



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé hAoine, 18 Nollaig 2020

Friday, 18 December 2020

Chuaigh an Cathaoirleach i gceannas ar 10 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Teachtaireachtaí ón Dáil - Messages from Dáil

An Cathaoirleach: Dáil Éireann has passed the Appropriation Bill 2020 on 17 December 2020, which is sent herewith to Seanad Éireann for its recommendation. Dáil Éireann has also passed the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill 2020 on 17 December 2020, to which the agreement of Seanad Éireann is desired. Dáil Éireann has also passed the Harassment, Harmful Communications and Related Offences Bill 2017 on 17 December 2020, to which the agreement of Seanad Éireann is desired.

An tOrd Gnó - Order of Business

Senator Regina Doherty: The Order of Business is No. 1, Appropriation Bill 2020 - all Stages, to be taken at 11.30 a.m. or 15 minutes after the conclusion of the Order of Business, whichever is the later, and to conclude after 60 minutes by the putting of one question from the Chair which shall, in respect of amendments, include only those set down or accepted by the Government, contributions by Senators to the debate on Second Stage shall not exceed five minutes and the Minister shall be given no less than four minutes to reply, Committee and Remaining Stages to be taken immediately afterwards; No. 2, motion for the earlier signature of the Appropriation Bill 2020, to be taken on conclusion of No. 1 without debate; No. 3, Harassment, Harmful Communications and Related Offences Bill 2017, also known as Coco's Law - all Stages, to be taken at 12.45 p.m. or 15 minutes after the conclusion of No. 2, whichever is the later, contributions by group spokespersons to the debate on Second Stage shall not exceed eight minutes, those of all other Senators shall not exceed five minutes and the Minister shall be given no less than six minutes to reply, Committee and Remaining Stages are to be taken immediately thereafter.

Senator Robbie Gallagher: My comments will be confined to discussing the end of the

year. This time last year, little did those of us who were in the Chamber think we would have the year that has just gone by. It has been a strange and tough year for many families, especially those who have lost loved ones along the way in difficult and strenuous circumstances. It has also been a very tough year for many in the business community, who struggle each day and will continue to do so for some time to come. Nevertheless, it is a time of year for families. I extend a happy Christmas to the Cathaoirleach and commend him on the job he has done since he took the Chair. He has been fair and impartial and I thank him and congratulate him for that. To the Leader and the rest of my colleagues in the Chamber, I wish for them a happy and healthy Christmas and, hopefully, a brighter new year. I cannot speak highly enough of Martin, Brigid and all the staff in the various sections of the Houses in the context of the courtesy they extend to us and for how helpful they are to us. I extend a happy and healthy Christmas to them and, hopefully, a brighter 2021.

Senator Victor Boyhan: I take this opportunity to say a few thanks. What a year it has been. Little did we think this time last year that we would be facing into a 2020 general election and Seanad election and a huge intake of new Senators - what an honour and achievement for them, personally. I remember the people who contested an election but did not succeed on that occasion. I hope we will see many of them here in future. It is important that we acknowledge the difficulties and challenges of contesting any election but that is the great thing about parliamentary democracy.

I thank Martin, the Clerk of the Seanad, Brigid and all the people in the background in the Seanad Office, and in the Leader's office, Orla Murray and how she co-ordinates the work behind the scenes among Departments, Ministers, speakers and the schedules every week. I thank the Cathaoirleach, Grace Coyle and all the others who work behind the scenes. This has been a difficult year for all of us. It has been a challenging year for business, as has been noted. I acknowledge the people involved in the Community Call. Local government shone brightest when people stood up and responded to the Community Call and I acknowledge the councils and local government throughout the country.

Finally, I pay special thanks to Senator Flynn. Anyone who saw her last night could not but be moved by this most wonderful Senator and by the journey she has taken through her life and personal experiences to be rightfully here, sitting in Seanad Éireann. Anyone who watched it could not but be moved by the extraordinary journey that Senator Flynn took. It shows that anybody can do anything they want if they set their mind to it and they are determined. I acknowledge her work. I also acknowledge the Members in this House and the great diversity of our membership.

I will leave the Leader with one ask. I hope that early next year we will have the two by-elections for Seanad Éireann. It is too important and it should not become a political issue or be divisive. There are vacancies for two seats in this House. I ask the Leader to engage with the Government to see if the early writ could be moved for both of those vacancies to have the election and to have, rightfully, two more new Senators in place in Seanad Éireann. I thank the Leader personally and wish her well for Christmas, as I do with all the Members in this House.

Senator Ivana Bacik: I join others on behalf of the Labour Party group in wishing all colleagues across the House well for the Christmas break and the new year. In particular, I wish you well, a Chathaoirligh, and Martin, Bridget, Grace and all in the Cathaoirleach's office, the Leader and all in her office, Orla Murray and others, who make the Seanad run so smoothly. I thank them all for their hard work this year. Undoubtedly, it has been a very tough year. At

this time, we also remember the many who have been bereaved or whose health and livelihoods have been so badly affected by the Covid pandemic. We look forward to a better year for us all in 2021.

Today is International Migrants Day. I look forward in the new year to making rapid progress on our citizenship law, being brought forward by the Labour Party group in memory of our dear colleague, Cormac Ó Braonáin. In keeping with our Born Here, Belong Here campaign, I met this week with the Minister for Justice, Deputy McEntee. I thank her and her officials for their engagement with me and I look forward to further engagement in the new year and to making progress on that issue.

I also thank colleagues for their support for the other Labour Party Private Members' Bill on which we have seen great progress on Coco's Law. We will be dealing with all Stages of the harassment Bill today. I know some colleagues have tabled a number of amendments. This Bill is being brought forward more swiftly than Bills are normally brought forward, with the agreement of all of us, in particular those of us in the Labour Party group and of my colleague, Deputy Howlin. We ask colleagues to bear with that and to engage constructively with us to ensure that it is passed before Christmas. There is clearly an urgency to this Bill, as we have seen in dreadful reports of breaches of privacy for people, and with their images being disclosed online. We heard that from Jackie Fox herself, whose daughter committed suicide after a campaign of online bullying. That is why we call this Bill Coco's Law. I look forward to the debate this afternoon. I thank the Leader for accommodating it on the last day of the term. It will be a positive note to be legislating on this important new law before we break for Christmas.

I thank Chloe Manahan in my office, who has done sterling work with me over the past year. I again wish everyone a happy Christmas. Nollaig shona dóibh go léir.

Senator Niall Ó Donnghaile: I echo the words of well wishes for Christmas and the new year. I did not wish to bring in a sombre tone but while we reflect upon what a year it has been, unfortunately, we are still in this year and it remains a very worrying and unsure period for people, not least heading into the Christmas break. I wish to use the platform afforded to me here this morning to encourage people to remain steadfast in adhering to the consistent and long-standing public health advice on the Covid-19 pandemic that is familiar to us all. I am sure the Leader saw in the North last night the introduction of comprehensive new restrictions, which I believe are necessary. I commend my party vice president and joint First Minister, Michelle O'Neill, for her clear communication of those new restrictions and her public engagement both last night and this morning. I understand there will be North-South engagement later this afternoon. I have said consistently that we need to see that clear, comprehensive all-Ireland strategy, planning, engagement and community, which will be key over the Christmas period.

That said, people in this State also need clarity. We are heading into a wind-down for the Christmas break. Businesses, business leaders, community leaders, healthcare workers, carers, families and private citizens all need to hear what, if any, new restrictions will be put in place. The Cabinet should meet as a matter of urgency over the weekend to ensure that the message is communicated, updated and co-ordinated in a way that meets the needs of people in the context of the ever-changing and ever-evolving situation.

We are just hours away from the Brexit deadline. It is something that we have worked on comprehensively as a Seanad in this term and in the previous term, not least through the work of the Seanad select committee on Brexit. I wish continued success and best wishes to the

Government in its efforts on this, but in particular to the EU team. There is no good that can come from Brexit. There are only varying degrees of harm that will be caused to this island. At least we have a glimmer of hope with the adherence to the withdrawal agreement and the Irish protocol, but it is an unsure and uncertain time for people right across the island in the context of Brexit.

In closing, I wish everyone a Nollaig shona agus athbhliain faoi mhaise and wish everyone well. I look forward to seeing everyone in the new term, suitably refreshed and ready to go. It is a very busy time for us. It will be laden with expectation given what we are coming through at the moment. I look forward to working with all colleagues across the House and wish them all every success.

Senator Malcolm Byrne: I wish a Nollaig shona agus athbhliain faoi mhaise to everybody in this House and to the staff. Since I have come in here, many people have surprised me with how much they are committed to public service, but one thing I have been amazed by is the people who transcribe the words of our debates, and do it so quickly. They often make us sound a lot better than we are. Their work should also be acknowledged.

Often in this House we complain and give out about certain things in society but sometimes we need to reflect on how much we have achieved. I welcome the publication this week of the United Nations Human Development Index, which placed Ireland second only to Norway. I accept that there is much about this Republic that needs improving and there are a lot of changes that we collectively in these Houses need to ensure happen, but let us look at what we have achieved. We have achieved much greater levels of participation in education and training and longer life expectancy. It is a safe country in comparison with many other parts of the world. It is important, in particular at this time, that we reflect on those other parts of the world and those who are not as lucky to live in as a safe democracy as this one.

What struck me about the UN Human Development Index and the report itself is that a lot of our success is being attributed to our investment in education. Over many years, successive governments have taken the decision to invest in education and it is what has led us to where we are today. Education does not necessarily mean that we get to see the results overnight. It is a long-term investment. I hope we learn from that and we appreciate what we have and that we continue to make that long-term investment in education, not just for young people but in lifelong learning.

Senator Jerry Buttimer: I offer my congratulations to Senator Bacik and her new husband, Alan, on their marriage. It took her long enough. It took Miriam Lord to tell us. I genuinely wish her, Alan and their daughters every happiness and congratulate them. I apologise for springing that on her.

Senator Ivana Bacik: Senator Buttimer is a devil.

Senator Jerry Buttimer: I am not going to rain on the good mood this morning in the House but Senator Ó Donnghaile is correct. The nation holds its breath in the context of Brexit and the relationship between us as a people and Covid-19. There is a need for the Government to bring clarity and certainty, and not to allow fear and wonder to continue over the Christmas period. Shops, pubs and gastropubs have reopened and there is an air of worry again this morning around when they will close.

I wish the Cathaoirleach and all his family a very happy Christmas. I thank all Members of

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the House for their courtesy and good humour during what has been a difficult year. I appreciate and thank the staff of the Seanad Office, every one of them, and all the men and women who work in Leinster House. Like Senator Byrne, I would particularly like to thank the unseen heroes of Leinster House: the people who transcribe, the people in the Bills Office, the people who put this place together, our cleaners, the porters and the ushers. I thank everybody. May they all have a peaceful Christmas.

Senator Aisling Dolan: I want to acknowledge that it has been six months since I became a Senator here. Reflecting back, I am proud of working with all my colleagues here to pass legislation that has had such an impact, particularly this year when dealing with Covid-19.

I will mention a few other things around Christmas. Again, I encourage people who are going home for Christmas and will be meeting their parents and grandparents to think about getting the children's nasal spray. We have one week. It will make a big impact and keep people out of hospital so it is a great thing.

Today is a chance to wear something sparkly. I wore my sparkly earrings as part of the Irish Cancer Society's #WearToCare initiative. We can encourage people and all our colleagues. Today is the day. I am sure there are many sparkly things we can wear to promote something today to raise funds. It has been a hard year for many charities to be raising funds.

Lastly, we are opening up counties now and many people will be going home. We can go back home to the west. Traffic is heavy, so be safe. I encourage people to think about shopping local when they get back to the town or village they left many years ago. Perhaps we can all think about buying and supporting something local. We should shop and look for local products because all of these things are important.

I am biased because Ballinasloe looks absolutely beautiful with its brand-new lights. I encourage anyone who is going back west to pop into Ballinasloe off the motorway and check out our lovely Christmas tree and reindeer. It looks absolutely stunning. People should bring the big and little kids and have a look. If we can do that, we are really going to have a great Christmas. I ask everyone to be happy and safe. There are a few more hard months to go but we have light at the end of the tunnel.

Senator Gerard P. Craughwell: I join all my colleagues in particularly thanking those who work in the background in Leinster House and make this House work like a well-oiled machine. I wish the Cathaoirleach and the Leader a very happy Christmas. Senator Bacik has blown me away today. I congratulate her on her marriage.

This year will stand out in my mind for the coronavirus and everything that goes with it. What really stands out in my mind is the impact it has had on children. It is no secret I was locked down for a fortnight because my three-year-old granddaughter tested positive. I recall visiting the house after we were all locked down and going up to visit the grandchildren. The five-year-old, Ellie, stood in front of Isabel and shouted across the corridor to me to stand back as there is a virus here. That is what 2020 means to five-year-old kids. When she is with me going into a shop, she will frequently pull me back to say there is no social distancing and we should not go in there. I do not mean to put a downer on Christmas but if five-year-old children can see that, I must ask why adults cannot see the same. Last night, I walked into a gastropub not too far from here and it was thronged. I turned on my heel and walked out the door. It is not an awful lot to ask.

My colleague, Senator Dolan, spoke about people travelling west. Many people travelling west, south or north - it really does not matter - will be coming home to vulnerable grandparents or parents. I believe the HSE message going out today is the right one. Before people walk through the door, they should consider whether it is worth putting their lives at risk. It really is a serious time.

I thank everyone in this country who made it continue to work during a most horrendous year. I am talking about the truck drivers, the packers of shelves in supermarkets, the nurses, doctors, gardaí, and particularly, the love of my life, the Defence Forces, the guys who went out and set up tents and made this country work. I hope we look after them better in 2021 than we have in 2020. The Cathaoirleach is generous on the clock today.

An Cathaoirleach: I was smiling because I was going to correct the Senator by reminding him that his family is also the love of his life.

Senator Gerard P. Craughwell: They already know that.

An Cathaoirleach: I wanted to make sure it was on the record. I do not want the Senator outside the door for Christmas.

Senator Annie Hoey: I will go through two serious issues before we get to the niceties. It came up in my memory that this day two years ago, the Health (Regulation of Termination of Pregnancy) Act 2018 passed through the Seanad. It has been two years since that legislation went through, which means it is up for review in the next 12 months. I know we have had a pandemic and things have been knocked off keel a little bit in terms of scheduling but I ask the Leader to make sure it is on the agenda for next year. It is an important matter. As we know, people are still travelling and still affected so we need to make sure we get the legislation right.

I also want to talk quickly about Transgender Equality Network Ireland, which is doing a talking census and information evening for journalists and people who will be talking about transgender issues and rights to show them how to do so in a way that is respectful of their lives and their truth. As we have seen, the discourse online over the last couple of months in Ireland has gotten unpleasant and cruel. I certainly encourage any journalist, or anyone who is interested, to take the time to engage with that evening session on how to talk about people, if we must talk about them. I do not know that we necessarily need to talk about transgender people the way we do. If we must, then we should talk in a way that is respectful for people who are simply trying to live their truth.

I join others in thanking, particularly, the Clerk, Mr. Martin Groves, and the Clerk Assistant, Ms Brigid Doody, who were patient with me when I was learning. I am still learning. The Cathaoirleach has been very kind. When I go blitzing through the place like a bit of a lunatic, the ushers and staff here are very patient with me. When I do not know where I am going, they walk me to rooms and tell me what is happening. Of course, I thank my Labour Party colleagues who have made me feel welcome.

As Senator Dolan said, we have only been in here for six months. I did not realise it was possible to ask so many questions and be so befuddled by things. It is great to be in a parliamentary grouping with people who are kind and generous with their time. Of course, I thank Ellen in my office, who is an eternal beacon of patience and kindness, and Ursula, who was working with me at the beginning. I wish all Members a very happy Christmas and thank everyone here who has been kind and made me feel welcome.

Senator Pat Casey: I will start with the Christmas message. It might calm me down a bit before I get into the substance of what I want to say today. It has been a difficult year for everybody. With regard to the House, I take this opportunity to wish a happy Christmas to the cleaning staff who knock quietly on our doors and clean the handles and all the surfaces we use, the catering staff, the ushers, the administration and, indeed, the Cathaoirleach.

This is not a happy Christmas for the hospitality sector. The news emanating since last night has been annoying, to say the least. Today, we are opening our doors to residents from outside the county for the first time in months. We were told last night that, possibly, people will not even get to New Year's Eve before they are locked down again. I cannot express the words at the moment about the way the hospitality sector has been treated. These are people's livelihoods and families are being affected. This yo-yo effect is driving us insane and crazy. It is all about personal responsibility. Senator Craughwell might have been in a packed gastropub but he did the right thing; he walked out. That is taking personal responsibility. I was in a shopping centre the other day and while the shop staff were behaving correctly, the open space in that centre was packed with people so I left. It is about taking personal responsibility but my frustration is that we, as a sector, have not been given that opportunity. The hospitality sector, whether it is a wet pub, a dry pub or a hotel, cannot be blamed for this pandemic or the exponential factor that has caused the increase in the number of cases but our businesses are going down the Swanee every additional day this action is being taken. Our survival is in question.

Last night's news was the last straw for me as a person in the hospitality sector. Even before we opened up to allow travel outside one's county we were told we will have to close and we might not even get New Year's Eve out of it. What are we at? Proof has not been given by the leader of my party, the Taoiseach. I have asked him for proof. I have also asked the Minister for Health. Where is the evidence that shows the hospitality sector is the cause of this pandemic? It does not exist. We are not any different from any other sector but we are being victimised. We are now going into recess, which means that Ministers will not be answerable to anybody here, and our own elected organisation will be leading the charge.

With all due respect to the Leader, I am totally frustrated and annoyed. My family business is being jeopardised again, not because of what we have done. We did everything we were asked to do. The sector has done everything it was asked to do yet information was put out last night that we will not even get to New Year's Eve before we are shut down. As I said, we are only opening today to visitors from outside the county. I wish everyone a happy Christmas.

Senator Emer Currie: I wish everybody a happy Christmas. I want to come back to the public health situation in the North, which I raised on Wednesday. I want to express my gratitude to the national ambulance service crews who will travel to Lurgan, Belfast and Craigavon hospitals this weekend to support the front line. I repeat that whatever help is needed we should give it.

The Executive yesterday took on the advice of the public health officials, which was the right and only thing to do given the potentially catastrophic circumstances. I am glad all the political parties recognised that but to be clear, there is a great deal of disparity North and South when it comes to compliance and following public health guidance, the lack of which is driving up the numbers. People need to ask themselves the reason for that. A fully integrated all-Ireland approach would undoubtedly have been the best approach. It puts the logical in epidemiological but, unfortunately, given where relationships are in the North, that was, and is, unlikely.

How can we expect others to behave differently if we are not willing to behave differently ourselves? When we face differences and disagreements in the North, the answer always lies in the principles of the Good Friday Agreement. The essence of the agreement is power-sharing. Power-sharing has always been about problem-sharing - the idea that communities would come together in partnership as equals and with respect to solve problems that unite them instead of focusing on what divides them. Covid-19 could have strengthened relationships in the North, and North and South, but that has not been the case and it is an awful pity.

The ambulances going North this weekend is uncommon but it is not unheard of because a memorandum of understanding exists through the North-South Ministerial Council on cross-Border co-operation on ambulance services. That is thanks to the framework of the Good Friday Agreement and the health sectoral work. Where would we be now in responding to a public health crisis together, with three more years under our belt, if the Executive and the institutions of the Good Friday Agreement had not have lied idle for three years?

We have a serious situation now that affects everyone on the island and we have a window of opportunity to react for the benefit of the whole island. If we are bringing in restrictions in the South, we should align with the North as much as necessary to avoid see-saw, out-of-kilter guidelines around the Border area and address case numbers in places such as Donegal and Louth. We may not get the official integrated North-South plan we want but we can create the alignment that we need. I again wish everybody a happy Christmas.

Senator Ollie Crowe: Along with my colleagues I want to thank the staff of the House, Martin, Bridget and the team, who have been very welcoming since the first day I arrived here last April. I wish all my colleagues a safe, peaceful and happy Christmas.

Senator Casey alluded to the hospitality sector. Generations of my family have been in the hospitality sector in Galway. What is happening at the moment is frightening. Major issues are arising with regard to mental health and the well-being and livelihoods of families. I want to raise two issues with the Leader. First, all of this needs to be looked at in a more regional format. Thankfully, the figures in Galway are very low as they are in other counties. As alluded to by Senator Currie, there are major challenges in other counties on the Border but a more regional format needs to be considered.

Second, next week is Christmas week. In terms of the way the hospitality sector works, having respect for staff and families, there would be closure on Christmas Eve and possibly part of St. Stephen's Day. We need to send a clear message to the hospitality sector by Tuesday at the very latest. I was talking to a man this morning who employs more than 300 people in the sector in Galway. In terms of his four or five outlets he would have stock the value of which would be in the region of a six-figure sum. We have to be clear on the issue of orders. In respect of all orders that would have had to go in yesterday for supply in ten days' time across the food sector, I would ask for notice and certainty to be given. Every Member is correct that personal responsibility is important. It is also the responsibility of licence holders and hoteliers. I believe they are doing all they can do but it is crucial that we get notice and certainty at the earliest opportunity, possibly by Monday of next week or, at the very latest, on Tuesday because this is doing untold damage.

I thank the Cathaoirleach also and wish each and every Member a happy and safe Christmas.

Senator Sharon Keogan: I, too, wish everybody in the House a happy Christmas. I thank

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Martin, Bridget and all the staff here for making me feel so welcome over the past six months. I say to all my colleagues in the Seanad that I have enjoyed my time here over the past six months. The work is certainly challenging. These have been the most challenging of times for us all. One can hear the pain felt this morning by Senators Casey and Crowe and all those in business at this time. We have to be a little kinder in how we deal with people in business. We are talking about businesses but also livelihoods and families.

I pay tribute to the thousands of volunteers we have in the country. They are the unsung heroes who volunteer week in, week out, whether it be Meals on Wheels, Tidy Towns associations or whatever they are doing to make life better in their own communities. I want to take the time to acknowledge them this morning and wish each and every one of them, and each and every Member, a happy Christmas.

Senator Mary Seery Kearney: I will begin by saying a huge “thank you” to everybody who has eased my passage into this House in the past six months. It is an incredible privilege to walk through the doors, if not overwhelming and daunting at times. I pay a special tribute to my party colleagues whose forbearance has been extraordinary at times when I have gone in to their offices, and particularly that of the Leader, and asked, “How do I do this?”. I have had great guidance from them for which I thank them. I thank all of the staff, Martin and Bridget, and the Cathaoirleach. I have good news that I want to share but I cannot do so without acknowledging the existential crisis facing the hospitality industry. I am familiar with the hospitality industry and know the terrible hardship experienced by those working in and supplying it at the moment. It seems trivial to go on with lighter happy things, but there are very serious challenges that we need to embrace and figure a way through in this most horrible of years. I will end my contribution on a series of good news items.

I thank my colleague, the Minister of State, Deputy Madigan, for her announcement yesterday of the opening of Scoil Colm in Crumlin, Dublin 12, as a special needs school. It has been fantastic to work with her. She has only been in her role for six months and already major strides forward have been made. I am very grateful for that. It is a great relief to the Dublin 12 campaign for an autism-specific school. We still have work to do with the Involve Autism group and we will move ahead on that in the new year.

A few weeks ago, I stood here and got very emotional about the need of Chernobyl Children International. I am glad to announce that at least one of the containers has already been financed. I thank my party colleagues who went out of the way and have asked not to be named but did special work on my behalf. I am very grateful to them for that. I am very grateful to Adi Roche and her team for their work.

Yesterday, a blue plaque was unveiled on the house in Leighlin Road in Crumlin where Phil Lynott grew up. At this time of year, I always remember his mother, Philomena, and the legacy she ensured for her son. I pay tribute to her as a great mother and a great role model. I also pay tribute to Phil, by saying, “I sure miss you, honey, now you’re not around”.

Senator Mary Fitzpatrick: I am delighted to be standing here just before Christmas. It is a real honour and a privilege for all of us to be in this House. I am conscious of what a difficult year it has been for everyone, with most of us facing into a difficult Christmas. I and all of us in this House are very privileged to be here and I am grateful for that. I thank all my colleagues in the Seanad. I thank you, a Chathaoirleach, and Grace Coyle in your office. I thank Martin Groves and Bridget Doody. I thank the Captain of the Guard and the ushers. I thank the cater-

ing staff and everybody who works in Leinster House. I thank the gardaí who work outside and the postmen who come in. They all help us to serve the people. We have a great privilege. I thank all of those who help us and enable us to do that.

I am my party's spokesperson on housing. The Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien, has made a great start. The budget has made an unprecedented investment in housing of €3.3 billion. Significant sums have been allocated to homelessness prevention. There have been announcements of investment in affordable and public housing. We will have significant work to do when we come back in the new year. I look forward to working with everybody on all sides of the House to deliver on that.

I have listened to my colleagues, Senators Casey and Crowe, and others who work in hospitality, including suppliers to the industry. While we might feel we will not have the full Christmas we would have had in previous years, many people are risking their lives and their livelihoods to try to provide others with a Christmas. The Government has a very difficult task and has done very well. We have all done very well by keeping our distance, washing our hands and reducing our contacts to suppress the virus. I believe everybody will try to do that.

I urge the Leader to ask the Government to give certainty to the hospitality sector so that for the next two weeks at least, it can manage or attempt to manage the situation. Those in the sector have had difficult choices to make on whether to open. Many of them have, but uncertainty has been created in the last 48 hours. NPHET has a job to do and I thank all those on NPHET for doing their job. However, the hospitality sector needs some certainty over the next two weeks. I urge the Leader to address that with the Government. Nollaig shona do gach duine.

Senator Lynn Boylan: I also wish everybody a happy Christmas. I thank you, a Chathaoirleach, the ushers, Martin Groves, Bridget Doody and everyone else in Leinster House. I try not to name them because I am afraid I will leave somebody out. I am sure everybody in the House will agree that the perfect Christmas present would be Sam staying in Dublin this weekend-----

(Interruptions).

Senator Lynn Boylan: -----and will join me in that call.

An Cathaoirleach: On behalf of the other 31 counties, London and New York, I can assure the Senator that is not what they want for Christmas.

Senator Garret Ahearn: Vótáil.

Senator Lynn Boylan: I know you do not mean that, a Chathaoirleach.

On a positive note, Senator Currie spoke about the importance of the parties in the North working together. Last night, proof of that co-operation was evident in the announcement that in the North, schools will be supplied with period products free of charge from next year. I again call on the programme for Government commitment to provide free period products to women and girls to be implemented as soon as possible.

I wish to raise a very sad and annoying issue. Despite the assurances the Minister for Justice, Deputy McEntee, gave the House and despite assurances by the Taoiseach on 9 December that deportations would not happen during the pandemic, the evidence shows that deportations are being sped up this week and a number of people have been deported. In the week leading up to Christmas, they will not have access to the courts and, worse, from 30 December those be-

ing deported to Britain will lose access to their EU rights. They will lose their rights under the Common European Asylum System, the EU Charter of Fundamental Rights and the European Convention on Human Rights. Everybody would agree that deporting people during a pandemic is particularly cold and callous, but especially in the week leading up to Christmas when we had been given assurances that it would not happen. I ask the Leader to take that message back and to reiterate what this House endorsed, which was that deportations would not happen.

Senator Garret Ahearn: Last night's news that the hospitality industry might need to close early again is devastating for many businesses around the country which have put in considerable effort to reopen and provide a service for their community, town or city during the Christmas period. These businesses have bought stock on the assumption they would be open until early in the new year. Even though people tried not to talk about it, there was always a feeling that they might need to close in January, but no one foresaw that it could happen between Christmas and the new year.

In different areas of the country the hospitality industry has faced this situation of having to close down and reopen three, four or five times. Every time it has asked for clarity as quickly as possible, which I know is a challenge. Almost every time the decisions made for the hospitality industry in particular have been in line with the NPHET recommendations. If we go with the recommendations NPHET gave last night, I urge especially at this time of year that we give those guidelines to the hospitality industry as quickly as possible. As others have said, those in the sector have done a considerable amount in recent weeks to reopen their premises, taking the risk of them and their employees contracting the virus. I ask that they be given as much clarity as possible. It is an extremely difficult time for them. Obviously, we worry about the people who want to go out and socialise during Christmas, but the most important thing is to give clarity to the people working there.

