



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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## SEANAD ÉIREANN

*Déardaoin, 3 Nollaig 2020*

*Thursday, 3 December 2020*

Chuaigh an Cathaoirleach i gceannas ar 09.30 a.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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### An tOrd Gnó - Order of Business

**Senator Regina Doherty:** The Order of Business is No. 1, motion regarding the arrangements for the sitting of the House on Tuesday, 8 December 2020, to be taken on conclusion of the Order of Business, without debate; and No. 2, Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 - Committee and Remaining Stages, to be taken at 11 a.m.

**Senator Malcolm Byrne:** Five years ago, the Paris Agreement on climate change was signed. Yesterday, three reports were published, which I read last night. Their findings did not help me to sleep. These were the World Meteorological Organization's State of the Global Climate 2020 report, the UNESCO report on conservation of nature and *The Lancet* report on health and climate change. I will outline why some of the findings are particularly frightening. It has emerged that global emissions must fall by 7.6% each year from now until 2030 if we are to remain below the 1.5°C increase that is necessary to avoid some of the disastrous consequences we keep hearing about. Arctic sea levels were at record lows in April and August.

This year, there have been 30 named Atlantic tropical storms and hurricanes, which is another record. Just like Covid-19, we found that vulnerable groups are now most at risk from climate change, particularly the elderly and those with respiratory diseases such as asthma. Conditions conducive to the spread of diseases such as malaria and dengue fever continue to develop. In the south Pacific region, the conditions for malaria have now spread to an area that is 150% greater than it was in the 1950s. We have seen the stories internationally about droughts and wildfires. Here we have seen particular challenges with floods. Climate change now threatens one third of the world's natural heritage sites. People know about the Coral Reef. Those who know Australia will be very familiar with the Blue Mountains, where much of the natural heritage is under threat.

I know the Government is making major moves with regard to clean energy sources and the introduction of the just transition programme which we have mentioned in this House. The Joint Committee on Climate Action under the chairmanship of Deputy Leddin is doing

excellent work on the climate change legislation. However, I do not think we are taking this seriously enough. The recovery from Covid-19 presents us with an opportunity to address the greatest existential challenge we now face, namely, that of climate change. It is not enough for just the Joint Committee on Climate Action to debate these issues. The Dáil and Seanad should debate climate change. We should have an approach to it similar to the approach to Covid-19 both nationally and internationally. This threatens our very existence. In the five years since the signing of the Paris Agreement, there has, unfortunately, been very little progress.

**Senator Sharon Keogan:** I also wish to talk about environmental protection. We can all agree that environmental policy and legislation are vital to protect the environment not just for the sake of the 7 billion to 8 billion people inhabiting this miraculous blue planet of ours, but also for our children and for generations to come. Rigorous implementation of environmental policy and legislation is certainly good and is arguably an ethical and a moral obligation. A clean environment promotes and maintains the health and well-being of communities and individuals, consumers and workers. It is also important for the aesthetics and reputation of Ireland's tourism industry, a vital part of our economy which provides employment for approximately 265,000 people.

In such circumstances, it is imperative that we protect the environment in order to ensure long-term sustainable economic growth. We all have a part to play in protecting the environment in our daily lives, our choices and actions. However, the statutory role of environmental protection and environmental law lies with a range of Departments, 34 local authorities, An Garda Síochána and several agencies. The principal regulator and enforcement body is the Environmental Protection Agency, EPA. Does the Minister for the Environment, Climate and Communications, Deputy Eamon Ryan, believe that the EPA has all the powers and resources it needs to implement and enforce environmental law in Ireland? I have my doubts. Every year, we pay tens of millions of euro to the EU to avoid harsher fines for failing to comply with our environmental obligations as a member state. This could become billions by 2030 if we continue to breach our greenhouse gas emission limits. Every year, we see reports of our land and waterways - the land that feeds us and the water we drink - being polluted with untreated sewage and effluent from industry and agriculture.

On the topic of fines and the principle that the polluter pays, which is at the heart of environmental law, are those who pollute in Ireland paying to the same extent as polluters in neighbouring countries? To give one example, the document I have before me shows that airlines in the UK have been hit with fines of £132 million for failing to meet emissions trading system rules. What has the Environmental Protection Agency, EPA, done to ensure our airlines are complying with these rules? The Minister needs to look at and address the issue of pollution and at the EPA's effectiveness in combating it immediately.

**Senator Ivana Bacik:** I thank all colleagues who spoke last night and who supported the Labour Party's Private Members' Bill on citizenship. I very much appreciate colleagues' support in ensuring the Bill makes further progress. I look forward to working with the Minister for Justice, Deputy McEntee, to ensure we have time for this early in the new year. I thank the Leader for her personal commitment to ensuring that Government time will be made available for that. On behalf of all my Labour Party colleagues, I thank everyone for their support. There was real agreement on the need for legislative pathways to citizenship for children born in Ireland, which we will work together to achieve. It was a good evening for the Seanad. We saw the best sort of constructive co-operation and collaboration on legislation.

Today is International Day of Persons with Disabilities, which I am wearing a purple jacket to mark. The theme for today is that not all disabilities are visible. I have just come from a wonderful meeting of the Joint Committee on Disability Matters at which we heard powerful presentations from Special Olympics Ireland and the Trinity Centre for People with Intellectual Disabilities. We heard from Margaret Turley, a basketball player with Special Olympics Ireland and a brilliant presenter, who gave us a really strong sense of the importance of ensuring that organisations like Special Olympics Ireland are supported and that the enormous contributions persons with intellectual disabilities make to society are recognised, acknowledged and affirmed. Perhaps we could have a debate on the need to pass various measures to fully implement the UN Convention on the Rights of Persons with Disabilities in the new year. That is the issue on which the committee is working. It is a new joint committee on which many colleagues from across the House sit. The work we are doing is very important in seeking to ensure that Ireland becomes a better place for persons with disabilities to live. I ask that we celebrate International Day of Persons with Disabilities today.

**Senator Pauline O'Reilly:** It is interesting that two of three previous speakers spoke about climate and environmental matters. It shows the importance of these matters to the House. It is something we can forget about but which we must put on the agenda, in some shape or form, every day. I would look for a way to include it in our business every week in the future.

Last night, I attended a public meeting at which I was one of three panellists, along with Professor John Sweeney and Ms Sadhbh O'Neill. We were discussing the Climate Action and Low Carbon Development (Amendment) Bill 2020. As Senator Byrne quite rightly said, this is not just a matter for the Joint Committee on Climate Action. Five Members of this House, Senators McGahon, Dooley, Higgins, Boylan and I, are members of that committee, in addition to the Deputies and the Chair, Deputy Leddin. At the moment, we are meeting for two to three hours every single day. We are now in the eighth week of our scrutiny of the Climate Action and Low Carbon Development (Amendment) Bill 2020 so if I have been missing from the Chamber more than usual, it is because of the amount of work we are doing. All of these meetings are being held in private session but this work shows the commitment of the Government in respect of climate action. We need to bring the debate out into the public so that everyone will know that this work is critical to us and that the reason it took so long to agree the programme for Government was that we hammered out the detail. This Bill was a key part of that.

It is now for us to deliver. I hope the Bill will come to the Seanad first and that we will have proper debates on it but I also believe we need a proper opportunity to debate it in the House. I thank Senator Byrne for raising the matter today because it is a good opportunity for us to deal with the issues facing our planet and our children. We talk about how our children are affected by Covid. This is a crucial issue for our children. We are looking down the barrel of an existential crisis. According to the World Meteorological Organization, this is set to be one of the three hottest years on record. We have not been doing what we should. We are seeing record levels of deforestation in Brazil under Jair Bolsonaro, which raises the issue of international climate justice. It is a great opportunity for us all to debate the issue. I thank the Senators and the Leader.

**Senator Paul Gavan:** I agree with a number of previous speakers on the issue of the environment. The suggestion that the Bill could start here is an excellent one. It would benefit from constructive cross-party discussion and debate.

I will raise two issues briefly, if I may. The first relates to student nurses. I will quote the

words of a student nurse, which I read late last night.

Just home from unpaid 13 hour shift. I struggle to reach my learning goals on placement because I am carrying out duties that should be carried out by a paid staff member. I am working not just learning and govt just doesn't value that. Is it any wonder we all want to emigrate?

That is quite a stark message. An issue was pointed out to me that is worth noting. Apprentices to electricians, plumbers and so on, which are male-dominated professions, get paid while they learn. I have no doubt that if nursing was a male-dominated profession, we would not be talking about this issue now because it would have been solved years ago. I am at a complete loss as to why the Government has not dealt with this issue to date. It occurs to me that it must be because of a lack of political will. We have been talking about it since the beginning of the pandemic and yet, nine months on, these nurses are still working for free. It is a shameful situation that requires action. I ask the Leader to insist, on what I hope would be a cross-party basis, that this issue is tackled as we enter the crucial months of December, January and February.

The second issue I wish to raise is that of Shannon Heritage. This is again a matter which has received cross-party support in recent months. In August, the Minister for Public Expenditure and Reform told us that €2.6 million had been allocated to Shannon Heritage to keep key sites such as Bunratty Castle and King John's Castle open. That was not the case, however. We were subsequently told by the management of the Shannon Group that actually only €550,000 of funding had been allocated. We now know that both Bunratty Castle and King John's Castle, which is a prime site in Limerick, will close on 31 December and their workers will be laid off until at least Easter. This goes entirely against what we were promised by Government Deputies. The staff and union representatives feel absolutely betrayed. "Betrayed" is the only word I can use in this regard. I do not think a city like Dublin would accept the closure of its key sites. The people of Limerick certainly will not accept the closure of King John's Castle. It strikes me that this issue shows a lack of commitment to the west and Limerick.

It also frustrates me that, to date, Sinn Féin is the only party which has called for Shannon Heritage to be removed from the Shannon Group. Privately, a number of Deputies from other parties have said it is the right thing to do. We are calling for its transfer to the Office of Public Works. We can see that Clare County Council has no problem keeping the Cliffs of Moher site open all year round. There has been a series of failures and broken promises from Government. I ask for a debate on the matter.

**Senator Lynn Ruane:** I propose an amendment to the Order of Business, that No. 4 be taken before No. 1. On behalf of the Civil Engagement Group, I am today introducing the Deportation Moratorium (Covid-19) Bill 2020. This will be taken in our Private Members' time next week and I call on all Senators to support it. The Bill is very straightforward. It would implement an emergency moratorium on the deportation of refugees and migrants from the State for the duration of the Covid-19 pandemic and for as long as general measures restricting movement and travel are in place. The principle underlying the Bill is very simple. Since the beginning of the pandemic, international travel has been identified as a key source and transmitter of the Covid-19 virus. It is Government policy to restrict the movements of people coming into, travelling within and leaving the State to restrict the spread and incidence of the virus. However, this policy has not been extended to those seeking refugee or legal migration status. Deportations have continued unabated throughout the pandemic. Ireland has drawn international criticism and scorn for relying on migrants in our health service to combat the virus and

then issuing them with deportation orders after a few short months. It is frankly hypocritical for the Government to tell people that international travel is too dangerous on the grounds that they may spread the virus while at the same time forcing vulnerable refugees and migrants to leave the State and return to potentially less stable or safe jurisdictions, thus endangering their own health and global efforts to reduce the spread of Covid-19. If international travel is off the cards it must be so for everyone, particularly for vulnerable migrants. Our Bill is timely emergency legislation to support those in need of protection and I call on all Senators to support it next week.

**Senator Martin Conway:** In response to Senator Gavan, I note that I have publicly stated that Shannon Heritage should be moved to the Office of Public Works, OPW. A debate on the issue would be welcome.

I stand today to mark International Day of Persons with Disabilities. That day has been marked on 3 December for many years. It gives us an opportunity to reflect on what needs to be done and on what we have achieved. When I was first elected to this House in 2011, Ireland was marked by inequality. There have been many positive developments for persons with disabilities. In life I have always tried to be positive, speak positively and think positively. We have ratified the UN Convention on the Rights of Persons with Disabilities, UNCRPD. This hugely momentous step was taken by the then Taoiseach, Deputy Leo Varadkar, in 2017. We now have an Oireachtas Joint Committee on Disability Matters to monitor the implementation of the UNCRPD. This is absolutely appropriate because we must also ratify the optional protocol to the UNCRPD. I note that the committee includes Members of this House.

For four years a Minister of State with responsibility for disability issues, in the person of former Deputy, Finian McGrath, sat at the Cabinet table. I pay tribute to him for what he achieved during that period. The most recent budget saw the biggest financial supports ever allocated to realising equality for persons with disabilities. Finally, under the stewardship of the Cathaoirleach, this House voted in the past four years to give State recognition to Irish Sign Language. It is great to see interpreters at all the Covid-19 briefings. That service needs to be extended. There should never be a Government briefing on any issue without these interpreters. There is a lot more to be done. In the new year, I would like the Leader to invite the Minister for Children, Equality, Disability, Integration and Youth, Deputy Roderic O’Gorman, to the House for a debate on disability, so that we in this House can support the work of the Oireachtas Committee on Disability Matters.

The theme of this year’s International Day of Persons with Disabilities recognises that not all disabilities are visible. I wish all persons with disabilities in Ireland and the world an enjoyable day. I would like them to view Ireland, the world and the people in the Oireachtas who are fighting on their behalf in a positive light.

**Senator Lisa Chambers:** Last night there was a discussion in the Dáil on pay for student nurses. While I fully understand that politics were at play, there is a conversation to be had about how we can justify student nurses not being paid. That applies not just during the pandemic but beyond it. Electricians, plumbers and apprentices are all paid something during training. They do not receive a full wage rate but their work is acknowledged and paid for. The same should apply to student nurses. When this pandemic is behind us we need to have a conversation about how we can do this. Student nurses in hospitals may not do the full complement of professional work - they do not administer drugs or perform other tasks requiring training - but they are working extremely hard. Our health service relies upon them. It is no coincidence

that this issue remains unresolved for a predominantly female profession. I will work with my colleagues in Fianna Fáil to ensure this matter is resolved to the satisfaction of student nurses.

**Senator Gerard P. Craughwell:** To follow up on what Senator Chambers said, we need a wider discussion on those who are in training. The legal profession and the accounting profession exploit people to the very last during their training periods. We need to look after student nurses but we must also examine internships and training periods in which people are exploited.

I would like to thank the Leader's office. Yesterday I had difficulty in getting information on Covid-19 restrictions for a person in Cork. The Leader's office came back to me very quickly to tell me where I should go for the information. This brings me to another point. We need a searchable database for people concerned about how Covid-19 impacts them. The query I had concerned an outdoor Christmas market that was being set up in the south of the country. The organisers were told that only 15 people could attend the market at any one time. The person who rang me said this was absolute insanity in light of how busy Patrick's Street in Cork or Henry Street in Dublin are. We are trying to get to the bottom of this issue. Senator Byrne raised the issue of markets and how Covid-19 restrictions apply to them. We need clearer information for the nuanced areas that are arising.

Last night, we had a very good debate on higher education. I argued that the management and staff of Munster Technological University, MTU, needed their heads knocked together. I got a very quick awakening last night when someone asked me why the university is in the Workplace Relations Commission if the staff are at fault. Clearly management is not engaging with the staff. We are 30 days away from the establishment of MTU and it is before the Workplace Relations Commission today. That is wrong in every sense of the word. The management must engage and get that technological university up and running quickly.

**Senator Barry Ward:** I wish to raise the issue of non-geographic numbers and premium rate services, which are provided by various institutions, companies and organisations throughout the country. Non-geographic numbers begin with 1800, 1850, 1890, 0818 or 076. These are reduced-cost services, often those provided by State agencies. This week marks one year since ComReg stepped in to ensure that the costs of those numbers are deducted from mobile bundles. The way people use telephones has changed dramatically in recent years. Prior to 1 December last year, mobile companies would essentially charge extra if a caller rang the then Department of Employment Affairs and Social Protection or somewhere like that. That has changed, which is a very welcome development. We are also about a year away from 1 January 2022, when that will change again. The number of those prefixes will be reduced to just two; 1800 for freephone numbers and 0818, for fixed-cost numbers. This is to be welcomed.

We need to mount a communications campaign around this to ensure that certain people are aware of that change. I am thinking particularly of elderly people, who may be unaware of, or confused, by these numbers, and other people in vulnerable categories.

*10 o'clock* Perhaps even more important in this context are premium rate numbers, which can be exorbitantly expensive. There are 15 prefixes. They range from 1512, which costs 50 cent per call, to 1590 numbers, which cost €3.50 per minute. The text services that use these numbers are frequently advertised on various platforms. There must be a public information campaign on the costs of these services and the risk to phone users. Sometimes a cost is levied both for sending a text and receiving a text.

There is vulnerability here for lots of different sectors of society. We need to talk about

how we make sure that people know about the risks associated with premium rate numbers and provide clarification on non-geographic numbers.

**Senator Rebecca Moynihan:** It is very positive to see a number of Members of the House raise the issue of student nurses, which has been raised continuously by my colleague, Senator Hoey. Student nurses are the backbone of the health service and have been on the front line assisting us in the fight against this pandemic. It is also worth noting, however, that the fact that there is no payment constitutes a barrier to entry, particularly for people from working-class backgrounds. While we blame people for being unemployed, we do very little to help people be activated. The Central Statistics Office, CSO, released figures yesterday that show that unemployment has risen above 20% again, with younger adults most affected. An Irish Fiscal Advisory Council report released this week noted that the Government announced just a 20% increase in funding for labour activation measures, despite the fact that we have extremely high numbers in unemployment as a result of the pandemic and it will be difficult for people to find new jobs in the months ahead. We also have a worryingly high client-case worker ratio. The optimal figure is 150:1 but ours is 500:1. I would like a debate in the House on the issue of activation measures and the people who have lost their jobs as a result of the pandemic and who potentially will not be going back into the same jobs. This is vital if we are to get over this and get the economy back working. It is also vital for people to have access to resources so they are able to retrain and not be locked out of the workforce in the long term.

**An Cathaoirleach:** Is the Senator seconding the amendment?

**Senator Rebecca Moynihan:** Yes, I second the amendment.

**Senator Pat Casey:** I wish to raise the issue of the hospitality and tourism sector. I am disappointed to have to do so. The whole sector has been treated very badly this week. I have always called for any decisions made by governments to be based on the evidence. No evidence has been presented to our sector for the strategy the Government has taken. While I accept that public health has to be front and centre and the priority issue, there is now frustration about the Covid restrictions support scheme, CRSS. I was fully supportive of the CRSS when it was announced, but the more the details as to how it will be calculated and paid out evolve, the more frustrating it becomes. Now that the Government has decided to move to level 3-minus, or whatever it is, and hotel restaurants can open, hotels no longer qualify for the CRSS. This is having a horrendous effect on the industry and the people in it. We ask that we be allowed to open our doors to the whole country. We are prevented from doing that. It is allowed only from 18 December. We are asking people to come back to work for 20 days. We are trying to get staff to come off the pandemic unemployment payment, PUP, and to come back and work in our industry for 20 days, only to be told their jobs could be gone on 6 January. This makes it impossible to operate a business. We must consider the people this is affecting, especially at this time of year. We are asking people to come back to work at Christmas and to abandon their families but also telling them that, by the way, we will let them go on 6 January. This House needs a full debate on the hospitality and tourism sector. It is disappointing that our sector has not operated as one, be it the wet pubs, the dry pubs, the restaurants or the hotels. As an industry, collectively, we need to come together and form a stronger union because we have been mistreated during the pandemic. We were promised the data. We have never been given the data or the evidence to back up the Government's decision. The CRSS is just the final straw. This survival payment that was promised to the industry is now being pulled by bureaucracy and detail.

**Senator Emer Currie:** I raise the issue of admissions policies in primary schools in Dublin, as set out directly by the archdiocese. Unfortunately, public representatives, the Minister for Education and even boards of management in many cases do not have influence over this. There has been a break from the “sibling first” policy, and I for one am not in favour of it. Some families in Castleknock and Carpenterstown will find out this week that the younger children in their family may not be able to go to school with their older siblings unless the parents want to wait until their children are five and a half or nearly six. Can anyone who is a parent or who empathises with family life tell me the logic of this? It will potentially involve two school drop-offs and pickups, two sets of school rules for small children within the one house, two different uniforms, two different training days to be juggled, two different family contributions and raffles, two different parent-teacher associations, special occasions done in different ways and different dress-up days and Christmas concerts.

Whenever a small family starts to send the children to school, the parents really buy into the ethos of the school and think very carefully about it. I cannot explain the logic of this change because it is ludicrous to me. “Sibling first”, to me, means siblings first. It does not depend on age or undersubscription in the school. Parents know the appropriate age at which to send their children to school and when they are ready to go to primary school. We should be doing everything we can to keep families, especially those with small children, together in the same school rather than sending them to different schools. This is an additional and completely unnecessary stress for families. I urge Members to look at the admissions policies of their local schools and write to the archdiocese if those policies affect the people in their area.

**Senator Lynn Boylan:** I think most of us yesterday breathed a sigh of relief when we heard we were a step closer to a Covid vaccine, and we have been reassured by the Irish Government that it has a plan to roll out and administer it, that it will be free of charge and that there will be no issue obtaining it because we are part of an EU-wide procurement deal. This is all very welcome news, but I wish to spare a thought for the Palestinians because it seems that even in a pandemic Israel is, with the help of the EU, facilitated in continuing its apartheid system. News broke this week that the EU deal to procure the vaccine, the deal to which Ireland is a party, is cutting in the Israeli people but cutting out the Palestinians. The Israeli public health officials have counted only the number of vaccines required to vaccinate Israeli citizens, claiming that it is the Palestinian Authority’s job to look after Palestinian citizens. This is a breach of international law. The Geneva Convention requires that the occupying force take preventative measures to combat the spread of contagious diseases and epidemics.

After 13 years of an Israeli blockade, the Palestinian health system is on its knees. It has been starved of all the tools to combat Covid, including PPE, ICU beds and ventilators. This is nothing new. I visited Palestine after Operation Protective Edge and the destruction of Gaza and witnessed at first hand the discriminatory treatment of Palestinians. I spoke to terrified children who were forced to travel to hospital alone because their parents were prevented from getting permits, children who had lost limbs and who were suffering from cancer alone in their hospital beds. I also witnessed vital medical supplies being withheld from the Palestinians in a Red Crescent medical storage unit. That was six years ago, and the EU and Ireland are continuing to facilitate this apartheid. We have heard time and again that the virus does not care about borders, that it does not discriminate. Sadly, however, for the people of Palestine, the Israeli Government does. I ask that the Minister for Foreign Affairs show leadership and demand that the EU vaccine be given directly to the Palestinian Authority and that Palestinian citizens be facilitated with the vaccine.

**Senator Ollie Crowe:** I echo Senator Casey's views and support him. I also wish to discuss bars, gastropubs and restaurants. It seems absolutely ridiculous that we cannot leave our counties but the Government expects hotels the length and breadth of the country, including in Galway city and county, to have no supports. It is just not acceptable. The fundamental point is, as we are aware at this stage, that a main course has to be provided, it has to cost in excess of €9 and the preparation and commercial kitchen must be on site. I have no issue with that. I have been contacted by a number of councillors and employers. What I have an issue with is this: in County Galway, along the west coast and right across rural Ireland, there are many bars and restaurants that open seasonally, by which I mean that they open from April until September. As Senator Casey alluded to, their supports have been removed. Something has to change because that is not acceptable. Currently, as we are all aware, the tourists are not there, so the restaurants and bars cannot open. At this time of year, they are under pressure in the context of staff, namely, chefs and senior staff members. For those reasons, the CRSS needs to be revisited. I have contacted the Government, particularly the Minister for Public Expenditure and Reform, and I am hopeful that this will be dealt with as a matter of urgency in the coming weeks.

**Senator Aisling Dolan:** As colleagues have noted, today we celebrate the International Day of People with Disabilities. Many buildings are being lit up with purple lights and people are being encouraged to wear purple. The theme this year is "Not all Disabilities are Visible", and we see this often in the context of mental health and those who suffer traumatic brain injuries. It is about recognising that inclusion and accessibility are important for all of us in society in our day-to-day lives but also in our workplaces. I would like to pay tribute to accessibility groups such as Brothers of Charity and Ability West that run many organisations in the west of Ireland close to where I live. I want to thank the advocates who speak on their behalf and who have approached me many times with representations. Sometimes the things we can do to help are very simple and practical. For example, when those of us who have pets clean up after our dogs, it means that wheelchair users and those with prams do not have to clean them when they get home. There are many things that each of us can do at a practical level to help build awareness in the context of disability.

I also wish to highlight the importance of the rural regeneration fund. The deadline for applications from local authorities is coming up and strong applications have been submitted from Roscommon and Galway. The importance of the fund cannot be understated. It is crucial in the context of developing our towns and regions. Many of these applications are looking at matched funding. When local authorities are able to work with others to organise matched funding, this can only strengthen applications. In Roscommon and Galway, we are in a position to submit strong applications for the rural regeneration fund.

**Senator Alice-Mary Higgins:** I understand that the Bill which my group is putting forward next week has already been formally seconded, so I simply want to voice my support for it. During the Covid-19 pandemic, we have talked a great deal about solidarity and vulnerability. One cohort of people who are extremely vulnerable are those who have received letters informing them that they are to be deported and who face the prospect of being placed in unfamiliar situations. Senator Boylan spoke about the vaccine. While we may have the vaccine in Europe, we know that right across the world there are many countries that are struggling to find out how they will be able to source adequate supplies. The COVAX scheme is limited but needs more work regarding what the health supports might be in different countries. In that context, I am very proud to be co-sponsoring the Bill that we will bring forward next week.

