that the amendments effected by Part 3 of the Health (Preservation and Protection and other Emergency Measures in the Public Interest) Act 2020 should remain in operation for the period beginning on 9 November and ending on 9 June 2021. Today, I am proposing that the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 should also be extended for the same period to 9 June 2021. For clarity, it is important that the extension to the Health Acts, the Covid-19 regulations and the powers contained in this Act all remain in alignment for the same period.

By way of background, the Act that is the subject of the motion was signed into law by President Higgins on 11 September 2020. It provides An Garda Síochána with statutory enforcement powers regarding licensed premises and registered clubs to ensure strict adherence to public health measures on such premises where alcohol is sold for consumption. It has not yet been in force for two months. In that time, nothing has changed regarding the virus. The threat still exists and emergency measures that are time-bound are still required to deal with that threat. This remains a critical time for our country and we will continue to have a special responsibility to comply with the public health guidelines and regulations. We know that none of this is easy. Everyone is impacted upon in some way. The vast majority of people and businesses in Ireland have complied with public health restrictions during this difficult period because they understand that doing so is the most effective way to keep us all safe.

Senators will be aware that under level 5, all pubs and restaurants are currently closed. When Minister McEntee addressed the Dáil on Wednesday, she expressed the hope that they will soon reopen if we are successful in tackling the virus, and I share her sentiments in that regard. I am very conscious that many restaurateurs and publicans have spent money to make



their premises safe for their customers and staff, but also to play their part in the national effort in dealing with Covid-19. They have reduced capacity, put in safety screens and have played their part in contact tracing. The vast majority of publicans have fully complied with all the restrictions.

It is because of that great effort that the Government believes it would be completely unfair if the small minority who wish to flout the law and to put their customers and staff at risk, are allowed to do so without consequences. The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 gives gardaí the power to enter such premises and encourage that small minority of publicans who are acting contrary to public health regulations to bring themselves into compliance. If they refuse, An Garda Síochána has the power to act swiftly. An Garda Síochána has played a huge role in the national effort to suppress the virus. The front-line engagement of its members with communities and vulnerable groups has been recognised by the Policing Authority, as well as the challenges and complexity of policing in a pandemic. The graduated response to policing, which has been adopted from the outset, is based on the Garda tradition of policing by consent. Gardaí are continuing to use the “four Es” strategy to engage, educate, encourage and only to enforce the relevant provisions as a last resort.

We know that the vast majority of licensed premises have been acting in full compliance with the relevant regulations. Under Operation Fanacht, the number of crime incidents recorded by An Garda Síochána in regard to licensed premises between 3 July 2020 and 24 October 2020 was 281. Fewer than 100 of these incidents have taken place since this law was enacted on 11 September 2020. These figures have to be seen in the context of the varying restrictions which have applied at county and national level since 11 September. Levels 3, 4 and 5 have applied at some point in all counties. Should a publican decide to ignore the current restrictions and open a licensed premises, An Garda Síochána has the power to immediately take action.

I think we can all accept that Covid-19 will be with us until well in to 2021. In this context therefore, and in line with the Government’s Recovery and Resilience 2020-2021: Plan for Living with Covid-19, the emergency measures contained in the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 will continue to be required. The Garda authorities have reported to my Department that An Garda Síochána has not as yet issued any closure orders or compliance notices. Consideration has been given to using each of the powers contained in the Act but they have not been required to date. When the Minister for Justice, Deputy McEntee, introduced the legislation in Dáil Éireann, she said that it would be her preference for the small minority of publicans in question to come into compliance and she hoped that no pub closures would be required under this Act. She was very clear that enforcement should be and would remain a last resort. The entire purpose of this legislation is to enhance compliance and that is exactly how it has worked out so far.

There is no immediate penalty for a licensed premises that may be flouting the regulations. The first thing that happens is that the licensee or the manager is given a direction to come into compliance. The penalties in the Act only come into play if the publican fails to comply with that direction. Just because no pubs have had to be closed does not mean that this Act is not a success. On the contrary, the threat of enforcement actions has probably been all that was needed. The Garda Commissioner is of the view that it is because of the existence of these powers that those publicans who wish to flout the law have actually come into compliance. Consequently, that is why it has not been necessary to issue any closure orders so far. The Commissioner has strongly supported the continuation of these powers into 2021.

I assure Senators that the Minister and I fully expect that the graduated policing approach we have seen to date in all aspects of dealing with the pandemic will continue to be pursued by An Garda Síochána. By continuing to provide these additional enforcement powers to the Garda, we will see an improvement in compliance with Covid regulations by those who operate pubs, restaurants and registered clubs, in the interest of public health and in a way that will facilitate the gradual reopening of society.

The matter before us today is relatively straightforward. I am proposing the continued, but time-limited, application of legislation which was scrutinised and passed by this very House less than two months ago. The circumstances leading to the enactment of the legislation have not changed. The virus has not changed. It remains a serious threat. The Government is firmly of the view that extending this Act is both necessary and proportionate. We believe it is entirely appropriate for clarity purposes to align the dates of various related instruments. The provisions are carefully balanced and follow a human rights approach to address the small minority of licensed premises that are showing disregard for public health requirements.

Important safeguards have been provided throughout the Act, in particular through the requirement for involvement of a Garda member of at least superintendent rank, the time-limited nature of the closures, and the various possibilities for an appeal. Providing for these additional, limited powers until next June will enable the Garda to move swiftly to address those cases in which licensed premises and private clubs breach public health regulations. In conclusion, I commend the resolution to the House. I thank Senators for their attention, and I look forward to hearing their comments on the matter.