I thank you, a Chathaoirligh, Martin Groves, Bridget Doody and everyone in Leinster House for the phenomenal work they have done in the past six or nine months that I have had the privilege to be a Senator. I am very new and I want to wish all of my colleagues well over the Christmas period. It has been a pleasure working with everyone and learning from seasoned as well as new politicians. Everyone has performed extremely well and it has been a pleasure to be here.

Senator Micheál Carrigy: I echo the comments of Senator Ahearn and wish everyone a very healthy and happy Christmas. I thank everyone for their work. Staff from across the House have been good to me and to all elected representatives and I thank them for the courtesy they have shown to us since we were elected. I wish them well and hope they have a happy Christmas.

I wish to raise a number of issues this morning, the first of which is the upcoming announcement relating to the urban regeneration and development fund, URDF, which is expected early in the new year. One of the towns in my constituency, Athlone, has submitted an application and I ask that it be given favourable consideration. The application is for funding to redevelop a strategic but derelict site beside the shopping centre in the town to improve facilities as well as to augment the successful shop front enhancement scheme. That scheme was introduced by Westmeath County Council a number of years ago and has been fantastic for every single town in that county. It has been introduced in Longford too and has been very successful. It enables businesses to upgrade the front of their premises.

On sport, I was speaking to representatives of my local Longford Rugby Club recently who are seeking clarification from the Minister regarding the guidelines on what sports can be played. Many local schools and the vast majority of club players have not played a game of rugby since 19 March. This is an extremely important issue. Participation in sport is difficult in these times but Longford Rugby Club has asked that school-age teams and clubs be allowed to play matches while adhering to all Covid-19 safety guidelines in level 3. That is a key request and it is only fair when both soccer and Gaelic games teams have been allowed to play at that level. I ask the Minister to consider this matter.

Senator Tim Lombard: I wish everyone a happy Christmas. It is great that we have reached this stage of what has been an amazing year. Some of us have fought a general election and a Seanad election, we have endured a pandemic and have been locked up at home for long periods. It has been a year that none of us will ever forget. I wish to acknowledge the courtesy of the Cathaoirleach and thank the staff of Seanad Éireann for their kindness over the past six to eight unusual months. I also thank the Leader of the House and the Members who have helped me over the past few months.

The news that emerged last night in terms of the uncertainty regarding the catering trade is worrying. I realise that we are very close to Christmas but, as many speakers have said, clarity *vis-à-vis* supply chains and so on is very important for traders and society at large. I hope the Cabinet will convene sooner rather than later and make a decision on this because the longer the uncertainty persists, the more difficult the situation becomes. Clarity is needed.

I compliment the Leader on her statement earlier this week on the anti-vaccination campaign. Public representatives should not proffer medical advice on who should or should not be vaccinated. Some public representatives are using their platform to speak on behalf of the anti-vaccination campaign, which is not appropriate. We have medical experts in this country who have the ability to dispense medical advice. They should lead the vaccination campaign and public representatives should not comment on matters as if they are experts. It is unfortunate that some are doing this for nothing other than political gain. People's lives will be lost because of the anti-vaccination campaign being conducted by certain public representatives. They are just doing it for their own benefit and it sickens me. We need to stand strong, particularly given the good news around the roll-out of the vaccine. Hopefully by the time this House sits again, the vaccination programme will be up and running and people will be getting the vaccine. That is really positive news and something that we must continue to talk about. I am no medical expert but I listen to the medical advice on the ground. Every single expert I have spoken to has said that we should back the vaccination programme. I ask the Leader to organise a debate on this matter after Christmas. We need to call out the people who are saying that they will not get vaccinated because that cannot continue. If it does continue, lives will be lost and that is something that nobody in this House can stand over.

Senator John McGahon: It is funny that we are talking about reflections and so forth. This day last year was my last day in Leinster House as a member of staff, after seven years. I finished to focus on the general election that I hoped would be called in the summer but it was called about two weeks later. If it had not been called, we would have gone straight into Covid-19 and many of us would not be sitting here. None of the new Senators would be here because the previous Government would still be in place. It is funny how things work out.

I wish to compliment my colleagues on the Oireachtas Joint Committee on Climate Action and the chairperson, Deputy Brian Leddin. This morning, the committee published its pre-

legislative scrutiny report on the Climate Action Bill, which is landmark legislation. It is so important that we are putting it through in the first 100 days of this Government. We have started that process strongly and I hope that this report will inform all Oireachtas Members about the legislation. It sets ambitious targets in terms of carbon budgets and strengthens oversight of climate policy by the Oireachtas. The Bill seeks to change the role and composition of the climate strategy advisory committee and sets out strong national objectives up to 2050. It is landmark legislation and I compliment all my colleagues on the committee and particularly my Seanad colleagues who have worked incredibly hard over the past ten weeks to get this report through. We have been meeting every day and have heard really important expert witness testimony which fed into report. This will undoubtedly benefit the legislation. The vast majority of the report was put together without votes. We only voted yesterday morning on certain issues where we could not reach agreement but the vast majority of it was put together through cross-party co-operation, give and take and trying to understand the needs of both Opposition and Government. That type of collegial politics is lacking in these Houses sometimes. We could do with a lot more of it but it was certainly evident in how the committee worked over the past ten weeks.

Senator Martin Conway: I was listening in my office when Senators Crowe and Casey spoke. My heart sank when I heard what they had to say about the hospitality industry and what it has suffered because they are so right. The news last night was yet another blow to the sector and I agree with what others have said on the need for clarity. Clarity is important and I hope it will come in the next day or two.

Senator Lombard spoke about the Covid-19 vaccine and those who are anti-vaccination. This is so serious. It is such a critical issue and, as public representatives, we must show leadership when it comes to articulating the benefits of the vaccine. It will not be compulsory but I hope that more than 90% of those who are able to take the vaccine will do so. Yesterday I wished everyone a happy Christmas and I reiterate that today. I also want to wish a lady who works on the fourth floor well. Lydia is finishing up today and is moving on to bigger and brighter things. I wish her the very best. I hope everybody has a safe and enjoyable Christmas.

Senator Paul Gavan: I will begin by wishing the Cathaoirleach a happy Christmas. I thank him for his guidance during the year. I also extend Christmas wishes and thanks to Mr. Martin Groves, Ms Brigid Doody and all the Seanad staff as well as to the Leader, whose constructive approach thus far must be acknowledged.

I was struck by the comments of Senators Casey and Crowe and my heart genuinely goes out to them. I cannot imagine how hard it is for the hospitality sector at the moment.

11 o'clock

I appeal to the Government to review this constantly and determine what more it can do for the hospitality sector at present. That said, I believe there is probably no alternative but to go back into some kind of lockdown. Considering the figures and what is happening across Europe, health has to come first. That, however, does not make anything any easier for all the businesspeople who have struggled throughout this period so far.

I was really pleased that Senator Casey mentioned the staff in the Oireachtas, particularly the cleaning staff and other contractors. I feel passionate about the idea that this Oireachtas should be a living-wage site. It can be done. My union, SIPTU, has pioneered the concept. It means that every worker, regardless of whether they are employed directly by the Houses of

the Oireachtas or here as contractors, gets a living wage. There are a number of sites in Ireland that have already established this practice. It would make a substantial difference to the people who do an amazing job in these buildings and who are paid very low sums of money. It would make a substantial difference to them. It would not be a huge drain on the Exchequer. It would be very small. When we come to work next year, would it not be wonderful if we knew the workers were getting at least a living wage and could earn a living? I appeal to Members on a cross-party basis in this regard. I have written to the Houses of the Oireachtas Commission and asked the Chair to consider my proposal actively so we can make a real difference for people. It is not enough just to give applause to the essential front-line workers. Maybe we could consider my proposal for next year. I wish everyone well and a happy Christmas.

An Cathaoirleach: Senator Joe O'Reilly is due to speak next but I want to give him the last word so I call on Senator Ruane.

Senator Lynn Ruane: I have two points, one being on the matter of the new Standing Order, which I acknowledge is included on the Order Paper today. I thank the Cathaoirleach for the initiative on bringing in outside constituencies in this way. It concerns sexual harassment and bullying within the university sector but, most important, the use of non-disclosure agreements, NDAs, not only to move people around a university but also as tools to silence victims of abuse or bullying. Over the past few years, many people from various universities have contacted me in this regard. I will not elaborate on the issues raised now as we can tease them out in the new year. Reference was made to certain staff members having several NDAs within one university, which just perpetuates a culture of silence and abuse. I look forward to being able to debate this in the new year. My office has legislation ready to go on the use of NDAs but I regard this as the very first port of call in being able to understand the severity of the culture of using NDAs in the university sector.

In the debate on deportations and the deportation moratorium a few weeks ago, we were assured there would be no more deportations during the pandemic. This has not been the case. Two days ago, a young man was brought to the airport and put on an plane to England, from where he was to continue to Sudan. Another young man was taken from his accommodation last week and put in Cloverhill Prison until deportation. I hope the Leader will speak to the Department of Justice and ascertain whether the message on deportations has been clear. The Taoiseach and Minister for Justice have referred to the moratorium but maybe there is a lack of communication with the authorities who deport people. If we are to say something in the House on deportations, we need to be really clear and strong in our stance, and we need to reassert the position that nobody will be deported during the global pandemic.

Senator Joe O'Reilly: I thank the Cathaoirleach for affording me the privilege of saying the last word. I wish him a very happy Christmas and a good 2021. It is a pleasure to work with him in my role as Leas-Chathaoirleach. I wish our Leader and all my colleagues across the House a good Christmas. There is tremendous commitment in this Seanad. There is also great dedication and genuine ambition to do the right thing, be responsible and make a difference for people. This is very palpable. Maybe the privilege that the Cathaoirleach and I have is that we get to listen to debates in a way that allows us to absorb what is going on around the Chamber. The more I am present for debates here, the more I am impressed by the commitment of Members, the way they go about their business, and the sincerity, depth and thoughtfulness of contributions from all sides of the Chamber.

I also wish a happy Christmas and a good 2021 to our administrative staff in the Seanad

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Office, led by Martin and Bridget, and all the other staff there. We have an excellent administration. Without that, we would not have the kind of House we have.

I have a general remark on what I believe is a theme of the morning. I did not hear the contributions of Senators Casey and Crowe and can only imagine what they were saying. I have an arm's-length connection with a small part of the hospitality business — a very small retail outlet. Thank God, it is an arm's-length association because I know how bad circumstances are in the sector. I empathise with those affected.

Given our privileged position as leaders in the community, we should use this Chamber at every opportunity to exhort people to be sensible over the Christmas and observe the rules on social distancing and the other rules on Covid. It is very difficult. It is a terrible strain. I find I have to go back to the car for the mask, as we must all do at times. What we must do is shocking and onerous but it should and must be done. I exhort people to do it.

There is a bit of bad news coming and, as a Senator said, we need clarity on it. The big news, however, is the vaccine. The Leader, who is a former Minister, has considerable influence so she should ensure, when reporting from this House, that she conveys in any way she can our great desire to have a very efficient and quick roll-out of the vaccine to the front-line workers and elderly and then to those with special medical needs. Those are the main points. In the meantime, people should hold their discipline.

I feel privileged and honoured to have an office in this Chamber and to work with the Cathaoirleach in my role. I do not take this lightly. I genuinely admire and am occasionally in awe of the quality of personnel here and their input. I am very sincere about this. It is very clear. The Cathaoirleach would echo these comments because he hears about the quality of the personnel also.

Críochnóidh mé le cúpla focal as Gaeilge. Guím Beannachtaí na Féile ar Sheanadóirí. Guím Nollaig faoi shéan agus faoi mhaise do na Seanadóirí go léir. Le cúnamh Dé, beimid slán agus ar ais le chéile sa bhliain nua ag obair go díograiseach ar son an phobail. Sin an dualgas atá orainn agus níl aon amhras orm ach go mbeimid ar ais ag déanamh sin má táimid ábalta ar chor ar bith. Gabhaim buíochas leis an Chathaoirleach agus guím Nollaig iontach do na Seanadóirí go léir.

Senator Aisling Dolan: Well said.

An Cathaoirleach: Gabhaim buíochas leis an Leas-Chathaoirleach agus guím Nollaig Shona dó freisin. It is pleasure working with him. I thank him for his kind words.

It has been an extraordinary year for the Leader, who, like all Senators, has done an extraordinary job under really difficult circumstances. I congratulate Senator Bacik on her good news. If times were different, we would organise a little reception to celebrate the good news. Please God, we will be able to do so in the new year. Other Senators, including Senator Boyhan, referred to Senator Flynn. I do not know if they saw the extraordinary interview she did last night but we are truly privileged to have her in the House. Her achievement would have been unimaginable a number of years ago but she has brought new ideas and new achievements to this Chamber.

The UN human development index measures health, education and income. In a world where there is very little good news, we have seen that Ireland is ranked joint second with Swit-

zerland on that index, one place behind Norway and ahead of the likes of France and Germany, which is an extraordinary achievement. When we joined the index more than 30 years ago, the average life expectancy was 74. It is now 82. The average number of years our people spent in education was then nine and is now 12. That kind of achievement is only possible through the work of extraordinary people in this Chamber down through the years since Independence. We are truly standing on the shoulders of giants in that regard.

Many have raised the issue of the front-line workers, whose service and sacrifices have meant that, while the pandemic has affected many, it has not been the disaster it has been in many other jurisdictions. We acknowledge them for the service they have given so far. When we are at Christmas dinner, they will be out working. We also think of those who will have empty chairs this Christmas. They are in our thoughts and prayers as well.

I thank all the ushers, the cleaners, the catering staff and everybody else who works in Leinster House. I also thank Mr. Martin Groves and Ms Bridget Doody, who do extraordinary work late into the night to get all the amendments organised and issues resolved to ensure the Seanad works as smoothly as possible. I thank Ms Carol Judge, Ms Carmel Considine, Ms Ilinca Popa, Mr Eden McLaughlin, Ms Aisling Hart and, of course, Ms Grace Coyle in my own office for their extraordinary work throughout the year. It is quite extraordinary that such a small team runs such an important part of our legislative process. I also thank Ms Orla Murray in the Leader's office, who also does extraordinary work. I thank the Ceann Comhairle for the use of the Chamber. Nothing says more about how historic this year has been than the Seanad sitting in the Dáil Chamber. We thank the Ceann Comhairle for his generosity in that regard.

Finally, I wish all Members a safe Christmas. I hope they get time to spend with their families and friends. Please God, we will see them all in the new year.

Senator Regina Doherty: I will speak on the few specific issues which were raised. In response to Senator Ruane, Senator Higgins contacted me over the weekend with regard to the gentleman about whom Senator Ruane spoke. I did not contact the Minister for Justice, but the Taoiseach. They are well aware of the circumstances. We are all well aware of the commitments made by the Minister of Justice in this House and by the Taoiseach last week. I will send that message again today.

Senator Boylan mentioned the commitment we made earlier this year in passing a motion in this House. It is momentous. It probably does not affect everybody, but the fact that schools in Northern Ireland yesterday received supplies of period products is a real step forward and a real sign of leadership. I am aware that there is legislation in preparation. Senator Seery Kearney is drafting legislation at the moment to ensure this matter is put on a legislative footing this year.

Would it not be wonderful if this House could show leadership in that regard? This brings me to the point Senator Gavan made. We are the Houses of the Oireachtas and we have control over the leadership we give not only through legislation, but through our actions. Would it not be wonderful if this House could provide period products as a sign of leadership which might instruct all of our Departments to do the same thing for all of their staff? I was going to say my next point was more important but perhaps it is just on a different level. It would be an absolutely wonderful sign of leadership to be able to declare this site a living-wage site. This is something the Senator should definitely pursue. I will support him in the new year in that regard.

This has been a hell of a year. Life is not meant to be easy; it is meant to be lived. There are happy times and rough times. We all know them. With every up and down, we learn something. We learn lessons which, I hope, make us stronger. We have certainly learned an awful lot this year, if not about ourselves, certainly about one another and about all that is good in this country. That stems from our people. This year, leadership has been shown from the ground up by our volunteers, organisations such as sporting groups, industry and every other section of society. Indeed, all of our politicians have shown leadership this year. It was certainly a time for Government to be generous and to support people through an unprecedented time. I know we use the word “unprecedented” too often but I certainly hope it is a word we will have to use less when we see the light at the end of the tunnel next year.

I did not see the programme the Cathaoirleach mentioned last night but Senator Boylan brought it to my attention. I have, however, witnessed over recent months some of the most thoughtful contributions ever made here being made by our new Senator, Eileen Flynn. She is a wonderful example of the ordinary people in this country who can do extraordinary things. I wish her every success in the future. She perfectly proves the point that one cannot be what one cannot see. This can only happen with our co-operation because she comes from a minority section of our society that does not have the votes on the panels that would allow her, and others like her, to be successfully elected. We all need to be aware that sections of our society do not have the same voice as some other sections. She is a wonderful advocate for that community. One can be sure that, having seen her, people will want to be like her in the future.

She is not unique. We have a lady mayor from a minority community and the President of the European Commission is a lady. Very shortly, we will have the first lady Vice President of the US. The gentlemen present are on notice; we are here and we are here to stay. I only hope we can continue to receive their support to ensure equality of opportunity for every woman, regardless of her background, ethnicity or love life. It does not matter; we just want equality of opportunity. I know that they will know, because we know, that society will be better and that decisions will be better made if we have that equality of opportunity.

Politics is always about the personal and there was nothing more personal than the contributions made by Senators Casey and Crowe and others in support of the hospitality industry. It has gone through the absolute mire. I know everybody else has as well and that we can all advocate for particular industries, for sport or for dancing. We do that. That is our job and we do it with passion. The passion Senator Casey has shown not only this morning, but over recent weeks, in speaking on the impact and effects of the decisions being made - although they are being made for the right reasons - are having on his family and countless other families in the hospitality industry cannot be understated. I will absolutely will send the clear message back today that hanging around and waiting until next week is not acceptable. This delay might be to allow more informed decisions to be made but there was a gentleman on the radio this morning who said that he had a six-figure sum worth of stock coming in. Another gentleman said he had €30,000 worth of food coming in this weekend. The absolute least that can be done is to give certainty as to what is going to happen for the next week or two. I assure the Senator that I will send that message to the Taoiseach’s office as soon as I am finished here today.

By the same token, we have all worked incredibly hard this year. The Cathaoirleach himself has touched on the more than 3,000 families that will have somebody missing from their lives and from their Christmas tables. We will be able to sit around our Christmas tables with our families and, it is to be hoped, enjoy ourselves, although it will be in different circumstances. Every decision being made, however, is being made in the best interests of our people. These

decisions are not perfect because we are not perfect. They are being made by human beings and we hope they will give us a better chance at a good outcome. We can sometimes be a little bit severe in our criticisms of the National Public Health Emergency Team, NPHE, so I would like to thank its members sincerely, I hope on behalf of us all, for the endless hours of work they have put in since the beginning of this year. That is well deserved. Dr. Holohan was announced as man of the year yesterday. He has certainly given far more than is expected of a public servant. Many of our other public servants have done the same behind the scenes. I will write to NPHE today on all of our behalf to thank its members for their public service over the last ten or 12 months. They really have been exemplary.

That brings me to the public servants in this House - Martin, Bridget, their staff and all our staff, including Orla and Grace, and all the staff in the wider House. I have had the privilege of working in Leinster House for a number of years. I used to think when I was first elected to the Oireachtas that our ushers were hand picked because they were so special, kind, caring and generous. It was not just one or two of them but all of them, which is why I used to think there must be a special recruitment process for ushers in the Houses because they do an incredible job with such good spirit and such warmth towards us. I can attest to that. I thank them so much for everything they do and for all the care they give us.

Equally, I thank all the catering staff. I think we probably know more about the lives of the people who work in the bars, canteens and the coffee dock, and they about ours, than we do of those of our friends. They are wonderful people. The high spirits they have been during an incredibly difficult year have put a smile on my face on many a day, so I thank them and wish them well. Our cleaners, too, are some of the happiest people. As was noted, in most cases they are probably members of our new Irish community. They come to the House and they are quiet and unassuming. Sometimes when I say hello to them, I almost think they are surprised that someone is talking to them. Every one of us should talk to them, know their names and make a point of thanking them for what they do, which is keep us safe in an unassuming and understated way. All the officials and public servants in the House do an incredible job of making us look good when we are doing our jobs and I pay tribute to them all.

I started this year in one role and am so privileged, lucky and blessed to be in the role I am in today. This House is full of thoughtful, co-operative and collegiate people. Unfortunately, that probably could not be said about the other House, which is far much more adversarial. We have an opportunity, because of a regard for one another and mostly because of the issues we bring to the House, to make a real and substantial difference. I thank Senators for giving me the honour of being in this role and for the co-operation and good wishes I have received over recent months. We had a few niggles at the beginning of my tenure because I did not really know what I was doing, so I apologise for that, but I thank them for their co-operation. It is the honour of my political career to date to be here and I will continue to serve the House next year, please God.

I wish all Senators a happy and safe Christmas. As Senator Hoey noted yesterday, and I could not have put it better myself, we need to keep Christmas small and safe because we need to get through this. We need to ensure that there are as few possible fatalities between now and that wonderful light at the end of the tunnel that will, hopefully, come on 27 December. With that light, however, comes the responsibility of our actions, which lies on all our shoulders.

I issued a press release at the beginning of the week because I was astounded at the level of ignorance of some public representatives in refusing to take the vaccine and at their explana-

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tions and reasons for that stance. I fully understand fear, and many people in Ireland will be nervous and anxious, but it is our job to ensure we allay those fears, not feed into them or into the propaganda that has resulted in measles being a problem in this country again when we had all but eradicated it because we gave our children measles vaccines over the years.

It is outrageous that leaders in this country would feed into conspiracy theorists and give rise to allowing those people to have those fears and concerns and to think their fears and concerns are warranted. They are not warranted and every one of us has a job and responsibility to ensure that we act responsibly. I fully commit to getting the vaccine whenever I am in the queue. It is important that each of us says that to our constituents, voters, friends, neighbours and anybody who will listen. It is probably the most important message we can put across in the coming months.

There will be hiccups and arguments that the conspiracy theorists will be able to hang their hat on. We need to stand steadfast, however, and ensure that we are strong and that we know what we want, which is to get through this pandemic and to get people vaccinated in order that we can get back to talking about health, housing, the living wage, unemployment and all the matters we so passionately care about fixing in this country.

I cannot speak Irish. It is one of my major failings, although perhaps I will get around to it when I retire, when it will be too late. Nevertheless, I wish Senators and their families and friends a safe and very happy Christmas.

Order of Business agreed to.

Sitting suspended at 11.25 a.m. and resumed at 11.44 a.m.

Appropriation Bill 2020: Second Stage

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

An Leas-Chathaoirleach: I welcome the Minister of State at the Department of Public Expenditure and Reform, Deputy Ossian Smyth.

Minister of State at the Department of Public Expenditure and Reform (Deputy Ossian Smyth): I thank the Leas-Chathaoirleach and Senators for having me here today.

The Appropriation Bill 2020 is an essential element of financial housekeeping that must be concluded by both Houses of the Oireachtas before the end of this year. The Bill serves two primary purposes. First, the Appropriation Bill is necessary to authorise in law all of the expenditure that has been undertaken in 2020 on the basis of the Estimates that have been voted on by the Dáil during the year. Section 1 and Schedule 1 set out the amounts to be appropriated for supply services. These relate to the amounts included in the Revised Estimates for 2020 voted by the Dáil earlier this year, and the Supplementary Estimates voted by the Dáil earlier this month. In aggregate, these Estimates amount to nearly €69.7 billion. Undoubtedly, this is a significant investment and reflects, when including expenditure on the Social Insurance Fund and the national training fund, approximately €16.75 billion in additional Covid-19 related expenditure supports provided this year. Without an investment on this scale, the Government would not have been in a position to introduce a series of critically important expenditure measures

that were required to support our economy, enterprises and households from the unprecedented shock of Covid-19, and to provide the necessary funding to our health service to respond to the pandemic.

A further key purpose of the Appropriation Bill 2020 is to provide a legal basis for spending to continue into 2021. The passage of the Appropriation Bill allows, in the period before the 2021 Estimates are approved, continued funding of social welfare payments from the social protection Vote, Exchequer pay and pensions and other voted expenditure. If the Bill was not enacted before the end of December there would be no authority to spend any voted moneys in 2021 from the start of January until approval of the 2021 Estimates, since this authority for 2021, as contained in the Central Fund (Permanent Provisions) Act 1965, is based on the amounts provided for in the Appropriation Act 2020.

Under the rolling multiannual capital envelopes introduced in budget 2004, Departments may carry over, from the current year to the following year, unspent capital up to a maximum of 10% of voted capital. The multiannual system is designed to improve the efficiency and effectiveness of the management by Departments and agencies of capital programmes and projects. It recognises the difficulties inherent in the planning and profiling of capital expenditure and acknowledges that capital projects may be subject to delays. The carryover facility allows for a portion of unspent moneys, which would have been lost to the capital programmes and projects concerned under the annual system of allocating capital, to be made available for spending on programme priorities in the subsequent year.

The Appropriation Act determines definitively the capital amounts that may be carried over to the following year. The aggregate amount of proposed capital carryover from 2020 into 2021 is €748.5 million, which represents 7.5% of the total Exchequer capital programme of more than €9.8 billion for 2020. This figure is considerably higher than last year's carryover figure of €215.4 million, which amounted to 2.9% of the 2019 capital allocation. This increase reflects both the increase in the core capital allocation from 2019 to 2020 of approximately €1 billion, as well as the impact of Covid-19, both in terms of additional capital allocations to certain Departments and delays to other capital projects as a result of public health measures and restrictions.

The proposed amounts to be carried over by Vote are set out in Schedule 2 to the Bill. The 2021 Revised Estimates Volume sets out detailed financial and key performance information for Departments and offices. Part III of the Estimates includes, for each Vote availing of the capital carryover facility, a table listing the amounts to be deferred by subhead. In line with last year, section 3 of the Appropriation Bill includes a specific provision to allow for an advance from the Central Fund to the Paymaster General's supply account, with this advance then being repaid to the Central Fund in January. The amount included this year is up to €280 million. The need for this provision arises as certain Exchequer liabilities and social welfare payments are due for payment by electronic funds transfer on 1 January and 4 January 2021. With the banking system closed on 1 January, funding will need to be in place in departmental bank accounts before the end of this year to meet those liabilities on a timely basis. In addition, An Post needs to be pre-funded before the end of 2020 in order to physically transfer cash to its network of post offices throughout the State.

These Exchequer pay, pension and social welfare payments form part of the supply services for 2021, and these costs will come under moneys voted in 2021 in respect of which the usual processes and mechanisms for voted moneys will apply. The signed Act is required by

the Comptroller and Auditor General for clearance of the end-year issues from the Exchequer. Under Article 25.2.1o of the Constitution the President may not sign a Bill earlier than the fifth day after the date on which the Bill is presented to him. However, there is provision in Article 25.2.2o of the Constitution whereby, at the request of the Government and with the prior concurrence of Seanad Éireann, the President may sign a Bill on a date earlier than the fifth day mentioned. In view of the urgency of this Bill, the provision in Article 25.2.2o is sought, and a motion to this effect is placed before the Seanad. Such an earlier signature motion has also been sought in relation to the Appropriation Bill in previous years.

The Appropriation Bill is an essential element of housekeeping which those of us in both Houses of the Oireachtas are required to undertake. The passing of the Bill will authorise in law all of the expenditure that has been undertaken in 2020 on the basis of the Estimates voted on by the Dáil during the year. The passage of the Bill, which is of fundamental importance to those who depend on our essential public services, will also ensure that payments funded from voted expenditure in 2020 can continue to be funded in 2021 in the period before the Dáil approves the 2021 Estimates. I commend the Bill to the House.

Senator Pat Casey: I welcome this Bill. I do not think anyone has a problem with it. It has been an exceptional year with levels of expenditure that we have probably never seen before, and which we will hopefully never need to see again, around Covid-19.