Like previous speakers, I also want to highlight the UN International Day of People with

Disabilities. As a member of the special committee that has been set up to implement the UN Convention on the Rights of People with Disabilities, I think this is a particularly important UN day, because we are now at the beginning of a process of really implementing this convention and changing society as a result. The Seanad has a very proud record - as does the Cathaoirleach - on such issues such as leading in the recognition of sign language. The UN International Day of People with Disabilities is a day to celebrate those with disabilities, who are becoming visible and active in every area of life, and are shaping our society. It is also a day to renew our commitment to transforming society so that it is more inclusive. That is the job of work ahead of us.

**Senator Eugene Murphy:** In the Ballinasloe area, a number of residents were woken in the early hours of Sunday, 22 June 2020 by a low-flying aircraft. It has now been established that the aircraft belonged to the RVL Group, an English-based firm that specialises in aerial surveys. It was previously reported that the firm had completed survey flights over parts of Westmeath in the early hours of 4 November. Online flight records show that a Cessna 404 Titan registered to RVL Aviation took off from East Midlands Airport near Derby in England at midnight on Sunday, 22 June, and arrived over Lough Ree at 1.45 a.m. The flight passed over south Roscommon, including areas such as Taghmaconnell, Ballyforan, Creggs, Ballinasloe, and parts of County Westmeath. It returned to East Midlands Airport at 6 a.m. I have to say that the incident has annoyed, frightened and upset people. From my perspective, that type of manoeuvre, which upset families and livestock, should not be taking place in the middle of the night. An older man living across from where the aircraft passed over said he was up for most of the night and that the noise was particularly bad between 1 a.m. and 3.20 a.m. The Leader is very good at taking our requests back to the Cabinet, but I am not asking for a Minister to appear. I am asking her to contact the Department for Transport and those who have responsibility for air traffic control, because this type of manoeuvre should not be happening in the middle of the night, unless it is an emergency or there is a situation on the River Shannon that must be dealt with. This sort of flight in the middle of the night is totally unnecessary and it is very concerning for people when it does happen. Thankfully, it does not happen too often.

**Senator Victor Boyhan:** I am sure that many Senators heard on the RTÉ news bulletins and from other media outlets this morning about the publication of a report that was commissioned by Government, which has recommended legislative change. It recommends such change in the context of corruption, fraud and economic crime. This raises extremely serious concerns. The Hamilton review, which is the report in question, states that legislation is required to deal with the ethics breaches of former Oireachtas Members. That was reported in the hourly radio news bulletins between 6 a.m. and 9 a.m. It clearly presents a challenge for the Oireachtas. This report clearly needs to be the subject of a debate, when appropriate. I suggest that once it has been cleared by the Government and in various quarters, there should be a presentation on the Hamilton review and that the House should debate it early in the new year. If there is a suggestion that there is something wrong in the Oireachtas, then the Oireachtas should at least have some debate on the matter. When appropriate, and given that these kinds of reports must undergo a particular process, I am asking the Leader to keep the matter actively under consideration and for there to be statements and debate on it in the House.

**Senator Tim Lombard:** I want to speak about the current crisis in the local media sector. We all have local radio stations and publications based in our parishes. The pressure that they have been put under due to Covid-19 is immense. This is more of a rural issue than an urban one because the newspapers concerned are based in rural Ireland. They are part of the dynamic

there and have been for a long time. There has been a lack of credible supports to help them survive. Advertising has collapsed and is down by 60% to 70% from where it was previously. This is for the obvious reason that the businesses do not have the money. Circulation is under pressure because people do not want to go out. It is a ticking time bomb and, because of that, a debate is required as a matter of urgency. If we do not move on this issue in the next six to eight weeks, a number of titles that are important to the entire country could fail. That would result in a deficit for our society. This is an issue that needs to be addressed. I ask the Leader to invite the Minister to the House so that we can have a debate on the matter. She has proposed that a commission on the future of the media be established. That commission will be sitting again in the next few weeks. Its report has to be laid before these Houses in the next few months. Without that sort of interaction, unfortunately, in a short time, we will lose many publications and that will be a deficit for society.

**Senator Mary Fitzpatrick:** I also ask the House to recognise that today is a day we should all be mindful of those with challenges and who battle disabilities daily, and also their families and friends and the communities that support them. It is really important. We all have our challenges, visible and invisible, but today is a day for those with specific disabilities. We should all be mindful of them.

A related matter is those who care for people with disabilities. Many are carers, family carers and friends who care in an informal way, but also the nurses, midwives and those in formal care settings. The Leader raised this as a Commencement matter earlier this week and it is an issue of significant concern to my Fianna Fáil colleagues, and was discussed at length at last night's meeting of our parliamentary party. We need the Minister of Health to come to the House to address the treatment and value of our nurses and midwives and, in particular, student nurses and midwives. I understand he was dealing with other health matters yesterday and was in the Dáil to deal with the debate on a Private Members' motion, which was a political stunt, largely aimed at gaining political currency, but there is a sincere interest and commitment on all our parts to ensure that the nurses and midwives who have worked tirelessly and generously throughout the Covid pandemic, as they always do, are properly valued in our society and by Government. The Government has awarded a historic additional €4 billion in funding for the health service. I and my colleagues believe that all our nurses and midwives need to be valued not only with expressions of our appreciation but with financial reward and compensation. There will never be enough money to pay for the work they do and to put a price on that work is to cheapen it but fair is fair. I ask the Leader to again raise this with the Minister for Health.

**Senator Micheál Carrigy:** I concur with Senator Fitzpatrick's comments. We need to value our nurses, and I believe we do. It is important that the Minister for Health should come before the House to deal with that. The demand for a €100 registration fee, which was sent out to nurses in recent days, is another issue. It is only correct that this be waived for this year, at least.

The Forestry (Miscellaneous Provisions) Act was recently before the House. There is a crisis caused by the lack of delivery by the forestry division in the Department of Agriculture, Food and the Marine. We have reached a position where the entire industry is grinding to a halt. The Act was signed in October but the crisis has continued to deepen. Thousands of jobs, all in rural Ireland, are under threat. There are 495 jobs at risk in my county of Longford, including 250 jobs at Glennon Brothers, one of the largest timber manufacturing companies in the country.

It is clear that the Department has consistently not delivered on its stated goals to provide the necessary number of licences needed and has missed all its targets. The entire system is operating at one third of the required rate. The forestry appeals committee is still dealing with fewer than 20 appeals per week, rather than the 40-plus required to clear the backlog within the next three months. I ask that the Leader speak to the Minister for Agriculture, Food and the Marine to get the Department to deal with this or the industry will grind to a halt. We brought in the legislation and pushed it through the Houses to ensure it was in place but it is not being delivered on the ground. There are 12,000 jobs in the entire industry and nearly 500 in my own county. I ask that this be prioritised.

**Senator Garret Ahearn:** Currently, credit unions are unable to hold in-person annual general meetings, AGMs. There is no point in holding virtual AGMs because, without legislation being passed, they are unable to payout the annual loan interest rebate or dividend. The credit union in Clonmel, where I am from, has a dividend of approximately €1.7 million to distribute to members, which equates to between €200 and €300 per individual. It is always very welcome at this time of year. People spend it locally at Christmas time. It is an extra bit of cash that people need at this time. It is important that we bring through legislation to make it possible for credit unions to hold virtual AGMs that they might be able to distribute dividends. Will the Leader contact the Minister for Finance to ask that legislation be brought through as quickly as possible? I do not wish to over-promise that this can be done before Christmas in order that people could get payments before then, as that would be very tight. Nevertheless, it is a payment that people are very much used to and they really appreciate it. It is important that members are involved in credit unions. They give back a great deal to communities. It is no one's fault this has happened that they are unable to have a normal AGM. I ask that we would do something as a matter of urgency, for all credit unions but particularly for my own town in Clonmel.

**Senator Mary Seery Kearney:** Today is the UN International Day of Persons with Disabilities. I have just come from the Joint Committee on Disability Matters where we had an exceptional, inspirational and challenging meeting with Special Olympics Ireland, Trinity Pathways and WALK in Drimnagh on their incredible work.

Every Christmas, I look forward to the RTÉ news report of the children from Chernobyl arriving in Ireland. It is always very moving. On this day, when we remember disabilities, I wish to speak a little about them, because while they are not Irish citizens, they are part of our Irish family. They live in archaic institutions. They are loved, supported and wonderfully cared for by Adi Roche and everybody at Chernobyl Children International, CCI, and all its families and supporters.

People with disabilities living in institutions are the most vulnerable but their vulnerability has been exacerbated by the appalling combination of the pandemic and the political instability that surrounds them, which has caused extreme regression. Children who were once going to school and were supported by the life skills and restoration of rights programme run by CCI, now do not know their own names and spend their days rocking backwards and forwards. It is so sad. They will not get to Ireland this year because of the circumstances. CCI is sending a container and I will exploit my position by asking anyone who can to assist in paying to send it there so that we can send Christmas to Chernobyl with all our hearts.

**Senator Jerry Buttimer:** This morning, in light of the commitment of Government to extend supports in to the new year to assist businesses to reopen, the reopening of the economy

this week, notwithstanding Members' remarks, and acknowledging that the Covid restrictions support scheme, CRSS, the rate freeze, the VAT reduction, and the availability of the pandemic unemployment payment, PUP, I am tempted to propose an amendment to the Order of Business to bring in the Minister for Public Expenditure and Reform, Deputy Michael McGrath, but I will not. There are several reasons he should come in. The first is the public sector pay talks are beginning, if they have not started already. There was discussion this morning, rightly, on the role of student nurses. The public service stability agreement expires at the end of the year.

As I stated on the Order of Business earlier this week, the Irish Fiscal Advisory Council, IFAC, has raised the issue of non-Covid permanent spending of €85 billion along with the hiring of 17,000 additional public servants. To cap it all, this week, the Minister for Public Expenditure and Reform, Deputy Michael McGrath, said there is a possibility some adjustments in taxes will be needed. Is he having a laugh? Who is going to pay an increase in taxes? The ordinary worker is paying enough already. If there is to be an increase in taxation then we need to have a debate on fiscal policy, especially when the Minister is publishing the multiannual budgetary projections in April. I appreciate the work that Government is doing in this Covid-19 situation but let us not go back to the days of people refusing to pay water charges as the Minister, Deputy Michael McGrath, did when in opposition. We have an important job of work to do as a country. Increasing taxes for ordinary citizens that are struggling is not the way to go, in my opinion.

**Senator Regina Doherty:** There are plenty of issues for me to respond to today. I thank colleagues for all of the items raised which I propose to respond to working backwards.

I do believe there is a need for a debate on fiscal policy but whether it is beneficial to have it between now and Christmas is probably debatable. I will ask the Minister to come to the House for that debate but there is probably a variety of Ministers that need to come in for that debate. The world is an entirely different place today than it was when colleagues were debating the merits or otherwise of water charges seven or eight years ago. There are challenges arising not just from the costs that have been extended to support citizens in this country because of Covid, but the impact of those actions in terms of the way we do things, not least how we work, shop and live in the future, and on businesses. This demands that we have a debate on supporting industries, creating new industries and, probably, who is going to pay for all of that at the end of the day. I will try to arrange for that debate to happen when the House returns in the new year. It is not fair to put the entire responsibility on the shoulders of the Minister, Deputy Michael McGrath. We are all in this particular boat together and as Oireachtas Members we need to decide how we share the burden of what is going to be a challenge in the next couple of years. We are all very hopeful, notwithstanding the positivities that the vaccine is going to bring, that when society does reopen, it will be like the roaring twenties and it takes off. This might solve an awful lot of our problems and do a lot of the heavy lifting. A debate is required.

A number of Members referenced today being the UN International Day of Persons with Disabilities. The presentation given at the Joint Committee on Disability Matters this morning, as referenced by Senator Seery Kearney, must have been incredibly moving. People live with disabilities every day. There are different days during the year when we pay tribute not only to the people who support them, including their families, but the immeasurable amount of care given that is mostly hidden. It is not good enough that we only recognise that work on particular days, although it is very welcome that we do and that we are having this conversation today. Our actions show how we recognise and value people with disabilities and all of the people who care for them, be they organisations such as Fingal Prosper, WALK or anybody else. There are

organisations in all of our towns and villages that do great work. In introducing pensions for parents of children who are incapacitated and will never have the stamps to qualify for a pension, as provided for in the programme for Government, we show that we do not just talk the talk, but we walk the walk. It is important that we have a debate on this issue and I will try to arrange a debate with the Minister shortly after Christmas.

Senator Ahearn raised credit union difficulties. I did not realise there was such a big dividend in towns and villages. A sum of €1.7 million for the town of Clonmel is a sizeable amount and it would be very welcome if it could be spent there before Christmas. I might be speaking out of turn but there may be a possibility of introducing an amendment to the Finance Bill that has not yet been finalised. I do not know if that is possible but I will liaise on it with the Minister today and then we can talk about it again between now and next week.

Senator Lombard raised the issue with regard to our local media, local radio stations and local newspapers. As politicians we are very reliant on them, but our neighbours and friends who buy *The Meath Chronicle*, *The Fingal Independent* or any of the other local newspapers and who listen to local radio stations do so for local news and because they want to be attached to what is happening in their local areas. Many of them do it for sport, particularly in the case of newspapers. This is probably more attuned to the local GAA matches at county level. They are hugely important. Notwithstanding the difficulties they are experiencing because of Covid, they were already in trouble. We have had various representations from the organisations. A new organisation was set up to lobby as a collective. It is an issue we need to respond to. The Future of Media Commission is welcome but it is going to take months before it can report and for us to debate that report. The crisis is far more immediate and so I will seek a debate on that particular issue, although I am mindful that I already have a number of other requests with that Minister on other issues.

We had a particularly emotional contribution this morning by a Senator who is walking the walk with regard to the difficulties facing our hospitality sector. Over the last couple of days a number of Members raised the issue regarding the Covid restrictions support scheme, CRSS. There are clearly anomalies as to why a business cannot open and at the same time cannot access the CRSS that need to be brought to the attention of the Minister. On behalf of Members, I will write to the Minister on the basis of the anomalies of which I am aware and have been brought to my attention to see if they can be rectified. I do not think any scheme to support people was set up with the intention of excluding other people. I know from personal experience that not everything can be thought of at the outset when devising a scheme. There are always things that need to be revised. Schemes need to be living schemes and to be adaptable. I will write to the Minister for Finance on the basis of that particular sector. I mentioned in the House yesterday that I think we need a task force on the retail sector. We definitely need some type of force to make sure our hospitality gets back on its feet when the vaccine comes. While there is talk of some sort of immunity for the Irish people it will not be until next September. This means two entire seasons will have been lost for the hospitality sector. The vast majority of that sector will not resurface after those two seasons without supports. I will raise that issue by way of a letter to the Minister.

Senator Boylan spoke very poignantly about the discrimination in Palestine. I will write to the Minister for Foreign Affairs, Deputy Coveney, and the Minister of State, Deputy Brophy, today. I cannot believe that an organisation like COVAX would not have a plan B. The Senator is right that there should not be a need for a plan B. There is a plan A and that plan should work. I do not know the answer to her question but I will write to the Ministers seeking that

information. If I get a response today, I will contact the Senator by phone. If not, I will communicate with her in writing.

Senator Currie raised the admissions policies that have been changed by some of our Dublin schools and, probably, by some of our city schools in Cork and Galway. She alluded to the fact that she could not understand the logic to it. I think that is because there is no logic to it. It makes no sense for a parent to send a seven-year-old to one school and a four- or five-year-old to a different school further up the road. All of us who have children know how difficult it is to get them to the same school in the first instance and to get them all there on time. This issue underlies a bigger issue in so far as there is a problem with school places. The fact that dioceses have to juggle with the rules to try to accommodate within the school places that they have, with changes that do not make sense, leaves us to believe that we have a bigger problem than just them juggling with their own admissions.

Senator Casey raised the issue of the hospitality sector. Senator Ward raised the very interesting topic of how people can fall foul of not knowing what is behind the 1890 and 1590 phone numbers and, particularly, the costs. The change in the legislation last year was very welcome but those 1590 and 1890 phone numbers are still a major cause for concern. The Senator mentioned that there are some older people that would not necessarily be aware of the costs and charges for these numbers. There are some younger people in households who do not pay their own bills who are not very aware of those charges and they enter competitions that result in them receiving a text a day that costs €3. In my own household, my daughter just thought the texts were very annoying and she deleted them and did not bother telling anybody. There is a real need to raise this issue with ComReg and to ask what it might look like to make sure everybody, young and old, is reached.

Senator Craughwell raised the idea of a searchable database, which I think would be very welcome. I am not sure that colleagues have had the experience I have had in the past days of different people making representations to us about different sectors and what regulations apply to them in those sectors. They went on to the *gov.ie* website and could not specifically find it. Their own industry, be it sports or dance, has told them they can do this but somebody else has told them they can do that, and there is a bit of conflict. A searchable database would be a very good idea. I may write to the Taoiseach to see what he thinks about it.

I am very happy to accept the amendment to the Order of Business, and second it, and take the Bill next week. I wish the Senators every success with it.

The climate action Bill was raised by a number of Senators. I am baffled that I did not know that our Oireachtas Joint Committee on Climate Action is sitting every single day. I am not sure if other Members know this and I am not sure why we do not know. I am also curious to know why it is meeting in private session because this is a very public conversation. The suggestion by Senator Malcolm Byrne that the topic be a weekly recurring theme on our Seanad Order of Business would be a very good idea.

**Senator Pauline O'Reilly:** For Senator Doherty's information, there were a number of public hearings and now it is the finalisation of the report so we are meeting in private session.

**Senator Regina Doherty:** I am sorry, I misunderstood that. Again, I genuinely do not believe that people know that the committee is meeting every single day. Most Oireachtas committees meet once a week and some meet only once a fortnight. It is a huge onus on all of us to

make sure that everybody knows there is a huge volume of work being done. That is especially the case in a week when we see the reports spoken about by Senator Byrne that do not paint a very good picture, and particularly in a week when the Government had to acknowledge that it is only at 78% of the targets we had set for ourselves on climate action. We need to be telling people far more loudly what it is we are actually doing, what our ambitions are and where we are at. In the new year I will look to see if we can have a recurring theme around climate action on our weekly schedule.

Senator Bacik mentioned last night's debate. I thought it was a wonderful debate. I was not here but I watched it remotely. It was a very inclusive debate. It shows by example that when we in this House work together we work better. This is something that other Houses might take note of. There is some real thoughtfulness around some of the policies that start in this Chamber. Due to the fact that there is the space and time to tease through differences of opinion in a very relaxed and collegiate atmosphere, one gets much better policy and better legislation. I thank Senators for doing what they did last night and I am very happy to continue to facilitate that. I will bring it back in the new year.

Senators Keogan and Byrne started off today's Order of Business with the issue of environmental impacts. I am not sure that the EPA does have the full clout, be it through legislation or through the bodies it needs. We will not know until we ask. I will be writing letters for the rest of the day, but I will send another letter on that issue this afternoon. I will copy the Senators on that letter. We will make this a commitment that we will try to put a weekly part of the schedule on the Order of Business for climate actions.

I shall conclude with a matter that a number of my colleagues have raised, but not just in this House and not just today. The matter was raised in the Dáil last night. I have to say that even though I am a Government representative in this House I am very disappointed in the way Dáil Éireann voted on the issue last night, although I understand the reasons. I had a Commencement matter this week on the issue of student nurses' pay.

Rounds of applause are lovely, they really are, and they show that we genuinely appreciate the work of all our front-line staff. However, one shows appreciation by putting money into people's pockets. It is as simple as that. It is a basic, human function. We all need money to live. This is why people go out to work. We hear phrases such as "I am a teacher because I have a vocation" or "I am a nurse because I am really caring". There is this nonsense that taking a profession that one loves means that one is not really working is great, but we all go to work to get paid. The value we put on it and the appreciation we show to people is by putting money in their pockets. I am really disappointed because the Minister gave me a commitment here on Tuesday. Although we are going to look at the HSE contracts for next year, which is great and is deadly for the student nurses that start next year, we have 4,000 student nurses now. Most of them are women. Most of our teachers are also women. This, however, is another gender-based argument we can have on a different day. Stop with this nonsense of saying we are going to do something in the future. We are in the middle of a crisis, not just in Ireland but also in the world. It is a time for us to be generous and to recognise that people are pulling together and that we need to respond in kind. I will write again to the Taoiseach today to ask for the issue to be resolved now and not at some point in the future. I will do that in everyone's name if that is okay.

**An Cathaoirleach:** I thank the Leader for putting forward the Commencement Matter on student nurses' pay. I selected it because it is such an important issue. There are too many nurses emigrating because of their experience in our health system while they are trainee nurses

and student nurses.

On the issue of climate action, I hope that we could include it on our schedule. I was at a foreign affairs committee meeting in the same week the Pope said climate change was a risk to humanity and the Pentagon said it was a bigger threat than global terrorism. If the Pentagon is saying that the issue of climate change is a bigger threat to humanity's existence than global terrorism, then we do have an issue.

Today is the International Day for People with Disabilities, and I thank colleagues for raising this issue.

Senator Ruane has proposed an amendment to the Order of Business: "That No. 4 be taken before No. 1." The Leader has indicated that she is prepared to accept the amendment. Is the amendment agreed? Agreed.

Order of Business, as amended, agreed to.

### **Deportation Moratorium (Covid-19) Bill 2020: First Stage**

**Senator Lynn Ruane:** I move:

That leave be granted to introduce a Bill entitled an Act to prohibit the deportation of persons from the State during the public health emergency posed by the spread of Covid-19 and to provide for related matters.

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

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

Question put and agreed to.

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

**Senator Lynn Ruane:** Next Tuesday.

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

Second Stage ordered for Tuesday, 8 December 2020.

### **Sitting Arrangements: Motion**

**Senator Regina Doherty:** I move:

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

The Seanad on its rising on Thursday, 3rd December, 2020, shall adjourn until 10.30 a.m. on Tuesday, 8th December, 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,

and up to six matters may be selected by the Cathaoirleach for discussion;

(c) Business ordered to be taken subsequent to commencement matters, shall be taken in the Seanad Chamber.”

Question put and agreed to.

*Sitting suspended at 10.43 a.m. and resumed at 11 a.m.*

### **Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020: Committee Stage**

#### SECTION 1

Question proposed: “That section 1 stand part of the Bill.”

**Minister of State at the Department of Foreign Affairs (Deputy Thomas Byrne):** Gabhaim mo bhuíochas leis na Seanadóirí as ucht an Bhille seo a thógáil inniu mar tá sé an-tábhachtach. Táimid ag teacht anois go tapa i dtreo dheireadh na bliana agus tá sé tábhachtach go mbeimid réidh don Bhreathimeacht. Tá an Rialtas réidh ach tá sé tábhachtach go bhfuil gach duine sa tír seo, go háirithe iad siúd a bhíonn ag trádáil leis an mBreatain, réidh roimh dheireadh na bliana. Tá an reachtaíocht atáimid ag cur tríd an Seanad inniu ag iarraidh go mbeimid réidh sna dlíthe agus sna reachtanna atá againn sa tír seo.

I thank Senators for their consideration of the Bill. Those who were Members of the previous Seanad will recall similar legislation that we passed before this. This particular legislation is required, deal or no deal. The Government is doing its utmost to prepare for Brexit and this is the legislative part of the Brexit preparations. Brexit will happen when the transition period ends on 31 December. Deal or no deal, that will mean significant changes to the way we conduct our trade with the island of Great Britain. Thanks to the protocol, there will be free movement of people and goods on the island of Ireland. I am glad that work on implementing that protocol has been going on quite well over the past few weeks. There have been good relations on both sides. I am glad to report that to the House because we are hearing a lot of news about the overall trade deal. That is obviously very important as well but we must ensure the protocol and the agreement that was reached with Britain that there will be no hard border is implemented. Work has been going pretty well on that. There will not be a hard border on this island and there will not be any difficulties in trading goods North and South on this island, thanks to that protocol.

I thank our European colleagues for their continued solidarity with us. They ask me every time I speak to them about the situation in Ireland. They are extremely interested and knowledgeable about it. I also thank all parties in the Oireachtas. As a Government, we have tried to conduct our work on Brexit in as consensual a manner as possible and the unity and common purpose demonstrated by Members from all political parties and none on this issue is appreciated by the Government. It is also recognised across the European Union and has been a huge strength to us. I am very grateful for that.

I will not say too much more because each Minister will speak on and deal with his or her section of the legislation. That is the way we have done it previously and that is the best way of doing it. The Department of Foreign Affairs has an overarching role in this but the Minister,

Deputy Coveney, is in Paris today. One of the French ministers, Mr. Clément Beaune, is coming to Ireland this weekend so that interest remains. I look forward to the debate and I thank Ministers and Departments for their work on this Bill. I again thank the Seanad for allowing this legislation to come before it today.

Question put and agreed to.

Sections 2 to 64, inclusive, agreed to.

## SECTION 65

**Senator Fintan Warfield:** I move amendment No. 1:

In page 44, to delete lines 27 to 30.

I wish to speak to amendment No. 1. I will cover the first grouping of amendments and then my colleague, Senator Ó Donnghaile, will take over.

I want to speak about tourism and I raised these concerns on Second Stage. Sinn Féin has tabled amendment No. 1 to essentially delete the section, far too much uncertainty is facing a sector that is only now starting to emerge from lockdown. I have been contacted by many people within the tourism sector who are dismayed at this measure and some of them cannot understand what it is doing as part of a Bill on Brexit. These people are also clear about the impact that these proposed changes would have on their respective businesses. They are adamant that this is another tax on their industry that will negate any financial help the Government says it is providing to the sector in the wake of Covid-19.