**Senator Barry Ward:** I support the motion that the Minister has put before the House in circumstances where I think it makes perfect sense. The legislation passed by this House a number of months ago was introduced in a context where some Members in both Houses complained of what they considered to be its draconian aspects. There were legitimate concerns about that, and there were also some who raised concerns that were not pertinent to the Bill such as, for example, the invasion of dwellings and other such issues. This legislation does something extremely important but also quite straightforward. It empowers the Garda, as the Minister of State indicated, to enforce measures regarding the limitation of business, in particular for pubs, but in many other areas as well, and ensures there is an enforcement mechanism available to the Garda so that those considering transgressing the law know that if they do, there will be a consequence. That is tremendously important. It is a principle that runs throughout our laws and the justice system that there will be consequences for people who break the law.

I do not think the consequences are draconian, as was stated in the discussions during the initial passage of the Bill, but one of the measures that was included in the legislation, probably in a small part due to the contribution of Members, was the idea of a sunset clause. The Ministers who have brought this legislation through the House put that in specifically to allay the fears of people who felt that this was an opportunity to slip into law greater powers for the Garda than it should have on a long-term basis. The sunset is 9 November and the proposal in the motion is to extend it to June of next year. In the Dáil there was a motion to change it to February but much as I regret to say it, I do not think we are going to be finished with Covid by the time February comes around. I hope we will be by June, but I could not say that with any confidence either.

The point of the sunset clause is to allow these Houses to consider whether there is a justification for continuing the legislation. In arriving at that decision, I suggest that we need to look

at two particular points. The first is whether the measures in this legislation have been used erroneously, unjustifiably or with a strong arm by the Garda. We have heard the Minister say that is not the case. In fact, not a single closure order has been made. The Garda Commissioner has also indicated that he believes the presence of these provisions in the Act are important from the point of view of allowing the Garda to take the steps it needs to take.

The second point we need to consider is, in the event that they have not been used, whether they are necessary. I refer the House to the remarks the Minister of State made in respect of his contact with the Garda. The Garda has indicated that the measure has helped with compliance. It has not been the case that the powers have had to be deployed but the fact that the powers are “in the back pocket”, as it were, if and when gardaí need them, has helped in achieving the compliance of businesses and publicans throughout the country. They are the two considerations that make it very clear in my mind that we should extend the measure.

There is general agreement that the measure should be extended, whether it be to February or June, but June seems to me to be a sensible distance away for two reasons. When this legislation passed just a few months ago there was quite a short period before the sunset clause had to be dealt with by the House. June is far enough off that we will have a much better picture of how this legislation is being used between now and then. Second, we can look it from the point of view of where we are with the virus. The Minister has said the virus has not gone away and currently we are in a situation where there is a regrettable, albeit necessary, restriction of business activity throughout the State. Everybody wants to move past that as quickly as possible and we hope that will happen as quickly as possible, but I have no confidence that we will no longer be dealing with these issues early next year. We would all like to think that by the time June comes around, we will have a much better handle on the situation, be it through the reduction of the virus in Ireland or some other option such as a vaccine being available to us, but nobody can make such promises. It seems to me that the motion before the House is a sensible one. It reactivates this legislation and allows it to endure until June of next year and it gives us an opportunity, when we reach 9 June, to take stock and decide again whether it is necessary and reasonable in all the circumstances as we see them at that point in time to renew the legislation, or not as the case may be. However, at this juncture, looking into the future it seems entirely reasonable and necessary to renew this legislation. I commend the motion on that basis.

**Senator Michael McDowell:** I will be supporting the amendment, which has been tendered to this motion, to extend the legislation only to a date in February. I do so because I think it is important for this House, and Dáil Éireann for that matter, to keep the Government accountable and keep all of the emergency measures under constant review and that we do not find ourselves effectively being run by Government-imposed regulations on lockdowns without adequate accountability.

Senator Ward says that on 5 June we will have plenty of time to look at this legislation and see whether it needs to be extended. The same applies to a date in February as well. There is no reason this legislation should be extended on the basis that it might be necessary to have it in March, April, May or June. Let us see whether it is necessary at that stage. Members referred earlier to the American elections and people have been commenting in the media about the failure of the pollsters in America to gauge what was going to happen in terms of the voting intentions of the American public. It may be there were shy Trump supporters who did not reveal their intentions to pollsters but, also, and this is what is relevant to this legislation, I think the second wind he got was largely due to the fact he was selling to the American people an opti-

mistic message and was engaging with them on the necessity to minimise economic damage. That probably explains why many people, surprisingly perhaps in terms of their origins or their place in American society, liked the message and thought the doom merchants were a bit too pessimistic. It is a fine political art to navigate between realism and pessimism but I genuinely believe the economic, social, cultural and health damage being done by the lockdowns is huge.

I heard on BBC radio today that the number of children under the age of one in the United Kingdom who are being battered and abused, with some of the abuse ending up in death, has increased by 20% during the lifetime of this lockdown. That is only the tip of the iceberg on the basis of anecdotal evidence of a high rate of suicides in Ireland. God only knows what it is like to be cooped up in a house with an abusing spouse, child or whatever.

The mental health of Irish people needs to be respected as well. While appeals are now being made to the public to use hospitals and not to allow their ordinary health to be prejudiced for want of going to hospital, there is and will be a very serious death toll in terms of untreated cancers, psychiatric conditions and the like arising out of the measures we have put in place. That is why we must keep the Government constantly accountable to these Houses. We can decry what happens in Westminster now and then but at least those Tory rebels had a real opportunity to express a view about the latest measures that are being taken in Britain, whereas in Ireland we are going on autopilot where the Government chooses and the most that can happen is an *ex post* opportunity to challenge what is going on.

On the question of the particular remedies in this legislation, it is the case they would be frightening to a publican or the owner of a licensed premises. They are tough measures but if someone was running a licensed premises in a way which was a danger to public health, perhaps tough remedies are necessary. We must also bear in mind some aspects of what is going on at the moment. Senator Ward will know that on the Main Street of Blackrock there is an open-air drink bazaar going on with not very much social distancing. Publicans in Blackrock are keeping an open-air fair going on selling drink in this Dublin area. I am against shebeens. I agree with the Minister that it is only fair that publicans should all be on the same level playing field.