Following the news last night about hospitality, I take this opportunity to ask for certainty about what is happening in the coming week or ten days. We just need that. I spoke earlier on the Order of Business about the effect it is having on the families who are engaged in the sector. I spoke to my brother this morning. He said we would be better off being told that we will be closed until March or April because the in-out, open-closed, half-closed, half-open, half-partially open approach is playing havoc with everyone involved. I appreciate the level of supports that have been given to us so far to keep us alive and so that we can open. It was difficult to get staff to come back to work for what was going to be a period of 20 or 30 days, but we found out last night that it could be curtailed to a ten-day period. It is worrying. I ask the Minister of State to take back to the Government a message that it should make a clear decision for us and give us plenty of notice. The uncertainty is very difficult and emotionally draining for the families in business and all the staff, whom we coaxed to come back to work for 20 days and now we are going to have to tell them it is for just ten days.

I fully support the Bill, which was needed. The supports were put there.

An Leas-Chathaoirleach: I omitted to point out that Senators have five minutes each. I do not think that presents a challenge.

Senator Seán Kyne: I welcome the publication of the Appropriation Bill. It is the signal for the end of the legislative term and the fiscal year. It covers the spend on all Departments and State agencies for the next year from the offices of the President and the Taoiseach to our newest Department, the Department of Further and Higher Education, Research, Innovation and Science. I also acknowledge the Department of Community and Rural Development, where I had the privilege to serve with the former Minister, Deputy Ring, and the Department of Children, Equality, Disability, Integration and Youth. We should never be afraid to establish new Departments to cover very important areas. They give a focus.

The Minister, Deputy Humphreys, covers two Departments - the Department of Social Pro-

tection and the Department of Rural and Community Development. It is important to recognise that. Key supports for health, business and social welfare play an important role every year, but they were very much in focus this year because of the pandemic. The Department of Health has been on the front line protecting our health. The Department of Enterprise, Trade and Employment has provided so much support to people and businesses over the last year to maintain the key link between businesses and workers. Obviously, the Department of Social Protection has administered the pandemic unemployment payment, the temporary wage subsidy scheme and all the supports that were enacted over the last year. The Department of Housing, Local Government and Heritage is responsible for rates, which are so important for businesses in what has been a very challenging year. No one could have imagined that 2020 would end up like this. This time last year, we were looking forward to growth in the economy. We had full employment and balanced books. The challenges of Covid have changed all that. The supports put in place by the Government are accounted for in this Bill for the year ahead.

The Department of Housing, Local Government and Heritage is important. As a Senator who is elected by councillors, as well as Members of the Oireachtas, I will focus on local authorities. My county of Galway has had difficulties with the funding model in place for 20 years over successive Governments. I do not think the model is fair for a county of its size which has numerous challenges, including offshore islands, a long coastline and a large geographical area. It receives proportionately less money per head than many neighbouring counties. It does not have the same rates base as some neighbouring counties because the city of Galway is a separate local authority. This presents challenges. The Department wanted to amalgamate, which I support, but a decision was made not to proceed. As a result, Galway county is still left behind. We are told that the Department will wait for the review of the local property tax to look at the whole funding model. The officials were not fully sure how the original funding model came up. A mix of 600 different criteria for each county was used in the formula which decided how counties would be funded. The officials were not sure precisely how this was arrived at. The historical bias is still there and is particularly prevalent in Galway County Council's funding. It has knock-on effects in the delivery of services and the annual debate over whether rates are increased and so on. No one wants to do that but it can be necessary.

I acknowledge the very important work done by the Minister of State with responsibility for local government, Deputy Peter Burke, on councillors' pay. He has presented proposals on their pay and conditions which are with the Minister for Public Expenditure and Reform. Councillors do very important work for everyone and deserve to be better recognised than the present system where their pay and conditions have not changed since 2004. I hope the Minister of State brings that back to the Minister, Deputy Michael McGrath, as an issue that needs to be dealt with very soon.

Senator Paul Gavan: Sinn Féin will support the Bill. The purpose of the Appropriation Bill is to give statutory authority for the amounts voted by the Dáil during the year as required by the Constitution. The Appropriation Bill must be enacted by the Oireachtas in December. Otherwise, there will be no authority to spend any voted moneys from the start of 2021. The amount of €69.7 billion in respect of net voted expenditure in the Bill includes the original Estimate, Further Revised Estimates and Supplementary Estimates presented to the Dáil. The final Supplementary Estimates were voted by the Dáil on 9 December.

I will not spend too much time speaking on this Bill because we all agree it has to be passed today, but I wish to raise one issue which the Minister of State should bring back. It relates to the tax reliefs that are contained in the current rules. Social Justice Ireland published an inter-

esting piece which showed in 2016, 10% of our total tax revenue was made up of tax reliefs. Taking the figure of €70 billion for this year, if the 10% holds true, and it probably does, that is approximately €7 billion in tax reliefs. I find it shocking that there is never any information on the budgetary process about the costs of tax relief by time for each past year. They are not published.

12 o'clock

Neither is the estimated cost of tax reliefs for the year ahead. This is an important issue. We all know of tax reliefs that are unfair, in that they benefit the very well-off. I could point to pensions. Middle-income earners benefit from tax reliefs in this regard, but higher earners benefit disproportionately more. There were changes to the real estate investment fund, REIF, system in respect of real estate investment trusts, REITs, in 2019 because the Minister, Deputy Donohoe, stated that there was aggressive behaviour to avoid tax among Irish real estate funds. Those changes were welcome. Afterwards, however, *The Irish Times* wrote that well-paid accountants and advisers were already working on finding the next tax ploy. We all know that these things are happening.

These reliefs are fundamentally regressive in nature. Even Departments have acknowledged that. They lead to those at the bottom subsidising the investments and savings of those at the top. This issue requires much more analysis from the Government. We are in a state where the super rich get tax breaks all the time while those on the minimum wage see a 10 cent per hour pay rise, student nurses work for free and workers across the State have no statutory right to sick pay. This is such a gross injustice. Bearing in mind the €7 billion in tax reliefs, it should not take a great deal of radical Government thinking to ensure a greater degree of equity. Loopholes and well-paid accountants are not available to low-paid workers. We need to rethink our economy and build the tax system around the basic principle of fairness that benefits those with the least through those who can pay most. The PAYE system is progressive, but the surrounding tax architecture is anything but.

That is all I have to say. We will support the Bill.

Senator Jerry Buttimer: I welcome the Minister of State to the House and congratulate him on his elevation. I will begin on a discordant note, although the responsible Minister is not present. I wish to raise two issues. We all support the Appropriation Bill, which is an important parliamentary fixture, as Senator Kyne stated. It is normally taken on the last sitting day of the legislative calendar and gives the Government the approval to spend and embark upon the Estimates process in Departments. Every Department is listed in the Schedule. We are spending €70 billion or thereabouts. Senator Gavan, whom I disagree with, raised issues about tax reliefs and so on. We set up the Committee on Budgetary Oversight, which is something about which we agree. However, it is important to consider how we can debate these measures without shoehorning that debate into the last day. I do not blame the Minister of State, but if we are serious about parliamentary reform, this is an area where we as parliamentarians can play a role, not just in scrutinising, but in debating. On the Order of Business, Senator Kyne, Senator Casey and others spoke about the hospitality sector, supports for local government and so on. That is why this is important.

It is regrettable that the Bill does not make any mention of councillors' pay and conditions. We are allocating moneys, and rightly so, to members of An Garda Síochána, the Defence Forces, the Departments and all sectors in terms of salaries, expenses and "retired pay, pensions,

compensation, allowances and gratuities payable". However, no decision has been made by the Government on councillors' pay and conditions. We have had the Moorhead report under the former Minister of State, Deputy Phelan. The Minister of State, Deputy Peter Burke, has sent a submission to the Department of Public Expenditure and Reform. It is time that the Government made up its mind. If it is for local government and our councillors, that means paying them properly, fairly and justly irrespective of who they are and their political ideologies. They work hard and deserve to be treated fairly. Money has rightly been given back to people as part of the unwinding of the FEMPI legislation, but for some reason it seems that there is obfuscation and procrastination on this matter by the Government, in particular the Minister for Public Expenditure and Reform, Deputy Michael McGrath. I appeal to the Minister of State to ask the Department to sign the statutory instrument and pay the public representatives of our country at local authority level a just and fair level of remuneration for their work. That is what we have to do. This has to stop. It is codology of the highest order that we are on the last sitting day of the Houses of the Oireachtas in 2020 yet there has been no Government decision on councillors' pay and conditions. I appeal to the Minister of State as a former local authority member to continue representing and advocating for these people who do a great amount of work that we can see every day.

Almost €70 billion in Government spending is an extraordinary amount and deserves to be discussed in more than just one shoehorned debate. In the context of next year's financial outlook, the Minister, Deputy Michael McGrath, stated that he could not rule out some tax increases. I call for a debate rather than kite flying in the Houses. Critically, the ordinary citizen cannot pay much more. As Senator Casey eloquently stated on the Order of Business, there are hard-pressed people in the hospitality sector who have lost businesses and jobs and who have no incomes other than the pandemic unemployment payment, PUP. They are facing into an uncertain 2021. The Minister of State knows well where I am coming from in this regard. As a Government, let us not fly kites in public about tax increases. People are justifiably concerned and they deserve better than Ministers saying that we might have to increase taxes. They cannot take much more.

Senator Joe O'Reilly: I agree with Senator Buttimer on a number of issues. For example, I agree with his point that the sheer scale of the budget merits further discussion and longer sessions. I join the Senator in congratulating the Minister of State on his appointment and, in the context of what I am about to say next, I recognise the Minister of State's background in local government.

It is a disgrace that, in the weeks before Christmas, the Government did not announce an increase in councillors' pay. It was a ludicrous form of cowardice and was wrong on many levels. For years, councillors have been in a difficult situation. I know a number for whom carrying on is proving difficult. Doing much of their other work is not possible and other opportunities to earn are displaced. The job of a councillor, including being out and about physically, requires a great deal of expenditure, but the remuneration they get is far below that level. The Moorhead report was an objective study led by a legal individual. It established in objective terms that there was a strong case for councillors to get their pay. On foot of that study, the Minister of State sent a memo that was negotiated with all of the councillors' interest groups and would give councillors the dignity of a certain level of income. It would not put them in a great position but it would put them in a position that they could do their job. The Minister of State, Deputy Peter Burke, did that with great efficiency and sent it up the line. It should be implemented. Senator Buttimer referred to the input of the former Minister, Deputy John Paul

Phelan, in this matter, which merits acknowledgment.

There is an injustice. As the Minister of State will know from his own background in local government, there is now a whole proliferation of meetings which did not exist when I entered local government. There are municipal areas with meetings after meetings. Councillors have to respond to the public, interest groups, attend public meetings and travel away from home. It is a difficult situation to be in. I could cite individual cases of councillors who are in difficult positions because of this but it would not be appropriate for me to do so. The Moorhead report established that in proper objective terms, stating there is a gaping need in this area. This matter needs prompt action. It is a disgrace. Councillors should have assurance of this issue before Christmas.

Minister of State at the Department of Public Expenditure and Reform (Deputy Osian Smyth): I thank Senators for their comments and for supporting the Bill. I also thank Senators on all sides for the acknowledgement of the great expenditure that went into protecting people and businesses this year. The pandemic unemployment payment was a significant innovation and rapidly delivered by the Department of Social Protection. Impressively, most people got this payment online. For businesses, there was the tax relief at source, the employment wage subsidy scheme and the Covid restrictions support scheme. There were full rebates of rates for the year, along with restart grants and trading online vouchers.

Even with all of that, however, it has still been difficult for people in the hospitality sector. It is incredibly difficult for somebody to have a business reopen and then shut down again, to be given hope and then have it dashed. Some pubs in Dublin which never served food have never reopened because they did not have a chance all year long. That has been incredibly difficult for those people, no matter how much support they were given. The frequency with which they have been opened and shut down has created anxiety. I will bring those sentiments to the attention of Ministers.

The Cabinet will be meeting throughout the Christmas break and over the new year as we are still in a critical period. The vaccine roll-out project, one of the most important projects in the history of the State, is taking place and will have to be got right. Dealing with daily data which shows how the disease is spreading must also be responded to by the Government. All the way through Christmas, the Cabinet will be working on that.

I have been working on the base funding of local authorities - Galway was mentioned - and it is being reviewed. I take the point that it has always been discussed in the context of local property tax but it can be considered separately as well. Whatever is done, it would be difficult to produce a funding model that satisfies everybody and that every local authority feels it has been fairly treated. It is a challenge and it is not a simple thing to do. It is difficult to divine what the logic was at the start. I am working on that and I know there have been detailed proposals as to how it could be reworked. If the Senator wants to come to my office, I am happy to engage on that.

Our programme for Government includes a commitment to the full implementation of the Moorhead report which involves a dramatic difference in the way councillors are paid. All major public expenditure decisions that involve pay always come back to the Department of Public Expenditure and Reform because they involve multi-year commitments, not just something within one year's budget. They have to be approved. I am happy to find out what stage that is at and report back to the Seanad. Many Members are concerned about the pay and conditions

of councillors. We know the endpoint is the full implementation of the Moorhead report.

I was a councillor for a number of years and served as cathaoirleach of my local council. I have first-hand experience of the difficulties and the challenges councillors have nowadays, particularly this year when they cannot even meet easily. One function of a local authority is that it is the agency designated for emergencies. During severe weather emergencies, it is the local authority which grits the streets for example. It is the local authorities which stood up during the pandemic to provide emergency services to older people, to bring food to their homes and to organise volunteer groups. I am grateful to them for all of that, particularly the chief executive of my own council. I am still in contact with my local authority. I was meant to meet its chief executive, Philomena Poole, who is very competent, this morning but I am here. I will report to the House as how we are getting on with the Moorhead report.

Tax reliefs were mentioned by Senator Gavan. My Department is keen to eliminate as many tax reliefs as possible. They are expensive and grow like weeds. They are sometimes introduced to facilitate legislative or strategic change. A decade ago, there was a major pruning back of tax reliefs. If there are any which the Senator would like to see abolished, he should feel free to ask me and we would be very happy to consider them.

It is our policy to bring in a statutory right to sick pay. Ireland is one of the developed countries which does not have such a statutory right. At the start of the pandemic, it was brought into focus that many people did not have a right to sick pay. It is dangerous for the population if those on low wages are obliged to go to work at a time when disease is spreading. That is why the rules were changed to allow for people to claim pay on an accelerated basis where they felt they had symptoms of corona virus. We need to extend that into a general statutory right for sick pay for all workers. That is something we are working on.

Question put and agreed to.

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

Senator Seán Kyne: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Appropriation Bill 2020: Committee and Remaining Stages

Sections 1 to 4, inclusive, agreed to.

SCHEDULE 1

Question proposed: "That Schedule 1 be a Schedule to the Bill."

Senator Jerry Buttimer: I wish to respond to the Minister of State's remarks regarding councillors' pay and conditions. Schedule 1 at Vote 34 refers to the allocation of moneys to the office of the Minister for Housing, Local Government and Heritage, "including grants to Local Authorities, grants and other expenses in connection with housing, water services, miscellaneous schemes, subsidies, grants and payment of certain grants under cash-limited schemes", while Vote 35 refers to retired pay, pensions and compensation. Political courage is needed

here, as is a sense of reality *vis-à-vis* the pay and conditions of councillors. I am not going to labour the point but assure the House that this is not about us as parliamentarians reaching out to the people who elect us but about respect. This is about recognising the role of local authority members and ensuring that people will continue to come into politics who will not be beholden to anyone else. My greatest concern is that we are making politics at all levels the preserve of the few. We should not do that.

Ireland is very different from other countries in terms of the amount spent on elections. The amount spent in America, for example, on state, House of Representative and Senate elections as well as presidential elections is absolutely absurd. In terms of raising money to run for election, we have very strict limits on political donations in this country, which I fully support, and I hope we never deviate from that. In the old days, we had what was called “walking around money” in the context of local government and we all saw what happened at various tribunals of inquiry. We can never go back to those days. I do not know anybody in this House who wants to see politics demeaned. Nobody wants to see anyone other than voters - the citizens to whom representatives are accountable - having an influence over elected members. That is why it is important to take the bold but correct decision to improve the pay and conditions of councillors. The can has been kicked down the road and the buck has been passed repeatedly. The issue is with the Department of Public Expenditure and Reform at this point. To be fair to the Minister of State, he has to work within certain parameters. The Minister for Public Expenditure and Reform, who has been in politics for a long time, both as a local authority member and as a Member of these Houses, should just sign the order to pay our councillors properly. The Leas-Chathaoirleach made reference earlier to the Moorhead report but that report did not get everything right and we should not pretend that it did. I appeal to the Minister of State to use the funding available.

I also appeal to him, as a member of the Green Party, to ensure that the lower Lee flood relief scheme in Cork is built. As can be seen from the Schedule, new Departments have been created and I welcome that. Today Mr. Barry O’Connor retires as president of Cork Institute of Technology, CIT. I mention this in the context of the new Department of Further and Higher Education, Research, Innovation and Science and thank Mr. O’Connor for his leadership at CIT and for the way in which steered the amalgamation of CIT with the Institute of Technology Tralee, ITT, to form the Munster Technological University, MTU.

The aforementioned flood relief scheme must start. The Minister of State at the Department of Public Expenditure and Reform, Deputy O’Donovan, was in Cork a couple of weeks ago following a serious flooding event. This week we had an orange weather warning in Cork, with more flooding forecast but thanks to the grace of God, the wind changed direction and the city was not flooded again. It is time for the talking to end. We have had a gargantuan consultative process and we must now ensure that the money that has been allocated is not lost. The former Minister of State at the Department of Public Expenditure and Reform, Deputy Moran, said previously that the money could go elsewhere but I do not want to see that happening in Cork. The lower Lee flood relief scheme is being held up by a very well-intentioned group, whose motivation is not in question but the project has been seriously delayed and businesses have closed as a result. Business owners are in constant dread and families living in the inner city are worried and fearful.

I appeal to the Minister of State to raise the aforementioned issues with the Minister. We are missing an opportunity here, especially as we are dealing with a Bill that speaks to salaries, expenses and administration costs as well as referring to local government. I thank him for his

attention.

Senator Pat Casey: I also wish to speak about councillors' pay, which has already been mentioned by three Senators. I agree that the time for talking is over. A decision must be made and it should be made sooner rather than later. This has been a protracted process. The Minister for Public Expenditure and Reform has been mentioned twice during this debate but he has only held that brief for the last six months. Previous speakers should remember that their party held that brief for a considerable number of years previously and no decision was made. I sat on the Joint Committee on Housing, Planning and Local Government in the previous Dáil, which found it impossible to get access to the Moorhead report. Fianna Fáil actually had to include the report in the programme for Government to be able to see it. I would not have said anything today except for the fact that a colleague of mine was mentioned and it was implied that he has sole responsibility. I just want to remind those Senators that their party has been in government for the past nine years and could have dealt with this issue. We all agree that councillors need to be respected for the work they do and the role they play in their communities. Everybody has accepted the principle but the decision has not been made. A debate was had in public at the previous committee meeting before the dissolution of the previous Dáil. The media ran with it so I do not know what we are waiting for at this stage. We just need to get on with it but I am not overly happy with how it has been portrayed here. Senators have suggested that it is a decision for the Minister and have asked why he has not made it yet but the same Senators were in government for the past nine years and did not address the issue.

Senator Jerry Buttimer: Can I make a point by way of clarification? The reason I mentioned Deputy Michael McGrath is that he is the Minister responsible. It is lying in his Department and I-----

An Leas-Chathaoirleach: I thank the Senator. We will proceed with the debate.

Senator Jerry Buttimer: I do not disagree with Senator Casey; it should have been sorted out years ago but was not. The point I am making is that the Minister with responsibility is the Minister for Public Expenditure and Reform. That is the context in which I referenced Deputy Michael McGrath.

An Leas-Chathaoirleach: We are moving on now.

Senator Seán Kyne: I thank the Minister of State for his generous offer to discuss the issues relating to Galway, which I will certainly take him up on. I also concur with Senator Casey's point that many people think councillors have already received pay increases because they have been announced a number of times. A number of councillors have told me that people have said to them that councillors have received X amount over the recent period when they have not. It is time to make a decision on this very important issue. Councillors' pay is pretty much what it was when I entered a local authority in 2004 so it needs to be addressed. Successive Governments have been afraid to do anything that benefits politicians because politicians are almost regarded as bad people now. There seems to be a view that one could not possibly do anything for them, even though they have difficult jobs and do difficult work across the Houses of the Oireachtas and in local authorities. This view is regrettable because elected public representatives and other public servants have noble professions that we need to encourage people to embrace. If we did not have democracy, people who guard democracy and people who run for election, where would we be?

We have heard about many working from home during the pandemic. They have been doing so out of necessity but there has been a move across all Departments and agencies to encourage working from home anyway. Has there been any feedback from Departments on how it has worked? Obviously, it has benefited many people. What is the view of assistant secretaries and Secretaries General of Departments? Do they regard working from home as positive or are there drawbacks and limitations? It is worth having a review in each Department to determine whether it could be promoted. We are aware of its benefits in terms of reducing commuting times, the carbon footprint and pressure on roads and public transport, where it is available. I do not like asking whether working from home has improved efficiency but is it at least comparable with working in Departments or State agencies in normal times?

Senator Paul Gavan: I want to speak on two issues. First, I concur with what everyone has said on several occasions in this Chamber over several years about councillors' pay. I am genuinely puzzled because, in my naïveté, I had assumed this problem would have been dealt with by now. I suppose I have an interest in the Sinn Féin councillors, in particular, because most of them tend to be full-time councillors. The problem we have is that it is almost impossible to live on the salary of a full-time councillor. It is part of the ethos that runs through our party, however.

In the five years I have been here, Senators from all sides have spoken about the need to address this matter. I take Senator Kyne's point that there may be reluctance to do anything for politicians but I would counter that by saying that we all agree on what is required. There is no one in opposition saying the councillors should not be given the money.

I take Senator Casey's point, that is, that this really should have been dealt with in the nine years in which Fine Gael was in government. It had ample opportunity to do something about it. It is inexcusable that nothing was done; let us be clear about that. The damage that was done to local governments by the Fine Gael–Labour Party Government was appalling. I refer to how it took apart many of our local government structures, town councils and so on. However, I do not want to revisit old history, particularly today, other than to make the point that I am genuinely surprised this was not dealt with in the expenditure items for this year. I would like to understand when it will be dealt with. Surely to God we will not have to have this conversation again in 12 months, or even six months. Surely this has to be dealt with sooner. Senator Kyne is correct that the public is under the impression that councillors have received pay increases although no such increases have been made.

My colleague Senator Craughwell has rightly been making the point about the special class K contributions that Senators make. I meant to raise this the other day but I did not get the opportunity. The contribution is absolutely useless to us. This really needs to be addressed as part of an overall review of finance. Solutions have been suggested. Senator Craughwell has been championing this particular issue in the House, again for five years or more. I really hope we will not still be talking about it in 12 months. The whole Chamber agreed something needs to be done because what is occurring is fundamentally unfair. Colleagues from all parties lost their seats in the last Seanad election and find they have no support from social welfare.

I have to raise the Coonagh Cross–Knockalisheen road project in Limerick and the fact that it has had 15 start dates postponed since 2012. The Minister for Transport, Deputy Eamon Ryan, has admitted he is delaying the project for a further review. The project is crucial to the infrastructure of the north side of Limerick. It is a working-class area. The project is crucial to opening up Moyross, in particular. The good people of Moyross have waited for years. They

have been disappointed by Government after Government and are at their wits' end. I appeal to the Minister of State to speak to his colleague, the Minister for Transport, because the project must not be delayed continuously. It is an essential part of the Limerick city infrastructure. It is essential to open up the north side, which is the most deprived side of our city. Action and an urgent start are required.

An Leas-Chathaoirleach: I thank Senator Gavan. Normally I would not try to curtail Senators' time but I am doing so now only for one reason and with a view to being helpful to colleagues. This motion has to be concluded at 12.45 p.m. There is just less than ten minutes left. I will call colleagues according to the order in which they offered to speak. We have a burgeoning speaker list, for some reason. If Members want to co-operate and help each other, they should speak for a minimal amount of time.

Senator Vincent P. Martin: On behalf of the Green Party, I wish to refer to how we recognise and value elected members of local government and to demand fair treatment for them considering the incredibly hard work they do. All Members of the Seanad bring their own experiences and they are all very helpful in offering their opinions and making suggestions on supporting local county councillors. I would like to believe my own journey can add some value to the debate because I may have the near-unique distinction of having served in two county councils in two provinces. Therefore, I am aware of what county councillors do at the front line. I am aware of meetings that take place after midnight, when the pizzas come in and when councillors have not got a chance to put their children to bed. I am aware that county councillors comprise the lifeblood and nerve centre of our democratic system. It is only right that they be recognised not with empty lip service but with concrete action. The Minister of State, having served as a councillor with distinction in Dún Laoghaire-Rathdown, has, like most of us, come through the school of privilege, hard knocks and excitement himself so he knows at first hand what I am talking about.

Nine years is a long time to wait for progress on this. The Green Party is now in government. I will expect words to be translated into action. Nothing else will be accepted. I acknowledge that I have the support of the Minister of State in this regard. We will be judged by our actions. I will not go down the road of populism and ducking for cover. Our county councillors deserve a salary rise — end of story. We are losing county councillors who got elected in good faith because they simply cannot continue in their privileged role as servants of the people due to the financial constraints. That is not good enough. We are also failing to attract people to this vital tier of democracy because they cannot make it work financially.

Why is there an anomaly in the system whereby county councillors have to pay rates on their offices, unlike MEPs or Deputies? A county councillor who is working really hard and wants a constituency office is treated differently from democratically elected people at other levels. Why do the county councillors not get leave from their workplaces? Some nearly have to beg their employers to go to a plenary session of the county council.

The Government will be judged on actions, not words. This Government will be judged on actions, not words. The time for talking is long since past. The Moorhead report is gathering dust. It behoves us to move in the right direction. We have to and I implore the Government to do so. There can be no more tokenism. We need real concrete support for our hard-working county councillors.

An Leas-Chathaoirleach: We have less than five minutes remaining. We will take the fol-

lowing speakers in this order: Senator Gallagher, Senator Crowe, Senator Craughwell, Senator Garvey, Senator Keogan and Senator O'Loughlin. If Members want to do 40-second speeches, everyone will get in. I cannot stop them if they do not want to.

Senator Robbie Gallagher: I appreciate the latitude the Leas-Chathaoirleach is giving us and I appreciate that other Senators want to say a few words on this matter. With regard to the two previous speakers, Senator Martin mentioned that the time for talking is over. None of us need to say any more on what councillors do. Everyone knows what they do. Senator Gavan summed it up very eloquently in his contribution. This is not about a blame game or pointing the finger at Fine Gael and saying that it has been in government for eight years and has done nothing. We are not going to go there. It is Christmas. Fianna Fáil is in government.

Senator Fiona O'Loughlin: Where is Santa for the councillors?

Senator Robbie Gallagher: Fianna Fáil has been in government for less than eight months. Like Senator Martin said, I intend to do all I can, along with my colleagues, to ensure that councillors get what they are entitled to.

An Leas-Chathaoirleach: Senator Gallagher was very helpful to his colleagues. Can Senator Crowe emulate that?

Senator Ollie Crowe: I will be brief out of respect for other Members. This is straightforward. I was a councillor for 11 years. The reality is that we are losing young and ambitious people from local government because they just cannot give the commitment that is required. This is causing untold difficulties. I believe every Member has great respect for local authority members and the work they do, which we know at first hand. The majority of Members have been members of local authorities. Councillors must be respected. The reality is that the present terms and conditions are a farce. I am fully aware that this is the case on the ground. It is unacceptable. There is a race to the bottom, which we must stamp out. The time for talking is over. We must get on with it. I hope that, in the coming days, Santa will arrive for the councillors.

An Leas-Chathaoirleach: We are going well. We may get everyone in if we keep it up.