Amendment No. 1 deals with the €75 threshold. Such a threshold removes over 50% of transactions and 16% of sales, plus it is linked to a potential loss of 470 jobs in retail. A €75 limit remains a severe measure given our unique dependency on a singular inbound tourist segment, mainly Americans, who historically have a lower average value of transactions, AVTs, across Ireland, in particular along the Wild Atlantic Way. This cohort would struggle to reach the €75 threshold when their starting point is in the region of €30. For such a serious issue, Sinn Féin believes that the approach by the Government has not been good enough.

**Acting Chairman (Senator Eugene Murphy):** Senators Buttimer and Chambers have indicated so I call Senator Buttimer. Anybody else who wishes to speak on this amendment should please give me his or her name.

**Senator Jerry Buttimer:** On a point of clarification, are Members entitled to speak on this section a number of times or just once?

**Acting Chairman (Senator Eugene Murphy):** As this is Committee Stage, Senators can speak as often as they wish.

**Senator Jerry Buttimer:** Much as I do not want to agree with Sinn Féin's economic policy-----

**Senator Fintan Warfield:** It is very good.

**Senator Jerry Buttimer:** It is not really. If Sinn Féin wants to debate economic policy then I will do that any day but today we will debate the Bill.

I come from Cork, which has got Blarney Castle on the Wild Atlantic Way and the Port of Cork, which has cruise ship liners coming into the harbour, whose passengers then spread out to the tourist attractions in the city and county. The insertion of a €75 threshold in the legislation makes no sense whatsoever. I appreciate the bona fides of the Minister of State. I listened to him in the Dáil and I understand where Revenue is coming from. This section is causing huge angst in terms of the retail export scheme, traveller eligibility, taxation and tax-free shopping.

Perhaps the Minister of State can tease out with Members who has decided on this measure. To look at the longer-term tourism potential and implications, all one need do is refer to this week's meeting of the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht, which had the key stakeholders in. They are the people who know and not me, civil servants, commentators or politicians. They told us that in many cases, 2021 is being used as a holding pattern to develop staycations in Ireland by Irish tourists because they recognise that people potentially may not travel. On the Order of Business this morning, Senators Casey and Crowe spoke eloquently about the damage that Covid-19 has done to the hospitality sector. Are we really saying, as part of a Brexit Bill, that we will do four things, namely, create a new type of tourist, create a division in the tourism sector, place a further tax on the hospitality sector and state we could lose jobs? I know that is not the intention of the Minister of State, Deputy Fleming. I ask that a significant alternative is considered because the €75 threshold will have a catastrophic impact. I do not attend this House too often for Bills but I have been inundated with correspondence from business people who are entrepreneurs and risk takers in the hospitality and retail sector. The Minister of State knows better than I do that one could drive a massive chasm through the tourism sector in terms of the decimation this year.

This is not about the Guinness Storehouse or other major attractions with large footfalls, it is about small, independent retail and hospitality outlets in tourism-driven areas. I ask the Minister of State to outline the Department of Finance's thought process behind this suggestion. The Labour Party has tabled another amendment to reduce the threshold to €50. I will speak on that matter when we come to it. Figures provided to us indicate that a €50 threshold would remove 40% of transactions but only 8% of sales, whereas a €75 threshold would remove 50% of transactions and 16% of sales. If those figures are wrong, then they should be challenged.

What are we implying and inferring by this measure? I am sure the Minister of State and his officials are aware that there are tourists who spend lavishly and other tourists who either do not spend or who are very conscientious in their spending. We have all visited Blarney Woollen Mills, Killarney, the Rock of Cashel and other places that the Americans come to and spend money with abandon. Other tourists spend significantly less. For tourism marketing, our nearest neighbours are the people in Great Britain. They will potentially travel here and we must be able to say, in keeping with our tradition of céad míle fáilte, that ours is an island of welcomes and that applies to our policy on VAT and tax rebate.

I do not always come to the House to speak on legislation like this, but it is exercising me because I know the people who will be affected. Has Revenue engaged in any real analysis? I appreciate that its job is to collect taxes and so on. Have we grasped the nettle and taken a whole-of-government approach? I do not think we have. What is the potential revenue gain to the State in what is proposed? That needs to be balanced with what we lose in revenue coming in and in terms of jobs.

This is about non-EU visitors to Ireland. Many people living in our tourism hotspots or hubs depend on tourists arriving to make ends meet. I am not a stakeholder in Blarney Woollen

Mills but I do shop there. I have no vested interest other than ensuring that we provide jobs, present Ireland as a country of welcomes and make our tourism product, which we all accept is brilliant, even better.

There is a dependency on tourists for revenue. The Minister of State is a very good politician working on the ground. While he is an ordinary guy, he is also a professional person who understands business. He understands that all of those involved in tourism, including coach operators, retail outlets, tour guides and other operators, are on their knees. I could keep listing all the categories affected. The challenge will not be 2021 because that is already being planned for. The challenge will be to get it back in 2022 and 2023. I am a member of the Joint Committee on Transport and Communications Networks. Representatives of the aviation sector have appeared before the committee to discuss the response to Covid-19.

I appreciate that very few countries have a rebate scheme with no threshold; I think it is just Ireland and Spain. In Denmark and Finland, it is €40; in the Netherlands and Germany, it is €50; and in Norway it is €30. We propose to go to €75. Why are we doing that? If there is a rebate entitlement for overseas visitors to spend more, surely the economy will benefit through more jobs and a higher income tax take. I will come back in shortly. I appreciate the Minister of State's sincerity and bona fides. However, I wonder what we are trying to achieve by this change.

**Acting Chairman (Senator Eugene Murphy):** I remind Members that because we are on Committee Stage, they can speak as often as they wish and for as long as they wish. I do not want to over-encourage Senators, which could be dangerous. I welcome the Minister of State. I have a long list of speakers. The next speaker is Senator Chambers.

**Senator Lisa Chambers:** I ask that Senator Casey be allowed to speak before me. I will come in after him.

**Acting Chairman (Senator Eugene Murphy):** Is that agreed? Agreed.

**Senator Pat Casey:** Do I move amendment No. 7 now? It is grouped with this amendment.

**Acting Chairman (Senator Eugene Murphy):** It cannot be moved, but the Senator can speak to it.

**Senator Pat Casey:** The amendments all relate to the same issue. The VAT refund scheme was introduced in 1985 and was one of the most incisive decisions ever for the promotion of tourism in Ireland. I am concerned that the Department does not fully understand the impact this scheme continues to have on the economy. I am very concerned about the €75 threshold. Senator Buttimer mentioned Blarney Woollen Mills, whose success was based on the VAT refund scheme. We all know of the coachloads of Americans coming through the shop who got their tax-rebate forms at the end or else posted away and got the VAT back at that point. We have had Avoca Handweavers and many other success stories based on this VAT refund scheme which has been in place for 35 years. It is nearly as sacred to the tourism industry as the rate of corporation tax is to our nation.

The €75 threshold will disenfranchise the small craft shops in towns and villages throughout the country. A €75 threshold is fine for a tourist going to Blarney Woollen Mills, Avoca Handweavers and other such outlets. However, the little shop that is selling the trinkets and T-shirts with "I've been the Glendalough" printed on them will never reach a spend of €75 and tourists

will never get the tax back. It was a simple message without complications; there was tax-free shopping as long as one lived outside Europe. The message is no longer that shopping is tax-free but that one must spend €75 per transaction in each shop to qualify for a tax rebate. That is fine when dealing with the English or American market but our American market is now the Chinese market. God help the poor salesperson trying to explain to a Chinese person at the till that his or her shopping has only reached €65 and will not qualify for the tax rebate when the coach is leaving in ten minutes and there is a queue forming. What does one do in that situation? I do not believe we have a full understanding of the practical workings of this measure or, more importantly, the impact it will have on rural Ireland and on every rural village. The Minister of State will know that these small craft shops do not sell Waterford Crystal; they sell trinkets and T-shirts.

As a member of a Government party, I will probably have to withdraw my amendment at the end of the day, but may I ask a few specific questions? Senator Buttimer has asked where the figures of €75 and €175 came from. I would like to understand that too. Why does it not apply to cumulative spend? If it did, it would not matter whether one spent €5 in one shop, €10 in another and so on, one would still be able to claim transactions of €75 to claim the VAT back. Why was that not looked at or evaluated? Why could that not be the solution? This would mean that people would just have to spend over €75 or €50 or whatever figure is agreed over the whole period of their holiday. The requirement to spend €75 in one transaction in one retail outlet must be looked at and amended. If it is not, this will be another hit to a sector that has been rocked this year. There are craft shops across the country that have not once opened their doors this year and which probably will not do so until next June. This is the last thing they need. Many of these small retailers do not even know this debate is going on or the implications this measure will have for foreign visitors to their shops.

I am told the fear is that, because of Brexit, the UK market will be able to avail of this VAT refund. Why are we not celebrating that? We have created a market of 60 million who can come to this country and buy our products before going back to the UK. Why are we not looking at this as a positive? Why are we looking at it as a negative? We have already taken a hit from decreased tourism from the UK because of the sterling exchange rate. The hospitality sector declined by between 15% and 17% in the first year after Brexit was mentioned. This would only go towards alleviating the difficulties caused by that currency exchange rate. It should be looked at as a positive.

I do not buy that it would add more bureaucracy for the Department to deal with. That is the greatest load of wally I have ever heard in my life. Revenue was creative enough to bring in a stay-and-spend initiative app. Why can the same not be done for the VAT refund scheme? Why can the Government not look at alternatives? I know this is not the responsibility of the Minister of State and that collective agreement must be reached but, for the sake of the small independent craft shops this measure will affect, I ask that the measure be looked at again and an alternative found before the Bill is passed. I do not know whether the Department realises the impact that this will have. I regret that retailers are not aware of this debate. That is a further frustration. They do not know what it will mean for them. They will no longer be able to say that there is tax-free shopping in their shops. I have reservations about that.

I will come back in again. There are probably a few things I meant to mention. I will raise the issue again. As the corporation tax rate is to our nation, this VAT refund scheme is to our industry. I ask the Minister of State to take that on board. We consider our corporation tax rate as sacred. The tourism industry considers this VAT rebate as vital to its success story. Let us

look to the 60 million people next door as a positive and as an additional market from which we can now generate more revenue.

**Senator Lisa Chambers:** I thank the Acting Chairman and other Members for facilitating the change in the speaking rota. I commend Senator Casey on putting forward his amendment. I concur with everything he and Senator Buttimer have said. I know this is not the Minister of State's baby and that the Minister for Finance, Deputy Donohoe, is the line Minister and senior Minister in the Department. I understand the original intention of the measure but I implore the Government to take a step back, reflect and listen to Senators from two Government parties taking issue with this. I assume a Member from the third Government party will also do so; I see Senator Garvey is here. A government should be flexible and willing to move.

The explanation I heard from the Minister for Foreign Affairs, Deputy Coveney, who I assume had been speaking to the Minister for Finance at the meeting of the Seanad Special Select Committee on the Withdrawal of the UK from the EU yesterday, is that there was a concern that many UK tourists, who represent the largest body of tourists who come to visit the island, might look for a VAT rebate on fairly small transactions of €20 or €30 and that processing such claims would place an undue burden on the Department. That argument does not stand up to scrutiny. It is not sufficient reason when one listens to all of the arguments against setting the threshold at that level. If the problem is that it would be an inconvenience for the Department or would end up resulting in additional work for it, let us resource the Department.

I completely agree with Senator Casey's point. The fact that we can make visiting Ireland better value for UK tourists is a good thing. We need to do that. The fact that they will be outside of the European Union will, at times, make it more expensive for them to come to visit Ireland. Given that the UK is our biggest tourist market and that our tourism sector is on its knees, this is the wrong time to introduce this threshold. It is the wrong way to go about it. Let us make Ireland better value and more attractive for UK customers. Let us welcome them with open arms and encourage them to buy as much as they can while they are here to support our tourism and hospitality sector.

Senator Casey is right that this measure will affect the small independent retailer rather than the bigger guys. It will affect the smaller guys who sell the hats, T-shirts and smaller trinkets. I still have not heard a reasonable explanation as to why the threshold is not cumulative. The threshold of €75 per transaction seems unduly restrictive and serves to make it almost impossible for the average tourist to claim anything back. We seem to be facilitating the wealthier tourist who is buying lots of items or really expensive items while not looking after the ordinary tourist, which all of us would be if we were to travel outside of the European Union. It is the wrong way to go about this and absolutely the wrong time to do it.

There is an amendment coming up which would introduce a new section 68 to require a review of this policy. Let us do it the other way around. Let us set the threshold at zero. Let us have no threshold and then review that in a year's time. If we find that it is harming the country's finances severely or if it has not worked out for another reason, we can review it the other way. Why not start off from a position of not impacting negatively on the small retailer and seeing how that policy has worked in a year's time rather than coming in all guns blazing and introducing a very restrictive scheme which will be too burdensome for the smaller retailer?

I ask that the Minister of State, the Minister and the rest of the team in the Department of Finance reflect on this matter and look at it again. The fact that it would be inconvenient if the

Seanad were to accept an amendment which would then have to be sent back to the Dáil to be dealt with before coming back here is not a good enough reason to reject it. These are laws we are putting on the Statute Book. They will have a real impact on people beyond these walls. If we have to come back here on 21 December, we will do that. There is no difficulty with that. We in this House have no difficulty in coming back to do our parliamentary duty and enact the legislation the country needs. We are not under severe pressure to get this Bill passed today. This is not an emergency. We need the Brexit omnibus Bill and there is cross-party support to get it through because we know we need it by the end of year as the changes are to come into effect on 1 January. We have time, however. We have time to make the necessary changes to make sure that this legislation does not cause any unintentional harm to our people, businesses or citizens. Our tourism sector finds itself in an unprecedented situation. The Minister of State has Government Senators on their feet asking him to look at this and to make these changes, and telling him we are willing to come back to him - no problem - whenever needed to make these changes come to pass. We are here to do that work. I ask the Minister of State to request that the senior Minister in the Department, Deputy Donohoe, make a change to this now. I understand that the very same debate and the very same argument was had in Dáil Éireann last week, so we knew this issue was coming and we are hearing it across the board. Our small independent tourism and hospitality businesses are imploring us and pleading with us to make this small change. All it may take is some extra staff in the Department of Finance. Senator Casey's suggestion of setting up an app to make this easier for people to use is a fantastic idea because it will encourage people to spend more. We want them to spend when they are here and to buy Irish and buy local. We tell our own citizens to do that.

We need to put our shoulder to the wheel and do everything we can to support the tourism and hospitality sector. This is the wrong time for this policy measure. It may be something we can reconsider in the future, but we definitely need to look at this in the context of Covid. We need to consider making a change. I ask the Minister of State to do whatever he can. I know he is extremely reasonable and flexible and supports the hospitality and tourism sector. I ask him to see if he can do anything to make this change today and allow us on the Government side to support an amendment to the section.

**Senator Róisín Garvey:** I thank the Minister of State for coming here. I have got sad in the Chamber twice but today I will just get mad. I come from Clare. I can speak only for my own county. We need this more than anything ever before, and I commend Senator Casey on bringing this proposal forward. The tourism and small business sectors have been crucified. This is the last thing they need. It is a real kick in the teeth. If I were the Minister of State, I would be seriously worried about not getting support from the House on this if he does not support the amendment. We talk about the multinationals and the €13 billion for Apple and then we look at the small businesses and we say "No". It is just not good enough. The small businesses are the backbone of rural Ireland - and urban Ireland, actually. We know we cannot all rely on the big multinationals, whether Amazon or - I do not wish to name any others, but they will do what they want, use us for what they need and go off again when they need to. Small businesses will be affected by this. It would just be wrong not to take this amendment on board. It is 2020. This is so easy. I could go to my son and a couple of his friends in second year of college or some of the young scientists and they would have an app done for us in the morning to figure out the accumulative nature of this. This is not a big challenge. I do not know if the Department even needs extra staff for this; it just needs a bit of cop-on and some clever people with IT skills. The Minister of State is making this out to be a big deal in saying it is too hard to keep track of and so on. I strongly recommend that he supports the amendment, and I thank

Senator Casey for bringing it before the House.

**Senator Mark Wall:** I wish to speak to amendments Nos. 2 and 4. I welcome this debate and welcome the Minister of State to the House. I also welcome what seems to be total support in the House for doing something about this. It has to be done. As I said on Second Stage, the €75 threshold was an improvement on the €175 threshold initially proposed. Purchases within the €75 threshold amount to 50% of all purchases in respect of which the refund has been availed of to date. As other Senators have said, the purchases in question are not by any stretch of the imagination massive. The revenue is going to the many great craft shops selling Irish gifts and knitwear, as Senator Casey said. There is no doubt but that these purchases have kept all these shops open. In many cases the customers are tourists bringing home souvenirs.

We have proposed an amendment that seeks to reduce the threshold to €50, recognising what a number of Ministers have said in recent days about existing revenue, which seems to be the reason this was brought in in the first place. The hope seems to have been to decrease administration costs and time. Most importantly, this must have a financial impact on the business of those retailers that need it most. We also know from talking to those in the trade that a €50 threshold would bring Ireland into line with markets such as Greece, Germany and Holland, keeping us very competitive.

My party has been very supportive of all Brexit initiatives the Government has taken. We have not been divisive in any way. We are aware that a Bill such as this is needed to combat the undoubted impact Brexit will bring upon us in just a couple of weeks' time. However, this part of the Bill affects those American, Canadian and Japanese visitors, and the growing number of Chinese visitors, who we hope will be back on this island very shortly, when some sort of normality returns. This would lead one to question, as other Senators have done, why this forms part of the Brexit Bill in the first place. We should be trying to minimise any economic impact on those retailers that are struggling so much and that really should not be affected by the withdrawal of the UK from the EU.

As other Senators have said, this should be seen as an opportunity for the tourism trade and nothing else. We were informed by Ministers a number of days ago on Second Stage that the Government is giving a commitment to review this so-called tourist tax within the next 12 months. Our second amendment seeks that this form part of the final Bill, but we would have no problem agreeing with Senator Chambers and flip-flopping this. Something needs to be done. If this starts off at zero, we would totally support the Minister of State coming back to us today, after speaking to the Minister, and saying he will review this after 12 months or so. That goes without saying because of the problems the tourism sector faces. As my colleague, Deputy Howlin, said on Committee Stage of the Bill in the Dáil, others in the EU see this as an opportunity. These arrangements look to see how we might capture UK spend. Unfortunately, we seem to see this as a threat and an issue for those who need our help most at this time. I appreciate that the Government has given a commitment to review this in a year so we can determine what is needed. As I have said, I have no problem starting off at zero and then having that review after one year. I hope we can come to some sort of agreement on this, as has been said. It is great to see Government Senators also proposing change here.

I ask the Minister of State, as other Members of the House have done, to explain where the €75 came from in the first place. Why has Revenue settled and suddenly changed this from €175 to €75? What is the thinking behind this? Perhaps the Minister of State can come back to us on that. Given what I said earlier about moving the threshold to €50, I wish to put on the re-

cord that research I have seen and which has been mentioned by others in the House states that such a threshold would remove 40% of transactions but only 8% of sales, whereas the proposed €75 threshold would remove over 50% of transactions and 16% of sales. More worryingly, as has been mentioned, it could potentially impact 470 jobs in retail.

I wish to use this opportunity to refer to my county of Kildare and the wonderful attractions we have. The purpose of this amendment is to help those in my county and throughout the country. There are so many great retail outlets in County Kildare. Take, for example, one very close to me, Kildare Village, which brings annually to the county more than 4 million visitors and, most importantly, a growing international tourist trade. I have been informed that if we were to set the threshold at €75, as opposed to the €50 threshold we propose, we would see just over 10% of sales affected. This would drop to just 5% at the €50 threshold, showing the impact on one great tourist attraction in my county.

As far as those of us on this side of the House are concerned, and as other Senators have said, we need to see something happen here. We are talking about the most vulnerable in our society in recent years and keeping their shops open. They continue to do that in the face of the issues that have come up recently. I look forward to the rest of the debate. I am sure we will come back to this later today.

I will throw out one other statistic. Yesterday in the House we heard about the latest CSO statistics, which show youth unemployment at 47%. We are all aware that so many of our youth get their first jobs in the tourism trade. That is another worry for me and something I hope the Minister of State will take on board. I hope, as other Senators have said, he will come back to us later today.

**Senator Micheál Carrigy:** The Minister of State is very welcome. I will keep my comments brief. Senator Casey has said it far more passionately than I could. I have been the chairman of the County Longford Tourism Committee for many years in a voluntary capacity. We are trying to build an industry from a very low ebb in order to bring people into our county. Now Covid-19 has brought us back to zero. I cannot understand why we are introducing this threshold when we should be trying to bring people into our country in any way we can. As has been said before, we have fought to hold onto our corporation tax rate as a way of bringing business and jobs into our country.

The Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht was addressed by Tourism Ireland and Fáilte Ireland yesterday. I asked both of those organisations for their views on this threshold. They were not in favour of it. I ask the Minister of State to consider an alternative. This is the wrong time to do this. It would have a huge effect on our efforts to restore tourist numbers to the levels reached prior to Covid-19. I compliment Tourism Ireland and Fáilte Ireland for their work. This is a massive industry, employing more than 200,000 people. We want to get those people back to work. As other Senators have said, this will hit small shops in smaller counties like mine, which are struggling to attract tourists. It will not affect big shops in bigger cities. It will be felt by businesses off the main roads; small craft shops, restaurants etc. I ask the Minister of State to reconsider this. It is not the right way to rebuild our tourism trade.

**Senator Fiona O'Loughlin:** I fully endorse and support amendment No. 3 in the name of Senator Casey. I ask the Minister to take on board the issues the Senators have raised. I had the opportunity to raise this matter with the Minister of State myself. This is the wrong way to

go. At this late stage, I call on the Government to reconsider this measure. Covid-19 has had a hugely negative impact on our retail industry. Many of our shops are struggling. They have only had the opportunity to reopen for Christmas this week. The last several weeks would have traditionally been one of their busiest periods. Retailers need as much support as they can get.

Travel is currently restricted but with the advent of vaccines, 2021 will hopefully be a much better year. We may see normal numbers of visitors to the country in 2022 and thereafter. We must do everything we can to support these businesses and make sure Ireland is as attractive a place for people to spend their time and money as possible. The money they spend is hugely important to supporting employment, jobs and businesses. The constituency of Kildare South has many tourist attractions. I refer particularly to the Irish National Stud, Newbridge Silverware and Kildare Village, which supports many people through employment.

This threshold will have a very negative impact on people's spending patterns. A cumulative threshold of €75 over several transactions would be an understandable measure but that is not what is proposed. A single purchase of €75 would be quite significant at the attractions I have mentioned. That is particularly true in some of our more tourist-friendly counties. I ask the Minister of State to consider accepting this amendment. Failure to do so would be regressive.

**Senator Fintan Warfield:** It is really heartening to see so many Senators supporting either Sinn Féin's amendment or Senator Casey's amendment. They propose the same thing. I am in two minds on whether to divide the House on the issue if it comes to that. Talking about trinkets might give the wrong impression. We are talking about quality craft goods. Having a Roscommon man in the Chair reminds me of my visit to Strokestown Park House and Gardens. Many museums and cultural centres throughout Ireland have great museum shops. They are less focused on trinkets than on the local crafts. They offer handmade gifts like candles and jewellery. These are quality goods. Senator Garvey reminds me of my trip to the Burren. The internationally renowned Burren Perfumery offers many goods above and below €75 in price. I really encourage the Government and the Minister of State to reassess this issue.

**Acting Chairman (Senator Eugene Murphy):** I thank the Senator. I am very proud to hear him speak about Strokestown Park House and Gardens, the National Famine Museum and County Roscommon.

**Senator Joe O'Reilly:** Senator Warfield will be allowed to speak on a whim all day after those remarks on Strokestown House. I also wish to welcome the Minister of State. I do not propose to rehash all the arguments which have been well made by others. I am very persuaded by the argument that we should maintain attractiveness to the UK market. Our UK tourists are a huge part of our tourism product, including returning emigrants and the descendants of the Irish emigrants of generations past. We in County Cavan have been working very hard to develop our tourism product in recent years. We have had a lot of success. A lot of potential has not yet been realised, particularly in fishing and other areas. UK tourists are a very major part of the tourism market in my area. They are very good spenders and regular visitors. We should seize the opportunity to attract them. I find that argument very persuasive and I commend it to the Minister of State for serious consideration. We should aim to keep English tourists coming and attract them in greater numbers.

**Minister of State at the Department of Finance (Deputy Sean Fleming):** We are discussing a group of four amendments. Amendment No. 1 seeks to delete the €75 figure entirely,

amendment No. 2 seeks to reduce it to €50, amendment No. 3 seeks to reduce the €75 figure to €1 and amendment No. 4 calls for a review to be laid before the House on the operation of this section of the Act within 12 months.

As originally published, the Bill required the value of qualifying goods to exceed €175 for third-country travellers to qualify for the scheme. It also required UK citizens to show proof that VAT and customs and excise duties have been paid. These measures do not eliminate the use of the VAT retail export scheme for UK residents post Brexit.

Instead, by excluding goods below a certain value threshold and requiring proof of declaration of importation into the UK for any goods for which a refund is claimed by a UK-based traveller, they provide the legal basis to protect the Exchequer revenues and to control and minimise any scope for abuse of the scheme. This is something I believe to be necessary when consideration is given to Ireland's proximity to the UK and the volume of traffic between the two. However, in recognition of the challenges facing the retail sector, to support the sector in these challenging times and in light of the various comments that have been made by the industry and public representatives since the Bill was originally published, on Dáil Committee Stage the Minister amended the original limit of €175 and has reduced it by approximately 60% to €75, thereby going much further than halfway on achieving a compromise between €175 and zero. This will apply to all third-country travellers who are seeking a refund.