It is extremely important that the Irish Government keeps up optimism and that the Oireachtas, in particular, operates so as to ensure that regulations are not put in place on a broad-brush basis which are having seriously damaging effects for which there will be no accountability in the end.

**Senator Robbie Gallagher:** I welcome the Minister of State back to the House. I, on behalf of the Fianna Fáil Party, will be supporting the extension of the sunset clause up until 9 June, with the current one due to expire on 9 November. This allows us to give gardaí additional powers to enter public houses, and private houses for that matter, regarding incidents of lawbreaking. It is not often we introduce legislation in this House where we hope it will not be needed. This legislation is an example of that.

Publicans deserve huge credit for the way they have conducted themselves throughout this entire pandemic. They did not have to wait for Government regulations or advice to close down their premises; they acted in advance of that. They deserve huge credit for the mature and sensible stance they took back then. Since then, they have gone through, like many others, a horrible time, both financially and every other way, because they have mortgages, families, children going to college and various expenses they have to meet. They have been through a very difficult time. They got some good news and reopened but before doing so they put their

hands in their pockets and spent a great deal of money making sure their premises were fitted properly and safely with the necessary materials to ensure the safety of people who visited their premises. They were just getting going and making a very good job of it when, unfortunately, they had to close again. I have huge sympathy for them. I sincerely hope we get to a point very quickly at the end of the current phase 5 restrictions where we can find a way that allows publicans, and many other businesses for that matter, to open their doors again in a safe manner.

I also wish to raise the issue of the gardaí. They deserve huge credit for the manner in which they conducted themselves since Covid-19 came upon us. I understand the Garda roster has been altered in such a way that more Garda personnel are now out on the streets during the day. That is clearly visible as we drive the highways and the byways of this great country of ours or as we walk down our streets. There is an increased Garda presence. That is a positive aspect. If one positive was to come out of Covid-19, it is that the additional personnel on the ground during peak times has allowed the public, in many ways, and the gardaí to reconnect again in a manner that has been a hugely positive experience not only for the gardaí but for the general public. The manner in which the gardaí have been selling this message has allowed the transition we are currently going through to go very smoothly. They deserve great credit for that.

As we move on and, hopefully, get out of level 5 as soon as possible in a safe manner, it is incumbent on the Government to analyse - we are always learning about this disease - and learn from the areas where we can relax the regulations and rather than use a sledgehammer all the time that we would be a bit more discreet and directive in how we ask businesses to conduct themselves going forward. We are all learning that many businesses can successfully trade and open and still adhere to the regulations. We need to move to that space very quickly.

I agree with this legislation. I am heartened to hear from the Minister of State that the Garda is more or less saying it has not as yet used this legislation. I am not surprised because the vast majority of publicans are very sensible and public-minded individuals. I compliment them for that. I am happy to support this legislation and bring it forward to the House.

**Senator Ivana Bacik:** I welcome the Minister of State to the House. I also welcome the opportunity to speak on the motion to extend the legislation which we debated in the House barely two months ago. I checked and we debated all Stages on 10 September. It was unfortunate at that point that we were debating all Stages in one day. There have been several different occasions on which we have had that experience. We did not, however, oppose the Bill on that occasion but we did put down amendments. On behalf of the Labour Party, I spoke about our concerns as to the powers it contained.

We all recognise there have been high levels of compliance. It is useful the Minister of State's speech contained the figures on enforcement. Clearly, licensed premises have shown high levels of compliance. I noted the Minister of State said nothing has changed in regard to the virus in the two months. We have all perhaps become even more aware of the threat Covid-19 poses in the two months since. What has changed is that licensed premises are now all closed and we have moved back to a level of lockdown not experienced since the spring and early summer. There is the welcome difference with level 5, however, in that schools and childcare facilities have remained open.

We have seen the threat building across Europe to the point where we are seeing much higher levels of restrictions in place across different European countries than were in place in September. Perhaps in September we had a different view of how we could experience living



with Covid-19 than we do now. What is more pressing and what has changed is the urgent requirement for a clear and coherent exit strategy to be put in place. It must be a strategy beyond simply rolling levels of lockdown, rolling periods of restrictions on businesses and our lives with the ongoing effect and impact that these have on people's mental and physical health, as well as on our economy and our society.

On 23 October, when we last debated an extension of special powers by the Government, I said we needed to see that exit strategy built on an investment in rapid testing, increased resources for contact tracing and a much greater commitment to an all-island strategy. What has changed in two months is that we have seen frightening levels of infection spreading rapidly across Northern Ireland. There is now a far greater clarity about the need for an all-island strategy. We need to be looking at an approach which has been adopted successfully in democracies such as Australia. Other colleagues spoke earlier about Taiwan. We need to look at countries which have adopted a much clearer sense of purpose around an exit strategy and a zero-Covid strategy where the virus can be suppressed to a point where any outbreaks can then be rapidly contained when one has investment in rapid-testing and contact-tracing strategies. That approach has to be taken on an all-island basis. Otherwise, we will be faced with an endless series of lockdowns and endless extensions of different restrictive procedures.

We did not oppose the Bill in September, despite our misgivings and concerns. We will not oppose the extension of powers today. However, we support the amendment to shorten the period for which the powers are to be extended. An extension to June is too long. We should look at coming back to the Houses in February, not because we think the threat of the virus will have been eliminated. It will absolutely not be the case. Sadly, none of us thinks that any more. We are all cognisant that this threat will remain with us well into 2021. It is because we recognise the need for the parliamentary scrutiny of extensions of powers. That has to be acknowledged.