Senator Gerard P. Craughwell: I will be as quick as I can. I brought this issue up on Inchydoney Island in 2015. I said that no government was going to increase the pay of councillors and, to date, I have been proven correct. How does any government or political party dare to treat these people in the way they have treated them over the five years I have been in this House? These are the foot soldiers for political parties. They are the guys who go out in the rain. Senator Kyne said a few moments ago that we do not respect local politicians in the way we should. Every other Senator has said the same. None of us have a monopoly on this issue. The Government should pay them. By the way, what is offered in the Moorhead report is not worth giving to them. They need a decent salary. If one is on social welfare and is elected as a councillor, one's social welfare payments stop. A councillor's money is not, however, a salary. There is no master-servant relationship between the council and the councillor. It is an allowance to assist them in doing the job they have been elected to do. When their salaries are fixed, therefore, they must also be taken out of the loop with regard to any social welfare benefit to which they are entitled. I respect those on social welfare in the same degree as I respect millionaires. I would love to go on for another ten minutes but the Leas-Chathaoirleach will not let me.

An Leas-Chathaoirleach: I am well aware of Senator Craughwell's eloquence and of his

capacity to go on. We are now down to 30 seconds or less for each Senator.

Senator Róisín Garvey: Not only do we need to pay councillors properly but we also need to look at the lack of power given to local authorities over the years. We have reduced the money and power they get and, as a result, the job of councillors, who receive this low wage, is even harder. They do not have money to fix water infrastructure or to fix houses. That has all been centralised. As we discuss the Appropriation Bill, I would like us to look at that issue and to rethink how we allocate power and money to local government in addition to considering the issue of councillors' wages.

An Leas-Chathaoirleach: What a good example Senator Garvey has set. Can Senator Keogan match it? If she can, we may get to everyone.

Senator Sharon Keogan: I will try to be as quick as I can. Since I have come into the House, I have been advocating for councillors' pay. Today the ladies and gentlemen of Fine Gael, Fianna Fáil and the Green Party will pass this Bill. Why do they not just amend it now to include the issue of councillors' pay? They should stop talking and walk the walk. They have the power to do so. They should not pass this Bill today. They should get the issue of councillors' pay into it. Today is their day.

Senator Seán Kyne: Has the Senator tabled an amendment to that effect?

Senator Sharon Keogan: They should stand up for the councillors of this country.

Senator Seán Kyne: Has the Senator tabled an amendment?

Senator Sharon Keogan: The Members can do it.

An Leas-Chathaoirleach: We will have no interruptions.

Senator Sharon Keogan: There is no point talking about it anymore. I have written to the Taoiseach and asked him for a meeting. I will go to his clinic in Cork if I need to do so to get a meeting about councillor's pay.

Senator Ollie Crowe: Does the Senator have an amendment tabled?

Senator Sharon Keogan: This is in the Government Senators' hands today.

Senator Seán Kyne: Does the Senator have an amendment tabled?

Senator Sharon Keogan: No. Amendments from the Opposition were not allowed; only amendments from the Government parties were. I ask the Government parties not to pass this Bill.

An Leas-Chathaoirleach: I will allow Senators O'Loughlin and Davitt one sentence each, just to be fair, but we have actually run out of time.

Senator Fiona O'Loughlin: Effective local democracy is the absolute cornerstone of a functioning society and that respecting and valuing the work that local councillors do is very important, as is supporting with resources the work that needs to happen at local government level.

An Leas-Chathaoirleach: The Senator has got an hour-long speech into a minute. That

takes intelligence.

Senator Aidan Davitt: I agree with my fellow Senators. The commitment Fianna Fáil, Fine Gael and the Green Party gave was one of the few things in the programme for Government to which a time limit applied. It will happen. I have no doubt about that. I look forward to that. I also appreciate the good work done by the Minister, Deputy Darragh O'Brien, and the Minister of State, Deputy Peter Burke, on this issue. It was not a simple matter. The full implementation of the Moorhead report would not have been good enough for the councillors. We have gone above and beyond that.

An Leas-Chathaoirleach: I thank Senators for their co-operation. We strained a point to get them all in. The time permitted for this debate having expired, I am now required to put the following question in accordance with an order of the Seanad of this day: "That Schedules 1 and 2 are hereby agreed to in Committee, that the Title is hereby agreed to in Committee, and that the Bill is accordingly reported to the House without recommendation; that Fourth Stage is hereby completed; and that the Bill is hereby received for final consideration and returned to the Dáil."

Question put and agreed to.

Appropriation Bill 2020: Motion for Earlier Signature

Senator Seán Kyne: I move:

"That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Appropriation Bill 2020 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him."

Question put and agreed to.

Sitting suspended at 12.48 p.m. until 1.03 p.m.

Harassment, Harmful Communications and Related Offences Bill 2017: Second Stage

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

Minister of State at the Department of Justice (Deputy James Browne): I am delighted to introduce the Harassment, Harmful Communications and Related Offences Bill to the House today, following its approval by the Dáil yesterday. As Senators will be aware, this Bill is a Private Members' Bill, sponsored by Deputy Brendan Howlin, which was heavily based on recommendations made by the Law Reform Commission in its 2016 Report on Harmful Communications and Digital Safety. The report identified areas of the law in relation to harmful communications online that needed to be strengthened to ensure that people are adequately protected. I thank Deputy Howlin for introducing this important Bill and for working with the Minister for Justice, Deputy McEntee, and me to get it to this point.

I also thank Senators for agreeing to take all Stages of this Bill in the House today. I think

we all agree that the issues addressed in the Bill are significant and I welcome the support it has received from across the Oireachtas. I understand and appreciate that Senators would probably have preferred more time to consider the issues involved. However, I think there is an appetite to get this done before the end of the year, and we can all be happy that we will have done work of real value today, when the Bill completes its passage.

The Bill was amended significantly on Committee Stage in the Dáil to reflect the policy aims of the legislation and to strengthen its provisions. As a result of these structural changes, my Department has published a new explanatory memorandum to the Bill on the Oireachtas website. The new memorandum recognises the role of victims in campaigning for a change in the law, particularly Ms Jackie Fox, who tragically lost her daughter Nicole to suicide. I thank Ms Fox for sharing her story and for keeping these issues in the spotlight.

In today's world, more and more of our interactions and communications are taking place online. While this has been a largely positive advancement which enables us to communicate instantly with people anywhere in the world, it can also mean that people who wish to do us harm have a readily accessible platform from which to do so. This Bill will strengthen our response to harm perpetrated online, as well as offline, to ensure that individuals can be punished in a proportionate manner.

Senators will recall the recent leak of intimate images that was reported widely in the media. While I cannot comment on any individual cases, there was obvious concern that the once-off sharing of intimate images without consent is not a criminal offence in Ireland. The Bill addresses this by creating two offences to deal with this behaviour. The first will address the distribution or publication of an intimate image without consent with intent to cause harm to the victim. It will also be an offence to threaten to distribute or publish such an image. The second offence is a strict liability offence to target the recording, distribution or publication of an intimate image without consent, with no requirement to prove an intention to cause harm. These two offences will mean that this type of activity will no longer go unpunished.

The Bill will also deal with other areas of harmful communications by creating a new offence of distributing, publishing or sending a threatening or grossly offensive communication with intent to cause harm and will extend the current offence of harassment to deal with communications about a person, as well as communications to a person. I am confident that these offences will act as a real deterrent and will make people think twice about the type of behaviour they are engaging in online.

It must be acknowledged that while this Bill is a positive development, the criminal law is not the only way to tackle the spread of harmful communications. Education and awareness-raising, particularly among young people, is also crucial to ensuring the Internet is a safer place for all users. The Government's action plan for online safety addresses a number of areas for improvement and work is ongoing to that end.

Turning to the detail of the Bill, I would like to outline its key provisions. Section 1 defines the key terms used in the Bill, the most notable being the term "intimate image", which is used in the offences created under sections 2 and 3. This definition was subject to much debate in the Dáil and it has been amended, taking account of some of the concerns raised by Deputies. It does not require that the person was the subject of the original image, so long as they are represented in the image in some way. The term "harm" is defined as including psychological harm. This is extremely important, as much of the impact of the offences in the Bill will be

psychological. The word “communication” is not defined. This is to ensure that it does not limit the wide interpretation of this concept to date in the courts.

Section 2 creates a new offence to deal with the publication or distribution of an intimate image without consent with intent to cause harm, or being reckless as to whether harm is caused. The person who distributes or publishes the intimate image must have intended, or been reckless as to whether these acts would seriously interfere with the peace and privacy of the other person or cause the other person harm, alarm or distress. This will be considered in light of whether a reasonable person would think that the behaviour would interfere with the peace and privacy of the other person, or cause him or her harm, alarm or distress. Threatening to distribute or publish such an intimate image is also an offence. The maximum penalties for this offence for conviction on indictment are up to seven years’ imprisonment and-or an unlimited fine.

Section 3 is the second offence to be introduced in relation to intimate images. It provides for an offence of recording, distributing or publishing an intimate image without consent. This is a strict liability offence, as the person who records, distributes or publishes an intimate image without consent does not need to have a requisite intention to cause harm. It will be sufficient that the taking, recording or distribution of the intimate image seriously interfered with the other person’s peace and privacy or caused him or her harm, alarm or distress. This is aimed at voyeuristic behaviour where an individual may not even know the victim. The maximum penalty for this offence on summary conviction is 12 months’ imprisonment and-or a €5,000 fine. Senators will appreciate that strict liability offences do not attract the same penalties as those where there is a clear intention to cause harm.

The Law Reform Commission, in its 2016 report, recognised the harmful effect that one single message may have on the person who receives it. While we have strong laws in respect of persistent communication, there should be an offence to tackle once-off harmful messages through the use of any platform. Therefore, section 4 provides for an offence of distributing, publishing or sending a threatening or grossly offensive communication. This offence applies to all forms of messages or communications. It will be an offence to send a threatening or grossly offensive message where the person who is sending the message or communication intends to cause harm to the person who is the recipient of the message. This offence is intended to deal with the most harmful forms or messages and communications, both online and offline, where there is a clear intent to cause harm. This offence is narrow in scope to ensure there is no undue interference in freedom of speech and to avoid criminalising adverse comment, for example. The maximum penalties for this offence for conviction on indictment are two years’ imprisonment and-or an unlimited fine.

Section 5 provides for the anonymity of victims of an offence under sections 2 or 3 of the Bill, that is, the two offences that deal with the recording, distribution or publication of intimate images without consent. Section 5(1) creates an offence where any person distributes or publishes any information that may lead to the identification of the victim of the offences.

Under section 5(2), a judge may, if it is in the interests of justice to do so, direct that certain information may be published or broadcast in such manner and subject to such conditions, if any, as he or she specifies in the direction. I brought forward an amendment to this section on Report Stage yesterday to make it an explicit requirement on a judge to take into account the views of the victim in such a direction. It shall be an offence if any person publishes or broadcasts any information in contravention of a direction under section 5(2).

The maximum penalties for conviction on indictment for an offence under this section are up to three years' imprisonment and-or an unlimited fine. It shall be a defence for a person to prove that he or she was not aware that the material published or broadcast was material that was subject to the provisions of this section or a direction under this section.

Section 6 provides for the liability of corporate bodies as well as officers and directors of corporate bodies in respect of the offences under the Bill.

Section 7 relates to summary prosecutions. There is normally a six-month time limit for the bringing of summary proceedings under the Petty Sessions (Ireland) Act 1851. This has been extended to two years for summary offences under this Bill to ensure that there is sufficient time for evidence gathering, particularly where mutual legal assistance may be required if data is held outside the State.

Section 8 is an important safeguard in respect of prosecutions against children under the age of 17 years. The consent of the Office of the Director of Public Prosecutions, DPP, must be given prior to proceedings for an offence under the Bill where the alleged offender is under 17 years of age.

Section 9 amends the Schedule to the Bail Act 1997 to include the offence of distributing, publishing, or threatening to distribute or publish, an intimate image without consent with intent to cause harm, or being reckless as to whether harm is caused, under section 2 of this Bill. This will mean that a member of An Garda Síochána may make an objection to bail under the 1997 Act in the case of a person who is remanded in custody for an offence under section 2 of this Bill.

Section 10 amends the Non-Fatal Offences against the Person Act 1997 to strengthen the offence of harassment under that Act. The amendment will provide that harassment may be as a result of persistent communication with a person but also persistent communication about a person, sometimes referred to as indirect harassment. The maximum penalty for harassment has been increased from seven years' imprisonment to ten years' imprisonment to reflect the serious nature of harassment and the wide range of behaviours it represents.

Section 11 amends section 40 of the Domestic Violence Act 2018 to include the offences at sections 2 and 3 of the Bill as "relevant offences" for the purposes of that section. Section 40 provides that where a "relevant offence" is committed against a "relevant person", it shall be an aggravating factor for the purposes of sentencing for that offence. This means that it will be an aggravating factor for the purposes of sentencing a person for an offence under section 2 or section 3 of the Bill if that person is the spouse or civil partner of the victim, or is, or was, in an intimate relationship with the victim.

Section 12 provides that a review of the operation of the Act must be carried out within three years of the date from which it was commenced.

Section 13 provides for the Short Title and commencement of the Act and is a standard provision.

We can all agree that this Short Bill represents a big step forward in terms of harassment and harmful communications, and I am hopeful that the support in the Dáil for the Bill will be echoed in this Chamber. The Minister for Justice, Deputy McEntee, and I are both strongly supportive of this Bill. Deputy Howlin made the point yesterday that this is an evolving area

and it is an issue that we are likely to have to come back to in the not too distant future, to address new technologies and trends in online activity. I could not agree more on this point. That being said, I am looking forward to a good debate on this measure here today and I commend the Bill to the House.

An Cathaoirleach: I would like to join with the Minister of State in paying tribute to the courage of Jackie Fox, whose daughter Nicole died in the most tragic of circumstances, and whose championing of this campaign on behalf of her daughter and everyone in this State has led to this Bill being put forward. I pay tribute to Deputy Howlin and the Labour Party for pursuing this Bill. I know it has broad support, but it is important that this legislation has been put forward to protect people from those who intend to cause them harm.

Senator Robbie Gallagher: I welcome the Minister of State back to the Chamber. As the Cathaoirleach outlined, Fianna Fáil is delighted to support this important legislation which is referred to as Coco's Law, in memory of Nicole Fox Fenlon. We are thinking of Nicole's family at this time, particularly given the time of year, and our thoughts are with them.

The Bill provides for the creation of two new offences in respect of the publication and distribution of intimate images without consent. The first offence concerns the distribution of intimate images without consent, or the threat to do so, with the intent to cause harm. The second relates to the distribution or sharing of such images without consent. It also provides for a number of other measures to strengthen the State's response to harassment, including increasing the maximum sentence for harassment to ten years' imprisonment, civil restraint orders, and providing that harassment may be the result of persistent communication about an individual rather than directly to an individual's face.

Recently, there was an outcry following a case that was widely publicised. Unfortunately, this case was not an isolated incident, and there have been numerous reports of individuals, the vast majority of whom are women, who have been targeted with such abuse. Yesterday evening, on the way home, I listened to Senator Hoey who is present today, as she outlined on the radio, her experience with harassment. I sympathise with her and I admire her bravery in that regard. The level of abuse to which the Senator was subjected is not good enough and simply should not be tolerated by anyone. For that reason, I wish to commend Deputy Howlin, Senator Bacik and the Labour Party for their great work on this issue. I am delighted that further action will be taken in the month ahead to address harmful behaviour online through the online safety and media regulation Bill. I welcome that Bill and I look forward to it coming before the Houses.

On a more general note, I too am sometimes depressed by the level of abuse generally on social media. I use some social media platforms, mainly to pass on information to the public rather than to give my opinion on any particular item. I am amazed at the level of abuse that comes back in my direction. I suppose it is part of the game we are in to a certain extent but it is sad nevertheless. I often think that if I posted online the winning numbers for next week's lottery draw, there is no doubt that certain individuals would come back with a range of abuse and personal attacks aimed at me. All Members have to accept such abuse, although maybe we should not have to accept it. It is very sad that it has come to that point. Unfortunately, that is the world in which we live today.

I very much welcome the Bill. I am delighted that we in Fianna Fáil will be 100% behind it.

Senator Fiona O'Loughlin: I thank the Minister of State, Deputy James Browne, who is present, and the Minister, Deputy McEntee, for absolutely prioritising this legislation. It is among the most important legislation to come before the Houses this year. The fact that it was prioritised in the programme for Government sends a very strong message to the perpetrators of these vile online crimes that their actions are not just wrong and immoral, but that they are now illegal and that they will be criminalised for these activities.

There is one plea I wish to make to the Minister of State. He has acknowledged the work of Jackie Fox in terms of highlighting the whole area of cyberbullying. Indeed, credit is due to Ms Fox and many other civil society organisations such as Rape Crisis Network Ireland, the Victims Alliance and the National Women's Council of Ireland, which have done a significant amount of work in terms of ensuring this legislation was a priority. I also acknowledge the work of Deputy Howlin and the Labour Party on this issue.

As I stated in the House two or three weeks ago, the Bill should be known as Coco's Law for several reasons. We need to recognise the significant work done by Jackie Fox in memory of her daughter. Young people in particular may not be attuned to the parliamentary language we use around legislation and it may be that the Bill being known simply as Coco's Law would make it more relevant, particularly for the younger people who we wish to help and support. I ask that this proposal be considered again.

The fact that the Bill creates two new offences relating to the publication and distribution of intimate images without consent is very important. The first of those offences relates to the distribution of intimate images without consent or the threat to distribute those images with the intent to cause harm and the second relates to the actual distribution or sharing of images without consent. The creation of those offences is very important but there are several other important measures contained in the Bill to strengthen the response of the State to harassment, including increasing the maximum sentence for harassment to ten years, provision for civil restraint orders and offences relating to persistent communication about an individual.

All Senators know and have spoken in the Chamber about the significant shock to young women in particular that was caused by the 10,000 intimate images and videos, mainly of Irish women, that were shared without consent. That is the clearest indicator to date of the urgent need to address image-based harassment. Of course, Members also know about other individual situations.

It is very important to note that further action to address harmful behaviour online needs to be taken following the passage of this Bill. Of course, that will be done through the online safety and media regulation Bill, as well as the fact that there will be an online safety commissioner.

There is much to be commended in the Bill. One particular issue of note is the fact that it will be irrelevant that consent was given for an intimate image to be taken. The fact that it will be irrelevant in terms of a case going to court is very important, particularly to young women who ended up with a sense of guilt or shame because they allowed an image to be taken with consent by a person with whom they were in a trusting relationship at the time. I thank the Minister of State for his work. I commend and support the Bill.

An Cathaoirleach: In the normal course of events, the Independent Group would be next up but it has indicated that as the Labour Party championed this legislation for so long, it will give way to Senator Bacik.

Senator Ivana Bacik: I thank my Independent Group colleagues, particularly Senator Craughwell, for swapping their time with the Labour Party Senators. In light of the unusual origins of the Bill, it is appropriate that the Labour Party would have the opportunity to lead for the Opposition on the Bill and I am delighted to do so.

I welcome the Minister of State to the House and I ask him to pass on our words of thanks to the Minister, Deputy McEntee, who has done so much to pilot the Bill through the Houses following its initiation in the Dáil three years ago by my Labour Party colleague, Deputy Howlin. I pay tribute to Deputy Howlin, who led on this issue from the start and initiated the legislation. His enormous contribution to law reform in this area has very fairly been acknowledged by all in the Dáil and in this House also. I am delighted to see that the revised explanatory memorandum published with the Bill this week recognises the role of Deputy Howlin and the fact that the Bill started as an Opposition Bill introduced by the Labour Party but has now been taken up by the Government through a constructive engagement process with Deputy Howlin and has been steered through the Dáil with support from all parties and Independents. I hope it will make similarly smooth progress, albeit with robust debate, in this House.

I also wish to pay tribute to the extraordinary campaigning work of so many whose lives have been so severely affected by the scourge of online abuse, digital bullying and so on. I refer in particular to Jackie Fox, the mother of Nicole Coco Fox Fenlon. Nicole, who was known by the nickname “Coco”, tragically took her own life tragically in 2018 at the young age of 21 following years of being subjected to vicious abuse and bullying online. I again thank the Minister of State and the Minister for revising the explanatory memorandum. It states:

The content of this Bill is strongly influenced by persons who have lost their lives because of online abuse, in particular Nicole Fox. The Bill is in recognition of her mother’s determination to honour the memory of her daughter and to strengthen the law so that others can be safer. As a result this Bill can be referred to as *Coco’s Law*.

That is a really fitting way of marking the enormous contribution made to law reform by Nicole’s mother and the other bereaved families who have lost young people to suicide, often as a result of serious online abuse and bullying. Deputy Howlin hosted an incredibly moving event outside Leinster House some months ago which I know a number of colleagues attended and at which we heard directly from Jackie Fox and other parents as to the seriously detrimental effect that online bullying had on their children and teenagers. That brought home to many of those present the very serious nature of this phenomenon and the need for law reform in this area. As I stated, Deputy Howlin pioneered this legislation and had originally introduced the Bill in 2017. Thanks to the galvanising of support from across the House and, indeed, thanks to the support of the Minister, Deputy McEntee, the Bill has been progressed much more swiftly in this Oireachtas term and for that I thank colleagues.

That is why, in the interests of seeing it passed into law now without further delay, we have listed it to be taken through all Stages today. That was by assent of all of us represented at a recent leaders and Whips meeting.

Many NGOs have also engaged very constructively with the process and are anxious to see the Bill become law. Safe Ireland sent us a very powerful email last night asking for the swift passage of this law with no further delay. I pay tribute to Safe Ireland, the Rape Crisis Network and all the other NGOs that have been so actively engaged in respect of the Bill, including the National Women’s Council and Women’s Aid, which have done great work to support survivors

and victims of domestic abuse in recent months. Women's Aid and others are seeking further improvements to the Bill even at this late hour. However, I believe colleagues appreciate that there is an imperative to get the Bill passed in order to ensure that we have, for the first time, a robust legal framework to protect those who are suffering from online abuse and harassment, including the sharing of intimate images we have seen reported in recent months.

Once it is introduced, legislation is subject to amendment. I quote Deputy Howlin, who on this point on Report Stage in the Dáil yesterday stated:

The one thing I am very clear on is that there is no end to the amendments we could actually consider. People have been contacting me about this over the years, but also recently. Since there is such an urgent need for legislation in this area, our objective should be to establish a framework. As I said in my opening comments on this, the framework should not be the final word, by any stretch of the imagination. We will be building on it ... New technologies will have to be addressed in the future.

The Minister of State referred to this as an evolving Bill, which is right. It provides us with a first robust statutory framework. Clearly, it needs to be built upon, as the Law Reform Commission pointed out in 2016, through the enactment of further legislation to deal with civil remedies relating to online abuse and harassment. That is clearly not being dealt with in this Bill, which is a criminal Bill, as Deputy Howlin pointed out. It will also need to be dealt with through other mechanisms beyond law reform, through, for example, education programmes and the establishment of awareness-raising programmes the Minister of State also mentioned. It will take further legislation to establish, for example, the digital safety commission that the Law Reform Commission called for in 2016.

Our priority today should be to get this Bill passed, but we recognise that further legislation will be required to deal with other aspects of online abuse and harassment. We are also cognisant that the Bill was amended quite extensively on Committee Stage and even on Report Stage in the Dáil. Yesterday, and I believe on Committee Stage, the Minister, Deputy McEntee, indicated that a justice (miscellaneous provisions) Bill will come before the Oireachtas next year and that any issues with this Bill could be addressed via that legislation. We are conscious that there is scope for further evolution of the law in the area, particularly in view of the speed at which technology is changing. Even in the three years since Deputy Howlin first introduced his Bill and the four years since the Law Reform Commission issued its important report on harmful communications and digital safety, we have witnessed extensive technological change and much greater pervasiveness of social media access by much younger teens. I speak as a mother of teenagers. We are all conscious that that has been a feature.

In previous debates, colleagues have mentioned the visible coarsening and degrading of discourse and abuse online that all of us have received as public representatives. In recent weeks just in respect particularly of our citizenship law and the Born Here, Belong Here campaign, I and other Labour representatives have received horrible abuse online. We are all aware of that. That has been a changing landscape which we need to navigate and address in our laws.

As Deputy Howlin has pointed out, this Bill is long overdue, even though we recognise that further evolution will be necessary. Some of the law it seeks to reform is half a century old, including the Post Office (Amendment) Act 1951 relating to communications. Even the much more recent Non-Fatal Offences against the Person Act 1997, which itself was a major consolidating piece of legislation, is now 23 years old and much has changed during that period.

I will speak briefly about the content of the Bill and how it is now coming to us. Essentially it seeks to address two different aspects of online abuse and harassment, first the sharing of intimate images and online sexual abuse we have seen reported on so widely recently. The non-consensual sharing of intimate images of women and girls has caused much alarm in recent months. That aspect of online abuse is dealt with in sections 2 and 3. These sections provide a clear framework for dealing with the more serious aspect, which is the intentional or reckless sharing or distribution of intimate images which carries a maximum penalty of seven years' imprisonment and is provided for in section 2. Because it is a more serious offence, it has a higher threshold to meet for prosecution. Having looked at it extensively, I think it fits within our criminal law framework adequately. Section 3 contains the less serious offence, which is a strict liability offence and does not require proof of intention or recklessness and therefore carries a lesser penalty. However, it also addresses the terrible harm of recording, distributing or publishing an intimate image without intent. That is a clear and robust scheme.

The second aspect of online harassment relates to the online bullying and harassment that does not involve the sharing of intimate images. That is dealt with through two provisions in the Bill. Section 4 creates the new offence of distributing, publishing or sending threatening or grossly offensive communication. This offence carries a penalty of two years' imprisonment. It is a crucial reform which is long overdue because it covers once-off abuse, the sending of a single abusive message which currently no law addresses. Importantly, section 10 updates the existing offence of harassment in section 10 of the 1997 Act. It expands the definition of that so that is not just communicating with somebody, but now crucially also communicating about them - the sort of horrible bullying we see taking place online where people are vilified through posts or messages to others. There is also an increase in the penalty from seven to ten years' imprisonment. That is a good scheme. We have two graded offences under each heading, under the heading of the sharing of intimate images and under the heading of more general online bullying and harassment.

Deputy Howlin spoke about the motivation in introducing the Bill. He said that the Bill is based on a fundamental view that the Internet and use of social media and online space generally is a public space and people who use that public space should be protected there and have their behaviour regulated in the same way that we regulate behaviour in a public street or a public park. Clearly, we must also be mindful of balancing protections against the right of free speech and free communication. We need to recognise the enormous benefits the Internet and social media platforms have brought us, but it is fair that we regulate that space, which is the purpose of the Bill.

The Bill also contains important safeguards such as the provision in section 8 that children can only be prosecuted with the consent of the Director of Public Prosecutions, which is right and proper. We are all mindful of the need to ensure a balancing of the more serious offences and a higher threshold.

We are anxious to have the Bill passed by both Houses before Christmas. We want to give relief, succour and reassurance to the many people, the women and girls, the teens and young adults who have suffered bullying and abuse online, who will continue to suffer from such bullying and who want to see, as their families do, some measure of redress and accountability for the perpetrators. In particular, they want to know that there is a robust legal framework to protect them. This Bill can provide that robust legal framework. On behalf of the Labour Party, I am delighted to speak in support of this legislation which we initiated. I ask colleagues across the House for their support. I thank the Cathaoirleach for the extra time he afforded me for my

contribution.

An Cathaoirleach: I thank Senator Bacik for championing this Bill for so long. It is very rare that a Bill from the Opposition reaches this point. I thank colleagues for their understanding in allowing more latitude than normal in these circumstances.

Senator Barry Ward: I propose to share time with Senator Seery Kearney.

An Cathaoirleach: Is that agreed? Agreed.

Senator Barry Ward: I welcome the Bill. We recently had statements on exactly this issue and the Bill was discussed extensively on that occasion as well. This is very important legislation and I will not repeat what other speakers have said about its import. Suffice it to say that most people find it astonishing that this kind of activity is not already against the law. We are behind the curve on the matter. It is right and proper that we should correct that this week, so I look forward to the passing of this Bill into law.