The amendment also calls for a report on the operation of the amendments effected by this section within 12 months. I am not in a position to accept this amendment but, as indicated by the Minister for Foreign Affairs during the Seanad Second Stage debate two days ago, the Revenue and the Department of Finance will carry out a review of the operation of the scheme in the course of 2021. People will know that we have a Finance Bill every year because the Revenue and the Department review legislation on an ongoing basis and they come back each year with amendments to existing legislation. The operation of the scheme will be reviewed within the 12-month period and the findings can be taken into consideration for a Finance Bill amendment next year or when a review indicates that should be done. It would not be, however, a review that was laid specifically before the Oireachtas as proposed in the amendment; rather, it would be part of the normal review carried out each year by Revenue and the Department in respect of each tax heading, which permits the ongoing amendment of the finance legislation each year.

Approximately ten Senators have spoken on the difficulties caused by the €75 threshold, including the impact it will have on small craft shops and how more rural areas will be affected. It should be noted that we are taking this action because of Brexit. This scheme for tax-free shopping applies to those living outside the EU, and will now apply to those from England, Scotland and Wales. Northern Ireland is not included, as it is covered by the Northern Ireland protocol and therefore this will not have an impact on people travelling between North and South. Only those travelling between the rest of the UK and Ireland will be affected. As the UK is going to be outside of the EU for the first time, we had to include this measure. In the Bill before us today, well over 50% of the amendments concern tax, VAT, customs, capital gains tax and various other items. Therefore tax has featured in a big way in the assessment of the impact of Brexit on our revenues in Ireland. There are around 40 other sections that deal with the fact that the UK is leaving the EU and that introduce appropriate measures under other tax headings. This amendment understandably has attracted particular attention because of the impact it has on the tourism sector, especially given how tourism has been affected during the Covid-19 pandemic with many businesses unable to open.

It was decided to look at this in the context of Brexit and the UK leaving the EU. The first thing the Government did was to look at arrangements in place in Europe generally. It found that there are schemes in operation in other countries and in the European Union, the maximum threshold one can have for such arrangements is €175, while some countries do not have a threshold. It should be noted that we are working within the provisions set out in the EU VAT directive and the Minister originally introduced the maximum figure permitted under the EU VAT directive of €175. Having listened to the debate in the House and feedback from the public at large, he has since reduced that threshold to €75, as I previously mentioned. As one of the Senators has already mentioned, it should be noted practically every EU country has a threshold in place, and there are only two - Ireland and Spain - that currently have no threshold. The thresholds vary between countries, some of which have a threshold of €175, while others have thresholds of €100, €50 or €40. Therefore, we will rank in the middle of EU countries when the €75 threshold is introduced and we will be nowhere near the top of the scale. What we are doing is not unusual in itself and tourists coming to Europe are used to visiting countries with thresholds in place. I know that some would argue that it is a unique opportunity for Ireland to maintain not having a threshold but it is something with which tourists travelling to Europe are familiar. Consequently, while the introduction of the threshold is a new concept for us, it is not a new concept for them.

Several Senators have commented on the cost of this measure. I accept that it is very difficult to put a figure on the cost of operating this scheme, because it involves customs operations, and those who operate the scheme on behalf of the shops have stalls at airports, where forms are stamped and then returned to the shops, and the refund is subsequently issued to the customer. We have all seen the extensive report that was commissioned by the five main operators of the scheme, which will process most of the refunds that are issued through the scheme and which are based at the airports. In addition, I wish to advise Senators that there are two further ways that the scheme could be operated. The shops could do it directly and give the VAT refund to the customers themselves, or they could offer a no-VAT system to those from outside of the EU, but most of them have chosen not to do that because a fundamental condition of this scheme is that the goods must be exported. It is not the case that the scheme applies to those who are visiting from another country and spending money; it applies when those visiting from another country take their purchases back home with them. If a shop were operating the scheme, it could not be guaranteed that a product bought in the store by a tourist would be taken out of the country with them. Therefore, while technically shops could operate the scheme, they could potentially be putting themselves at risk if they gave a refund or did not charge the VAT, and the Revenue subsequently found that there was no proof that the goods were actually exported. I understand why legislation facilitates the scheme being operated that way but at the same time, I understand why most shops would be loath to go down that road, even though the option is there.

That brings me to the issue of exportation. Given that around 30% of those visiting Ireland every year are from the UK, and stay for different periods of time, the proof of export is a key determinant of the scheme. The purchasing, the threshold, and the amount spent in the shop, whether cumulative or in a single transaction, is one half of the equation. The other half of the equation is that there must be proof of exportation. That is why most tourists complete the forms and hand them in when they are leaving the country, whether it is by port or airports, as the scheme will apply to those visiting from the UK if they spend over €75, regardless of how they leave the country. Therefore the scheme will be operated in ports such Dublin, Rosslare and even Holyhead.

Another point I wish to make is that there is a greater chance of people from the UK buying a product here and possibly then consuming or using it while they are here or perhaps taking it home as a used product. While people may say that I am nitpicking, that is not the purpose of the scheme.

If someone buys a T-shirt here, wears it here and then takes it home, it would not be considered a product for export, because it was used here and then taken home. One has to be able to show that the product purchased was exported intact. That is the second half of this scheme and that is a factor that comes into this as well. One has to prove that the product was exported and the craft shops know that as well.

An interesting point was made about the app. That is probably where this is going to go eventually. Revenue authorities in other countries are already examining using an app, although none of them have one that operates fully satisfactorily yet. It is easy to handle the transaction, the receipt, to whom it is to be refunded, and whether it was paid by card or whatever, but proving export has to be part of any software associated with an app. That is a particular complication. Other countries are a little ahead of us on this issue because they have been operating thresholds up to now. I am quite confident that if they come up with a system, Revenue will move on to it, as it did with the stay-and-spend scheme. Unfortunately, Covid stopped many people travelling outside of their county. That scheme could have been beneficial but further Covid restrictions prevented it having the impact it could have had. The app could come into it but that is down the road. I will go back to the Minister and suggest that part of the review to which he has committed should seek to develop this app solution. There would probably be something at the airport where people could flash the app at the point of leaving the country or upload their receipts in some way. That can be done.

This next issue was also mentioned and there are different views on it. The Minister mentioned the €175 threshold in the original legislation. I do not know who has received a copy of the independent report but it shows that, of the transactions under €175, the average transaction came to €65. That is in the report, which was not done by the Department of Finance but on behalf of the industry. I understand what Senator Casey is saying. Sometimes the bus is leaving and people are being told to grab something else worth €10 off the shelf. I used the following parallel in the Dáil last week: many households in Ireland will be familiar with the voucher scheme operated by supermarkets where if people spend €50, they get €10 off. It would not be very clever for people to go to the till having spent €48 when they could spend the extra €2 and get €10 off. People will understand, if they spend €55 or €60 in a shop and the person in the shop says there is something at the till that will bring them over €75, that they will get €18 back. That is the VAT they would get back on the €75. The shopkeeper is saying to those customers that if they spend more, it will cost them less because they will get a tax refund and an extra product to take home. It may encourage people who are already spending €50 or €60 to go over the €75 and get the €18 back, although I cannot say that it will. I consider that a major incentive. It is a bit like telling tourists that there is a voucher and if they spend in excess of €75, they will get €18 back. I accept that it is a little bit clumsy and the people in the tourism sector are getting their heads around it, as well as the simple message we have at the moment, which is that we have very straightforward tax-free shopping. That is the central message. This other message is saying that if people spend €75 they get money back. I hope the industry will be able to adapt to that point as well.

As has been noted, I have discussed this with the Ministers for Foreign Affairs and Finance and they were very clear that they have taken on board everything that has been said. Com-

ments were made here on Second Stage, as well as in the Dáil in the past few days, and the industry has been making representations but the Ministers want to proceed with the figure of €75, which is a significant reduction from the original €175. They have given an absolute commitment that it will be reviewed. Revenue and the Department of Finance review every taxation measure every year and they will come back and report on it at that stage. That is the general extent of my response to the various points made.

I accept that it is not easy to introduce a new charge that was not there previously. We did not ask for Brexit but we have Brexit and we have to deal with the situation. That is why we have this legislation. We all wish we did not have to deal with Brexit or any of these problems. Issues came up an hour ago regarding an amendment to an earlier section of this legislation about the cross-Border initiative, which cannot happen because of Brexit. We might have to do something to compensate for the cross-Border scheme. Brexit causes problems and this is one of them. I understand what Members are saying. We would dearly love not to be here discussing Brexit legislation but the British voted for it. It was a democratic decision and they are leaving on 31 December. It is not of our making and we have to make the best of it. This is one of the measures that is part of the Brexit legislation. We would prefer if we were not here at all having this debate in the first place but, unfortunately, we are and we have to make a good fist of it. We will review it within the year and if it requires tweaking, amendment or app technology to assist the process, that will be taken into consideration by the Department between now and then.

**Senator Jerry Buttimer:** I thank the Minister of State. I appreciate his bona fides and that he does not want to be here either. At the heart of what he said at the end of his contribution is that this situation is not of our making. He is 100% correct about that. We are the victims of an appalling decision by the British people. What are we doing about it? The Acting Chairman spoke passionately about legislation this week and this morning many of us were doing the same. Let me make it quite clear: I have no vested interest whatsoever. Blarney Woollen Mills, about which I spoke earlier, is not even in my constituency. I am just saying that so people understand where I am coming from.

**Senator Fintan Warfield:** Strokestown is not in mine.

**Senator Jerry Buttimer:** I know. In my humble opinion, we are exacerbating the situation. The Minister of State said that bringing in a new charge related to Brexit is not easy. He is right but why are we changing it? We are tying the industry's hands behind its back. The one thing I have learned in my 16 years as a public representative is to listen. I have made many mistakes but one tries to learn. People in the industry are making contact with me about this issue who have never spoken to me about tourism or hospitality previously. We are putting an impediment in front of our tourism sector. Senator Casey is a hotelier so he understands this better than any of us. It is quite unusual. Tá seisear ball den Rialtas ag caint mar gheall ar an mBille seo. Members of the Government are coming in here to speak on a particular matter of a Bill, about which we are concerned.

Let us look at the bigger picture for a second. The debacle that led to tragic losses of life grounded the Boeing 737 fleet. As a result, Norwegian Air left our aviation space. That had an impact on Shannon and Cork airports, and on Dublin Airport to a lesser extent. Then we had the pandemic. Senator Casey correctly identified the relationship between corporation tax and the VAT rebate scheme and one of the attractions we have as a unique selling point is our tax-free shopping. The Minister of State and Senator Garvey are correct that we need to look at

developing an app, but the app in itself is not the issue. That is one element of it. How many of us have been abroad in other countries and could not be bothered to claim tax back because it was too cumbersome and we were rushing to get to our flights? Let us make it easy. Paul Kelly and Niall Gibbons told the Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht earlier this week that it would take five years to recover, a large-scale marketing campaign was required, this year had been catastrophic and there would be a rapid acceleration in insolvencies. Those are not my words but those of people who know.

I appreciate the change made in the Bill and I really appreciate the supports the Government has given to the hospitality sector, as does the industry. We are talking about balanced regional development and sustaining tourism in rural communities. Are we really saying that we will tie the hands of an industry that has experienced a €6 billion reduction in revenue and the loss of hundreds of jobs? The long-haul aviation sector is looking at 2022 and beyond. The Minister of State referred to the stay-and-spend scheme. I hope we will extend it. I appreciate and value the Minister of State's comments and he is right that level 5 restrictions have meant that people have not travelled. The scheme needs to be extended and we need to incentivise it. The Power report speaks of a €108 million contribution to the economy outside Dublin.

My mind returns to the middle of July or August in a normal year in Blarney Woollen Mills, where we have gaggles of tourists shopping, a buzz and an atmosphere, and, as Senator Casey rightly said, lots of questioning. We are known for our welcome and the VAT refund scheme is linked to that. Reference was made to the United Kingdom leaving the EU but how has Revenue engaged? Have the data and an analysis been published on why we are doing this? Why is it being done in the Brexit Bill? I appreciate the Minister of State's remarks about the different tax clauses and the exemption of the North but he also spoke of abuses. Has there been wholesale abuse? I do not know but I would like to hear if there was. What are the projections for the Exchequer?

I believe in listening to people. One can legitimately argue that those who have made representations to us have vested interests. They do because they are business people and employers who are part of our tourism experience and culture. I am told that UK visitors do not primarily spend on consumer goods - Senator Casey may wish to add to that - and, as a consequence, refunds should be very low. I contend that Revenue's concern is unjustified. It would be better if we made no change to the existing scheme, in keeping with what Senator Chambers said, in the context of the review and rather than putting the cart before the horse, putting the horse with the cart. I ask the Minister of State to look at that.

This is about jobs and the marketing of our country in the years after 2020. If one talks to travel agents and those involved in the hospitality sector, aviation, cruise liners, the Port of Cork - representatives of the ports appeared before the transport committee yesterday - there is devastation. I fully recognise the assistance the Government is giving through various supports. We were one of the first countries to move in the area of supports. There should be no changes to the existing scheme. I welcome the change in the threshold from €175 to €75, which is a step forward, but I do not know why we have changed the scheme.

I mentioned Ireland and Spain earlier. Why did we change? I have not heard a convincing reason. We are effectively saying "Yes" to the proposal by Paul Kelly and Niall Gibbons to have a massive marketing campaign and, at another level, we are saying we have to do this too. I do not see the sense of that. I appreciate that we are trying to get everything aligned with the Brexit date and the implications for imports, but surely a time must come when industry and

Government align. The competing forces do not have to clash the whole time. In this case, there is no logical reason we could not maintain the *status quo*. It is about further support. The new €75 threshold removes 50% of transactions and 16% of sales and has been linked to 470 potential job losses in retail. I hope we can have a further discussion on the financial impact on business. As Senator Casey said, this affects the mid-range in the market. I appreciate where the Minister of State is coming from but I hope we can see further movement.

**Senator Pat Casey:** I thank the Minister of State for his reply. This is about the principle of the VAT refund scheme, not whether the threshold is set at €175, €75 or €50. It is about a scheme that has operated successfully for 35 years, including last year. It engages with over 3.2 million visitors. What have they done wrong to be so disenfranchised? Visitors have availed of this scheme for 30 years and now it is being pulled away from them. Why? We are being told it is because of Brexit.

I did not fully understand this and I was in communication with the Minister of State on it over the last two days until I got clarification that the measure related to single purchases in a single individual retail transaction. Equally, I was not aware of how this would impact the cross-Border situation. The Minister of State has clarified that it has no impact in relation to Northern Ireland. That makes me more determined to get my amendment through because it now has no impact on traffic between the South and the North. Anyone who wants to avail of this VAT scheme has to get on a plane or a boat to come to this country. I am disappointed because the message I am getting from the Minister of State is that there is absolutely no room to move on this. We must look at this and move on it. The hardest thing to do in politics is reverse a decision. If we bring in this measure, it will be almost impossible to reverse it.

I ask the Minister of State to discuss a few proposals with the Minister to see if the Seanad, which is united on this issue, can be facilitated. We are unanimously agreed on this proposal or on a variation of these amendments.

I shall go back to the core of why I put in the figure of €1. I do not want to disenfranchise the small retail shop which is in every one of our villages and which would be disenfranchised by that threshold of €75. What I am proposing encompasses everybody, with nobody being disadvantaged. I am aware that the Minister of State has given examples of potential abuse of the system, which I believe is a stretch to be quite honest. The scheme has been in place for 35 years. Americans who have bought T-shirts go around wearing them. Do not tell me it is going to be any different when a UK visitor comes over and wears one. In all honesty, we see them wearing their peaked caps and walking along with shillelaghs. They are all using them but nobody is claiming them at the airport and telling them they will not get their VAT back. That is the practicality of it. We have to be practical about these things because we are talking about people's livelihoods.

The Minister of State is trying to reverse my proposal in the context of the market and of looking at this as an opportunity. Clearly, Revenue looks at this as an exposure. I do not believe it is. It is one of the greatest opportunities where we can get an advantage over our neighbour to try to restore something back to this industry.

I should have admitted to the House that part of my hotel has a small craft shop attached. This is why I have an understanding of how important this scheme is to small craft shops such as those that sell trinkets. I refer to the small craft shop that sells the locally produced stuff. This is about the man that is down there banging out pieces of silver and bringing them up to

the craft shops to sell. If we take this facility away from that sector we are actually taking away support for those artisan producers. We need to be very careful about this.

Like Senator Buttimer, I must ask why we are doing this? I do not understand. No reason is being given as to why we must introduce this measure. As Senator Chambers stated, if one were to reverse the logic of it, we would allow it to run for a year and then carry out a review with regard to it remaining the same and what impact that has had in one year. I ask the Minister of State to reverse this and to not go through with this process.

I say again that this is the very same as the corporation tax is to this country. That is how important it is. We have seen a whole economy develop in Ireland around the VAT refund. The biggest player and the biggest mover is probably the Blarney Woollen Mills, which would have started in the scheme back in the 1970s. I remember people on the coach tours coming into my hotel and saying “We were down in Blarney Woollen Mills last night”. This scheme sustained many jobs in the State, including in the manufacture of the goods, which are now being exported back out again. We are putting all of this at risk, and for what? I do not know what the risk is. Perhaps the Minister of State can come back in on where the actual risk is to this country with regard to revenues if the scheme is not brought in. What is it doing to the 3.3 million visitors who have availed of this scheme over the past 35 years and which will no longer be available to them?

I will have to come back in again because I may have missed a few things. The Northern Ireland aspect is important. I am more resolute now than ever because I did not fully understand what the impact might be. The Minister of State has said that it will have no impact. I am now more resolute to keep pushing with this. Can the Minister of State understand from where we are coming? It is about the principle. It is about a promotion this State has availed of for the past 35 years to give it that advantage over our competition. We have used it exceptionally well.

The Minister of State referred to some of the other detail. Yes, retailers can give the VAT back at source of purchase, and they do this when they are exporting the goods on behalf of the customer. This is happening at the moment. Any of the more professional retailers out there who offer a mail order service give that VAT back at source. They have responsibility for ensuring that the goods are exported. It is happening now and I do not want to see that being used as an excuse. The Minister of State has given reasons as to why this proposal should not be brought in and I must say that many of them are spurious. I do not know why the Government is so adamant that this be brought in. I just do not understand the logic.

We need to give this whole industry the break it needs. Give it the year to try to recover. Most of these are small retail craft shops that never opened their doors this year and that did not earn one cent this year. Give them back that hope and the opportunity that this scheme of tax-free shopping that we have promoted for the past 35 years will remain, and not that it would be tax-free shopping only if a person spends €75 in the shop. Put it back there. There should be tax-free shopping for anybody from outside the EU. Let us get back to that simple message. I plead with the Minister of State to go back to the Minister and make contact with him about this. The officials are also here.

The House is united on this issue. The more we debate it, the more people understand it. I hope that some of the smaller retail shops, who have no idea on it, are listening in and understand the impact it will have on them. As I have said, it is not about the Blarney Woollen Mills, Avoca Handweavers or the Kilkenny Shop. Anybody going into those shops will spend €75.

This is about the small, independent retail shop which is in every one of our communities and which will be disenfranchised by this process. Why? The Minister of State has still not told us why. What will be the impact of this on revenues? What will be the financial impact on the country? If we approach it right, it could be a win for the State. We should not see it in the negative.

**Senator Fintan Warfield:** It would be a win for the country. The EU comparison made by the Minister of State only supports the point being made by Senators from all groups, which, I recognise, is unusual. Let us do it differently. Ours is an island nation on the fringe of Europe. The Minister of State mentioned Spain. I am trying to figure out what Spain is doing in respect of this matter. Who visits Spain the most? It is British tourists who do so. In fact, 18 million UK tourists went there in 2019. I contacted people I know in Spain who are in politics to see if they are planning to change their rules in light of the numbers of British tourists who travel there but who are resident in Britain. I wait to hear back but I have no reason to believe that Spain is changing the rules. Why are we doing it?

Tax-free shopping is simple. Senator Casey has said time and again that it is a simple message. Businesses need that type of simple message as it has been for 35 years.

Senator Buttimer referred to Exchequer projections. I understand that a €75 threshold rule would remove more than 50% of transactions and 16% of sales and would be linked to 470% of job losses in retail. I will leave it there. Those are the notes I had made in the last series of contributions.

**Senator Mark Wall:** I wish to come back in on a number of things. Senator Casey has made an important point. Many smaller shops do not know this debate is going on today. In fairness, we have all seen the contact from the larger organised shops but this will affect the smaller ones most, as has been said by every Member in this House today. That is a significant point. As Senator Casey said, I hope they are listening but they probably are not. The Minister of State said something striking, which is that this will be new to them. We are introducing something new at their worst time, when they are on their knees. These people are telling the employees they cannot employ them anymore. They are putting them on payments.

As has been said by every Member in the House, they are more likely not to open up again. We are going to introduce a new tax - essentially a tourist tax - on them. It beggars belief this is happening at a time when we should be supporting them. I acknowledge we have supported them and what the Government has done in supporting them to this point but this is an opportunity. Opportunity knocks here with regard to the UK visitors. That is my opinion and it has been said by every Member of this House. We cannot understand why the Government would impose a tax like this on those who need so much help at this time. It defies logic.

While I mean no offence to the Minister of State, when listening to this debate, the most important thing for me is that he still has not explained where the €75 came from. He still has not come up with a logical explanation as to why somebody opted for that figure. He told us the original figure of €175 was the maximum, so we started off with the maximum and then, somewhere in the Revenue Commissioners or wherever, somebody picked €75 out of a hat. That is what it seems like this morning, because there is no logic as to how we came up with it.

I have spoken, as have other Members of the House, to people in the industry who are looking for figures at this stage. They have come up with €50 and €35. Senator Casey has come

up with €1 and I believe our Sinn Féin colleagues have come up with a threshold of zero at this stage. It is because we all want to do the right thing here. We all want to support those who need our support at this time. This is about those craft industries and artists we hear about in the media every day of the week who are under great pressure. As has been said already by me and others, the artists who are in these craft shops probably do not know this debate is taking place and will look in horror at what is happening.

Can the Minister of State explain to us why €75 was chosen? Why not zero? As Senator Chambers said, why not leave this threshold at zero and review it after a year? I am sure we all could come back after a year and say there was a huge cost to the Revenue Commissioners, as well as huge administration and time costs, and then we could debate that. I ask the Minister of State, however, to please reconsider. He should talk to the Minister and come back with something better than €75.

**Senator Jerry Buttimer:** I will make a further point of support on what we are trying to achieve. We are allowing for duty free to come back, which is a positive. The UK-bound traveller or the traveller bound for here can avail of duty free. As we now are incentivising at a different level again, there is inconsistency in this regard.

**Deputy Sean Fleming:** I appreciate the additional comments that have been made by Senators in the second round of discussions on this measure. First, I must bow to Senator Casey, who knows the industry exceptionally well. Some people use the purchases. They purchase items before they leave the country and take those items with them. I hope, therefore, nobody is listening too carefully to that and starts checking to see whether a person used the shillelagh before he or she brought it home.

I wish to make one little addition to what Senator Casey said. I gave the examples of where it can be done at the airport by the major operators. Shops can do it and or they can operate a VAT-off scheme and take the risk onto themselves. Senator Casey, however, mentioned the scheme where the retailer does the exporting. That is another scheme entirely. It is not exactly this scheme; it is a separate provision for a separate scheme. It is not one of the methods under this scheme but it is still there.

To go back again, however; why are we here? We are here because the British voted for Brexit and the UK is leaving the EU on 31 December. None of us wanted to be here with Brexit Bills for the second year in a row, and here we are at this late stage. It is not our choice but we must deal with it.

As I have already stated, 65 sections of this legislation are to do with taxation measures. The majority of it is tax-related, whether it is VAT, customs tax, income tax or all those arrangements. There are, therefore, quite a number of issues when a country chooses, for the first time ever, to leave the EU. Many financial implications are involved and this is one of those. It is not of our making that we are here having this debate; the UK leaving is the reason we are here in the first place.

That said, I wish to make some final points. As to where the €75 threshold came from, it is not an exact science. As we have said, in the EU, €175 is the maximum figure. Only two countries have a zero figure. We went for a figure of €175 in the beginning. When the Minister published the Bill, he had a figure of €175. The Minister and the Government, however, listened to the public debate. They took on board what the people said, accepted they had a valid

point and went more than halfway. They did not just halve it; they cut it by 60%.

That figure of €75, therefore, was in response to the views being expressed by the trade, the tourism sector, the public at large, Members of the Oireachtas and other public representatives. It felt reasonable and the Minister went back to Cabinet and got approval to bring in the figure of €75, which he felt, in view of the comments made, was the most appropriate thing to do. I compliment him on arriving on that amount. He could have picked €80, €90, €70 or €60 but he chose €75, which was a long way down from the original €175. I believe it was fair.

Perhaps, I have not made this specific point clear up until now. In order that people listening can understand what we are talking about, this is a system whereby people from outside the EU who come here as tourists and spend money in shops can get VAT back if they export the product back with them when they leave the country. We all understand that.

It only applies to people from outside the EU, for example, Americans, Chinese, Saudi Arabians or whoever comes to the country. It does not apply within the EU at all. It is, therefore, not available to French, German or Spanish people or for us going to Spain, France, Italy or England at the moment or to English people coming here at present. This is the positive aspect of this legislation, about which perhaps I should have been more upfront earlier.