It is disappointing that the Government did not see fit to accept the amendment. In any other setting, these would be seen as draconian powers, along with the powers contained in the other emergency legislation which we have passed. We have not seen, unfortunately, similar lengthy extensions on, for example, the ban on evictions. We have not seen the introduction of statutory sick pay, which the Labour Party has called and pushed for and the need for which has been acknowledged by the Government. For all of these reasons, there should be a shorter period of extension, although we will not oppose the principle of the extension of the powers given the threat, which is an international one, we all face.

Colleagues have spoken about the US election. As we all await the hopefully imminent declaration of President Joe Biden - again, that sounds good - the Covid context of the US elections has had a significant impact on the way in which people voted there, for better or for worse. It will be a massive challenge for incoming President Biden to deal with.

We have seen extraordinarily high levels of compliance from licensed premises, the subject of this legislation. That has to be commended. The way in which the Garda has approached policing and the use of draconian powers has also been commendable. All of us recognise that the Garda has not gone in with a heavy-handed approach. It has recognised that our best way of dealing with Covid and bringing infection rates down is through public buy-in and social solidarity across communities, not through the heavy-handed or crude instrument of criminal law.

**Senator Niall Ó Donnghaile:** I move amendment No. 1:

To delete “9th day of June, 2021” and substitute “9th day of February, 2021”.

**Senator Michael McDowell:** I second the amendment.

**Senator Niall Ó Donnghaile:** I welcome the Minister of State and this debate. Talking is a good thing. Reviewing is a good thing. Engaging in the parliamentary process is a good thing and that is the purpose of this amendment. It is to bring what are essentially emergency powers back to the Oireachtas in order for these institutions to have the opportunity merely to review, reassess and provide the Government, as well as both Houses, with a punctuation point at which to look at these powers again.

Senator Bacik got to the nub of the issue when she said these powers are in place. We have had the debate and the discussion around the elements and nature of the said powers. The amendment seeks to give us a breathing space to review them.

I concur to a point with Senator Ward in that none of us expects to be through the worst of the Covid-19 crisis come 9 February. That is not what this amendment is about, however. We had extensive contributions from colleagues across the House on this morning’s Order of Business, talking about the real need to live with the Covid-19 crisis. This is an evolving development and changing situation. The sunset clause in February would allow us to react to the changing and evolving nature of that situation in a much more convenient, sensible and earlier fashion. In any crisis, particularly one of health and epidemiology such as this, I cannot see the logic for opposing a review of these powers in February.

I do not want to labour the point. The amendment speaks for itself. Colleagues have carefully outlined the rationale for such a check. I believe there is a rationale to it. We could debate the merits of the powers, their draconian and emergency nature, compliance and the rest of it. At the heart of this has to be the ability afforded to us. Seven months to June is too long for these powers to go unchecked and unreviewed without that punctuation point.

On that basis, I hope the Minister of State and colleagues on the Government side will think again. This amendment is intended in good faith. It is intended with a real sense of sincerity because it would strengthen our ability collectively to deal with this crisis. No one is saying that these powers, as they currently stand, would end on 9 February. What would happen is that we would have the review. The Minister of State imagined the lowering of some of the figures. Senator Bacik alluded to the crucial need for further all-Ireland co-operation, co-ordination, responses, strategising and communication in dealing with this crisis, and I agree with this. I note the British-Irish Council met today and it was also a point coming from its plenary meeting. If we are serious about taking on board all of these points, working within the confines of the existing powers, bolstering all-Ireland co-operation and co-operation between these islands, then I hope that February gives us ample time to come back and, I hope, in a changed, reduced and improved dynamic we can look at the powers again. I hope the Minister of State will accept the amendment. Unfortunately, unlike my colleague, Senator Bacik, if the amendment is not accepted I do not feel Sinn Féin can support the unchecked extension of these powers for seven months into June next year.

**Senator Vincent P. Martin:** I do not wish to repeat the points that have already been made but a central acknowledgement is that An Garda Síochána has not issued, as has been said by the Minister of State, any closure or compliance order. On one level this vindicates the legislators who supported this two months ago and on another level we can say the Members of this

House and the Lower House who opposed it, some in colourful terms, are not vindicated and were wrong. I do not see them as being wrong. People are never wrong when they are vigilant. Who was to know there would be such buy-in to date? It is a significant emergency power that remains on the Statute Book. A cautionary approach is always the best. Stakeholder buy-in is very encouraging and I include the people of Ireland because they have not demonstrated a demand to tempt publicans into going down the road they ought not to travel.

I hear the calls and concerns of a number of Senators. The points are well made, in the sense I know it is an unfair question as to why June and it seems to be arbitrary and selected without consideration. If there was any justification for it, I would understand it. I cannot say why not February either. Less is more in this instance. As Senator McDowell mentioned, there is also the element of hope. I am a little bit more hopeful than some speakers. Perhaps in seven months' time there might be a way out of this, and I am not so sure about legislating today with a *fait accompli* that we are in it until at least the middle of next year, which we might be but I am not giving up on it and why should we?

I commend An Garda Síochána on the front line. I meet them most days on the way home. I am not sure whether the resources are best used by slowing up the traffic for such long periods of time. When I get to them I always have a chat with them and they are great and very pleasant and professional. There should be joined-up thinking, especially if there are roadworks on major motorways. Why put a Garda checkpoint a mile further up the road after disgruntled motorists have had to navigate through and waste time on roadworks? Why should they then meet a Garda Síochána checkpoint?

I hear the bona fide and genuine concerns with regard to emergency legislation and I feel that less is more. I would like to have seen more consultation before it was put before us. There seems to be no justification and because of this we feel June is a fair call. I have not seen compelling reasons it has to be June. I am slightly disappointed we have arrived at June but I understand the bona fides of the Government. Overall, there is movement in the right direction. I concur with a great deal of what Senator Ward has said. I have not seen an argument or compelling reason that it has to be June, apart from that kicking it into next year sounds good. We should not be so easy about kicking emergency legislation to seven months away. I am flagging this to the Minister of State. I know he is doing his very best, as is the Government, but I have a concern as to why we arrived at a date seven months hence.