I wish to comment on the fact that this is a Private Members' Bill. It is a tremendously important function of these Houses that legislation comes forth from Members other than those in the Government. I acknowledge that it has been amended somewhat in the Dáil, but to a great extent the Bill that was drafted by Deputy Howlin, with the assistance of the Law Reform Commission, stands and will become law. We should mark the importance of that. All too often, Private Members' Bills from this and the other House are brushed aside. There was an improvement in that regard in recent years, particularly in the previous Houses when there was a need, perhaps, to engage more with the Opposition. Both Government and Opposition Members have an equally valid opportunity to put forward legislative proposals and I welcome the fact that this is one such proposal that makes sense and has been championed by the Government.

I pay tribute to the Minister for Justice, Deputy McEntee, in that regard as well. In fairness, she came to the House for statements recently and she did a great deal of work on this Bill in the committee. It is a tribute to her, as has been said by Senator Bacik, that she has taken this legislation on board and agreed to bring it forward and champion it in some respects. It is not possible for an Opposition Member to do that to the same extent.

I also acknowledge the content of the explanatory memorandum. Senator Bacik quoted the final paragraph of the background section on the first page in which specific provision is made for this to be called Coco's Law. I am aware of the extraordinary campaigning Jackie Fox has done on this subject on behalf of her late daughter, but also on behalf of the myriad victims of this type of behaviour across the country. It is appropriate that we acknowledge that, and credit is due to the Minister for flying in the face of convention, to a large extent, to make provision in the explanatory memorandum to specifically acknowledge this as Coco's Law. It is only a convention and there is nothing to stop us calling it Coco's Law in the Title of the Bill. However, that is more of an American affectation and, unfortunately, I associate that behaviour in America with much more reactionary, populist legislation, as opposed to this legislation, which is incredibly important and grounded in fact and in an identifiable problem. The fact that it is in the explanatory memorandum is an important recognition of Nicole Fox and what she went through and of the campaign her mother launched in this respect.

I will not go into the details of the Bill. In specific sections some of the changes that have been made by the Department in the drafting are, perhaps, unnecessary. They are done now and I do not propose to try to undo them on Committee Stage. However, I return to the point I was

making about Private Members' legislation. When something is drafted a particular way and it does the job, it does not have to be written in the Department's style for it still to be perfectly legal, correct, justiciable and functional in the context of prosecutions. I slightly resist the desire sometimes of the Government and the permanent government, if I can put in those terms with the greatest respect to the people who keep the country going, to write things in a Bill in the official form. It can make it more wordy, less accessible but no better in real terms to what was drafted in the first instance.

Finally, I wish to make a comment in respect of what I said earlier about the Law Reform Commission. This is a perfect example of where Members of the Oireachtas have an opportunity to make the best of what the commission does. The commission is a State body that makes recommendations on legislative changes. It provides incredible reports that are very detailed and bring forth the benefit of extensive research and consideration of legislative changes. It also publishes consolidated legislation. Reference is made to many legislative measures in this House, but they are amended all the time. The Law Reform Commission publishes consolidated legislation on its website for the benefit of everyone. It is free of charge for everyone as well. The commission produces reports time and again, on budget and on time. It is remarkable for that fact because it is not an enormous organisation. The fact that Deputy Howlin, no more than any Member of this House, can benefit from that expertise, professionalism and depth of understanding is extraordinary. I encourage all Members to engage a great deal more with the commission, take on board its suggestions and bring forward Private Members' Bills such as this, which identifies and solves a problem that very clearly exists.

It is wonderful the Bill is here and that we are making progress. I also thank the Minister of State, Deputy James Browne, for the work he has done and for coming to the House, and all Members for allowing this Bill to pass quickly today. That is exactly what should happen.

Senator Mary Seery Kearney: I will begin by paying tribute to Jackie Fox and the memory of her daughter. It is fitting that this Bill will be known as Coco's Law. I thank the Minister for bringing it forward and the Minister of State for all the work done on it.

I read Deputy Howlin's contribution in the Dáil very carefully. It was an extraordinary piece of parliamentarianism, if that is a word.

Senator Ivana Bacik: It is now.

Senator Mary Seery Kearney: Yes, it is now. It was, and I am proud to participate in the passing of this Bill by the House. It is extraordinary that we live in an age in which the threat of the publication of an image and the harassment of individuals can happen online in the manner in which it does. It is appalling, and I am delighted that it will quickly become a criminal offence. It is long overdue.

I have great respect for Safe Ireland and all the other NGOs that contributed and have spoken on it, as well as their email to us urging us to get on with getting the legislation onto the Statute Book and into effect as quickly as possible. I am glad that consent is irrelevant in the context of this Bill. That was extremely important. The phenomenon of the use of social media is quite extraordinary. I pay tribute to Professor Mary Aiken who published a book, *The Cyber Effect*, in which she deals with what happens in our psychology whereby things we would never say to somebody in person we would say online or over social media. She explains that phenomenon very well. It is amazing.

In the abuse I have received people refer to me in the most extraordinary and certainly unparliamentary language. They will do that in a Facebook post in between celebrating a daughter's birthday and something else for another family member. They can do it without considering that perhaps the child may grow up to be a Member of the Oireachtas and be subjected to similar abuse. Hopefully, as a consequence of this Bill, the child will not. It is important that the discourse online is safe, and that it is a place where we can all engage in a positive and constructive manner with our freedom of speech.

An Cathaoirleach: I call Senator Craughwell and thank him for allowing the Labour Party to lead for the Opposition in the debate on this legislation.

Senator Gerard P. Craughwell: I welcome the Minister of State. This is the first time I have addressed him since his elevation and it is great to see him here.

I was proud to step aside and let the Labour Party take the slot, given the debt of gratitude that is due to Deputy Howlin, the party and, indeed, Senator Bacik, for bringing this legislation forward. It has been a long and arduous journey. I wish to tell Jackie Fox that Coco did not die in vain. The outlandish and horrendous torment, abuse and harassment she took from bullies online was not in vain. She has made this country, at least, a safer place. I met the family outside the gates of Leinster House thanks to Deputy Howlin. It was a harrowing meeting, to see what was done to that beautiful child. She could have been 21 years old, but she was somebody's child.

Something terribly wrong is happening in our society with respect to the use of social media. The fact is that one can register anonymously and throw out any abuse one wishes. There is a misconception that it is scumbags who engage in this type of behaviour. My personal experience is that I asked a question in this House about the HPV vaccine. I asked it because I knew nothing about it and I called for a debate. Talking about online harassment and what it does, on one particular Saturday evening I found my own mental health being challenged. The people who were bullying me were not scumbags but registered general practitioners in medical practice. I still have the screen captures of what they said to me online. One of them went as far as to diagnose me as somebody who needed mental treatment. At that stage, I contacted him and told him that I knew who we was and that he had gone too far. Within three minutes, every tweet was gone. These tweets came from medical practitioners. If medical practitioners can behave like that, what are those who do not understand the damage they are doing capable of?

This Bill is about use of images and the horrendous work that is done on young ladies. I understand this issue as I was a teacher for 25 years. One of the worst things someone can do online to a girl is not to comment, for example, if a girl puts up an image of herself in a new dress. That is one side of it. The other side of it is one on which I have to speak to the young men of Ireland. What are they thinking of in asking young girls to take intimate photographs of themselves and send them on to them? What the hell is that about? If they want to see some part of their anatomy, they can go and meet them. They do not need the image to be sent to them online and then have this big stick to hold over their heads for the rest of their lives. I have seen some of this carry-on in schools. Really and truly, this has to stop.

In my first week as president of the Teachers Union of Ireland, I had to travel to the north west where two young girls had taken their own lives because of what was going on online. What sort of country do we have? On the day I arrived, a school principal told me he could not understand what was going on in family homes. We were talking about children aged between

13 and 15 years. He told me these children are sent to bed at night at a particular time, their parents ensure they have washed their teeth, put on their pyjamas and, in some cases, have said their prayers before they go to bed. Then they will leave them with the most lethal instrument in bed with them, namely, their mobile phone. They can either be the bully or the bullied. This is a societal issue and this legislation will go a long way towards changing the society we live in. I am very grateful to Deputy Howlin for bringing forward this Bill. He fought long and hard to bring it to both Houses. It will pass as Coco's Law and it is not before time that we have had such a law.

We now have to go one stage further. I hope the Minister will engage in a national advertising campaign to ensure nobody is left unaware of exactly what this means. I hope my former colleagues in education will explain to children in schools, particularly in the later years of national school and all of second level, that they do not have to provide images of themselves to anybody. "Oh, if you loved me you would send me the photograph" they are told. They do not have to do that and if they do so, they will leave themselves open to these blackguards and what they will do. I could use much stronger language if I wanted to. There has to be penalties. I am glad that both the Minister of State, the senior Minister, Deputy McEntee, and Deputy Howlin saw that this was a dynamic Bill. This legislation will have to change.

I am in my 60s. I started communications with Morse code, dots and dashes, and it is not that long ago.

Senator Michael McDowell: Was it not smoke signals?

Senator Gerard P. Craughwell: I was just ahead of the smoke signals.

Senator Ivana Bacik: It was probably carrier pigeons.

Senator Gerard P. Craughwell: I moved from Morse code in high frequency, through to very high frequency and later mobile phones and on to the Internet where we are today. In that short space of time, I have seen how communications have been used as a weapon to pull people into line.

I know this Bill deals with online communication but we must also look at bullying in the workplace and the classroom but particularly the former. I am familiar with this because a former colleague took his own life because he could take no more of it. The bully is the guy one meets in the staff room or corridor who may be the nicest person any of us could possibly meet until he or she gets into a room with one of us alone. These people can be the most heartless creatures. If they are like that one-to-one, what will they be like online? Much of the stuff that we have seen online has come from the school yard and we have to move to stop it.

While this Bill will go a long way in dealing with cyberbullying and the like, we need to look at other laws. I know the Non-Fatal Offences Against the Person Act is a law that can be used to deal with bullying but it is difficult to prove a case. Bullying is usually a one-on-one issue. I remember a schoolteacher telling me one time that if she was called in by a certain person once more, she would close the door as she entered, bang her head as hard as she could off the wall, run out and say this person hit her, because this was the only evidence she would ever have that she was being bullied. I thank the Labour Party for really good work on this and the Government also for accepting the work of Deputy Howlin.

Senator Lynn Boylan: I welcome the Minister of State. I also commend Deputy Howlin

for instigating this important Bill which he first introduced in 2017. I am pleased that the Government has worked constructively to bring it to fruition. It is regrettable that it did not take the same approach to Deputy Donnchadh Ó Laoghaire's Bill on establishing an online safety commissioner. Maybe as a new year's resolution, the Government would set out to work with the Opposition on Private Members' Bills, especially where they seek to address real gaps and deficiencies in our legislation.

Since the Harassment, Harmful Communications and Related Offences Bill was restored to the Order Paper in September, it has moved swiftly, which is to be welcomed. That is because a truly collaborative approach has been taken by all parties, which reflects the seriousness of the issue. Through co-operation and a genuine desire to make this legislation robust and fit for purpose, many of the loopholes highlighted at the start of the process have now been addressed. That said, there are, as has been conceded by many Senators today, areas that can be improved. A number of amendments have been submitted and I am sure the Senators who submitted them will speak on them later.

I share the view of many organisations that we need to get this Bill passed as soon as possible to put the critical protections in place. We have seen the devastation that was caused when the Victims Alliance discovered that thousands of images of women and girls had been shared online. I commend Linda Hayden and the Victims Alliance on their Trojan efforts in bringing that situation to light. Up to 140,000 intimate and sexual photos were shared without consent and traded on the Internet like children would trade trump cards. This is a profound violation of the rights of women and girls. I cannot even imagine the hurt, pain and emotional toll it would take to be told or to find out that one has been violated in this way.

It is long overdue that we as a nation face up to the fact that we have a problem with consent in Ireland and that we need to start addressing it immediately. It is too late at third level. We have to start much earlier. The Committee on the Eighth Amendment of the Constitution made recommendations on sexual health and relationships education and called for these to be addressed in our school system, youth clubs and all organisations involved in education and interaction with young people. The case for education on consent was never so stark as when one scrolled through the responses to those who had highlighted the online sharing of intimate images. It was terrifying to see the level of victim blaming and misogyny that poured out over the Internet. Just because consenting adults create and share intimate images does not mean that those images can be widely shared with random strangers or friends.

I disagree with Senator Craughwell. It is absolutely up to individuals, whether they are in relationships or not, to share images if they so desire. The issue is whether those images are shared with others.

2 o'clock

I welcome that the Bill has been amended to include deep-faking, which involves the superimposition of someone's face onto someone else's body and is becoming a more common form of image-based sexual abuse. Everybody agrees this is good legislation, even with the omissions, and it will provide essential protections that are currently lacking leading to exploitation due to the lack of legislation in Ireland. Getting this Bill passed today is critical because we need it. It will be beneficial to the safety of women and girls. That said, the legislation is only as good as its ability to be enforced. We tend to be good at passing legislation but not so good at implementing it. Ireland has a disturbingly low rate of detection and sanction of sexual offences

and other forms of gender-based violence.

We need to hear commitments from the Minister of State that the Garda will be fully re-sourced and that its members will be trained to deal with reports made under this legislation and provided with the technology and the powers to ensure material can be taken down swiftly from the Internet and that those responsible for the offences will be pursued with vigour. We also need assurances that victims will be treated with the utmost care and professionalism when they come forward.

I thank Jackie Fox, who has fought tirelessly to get laws enacted to deal with online bullying. We have all heard how Jackie's beautiful daughter Nicole, known affectionately as Coco, was subjected to relentless online bullying, which eventually led to her suicide. It is only through the campaigning of her devastated mother that this Bill is brought to the Dáil and the Seanad. It is only right that the Bill should be known as Coco's Law. Coco was a beautiful young woman with her whole life ahead of her. When she needed the protection of this State, it was not there. That changes today and that is a good thing.

Senator Lynn Ruane: I thank the Minister of State for being here this afternoon. The Oireachtas scheduling means that, though I will speak to the amendments, realistically I cannot push them. I do not want to hold the Bill up and I am the only one who has tabled amendments to it.

When the domestic violence legislation was going through, I took a back seat because of the impact some of the conversations in respect of coercive control could have on me. I got a phone call about the images that were shared online before the story went live. I had to tell them to ring me back because two gardaí were in my sitting room with me as I began to look at taking my own case concerning harassment that has been ongoing for five years.

As this Bill was coming through at speed, I sat down to look at it to see how I and people who have had my experience could be protected by this legislation. That is why I will focus heavily on the harassment part of the amendments. The bar is set so high to prove harassment. In the 21st century, harassment looks very different from how it used to. You cannot display all these phone calls you are getting because there is the ability with technology to block people so they find resourceful ways to continue to harass and abuse you.

On my first ever speech in this Chamber in 2016, I was escorted by an usher. I had to be walked to the bus stop. There are two men in the last five years who have not taken me off their radar. I have had many conversations with gardaí and have been trying to find ways to protect myself. I have a firm belief that I want to see culture change and not imprisonment. I am caught between a rock and a hard place because I want to see culture change and I do not always think that hefty sentences achieve that. It is hard to find a balance between advocating for these changes while realising that a huge level of information and education is needed, as Senator Boylan said, in relation to consent. Early intervention is needed to ensure understanding of what is harmful communication and what is not.

Like others, I commend the Labour Party and Deputy Howlin on bringing this forward. It is important legislation and the difference for me between now and the time the domestic violence legislation went through is that I am no longer willing to not speak out of fear that I would put myself back on someone's radar by speaking. I put in the amendments today because it was important for me to correct my silence throughout the last few years on this issue. It was important

for me to feel that, when the time to speak came, I could speak with confidence and without fear of the repercussions of my voice.

The Minister, Deputy McEntee, and the Department have committed to bringing forward consequential miscellaneous provisions in respect of justice legislation. I would like to be able to have input into that and most of my amendments are in the vein of hoping to frame some of the discourse on those future amendments and conversations and on how we redefine harassment. Showing a garda a postcard saying “Keep up the good work” and trying to convince that garda that it constitutes harassment is a funny place to be in. It is subtle and insidious. I have had my kids getting up to lock the doors at night and I still do not reach the bar for harassment. While harassment is included in this legislation, I do not believe it protects women from harassment, given the way in which it is defined. I would love for Members to look at that in the future and to see this as a huge step forward in beginning to name these issues and in bringing the legislation forward into the times we are in, in terms of how people abuse and control people. I hope I can use today’s debate as an opportunity to signal what we need to do going forward.

I acknowledge, as everyone has, Jackie Fox, the work she has done and the investment she has made in using her daughter’s tragedy as a way to make change. It is unfortunate that sometimes, it is tragedy that makes change, motivates us and drives us forward but that should not be the case. I also wish to recognise Dara Quigley and her family.

Intimate images or offensive images of somebody at the time of his or her death are covered to an extent by “harmful communications”. My childhood friend, Paul Griffin, has been as vocal as he can about the death of his sister Jackie on the M50, when her horrific death was shared online within moments. The family were sent images before they even knew it was their daughter dead on the M50. We need to ensure this type of image is captured in legislation like this. I thank the Griffin family for pushing forward on that becoming a law, making it possible to hold people accountable for a gross invasion of someone’s privacy and dignity at the time of death.

Senator Malcolm Byrne: I welcome the Minister of State. Like others, I pay tribute to our Wexford colleague, Deputy Howlin, for his championing of this legislation, and to Senator Bacik and her Labour Party colleagues. It is a good sign that this has cross-party support. I echo the tributes paid to Nicole Fox Fenlon and her mother, Jackie. Not alone has Jackie Fox striven to ensure we get this legislation in, she has also spoken to schools and other organisations trying to get the message to young people about how important it is for people to behave responsibly on social media.

We saw the case recently around image-based sexual harassment, which was to the fore. It struck me that if one thinks even about ourselves in our teens but particularly about a teen girl or a young girl and the impact it would have on her, conscious of the need for the approval of her peers, to have intimate images shared without consent, it is frightening. The point is clear that this has to be evolving legislation. Senator Craughwell was right. We will be moving quickly into an era of virtual and augmented reality. How will we deal with bullying and harassment in those circumstances? Senator Ruane in her personal and powerful testimony talked about the different forms of harassment we have to deal with, in terms of abuse and control. I also reference parental alienation. The key point about it is that nobody should be afraid to speak out. As legislators, we have to help empower people to be able to do this. I agree with Senator Bacik on the need for civil remedies to be addressed also.

What I want to raise is the question of the responsibility of the social media companies.

A number of people here, beginning with Senator Gallagher, spoke about how we have all received abuse online. We can deal with a certain amount of it but the problem is with some of the anonymous accounts that literally spew vile abuse on a regular basis. I was used to it but an anonymous Twitter account in the name of P O'Neill targeted me and others earlier this year. When a local businessman who was the subject of the abuse tried to get information from Twitter to find out who was behind it every possible barrier was put in his way. Facebook and Twitter in particular hide behind a wall of anonymity. If we look at Revolut, which people will know as a financial technology company that is revolutionising digital banking, with almost 1 million people in Ireland using it, anyone who signs up to it has to produce a picture of their passport. It is similar to opening a bank account here and it is because of rules required by the Central Bank. People have to identify who they are.

People may know in recent days that *The New York Times* had a big story about Pornhub and some of what had been uploaded to it. By the way, Pornhub is the ninth most viewed website in Ireland, far more than any news site. To deal with the fact there were anonymous postings on Pornhub of vile and abusive acts, MasterCard and Visa took action and said they would not allow cardholders to pay for anything, and Pornhub had to take action. The result was the Pornhub took down approximately 80% of its content. I do not want to comment on the nature of pornography sites but now if people want to upload content onto Pornhub they must identify who they are. They can no longer be anonymous. Whether it is in banking or pornography, people cannot be anonymous yet Facebook and Twitter have no requirement to prove identity.

One of the concerns I also have, and it has been covered by the media, particularly by *The Business Post*, is with regard to the content moderators in Facebook. As part of their contract they have to acknowledge they have the risk of post-traumatic shock disorder because of some of the content to which they will be exposed that will be anonymously uploaded.

There are good reasons for anonymity. This is entirely accepted. For particular reasons, people should not necessarily have to identify themselves publicly but where we have a situation where there are defamatory, violent or abusive images we should be able to find out who is responsible for them. The social media companies have to take responsibility in this area. As Senator Bacik said, this is about a public space and we have to have regulation of the public space.

I strongly support the legislation. I know the online safety and media regulation Bill will be coming before the Oireachtas Joint Committee on Media, Tourism, Arts, Culture Sports and the Gaeltacht in the new year for pre-legislative scrutiny and we can look at enhancing a number of the provisions that have been raised. While we as legislators are taking responsibility, and there is a personal responsibility on everyone and we need digital literacy and education, responsibility also has to be placed at the door of the social media companies, in particular Facebook and Twitter. If they do not act we, as legislators, have the responsibility to take action against them.

Senator Regina Doherty: We are really talking about the ugly reality of human behaviour when we start sharing stories of individual harassment. I know there is probably not a person in the Chamber who has not experienced it. I am really sorry to hear of the length of harassment that Senator Ruane is going through and I really wish her success, if not with the current legislation which is abysmal, but with this new legislation. I hope she can bring it to fruition with a happy outcome for her.

Nobody in the House, our local Government colleagues, our Dáil colleagues or probably

anybody in any walk of life has not suffered in some way, shape or form on the medium we call the wonderful world of social media and the great invention that is the Internet. The legislation will go if not the full way then a long way to address many of the concerns we have. There are two aspects to it. One is the sharing of images, and the stark reality of how harmful it can be was probably really highlighted to us all only a couple of weeks ago when we saw the dump of tens of thousands of very personal images that caused great hurt and particularly exercised the young women in Ireland. It did in my household anyway. I really welcome this aspect of the Bill.

I want to talk about the other aspect of the Bill, which is the harmful harassment and bullying aspect. While the legislation is very welcome, and particularly the penalties are very welcome, I do not believe we really fully appreciate the extent of where it will go. When we hear about people being bullied we think they are being bullied by a certain stereotype of person we have in our head. We think the perpetrators are all adults. We think they are all in a box, and that when we do shine a light on them and point the finger at who they are that the two year sentence will be well justified, and that it will be grand and everything will be great.

We spoke this morning about politics being about the personal and I can only speak about the personal experiences I have had with regard to bullying. The bullies are not all adults because we had an incident in my house a couple of years ago, which was greatly helped by schools and the Garda but there was no happy outcome because the bullies were 13 and 14 year old girls. These girls were vicious and relentless. When we looked them in the eye in front of their mummies and daddies butter would not melt in their mouth and they were really sorry but the Snapchat messages we read back to them were relentless.

Senator Craughwell will said earlier it is awful for a parent to let their child go to bed with a mobile phone. In some cases when a child is being bullied it is the only friend they have. That does not make sense but when we are in the throes of it, with a child we love the bones of, and not being able to help them because what we want to do to help them is probably not legal, we are left with absolutely no tools in our kit. Children aged 13 or 14 years do not actually realise the damage and psychological harm they are doing to the child they are bullying. I am not sure the legislation, welcome and all as it is and I really mean that, will actually fix this problem.

I am encouraged by the Minister of State and the Minister, Deputy McEntee, when they say there is a need for educational programmes and a need for awareness. It is not just the 14 year old or 13 year old children who need to be made aware of how harmful the communications they are snapping at 1 a.m. 2 a.m. or 4 a.m. are because they do not go away, and the harmful impacts they have on another 13 year old child's psyche. We end up doing the full circle of why we are all here today. It is because a young woman, and there are plenty more like her but we all know this girl by name today, was not able to cope with the harmful communications she received relentlessly and she took her own life. It is because of the ferociousness of her mother and the unwillingness of her mother to allow those people to get off the hook that we are all here today celebrating a young woman's very short life but a legacy that will live long after the legislation is passed. It is absolutely right and fitting that it is called Coco's Law in her honour.

I am really not sure this will do the trick, which is why I am so glad it is not a stand-alone piece of legislation. It is not something that is to be put in a drawer or on a shelf that we will get back to in a few years time because I absolutely believe when we start to monitor the bullying online, which we will now start to be able to do because of this legislation, we will also be able to start to measure it. The ugly reality of it is that its perpetrators are not some awful men and

women who have no feelings. In many cases we are going to discover they are children who just do not realise the harm they are actually doing. This is an even bigger problem we need to address.

I want to add to the cloud that Deputy Brendan Howlin is probably travelling home on today because it is so well deserved. Often, when I had the privilege of being a Minister, one of the first things I used to say during legislation was that no Minister or official in the Department had a monopoly on wisdom and this is a perfect example of how this is true. I thank Deputy Howlin. I thank the Labour Party. I thank everybody else who have co-operated in getting this Bill passed.

This is only the beginning. It will not fix the problem that we are unearthing. I believe that when we properly take the ugly face of the problem that we are talking about, we are all going to be so ashamed of the society, of the communities and of the children that we are rearing. That is not true of all of us but it is definitely true of some.

Senator Rónán Mullen: I am taken by the various speeches I am hearing in the Chamber today. Some of us are very much looking forward to the season of goodwill - the celebration of a time when the entry into the world of an innocent child brought so much hope to humanity - and yet what we are hearing today is about a real loss of innocence in our society and a loss of decent childhood for many children who should not be exposed to some of these particularly modern harms.

The more I have looked at this legislation, the more I favour its essential provisions, but also the more I worry about flaws in the legislation and the more indignant I feel about the fact that this legislation is being put through at all Stages today. Several colleagues have said that this is a Bill that will have to change which is masking the fact that there is no excuse for rushing through a piece of criminal legislation on the week before Christmas at all Stages. I have already spotted at least two issues that gives me concern and this Bill only passed the Dáil yesterday. This is not emergency financial legislation. Nobody will be done an injustice. We do not know when the Bill will commence - at least, I do not know. This could have been concluded in the new year. I was told by a Fine Gael colleague that we all supported this because, apparently, at the group leaders' meeting, everybody agreed. I am also told it was suggested unless one wants to come in next Tuesday and Senators shied away. We are bringing our politics into disrepute every time we do this. The parties in government must take a lead. It is wrong to give people no opportunity to listen to Second Stage speeches before they consider amendments. It is wrong to give Senators no time between Committee Stage and Report Stage. The Government is contributing to the contempt that people have for the Oireachtas and for politics and it needs to stop doing that. I say that to my own group as well. We have to stop rushing through legislation in this way. This is important urgent legislation but, in fact, the Government is dishonouring it by giving it so little scrutiny.

For example, why is the recording of intimate images without consent not being criminalised in section 2? Somebody could record something in order to inflict harm on a person, but not distribute it. Is that a mistake or is there a rationale for it? In section 3, there is a saver for somebody who is involved in prosecuting offences in distributing or passing on images, but has consideration been given to the possibility that someone, for example, a medical person, might send an image to a colleague, perhaps to get his or her opinion, or to educate a student about something, and maybe the person did it without consent? Maybe they should not. Maybe it should be a regulatory or an administrative offence, or maybe a civil offence. Has this even

been thought through in this rushed legislation that will pass all Stages today? Maybe there is a very good answer to the concerns that I have raised, but that is not good enough. Seanadóirí need an opportunity to hear what the Minister has to say to make a freer decision then about whether they want to bring forward an amendment. I am not going to dignify this pathetic process today by bringing forward amendments when it is quite clearly on green paper. It is intended that this will be done and dusted. Our views, as Senators, do not matter. This is a joke, and yet it is a joke in the context of some really serious and important legislative change which I welcome. It is a Bill that gathered dust for almost three years and then, suddenly, because there is publicity in the media and controversy, it is all happening at once. This is the wrong way to do it.

There was no mention in the Dáil, for example, that in the United Kingdom 30% of victims of these incidents are men. That is an important point. This is legislation about protecting women and men, and yet there was no talk about the UK experience.