As we speak today, a UK person coming to Ireland can spend all he or she likes but will get no VAT back. That person is not eligible because he or she is in the EU. We are now introducing a system, for the first time ever, where travellers coming from the UK into Ireland can go to a tourist shop, spend more than €75 and get VAT back for the first time in their lives. This, therefore, will probably cost the Exchequer money in providing VAT refunds to UK tourists who were never able to get a VAT refund from the Irish Exchequer previously. They will, therefore, now be able to get VAT back. This should be a positive selling point by the Irish tourism sector to British tourists coming to Ireland.

More than 3 million people come to Ireland from the UK every year. It is at least 30% of the inward travel. This is an advantage to the UK, now it has left the European Union after Brexit. It was not able to avail of this scheme because it was in the EU up until now. Now the UK has left the EU, we are saying to such tourists that for the first time ever, when they come to Ireland, as they have been doing for years, and when they come home at Christmas and the new year to meet family and friends and buy here, they can spend more than €75 in any transaction. A person can spend €750 on ten transactions if he or she likes. I ask them to please do so and support the industry. When that person goes back to England, he or she will get the VAT back on all that. This is a positive sales point to encourage British tourists to spend money in Ireland. The incentive never existed before because Britain was in the EU. Since it is now outside the EU, the new incentive has been made available so the British will spend money when they come here, either as tourists or to visit family. They will be able to get VAT back for the first time. It will be a cost to the Irish Exchequer. It is a new aid to all British tourists coming into the country that we should promote. The tourists will not know about it, nor will the shops, which are closed and are not listening to this debate. I urge Fáilte Ireland to tell everybody about it and erect signs at our ports and airports targeting people coming in from Britain, informing them that for the first time ever they will be able to get VAT back. It can be argued that a certain amount has to be spent before getting the VAT back but many visitors spend more than €75 on a transaction. They will get VAT back.

I was asked about the position on Northern Ireland and I stated there is no change for North-

ern Ireland. Owing to the Northern Ireland protocol, Northern Ireland is deemed to be within the Community for tax purposes. In fact, the people from Northern Ireland are excluded from the benefit that people from England, Scotland and Wales will be able to avail of from now on. I can understand it if they have a gripe but they are actually getting the best of both worlds in that they benefit from being within the UK and from being within the Community for taxation purposes on most matters. A British tourist, for the first time ever, will be able to claim VAT back on expenditure in Ireland. That is a major selling point. It will cost us some money. I hope Fáilte Ireland and the other tourism bodies promote the scheme. Rather than regarding the scheme as a drain and a risk, or as something negative, as I initially regarded it, why do we not use it as a positive selling point? It is positive in that it will encourage British tourists to spend money here and get VAT back. I hope that will increase tourism sales in all the shops around the country that we have been talking about.

I have spoken personally to the Ministers directly involved. They are committed to the figure of €75. They listened carefully and reduced the threshold from €175 to €75. They feel they have gone more than halfway in meeting the legitimate points made. They have taken them on board. They have committed to a review during the course of the year, just as the Revenue Commissioners review every tax heading every year. If a tweak, amendment or change is needed in the Finance Bill next year or the following year, it can be made when we gather some of the relevant information during the course of the coming year. Unfortunately, I am not in a position to accept the amendment as proposed.

**Senator Lisa Chambers:** With respect, there is inflexibility being shown here that is not reasonable. Government Senators from all three parties have got on their feet to ask for this scheme to be reflected upon and changed. On the suggestion that the Government has listened because it has reduced the threshold from €175 to €75, I would respond that the threshold of €175 was just so unreasonable and out of touch that it had to be changed. Very reasonable suggestions have been made across the House to base the figure on evidence. We do not have evidence on the impact of the Brexit changes on the VAT rebate scheme. I suggested earlier that we simply press pause and wait for 12 months. We already have a commitment from the Government to review this issue in 12 months. In 12 months, we will actually have the evidence to support whatever threshold we need to introduce to protect the Exchequer, the revenue to the State, and ensure the scheme is operating as intended and is fit for purpose. We do not have the information and evidence now, however.

The Minister of State said it is not an exact science, but it can be more exact in 12 months because we will at least have some evidence and information to go on. I accept and agree to an extent with the Minister of State's point that the incentive is new for British tourists in that they will, for the first time, be able to avail of a tax rebate on purchases in excess of €75. That is positive but we could make it more positive, attractive and valuable by having a much lower threshold of a threshold of zero. The measure does not provide additional value to visitors from other third countries, such as Japan, China and the United States. It actually makes Ireland a more expensive and less attractive place to come to.

Other members and I have made a point on the timing of the new measure. The tourism sector has been absolutely floored. It is on its knees and trying to recover. As Senator Casey said, those in the sector have been availing of the tax rebate scheme for 35 years. They have come to rely on it. They have developed their marketing systems and pitch to international tourists based on a system that has been in place for a very long time. We are changing something that has been in place for 35 years on the basis of maybes, possibilities and what-ifs, not on the basis

of evidence. This is not a sound basis for legislative change. Government Senators have made the very reasonable suggestion that we press pause. The review that has already been committed to by the Minister for Foreign Affairs, Deputy Coveney, and others, which review we fully support and believe is reasonable, is to take place in 12 months. I see great merit in pausing the change and maintaining the *status quo*. We all understand in this House that, in 12 months, we may need to introduce a threshold because it might be in the interest of the country. We are fully open to having a debate and discussion on that based on the evidence, but let us have that discussion and debate in 12 months' time. In the Dáil last week, many Government Deputies expressed the same view. Therefore, there is not unanimous support for the Government's proposal within the Government ranks. I ask that those in government, who are not in a silo on their own, listen to their colleagues in their own parties and take on board what they are saying to them. There is time to accept one of the four amendments being proposed. My preference would be to accept Senator Casey's amendment in that it would bring the threshold down to €1 and require the carrying out of a review in 12 months' time, with the full support of most, if not all, Senators. A threshold may need to be introduced at that point if the Government can present evidence to the House that it is necessary.

I ask that the Minister of State heed the call of the hospitality and tourism sector. My God, it has had an extremely difficult year. It is not out of the woods yet. Many of the businesses and traders will not reopen next year. There is a sticking plaster at the moment because many supports and significant payments have been made available by the Government to keep the show on the road for now, but when those payments eventually cease, which will have to happen at some point, some of the businesses will not survive. Some will not survive until this time next year. Therefore, let us not take away one of the few supports in place, a support that has been in place for a very long time. It is successful and working. We should allow Ireland to be an even more attractive place for British customers. If more of them want to travel to Ireland and spend money on Irish products, that is great. Let us welcome them with open arms.

My main argument is that we do not have the evidential basis for the proposed legislative change. We will have the information and evidence in 12 months. There is a commitment to a review. The Minister of State should accept one of the amendments and press pause because we are all asking for breathing space. We are not saying we will not introduce a threshold at some point down the line. There will be time to have the debate. Now is the wrong time to do what is being done. It is not appropriate to attach the measure to the Brexit omnibus Bill, time-sensitive legislation that we absolutely need. We need it passed in a number of weeks. We simply do not have the space or facts to pass the section under discussion, but we do support the Bill as a whole. I ask that the Minister of State make another telephone call to the Ministers on foot of the debate here and do his best to change the minds of the small number of Ministers supporting the measure, bearing in mind that the vast majority of members of the Government parties do not support it. They have made their views very clear on the floor of this House and in Dáil Éireann. The Government must be flexible and in a position to adapt and change based on the views expressed in this House. Otherwise, what is the point of having this debate? I will leave it at that but I might contribute again at a later point in the debate.

**Senator Jerry Buttimer:** The Minister of State made a very good point on UK tourists. I will not vote against the Government. I have never voted against my own party in my 16 years in public life, nor will I, but I believe we must consider the import of what we are trying to do. Senator Chambers is correct. We have asked for a pause or a review. Let us take it that 2021 is to be a staycationing year again. Travel agents, airlines, airports and those in the hospitality

and tourism sector are saying, notwithstanding the roll-out of the vaccine, that 2021 will again be a year of limited travel.

They are predominantly saying, notwithstanding the roll-out of the vaccine, that 2021 will be a year of limited travel again. What is this scheme about? It is an important element of the competitiveness of the Irish tourism product. What will be the result of us putting this €75 levy in place? It will reduce the spend. President-elect Biden will be in the White House, which will be good for Irish-American relations and encourage the American tourist to travel in time. For 2021 and 2022, Senator Chambers made a good point regarding the review and I do not understand why we cannot go that way. What we are trying to achieve through one arm of State, as the Minister knows, is to promote tourism. We have given significant supports to the tourism and hospitality sector, and rightly so, and we are suddenly saying to the non-EU market that we are trying to attract and incentivise to travel that we are going to change the tax regime, which is one of the many good reasons to come to Ireland. It goes back to Senator Casey's point about the corporation tax compared with the VAT rebate scheme. It should be a set percentage.

Regional tourism is dependent on non-EU travel, especially from North America. Given that we are now building links with China, I hope that we can develop links with Taiwan further. I question what will be gained by this change. I acknowledge that we have come from €175 to here. I have heard nothing to convince me that we should have changed our policy. I will not vote against the Government. I have never done that. However, there is an easy option to opt for the review first. There will be less travel in 2021 than in 2019 or 2018.

**Senator Pat Casey:** I will probably end up going over some of the same points. Does the Minister of State understand my point? Will he accept that we are clearly disenfranchising the owners of small, independent craft shops across the country with this €75 threshold? They will be the most impacted. I would like him and the Minister for Finance to accept that these are the people this will affect. I fully accept that it does not affect larger businesses. The Minister of State said that Brexit was not our decision, and it was not, but this is our decision. This is the Government's proposal. It has decided to bring this in. Nobody has asked it or forced it. What we are voting on today is a choice of this Government. It might be related to Brexit but it is the Government's decision to bring it in.

In the past year, Spain, knowing that the UK was leaving, brought in a threshold of zero. That was after it found out. France has reduced the threshold to €100. We should be using this as a positive issue, not a negative one. The Minister of State indicates that there is a cost to the Exchequer. I wonder if there is an actual cost. For every extra euro that is spent, what is the multiplier for the local economy that can go into people's pockets? We do not have the information, yet we are making the decision against the 3.3 million visitors who availed of this in 2019 and over the past 35 years. We have a new market of 3 million visitors coming in from the UK who can avail of this scheme but we are disenfranchising those overseas visitors who have availed of it. That is a negative matter from their point of view.

If somebody comes into my shop tomorrow morning and buys something for €75, it actually costs them €60, but if that person buys something for €74, it costs €74. I do not understand any figure. It should return to the simple message that we have had for the last 35 years, that there is tax-free shopping to support our industry, tourism and retail, all the way down. I am disappointed with the word that is coming through. Senators Chambers and Buttimer have suggested solutions but we are being ignored. If we are being ignored, can the Minister of State

and Minister for Finance admit that this has disenfranchised small, independent craft shop owners throughout the country? Can he admit that they are the people who will suffer at the end of the day because of this amendment? Can he give any evidence of what the impact is, because nothing has been done?

**Senator Alice-Mary Higgins:** I encourage the Minister of State to review this, at a minimum. There has been a significant impact on businesses and will be an impact in the coming seasons. The proposals being put forward are reasonable, particularly those suggesting that the change being suggested needs to be reviewed so it does not have a lasting impact.

**Senator Fintan Warfield:** I thank Senator Casey for giving the information about Spain. I just read the Dáil transcript, which told me that Spain has the largest number of British visitors and reduced its rate to zero. We are going from zero to €75. We cannot do much about our location in the world. What we can do relates to the cost of someone's trip, and this increases that cost.

**Senator Mark Wall:** The Minister of State said in his most recent contribution that this is not an exact science. I hope there are more of those people who we are all fighting for listening in today, because this is totally unacceptable. If we are putting in a new tax, which is what this is, then it should be an exact science. It should be agreed in this House and, more important, it should be agreed by Revenue and the Department. This is a tourist tax, by all accounts, and if the Minister of State is bringing in a new tax, it should be an exact science. This goes back to the point made by Senator Chambers that we do not have the information. Let us press the pause button and review this after a year, as the Minister, Deputy Coveney, committed to, as did others in the Dáil previously. It is not good enough for those listening in who are at the pin of their collar to hear from the Minister of State that this is not an exact science but they will have to put up with it. It is no good to them when they will have to close their doors and, in many cases, not open them again. I hope the Minister of State is listening to his Government colleagues and all of us on this side of the House.

**Senator Jerry Buttimer:** I apologise to the Minister of State for drawing out the debate. I welcome that he is committed to a review, which is what we want and which gives me heart. I know I am not a mathematician or a genius but why are we fundamentally changing this now in 2020, going into 2021, when there is no need to change it? The change could happen if the Minister and the Government are of the disposition to make that change in 2023 or 2024, when we will have a proper indication and the world has returned to some type of normality, whatever that normality will be in a new Covid world. For the life of me, I cannot comprehend why we are introducing the change today. I know and understand it is in the context of Brexit. As Senator Chambers said, we are inserting it in a section of a Bill about Brexit. The Finance Bill will come to the House before Christmas and I am sure Senator Casey and I can discuss this issue while discussing the Finance Bill. I have not heard a convincing argument or presentation on the position of the Revenue Commissioners and the Department of Finance. If it was explained in the Dáil I apologise because I did not see it or read it. This is about tax-free shopping. We hear about abuses. I would love to know the volume of abuse of the scheme. From a scant look at Dr. Google and checking Revenue or the Department of Finance, I cannot find it anywhere.

Let us just look at the whole issue of balanced regional development and products, including fashion, crafts and clothing. People living in Matunuck in Rhode Island see their neighbours with a piece of Waterford Crystal. People living in Allegheny County in Pennsylvania find their neighbour wearing an Aran sweater or people over in Cape Cod have a piece of Belleek china.

This is an incentive and a marketing campaign that attracts other people to go and buy. I do not want to see us tying the hand of industry. I go back to my fundamental point. I rarely come to the House to speak this in-depth on matters of legislation but I am very exercised by this, not because I have a vested interest but because it makes no sense. We are taking jobs and creating an impediment to the development of jobs and, more important, the marketing of Ireland.

I go back to my early comments with regard to what Niall Gibbons and Paul Kelly spoke about when they came before the tourism committee this week. They said it will take five years to recover the tourism industry and a large-scale marketing campaign is required. It has been a catastrophic year and there has been a rapid acceleration of insolvencies, excepting the huge support given by the Government. I do not know why we cannot take the suggestion of Senator Chambers and pause, have a review and then come back. This is what makes sense.

We are known for our tax-free shopping. We are known for our artisan creations and designs. We are the country that founded the duty-free shop and the whole duty-free experience. Look at what that has led to with the creation of jobs and the positivity around it. We have an opportunity to win here. I would love to hear the analysis of Revenue and the Department of Finance on this. With regard to the retail exports scheme, this is a mistake. The customer experience is about the products and marketing our country.

I thank the Minister of State for his engagement and I really appreciate it. However, we are making a fundamental error with the imposition of this tax change now because of the desire to align the tax codes, or whatever the rationale is with regard to Brexit. The UK visitor will not spend money excessively on hospitality or consumer goods. The return from UK tourists will be low. I am concerned about tourists from North America and other places, with regard to incentivising them to come back to our country. Yesterday, the dollar was €1.20 or €1.19. It was at its lowest point in a long time against the euro. I would love to have a joined-up conversation on the selling and marketing of our country and the preservation and retention of jobs.

Senator Casey said it much better than I did because he has the experience and I do not. What I do have is engagement and conversations with people working in the industry. As a member of the transport committee I read, listen to and watch its proceedings. We cannot but get a sense that this does not make sense. I am disappointed. I know we have made a change from €175 to €75. As they say, we are where we are. It goes back to the Minister of State's fundamental point that if the UK did not decide to leave the European Union we would not be here but we are. I hope that as part of Government policy in future that there will be engagement, and that it is not just consultative in a passive way but that there is meaningful engagement. There is a reason we have engagement. It is because people who work at the coal face and take the risks and who are entrepreneurs understand and know what is going on. Sometimes, and I do not mean to be condescending or fight with anyone, people behind a desk do not know what is happening. The Government will not change its mind and that is fair enough and I appreciate that but it is a pity because we could have made the Bill better by not having the change the Minister of State is bringing in.

**Senator Pat Casey:** I do not understand why this specific part of the Bill has to be rushed through. We are looking at an industry that has been decimated this year. There will probably not be an English or overseas visitor here before June next year anyway. Where is the panic? Where is the urgency? Why are we rushing this? As Senator Chambers said, why can we not pause this and get further detailed analysis on it?

Credible alternatives have been put to the Minister of State today and I am disappointed they will all be ignored. I am not buying into the review at the end of the year because as I have said, once this is brought in we will be trying to backtrack. I do not understand why the collected spend of €75 was never considered, whereby people can only submit a claim if they spend a total of €75.

I am begging for an industry that has been shut down this year to give it an opportunity next year. It will be lucky if it gets six months next year. There is no impact to Revenue in this. I urge the Minister of State, if he can do anything in the last few minutes we have in the debate, to get the Government to see some of the reasonable proposals that have been put forward by Senators in all parties in the House, including Government Senators.

**Senator Shane Cassells:** From the contributions the Minister of State has listened to over the past two hours, in particular from Government Senators, he will have a sense of the passion and anger felt about this matter. I support and commend Senator Casey, as someone with professional experience at the very core of this industry which has been hit so badly. Decisions by the Government in any sphere should support the industry and not hurt it further. If something that has been working for three decades is still working, why try to fix it or hinder it in this respect?

Tourism has been held up as a shining light by successive governments as something we do well. People come here because we market our country on the international stage, highlighting its natural beauty and so forth. However, for tourists, cash is king. They make decisions before they travel as to what will hit them in the pocket and where they will get best bang for their buck when they go to a particular country. Senator Casey is right in pointing out that this is a determining factor. I also agree with Senator Wall that exact science should be used when assessing any new measure. I am a member of the Oireachtas Joint Committee on Media, Tourism, Arts, Culture, Sport and the Gaeltacht. Yesterday Paul Kelly, chief executive of Fáilte Ireland, appeared before the committee. He said:

...the severity and longevity of public health restrictions mean that for many businesses the current level of support is not going to be enough. We have already seen some insolvencies and we are likely to see a rapid acceleration in this after Christmas...

We know tourist numbers will be down and we want to incentivise those who might come. However, here we have a measure with the exact opposite effect.

Earlier there was a defence put up of the Government's halfway measure to reduce the threshold. Senator Chambers is correct that it was a hames in the first place. The gurus in the Department of Finance realised they made a mistake. I support what Senator Chambers said. I support in particular Senator Casey's amendment. I urge the Government to listen to the very strong message being conveyed in this Chamber this afternoon.

**Senator John Cummins:** I echo the comments of my colleagues to my right. I come from Waterford and Waterford Crystal is a large international company in our city, with a long track record of attracting significant numbers of international tourists. It is rightly concerned about the threshold set here. I support Senator Chambers's call to pause this proposal. I believe the proposed compromise of a €50 threshold, which would remove 40% of transactions and only 8% of sales is reasonable and should be given due consideration by the Department. I echo the last-minute calls on the floor of the Seanad for the Minister of State to reconsider this. I believe

it will have a considerable impact on the sector which is already decimated.

**Deputy Sean Fleming:** I have listened carefully to what everybody has said. The Minister for Foreign Affairs, Deputy Coveney, when he spoke on Second Stage of the Bill, said:

...there is a commitment from the Minister for Finance, Deputy Donohoe, to carry out that review. I reassure Senators that the Government will undertake that review over the next 12 months to see how that is impacting on the retail sector, trading and so on.

He gave that commitment on the floor of the House. Therefore, this review will happen.

I make a few general observations for Senators and others who may be watching. Last year, the Houses of the Oireachtas passed the legislation with a €175 threshold. The retail export scheme was amended by the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 to allow Ireland to impose the maximum restriction possible in the operation of the retail export scheme for UK travellers. The threshold was set at €175 over a year ago when the previous Oireachtas passed the first Brexit Bill. At that stage, it was decided that the maximum figure allowable under EU legislation, €175, would be the threshold.

Senators will recall that this measure was intended to be implemented if the UK adopted reciprocal arrangements after, in effect, excluding Irish travellers from the retail export scheme. Over a year ago, the Oireachtas passed legislation with a €175 threshold on the basis that the UK would reciprocate. Now, as we all know, the withdrawal date has changed. The policy objective at the time was to avoid the loss of tax revenues that would arise if there was a large-scale diversion of consumer spending to avoid VAT. It was understood at that stage when the Oireachtas passed the €175 threshold in legislation that the UK would be reciprocating. It is law, passed by the Oireachtas. I am just reminding people of that in case it was not known. This ground was covered last year. However, as that withdrawal Act lapsed with the timing of the UK's withdrawal, we are now here with a new Brexit Bill. We are back here covering similar ground a year or so later.

Given that there was no commitment that the UK would reciprocate, the Minister has taken the decision, having considered representations from Members of the Oireachtas and business interests, to seek a lower figure. The €175 threshold was set because it was the EU maximum and on the basis that the UK was going to do it. It is important to recognise that the €175 threshold, as passed last year by both Houses of the Oireachtas, would have had the impact that is being discussed here at a much higher level of €175, not €75, in respect of all third countries outside the EU. If there had been a reciprocal arrangement by the UK, it would have been different. The Oireachtas passed legislation last year to apply a €175 threshold for Americans, Chinese, people from the Far East and all people outside the EU. That passed and now it has lapsed.

Following subsequent Brexit negotiations, the Minister understood that there would be no reciprocal arrangement from the EU and decided to lower the figure to €75 having listened to everybody here, even though we are not getting reciprocation of the €75 figure from the UK. In fact, the UK has recently announced that it will not have any scheme whatsoever. It is one-way traffic. We will introduce a scheme here allowing UK travellers coming here to reclaim the VAT when they spend over €75 in a transaction. We previously passed legislation with a threshold of €175. Since then, the British have said they would not reciprocate on the €175. We brought the threshold down to €75 because we knew leaving it at €175 would have had a severe impact

on all the businesses mentioned in this debate.

The UK has recently indicated that it would not have any scheme whatsoever. UK visitors coming to Ireland will be able to get the VAT back for purchases over €75, but Irish people travelling to the UK will have no reciprocal arrangement. From that point of view, we are being very reasonable by supporting inward tourism into Ireland which is not happening on the other side. What the British do over there is their affair. I was asked what arrangements they are making but all we can do is pass legislation for Ireland. A lot of this legislation is seeking to make sure the Northern Ireland protocol is implemented. Not every VAT rate and tax rate aligns between various different countries but they have double taxation agreements on income tax, corporation tax and those types of issues. This is a particular issue with a VAT rate.

I want Members to remember that we are coming from a situation where we had a threshold of €175 already and we are now keeping it at €75 to assist tourists coming into Ireland from outside the EU, which will include the UK from next month onwards, notwithstanding the fact that they are not reciprocating at all to our people travelling over there. That is their decision. The Minister said he will undertake the review in 12 months and that is a guarantee on the record from when he spoke here two days ago.

I want to respond to the points that have been made on the suggestion of pausing it and reviewing it in 12 months. If we pause it there is nothing to review in 12 months because it did not happen. We will have no more knowledge in 12 months than we have today if we do not bring in a scheme and even if we bring a scheme at €1, that is a figure that is so close to zero as to make no impact at all. That is the purpose of the €1 amendment, namely to have no impact. It is to technically have it there but at €1 there will be no impact. The amendment on the review is contingent on the Oireachtas introducing something by which there will be something to review at the end of 12 months. If we do not introduce anything, there is no need to review because there is nothing to review. That is why there is a difficulty with putting that amendment into the legislation if it is passed at the figure that is in the legislation that has come from Dáil Éireann with €75 in it. That will be reviewed and there will be information on that.

There is no exact information on this at the moment. Nobody can predict the numbers that will come to Ireland next year and nobody can predict the number of people who will spend under €75. We can all guess and extrapolate but we can only know when we see what happens and when we have evidence after there is a threshold in place. If there is no threshold in place, there is nothing to review in any event. The pausing is essentially not proceeding. I reiterate that when the Minister for Foreign Affairs was speaking here, he was clear that there will be a review of this when it is introduced. I know there are fears that once it gets in it might never be amended but it is such a significant issue at this stage and it is up to Members to keep that issue alive when it comes to the finance Bill next year, having seen this in operation between now and then.

Maybe Members will not appreciate this but I want to outline what we are talking about for the people listening in. We are saying one has to spend €75 to get a VAT refund if one is from outside the EU. What if one spends less than €75? What is the loss to the tourist? We are being told this will have severe implications. What is the loss to the tourist who spends €74.99 and does not spend €75? The VAT element of that is €18. I want everyone to understand that. The companies that process the claim normally get about 50% or more of that €18. The amount that a person who spends €74.99 is losing is a maximum of €9. The people who process it get the other €9 and the total VAT involved is €18. I understand that it is important but I also want the

people to know the context of what we are talking about if a tourist comes from the UK or the United States. I am not making light of it but I am saying that this debate is about that tourist not being able to get €9 in VAT back, having maybe spent a couple of thousand euro to get here and to stay here. Those are the stark figures of what we are talking about. It is a €9 loss to the tourist out of his or her total spend when he or she comes to Ireland.

That will not put a tourist off coming here. If a tourist is coming from any country to Ireland, there are flight, travel, food, accommodation, spending and entertainment costs but he or she will not be able to get that €9 back if he or she spends under €75. If one spends over €75, one will have no trouble getting it back. I do not know how many people will change their travel arrangements, not come here and drastically reduce their spending on the basis that if one spends under €75 in a shop to bring something back home to export one will lose €9 on it. I ask Members to put that €9 in context. That is what this debate is about and not a penny more comes into it. Once one is over the €75 threshold, he or she is getting the €18 plus VAT back, minus the processing fees.