**Senator Alice-Mary Higgins:** I have tabled an amendment to the motion that would also set a date of February. It is identical to the amendment tabled by Sinn Féin and when Sinn Féin presses its amendment I will support it. I want to be clear, because there have been a diversity of reasons put forward on this, that my reasons may be different from those of others in the House, including Senator McDowell. I do not propose a date of February because I believe that by any stretch we will have dealt with the Covid-19 crisis by February. We are facing a very serious situation regarding Covid-19. It would be irresponsible to encourage or chase in any part of the political system the narrative that has been put out by the potentially exiting President of the United States and others, which suggests things have been exaggerated and seeks to put a pejorative framing on health experts. Language such as “doom merchants” is not helpful. In fact, the greater concern we have had with regard to Covid-19 has been merchants. At points, including last June, when Ireland had lowered the number of cases to a point where zero Covid was in sight and a possibility, there was by the then Taoiseach and now Minister for Business, Enterprise and Innovation, Deputy Leo Varadkar, a decision to accelerate and move towards a more speedy opening of a variety of establishments. This was unhelpful. We heard the idea

that pessimism and realism are somehow a point, and that pessimism is the medical side and realism the economic side. Let us be clear; realism comes from the science. The Minister, Deputy Varadkar, was praising an optimistic policy in Belgium, which now sees more than 1,000 people in ICU and, potentially, cases having to be taken to Germany. It sees doctors and nurses who themselves have Covid-19 having to continue to work because the health system is at such a crisis point. In the United States we see that 250,000 people have died. I do not understate the crisis. If anything, the Government has itself understated and underinvested in the actions needed to address the crisis.

My concern and opposition to the June date is because I do not believe the failures have been from lack of powers for the Garda. There have been failures of policy. It has been a failure with regard to a quarantine policy and giving adequate isolation supports, particularly for people in congregated settings, be it residential care, direct provision or family hubs. There has been a lack of clear and proper systematic tracing and tracking, not simply looking forward to new contacts but looking back to where cases originated and making sure asymptomatic spreaders are identified and that there is support for people. Instead of putting individual responsibility on everybody when everybody has very different circumstances the State needs to step up the support for people who have shown a spirit of compliance. These are the failures.

Let us be clear that when the legislation was introduced it was so the pubs could open. It was not because there was a huge crisis of cases in pubs, it was to allow the pubs to open so that the Government could still say it was sending a firm message. We need to move past this type of messaging and get into actual action and policy. I want it reviewed in February not because I believe the Covid-19 crisis will be gone or that the virus will be gone but because I believe we will need to see whether it is contributing or simply an empty threat that has not been founded.

The Government is not allowed to have suspensions of rights just in case. Such suspensions need to be necessary. If what we are discussing is not being used and turns out to not be necessary, proportionate or relevant in February then, perhaps, we can allow ourselves to have a proper discussion about measures that might be more useful. It is appropriate that this be reviewed after three months. The Government has not earned a seven-month blank cheque in terms of yet more emergency powers. We want to see a shift in policy.

I must comment on mental health because the argument in that regard is being used a little bit. The mental health message to those many individuals in society who are at high risk or who have underlying conditions is to say that the convenience of society in general is more important than their survival. This is important. It is a negative mental health message to send. We need to be careful about how we use messaging relating to mental health. There are issues with mental health policy in Ireland to do with under-resourcing and they need to be addressed. Again, they can be addressed through policy.

I support the Sinn Féin amendment and, indeed, I will be pressing my amendment in which I suggest that February would be a more appropriate expiry date and would be more apt in the context of reviewing and scrutinising these measures. We can see if they are, in fact, assisting or evaluate what other, more appropriate measures might be needed to deal with the ongoing Covid-19 crisis. I have no doubt that it will still be with us in February.

**Senator Eugene Murphy:** I welcome the Minister, who is here to debate what must be described as a critical issue. I feel a little bit inferior sometimes in a debate like this because I

listen to such eminent lawyers as Senators McDowell, Bacik, Ward and Martin. It is fascinating to watch them go through this piece by piece. Some salient and important points have been made on both sides of the argument.

I do not even like the words “enforcement powers” any more than I favour the guillotining of debates on Bills, and I have said this before. I do not like that type of politics. Covid-19 has turned this world upside down. It has caused rancour, division and huge economic scars which we will only begin to see as we move forward. It has created a serious challenge to every government. Deciding how to handle it was not easy.

Even though I would not count myself as being as qualified as some people to speak thoroughly on this matter, I feel that, particularly with Christmas coming up, that the Government could not get rid of these particular powers on 9 November. Perhaps pushing them out to June causes concern to some. That is, however, the natural reaction of people who have been virtually locked away for much of 2020. In that context, it would be good if the number of people infected with Covid-19 and the number of deaths continue to drop. This is happening and it is positive, but there will be an understandable and natural reaction whereby people will want to break free.

I hear the debate about people coming home for Christmas. I shudder to think what is going through the minds of families whose loved ones are spread all over the world and who may not be able to get back home for Christmas. That would be extraordinarily sad. How do we tackle that eventuality and how can we assure people that we will be able to make some arrangements for families?

I listened to what Senator McDowell had to say. We must be careful with regard to Garda powers and so forth. As a result of travelling to and from work most days and speaking to gardaí, however, I must state that it is clear to me that they are doing a really excellent job. They are in conversation with the people. This does not involve a dictum or laying down of the law, it involves people conversing with gardaí to let them know to where they are travelling. Actually, I agree somewhat with Senator Martin regarding tailbacks. I have been caught in 6 km and 7 km tailbacks heading out of Dublin. By the time we leave here this evening, the tailback may be gone. If I encounter one however, it puts an hour and a half onto my journey. The point I wish to make is that when I am caught up in traffic that is moving at snail's pace a couple of kilometres back from the checkpoint, I notice the business people and the workers from County Mayo. I see the vehicles of the Lynch roofers from County Roscommon and the stonemason from Ballinasloe. All these lorries have their labels on them. Why are they being stopped? Common sense will tell a person that those people are coming to Dublin to do a day's work. We do not have much of it down in the west. That is where they get the work and then they go home.