There is also the question of what would happen where a person accesses images that were taken originally with the person's consent and put up on a website, perhaps for the purposes of making money, and then somebody - perhaps an immature young person - right-clicks and shares that information. Is that person to be convicted of a crime under this legislation? I think the answer to that is "Yes", but if it is to be a crime to share, for example, legal pornography that has been accessed, should it also be an offence to put it up in the first place? Should it be an offence to put it up for purchase, because I get the impress, and I am being advised, that one of the reasons this proviso is in here is that some of those most vocal about their images being shared online on the Discord platform had uploaded their own intimate images to a subscription website and their complaint was that they had not been paid? Are we shoring up a section of the pornography industry here by the way we are doing this? I do not like any of this stuff. I support protective laws. I supported the criminalisation of the users and the purchasers of sex, and others followed my on that issue over the past decade and now it is the law, but perhaps it follows from that that we need to criminalise the sale of such images, particularly when we consider its link to prostitution and, indeed, the trafficking industries. There is no possible chance to tease these issues through here today.

I favour laws that will protect people in this area. I would not oppose this legislation but I suspect it is very flawed. I favour education about consent, and the more of that the better, but there is a cultural problem in our society and politicians are trying to address it by creating more and more laws and talking more and more about the need to educate people about consent. That is all good and well, but it is not going to be enough. It will not protect people against harm because there needs to be a conversation about how we treat each other as human beings. It enters into the domain of morals and values, and if we lack the courage to have that conversation none of these laws will protect our society.

Senator Annie Hoey: I am pleased to be able to talk today on the Harassment, Harmful Communications and Related Offences Bill 2017 and that it will be known as "Coco's law". As many Senators here have, I commend Ms Jackie Fox for her relentless campaign, not only on getting this law passed but also to tackle the scourge of online bullying. I also think of, and commend, the other parents who have lost their children due to suicide because of online bullying. I can only image their pain and anguish when they tried to get legal recourse by going to the Garda to try and get something done to stop the relentless bullying that their children were experiencing and they could not. I am thinking of the parents who are, possibly right now, watching their children suffer. No doubt this online bullying is continuing to happen and it is

having devastating results.

Like Senator Craughwell, I and many other Senators here stood outside the gates of Leinster House and listened to Ms Fox and other parents talk about their children who had been driven to suicide from bullying. I think of those children who are not here with us anymore and hope that when this law goes through there is a better outcome.

There has been reference in here to consent and the need to get explicit consent. I agree that we have to tackle this area before we even ever have to get to the legal stage. I have talked a lot about my time in the student movement and how, by the time people get to third level, it is too late to be talking about consent. Not everyone goes on to third level. We have also got an even bigger divide there around talking about consent. We need education around having positive healthy consensual relationships with other people, how to give consent and how to receive consent. We talk about how we can be very awkward and that we do not like to say it as it is too awkward but sometimes we need to give people the explicit language to say, "I consent to this", "Yes, you can do that", "Yes, I want to do this", "Yes, that is something that I enjoy and I would like to do that again." We need to teach people how to say that. That is a long time coming. It is an awkward conversation, perhaps, for parents to have, but we need to have that. I want people to be able to have healthy sexual relationships with their partners and we need to get to grips with that. It is too late at third level to be talking about that, although, of course, we will keep doing so.

It is not the fault of the person whose photos others have shared. If the person consents to an intimate image to be shared between two consenting adults, the only person who is at fault for sharing that image is the person who has done so without the other's consent. I believe those people when they say that they did not consent to that to be shared widely and I want them to know that there are Senators who believe them.

I have spoken about this briefly before, that I am someone who has suffered sexual violence. I do not talk about it too often. It does not define me. When I see online anonymous accounts calling for that to happen to me again, which has happened, it is not pleasant. I thank Senator Gallagher for referencing the interview yesterday where I spoke of my experience of people calling for that to happen to me because I have spoken out against sexual violence and because I have spoken out against image-based sexual assault. That it happened to me in the first place is never acceptable, but it is even more unacceptable for those people to call for it to happen to me again because I have spoken up.

I am very lucky that I have an opportunity to speak out where many others cannot. Senator Doherty said there was probably not one person in here who has not experienced online abuse, and perhaps even concentrated harassment. Sometimes we are told it is just part of the job and that we just have to toughen up. I welcome the collective position that has been taken whereby we are saying we do not have to toughen up, that it is not right, and that people have to stop saying this. It frightens and terrifies me to think of young people having to process some of the most ghastly things online. I can brush it off and deal with it, but for young people it is very difficult.

I reiterate the comments on the need for a societal response to this. I agree with Senator Ruane. I would prefer to see behavioural change rather than legal sanctions, which should be a last resort. It is very important to ask why people behave the way they do. I am not referring just to online abuse. Why do people perpetuate hate? Senator Flynn spoke extremely eloquently last

night about her own experiences as a Traveller woman, and I suggest that people should watch that interview. Why do people perpetrate sexual violence, as done to me? Why do people harass and torment, as is done to Senator Ruane? We need to challenge and change these behaviours. The Bill gives an option for legal recourse and penal sanctions and, it is hoped, perhaps some small comfort to those who have been affected. As I have said, however, there is a wider societal issue that we need to tackle.

I am very grateful to Deputy Howlin and my Labour Party colleagues for this legislation. A journalist congratulated me for writing the legislation in 2017 when I was merely in the Union of Students in Ireland, but it was great to be associated with such a thing. I am very grateful to be associated with helping to bring the legislation forward and, I hope, some comfort to those who have been deeply affected by the issues we talk about today.

Senator Micheál Carrigy: I commend Senators Hoey and Ruane. I listened to the debate today and last night and the way they spoke on the issues makes me honoured to serve with both of the Senators. I just wanted to say well done. My wife, my family and I have also suffered harassment from a person, and we had to go the full way to court on it because of the effect it was having on our young kids and family. I am delighted to say that it was successful.

I commend the Labour Party, Jackie Fox and her family, and the Minister for Justice, Deputy McEntee, on bringing the legislation to this stage. We have also seen the recent uploading of images of individuals against their will. It is not acceptable. As Senator Ward said in the Chamber some weeks ago, we as men need to stand up and say it is not acceptable. When such images are shared, we as men need to say that it is not good enough and it is not acceptable.

Domestic violence does not just take place behind closed doors. It is now part of our daily lives through our mobile phones, through our laptops and can come in many forms, not just images or verbally. As our lives change with technology, it is important that we legislate for the new forms of communication, which is what the Bill does. I welcome the Bill.

I agree with Senator Doherty when she speaks about educating our children about posting on social media. I strongly believe that we need a programme throughout our schools to educate the younger generation on the effects that social media can have. I firmly believe that Facebook and Twitter should fund this programme. The taxpayer should not fund it. I fully call for the companies to fund the programme on the effects of social media to be delivered throughout our entire school system.

I look forward to working with Members when the online safety and media regulation Bill comes before the Oireachtas joint committee. I look forward to having an input and hearing the input of other Members to make sure that the legislation covers all the aspects needed.

I fully support the Bill before the House today. It is important that no other life is lost due to this. I commend Senators Hoey and Ruane, and I am honoured to serve with them here in the Seanad.

Senator Michael McDowell: I indicate my complete support for the campaign brought to public attention by Jackie Fox on the part of her daughter, Nicole. I commend Deputy Howlin and his colleagues in the Labour Party on introducing legislation to deal with this matter.

What Senator Rónán Mullen has just said is true. We should not be in a position that we are pushing this through without adequate time to fine-tune it or work out what the small detail

actually means. It is a pity that three years after Deputy Howlin introduced this as a Private Member's Bill in Dáil Éireann, we find ourselves, as described here, having to choose between coming back in Christmas week or dealing properly with the amendments to this legislation, which many have submitted. It is not befitting of Seanad Éireann, as a revising Chamber, to be cornered in this way. I fully accept the moral force of getting something done within three years of its introduction and I do not need to be lectured on that by anybody, but I also feel that we should never put ourselves in the position that Dáil Éireann passes something yesterday and it is plonked on our table today, with myriad well-intentioned amendments to it put down. We all know they count for nothing and that any criticism of its text is going to be bulldozed out of the way. Although it is said, to excuse that, that there will be other opportunities to correct, tweak or improve it, we are still left in the position that this Bill should not be considered in such hurried circumstances.

I noted that Senator Mullen had problems with sections 2 and 3. I have a problem with section 4. If one reads it, section 4 makes it an offence to send by any means any grossly offensive communication to another person, with intent to "cause harm". In this context, "harm" includes causing "distress to the other person". This means that sending any letter to any person if, objectively, it is likely to cause that person distress - nothing to do with sex or privacy, just distress - is now to be criminalised. I believe that this is an excessive overreach for what is undoubtedly well-intentioned legislation. The sending of a letter to somebody with grossly offensive material, which I presume is grossly offensive to the person who receives it as such, for example, sending religious comment to a person of the Islamic faith, is an offence if it causes that person distress. This is not something we should just lightly enter into. A judgment was handed down by the Court of Appeal in London recently where the majority said "Freedom only to speak inoffensively is not worth having", which is an interesting quote. I wonder if section 4 of this Bill is too widely cast and I ask the Minister of State to contemplate that point.

Another problem with section 4 is the penalty provided, which is two years' imprisonment. This is in contrast with seven years provided for in section 2. One of the consequences of not thinking this through is that the capacity of the Garda to arrest, search, seize property, and interview people they suspect of having committed an offence under section 4 disappears, because under the Criminal Justice Act 1984 and the categorisation of offences, a serious offence is one that carries a five-year penalty. This is a second point that needs to be brought in.

The last thing I want to say, and I would love to have said a lot more but I do not want to hog time, is about the fundamental moral hypocrisy of the age as described by Dr. Mary Aiken in *The Cyber Effect*. I launched that book, I read it, and it is a great book. There is a fundamental moral hypocrisy about an entire generation that values privacy so heavily in one way and then demands blanket anonymity in others. Why do people not have to stand over their own opinions? We are not all Wikipedia people. There are occasions where, if someone wants to bring into the public domain his or her views on an individual, a thought, a process or an entire section of society or if he or she wants to be offensive to their beliefs, he or she should at least have to stand up and name himself or herself.

One of the problems goes back to the Pirate Party in Sweden and the idea that youngsters should be encouraged to steal copyrighted music without remunerating the bands or the composers involved. It was considered wrong in some sense to make them accountable. We have a moral vacuum which tries to span an absolute desire for privacy with an absolute desire for anonymity and the two do not work together. I write articles in *The Irish Times*. It always amuses me that the newspaper publishes letters to the editor in which people profoundly dis-

agree or agree with what it prints and their names appear at the bottom. The same newspaper has online commentary which is done through pseudonyms and I am sorry to say that some of them are Sinn Féin trolls.

Senator Lynn Boylan: How petty. I disagree.

Senator Michael McDowell: If one publishes an article, there is one standard for people standing over their remarks on the letters to the editor page and a completely different standard for people who make abusive, ridiculous and sometimes moronic comments anonymously. That is part of this failure to adequately balance anonymity and moral responsibility.

Senator Mary Fitzpatrick: I welcome the Minister of State and thank him for coming to the House. The sharing of intimate images without consent is a serious issue, which warrants legislation and severe penalties. We need to call it out as a criminal offence and we need to hold those who offend in this way to account. I am very pleased to join with other Senators and to support Coco's Law today. I am thinking primarily of Jackie Fox, Dara Quigley's family and all the NGOs that have campaigned on this issue, such as the Dublin Rape Crisis Centre, the Victims Alliance and the National Women's Council of Ireland. I am glad the Government is supporting this legislation. It is not ideal to be dealing with this issue in this way, and I certainly bow to the greater legal minds in this Chamber, but I am glad we are dealing with it and we need to get on with the business of doing so because it is important.

By passing this legislation, we are not going to stop online abuse or harassment and we are not going to bring every bully to heel. In my life, the bullying and harassment I have experienced has been as much the human face-to-face or behind-your-back type of stuff that goes on in real life as harassment on digital platforms. It is important that the House and the Government legislate on this issue because we need to set a marker and set the bar. The law as proposed will call out such activities, state that they are unacceptable, criminalise them, identify penalties and provide anonymity for victims. It will also set, as standard, the fact that there may have been or was an intimate relationship as an aggravating factor, because that level of betrayal of trust is a real violation. That is an aggravating factor, be the harassment physical, online, or written. In this instance we are dealing with harassment on digital platforms, which is important. This legislation will not be perfect but it is important.

It is also important that we recognise that this legislation will not fix the problem and that we do not create that false impression. There is a real job to be done in education. When we use digital platforms we all have an opportunity to exercise the powers and facilities they give us. We need to report, block and delete anything that is offensive, not just to us but to each other because we all follow each other and see the trolls. We should not subscribe to the platforms and digital outlets that encourage clickbait, harassment, hate speech and abuse. The Internet - and the digital environment - amplifies human behaviour, magnifies and disseminates it in a much broader global way. When we all participate in the Internet, we should do so in the same way we would if we saw that abuse happening beside us in the street. In that case, we would intervene and would say "That is not nice, please do not do that in front of me. Please do not speak to somebody else like that." When we do something like that, we are asserting and championing good values in that space.

I also support the comments of my colleague, Senator Byrne. We should hold to account any platform that does not operate to a decent moral standard, including Facebook, Twitter or *The Journal*. Common decency is all any of us are looking for or have a right to expect. Further

legislation will be introduced in respect of that matter, which we also need to tackle. It is not acceptable that they continue to operate very profitably on the basis of anonymous, abusive and what in many cases will now be criminal contributors.

Senator Sharon Keogan: I welcome the Minister of State to the Seanad. At around 11 o'clock on the morning of 22 December 2012, I got the phone call about the death of Shane McEntee, our Minister for Justice's dad. I remember the amount of online abuse he received coming up to that time, which went on over a period of a few months. I knew the individual who continued to harass Shane McEntee at the time and I rang him asking him to stop. I rang that individual on multiple occasions and told him that what he was doing was not right, not kind and to please stop. He did not stop. On the day of the funeral, Shane McEntee's brother spoke out about that online abuse. That was back in 2012. Each and every one of us here today will have been the subject of harassment, harmful communications and related offences. One can snowball it in any way one likes.

For two years I suffered nuisance phone calls. I received 98 phone calls in one day alone. For two years I was getting calls and we could not get a prosecution because the person who owned the phone was not the person making the calls. That is ridiculous. I have received online abuse and been the subject of threatening behaviour, as have other female politicians. I remember sitting down with Senator Hoey soon after she had been elected to the council. We were talking about the online stuff and private messages one gets, including nude photographs that people would send at all hours of the day and night. People think it is acceptable. It is not; none of it is. We do not sign up for that. My office was firebombed because I spoke out about drug crime in my town. That is not right either. A child had to leave my care because I became a target for these thugs. That is not right. The Garda was watching my home for about three months afterwards. It is not a nice life that any of us politicians live. For all those watching who think we live in ivory towers with our gardens full of roses, it certainly is not like that. We suffer daily. I do not mind doing the work that I do and I believe in free speech but I also believe in being free to represent people and being safe and secure in doing that.

Therefore, I broadly welcome the Bill, the main purpose of which is to address the gaps in the criminal law pertaining to image-based sexual abuse, both online and offline. It creates two new offences to deal with the recording, distribution, and publication of intimate images without consent and provides for the anonymity of victims of those offences. The Bill also provides for an offence including the distribution, publication, and sending of threatening and grossly offensive communications or messages with the intent to cause harm, without the requirement of persistence.

I note that the Bill, sponsored by Deputy Howlin, is largely predicated on the proposals performed by the Law Reform Commission in its 2016 report on harmful communications and digital safety. Given that the report was published four years ago and that this Bill has had a gestation period of some three years, I must voice my dismay at the fact that all five Stages of the Bill are to be heard in a single afternoon in the final sitting of the Seanad before Christmas, when many Members are fatigued. Speaking in particular as a new Member of the Seanad, the practice of compressing all five Stages of a Bill that requires careful consideration, analysis and scrutiny is highly undesirable. I do not believe it is good legislative practice or is necessarily in the best public interest. The people are better served by the allocation of a little more time for deliberation and debate, in order that both Upper and Lower Houses may do the work they are elected and mandated by the Constitution to do. Senators only received a copy of this Bill as late as 9 p.m. last night. Surely, given that the Bill has been in years in the offing, the Upper

House should be afforded more time, more than one afternoon, in which to complete the legislative process, debate the ramifications of the Bill, draft amendments and so forth.

While I welcome the Bill, I have concerns like those outlined by Senators McDowell and Mullen.

Minister of State at the Department of Justice and Equality (Deputy James Browne): I again thank Deputy Howlin and the Labour Party for bringing forward this Bill. The Government has consulted with the Labour Party the entire way through the passage of this Bill. It has been a very positive and constructive engagement and I hope to see more of that happening. I met Jackie Fox numerous times, especially as the Opposition spokesperson for mental health. I first met her outside the gates of Leinster House and then met her several times inside, and had the pleasure to meet with her again a couple of months ago. I have had numerous contacts with Jackie and I am very glad that a method has been found to enable this legislation to be referred to as Coco's Law. I know that Jackie is very happy with the resolution to this issue and it pays tribute to Jackie, Nicole and the other victims whose experiences have led to the necessity for this legislation. To this day, there is ongoing bullying and harassment with which parents must deal both as the guardians of children who are being bullied but also as parents of the bullies themselves. They have very important to educate themselves and their children as to the sheer damage that has been done to those victims of bullying.

The Bill establishes a robust legal framework. It does not address every issue of concern around bullying, online harassment and other issues of abuse but it does establish that framework, which is hugely important. There will be other opportunities to address the other issues of concern. As Deputy Howlin said, is not the final word but it will be built on.

The criminal law miscellaneous Bill will be published next year and some other areas that need to be addressed can be addressed within that legislation. To be clear, however, this Bill is not flawed and does not need to be amended. It was established and brought forward by the Labour Party based on the Law Reform Commission recommendations. It is a robust Bill that is strong and well crafted and drafted. A number of amendments were brought into it, in consultation with the Labour Party and other Deputies and Senators, so I am very confident in this Bill. It is important that the message does not go out that this Bill is somewhat flawed. The message that needs to go out is that the sharing of intimate images is a criminal offence.

The issues of education programmes and awareness are of great importance. The Minister for Justice, Deputy McEntee, has undertaken, with Jackie Fox, to bring in a plan of awareness in education to highlight the importance of the consequences of what people may be doing in terms of bullying and harassment, as well as the existence of this Bill and its importance and to raise that bar in education and awareness. The Garda is also updating its schools programme to reflect the law in this area.

Senator Boylan referred to Garda resources. Significant funding for the Garda National Cyber Crime Bureau was announced this year. It will be established with four divisional hubs dealing with cybercrime. In addition, I refer to the roll-out the divisional protection services units that deal with domestic and sexual crimes. Significant investment is under way that will help to address the issues dealt with within this Bill.

I acknowledge Senator Ruane's very personal strength in coming in here. She is correct that this is about a cultural change and is not simply about passing legislation. We need to address

the underlying issues whereby people feel free to carry on in some of the ways they do. It is about information and education on consent and on harmful communications. I acknowledge the Senator's comments in that regard.

On section 4, Senator McDowell suggested the inclusion of "grossly offensive" might be overreach. It is deliberately constructed in order that it does not simply address intimate images or sexual offences and that it does actually address grossly offensive messages in and of themselves. Senator Ruane referred to the incident involving Jackie Griffin on the M50 and mentioned her family. I would hope that such activity would be covered under this section. It is deliberately crafted in that manner and in that sense.

Senator Mullen raised an issue whereby section 2 did not mention recording. That is because the penalty so high and the issue there is one of proportionality. It is in section 3. On medical harm, I note that the sharing of images by a medical professional, if it is within the consent of the patient, will not be an offence. If it is outside of the outside of the consent of the patient, then it will be an offence.

Senator Mullen raised the saver for the Garda Síochána in section 3.

3 o'clock

That is there because "intention" is not a requirement for that offence, and so will not affect An Garda Síochána in dealing with that issue.

In some ways, these issues should have been addressed long before now. There has been much discussion and consideration given to this. Jackie Fox was determined to address the issues that significantly impacted on her daughter Nicole. I met Jackie several times over the past number of years. I met her in October in the Department of Justice and the senior Minister, Deputy McEntee, met her on a separate occasion. No parent should ever have to bury a child. My parents did and many parents have had to unfortunately, but when one loses a child in the circumstances that Jackie Fox did, this can only compound that grief. When a person loses someone who is very close to him or her, he or she never gets over it but learns to live with that grief. One thing, in particular, that Jackie said to me, and it stuck with me, was that she had not allowed herself to even begin to grieve and that she would not allow herself to do so until this Bill had passed into law. I certainly hope that if this Bill does go through today, Jackie can allow herself to begin to grieve for the loss of Nicole.

Question put and agreed to.

Acting Chairman (Senator Aisling Dolan): When is it proposed to take Committee Stage?

Senator Regina Doherty: Now.

Acting Chairman (Senator Aisling Dolan): Is that agreed? Agreed.

Harassment, Harmful Communications and Related Offences Bill 2017: Committee and Remaining Stages

SECTION 1

Acting Chairman (Senator Aisling Dolan): Amendments Nos. 1 to 4, inclusive, are related. Amendments Nos. 3 and 4 are physical alternatives to amendment No. 2. Amendments Nos. 1 to 4, inclusive, may be discussed together by agreement. Is that agreed to? Agreed.

Senator Lynn Ruane: I move amendment No. 1:

1. In page 3, to delete lines 19 to 27, and substitute the following:

“ “intimate image” means a visual recording of a person made, with or without the consent, by any means including a photographic, film or video recording (whether or not the image of the person has been altered in any way)—

(a) (i) of his or her genital organs or anal region or her breasts (whether covered by underwear or bare),

(ii) in which the person is nude, is exposing his or her genital organs or anal region or her breasts, or

(iii) in which the person is engaged in sexual activity,

(b) in respect of which, if it was recorded with consent, at the time of the recording and afterwards, there were circumstances that gave rise to a reasonable expectation of privacy,

(c) any facsimile image, whether generated by computer graphics or in any other way, purporting to be the genital organs, anal region or breasts of the person or to be an image of the person engaged in any sexual activity, or

(d) any photographic or video-recorded image of the person, or any other person, manipulated so as to appear to be an image of the person’s genital organs, anal region or, in the case of a female, her breasts or of the person engaged in any sexual activity;”.

First, I want to thank the individual campaigners and organisations which have supported Deputies and Senators over the past number of weeks in strengthening this Bill with suggested amendments arising from their lived experience of supporting women and men affected by the issues in this Bill, particularly the Rape Crisis Network Ireland, RCNI, Safe Ireland, the National Observatory on Violence against Women and the Domestic Violence Advocacy Service.

Amendment No. 1 is a comprehensive rewriting of the definition of intimate image in the Bill and I thank the RCNI for its assistance in drafting it. This definition is key as it sets the parameters for the kinds of images and related offences that will be covered by this legislation. It is the definition on which this entire Bill is founded and on which its successful implementation will depend. I know that issues were raised with the previous definition and whether it was comprehensive enough in applying to so-called deep fakes, where an individual may have their image altered and superimposed onto sexual images of other bodies. These may not be intimate images of the individual, *per se*, but the distressing effect is obviously the same and indeed could potentially be worse.

I welcome that the Minister of State accepted an amendment to this section from Deputy O’Callaghan which resolves the deep fake issue. However, in my amendment, which is an edited version of one submitted by Deputies Pringle, Collins and Connolly, I am concerned that

there is no explicit recognition in the definition of the principle of consent and that whether the image was taken with or without an individual's consent is immaterial in defining it as an intimate image, which is why I have specifically included an additional clause of with or without consent in my proposed amendment.

Amendment No. 2 is also a rewording of a similar amendment tabled by Deputy Pringle. That amendment sought to expand and clarify that section 2, which is the principal section relating to the distribution of intimate images and would apply to various other related actions, including advertising, transmitting, and selling such images. The Minister of State, in responding to the amendment in the Dáil last night, said he believed that all such activities were adequately covered by the current wording with the exception of the "make available" clause. I am, therefore, proposing that such a clause be inserted into the section 2 offence.

Amendments Nos. 3 and 4 relate to additional and specific offences that have been called for by the various NGOs which advocate and provide services in this area. Amendment No. 3 would add a specific provision on making the recording of an intimate image with attempt to cause harm an offence. This was a provision that was contained in Deputy Howlin's Bill, as initiated, but was removed during the Dáil debate. The Rape Crisis Network Ireland has called for the offence to be retained, stating in a submission made to all Senators that, "The fact of recording or the threat to record intimate images is every bit as capable of causing harm as their threatened or actual distribution or publication." I ask the Minister of State to comment on why such an important offence has been dropped and to consider reinstating it.

Amendment No. 4 relates to a specific additional offence of retaining intimate images. This was the specific wording asked for by Safe Ireland in their commentary on the Dáil Report Stage amendments circulated yesterday. If a person is holding or keeping intimate images with the intention of causing harm and distress, this should also be a criminal offence along with the distribution of images.

Senator Sharon Keogan: Section 2, which creates a new offence, reads:

(1) A person who distributes, publishes or threatens to distribute or publish an intimate image of another person—

(a) without that other person's consent, and

(b) with intent to cause harm to, or being reckless as to whether or not harm is caused to, the other person,

is guilty of an offence.

I note that the maximum penalty for an offence under section 2 on conviction on indictment is seven years. I simply question by referring to the related piece of legislation-----

Acting Chairman (Senator Aisling Dolan): My apologies, Senator, but I believe we are on amendments to section 1 at the moment.

Senator Sharon Keogan: I thought Senator Ruane had gone on to section 2.

Acting Chairman (Senator Aisling Dolan): No. We were looking at the amendments Nos. 1 to 4, inclusive, which are to section 1.

Senator Sharon Keogan: My apologies, Acting Chairman.

Acting Chairman (Senator Aisling Dolan): Do any other Senators wish to speak to the amendments to section 1? I call Senator Ward.

Senator Barry Ward: I have great sympathy with the proposal Senator Ruane has put forward. I know she has recognised that there is a certain reality to the proposal being put but the definition of these offences is a very difficult issue to grapple with and is technical, and the notion that one has to cover every eventuality is very difficult because one has to imagine offences that have not even been committed yet or things that we may wish to make into offences. The definition is difficult.

Both section 1 itself, in the definition of intimate image, and amendment No. 1 contain, for example, a reference to something that purports to be a person's genitals, buttocks or anal region and in the case of a female, her breasts. That, in itself is problematic. There is similar terminology used in the Child Trafficking and Pornography Act which deals with child pornography and it has had knock-on effects in terms of the prosecution for offences under these matters that go beyond what the Oireachtas ever intended. The significance of that word "purports" is that if anyone, for example, were to draw a doodle - imagine a child in school drawing a doodle of his or her classmate - that that would constitute such an image. That could be done innocently or maliciously. I know that later sections which deal with the distribution of intimate images specifically provide for the necessity that there would be an element of intent, *sequelae* or consequences from that. One of the difficulties I have, both with the proposed amendment and the definition, is that an intimate image is currently defined as follows:

"intimate image", in relation to a person, means any visual representation (including any accompanying sound or document) made by any means including any photographic, film, video or digital representation-

(a) of what is, or purports to be the person's.

I doubt that the framers of the Bill intended for the definition to be quite as wide. I rely entirely on the prosecutorial discretion of our prosecutory authorities be it the Garda at summary level or the Director of Public Prosecutions, DPP, at the indictable level. I am concerned that if we frame the definition too broadly one will bring into the scope of serious criminal matters people who really should not be there, never intended to be there and never had the intention to commit an offence.

Later, I will talk about section 8 and the prosecution of individuals of a certain age. There is a danger of criminalising children in a way that we never intended to. All parties have discussed the provisions of the Bill on Second Stage. Of course we need to deal with people who genuinely intend to cause harm, are causing harm and even those who are unintentionally causing harm. As the Minister of State said when he wrapped up on Second Stage, the message must go out that this is not acceptable. The passing of this legislation will afford teachers, parents and other people who deal with children in a supervisory capacity the opportunity to say, "Do not do that as you are breaking the law and are liable to prosecution". At the same time, I have great sympathy with what Senator Ruane has put forward but we need to consider not having overly broad definitions that end up criminalising people who we never intended to criminalise.