The Minister feels that with the Oireachtas having already passed the €175 threshold last year and with it having looked at its effect, it came back to it this year with the €75 threshold. Now we are in a different situation. We are giving it to the UK visitors and they are not giving it back. There is nothing we can do about that but the Irish people should know that we are being the generous people by giving this incentive to the UK tourist to come here. By the way, they chose not to reciprocate and there is nothing we can do. They are leaving the EU and that is their call. I want the people to know the full ramifications of this because we understood last year that they would reciprocate but they chose not to do so.

In his statement, the Minister made it clear that he will undertake a review and doing so is implicit on there being something to review. There is the threshold in the legislation and that is to be reviewed. If we do not have a threshold there is nothing to review. The Minister is keen to ensure this matter will be fully reviewed. I have given Members a little bit of extra history about it already being passed and a little bit about the amount of money we are talking about in terms of a tourist's total spend when he or she comes to Ireland. What is at issue here is possibly only €9, if one spends under €75. If one spends over €75, one loses nothing at all under this scheme. Members understand that the Government has made a clear decision on this and I would hope we would use the new incentive for British tourists coming into Ireland if they spend over €75. They will have a new incentive and get tax back that they were never able to get before and that will be of benefit.

**Senator Lisa Chambers:** I thank the Minister of State for the recap on history and I am sure, being a colleague of his, that he was in no way having a pop at other colleagues.

**Deputy Sean Fleming:** No.

**Senator Lisa Chambers:** For the purposes of context and for the information of Members, because I was Fianna Fáil's Brexit spokesperson when that Bill came through, we were in a different space at that time, which I am sure the Minister of State will remember. It was more of an emergency situation. The Bill was very much rushed through the Oireachtas on the last occasion but that was done because it was necessary to do so. The Minister of State has served to remind us of a poor decision we took in the last Oireachtas and one we should not seek to repeat.

Another thing that has changed dramatically is the environment in which we are operating and the space the tourism sector is in. That is the biggest change and that is the big picture. The Minister of State keeps referring to what he believes the debate is about. He has used the word “possibly” quite a lot and that is the problem. The absence of hard facts and evidence is an issue. This is not about €9, €18 or the reciprocal arrangements that we have or do not have with the United Kingdom. This is about the hospitality and tourism sector that is in a time of crisis and need. It wants to see both Houses of the Oireachtas supporting it. To that sector, this is another tax and another undermining of its ability to protect its industry and it is another undermining of its members’ ability to earn a living. That is the bigger picture and that is what the debate is really about. It is about people and not money. It is not about the economy but about people’s livelihoods and businesses.

The Minister of State has suggested that it will have little or no impact on a tourist’s decision to come here. If that were the case, we probably would not have been operating the scheme for 35 years with such a success. It has an impact and it makes it a more attractive country to visit. From talking to American tourists, they are aware of the tax-free shopping, they use it and they know the value of it. It does encourage extra spending and it does feed into a person’s decision as to where they will travel if the perception is that it is a good value country to travel to. Whether the UK has reciprocated is beside the point. The focus is not on the tourists from the UK but on the tourists from other countries that have become accustomed to availing of this system and on the businesses that rely on it. Again, I am not suggesting we pause the measure. Senator Casey’s amendment is wise but I suggest that we carry out the review in reverse, that is to say, to decide in 12 months on the basis of the evidence we will then have. The Minister of State has suggested the €1 threshold will have no impact but, in fact, it will because it will pretty much maintain the *status quo*. The fear is that we will suddenly have an influx of UK customers buying lots of things and seeking to claim the tax back. I do not believe there will be a significant volume of travel at all next year. The more tourists we can get in, the better.

Many Senators have brought forward reasonable suggestions but a wall seems to have been erected in this regard. There is no openness at all to flexibility and the Government refuses to be dynamic and to change its position. The suggestion that the Government is being generous is too generous an interpretation of the proposed policy.

**Senator Pat Casey:** We have all heard it said that two wrongs do not make a right. As Senator Chambers alluded to, the previous Brexit Bill was emergency legislation and this level of focus was not put on it. We are focusing on it now. We are identifying the weaknesses in it and putting our case to Government. Again our heads are on the guillotine and we are told that we have to have this done next week. Senator Chambers has made an offer for the Seanad to sit the following week, if that is required, to amend this legislation.

The Minister of State has said there is no point in having a review if nothing has changed. That is wrong. One could carry out a review in 12 months and know exactly how much tax had been claimed back. The Government would then have a full suite of revenue and VAT rebate figures to allow for a review of the measure next year. It is wrong to say that it would serve no purpose. It would serve an incredibly important purpose; it would give an indication of how and if the scheme is working.

The Minister has made the claim that it is only a matter of €9. That is factually incorrect and I ask him to withdraw it. That figure is per transaction, which goes back to my initial point that the threshold is set per transaction rather than on a cumulative spend. That is where I have

a problem with this legislation. If the threshold applied to cumulative spend, it would be different. People could make multiple claims for €9 if they spend €75 in each shop. They could make 50,000 claims for €9 tomorrow morning if they wanted to. It is, therefore, wrong to say that it is only a matter of €9. If a visitor spends €500, he or she will get 21% back. That is what tax-free shopping means.

I need the Minister of State to clarify on the floor of the House that it is not just a matter of €9, because one can make claims in respect of multiple transactions. That is why I disagreed with this provision in the first place. I would have no problems with a threshold on cumulative spend but I have an issue with a threshold of €75 per transaction per shop. I asked the Minister of State to accept, on behalf of the Minister of Finance, that this legislation will have a direct and immediate impact on small retailers in our towns and villages. That is where this measure will have the greatest impact. These retailers have not had the option to open this year at all. We do not know what will happen next year. I need him to come back on those points because he has said a few things that are factually incorrect.

**Senator Jerry Buttimer:** As Senator Casey has said quite eloquently, this is about the issue of the power transaction. The Minister of State has found his mojo, in fairness. His colleagues, the Ministers of State, Deputies Rabbitte and Troy, tabled parliamentary questions to the Minister on this matter when in opposition. What figures does the Minister of State or his Department have on VAT fraud? Deputy Rabbitte, now a Minister of State, asked about a consultative forum in the calendar year of 2019. Was such a forum constituted? Did it meet? If it did, what were the outcomes? I am not taking issue with the Minister of State but this VAT refund scheme has been running for more than 35 years. If one searches “tax-free shopping” on one’s phone, one will see that every shop and retail business, north, south, east and west, mentions it on its website.

Senator has made my next point better than I can. We must be concerned about our competitiveness as a tourism destination. That is what I am concerned about. I thank the Minister of State for his engagement. I hope we can change this measure. As Senator Chambers said, we were in a different space last year. This year, the Covid-19 pandemic prevented travel which, as I said earlier, had a catastrophic effect on the tourism and hospitality industry. I thank the Minister of State again. I hope we can have the review first.

**Senator Victor Boyhan:** I will not speak on this matter at any great length. I have listened to the debate. I chaired the session from 12 noon to 1 p.m. so I heard Senator Casey eloquently make his case. There is no better person to do so. I am very familiar with his success in Glendalough and his commitment to enterprise. I was very interested in the comment by Senator Chambers regarding a wall around the proposal and the associated frustration. I have been there many times. There are very few Senators on the Opposition benches and people constantly trail in and out of here regarding different legislation. I acknowledge and understand the role and function of Government. I noted that, earlier, Senator Buttimer made the point that, although he would make his case robustly, he is committed to the Government and has never voted against it. I respect and fully understand that. It is interesting that others on the Government benches have today experienced this wall and have seen how little give there is. I have thought I did a reasonable job in making cases here before but it is always the same. The Minister gets up and reads a pink or yellow page from a folder that someone in the Department has provided. There is very little movement.

Ultimately, however, Deputy Fleming is the Minister of State and he makes the decision.

Understandably, he takes advice, but the bottom line is that it is the Government's Ministers who make the decision. What is notable about this debate is that those speaking against this measure are the Minister of State's own party colleagues. This results in difficulties and pressures for him but, ultimately, he has to decide based on the bigger picture and the advice he has been given. What is also notable about this debate is that members of Government parties are making very good and strong cases. That is very healthy in a parliamentary democracy. I support Senator Casey's amendment. If it comes to a vote, I will vote in favour of it. It is important to hear the views from these benches but I understand the difficulties facing the Minister of State. The case has been made to park this measure for a period and to reduce the threshold to €1. Senator Chambers made a very good case for doing that. The matter can be reviewed again but these are very difficult situations. I understand the difficulties being experienced by people in the crafts and hospitality sectors. We are in a situation not of our own making. We are in it because the British people, or some of them at least, made a decision and its government is pursuing a policy of Brexit. I support Senator Casey and the other Senators who have spoken in favour of this reasonable and fair amendment. We have had a good, healthy and robust debate on this issue so I hope the Minister of State will consider parking this measure or reducing the threshold for a period of 12 months.

**Senator Alice-Mary Higgins:** Procedurally, it is important to note and be clear that this decision by the previous Oireachtas was made in circumstances where legislation was being rushed through. Like Senator Boyhan, I have often highlighted that when one rushes legislation through without proper scrutiny mistakes are made. This provision is an example of that. It is important to note that the legislation in question never took effect. It is not the case that we already had a €175 threshold because it was never implemented. As previous speakers have pointed out, the material circumstances have changed, not just in terms of reciprocity but because we are in a situation where multiple pressures are applied.

I am not an expert in this area unlike others who have spoken. The fact that €9 or €10 makes a difference could be seen in the figures the Labour Party provided which showed the substantial difference between having a threshold of €75 or one of €50. That is just a €25 difference but it reduced the number of transactions by 40%, which is a big difference. With a decrease of another €10 or €15, the number of transactions affected reduces to 25%. That is proof of the impact of a €10 or €15 difference. Coming from the west, I do not want a person who produces just one good being disadvantaged because purchasers would always go somewhere where they know they can buy multiple items or make one larger purchase and get the tax benefit as they would be reluctant to make individual purchases and transactions in different locations and smaller shops.

I hope to discuss my amendments to later sections. Procedurally, I note that if the Minister of State does not want to accept the reasonable amendments that have been put forward, I understand it is within his prerogative not to commence section 65. He might well be advised to consider making such a commitment if he does not want the legislation to go back to the Dáil. A very strong case has been made for this amendment. Perhaps new or different legislation could be brought forward. I say that as somebody who has, unfortunately, had the experience in the past of winning in respect of having very good sections included in Bills that were not subsequently commenced. I have made a helpful suggestion to colleagues across the House because it seems Senators are not satisfied with this section proceeding as it stands.

**Senator Lisa Chambers:** I propose that we take a break until 2.15 p.m.

**Acting Chairman (Senator John McGahon):** Is that agreed? Agreed.

*Sitting suspended at 1.55 p.m. and resumed at 2.15 p.m.*

**Acting Chairman (Senator Aisling Dolan):** We are discussing amendments Nos. 1 to 4. Are there any other speakers on those amendments? I call Senator Warfield.

**Senator Fintan Warfield:** There has been a convincing debate over the last few hours in this House. I am heartened to see the support for the issue that has come from all sides and all groups. I urge the Minister of State to accept our amendment, which I will push depending on what the Minister of State has to say. There are other amendments that may also be pushed.

**Deputy Sean Fleming:** Since I last spoke, a number of Senators have spoken. One Senator asked me to look at the big picture when I pointed out, for the benefit of people watching in order that they would understand what the debate is about, the maximum amount of VAT a person could be in a position not to claim back as a result of the new threshold of €75. If somebody spends €75, the maximum VAT in that transaction would be €17 to €18. Of that, 50% goes to the company that processed the VAT, so the rebate to the person would be €8 or €9. That is what this debate is about. If somebody spends less than €75, they could lose up to €9 in VAT on that transaction.

I made the point before that I have confidence in the retailers around the country in the tourism sector who sell various craft products to the tourist industry. Everyone said it is not about the major retailers where people spend a lot of money as tourists, but about the ones where they spend a small amount. I have every confidence because many of these are family shops run by parents or children. It is a family business and a small undertaking. If a tourist comes in and spends €50 or €60, I would be shocked if they are not told they can get €18 back if they spend €75. I hope this measure will encourage people who might have been spending €50 to spend €75. It will cost them less and they will get more. I think that is a bonus. I accept it is clumsy, compared to having no threshold.

The other point I made was on promoting this scheme. This is the first time ever tourists from the UK coming into Ireland will be able to avail of VAT back. This brand new benefit for tourism in Ireland has never before applied to the over 3 million people who come in from the UK every year. They are the largest number of tourists coming into Ireland and, because they were in the EU up to now, they could not avail of this. I believe there is a great opportunity to promote this through Fáilte Ireland and everybody else by telling UK tourists they can get VAT back on purchases in Ireland which they could never get before. I do not know how it will work out. Next year will be difficult because of Covid and the number of travellers but, for those who travel, it could be a great incentive to spend money here that they would not otherwise have done because they will get VAT back.

I made the point that a lot of debate has been about why we are at €75. I said when the Oireachtas passed the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Act 2019 and brought in the figure of €175, it was passed by both Houses. Now that the Minister, Deputy Donohoe, has considered the matter and the various views expressed, he has reduced it to €75 because the last legislation lapsed due to the Brexit situation. Even though it was passed and approved, it did not have to be implemented because Brexit did not happen last year but is scheduled to happen now. That is an issue that has to be put on the record. People will say “generous” is too generous a word but we are offering something to UK

tourists who visit Ireland under a VAT-back scheme that is not reciprocated on the other side. That can be used to tell them they are welcome to come here and they will get their VAT back.

I was asked questions about looking at the big picture. I get the big picture and that is on one hand, but small businesses are on the other hand. I hope they will encourage people to spend €75. The contention was that this would ultimately be guillotined before the end of the year - not today, but on some other day. It has already gone through the Dáil.

I have to confirm something that Senator Casey raised and which we have discussed. I want to make it clear so the public knows and there are no illusions about this. The threshold is per transaction - it is not cumulative. One must have one's receipt for €75. One could spend €50 in one shop and the next day €50 in another shop and a further €50 in a third shop. However, if no single transaction goes over €75, one cannot claim the VAT back. In the marketing of this scheme, people should be made aware that if they spend over €75 in a single transaction, they can get their VAT back; but if they do not, they cannot get their VAT back. One cannot accumulate small receipts to get over the line. It is per transaction. That is what is in the legislation. There is no amendment down on that issue today so it is not up for discussion by way of amendment. I could understand if there had been such an amendment. As it has been raised in this discussion, I am clarifying it.

The impact will not be on the big tourist shops that we are all familiar with. The impact, whether it is large or small, will depend on where the tourists are coming from. If they are coming from the UK, the shops might get more sales. They might lose money on the other side with people who would only spend €30 or €40 and will not go to €75. I accept that and that is why we need a review. The Minister, Deputy Coveney, in his second speech was adamant there will be a full review. The Minister, Deputy Donohoe, is committed to that and will come back to the matter in 12 months. Those are the issues. People have asked me where the scientific evidence for the €75 is. That is like asking what will happen with Covid next year. Who can predict the future? Nobody can. We can set out the scenarios but, if we pause this, we cannot do a review if something does not come into effect. In order to have a review, something needs to have come into effect. There is nothing to review at the moment because there is no threshold.

Reference was made to the issue of the details of VAT fraud. I am not specifically aware of anything in that regard. I do not think I raised the issue of VAT fraud as such. It might have been mentioned in the course of discussion in the Chamber, but this is not about fraud. I have not raised an issue in that regard.

There was a question about a consultative forum. It seems a parliamentary question was tabled on this issue some time ago. I am not aware of any consultative forum but if there is one, we will notify Senators of it. I may be wrong, but I have no knowledge of such a forum.

A Senator asked when the Bill is due to commence and whether we can pause its commencement. We cannot pause Brexit. None of us voted for it, but we are here because of Brexit. It is not an issue of our making. I do not think the pausing of sections of the Bill even though Brexit is happening is a realistic suggestion or something I can offer to the Chamber. It would not be right to do so.

I have said what I have to say on a couple of occasions. There are positives and negatives to this. In fact, the only people who are not gaining from this are the people of Northern Ireland because they have the benefit of being part of the European Community under the Northern

Ireland protocol, whereas the people in England, Scotland and Wales are not in that protocol, so they can actually benefit from this. It is the same arrangement as it always was in respect of Northern Ireland; it is deemed to be in the European Community for this purpose, so there is no change. It will only impact people coming in from other areas.

As I stated, there is possibly only one other country in the EU that has a zero figure, namely, Spain. That is so because there are so many English people living in Spain. I may be wrong in that regard. If I am, I will stand corrected. I think it is only Spain or perhaps one other country that also has a zero figure. Ireland is unusual in the EU in that regard. The figure was from zero to €175. We had a figure of €175 last year and brought it back to €75, so we are now somewhere in the middle. We are not out of sync with our European counterparts on that. All one can hope is that the Bill will pass today. The Minister for Finance, Deputy Donohoe, and the Minister for Foreign Affairs, Deputy Coveney, have told me they need the Bill to be passed. The Minister, Deputy Coveney, gave an absolute commitment on Second Stage that there will be a review. I do not expect to get past the Finance Bill next year without this matter being up for detailed discussion. At this point, I am not in a position to accept the amendments.

**Acting Chairman (Senator Aisling Dolan):** I thank the Minister of State for the clarifications he has given. We do understand the urgent nature of the legislation.

**Senator Fintan Warfield:** I think this will probably be the last time I speak on the Bill. We should put the matter to a vote at some point. I intend to press the amendment. I was hoping that we would come back after the sos with some new information or some agreement on the issue. The most unfortunate thing is that, as Senator Chambers stated, the pitch that staff in museum or heritage site shops make to tourists will change no matter what.

Brexit talks are due to come to a head in the coming days and weeks. Their outcome is not within our control, as the Minister of State pointed out many times, but we can, at least, ensure the tourism industry is best placed to prosper in whatever new dispensation emerges. This measure simply could not have come at a worse time. I do not accept that more revenue will be raised through the €75 threshold than would result from the increased tourism, spending and economic activity if we leave this at a zero rating. As I stated on Second Stage, when businesses suffer, that sometimes leads to detrimental scenarios. In this case, maintaining the 1 cent threshold is the right investment to make because we cannot pump money into a business that has already folded. I will be pressing the amendment.

**Senator Pat Casey:** I will not delay the House too long. I have said nearly everything I could say at this stage. I again express my disappointment that the Government is not willing to accept any amendments, even those from its partners in the Government. I know the Minister of State referred to the fact that no amendment relating to the collective spend was tabled, but I think the result would have been the same even if an amendment had been tabled on the collective spend. The Minister of State came back in on the issue of the €9 and put it on the record that this is not about €9. It is much bigger than €9. The €9 relates to a figure of €75. I could question whether these tax-back companies take a full 50% of this figure. This is about people spending €500 or €600 and getting a percentage of it back. I do not want the impression to go out from this Chamber that we are arguing about €9. It is much bigger than €9.

Senator Warfield has addressed the issue. It is about the simple message to which I referred earlier, that is, that this country offered tax free shopping. That message is now gone. A system that has worked very effectively for our overseas visitors for the past 35 years will now be

amended in a negative way. The Minister of State has put forward the positives in terms of the UK and I agree with that but I think we could have got more out of it than what we have at the moment. I think the sos has taken the energy out of me, thank God. I do think this section is a retrograde step. I disagree with the Minister of State about the review. A review could be held in a year's time. At that stage we would be able to identify what our sales were and what our VAT rebates were. It is wrong to say that we would get no information. We would actually have accurate information on how to propose a scheme based on the figures, rather than introducing a scheme in the unknown as is being done. If we left it for a year, we would know the potential impact on our revenues of visitors from the UK shopping in Ireland and, equally, the impact of that spend in our communities and the multiplier effect that would have in our communities at the end of that year. It is wrong to indicate that we cannot have a review. We can have a review and that review could give us a significant amount of detailed and accurate information about a more targeted and accurate scheme that we could bring in.

I agree that we did not cause Brexit but it is our choice as a Government to bring in this legislation. We are not being forced to bring it in. It is the choice of the Government to bring in the Bill and, as such, it should not hide behind Brexit. We do not have to do this. The Minister of State knows that and so do I. He should not use the excuse of Brexit because we have an option to scrap the scheme if we so wish. That is our choice as a Government.

**Acting Chairman (Senator Aisling Dolan):** I thank the Senator. I understand that he has expressed many concerns. This is emergency legislation because Brexit is not waiting.

**Senator Micheál Carrigy:** There was reference to figures and money. It is not about money; it is about rebuilding the tourism sector. In 2019, approximately 4 million people visited Ireland from Britain. It is about getting those 4 million people back into Ireland in 2021 and 2022 and putting incentives in place. It is not about figures; it is about rebuilding an industry that employed more than 200,000 people. The UK is the biggest source of visitors, providing 4 million visitors in 2019.

Amendment put:

The Committee divided: Tá, 14; Níl, 25.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Ardagh, Catherine.
Boyhan, Victor.	Blaney, Niall.
Boylan, Lynn.	Byrne, Malcolm.
Flynn, Eileen.	Carrigy, Micheál.
Gavan, Paul.	Casey, Pat.
Higgins, Alice-Mary.	Cassells, Shane.
Hoey, Annie.	Chambers, Lisa.
Keogan, Sharon.	Clifford-Lee, Lorraine.
Moynihan, Rebecca.	Conway, Martin.
Ó Donnghaile, Niall.	Crowe, Ollie.
Sherlock, Marie.	Currie, Emer.
Wall, Mark.	Daly, Paul.

*Seanad Éireann*

Warfield, Fintan.	Doherty, Regina.
	Dolan, Aisling.
	Gallagher, Robbie.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Reilly, Joe.
	Seery Kearney, Mary.
	Ward, Barry.

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

Amendment declared lost.

**Senator Mark Wall:** I move amendment No. 2:

In page 44, line 29, to delete “€75” and substitute “€50”.

Amendment put:

The Committee divided: Tá, 11; Níl, 33.	
Tá	Níl
Bacik, Ivana.	Ahearn, Garret.
Black, Frances.	Ardagh, Catherine.
Boyhan, Victor.	Blaney, Niall.
Flynn, Eileen.	Boylan, Lynn.
Higgins, Alice-Mary.	Buttimer, Jerry.
Hoey, Annie.	Byrne, Malcolm.
Keogan, Sharon.	Carrigy, Micheál.
McDowell, Michael.	Casey, Pat.
Moynihan, Rebecca.	Cassells, Shane.
Sherlock, Marie.	Chambers, Lisa.
Wall, Mark.	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Currie, Emer.
	Daly, Paul.

	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Garvey, Róisín.
	Gavan, Paul.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	Ó Donnghaile, Niall.
	Seery Kearney, Mary.
	Ward, Barry.
	Warfield, Fintan.

Tellers: Tá, Senators Ivana Bacik and Mark Wall; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Amendment No. 3 not moved. Section 65 agreed to.

Sections 66 and 67 agreed to.

#### NEW SECTION

**Senator Mark Wall:** I move amendment No. 4:

4. In page 47, between lines 10 and 11, to insert the following:

**“Review of operation of *section 65***

**68.** No later than 12 months after the coming into operation of *section 65*, the Minister shall—

(a) review the operation of the amendments effected by that section, and

(b) lay before each House of the Oireachtas a report of his or her conclusions from the review.”.

Amendment put and declared carried.

Sections 68 to 114, inclusive, agreed to.

#### SECTION 115

**An Cathaoirleach:** Amendments Nos. 5 and 6 are out of order.

Amendments Nos. 5 and 6 not moved.

Question proposed: “That section 115 stand part of the Bill.”

**An Cathaoirleach:** Two amendments to the section have been ruled out of order.

**Senator Alice-Mary Higgins:** I have opposed sections 115 to 118, inclusive, because I had an overall concern. All the sections relate to policies on international protection. There are a number of flaws - anomalies and measures that are not compliant with human rights - within our international protection legislation, which it is proposed to re-insert here. I will not call votes on each section but I wanted to indicate that the reason I opposed the sections was I had concerns about this Part, because it is a particularly sensitive part. It will have a very real effect. There are many concerns about it and I would like there to have been greater scrutiny. Much of what is in the Part will merely cement what is already in law, and I do not know whether it needs to be included in the Brexit Bill. My amendments Nos. 5 and 6 have been ruled out of order, so I will not speak to them, but they will be addressed in the legislation next week, when we will have an opportunity to discuss the issue of deportations during a global pandemic. I do not mind that the amendments have been ruled out of order because we will have an opportunity to engage on them at that point.

**Senator Frances Black:** I welcome the legislation in its attempts to ground us in some certainty in these nebulous times as we face the onset of Brexit and all that the next few months will present. In particular, I commend the attempts to protect the important spirit of the Good Friday Agreement of 1998 and to mitigate, where practicable, the potential disturbance caused by the withdrawal of the United Kingdom from the European Union. I also commend the Bill on its objectives to reduce the possibility of a serious disturbance in the economy and in the sound functioning of a number of markets, sectors and fields in the State as a result of that withdrawal. I further commend the attempts to make exceptional provision for the reimbursement by the Health Service Executive to eligible persons resident in the North of Ireland of certain medical expenses incurred by a member state.

I, along with other Senators, have noted a few areas in the Bill that demand scrutiny and have tabled amendments. It is not possible to speak to them all but I will speak to two Parts in particular, namely, Part 18, on international protections dealt with between sections 110 and 118, inclusive, and Part 19, which concerns recognition of certain divorces, legal separations and marriage annulments dealt with in sections 118 to 121, inclusive.