Could someone not show a bit of imagination and divert such traffic past checkpoints via the slip roads along the route? Then, the officers manning those checkpoints could check whichever other vehicles they want. Would that not be a practical way to do it? If this was done, we would not have tailbacks. I can tell the Minister of State that some of the people, including me, who have to drive back from Dublin each day have to leave home at 5 a.m. or 6 a.m. and do not return until 10 p.m. or 11 p.m. People are extremely frustrated and tired at that stage of the evening.

I must really praise the work gardaí do and the way they talk to people. However, perhaps



somebody up along the line will take heed of what I say this evening and look at the possibility of implementing what I have suggested on all the motorways in order that we are not hindering people who have been so good. People have been so good. The majority of them have suffered but they know that the Government must act. I will openly state that the biggest complaints I had from members of the public were about why a particular pub was open and allowed to break the law and why the house parties were not tackled. To a degree, I agree with the powers to some extent. We need, however, to give something back in understanding the general public who have been so good in terms of co-operating with Government in all this.

To conclude, I often use the phrase “Short-term pain, long-term gain”. I am of the view that short-term pain will hopefully lead to long-term gain. If the Government adopts that strategy, then perhaps it needs to start saying to people that it will review the matter of the shooting season. I am not stating that it will decide to open it up but that it will review it and that it may consider extending it by a month into the new year. It is things like that which we must consider. We may, for example, consider allowing cattle buyers back into the rings because online trading does not suit everybody and does not suit older buyers in particular. The Government could, perhaps, say it will review that. We may review opening up golf or tennis in a week or two, not that too many people will play golf with the way the weather is at present. It is, however, all about giving a little.

While I do not like these measures, as a member of the Fianna Fáil Party, I will obviously support them. Perhaps, giving a little bit back may not be a bad idea.

**Senator Sharon Keogan:** I will also support the amendment to the legislation. The Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 was signed into law by the President on 11 September 2020. That date of September 11 - or 9-11 - struck me as somewhat ironic. This country and its people are being ruined and reduced to ground zero by the incompetence of this Government in managing the pandemic by means of effective policies. Untold damage is being done to the health and wealth of the people. Despite the Government advocating a living with Covid-19 approach, it is not allowing people to live. The living with Covid-19 plan is a lie and a fraud on the people. The Government has repeatedly singled out the hospitality sector to bear the brunt of restrictions without providing meaningful support to ensure businesses and jobs which were viable prior to the lockdown will remain so. The heavy-handed approach by Government in extending lockdown restrictions indefinitely and using the law to threaten people with harsh criminal sanctions must stop. It has not been proven to be proportionate or necessary. We are simply extending the suffering.

NPHET has claimed that infections were arising in pubs and restaurants. Can it produce solid empirical evidence and scientific data to support that claim? Can NPHET or the Minister of State provide data as to the number of hospitalisations, ICU admissions or deaths that have resulted from people making the choice to go to a bar or a restaurant of their own free will? Where is the evidence? Have we acquired any data from the European Centre for Disease Control and Prevention, ECDC, on how other countries’ bars and restaurants have remained open? Ironically, the ECDC headquarters is based in Sweden where they have genuinely chosen to live with Covid-19. There has been no evidence to date of the Garda imposing closure orders on any public house or restaurant under these powers so why would the Minister wish to extend this order?

I have addressed this House previously on the array of draconian emergency powers that have been introduced without any real debate or parliamentary scrutiny. The lack of debate is a

real concern and an affront to the people and to the democratic process. These lockdown powers shut down people's lives and their ability to earn a living. The enforcement powers dangle the threat of criminal sanctions over their heads if they do not comply. This is done with the claim of protecting them from a grave and imminent threat to their health. The provisions in question are due to expire on 9 November 2020 and the motion before the House is to extend them until 9 June 2021. Where is there hope for this nation with these measures the Minister is taking today?

Our leadership in this country has the public's support with words like "we might have a vaccine" or "maybe we will have a vaccine in 2021" but words like "might" or "maybe" do not give hope for the restoration of our freedoms and liberties. Nor will those words put bread on the table of the millions of people these decisions affect. The words "might" and "maybe" will not affect the 1 million people who are on our hospital waiting lists.

I have opposed the extension of the sunset clause and other draconian emergency legislative powers of a penal nature. I believe the extension of this sunset clause until June 2021 is legislation that has not proven to be warranted and I will be supporting the amendment.

**Senator Victor Boyhan:** I welcome the Minister of State, Deputy Browne, to the House. This has been a good debate on these matters but the reality is that the Minister is asking us to agree a proposal to extend these measures to 9 June 2021. I want to say at the outset that I fully support the members of An Garda Síochána in their challenging work in policing our communities but I also support the citizens, the greatest watchdogs of our communities, and their role in assisting An Garda Síochána with policing. Much policing is soft policing, soft information and open and good communication with An Garda Síochána at every level of its work. However, I want to share some stories with the Minister.

Last week, I had to contact An Garda Síochána in Dún Laoghaire where I had found, across the Dún Laoghaire-Rathdown County Council administrative area, people outside on the streets consuming alcohol and urinating it into the planters placed along the streets. The Minister of State may not know that Dún Laoghaire-Rathdown County Council has by-laws that prohibit the consumption of alcohol in public places. Having left here last night I was travelling through Blackrock and again I saw people all over the streets. There was no social distancing and no concern for the virus or for the health and well-being of citizens. People were sitting on walls and on the new temporary timber seats that have appeared everywhere, at a cost to the taxpayer, and planters for people to urinate in. We must remember that public houses are shut yet they continue to sell alcohol. Consuming alcohol in public places is in breach of the by-laws of our county. I visited Blackrock Garda station to express my concern and have yet to hear what will happen. I asked them to go out and enforce the law. All I was asking for was that the law would be enforced. We have a situation where from Booterstown to Blackrock, Monkstown, Seapoint, Sandycove, Glasthule and all the way up to Dalkey and Killiney people are consuming alcohol in breach of the law and with no regard to Covid-19.