Senator Ivana Bacik: I do not propose to speak at length on any amendments but just want to make a point on this group. To follow on from what the Minister of State said at the

end of Second Stage, he was right to emphasise that the Bill is not flawed and does not require amendment. That is the view of the Labour Party which initiated this Bill and in the view of my colleague, Deputy Brendan Howlin, who steered through First and Second Stages through the Dáil. Second Stage was taken in the Dáil three years ago. I have his original draft with me. Deputy Howlin and the Labour Party group drew up the legislation on the basis of the report produced by the Law Reform Commission. There had already been extensive deliberation by the Law Reform Commission. The definition of an intimate image that was used in the initial version was then subject to redrafting in consultation with the Office of the Attorney General and the officials in the Department of Justice, whom I thank, and in consultation with Deputy Howlin who is the instigator of the Bill. It is on that basis that the Bill comes before us. I am conscious that Committee Stage was debated in the Dáil on 1 December and that Report Stage was debated yesterday.

There has been a good deal of debate on the definition of an intimate image and those offences are dealt with in sections 2 and 3. Obviously the intimate image definition is central to those offences but not to the later provisions in sections 4 and 10 on the more general points on the new offences of online harassment and abuse. The definition has been debated and has evolved over the course of the parliamentary process. All of us are conscious that it is a difficult area to get the balance right. There is clearly a concern about potential over reach. There is also a concern that we all have about ensuring that we legislate sufficiently to cover all relevant abusive behaviour. We must also be mindful that this Bill cannot do everything. It does not regulate online content more generally. It does not address the civil law aspect which requires a separate legislation. The report by the Law Reform Commission dealt with both criminal and civil aspects. This Bill only deals with the criminal aspects and it does not address other issues around the spread of misinformation by online communication. It does not address hate speech. We know there is separate legislation. Again, it is difficult to strike a balance around that or child sexual abuse imagery about which we already have legislation. I am cognisant of all that when debating these and other amendments.

The Labour Party and Deputy Howlin are happy with the Bill as it stands. As Deputy Howlin said, we recognise this is an evolving area and technology moves on. We are happy that there is a three-year review built into section 12. That should offer reassurance to colleagues and the NGOs which have concerns and which engaged so constructively with all of us. I have already paid tribute to the work of Women's Aid, Safe Ireland and others. With all of that in mind, we are happy to see the definition of intimate image in section 1. We are also happy with the provisions on the offences in sections 2 to 4, inclusive, and 10, and with the safeguards that are built in.

I do not propose to speak on individual amendments or groupings but I have make a general and crucial point about the amendment. We want to see a robust legal framework put in place before Christmas and I think that is what the NGOs want. It is certainly what Jackie Fox wants and what the campaigners who we have dealt with would like to see, and what my colleague, Deputy Howlin, has sought.

Other colleagues have made important points about the role social media platforms should play and the need to ensure there is a stricter regulation of their behaviour, and that they need to be doing more in this area. We are all cognisant of the importance of protecting victims against image-based sexual abuse, and against online bullying and harassment, both of which this Bill seeks to do. The Labour Party is happy with the Bill as it stands.

Senator Regina Doherty: When I looked around the Chamber earlier, I thought that I was outnumbered by legal experts and barristers and I probably still am so I bow to some of the eloquent language used by my learned colleagues. Using normal language, I fully support amendment No. 1 and I do not believe that means I am saying the Bill is flawed. I do not think the Bill is flawed at all but Bills can be enhanced. The one part of the Bill I have a little bit of a difficulty with, and it is not a criticism, is that I think a three-year review is too long away. We are going to very quickly realise the ugly reality of Ireland today and waiting three years to conduct a review is a little bit too far away. I encourage Senators to submit a miscellaneous provisions Bill in the next couple of months. There absolutely will be one. The Minister of State will tell Senators that the Department has ambitions in respect of hate speech and stuff like that. There is definitely a forum for Senators to address some of the concerns they have raised in their very worthwhile amendments and I encourage them to do so.

Senator Mary Seery Kearney: I agree with Senator Doherty that three years is too long to wait for a review. We need to find ourselves in uncomfortable place as legislators. Once we are dealing with a legislative topic that is online and involves evolving technology then we will have to have an inbuilt review within a much shorter timeframe. I believe we should have annual review in order to anticipate and get ahead of the new forms of abuse and uses. Technology moves ahead of us all of the time. Every time I think I have mastered various platforms and gained knowledge about the different areas, ways and means of communications and abuse something else comes up. I look forward to the day when my daughter is old enough to educate me about what else is going on out there. One must adapt by keeping one's head in different generations and learn different ways and means of communication all the time. At one of the cyberbullying information forums I facilitated, as a councillor, we said that one must peruse the App download to see what young people are downloading so one can stay ahead of how they communicate with each other.

On Second Stage there was talk about a moral basis. We have got to somehow put in an ethical framework that reflects the best of public policy. However, in light of the fact that technology constantly evolves and changes, we need to sit in our discomfort and decide to review this to make it better all of the time and to respond at least on an annual basis. I will very much welcome a miscellaneous provisions Bill in the next couple of months. The online safety and media regulation Bill will pick up some of these issues and some of the overarching framework and guidelines that are required.

I thank the Minister of State for taking on board what purports to be a very important amendment in the Dáil. I support that, but I think it will be difficult and we will always be living with that tension from now on in some of these areas of law. It is a new place for us to be in. We would like to sign off on something and feel it is done and dusted, but it is not going to be, and that is unfortunate.

Minister of State at the Department of Justice (Deputy James Browne): I thank Senators for their contributions. Amendment No. 1 relates to the definition of an intimate image for the purposes of the offences at sections 2 and 3. A number of amendments on Report Stage in the Dáil yesterday sought to ensure that this definition included images that have been altered or doctored, commonly referred to as deep fakes. While I outlined to Deputies in the Dáil yesterday that I was confident that the original definition did in fact cover such alterations, I did understand their concerns and the concerns raised by others. Therefore, I accepted an amendment to include the words “what is, or purports to be” into paragraph (a) of the definition, to allay those concerns. On that basis, I will not be supporting this amendment, as I believe the

matter has been addressed in the Dáil.

Amendment No. 2 seeks to include the words “makes available” into section 2(1), which would mean that it would be a criminal offence to make an intimate image available. There are some concerns about the definition of what this may be and that perhaps the vagueness of it might give rise to certain difficulties in the prosecution of a criminal offence. The lack of clarity is causing problems so, unfortunately, I will be opposing amendment No. 2.

Regarding amendment No. 3, Senators will note that the recording of an intimate image without consent is provided for in section 3. I appreciate that recording an intimate image without consent is a very serious matter and one which can cause harm to the victim of such an offence. I do not consider that it is as serious as distributing or publishing such an image or threatening to do so. Furthermore, proving an intention to cause harm related to the recording of an image would be quite difficult as this type of behaviour is often done for voyeuristic reasons. I therefore feel that its inclusion in section 3 is more appropriate, given the fact that there is no need to prove an intention to cause harm and there is a more proportionate penalty therein.

Regarding amendment No.4, I outlined my position on the retention of images in the Dáil yesterday. I believe that criminalising the retention of intimate images could give rise to serious unintended consequences and this concern was echoed by other Deputies. There are offences to deal with the distribution and publication of intimate images or threatening to do so, and this is considered appropriate. I cannot accept the amendment to provide for the retention of images, in particular where there are no safeguards put in place in respect of this matter.

Regarding keeping the legislation under review, there is a three-year review built into the system. All Bills are kept under constant review but there is a requirement to complete a report, post-enactment, of all Bills passed by the House. We are going to report after one year and a full review will be carried out after three years. The one-year review has been criticised on the basis that it takes time, especially with criminal offences, for the first offences to work their way through the courts system and if there are issues, perhaps they may not arise after one year. For that reason, a report after one year and then a three-year review are required and that should catch any issues. I do not believe there will be.

The word “representation” was deliberately chosen to cover images ordered by any means. The offences are all based on intent or harm and, therefore, the view was taken that it is not too broad, because one will have to show both an intent to harm and to actually cause harm as well. Sufficient protections have been included on that aspect of the Bill.

Senator Lynn Ruane: In putting forward these amendments, as I outlined on Second Stage, it is in no way to put out the message that the Bill is flawed or does not fulfil its intentions. It is always good for legislators to have an opportunity to engage with the legislation and to at least signal our future intentions on how we feel the legislation should be improved. The fact is that there will be a review within three years and we can examine the evolution of the Bill within that time. We must also acknowledge that even since the body of work done by the Law Reform Commission, LRC, in 2016, there has been a significant amount of change. The initial body of work does not always stand up in every sense. I will not press the amendments. It is more the case that I wish to put on the record that when the other legislation comes in, these are the areas I feel need to be improved. I will withdraw the amendment.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2

Amendments Nos. 2 to 4, inclusive, not moved.

Acting Chairman (Senator Aisling Dolan): Amendments Nos. 5 to 8, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 5:

In page 4, line 5, to delete “and” and substitute “or”.

On the surface, amendments Nos. 5 to 8, inclusive, all relate to small changes to the wording of section 2 on the distribution of intimate images. However, they are important in that the overall intent is to make the legal threshold at which distribution becomes a crime more accessible and easier to prove for the victims of these offences. I am grateful to the National Observatory on Violence Against Women for calling for these important changes. As the Minister of State will be aware, we are currently in the process of reviewing many State processes and laws, as they relate to sexual offences, in particular the experience of victims moving through the justice system and how they are treated as individuals and on a system-wide basis. The most prominent example of this has been the recent publication of the report by the Department of Justice’s working group chaired by Tom O’Malley, which has made a number of very significant recommendations and proposals for reform to improve the deficiencies identified, in particular in how victims of sexual assault are treated in the courtroom. I welcome these moves, as they are important. These amendments are tabled in that same spirit. I am concerned that every time an offence provision is qualified with a largely subjective word like “seriously”, we are shifting the legal burden of proof from the perpetrator of the offence to the victim. I hope that we would have learnt from the O’Malley process and our obligations under the Istanbul Convention that this is bad practice and all legislation must be drafted in cognisance of the fact. I propose amendments Nos. 6 and 8 to rectify the issue in the Bill.

Amendment No. 5 would replace the word “and” with the word “or” to create two distinct offences, first for the publishing of an intimate image without the person’s consent and, second, doing so with the intent to cause harm. I believe that requiring a victim to simultaneously demonstrate both offences is too high a legal bar and they should be decoupled from each other. Amendments Nos. 7 and 10 would have a similar effect.

Senator Barry Ward: Section 2 is a relatively measured section, but I still think there are issues in terms of the manner in which it was drafted. I raise the same issues that I did in respect of the definition section, that there may be scope, in particular in subsection 2(a), for example, to overly broadly create an offence. Subsection (2) states:

For the purposes of *subsection (1)*, [which deals with the offence of distributing, publishing or threatening to distribute an intimate image] a person causes harm to another person where—

(a) he or she, by his or her acts, intentionally or recklessly seriously interferes with the other person’s peace and privacy or causes alarm or distress to the other person ...”.

The small concern I have about it is that it should not be a criminal offence to cause distress or alarm. That could be done in a perfectly lawful way. It is the manner in which it is done

that should be criminalised. It is the intention underpinning it that needs to be criminalised. There is definitely an interpretation of that section with reference to the words “intentionally or recklessly” which, arguably, covers that base but I wonder if the absence of a comma there could suggest at a later date that somebody charged with this offence under section 2 could use the wording to bend the way the section was intended. I understand from where Senator Ruane is coming with these amendments but I do not agree with her on this. She said they are small changes but they would make a substantial difference to the way the section would operate. The word “seriously” would be removed from subsection (2)(a) and the word “and” would be changed to the word “or” in subsection (1)(a). That means the offence of distributing, publishing or threatening to distribute or publish an intimate image either without the person’s consent or with the intent to cause harm would be an offence if the amendment were accepted, which would mean doing it without the consent in and of itself would be an offence. I do not have a difficulty with that but I have a difficulty with the maximum sentence for that being seven years imprisonment. That puts it beyond the proportionality measure. I do not have a difficulty with creating an offence of distributing, publishing or threatening to distribute an image without the person’s consent; that is a serious breach of ordinary civil behaviour. We are criminalising it in this section and I have no difficulty with that.

Amendment No. 5 proposes “and” would be changed to “or” and would make doing that without the person’s consent in and of itself an offence. Subsection (3)(b) provides that a person who does that would be liable to seven years imprisonment. I think fault would be found with that by the superior courts in terms of the proportionality of the offence with the penalty that is provided for it. A similar issue arises in respect of amendment No. 7, which proposes changing the word “and” to the word “or”. That would create an either-or dichotomy which would allow a prosecutor who was less sensitive to the balancing of these things to create a small offence out of something that in and of itself should be an offence, which I do not dispute, but the person would then be subject to a very substantial penalty. That is the difficulty I have with the amendments, notwithstanding from where the Senator was coming in tabling them.

Deputy James Browne: I welcome any amendments. Irrespective of whether they are accepted, they play an important part in testing the legislation and making it more robust. Legislation should always be challenged. Once a Bill has been tested by way of amendments and passes through this House, we can be more confident of it. Any comment about broadness within the Bill was more directed at one or two Senators who were making a few criticisms of the Bill.

Amendments Nos. 5 to 8, inclusive, relate to section 2. Amendment No. 5 seeks to delete the word “and” substitute the word “or” in subsection (1). This small change would have very serious implications in the context of the offence by providing that an intimate image could be distributed or published either without consent or with intent to cause harm, which would have the effect of making this offence a strict liability offence as it would remove the requirement to prove intention altogether. As Senators will be aware, intention is a fundamental element of the law regarding criminal offences. Offences without a requirement of some form of intention, more commonly referred to as strict liability offences, are the exception rather than the rule in legislation. Strict liability offences are generally dealt with by way of a summary prosecution and do not attract very high penalties to reflect the fact that they can be committed with no intention or even knowledge on the part of the defendant and this offence carries a maximum penalty of an unlimited fine and—or seven years imprisonment. Therefore, unfortunately, I cannot accept the amendment that would make this a strict liability offence. I would have

strong concerns that such an offence would be open to constitutional challenge.

Amendment No. 7 also proposes to delete the word “and” and substitute the word “or” in subsection (2). I appreciate the intention behind the amendment. A similar issue arises with this amendment, as with amendment No. 6. The purpose of paragraph (a) is to include a requirement that the acts complained of seriously interfere with the peace and privacy of the victim or cause them harm, alarm or distress. Paragraph (b) includes a requirement that a reasonable person would realise the harmful effects of those acts. A reasonable person test is common in legislation where intention to cause harm is an element of the offence to avoid a situation where behaviour that would not reasonably cause harm is sufficient to meet the offence.

Amendments Nos. 6 and 8 seek to remove the requirement that the behaviour referred to in the offence seriously interfered with the peace and privacy of the victim of the offence. I appreciate Senators may be concerned that the requirement to prove a serious interference could be an onerous burden in a prosecution. This word is included in the offence for a good reason. If it was sufficient to prove that the behaviour simply interfered with the peace and privacy of a person I would have a very real concern that the bar is set too low in terms of the penalties for the offence. This formula is used in the offence of harassment and I am not aware of any onerous requirements on a prosecution on proving the impact of the offence on the victim. I am satisfied this section should not be amended in this way.

Acting Chairman (Senator Aisling Dolan): Does any Senator wish to come in?

Senator Mary Seery Kearney: While I accept the Minister’s position, there is something in the “or” element of the amendment. I ask that it be borne in mind for future legislation. Perhaps a lesser offence needs to be created in future legislation. If we say it always must be inextricably linked with intent we are providing almost a defence of, for example, a person claiming they were not in control of their phone. There is also the issue of fraping on Facebook and the excuse is given by the person concerned that it was not them, that they did not do it. That has been used in house-----

Senator Regina Doherty: The claim of Russian hackers has been used a few times.

Senator Mary Seery Kearney: Yes, exactly. Given that these offences occur on mobile devices and the person claims their device was hacked or someone knew their password, if a person is in an intimate relationship with someone and has their image on their mobile phone, the person has a responsibility to protect that image or to delete it if the person is no longer in that relationship or whatever may be the reason the person came into possession of that image. There is something here in that when we always must have intent we are removing responsibility for what is held. In civil law we would be talking about intellectual property, with the image being the intellectual property. If a sportsperson’s image is used, they can sue on that basis. We are now creating a criminal offence but, by always inextricably linking it with intent, we cannot remove the responsibility, once a person is in possession and control of the image of somebody else, particularly a vulnerable image, that if the person did not have an intent that would give them an excuse. There may be a need for a lesser offence to be created on the basis of a strict liability offence that is justified if for no other reason than to create a deterrent that once a person has and is in control of someone image, the person has a responsibility and a duty always to protect that image and what happens to it. I support Senator Ruane in that respect.

Senator Lynn Ruane: Senator Ward was correct in what he said regarding proportional-

ity. I did not have the time to rewrite a section between the Bill being passed in the Dáil on Thursday and being taken in the House today. I will get that little dig in there. As Senator Seery Kearney said, I would look forward to amending the legislation through miscellaneous provisions to provide for lesser offences where we could decouple some of that language. Regarding what the Minister of State said concerning “seriously” and “causing offence” versus “seriously causing offence”, that issue will come up again in respect of the harassment element; however, in my recent experience, it would be very hard to prove that receiving a postcard or someone sending me a bunch of flowers is causing me serious offence or harm, although it may be part of a larger continued pattern of behaviour. My point, therefore, concerns how we can begin to pick up those patterns of behaviour over time, and how difficult it is for a woman to be able to present this information in a way that shows such behaviour is serious, because it may not look serious on the surface when trying to explain it. For that reason, there are several provisions throughout the Bill where we must remove the onus and burden on the victims to try to prove what “serious” looks like.

Deputy James Browne: I hope in cases of lesser offences, where intent is not needed, that many of the concerns raised by the Senators would be covered by section 3, which is a strict liability offence and intent is not required.

Acting Chairman (Senator Aisling Dolan): I thank the Minister of State for that clarification. Do any other Senators wish to speak? If not, does Senator Ruane wish to press this amendment?

Senator Lynn Ruane: I withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments Nos. 6 to 8, inclusive, not moved.

Section 2 agreed to.

SECTION 3

Acting Chairman (Senator Aisling Dolan): Amendments Nos. 9 to 13, inclusive, are related and amendment No. 12 is a physical alternative to amendment No. 11. Amendments Nos. 9 to 13, inclusive, may be discussed together, by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 9:

In page 4, line 23, after “records,” to insert “retains,”.

Amendments Nos. 9 and 12 relate to a specific additional offence of retaining intimate images in a similar vein to amendment No. 4. Amendment No. 11 is again an amendment that was raised with me by the National Observatory on Violence Against Women regarding concerns in respect of section 3 and the offence concerning the recording of an intimate image without consent. The current offence sets a disproportionately high legal bar, in that such a recording must represent a serious interference in the life and privacy of the victim. Our concern here is that the wording again places the burden on the victim to justify the nature of the abuse that has been suffered, rather than placing the focus fairly on the perpetrator. My suggested wording of amendment No. 11 would refocus the offence so that the balance is more fairly distributed between the perpetrator and the victim.

Regarding amendment No. 13, I apologise for the fact that due to the tight deadline following the Dáil debate to submit amendments, my office got the line references wrong. The amendment is intended to apply to section 4 rather than this section. I am going to proceed in the context of how I intended the amendment, instead of how it is tabled. The amendment will be familiar to the Minister of State anyway, as it is just a restatement of similar amendments tabled by Deputy Howlin in the Dáil last night. This amendment would strengthen section 4 by ensuring that where someone has distributed a threatening or offensive communication, it shall be presumed, when that communication has a negative effect, that the perpetrator knew what “the consequences of his or her acts” would be. It was this amendment the Minister of State referred to earlier regarding assuming, in respect of the Jackie Griffin video, that it would be covered in section 4. It is that part of the Bill the amendment seeks to further strengthen.

Senator Barry Ward: I speak on amendment No. 11, which proposes to substitute a new paragraph (b) in subsection (1). I like this amendment and I think it sets up exactly the type of test a court should conduct. The amendment would see the section essentially stating that, subject to subsection (2), a person is guilty of an offence where he or she has been responsible for the distribution or publication of an intimate image and “(b) that his or her acts are such that a reasonable person would realise that the acts would interfere with the other person’s peace and privacy or cause alarm or distress to the other person.”

Quite separate from the issue I raised in an earlier section regarding the possibility of merely causing alarm or distress, here we have a situation where we setting up for the court, be that a judge in a summary matter, or the jury in an indictable matter, exactly the kind of test we want this Bill to do. I refer to asking people to look into the mind of the person accused and to assess if a reasonable person in that position would have realised that what he or she was doing would have had the implications that nobody desired and which ultimately resulted from what he or she did. I like the provision drafted here, therefore, because it sets this matter out clearly.

One of the great difficulties with this type of legislation is looking into the mind of the alleged offender and deciding, in the case of non-strict liability offences, whether he or she intended the results of what he or she did. This amendment, however, sets out exactly what a judge or jury should be doing in that regard, namely, looking at what a “reasonable” person would do. We often talk about reasonable people in respect of the law, when, in fact, few of us act as reasonable people in real terms. This is, however, the test that is applied currently in so many criminal matters and it is an appropriate one. It would allow the judge of fact, be that a judge or jury, to decide, by looking into the circumstances of the person concerned, whether a reasonable person in the same circumstances would have understood the consequences of his or her action. This proposed amendment, therefore, adds to the Bill and it would be a fine addition to section 3(1).

Senator Regina Doherty: I agree with Senator Ward. Whether someone intends to cause hurt, mild or egregious, to someone else is irrelevant, because it is not necessarily the intent but the outcome that matters. If a person is hurt, then he or she is hurt. I like the idea, therefore, of being able to be in the position of someone else judging whether a person’s act is reasonable or not. On too many occasions, which we see this frequently in the world of politics, we get apologies after the fact from someone stating that he or she did not intend to cause any hurt, and that should make it okay. It does not make it okay.

I refer to the Senator and others who have suffered harassment. The stuff being said or done, in itself, might not necessarily be untrue or overly hurtful in isolation; but when it is persistent,

either daily or on multiple occasions daily, over months and years, then such behaviour absolutely becomes egregious and harmful. It does not matter whether the person responsible can stand up at the end of the day and say that he or she is sorry and did not realise that he or she was causing hurt. That is irrelevant. The hurt and the outcome is the issue, regardless of the intent and whether someone meant it. It is the outcome that is important, and I again encourage the Minister of State to bring this back at the earliest possible intervention.

Senator Mary Seery Kearney: Regarding the Minister of State's reply, I believe that the word "and" between section 3(1)(a) and section 3(1)(b) neutralises the strict liability potential that could have had. Inextricably linking the "recording, distributing or publishing" of an intimate image with the serious interference with another's person's peace, again, still gives a reason for no responsibility. Concerning a person holding an intimate image or seeking to record an intimate image of another person, why, to try to understand that mindset, would a person want to record an image of another person? In respect of distributing or publishing the image, there should be a full stop after consent. Once it has been done without the person's consent, that in itself should be sufficient. To have that as the lesser offence, therefore, would have been sufficient. I concur with Senator Ruane's view on that bar of "seriously", and that people have to have privacy and should not have to be caused alarm, distress or harm. There should be a level of ethic in our law that states that it is not okay to record an intimate image of a person without the person's consent. It should not go beyond that. I think this is great legislation and I am delighted it is happening, but I believe it does not go far enough in that respect.

Deputy James Browne: Amendments Nos. 9 and 12 relate to the issue of the retention of images. I have already outlined, in discussions on earlier amendments, the reasons that I am opposing amendments of this nature. I point out that the inclusion of retention in section 3 would arguably be more dangerous than in section 2, as there is no requirement in section 3 to prove any intention in respect of the offence. I am not satisfied that this would be appropriate and therefore cannot support these amendments.

On amendment No. 10, I do not wish to remove the requirement from this offence that it must be proven that the behaviour referred to seriously interferes with the peace and privacy of the other person or caused the person harm, alarm and distress. The Law Reform Commission recommended that elements of this offence should include harm. I am satisfied that this is appropriate in all the circumstances.

Amendment No. 11 seeks to replace the requirements regarding the impact on the victim with a reasonable person test. I reiterate to Senators that this offence is one of strict liability. No intention is required. As such, it needs to be clear in scope. For this reason, I will oppose the amendment. Intention is irrelevant to this section.

Amendment No. 13 attempts to insert a provision to include a rebuttable presumption, that the person who commits an offence under section 3 intended the natural and probable consequences of his or her actions. This is unnecessary, as there is no requirement to prove any intention on the part of the defendant under this section. It simply does not fit with the offence. I appreciate Senator Ruane's comments on another section, but within criminal law, a person is presumed to have intended the natural, probable consequences of his or her actions. That is the test in criminal law because it is impossible to prove what was going on in a person's mind and his or her actual intention. The natural, probable consequence is well-established in criminal law. I would be concerned about including it when it is not included in other criminal offences and that it may be used to try to distinguish this offence from other criminal offences, which is

not intended.

Senator Mary Seery Kearney: I completely accept that. However, while the intention of the perpetrator is irrelevant to the offence, the experience of the victim is a necessary element. That is where it becomes too complicated. It should not be about that. I appreciate that I have not tabled an amendment, which I probably should have. The very recording of an intimate image, even before distributing or publishing it, should not be about whether I find it acceptable or not. It should not happen. There should not be a recording of an intimate image of another person. It should not take place.

I come back to Senator Ruane's very valid point. I think the Law Reform Commission is fantastic. Its consolidation of legislation is amazing and it has always been a great resource to me, but its report in this regard is a couple of years out of date, and we have moved on as a society. What is permissible and acceptable regarding privacy and interference with privacy, and the threshold of what is now the assertion of privacy, is in a different place after a couple of months, let alone a couple of years. We need to come back to look at that at a later stage. Maybe that will be in the context of the review a couple of years from now, although for charges and arrivals to court for criminal offences, a year might be too soon. We need to have a threshold of what is okay in our society and we have an opportunity to do that in the future.

Senator Lynn Ruane: As with the other amendments, I will not press these amendments, but I look forward to working with the Department to move matters forward.

Amendment, by leave, withdrawn.

Amendments Nos. 10 to 13, inclusive, not moved.

Question proposed: "That section 3 stand part of the Bill."

Senator Barry Ward: I endorse what Senator Seery Kearney said. I was speaking to a female colleague in the Dáil, who has two relatively young female staff in her office. She indicated to me that it is a routine matter that they receive fairly offensive and profane images by email in her office every day. One of the points she was making was exactly what Senator Seery Kearney said, that in a strange way, as part of this Bill, she has to be offended. Even though the behaviour by its nature is offensive and should be illegal, she has to be offended or somehow upset by it, and must concede that upset, and thereby concede something to the person who is sending the images in. As Senator Seery Kearney said, we should certainly look at whether we can update this law to make it more about the offender's behaviour than the reaction of the victim.

Section 3(2) has an important saver for the prosecutor. It states, "*Subsection (1) shall not apply to a person who distributes or publishes an intimate image for the purpose of the prevention, investigation or prosecution of an offence under this section.*" That is an important provision. I remember the impeachment proceedings against a Circuit Court judge in 2004, when a Member of this House, who was Minister for Justice, Equality and Law Reform at the time, brought impeachment proceedings in respect of a particular individual who had been accused, and acquitted, of the possession of certain images. A special Act of the Oireachtas had to be passed to allow the Oireachtas committee that was considering the impeachment to view the images involved. It was a tremendously cumbersome instrument that is bypassed by this saver in section 3(2). It represents some forethought and heading the problem off at the pass when this Bill was drafted, and is worth remarking on.

Question put and agreed to.

SECTION 4

Acting Chairman (Senator Aisling Dolan): Amendments Nos. 14 and 15 are related and may be discussed together.

Senator Lynn Ruane: I move amendment No. 14:

In page 4, line 37, after “threatening” to insert “, private”.

Amendments Nos. 14 and 15 are attempts to legislate for a criminal offence for the practice known as doxing, where an abuser will publish private information such as home addresses or bank account details publicly on the Internet to terrorise their victims. The amendments have been tabled on the advice of the National Observatory on Violence Against Women and I would appreciate if the Minister of State could comment on this practice and whether it is covered adequately by the Bill.