The Bill provides for amendments to current international protection legislation and aims to address the circumstances that may arise if the transition period expires without a relevant agreement on this issue having been reached between the UK and the EU. This highlights the importance of respecting civil liberties, on which I fear this Part falls short. I wish to amend the section before us, which refers to the International Protection Act 2015, to refer instead to “the Act of 2020”, meaning the Emergency Measures in the Public Interest (Covid-19) Act

2020, which will then oppose sections 116 to 118, inclusive. The 2015 Act would not provide adequate protection to a person outside his or her home country who was unable to return without risk.

**Minister for Justice (Deputy Helen McEntee):** I thank the Senators for their comments. Section 115 is connected with sections 116 and 117, the sections they oppose. Given that these are all integral parts of the functioning of Part 18, I might outline the reasons behind it. We are trying, inasmuch as possible in respect of this legislation in its entirety, not just of the justice parts, to mirror arrangements we have with the UK. If the transition period expires at the end of this year without an agreement between the UK and the EU, the Dublin regulation will no longer apply between Ireland and the UK. We need to try to ensure, therefore, that some measures are in place.

Two concepts within EU law, namely, the safe third country concept and the first country of asylum concept, allow for applicants for international protection to be transferred to a third country. The latter has been transposed into Irish law and allows applications for asylum made here to be determined as inadmissible where the person has been granted asylum in the UK. Part 18, which is opposed by the Senators, will address the safe third country concept. It will enable Ministers to designate a third country as safe where it meets certain criteria in accordance with EU law, which will ensure that the UK can be designated. It will mean that an application for international protection can be deemed inadmissible where the applicant has arrived from a country that has been deemed a safe third country. The intention of this Part is that the UK could be deemed such a country.

Part 18 also introduces a mechanism to return applicants for international protection to the UK. This will provide for the return of a person to the UK where his or her application has been deemed inadmissible, on the basis that he or she arrived here from that safe third country or another country which is considered the first country of asylum. Part 18 is integral to ensuring that the international protection process continues and that we, as much as possible, try to mirror the Dublin process, which will fall if there is no agreement. Obviously, if there is an agreement, that will not be the case and we will not need this.

We are trying to substitute like for like here. I understand that Senators have concerns with what is already there but, given the timescale and the challenges with that, I am not sure this legislation is the place to do what they are seeking.

**Senator Alice-Mary Higgins:** I will not be opposing sections 115 to 118, inclusive. I am keen to move on to the specific amendments on section 119. However, some of those concerns are specific. Again, this is an issue I wish we had had more proper scrutiny of since the last occasion on which we passed withdrawal legislation. There are concerns, particularly if we end up in a situation where the UK withdraws from, for example, the human rights courts. In terms of the deeming of safe third country status and of being a first country of asylum, I have a concern that we will have automatic assumptions in regard to the UK that we might need to more thoughtfully address. It would have been useful to have had a sense of what the expectations are and how we feel this will operate. It is not going to be the case that we can just treat the UK as if it is an EU country if it ends up not having the same human rights standards.

We will end up returning to this issue. I will not oppose the sections so we can get to the substantive concerns on the international protection orders. However, we cannot make blanket assumptions on the situation if we do not have a deal. Of course, in an ideal scenario, we will

have a deal that miraculously happens and this does not apply. However, in a scenario where the UK does not commit to the kinds of equivalences that, certainly in regard to Northern Ireland, it is required to commit to under the Good Friday Agreement, and, more widely, to the kinds of human rights equivalences and equivalences in terms of international protection and asylum that exist, we may need to have a future discussion.

I will park that for now so we can move to the more substantive amendments. I will not oppose section 115.

**Deputy Helen McEntee:** The Bill sets out a clear set of criteria in accordance with EU law that we are requiring the UK to adhere to. Therefore, in order for us to assign it as a safe third country, it will have to fulfil those criteria. We are very clear that it is not just a blanket because we are trying to keep everything the same. That set of criteria still exists and we will expect it to adhere to it.

Question put and agreed to.

Sections 116 to 118, inclusive, agreed to.

#### SECTION 119

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

In page 91, between lines 14 and 15, to insert the following:

“(b) by the substitution of “14 years” with “18 years” in all places where it occurs within this section,”.

This amendment relates to one of the many concerns in respect of our international protection legislation. Whether the Minister accepts it today, it is one we need to look at. At the moment, the legislation allows for the taking of the fingerprints, without parental consent, of anybody over the age of 14. I note that, in other legislation, 18 years is what is specified in terms of a child. Specifically, under the Data Protection Act 2018, fingerprints are very much a part not just of personal data but of special categories of personal data that we are obligated under GDPR to treat with particular sensitivity. The Data Protection Act defines a child as anybody under the age of 18.

I am very concerned. Effectively, we already have a legal anomaly if our international protection legislation is treating a child as anybody under 14 and allowing for the taking of personal data, whereas our data protection legislation would treat a child as being under the age of 18. This is an anomaly that exists currently in the legislation. Again, it is regrettable that this Bill is being rushed because, in fairness, it has been coming for a long time and we could have started a month ago and got it right. That said, this would have been an opportunity to address that anomaly in law.

**Deputy Helen McEntee:** The reason we have the age of 14 is that under EURODAC, which is the European database for international protection and comparisons of fingerprints for applicants for international protection, the age is 14. We are complying with this EURODAC regulation from 2013. Therefore, it is the case at a European level but it is also the same within the UK, so, again, we are mirroring what we had before and we are not changing anything. I do not think it creates any kind of anomaly because we are following the EU regulations in this regard. In this instance, it is the right decision that we continue to follow EU regulations but,

also, regulations that will exist and will mirror this in the UK as well.

**Senator Alice-Mary Higgins:** The GDPR came after that EUODAC regulation so it is the more recent law. Perhaps it is due to the vulnerability of the persons affected that cases have not been taken but I imagine when they do take cases, they will be successful. While the EUODAC regulation allows us to have the database in that regard, we should look to best practice both in terms of our obligations under GDPR but also in terms of the fact Ireland has constitutionally recognised the rights of the child, so we should aim for the highest standards. We are certainly not obliged to take children's fingerprints without their parents' consent under the EU regulations.

Amendment put and declared lost.

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

In page 91, to delete lines 21 to 23.

The phrase "the person arrived in the State from a safe third country that is, in accordance with subsection (17), a safe country for the person." is used in the Bill. I will not speak at length to this because I wish to address the issue later when we discuss the issue of a safe third country. The European directives give guidance on that, but they also give a lot of scope for countries to set their own mechanisms. Because time is limited, I will instead focus on amendments Nos. 9 to 11, inclusive, in my name, which address the question of how we define what a safe third country is. I believe Ireland may need to add some supplementary circumstances or supplementary considerations to the determination of a safe third country.

I would simply note, in regard to the line "a safe country for the person", that this is something we have seen again and again. We have seen this described as a huge issue for persons who are seeking asylum or any other forms of international protection here in Ireland. A country that is predominantly safe may not be safe for a particular person. For example, we know there are countries that have been described broadly as safe countries which are not safe countries for an LGBT person, for a member of a particular minority or, in some cases, in regard to the familial violence particular people may face. There is sometimes a wider concern which we will not have time to dwell on today. I hope we get a chance to do that, and it would certainly help if the Minister would commit to reviewing the international protection legislation properly at some point in the next few months. We need to have consideration of how we approach that issue because very unfortunate decisions have been made in terms of persons being sent to a safe third country which proved not to be safe for them.

**Deputy Helen McEntee:** It is an issue we can discuss in more detail later. This part is an integral part, and the overall Part 18 would not work without it. The amendment would delete a provision whereby an application for international protection is admissible if a person arrives from a safe third country and it is important that we have that provision within this legislation. It is necessary to provide the basis for the application of international protection to be deemed inadmissible where the applicant has come from a safe third country. There is, obviously, a non-*refoulement* process which we will talk about later. A person cannot be forced to go back to a country where there is a possibility that they will be persecuted or treated in the ways that the Senator has just outlined. That principle exists even where somebody's application has been unsuccessful. The Part as a whole would not work without this so that is why we need to ensure it remains.

**Acting Chairman (Senator Pat Casey):** Is the amendment being pressed?

**Senator Alice-Mary Higgins:** No.

Amendment, by leave, withdrawn.

**Acting Chairman (Senator Pat Casey):** Amendments Nos. 9 to 11, inclusive, may be discussed together.

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

In page 91, between lines 30 and 31, to insert the following:

“(b) will have access to the same standard of medical care within the country, as they can receive within the State,”.

Amendments Nos. 9 to 11, inclusive, relate to a similar scenario. The Minister may be aware that I previously raised with the Minister of State with responsibility for law reform, Deputy James Browne, a Commencement matter regarding the concern around deportations or return orders that have been issued. I understand that more than 460 have been issued during the Covid-19 crisis. There are also concerns around the potential exercise of those deportation orders during a time of global pandemic. Amendments Nos. 9, 10 and 11 seek to address the issue in different ways.

The Minister may also be aware that the Civil Engagement Group today introduced specific legislation in the Seanad, which we will be bringing to Second Stage next week. I hope these amendments might be accepted but it is important that we address these issues. The specific legislation we have introduced seeks to ensure that persons will not be issued with deportation orders at a time when things are unsafe.

Amendments Nos. 9 to 11, inclusive, are a little different to the legislation I mentioned but try to address a similar issue. A country should not be regarded as a safe country and a return should not be issued where there is a significant risk to the health of a person, either as a result of the public health situation in a country to which they are being expelled or returned or if the process of travel itself to that country could carry a significant health risk. Those are the contents of amendment No. 10 but amendments Nos. 9 and 11 are variations on the same theme.

Perhaps the Minister will comment on this issue. I realise it is not the usual scenario but it is the current one in many parts of the world. We know that public health systems are really strained. The Minister mentioned the process of *refoulement* and obviously there can be no *refoulement* when a person will be persecuted or endangered because of their ethnicity, gender, sexual orientation and so forth. Sometimes endangerment, even within non-*refoulement*, is not simply a matter of an act of persecution, sometimes it is a matter of omission. If a person is less likely to be able to access the healthcare that he or she needs or is likely to be excluded from necessary public health protections, that is also a concern. That means that a person might be placed in danger, especially when there is a health crisis in Ireland and many other parts of the world. Many of the great cities of the world are experiencing health crises. There is a general and prevailing situation of public health danger. Some persons may be vulnerable and marginalised because they are of a particular ethnic group. Some of those who are facing deportation orders at present have no family links whatsoever in a country. They could be particularly vulnerable to that general public health danger.

That is what these amendments are looking at. I am conscious of time and the pressure the Minister has spoken about in terms of this legislation. I know that we will have an opportunity to engage on this next Wednesday, and, I hope, between now and then. Will the Minister indicate her thoughts on this issue?

**Senator Niall Ó Donnghaile:** I will be brief because I know that the Minister will want to come in and deal with many of the points that have been raised. I am somewhat torn over these sections because I have a great deal of sympathy and solidarity for what Senator Higgins has outlined but I am also very conscious of the live implications of Brexit and the necessity to get this legislation through. I wish we were debating legislation pertaining solely to the issues of migration. We need that conversation and to look at this much more broadly.

I will not be opposing any of Senator Higgins' amendments as outlined but I am conscious why it is important this legislation is passed for all of the reasons that we have extensively articulated in this House, going back over a long time. I am serious when I say that we need to look at the broader issues that my colleague has raised. It is important to make that point where there are complex legislative processes required.

I respect and appreciate the points that have sincerely been raised but I am not comfortable that they are coming during this Stage of the passage of emergency legislation. I wanted to make that point for the purposes of the record and to contribute to this debate. I acknowledge the severity of the issues raised. We need a stand-alone debate on those issues with a view to taking a much better approach. However, the focus now needs to be on concluding legislation for all the reasons that the Minister and her colleagues have outlined, and for all the reasons we know, given the live implications of this legislation.

**Deputy Helen McEntee:** I will speak to the three amendments together and re-stress that we are trying to mirror what we currently have. I take the points that the Senators are making and apologise for not being able to take the Commencement matter to which the Senator referred. I hope to be in the House next week for the wider debate on the Private Members' Bill that has been put down. We are following EU regulations as they are set out and, as the Senator says, perhaps that requires a wider conversation at home or at European level to take into account some of the points being made.

All of the relevant matters have been taken into consideration in the section that amendment No. 9 proposes to amend. The rules for determining whether a country is a safe country are laid down in the 2005 procedures directive. The section that the Senators are proposing to amend through amendment No. 10 contains clear principles for the non-*refoulement* considerations that have been defined in international and European law. We are trying to align ourselves with EU regulations and law and, at the same time, mirror what was there previously.

We deem amendment No. 11 unnecessary. If a person wishes to raise new or emerging circumstances in their case, including circumstances relating to the country to which they are to be returned, they can do so under certain provisions contained within the Bill. That facility already exists so I am not sure if amendment No. 11 is necessary. On the other amendments, we are following EU regulations and guidance, trying to mirror what currently exists with the UK and make sure that we match the legislation they are going to introduce on the other side. I take the points that the Senator is making but perhaps it is a matter for another conversation or debate at a later stage.

**Senator Alice-Mary Higgins:** I thank the Minister for her response. We will be addressing some of the issues in the legislation that we will bring forward next week. Some of the issues we will be bringing forward next week can be addressed by policy but that clearly needs to happen. Some of the issues require legislation and there is a mix in that regard.

Many of the amendments to which we are about to move very much require changes in policy. I suggest that within the EU directives on safe countries, there is scope given to countries; the directives are not entirely prescriptive in that regard. They set a base standard but allow for additional considerations. That said, I will withdraw amendment No. 9. I will press amendment No. 10.

Amendment, by leave, withdrawn.

Section 119 agreed to.

## SECTION 120

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

In page 92, between lines 19 and 20, to insert the following:

“(c) there is a significant risk to the health of the person, either as a result of the public health situation in the country to which they are being expelled or returned or if travel to the country to which they are being expelled or returned would carry a significant health risk.”.

Amendment put and declared lost.

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

In page 92, between lines 27 and 28, to insert the following:

“(c) an expulsion or return would carry a significant risk to the health of the person, either as a result of the public health situation in the country to which they are being expelled or returned or if travel to the country to which they are being expelled or returned would carry a significant health risk.”.

Amendment put and declared lost.

Section 120 agreed to.

## SECTION 121

**Senator Alice-Mary Higgins:** I move amendment No. 12:

In page 93, to delete lines 25 and 26.

We have spoken to amendment No. 12 previously. This is in relation to the first country of asylum. I am pointing to the fact that this is an issue that needed to be teased out a little more. I am also conscious that we have talked about families and others who would be affected by Brexit.

I have concerns, which I will not fully press now, on the issue of the first country of asylum and cases where a landing place may have been in the UK. Much as we have talked about

families who are spread across the Border here in Ireland, the EU relationship that Ireland has had will give rise to situations for family members. For example, in some cases this tacks into the issue of family reunification. In some cases, two siblings or family members who have been given asylum in different countries have sought to be unified. What measures are being taken in relation to family reunification from the UK when it becomes a third country?

I am concerned that while the issue of the first country of asylum within the EU is addressed in the Dublin Convention, I am unclear on how the procedures will work in cases where families who are separated seek to unify when the UK is a first country of asylum but outside the procedures for reunification that currently operate. I do not know whether the Minister needs to comment on that now because I am happy to withdraw the amendment.

**Deputy Helen McEntee:** I will come back to the Senator on the issue of family reunification. What we are trying to do is mirror the existing process for family reunification. We must have a system whereby, if somebody is granted protection in a safe country, we continue to adhere to the regulations that have been set out. It might not necessarily be the Dublin regulation if the transition period ends without the agreement in place but we are trying to mirror that. If somebody has been granted asylum in a safe country, the idea that we would ignore that would have knock-on implications and ramifications elsewhere. I will revert to the Senator on exactly how family reunification will work.

**Senator Alice-Mary Higgins:** They are ameliorating provisions.

**Deputy Helen McEntee:** What we are trying to do is mirror what we currently have in that sense. I will come back with more details, if that is acceptable.

Amendment, by leave, withdrawn.

**Senator Alice-Mary Higgins:** I move amendment No. 13:

In page 93, between lines 37 and 38, to insert the following:

“(5) Where a person specified in an order does not have legal representation, the State shall inform that person orally and in writing, in a language they can comprehensively understand, of legal assistance and advice that they may avail of.”.

Amendment No. 13 is on the issue of *refoulement*, which we have discussed. It is an attempt to strengthen and improve our current legislation in respect of *refoulement* so that where a person specified in an order does not have legal representation, as not everybody will have legal representation, the State shall inform that person orally and in writing, in a language the person can comprehensively understand, of what legal assistance and advice may be available to him or her. The purpose of the amendment is to improve our practices regarding those who may wish to seek protection under the principle of *non-refoulement*.

**Deputy Helen McEntee:** There is a view that this perhaps is not necessary. What the Senator is trying to do, as she outlined, is put in place protections. The amendment would insert a new section 51A requirement to inform a person, who is the subject of a return order, of that legal assistance. However, a person who is the subject of a return order already should have received the information required under section 21 of the International Protection Act 2015. Section 21 specifies the information to be given to applicants for international protection whose applications are deemed to be inadmissible and this includes a person's entitlement to consult a

legal representative. This support is already available and there is also an acknowledgement in the specific sections that there is an entitlement to consult legal support at that stage.

**Senator Alice-Mary Higgins:** Is it the Minister's understanding that this information that should be given to a person under the relevant procedure would include information in respect of the person's rights in relation to non-refoulement?

**Deputy Helen McEntee:** Yes, that is my understanding.

**Senator Alice-Mary Higgins:** Non-refoulement, by its nature, applies even after the event. Under that circumstance, I do not need to press this amendment.

Amendment, by leave, withdrawn.

**Acting Chairman (Senator Pat Casey):** Amendments Nos. 14 to 16, inclusive, will be discussed together.

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

In page 94, line 26, to delete "without" and substitute "upon obtainment of a".

In the next two groups of amendments, we come to some of the most troubling aspects for those concerned with civil rights and our international protection legislation. Amendments Nos. 14, 15 and 16 deal with the issue that members of An Garda Síochána and immigration officers are mandated to behave towards those who were asylum seekers but may have been unsuccessful in their asylum applications in ways that we do not consider it acceptable to treat others. As a country that champions human rights and civil rights, we should seek to have standards for how people are treated in their engagement with the law, even if it is for the purposes of a return or even if that person has not been granted leave to remain or citizenship.

Many hundreds of people have been subject to return orders, on and off, for years. I am thinking, in particular, of the 469 people who have received return orders or deportation orders since the Covid crisis started. Many of them are in huge distress. Many have lived here for ten years, have partners and colleagues in the workplace. Some of them are contributing immensely in the arts. We have heard about those among them who are care workers and health workers. We should bear that in mind. People who have been subject to a return order do not only fear being returned or deported. They are also in fear because the deportation can happen in a frightening and arbitrary way, one that may be very distressing for those around them.

The Bill states that where an immigration officer or a member of the Garda Síochána considers that there is a significant risk of a person who is the subject of a return order absconding, that person may be arrested without a warrant and taken to a place of detention. My amendments provide that this should be done "upon obtainment of a" warrant. That basic standard that a warrant should be obtained for the arrest of a person and his or her detention should stand in this respect.

Amendment No. 15 similarly proposes to delete the words "without warrant". Amendment No. 14 is probably the more useful amendment because it specifies "upon obtainment of a" warrant.

Amendment No. 16 refers to the arresting of a person under subsection (4). This is not a person who has been determined to be a danger to the State. This is not a person who has been

determined to be a danger to the State. This is somebody who has been determined as not reaching the standard by which the State will decide to give him or her protection and right of residency. This is not somebody who is a criminal or in imminent danger. Such a person is not even in violation of our public order laws through threats, harassment of others or the endangerment of public health. These people are not endangering others or creating danger in any sense. The section states:

For the purpose of arresting a person under subsection (4), an immigration officer or member of the Garda Síochána may enter (if necessary by use of reasonable force) and search any premises (including a dwelling) [and we have talked at great length when debating legislation on Covid about the sacrosanct nature of the dwelling and how one does not casually invade a dwelling] where the person is or where the immigration officer or member, with reasonable cause, suspects the person to be ...

The immigration officers or gardaí can do this based on reasonable grounds. This would cause immense distress to people who have these orders hanging over them and to those with whom they live, because I know of people who have deportation orders who are living with a partner for six or seven years. It would cause distress to their families, to children, to those who may be resident in a shared house or to those in their workplace. It is a distressing thing to have gardaí or immigration officers entering a premises without warrant and without notice, possibly with the use of force, and it is an inappropriate treatment. All of these amendments seek to address this and introduce, not indefinite permissions for anyone, but the normal processes we would expect in the execution of other aspects of our law and how we would expect people to be treated in terms of basic civil rights and good practice.

**Senator Barry Ward:** I just wanted to make one point in respect of Senator Higgins's comments. In the first instance, I recognise the intention behind the amendments because she identifies some important issues. Section 121 of the Bill inserts into the Act of 2015 three new sections, 51A, 51B and 51C. Section 51B refers to the power of an immigration officer or member of An Garda Síochána to arrest a person and bring a person to a place of detention. On the face of it, that sounds like a draconian power. I acknowledge what Senator Higgins has said but it is important to remember that the provisions of Article 40 of the Constitution will always apply in cases like this. If anybody is detained in contravention of his or her rights under the Constitution, it is always open as a matter of constitutional law and long-standing precedent for a person to bring an application before the High Court at any hour of the day or night. That happens routinely in respect of such detentions. That protection is there in the first instance.

Second, as regards detention without warrant, there will always be a committal warrant. There is a process in place there and in order to accept that person, a prison or a place of detention must have a process, which is already established. The Bill does not specifically refer to it because it does not need to. The provisions are already there to protect that person. I acknowledge entirely what Senator Higgins has said and her concerns about unlawful detention, or perhaps more accurately detention that is over the top, because she has correctly expressed a concern that these provisions are more than is required. I understand where she is coming from but we must remember that the provisions of this legislation are designed to cover the whole range and spectrum of persons and activities involved in this. Section 51B includes the proviso that there must be a reasonable concern on the part of the immigration official or the member of An Garda Síochána that there is a need in these circumstances. In respect of all the dealings of these officials with a person who is a subject of this section, they must always exercise restraint and good practice. Sometimes it will unfortunately be necessary to detain that person because

there is a reasonable basis to do so. In the context of Senator Higgins's proposed amendment, it must also be remembered that fundamental constitutional protections endure in respect of every person. The person does not have to be a citizen or have any particular status in this State. Once the State is the actor, the provisions of Article 40, or the *habeas corpus* of the Magna Carta as it is colloquially known, exist to protect that person and those fundamental protections exist in addition to the ordinary procedural protections.

**Deputy Helen McEntee:** I will speak to the three amendments together. Senator Higgins has touched on a number of points in her comments. We have quite a clearly set out process for people going through the international protection application process. It is very distressing and can be very difficult for people to get a letter saying they have a number of days to make services aware of what they intend to do. After that, there is another opportunity for individuals to make their case. At every stage it is about working with and supporting these individuals, and gardaí try to do that. In my own experience of working with individuals in my constituency and trying to help individuals who have been here a number of years, they go through the process and at every stage they have engaged with and worked with the Garda. It has been a positive process.

As Senator Ward noted, this section is about where there is a significant risk and one has to cover everything from individuals who were engaging regularly with the Garda as they go through the process to people who were not, and where there are serious issues and concerns. Some of the proposed amendments would create a dual system of arrests. As I keep saying, the premise of this Bill is to try to mirror the system we currently have and replicate it inasmuch as possible, in order that we do not have a huge difference at the end of December if there is not a deal in place. It would make it a much more complex system if we had a dual system of arrests and is counter to the spirit of the Bill. I accept where the Senator is coming from with these points but it is important to say that in my own experience, the Garda has always worked with, and tried to support, anybody going through this very difficult process. We need to encourage that to continue in that spirit but we must also allow for much more difficult cases with challenging issues and people who pose a challenge or risk.

**Senator Alice-Mary Higgins:** It is only a risk if the person is absconding. There is no risk to others specified. If the legislation related to a risk to the public in any sense identified, then there are certain circumstances but that is not provided for here. There may be wonderful gardaí who do things in a very good way, and there may be others, but our job is the law and its execution. I would prefer if we did not have a level of discretion or vulnerability to the good practice of others, which is being assigned to certain persons.

I am conscious that if we fixed this issue in this Bill it would not fix it in the rest of the legislation on international protection because it would only affect these new sections, but we should learn from and improve upon legislation when the opportunity is there. If a law is not a good law or practice we should not replicate it but should instead improve upon it and then use this improved legislation as inspiration for improvement to our wider international protection legislation. This is not just about the opportunities people have had and whether they get to stay. It is about how they are treated. We talked about when they get brought to a person or place and so on. Bearing in mind that we will later discuss the fact that people can be detained in a vehicle for 12 hours, there are many in-between spaces, liminal and scary spaces in which people can find themselves. I am afraid I have to press this amendment.

Amendment put:

3 December 2020

The Committee divided: Tá, 3; Níl, 30.	
Tá	Níl
Black, Frances.	Ahearn, Garret.
Craughwell, Gerard P.	Blaney, Niall.
Higgins, Alice-Mary.	Buttimer, Jerry.
	Byrne, Malcolm.
	Carrigy, Micheál.
	Casey, Pat.
	Cassells, Shane.
	Chambers, Lisa.
	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Daly, Paul.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Garvey, Róisín.
	Kyne, Seán.
	Lombard, Tim.
	Martin, Vincent P.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	Seery Kearney, Mary.
	Ward, Barry.

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

Amendment declared lost.