We are being told by the Minister of State that the Garda needs extra time. They have these powers but I am not convinced that they are being used. I appreciate the gardaí are under-resourced, that they need more assistance and that these are difficult times to police this situation. I recognise also the importance of working with people in terms of administering the law. It is not the top priority when we are dealing with more serious crimes in our community and the challenges that face An Garda Síochána. It is important to put that on the record.

As my colleague and friend, Senator McDowell, said, we have a role as one arm of the Legislature, Seanad Éireann, to ask questions of the Government and to hold it to account in respect of its proposals and legislation. I have no difficulty supporting the proposals but I will be supporting the amendment. It is reasonable and fair that we look at this issue until February and, if it continues to be so important, come back and do it at that time.

The Minister of State must remember that we have to give people hope. I have heard many of his colleagues in government from various parties talk in both the Houses and on the national airwaves about the need to give hope to publicans, pub owners and restaurateurs and to try to help them. Any pub owner or restaurateur reading the report of this debate in tomorrow's national press will be disappointed because we are telling them we are working to have their premises reopened. If I were to read tomorrow that Seanad Éireann and Dáil Éireann had approved a provision for an extension until June 2021 I would be a little disappointed and my confidence would begin to be shattered.

On a number of grounds what the Minister is proposing is reasonable but I do not see any reason not to convene another meeting of both Dáil Éireann and Seanad Éireann in February to explain that a reasonable extension is needed. It is about respect for the Houses of the Oireachtas. It is about the importance of scrutiny of legislation. That is reasonable and fair. I therefore will support the amendment. I thank the Minister of State for coming into the House. I thank the other Members who have engaged in the debate. If the Minister is giving the gardaí more powers, we need to find out if they are using them, if they need them and the difficulties to date. We do not have much information on any setbacks, challenges or problems with the powers they have had to date.

**Minister of State at the Department of Justice (Deputy James Browne):** I thank the Senators for their contributions on this resolution. We had a very good and wide-ranging debate and everybody who wanted to contribute was able to do so.

I will start by addressing the amendment put forward, which effectively seeks to change the extension in the sunset clause from the one proposed by the Government to a date in February. A similar amendment was put forward in the other House and rejected. I cannot accept the amendment in this House. All of us need to be realistic. Covid-19 will not be a thing of the past within the next three months. Even if we have suppressed the virus in the new year and a vaccine becomes available, and I certainly hope it does, it will still be months before it is rolled out to everybody across the country. That is the reason the Government introduced a recovery and resilience plan for living with Covid-19. That lasts until the summer of 2021. The Government is proposing 9 June 2021 because we do not want to be having the same debates in both Houses every few months when nothing materially has changed and we are effectively in the same situation. There is more important work to be done in this House than repeating debates every few weeks that may not be regarded as the best use of time when nothing materially has changed.

I wish the situation was different. I wish that such measures were not necessary. While it is hoped the situation will improve soon, we have to base our proposals in reality. We are trying to give people certainty and a realistic view of where we might be next year. We are also trying to give people clarity by aligning the dates of the various instruments to each other to ensure people will have that clarity in terms of where they are under the various regulations when they apply. Therefore, I do not accept the amendment to the resolution.

I welcome the comments from Senator Ward. He acknowledges that there is no realism to

the idea of Covid-19 effectively being removed or successfully dealt with by February. I certainly hope that it will be dealt with by June but there is no certainty to that. We can have this debate again in June if the measures need to be extended further. I hope they will not be but there is a real possibility that they will be needed.

As Senator Ward pointed out, not a single closure order has been made. This has not proven to be draconian. It has been in place to change people's behaviour, and that has been done successfully. Before these rules came in, gardaí noted and commented that when they attended to the small minority of publicans who were not adhering to the spirit of the law, they took the view that they could have taken action there and then but some of those publicans would simply have repeated the same challenges to the regulations as before. This has not really been happening since the regulations have been in place. The Garda Commissioner is satisfied that they have a purpose and that they are successful in changing people's behaviour.

I listened to the comments of Senator McDowell. I accept absolutely that the Government must be kept to account for all these emergency measures. These are extraordinary powers - I accept that. The rationale requiring these powers will still be with us in February. That is the aspect of realism to this. June is a rational date because it aligns with the other regulations in place. I expect that if there is a situation whereby these regulations are not needed at any point between now and June, whether by a natural result or through vaccines, they could be removed and I expect that they would be removed. Until such a time, I believe June is an appropriate date.

Hope is always necessary. Hope is very important, but as with Trump, hope sometimes veers into something purely based on faith. At times, at the start of the pandemic, there was hope based on delusion. There is a fine balance to be found. I absolutely accept that people need hope. We must be optimistic as a country, a Government and a Parliament. However, in terms of governance, that optimism and hope must be based on evidence and realism. There is always a balance to be found in that sense.

Reference was made to discussing the issues in the debate. The Minister for Justice, Deputy McEntee, stated in the Dáil that she is happy to go before the Joint Committee on Justice or any committee to further debate this at any time. If a request is put in, she will do so.

Senator Gallagher raised the issue of publicans and the serious situation they are in. Before going into the law I studied at DIT Cathal Brugha Street and worked in the hotel and catering industry. I worked in bars and in other parts of the hotel industry for 13 years. I am keenly aware of and understand the suffering publicans are going through at the moment. They are all shut at the moment so to a certain degree these rules are not going to be imposed. They apply to all the pubs that have stayed shut. I heard Senator Gallagher's comments on the greater need for flexibility. Certainly, the Garda has shown flexibility and understanding with a rationale.

Senator Bacik referred to the high level of compliance. These regulations were only ever needed for a small minority of publicans who were simply not adhering to the rules. When the Garda Síochána approached a minority of them, they simply would not comply. I believe the regulations are needed, but no closure orders have been given. Aligning the regulations to June with the other regulations gives us clarity. Often with a problem where we try to give more nuance it can lead to more confusion. There is a balance between finding flexibility to support as many parts of society as possible and not creating further confusion. I agree we need a clear exit strategy. We need to learn from every jurisdiction that has brought in rules and where they

have been successful. Senators have mentioned the measures in Australia and Taiwan used to suppress the spread as much as possible. We have an open Border with the Six Counties. That will always represent a challenge - I will not use the word “difficulty” because I want to see a date when we have a 32-county republic in the country. That is the reality of it. I note the comments from the Senator about gardaí and the great work they are doing.

Senator Dooley raised several important points. The powers are in place. They were extensively debated on the previous occasion. The primary purpose is to change behaviour and I believe they have done that. That has been acknowledged. No premises have been closed down. The key issue is the time for review rather than the actual emergency regulations that are needed. They are needed for the moment. They will be removed as soon as they are no longer necessary. Again, for the same reasons, I believe June is the appropriate date, but I appreciate all the contributions on providing an alternative date. They are well made and genuine and have a good rationale behind them. It is a question of judgment whether it is February, March, April, May or June. I have articulated the rationale we have put forward.

Senator Martin referred to how vigilance is important. I agree that a cautionary approach is always best. Senator Martin raised some concerns about consultations. The Minister, Deputy McEntee, has invited the leaders of the various parties for a discussion on this issue. The Minister has stated that during this period of the extension she is happy to go to the Joint Committee on Justice or any committee for that matter for further consultation. In fairness to the Minister, she has always been amenable to discussing any issue under her remit.

Senator Higgins raised several important points. With Covid-19, policy is critical but ultimately we will not defeat Covid with policy. We either need nature to remove it, which is highly unlikely, but it is always something we can hope for. Otherwise, we need a vaccine to get it under control. We all have to hope for that.

Senator Murphy rightly praised the people and all the sacrifices they have made. No matter what sector they are in they have made fantastic sacrifices. It has only been a small minority who have not co-operated.

A number of people raised the issue of mental health. As a former spokesperson for mental health I know they have made a serious and important point. I wish to make one statement on this for people. Social distancing does not mean social isolation. We already had an epidemic of loneliness in this country before Covid-19 and now it has been exacerbated. I have talked to various people who deal with day care centres for people with disabilities or older people. They said when they started to open up these centres in September or October they were ringing people. People rang back and the nurses and support staff said they could not get them off the telephone. In some cases it was the first telephone call or conversation the people had made in weeks. Much has been done in the area of mental health but more needs to be done.

Senator Keogan should note I am absolutely not targeting any sector or industry in this country. The decisions are being made based on policy, which is in turn based on evidence. It is based on people’s activities. That is where the levels come in. The assertion that no supports are being given was made. A total of €20 billion extra has been put into the State this year and €20 billion will be put in next year. This is an unbelievable and unprecedented level of funding and supports being put into the State. To say the supports have not been put in place is without foundation.



Reference was made to free will. Unfortunately, Covid-19 does not recognise free will. Again, I hope it is removed as soon as possible. Reference was made to a complete lack of debate. These measures were debated extensively when they were first brought in. This was debated in the Dáil this week. It is being debated in the Seanad today. The leaders were invited to meet the Minister for Justice, Deputy McEntee. She is available to attend a committee if anyone requests it. Any allegation of a lack of debate is completely without foundation.

I listened to the comments of Senator Boyhan. The point is that a small minority of people are consistently breaking the rules. That is the reality of life. It is always a small minority who cause the most damage in our society. We need always to find a balance to address that inasmuch as possible.

I have tried to address as many points as possible. I recognise all the contributions from the Senators are well made and genuine. I understand the rationale. These are serious powers. They should only be left in position for as long as necessary. While we may not agree on all points, I know every Senator in the House agrees that we must do what we can to protect the public from the virus. This includes protecting the health of licensees as well as their staff and customers. I know the Members of the House believe in fairness. These enforcement powers are about fairness and ensuring that all licensees play their part in the national effort. The Garda has acted sensibly and avoided using its powers to date, and I believe absolutely that approach will continue. I thank the Senators for the debate.

Amendment put:

The Seanad divided: Tá, 12; Níl, 26.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Boyhan, Victor.	Buttimer, Jerry.
Boylan, Lynn.	Byrne, Malcolm.
Gavan, Paul.	Carrigy, Micheál.
Higgins, Alice-Mary.	Casey, Pat.
Hoey, Annie.	Cassells, Shane.
Keogan, Sharon.	Conway, Martin.
McDowell, Michael.	Crowe, Ollie.
Ó Donnghaile, Niall.	Cummins, John.
Sherlock, Marie.	Currie, Emer.
Wall, Mark.	Daly, Paul.
Warfield, Fintan.	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Kyne, Seán.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.

*Seanad Éireann*

	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Alice-Mary Higgins and Niall Ó Donnghaile; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Question put: "That the motion be agreed to."

**Senators:** Vótáil.

**An Cathaoirleach:** Will the Senators claiming a division rise?

*Senators Paul Gavan, Fintan Warfield, Niall Ó Donnghaile and Lynn Boylan rose.*

**An Cathaoirleach:** As fewer than five Members have risen I declare the question carried. In accordance with Standing Order 61 the names of the Senators dissenting will be recorded in the Journal of the Proceedings of the Seanad.

Question declared carried.

The Seanad adjourned at 5.55 p.m. until 10.30 a.m. on Tuesday, 10 November 2020.