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

In page 94, line 26, to delete “without warrant”.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 16:

In page 94, to delete lines 34 to 43, and in page 95, to delete lines 1 and 2.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 17:

In page 95, to delete lines 21 to 25 and substitute the following:

“(8) If, and for as long as an immigration officer or member of the Garda Síochána concerned does not have documentation to prove that the person subject of a return order is not under 18 years of age, the provisions of subsections (4) and (5) shall not apply.”.

I hope we will have the opportunity to address these issues again. I am conscious that there are those who support these issues but one would like to engage with them in a more detailed debate at another time in different legislation.

Amendment No. 17 relates to the concern that exists currently under the legislation regarding the measures I have described, for example, being arrested without a warrant, taken to a place of detention and being removed from a premises by use of reasonable force, including one’s dwelling. The Bill contains the phrase “member of the Garda Síochána concerned has reasonable grounds for believing that the person the subject of a return order is not under the age of 18 years, the provisions of subsections (4) and (5) shall apply as if the person had attained the age of 18 years” and my amendment would reverse that. It basically states that in terms of not knowing that the person is over the age of 18 as a fact or only going on reasonable grounds of believing that, or an estimation, if there is a risk of erring, we err on the side of caution when it comes to children. The risk of treating someone aged 14, 15 or 16 as if he or she was over the age of 18 is a much higher danger than the danger that a 19- or 20-year-old might accidentally be treated as if he or she was 17. We have a particular duty of responsibility to the protection and care of children. We also have a constitutional commitment in respect of the rights of the child. If there are concrete grounds to be sure that someone is over the age of 18, so be it. However, it is a different case if one is simply going on their belief that a person is over 18, those reasonable grounds being an estimation. Indeed, we have seen multiple cases of false information being put out and false suggestions being made around people’s ages. As we must err on the side of protection, I suggest that given the potential distressing nature of the actions that are taking place under subsections (4) and (5), we should have a higher bar of ensuring that children are not subject to them.

**Senator Barry Ward:** I am sympathetic to Senator Higgins’ comments and she is quite right that we need to err on the side of consideration, protection and caution, particularly when it comes to minors or young people who are the subject of the proposed section 51B. This amendment applies to the proposed inserted section 51B, and particularly subsections (4) and (5) of that section. The difficulty I have is that when speaking to her amendment, Senator Higgins suggested that where we do not know a person’s age, we should err on the side of caution. While I am sympathetic to that view, that is not what the amendment states. Amendment No. 17 refers to the situation where the relevant officer, being an immigration officer or member of An

Garda Síochána, does not have documentation to prove the person's age. I suggest that there is a large gap between knowing and being able to prove a person's age. In the first instance, these processes do not follow the guesswork of individuals and do not rely on rumour or misinformation that might be put out on the Internet or whatever it might be. Before an order is made in this respect, facts must be established by officials within the Department to the satisfaction of the Minister but also, in certain cases, to courts and to the satisfaction of judges. It is not the case that either an immigration officer or a member of An Garda Síochána would be going into a situation where he or she would be exercising a power under the proposed section 51B(4) or section 51B(5) on the basis of guesswork, estimation or even his or her own assessment. Such relevant officers are working on the basis of information they have been given, which - I think we must work on this basis - has already been established as a matter of fact. Although I have great respect from where Senator Higgins is coming from, the danger with this amendment is that it creates an undue burden. For example, if the relevant officer is aware of the presence of a warrant or a document that perhaps he or she has been given in electronic format but does not have it in physical format or he or she does not have it with him or her for some reason, and if the relevant officer has come from an office where he or she has seen the document, I think he or she is still reasonably satisfied as to the facts and the age of the individual involved. This amendment would create an undue burden on an officer of the State in these circumstances. The amendment refers specifically to documentation proving a particular status, rather than knowledge of the status.

**Deputy Helen McEntee:** I, too, appreciate where Senator Higgins is coming from and when it comes to dealing with children, we need to take every precaution. We always need to be sure that we are treating them, and every individual, in the way that they deserve, and that is with respect. Insofar as possible, and I hate to repeat this point, but what we are trying to do is to mimic and to essentially put in place a mechanism that reflects the current mechanism that exists through the Dublin regulation. The section we propose to amend is set out, insofar as possible, based on Regulation No. 10 of the European Union (Dublin System) Regulations, which concerns powers of arrest and related matters when affecting a transfer decision under the Dublin regulation.

As Senator Ward has pointed out, this amendment would make it necessary that the relevant officers would have documentation proving a person's age and there are a number of challenges with that requirement. First, an officer would have to have that documentation with them and it would have to apply in all cases, and not just where there is uncertainty about a person's age. Second, there is the difficulty that as many international protection applicants may not have documentation proving their age, again there is a challenge in that regard. This would create a difficulty in carrying out what is an important part of the overall Part 18 of this Bill. We are trying to mirror what already exists. I am not saying it is perfect and I accept the Senator's point that we need to err on the side of caution and that we are particularly sensitive when it comes to younger people. However, this amendment would not just apply to someone suspected of being under 18 years of age. Documentation would be required for every single person and that would place an unfair burden on officers in this respect. The other point is perhaps something that we could discuss at another stage.

**Senator Alice-Mary Higgins:** I accept the Minister's point on documentation and it is fair, because the wording, as it is at present, is too wide in terms of what the reasonable grounds might be and where they would be set out. I am concerned about the interpretational issue and perhaps that is something on which we can engage with the Minister. It concerns the issue of

reasonable grounds, what constitutes reasonable grounds and what the guidance might be that accompanies that. Again, Members will be discussing our own legislation next week, which will open up the international protection legislation and I hope the Minister might also bring legislation to revisit some of the issues we are discussing now, possibly in the spring. I do believe the documentation point is well made and perhaps I could have worded the amendment better but while I will not press my amendment because it is too specific, I am really worried that the language in the Bill at the moment is too open and I am very concerned about adverse consequences for persons who are under the age of 18 and are subject to potentially distressing situations that might arise under subsections (4) and (4). Perhaps the Minister can find a way to engage with us on that issue again.

**Senator Michael McDowell:** Senator Higgins is being reasonable about this amendment, therefore I do not think I need to say too much about it. However, our immigration controls must be practical and workable. They cannot be an obstacle course of impenetrable presumptions against the proper conduct of immigration control. Therefore, it seems to me that were we to accept the amendment in its present form, it would effectively cast on the authorities an almost unbearable burden of proof in circumstances that would render the whole idea impractical. If someone is under the age of 18, they have ample opportunity to make that point and they will be treated accordingly. When a person has brought no documentation with him or her to Ireland from a great distance away and from a country which that person claims is liable to persecute him or her, and if that person is seeking international protection, it is impossible in those circumstances for the Irish authorities to be cast with the burden of finding documentation which establishes as a positive fact the date of birth of someone who is 21 but who could be 18 or 24. That is an onus which cannot be discharged. We must all face up to the fact that post Brexit, the common travel area is a matter of huge importance to this country, both North-South and east-west. Our arrangements in this country are going to have to be such as are compatible with and not subversive of the UK's right to control immigration as well. It is not spoken about much but there is going to have to be a degree of dovetailing of our approach to migration into Ireland, which takes account of the fact that we could become a back door to Great Britain and Northern Ireland. It is all very well to put forward proposals which seem to be protective of vulnerable people but one can push that too far to the point where it makes the law and the systems for making the law work inoperable and effectively opens an unclosable back door to migration to the United Kingdom. That would inevitably cause friction between Ireland and Britain. We cannot always assume that any safeguard is a limitation on rights. The rights of the Irish people to a common travel area, and the joint interest in Britain between it and all the people in the North and South of Ireland in maintaining that common travel area, require that the Irish Government takes on board the real threats to the subversion of British immigration law.

Amendment, by leave, withdrawn.

**An Leas-Chathaoirleach:** Amendments Nos. 18 and 19 are related and may be discussed together. Is that agreed? Agreed.

**Senator Alice-Mary Higgins:** I move amendment No. 18:

In page 95, line 37, to delete "12 hours" and substitute "5 hours".

The Bill allows for persons to be detained for 12 hours in a vehicle. I do not think that is right. It is not appropriate that a person might be detained for a 12-hour period in a vehicle on their way to an airport or port. No airport or port in Ireland requires one to be detained for 12

hours, if 12 hours is the journey time. The Bill also allows for detention for successive periods of 12 hours in a vehicle, which means the overall period in detention could be much longer. It is wrong. I am suggesting a substitution of five hours which is a reasonable period that allows for travel. In exceptional circumstances where the journey time may be longer, it allows for a break in travel and a resumption of travel. Twelve hours in a vehicle is unduly distressing and inappropriate.

**Deputy Helen McEntee:** Again, the section aligns Ireland with the current regulations. It would be very difficult to create or provide for a dual system where there is one period of detention for cases transferring to EU member states and a different one for those transferring to the UK. I get the Senator's point that nowhere in Ireland is 12 hours away, even from the tip to the bottom of the country. However, if one is getting to a port or airport and a flight or something is delayed or rescheduled, this measure takes into account that one may have already had a long journey. That is one element of it. The other element of it is that we are trying to replicate what is there and work with the system that currently exists in EU member states. It would be very difficult for us to have a dual system with one timeframe for one set of people and a different timeframe for those going to the UK.

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 19:

In page 95, line 40, to delete "12 hours" and substitute "5 hours".

Amendment put and declared lost.

**Senator Alice-Mary Higgins:** I move amendment No. 20:

In page 96, to delete lines 18 to 25.

This amendment relates to a wider issue in terms of immigration policy that might be more appropriately dealt with elsewhere.

Amendment, by leave, withdrawn.

**An Leas-Chathaoirleach:** Amendments Nos. 21 and 22 are out of order because they are not relevant to the subject matter of the Bill.

Amendments Nos. 21 and 22 not moved.

Section 121 agreed to.

## SECTION 122

**Senator Alice-Mary Higgins:** I move amendment No. 23:

In page 97, between lines 24 and 25, to insert the following:

"(e) the laws regarding international protection in that country are more prohibitive than in Ireland and a person who is claiming asylum does not have the same opportunity to be granted refugee status as they would in Ireland."

If a country is designated as a safe third country to which a person may be sent, it should not have international protection laws which are more prohibitive than the laws in Ireland and the individual should have an equal chance of receiving protection in that country as he or she would in Ireland. If we are sending someone to a country where he or she will again have to seek protection, I want to ensure we do not send him or her to a country where he or she will have a lesser opportunity of receiving protection.

We have unlimited time. I will conclude my set of amendments shortly. It is important that we ensure Ireland takes this seriously. We have spoken about the EU standards in this regard, which often need to be strengthened and improved. Ireland, as a country that prides itself on human rights, talks about civil rights and took a role at the UN on its international compact on migration, should adhere to the highest standards. I would strike a very cautious note on any suggestion that we need to seek to align ourselves with what may prove to be extremely restrictive laws that may happen in the UK. We have already seen how people who have been resident in the UK for 50 years have lost status and been sent away. We know there have been very restrictive policies. One of the EU's great concerns in its negotiations with the UK has been some of the treatment not only of non-EU country migrants but indeed of EU country migrants and family members. I strike a note of caution regarding any suggestion that we should take guidance from those policies. We ought to bear in mind that in many cases, those policies led to the promotion of Brexit and to people voting in favour of Brexit, which will have very negative consequences for the UK and for us in Ireland.

I ask the Minister to comment on this amendment. This may be a different issue. As we discussed third countries at the beginning of today's engagement, the amendment might not need to be pressed now. I ask her to comment on the idea of trying to ensure an equivalence of standard. That would be very useful. I hope we will be able to engage, as the Minister mentioned, in another way on the third country issue in the future.

**Deputy Helen McEntee:** We have already discussed the possibility of adding further criteria and identifying what is a safe third country. There are very strict criteria, in line with EU regulation, that we are applying to the UK if it is to receive that status. We are not deviating at all. We are not relying on the UK saying that everything is fine. We are setting and applying a strict set of criteria.

The amendment seeks to put in place a new consideration in the designation of a safe third country. However, sufficient provisions have already been clearly set out in section 122 to deal with that. One of the conditions provided for in the new section for designating a country as a safe third country is that the possibility must exist in such a country for the person to seek refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention. That protection already exists within this section. On that basis, I do not propose to accept the amendment. There is a strict set of criteria there. It is in line with EU laws and regulations. We intend to apply this, even though this is obviously a separate measure but will be mirroring the one that exists under the Dublin regulation.

**Senator Alice-Mary Higgins:** I thank the Minister for her engagement. I hope we might be able to discuss it further. Certain safe countries may recognise LGBT status which is recognised as a concern regarding our international protection laws. It is not always given the same status in other countries. Consideration might be needed in a few areas. I recognise that the Minister has indicated that there are criteria and that she is happy to engage in discussion on how those criteria are applied. In that context I withdraw the amendment.

Amendment, by leave, withdrawn.

**Senator Alice-Mary Higgins:** I move amendment No. 24:

In page 97, between lines 38 and 39, to insert the following:

“(6) The Minister shall, every 12 months, lay a report before both Houses of the Oireachtas outlining any changes to the list of safe third countries and provide rationale for any such changes made.”

The amendment proposes that the Minister produce a report every 12 months on the designation of safe third countries. It is yet another expression of my concern over how that designation is working. We need to bear in mind that circumstances in countries, which may have been designated as safe third countries, change very rapidly. We are at an extremely politically volatile point in the world. It should be reviewed every 12 months because countries that had been designated as safe third countries may undergo radical changes in circumstances. Every 12 months would be an appropriate interval at which to reconsider those issues. Even if the Minister is not minded to accept the amendment, I think it fits into the discussion that I signalled we need to have.

**Senator Michael McDowell:** I believe this amendment is reasonable. If we are to designate or dedesignate countries as safe countries for the purpose of this legislation, there should be an onus on the Minister who makes these decisions by statutory instrument to report to the Houses of the Oireachtas on the rationale of why a country has become safe or unsafe for these purposes. This does not prevent a Minister from making an order but provides a rational explanation as to why an order has been made.

**Deputy Helen McEntee:** For the purposes of this Bill, the only country I am proposing to designate is the UK. I note that the amendment refers to “changes to the list of safe third countries” and not changes within those countries. Therefore, it is specifically the list. Any new designation for a safe third country is required to be brought before the Houses and that is specified within this. Obviously for the purposes of this Bill, the only country I am proposing to designate is the UK and therefore it would not necessarily apply for this Bill. There is a requirement for a Minister designating a new country to bring it before the Houses.

**Senator Michael McDowell:** The problem is that the Minister does this by statutory instrument. Frequently these Houses are not in a position to adequately understand the rationale behind a statutory instrument before it is made. Having an annual report is a good idea and should be acceptable to the Minister. If she has made changes to the list of safe countries, we should have an annual report on Ireland’s approach and why particular decisions have been made. If, for example, Senator Higgins disagreed with a particular designation, she would need to table a motion to reverse the statutory instrument and negative the Minister’s decision. This proposal simply asks for an annual explanation of any changes that have occurred in the designation of safe countries during that period. As it does not apply to EU countries, there is no embarrassment there. The rule of law issues that are now arising within the EU are another day’s work. I still think the amendment is reasonable.

**Senator Alice-Mary Higgins:** I know the Minister is probably not minded to accept amendments today given the haste and focus of the Brexit Bill. However, it would be constructive if we could have such engagement. I ask the Minister to consider it. Of course, she has the prerogative to publish such a report or to create such a point for engagement for Members who

are concerned and have an interest in these areas. Perhaps she might find another way to do it even if she is not in a position to accept the amendment.

**Deputy Helen McEntee:** I am not opposed to the idea, but it is not appropriate in this legislation. It might arise in other legislation.

**Senator Alice-Mary Higgins:** Or without legislation.

**Deputy Helen McEntee:** If it does not require legislation, it is something I would be happy to look at.

**Senator Alice-Mary Higgins:** I withdraw the amendment in the context of trying to find another way, perhaps outside legislation, to progress this mechanism.

Amendment, by leave, withdrawn

Section 122 agreed to.

Sections 123 to 134, inclusive, agreed to.

#### NEW SECTION

**An Leas-Chathaoirleach:** Amendments Nos. 25 and 26 are related and may be discussed together by agreement.

**Senator Alice-Mary Higgins:** I move amendment No. 25:

In page 104, after line 20, to insert the following:

#### **“Review of operation of Act**

**135. (1)** (a) The Minister for Foreign Affairs shall, not later than six months after the commencement of any part of this Act, carry out a review of the operation of this Act.

(b) The Minister for Health shall, not later than six months after the commencement of any section in *Part 2* or *3*, carry out a review of the operation of those sections.

(c) The Minister for Enterprise, Trade and Employment shall, not later than six months after the commencement of any section in *Parts 4, 5* or *15*, carry out a review of the operation of those sections.

(d) The Minister for the Environment, Climate and Communications shall, not later than six months after the commencement of any section in *Part 6*, carry out a review of the operation of those sections.

(e) The Minister for Further and Higher Education, Research, Innovation and Science shall, not later than six months after the commencement of any section in *Part 7*, carry out a review of those sections.

(f) The Minister for Finance shall, not later than six months after the commencement of any section in *Parts 8, 9, 10* or *11*, carry out a review of the operation of those sections.

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(g) The Minister for Transport shall, not later than six months after the commencement of any section in *Parts 12* or *13*, carry out a review of the operation of those sections.

(h) The Minister for Social Protection shall, not later than six months after the commencement of any section of *Part 14*, carry out a review of the operation of those sections.

(i) The Minister for Justice shall, not later than 12 months after the commencement of any section in *Parts 16, 17, 18, 19* or *20*, carry out a review of the operation of those sections.

(j) The Minister for Children, Equality, Disability, Integration and Youth shall, not later than six months after the commencement of any sections in *Part 21*, carry out a review of the operation of those sections

(k) The Minister for Housing, Local Government and Heritage shall, not later than six months after the commencement of any sections in *Part 22*, carry out a review of the operation of those sections.

(2) The Minister for Foreign Affairs shall, not later than six months after the commencement of the review carried out in accordance with *subsection (1)(a)*, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.

(3) The Ministers referred to in *paragraphs (b) to (k)* of *subsection (1)* shall, not later than six months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.”.

Considerable power is granted to Ministers under this Bill through regulations and orders that can be made under the Bill as well as provisions within the Bill itself. Given the very substantial powers being given, these amendments would require that either at an interval of six months or after a period of 12 months, each Minister would report on the operation of the sections relevant to them. It is very much a review mechanism. We are giving considerable power to Ministers and indeed necessary discretion, given that we do not know all the variables we may face following the withdrawal. Within 12 months we should review how that has worked out.

Progress reported; Committee to sit again.

### Gnó an tSeanaid - Business of Seanad

**An Leas-Chathaoirleach:** The Leader wishes to make a proposal.

**Senator Regina Doherty:** I move:

That, notwithstanding anything in the order of the House today, Committee Stage of the Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020 be brought to a conclusion no later than 6 p.m. by one question which shall be

put from the Chair which shall, in relation to amendments, include only those set down or accepted by the Government; and that Report Stage shall not be taken today.

Question put and agreed to.

**Withdrawal of the United Kingdom from the European Union (Consequential Provisions) Bill 2020: Committee Stage (Resumed)**

NEW SECTION

Debate resumed on amendment No. 25:

In page 104, after line 20, to insert the following:

**“Review of operation of Act**

**135.** (1) (a) The Minister for Foreign Affairs shall, not later than six months after the commencement of any part of this Act, carry out a review of the operation of this Act.

(b) The Minister for Health shall, not later than six months after the commencement of any section in *Part 2* or *3*, carry out a review of the operation of those sections.

(c) The Minister for Enterprise, Trade and Employment shall, not later than six months after the commencement of any section in *Parts 4, 5* or *15*, carry out a review of the operation of those sections.

(d) The Minister for the Environment, Climate and Communications shall, not later than six months after the commencement of any section in *Part 6*, carry out a review of the operation of those sections.

(e) The Minister for Further and Higher Education, Research, Innovation and Science shall, not later than six months after the commencement of any section in *Part 7*, carry out a review of those sections.

(f) The Minister for Finance shall, not later than six months after the commencement of any section in *Parts 8, 9, 10* or *11*, carry out a review of the operation of those sections.

(g) The Minister for Transport shall, not later than six months after the commencement of any section in *Parts 12* or *13*, carry out a review of the operation of those sections.

(h) The Minister for Social Protection shall, not later than six months after the commencement of any section of *Part 14*, carry out a review of the operation of those sections.

(i) The Minister for Justice shall, not later than 12 months after the commencement of any section in *Parts 16, 17, 18, 19* or *20*, carry out a review of the operation of those sections.

(j) The Minister for Children, Equality, Disability, Integration and Youth shall, not later than six months after the commencement of any sections in *Part 21*, carry out a review of the operation of those sections

(k) The Minister for Housing, Local Government and Heritage shall, not later than six months after the commencement of any sections in *Part 22*, carry out a review of the operation of those sections.

(2) The Minister for Foreign Affairs shall, not later than six months after the commencement of the review carried out in accordance with *subsection (1)(a)*, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.

(3) The Ministers referred to in *paragraphs (b) to (k) of subsection (1)* shall, not later than six months after the commencement of the review, make a report to each House of the Oireachtas of the findings made on the review and of the conclusions drawn from the findings.”.

(Senator Alice-Mary Higgins)

**An Leas-Chathaoirleach:** We are turning now to amendment No. 25. Does the Minister of State wish to respond to Senator Higgins?

**Minister of State at the Department of Foreign Affairs (Deputy Thomas Byrne):** I thank Senator Higgins for her amendment and all the Senators for their contributions today on this Bill, which is not a normal one. The purpose is not for new significant policy initiatives but is to protect existing arrangements and rights. This is not about new rights or arrangements but is simply to keep what we can, insofar as we can, in the context of Brexit. The Bill protects citizens and consumers, facilitates the sound functioning of key sectors, ensures our businesses are not disadvantaged and supports the common travel area and North-South co-operation. It is not generally proposed to give delegated powers to a Minister to introduce legislation in new areas without recourse to the Oireachtas. It is instead about giving Ministers power to maintain existing service levels. The Attorney General has guided the approach and we are comfortable with it.

What the Senators are proposing is constructive and we are grateful both for their co-operation here today and for their constructive engagement on what would be post-enactment scrutiny, which is an important issue. I am not in a position to accept the proposed amendment. I agree with the purpose of the amendment and the intention behind it and the Government fully agrees that it is appropriate to reflect on and review the legislation in due time. However, rather than accept the amendment proposed, I am advised that our intention is to rely upon Dáil Standing Order 197 and Seanad Standing Order 168 which read separately but coincidentally as follows:

Twelve months following the enactment of a Bill, save in the case of the Finance Bill and the Appropriation Bill, the member of the Government or Minister of State who is officially responsible for implementation of the Act shall provide a report which shall review the functioning of the Act and which shall be laid in the Parliamentary Library.

In addition, Ministers are committed to ongoing engagement with relevant Oireachtas committees, and this has already happened, on any impacts of the measures in their parts of the Bill

to address any unforeseen effects. For those reasons and while I understand what the Senators are putting forward, I cannot accept them. It is worth doing the reviews and I am saying they will be done.

Separately from that, it is also the case that issues will arise in the new year as Brexit happens, which may well bring us back into these Houses to make further changes or there may be issues that we have known about but will cause unexpected changes for citizens through no fault of anyone in these Houses or on this island but through the decision of parts of the United Kingdom to withdraw from the European Union. Unfortunately, I cannot accept the amendments but I certainly agree with the spirit of them and I expect they will, in effect, be complied with in any event.

**Senator Alice-Mary Higgins:** In the context of the Minister's commitment to engage with the formal process of post-enactment scrutiny but also to other and supplementary engagement because my concern is in respect of orders and regulations and not simply the letter of the Act itself, I am happy to withdraw my amendment in the context of constructive engagement.

**Senator Michael McDowell:** In view of what Senator Higgins is saying, I agree with the Minister State that there should be scrutiny and reporting but the Houses of the Oireachtas will be in a position to do so without a plethora of reports and therefore, that seems reasonable.

I want to note for the record of the House that the Leader's amendment to the Order of Business has effectively been to guillotine the discussion on Committee Stage at 6 p.m. today and to provide for a debate on Report Stage on a subsequent day. I am quite happy with that. I saw what happened earlier and I understand and am not going to embarrass anybody about this but I make the point that when one abrogates, as a matter of habit, the differentiation of Report Stage from Committee Stage, it is usually done for the convenience of the Government. I now see that the opposite can be done, for the convenience of the Government. That is all I will say on that point and I will not put it any further than that.

**Deputy Thomas Byrne:** We had been hoping to have Report Stage this evening.

Amendment, by leave withdrawn.

Amendment No. 26 not moved.

#### TITLE

Question proposed: "That the Title be the Title to the Bill."

**Senator Michael McDowell:** I wish to make one brief comment on the Long Title, which will not delay us. The United Kingdom leaving the European Union is a real tragedy. Whatever the views other member states may have of this, Ireland should adopt the position henceforth that the United Kingdom would be very welcome back into the European Union as soon as the people of the United Kingdom so wish and that no obstacle should be put in the way of redressing the wrong that was done by the Brexit referendum.

Question put and agreed to.

Bill reported with amendment.

**An Leas-Chathaoirleach:** When is it proposed to take Report Stage?

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**Senator Seán Kyne:** Next Tuesday.

**An Leas-Chathaoirleach:** Is that agreed? Agreed.

Report Stage ordered for Tuesday, 8 December 2020.

**An Leas-Chathaoirleach:** I thank Members for their co-operation with this very long debate. In accordance with the order of the Seanad today, the House stands adjourned until 10.30 a.m. on Tuesday, 8 December 2020 in the Dáil Chamber.

The Seanad adjourned at 4.59 p.m. until 10.30 a.m. on Tuesday, 8 December 2020.