Deputy James Browne: Amendments Nos. 14 and 15 seek to include private messages within the ambit of the offence under section 4. Senators will understand the difficulty in seeking to legislate in the area of communications, speech and private interactions. It is imperative that any such offences do not interfere unduly with the constitutional right to the freedom of speech and that they are proportionate.

4 o'clock

Extensive consultations were held with relevant justice stakeholders to develop this offence and the main concerns were that a very broad provision in relation to messaging and communications could see a lot of online posts or communications between persons coming within the remit of the offence. The inclusion of the word “private”, particularly as it appears undefined, could broaden the scope of this offence in an undesirable way. It is not clear whether the word “private” relates to personal information or, for example, private information that could be reasonably communicated in the public interest. For those reasons, unfortunately, I cannot accept the amendment.

Senator Lynn Ruane: Can the Minister of State comment whether it is an offence under the legislation?

Senator Regina Doherty: What is it called?

Senator Lynn Ruane: Doxxing.

Deputy James Browne: I believe under this legislation, it probably is not.

Senator Lynn Ruane: It is important issue regarding a tool of abuse and is something that could be looked at. It is one of the ever-evolving things we encounter that can be used in the absence of the more normal ways in which to abuse or engage in harmful communications. I will withdraw the amendment but I hope that the Department will consider an amendment to make it an offence in some way.

Senator Regina Doherty: I appreciate the amendment is being withdrawn but I have a query for the Minister of State. He said the reason the Department was not minded to include it is because the sharing of private information might be in the common good. I do not know how

that can be a good thing. Every single one of us is entitled to our privacy. The information that I have at home, for instance, bank accounts, is my private business. Sharing it is not in anyone's interest or common good; it is my private business. Particularly in the context of the amendments as they relate to coercive control, and we are talking about men using power over women to control them, how in God's name could that be in the common good? Will the Minister of State expand on what he means? I can appreciate that it may not be suitable for this particular Bill but if it is not a criminal offence, and the Minister of State has told us it is not, why not? There is way that people being able to share private information to control and manipulate us is in anyone's good, let alone the common good.

Deputy James Browne: To be clear, no one is suggesting that this would be in the common good. Where any private information is shared, where that is intended to be harassing, is unacceptable, wrong and something that should be addressed. Speaking on this section of the Bill, it does not seek to make doxxing a criminal offence. That is not to say that it is not wrong or that it should not be a criminal offence but it simply is not being dealt with within this Bill. I do not suggest that doxxing or anything similar can be done in the common good but there may be instances in the common good where private information needs to be shared. I cannot get into every possible instance where that may be the case but we have to be very careful that there are not unintended consequences. The word "private" is not defined in the amendment and therefore, putting such a word into a Bill like this without a definition could have serious unintended consequences. To give an example, some of my personal details are shared by the Standards in Public Office Commission, SIPO, and that is both allowed and in the common good. Were we to start making any sharing of private information a criminal offence, it could have very serious unintended consequences. It would have to be very clearly defined and thought out where there might be unintended consequences and safeguards put in place. I appreciate where Senator Ruane is coming from. The issues she is talking about are very serious and it is something I have seen myself but it is not something that can be put into this section by way of simply inserting the word "private".

Senator Mary Seery Kearney: We might explore this in the context of general data protection regulation, GDPR, and data protection legislation. We probably have another piece of work to do about putting it into a criminal justice context. My home address is on the public record because it went on a ballot paper at one point. Things like that are known and the big poster in the front garden was the giveaway. There are contexts in which the publication of that information is appropriate. It was appropriate for South Dublin County Council to publish it, it was appropriate for it to go on a ballot paper. However, it is different if someone goes to the trouble of putting up my address for a reason that is not appropriate, because the handing over of my home address was for one purpose and for the processing of my personal data in a particular context and for a particular purpose. Doxxing is for a harassment purpose. It is to mobilise people to protest outside one's door. In that context, we need to consider broadening the definition for a criminal justice purpose of what is a data controller. The minute one assumes a processing role on personal data for a purpose other than that for which those data were surrendered and puts them on a social media platform, then I think there is something we can probably do in future to address doxxing. I appreciate there is a challenge in the wording when we have to define what is "private", but there is probably another way of going around it that would be very beneficial.

Senator Regina Doherty: I am sorry to be picky but I understand from the Minister of State's response is that it is not appropriate to this section of this Bill because we did not define

“private”. But it probably is appropriate to this section of this Bill. If all that was wrong was a definition of “private”, that could have been easily fixed or it could easily be stated now that if we bring back a definition of “private” in the context of something that is entirely different - say, me giving my information to SIPO with consent for it to publish because I have no choice, or my giving my information freely to anyone else to publish - to someone manipulatively using private information of mine for the purposes of controlling me or for controlling other groups to come and harass me directly. It is entirely different. Will the Minister of State clarify that he did not mean that it was not appropriate in this section *per se* but that it was not appropriate because the definition of “private” was not included? I am just curious.

Deputy James Browne: Yesterday I brought a Bill to the Dáil which will be before the Seanad in the new year, the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill. It has requirements that banks will have to share personal information with State bodies. I also refer to other areas dealing with whistleblowing, for example. Consequently, any potential unintended consequences around the word “privacy” must be guarded against. Unfortunately, the word is not defined here and in those circumstances I cannot accept the amendment. I certainly agree with Senator Ruane’s intentions and her concerns around the issue of doxxing, which is very serious. I have no difficulty addressing it in future legislation, if that is what needs to be done. I am simply saying that in the context here, the word “private”, were we to accept it here today, would potentially have serious unintended consequences.

Senator Lynn Ruane: This points to why a review in three years is probably too far away. I am happy to withdraw the amendments in the hope of having continued conversations around the practice of the practice or abuse of doxxing.

Amendment, by leave, withdrawn.

Amendment No. 15 not moved.

Question proposed: “That section 4 stand part of the Bill.”

Senator Barry Ward: I wish to raise a matter. The Minister of State referred to the importance of the Constitution’s freedom of speech provisions and the protection of same. I have a concern about the way section 4 is phrased in that it is overly broad. This matter was raised on Second Stage. The section reads:

(1) A person who—

(a) by any means—

...

(ii) sends any threatening or grossly offensive communication to another person,

and

(b) with intent by so distributing, publishing or sending to cause harm,

is guilty of an offence.

Harm is defined in subsection (2) as where “a person intends to cause harm where he or she, by his or her acts, intentionally seriously interferes with the other person’s peace and privacy or causes alarm or distress to the other person.” I can think of a number of examples where, in an

entirely lawful way, a person might write a letter or send a communication that qualifies under subparagraph (1)(a)(ii) as being threatening and also satisfies the requirement of harm under paragraph (1)(b), being that it causes alarm. The first one that springs to mind is legal proceedings. Another might be a summons to court, a speeding fine or a warning notice from a local authority. Those are official communications, but what about, from neighbour to neighbour, notifying of an encroachment onto the property of one or, in terms of farming, livestock gets from one field into another and one farmer sends what could be described as a “threatening” letter to another, which is 100% designed to cause alarm and thereby achieve results? There is a notion of comparing that scenario to the reality of what we mean by this Bill in terms of the serious intent of individuals to infringe upon people’s enjoyment of life, mental health and so on, but the two are not related.

Perhaps there is something I do not see, but I am concerned at the manner in which subsection (1) is drafted and the definition of “harm” in subsection (2). A perfectly reasonable and lawful, albeit unpleasant, communication between two individuals would satisfy the requirements of the section to commit an offence, which would carry with it, on indictment, a penalty of up to two years in prison. In light of the freedom of speech provisions that the Minister of State mentioned, I identify that there is a possible difficulty in this regard.

Something that the Bill probably does not do, particularly in section 4, is differentiate between the intentional action of an individual to cause gross offence and attack someone by means of an electronic or other communication and a person who might take offence in a particular way. These are two different scenarios. If the section does not distinguish between them, it creates an offence in respect of one that is unreasonable and disproportionate.

Senator Lynn Ruane: This conversation interests me. I understand the Senator’s point about something that is done lawfully causing distress, but there are also situations where someone uses lawful measures as a tool to abuse. On Second Stage, I mentioned two people on whose radar I am. One of them has used the courts in a vexatious way to continue abusing me and has tried to summons me to court. He is lawfully sending me summonses but I have never met him. I have had to avoid taking leaflets from people on the streets because, since I do not even know what he looks like, I think he will jump out and hand me something. The Garda has tried to get me an image of him. He has been very threatening.

How does one make the distinction the Senator mentioned when something is lawful but also abusive? That is another conversation because the intent is not to use the law in the way it was intended but as a form of abuse. This happens in children’s courts all the time in terms of guardianship. A parent will continue to take a woman to court and will be given guardianship with a nod of the head but will not pay maintenance, take the child or so on. The guardianship is a tool of control, in that the other parent would still have a say regardless of whether he or she wanted to co-parent. We need to examine how, in some situations, abusers can use the law as a tool to continue to control.

Deputy James Browne: Subsection (2) goes to the definition of “intent” as opposed to defining what “harm” is. Under subsection (1), there is a requirement that it must be a threatening or grossly offensive communication to another person. The Attorney General and the DPP are satisfied that there are no concerns that legitimate communications could be covered by this. As Senator Ruane points out, legitimate communication can be used for illegitimate purposes. We must ensure that the use of those types of communication is covered when they are abused. We are satisfied that this section does what is intended.

Senator Mary Seery Kearney: I read this section and took great comfort from it. Every now and again, I get letters that challenge me for daring to have a double-barrelled surname. I am confident that the Deputies Healy-Rae never get similar letters. The challenge is designed on the fact of my gender and the letters are grossly offensive and make all sorts of assumptions because my husband and I decided to take each other's name. In that light, I read this section as possibly putting manners on some of these people, who think they were entitled to write in with their full opinion and so on, which is irrelevant to me carrying out my job. I hear Senator Ward's concerns, but this provision would in practice be constrained to where it was intentional to cause harm. From that point of view, it is a great section.

Question put and agreed to.

NEW SECTIONS

An Cathaoirleach: Amendments Nos. 16 and 17 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 16:

In page 5, between lines 12 and 13, to insert the following:

“Harassment

5. (1) A person who, without lawful authority or reasonable excuse—

(a) intentionally or recklessly—

(i) follows, watches, pesters or besets another person,

(ii) communicates with another person, or

(iii) communicates with a third person about another person,

and

(b) by those acts seriously interferes with the peace and privacy of the other person or causes alarm, distress or harm to the other person,

is guilty of the offence of harassment.

(2) A person guilty of harassment is liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding 12 months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding seven years or to both.

(3) Where, in proceedings for an offence under this section, the court is satisfied that the defendant by his or her acts both—

(a) intentionally or recklessly interfered with another person's peace and privacy, and

(b) caused alarm, distress or harm to the other person,

the court may take that fact into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.

(4) Where, in proceedings for an offence under this section, the court is satisfied that in the course of or for the purposes of committing the offence the defendant—

(a) made use of personal information about the other person, being information that would, in the ordinary course of events, be known only to the other person or members of the family, or friends, of the other person, or

(b) made use of any electronic device or software in order to monitor, observe, listen to or make a recording of the other person or his or her movements, activities and communications, without the other person's knowledge and consent,

the court may take that fact into account as an aggravating factor in determining any sentence to be imposed on the defendant for the offence.”.

This introduces an amended version of the section on harassment that was included in the Bill as initiated by Deputy Howlin. The section was deleted in the Dáil despite calls from NGOs for a specific section and offences to be included. The Bill is titled, “Harassment, Harmful and Communications and Related Offences Bill”, but since this section was deleted, there is no specific harassment section in the Bill that the Minister of State is proposing to enact, which is of concern. The Government is making amendments relating to harassment offences in the Non-Fatal Offences against the Person Act 1997. I have concerns about those and we will discuss them shortly, but I am still concerned that we do not have a section in the Bill articulating and codifying a strong harassment offence.

My amendment would make a number of statutory changes. Most notably, I have dropped the words “persistently” and “seriously” to lower the legal bar for victims. I would appreciate the Minister of State's comments on these changes.

The National Observatory on Violence against Women has called for a specific stalking offence, which is the subject matter of amendment No. 17.

Senator Regina Doherty: I again find myself agreeing with my colleague. The irony is probably not lost on anyone that the Bill, which we will all call Coco's Law, is about harmful and harassing communications but the section on harassment has been removed. I am sure others will be able to attest to their own experiences, but this is disappointing personally. I spent two years being harassed daily, if not multiple times daily, by a lady who is a very large supporter of a political party and subsequently went on to be an elected representative of a political party. At breaking point after two years, I went to the Garda and attempted to take a case against her for that harassment under the very much outdated 23-year-old legislation. I did so because I was at breaking point and the harassment was having such a massive impact on my daily life, well-being, mental health and the peace that each of us should enjoy in our lives. The Garda investigated and spoke to the lady, who suggested that she would never do it again. Rather than not doing it again, she brought about a significant pile-on accusing me of actually harassing her by going to the Garda in the first place. That was four years ago. I dealt with it and got over it but there are thousands of people in Ireland today suffering harassment on various levels. The fact that we have an opportunity to do something now about it and that we are losing and miss-

ing that opportunity is a real shame and pity.

The section has been removed even though it was debated at length yesterday and last week. It will not be reinserted today. As such, what plans do the Department, the Minister of State, Deputy James Browne, who is present, and the Minister for Justice, Deputy McEntee, have to address the issue of harassment as very eloquently detailed in sections 16 and 17 of the Bill as originally initiated by Deputy Howlin?

Senator Aisling Dolan: This is the first time I have spoken today on the Bill. I very much welcome the legislation. To follow up on the comments of my colleagues, the legislation that is being brought before the House is unique; there has been nothing like it before. It is fantastic to see it being brought in to tackle the current problems with image-based sexual violence and the sharing of intimate images. The Minister of State mentioned that a report will be compiled after one year and a review will be carried out after three years. As has been pointed out, the section relating to harassment has been removed from the Bill. Harassment comes in many different forms. Unfortunately, many of those present have had to deal with some of the consequences of harassment. I have listened to the stories of my colleagues. I echo the call of the Leader for feedback on what will be done in terms of harassment and what the Minister may be able to bring to us.

Senator Micheál Carrigy: Like my colleagues, I too have a query on why the entire section dealing with harassment has been removed from the Bill. The Title of the Bill includes the word “harassment”. I speak as one whose family suffered harassment and had to go the Garda. Luckily, the Director of Public Prosecutions took a case and it was successful. The person in question is not harassing my family anymore. Public representatives regularly get harassed online and offline because of our political allegiances. What plans are there for legislation to deal with harassment? As Senator Dolan stated, it comes in numerous forms and it needs to be dealt with.

Senator Mary Seery Kearney: I echo the comments of other Senators regarding the need to tighten up the law on harassment. The threshold for harassment needs to be significantly lower than it is currently because when the offence of harassment was put in place, there was not the same access to digital and other technology that there is now. There was not the same means of getting into someone’s space that there is now. The legislation needs to be updated rapidly. This is a very fine amendment and it is regrettable that it is not part of the Bill. I would welcome knowing when we will have that update.

Senator Eugene Murphy: This is the first time I have contributed to this discussion today. I was not in the Chamber until now. What is happening here is very welcome but the discussion of the issues involved is very important. I agree with Senator Seery Kearney and other Senators regarding tightening up the area relating to harassment. It is well known that I went through this experience. I am thankful to the journalists who highlighted it. In the context of an issue that, unfortunately, arose with regard to eviction, people were clearly told on social media how to burn my car with acid and to shout at my wife and kids. That is fine with me to a degree, although it should not be. It is about how it affects the people around one. It is about one’s children, wife, partner, mother, brothers or sisters, who all worry about this. I have campaigned quite strongly on this issue and I am very glad to see things happening now.

Public representatives across the line are hard workers generally. They try to take people’s problems on board and improve things. We need to set standards. Harassment is totally un-

acceptable behaviour no matter who perpetrates it. Members may be aware of certain events when the Leader, Senator Doherty, was a Minister. We must ensure that the legislation relating to harassment is tightened up. I do welcome what is happening here and the commitment of the Minister of State to it. I am not trying to make this about me but it is very difficult for one's family to be affected and one's relatively young kids to have to text at 12 o'clock at night to ask if one is okay, whether one is at home or where one is. Many of my colleagues have had that experience; not just me.

Deputy James Browne: Amendment No. 16 seeks to include a new offence of harassment in the Bill. I draw the attention of Senators to section 10 of the Bill which amends the existing offence of harassment contained in section 10 of the Non-Fatal Offences against the Person Act 1997. As the Minister, Deputy McEntee, mentioned in the Dáil, she agreed with the extension of the offence of harassment to include persistent communications about a person rather than simply communications with another person. This is considered appropriate in the age of social media, where so much online comment is often about a person. The proposed amendment to the existing harassment offence will retain this idea.

The proposed harassment offence in amendment No. 16 does not include other powers available to a court that are currently provided for in section 10 of the 1997 Act. Subsections (3) to (5), inclusive, of the existing harassment offence provide that a court may impose an order on a defendant compelling him or her not to communicate with or approach the victim. Such an order can be imposed, regardless of whether the person has been convicted of the offence of harassment. It is an offence not to comply with such an order. I have been advised that these provisions are extremely valuable.

Section 10 of the Bill inserts a new subsection into section 10(1) of the 1997 Act to include communications about another person as an element of that offence. By simply amending the existing harassment offence, as agreed by Dáil Éireann, the additional orders mentioned in subsections (3) to (5), inclusive, remain as options for a sentencing judge. This is extremely important as orders can be imposed with or without a conviction. Furthermore, the aggravating factor of the victim and defendant being or having been in an intimate relationship as provided for in section 40 of the Domestic Violence Act 2018 also has effect.

Amendment No. 17 proposes to introduce an offence of stalking. The amendment is very similar in style to the stalking offence proposed by the Law Reform Commission. The Government too intended to introduce an amendment to create a distinct offence of stalking and this issue was thoroughly examined in my Department. Following consultations with various stakeholders in the criminal justice system and an in-depth examination of the existing offence of harassment, it was clear that the behaviour outlined in the amendment is already encompassed in the current offence under section 10 of the Non-Fatal Offences against the Person Act 1997.

Neither of the proposed amendments include the element of persistence. This would reduce harassment to an offence to address one-off instances, whereas, traditionally, harassment has had a requirement for persistence. I believe the removal of the persistence element would diminish the offence and possibly require a lower maximum sentence. Instead, the Government is proposing a higher maximum sentence of ten years for the most serious forms of harassment. The difference between the existing offence of harassment and that in the proposed amendments is the effect of the behaviour insofar as persistent communication, watching, besetting and pestering would have to cause the victim harm, alarm or distress and interfere with his or her peace and privacy. This would make the offence more difficult to prosecute than the current offence

of harassment as the prosecutor would have to prove both elements, rather than one of them, in order to secure a conviction. On that basis, I cannot support the amendments as proposed.

Senator Lynn Ruane: I wish to come back in on the issue of persistence. Removing the word “persistence” does not mean the offence only applies to once-off events. Rather, it allows us to begin to account for sporadic communication. In my experience, both my own experience and in supporting other women, sometimes abusive communication and harassment can be seasonal, for want of a better term. It can happen for a period of a few weeks on two or three occasions a year, and it heightens, then drops off and then heightens again.

Currently, the person has to produce hard evidence of continued and persistent phone calls over a period of time. The word “persistence” sets the bar way too high. I do not think simply amending the 1997 Act achieves any sort of protection for people experiencing harassment. It is probably too old-school in terms of understanding how harassment is actually carried out. In my own experience over the last five years, the communication I have received has been concentrated in particular parts of the year, and then it goes away. It does not meet the current requirement for harassment and I would have to take a private injunction. I might be in a position now to have colleagues who work in the legal profession pursue that, or I might be able to pay for it. However, if it does not reach the level of “persistent” in the terms set out here, and if a person cannot pay to have a private injunction, that person will not be protected under the current harassment definitions within this legislation.

Senator Regina Doherty: It is a real pity, given this legislation was drafted and first presented three years ago, that we are now updating a whole section on harassment, which is absolutely pertinent and should be done now, by changing a law that is 23 years old and that we all know does not actually do what it says on the tin. That is an enormous pity and is a huge missed opportunity, particularly given the Law Reform Commission and Deputy Brendan Howlin practically wrote the sections we so desperately need.

The section which, in the opinion of the Minister of State and the Department, replaces the need for this section 5, states at section 10(a): “in subsection (1), the substitution of “communicating with or about him or her” for “communicating with him or her””. Does that mean that if somebody was communicating about me persistently, it is not going to be considered harassment any more? It is the same with regard to section 10(b), which states: “in subsection (3), the substitution of “communicate by any means with or about the other person” for “communicate by any means with the other person””. Therefore, no longer is harassment going to be defined as somebody saying things about a him or a her, but a person will only be harassing somebody if the person is saying it to him or her. Is that what this section is implying?

Senator Mary Seery Kearney: I want to raise a point that Senator Murphy’s contribution brought to mind. My husband has had the experience of being discussed on Facebook in the context of him carrying out his job in employment law, and prosecuting through the Workplace Relations Commission, which, in the grand scale of all that is possible, one would imagine to be most innocuous. However, that context resulted in a conversation on Facebook that would emerge every couple of months as to “Where would we procure bullets?”, “What would we do?” or “How would we...?”, and this discussion was about and around him. We complained to Facebook and Facebook took it down, but the Garda did not have enough to be able to pursue it in that context.

My question is similar to that of Senator Doherty. That was a conversation about my hus-

band, not with him. Consequently, is there no way of it being covered? It is a lost opportunity, given how technology has moved on and the possibilities of harassment have moved on.

An Cathaoirleach: I am conscious the debate has been going for over three hours. It is a very good and important debate but the Minister of State has been here for all of that time, as have many Members. I ask the Leader to call a suspension for 15 minutes.

Senator Regina Doherty: We will suspend the House for 15 minutes.

An Cathaoirleach: Is that agreed? Agreed.

Sitting suspended at 4.35 p.m. and resumed at 4.50 p.m.

An Cathaoirleach: We are on section 5. Amendments Nos. 16 and 17 are related and are being discussed together with the agreement of the House.

Deputy James Browne: The views taken with the amendments to the Bill is that the 1997 Act, albeit a bit old, contains flaws identified by the LRC which will be addressed by these amendments. A one-year report and a three-year review will be carried out on the Bill, if passed. This amendment is extending the remit of the Bill. At the moment, harassment under the existing law is only to the person. This extends the law to where it is about the person. Perhaps I misspoke but I wish to make it clear that this extends it to where it is not only to the person but about the person. It will make the law broader in that respect. The view taken on this side of the House is that the amendments are sufficient to address the current concerns around the 1997 Act.

Senator Regina Doherty: I am showing my ignorance but can the Minister of State explain that to me in English? Did I read it the wrong way around? I read it as saying that we are taking out “communicating with or about him or her” and putting in “communicating with him or her”. It is the other way around. I thank the Minister of State. That is good to know.

An Cathaoirleach: Is Senator Ruane pressing the amendment?

Senator Lynn Ruane: I withdraw it.

Amendment, by leave, withdrawn.

Amendment No. 17 not moved.

SECTION 5

Senator Lynn Ruane: I move amendment No. 18:

18. In page 5, between lines 22 and 23, to insert the following:

“(2) Notwithstanding *subsection (1)*, the alleged victim of the offence may make an application to the Circuit Court for the purpose of waiving their anonymity under this section.”.

Important provisions are contained in section 5 of the Bill related to the anonymity of the victim such offences. This is important but we cannot allow such provisions to silence victims who may wish to speak out and identify themselves. Amendment No. 18 would allow them to apply for a court order waiving their anonymity under this section. Will the Minister of State

comment on that?

Senator Barry Ward: The amendment specifically refers to proceedings in the Circuit Court. The offences in the Act can be tried summarily or on indictment. Therefore, it seems to me that this amendment precludes the action intended from applying to summary proceedings in the District Court. The basis on which somebody might wish to make his or her name public in that court is just as strong.

I am surprised by the provisions of the Bill generally in relation to section 5. I speak to the section rather than the amendment but it seems strange that it is a matter for the judge as to whether the person waives his or her anonymity or not. That is my reading of the section and I think that is something the victim or alleged victim should be entitled to do himself or herself. Under the section as currently drafted, it would almost be an offence for that person to waive his or her anonymity without the permission of the court or the judge. That is a difficulty I have.

On amendment No. 18, I do not understand why it is not “the court”, rather than “the Circuit Court”.

Senator Lynn Ruane: The Senator is right. It is a mistake.

Deputy James Browne: Amendment No. 18, proposed by Senators in relation to the waiving of anonymity of a victim, is not considered necessary. The Minister, Deputy McEntee, took the concerns of Deputies and Senators into consideration and introduced an amendment into section 5(2) in the Dáil providing that there is an obligation on a judge to take into account the views of the alleged victim of an offence under section 5. The aim of these provisions is to protect the victim from being identified, not the perpetrator. As such, the wishes of the victim must be considered. Therefore, I ask the Senator not to press the amendment.

Senator Lynn Ruane: I will not press the amendment. There is a mistake in it anyway.

Amendment, by leave, withdrawn.

Question proposed: “That section 5 stand part of the Bill.”

Senator Barry Ward: On subsection 5(2), the Minister of State has mentioned in his reply on amendment No. 18 the fact that the judge in proceedings is obliged to take into account the view of the alleged victim of the offence before making a direction under subsection (2). I have mentioned that I find it confusing that a victim is, on the face of it in the Bill, precluded from going public with his or her situation and what he or she may have suffered. Specifically in relation to section 5(2), the fact the judge is obliged to take into account or make the order having taken into account the views of the alleged victim of the offence creates two difficulties, both involving the victim not giving his or her view. If, for example, a judge asks for the views of the alleged victim and that person declines to give a view, is not present or for whatever reason does not give a view, the judge cannot take into account the views of the victim. Does that preclude the judge from making a direction under this section?

5 o'clock

More importantly and germanely, given that this is Coco’s Law, in circumstances where the victim is deceased there is clearly no provision for the victim to give his or her view on a direction being made or there being any privacy or restrictions on reporting. If the victim is deceased and the view cannot be given, is the judge precluded from making a direction under this section

or have I misread it? Does the Minister of State have a view on it?

Deputy James Browne: The line relating to taking the victim's view into consideration is standard across all legislation. It comes from two issues. One is that it is about not fettering judicial discretion, so that section is included. However, the courts and our Constitution always lean towards law being practised in public. That is the starting point. If a victim states to the judge that he or she wants the information to be put into the public domain, it is something the court must take into consideration, as well as other matters whereby these issues should be dealt with in public. They are being done *in camera* here to protect privacy or to protect the victim, in most cases. It expects the judge will use his or her discretion in the interests of the victims. My understanding is that under current law where a deceased person is involved, the person can be identified. Currently, there is an issue in that regard in respect of children that arose quite recently and the Minister, Deputy McEntee, has undertaken to address that in forthcoming legislation.

Question put and agreed to.

SECTION 6

Question proposed: "That section 6 stand part of the Bill."

Senator Barry Ward: I welcome the provisions of section 6. They create a liability for the directors and officers of corporate bodies. I have two questions for the Minister of State. There was much discussion during the debate on Second Stage about the need for regulation of social media platforms, many of which essentially provide the base on which much of the abuse, harassment and so forth take place. Is there provision in this section to allow us to enforce certain actions by social media platforms? For example, offences under this legislation are described in subsection (1), but if the facilitation of such an offence is created by a social media platform, whichever one it might be, is it therefore corporately guilty of an offence?

I also wish to refer to a proposal I put forward. Although it is not part of this Bill, when we had statements on these issues a week or two ago, one of the matters I discussed was copyright issues. In the Dáil the Government removed the provision relating to civil restraint orders. The Department takes the view that this is a criminal statute and, therefore, civil remedies should be removed from it. I make no comment on that, but that is the reason I have not proposed any amendments relating to the copyright proposal I made during the statements. I was suggesting that where intimate images along the lines of those defined in the Bill were published without consent, in the same way that is described in many of the offences that will be created by this Bill, the person who is the subject of that image would automatically assume the copyright of the image. The reason that is important is that the social media platforms and the IT corporations around the world sit up and listen when copyright is on the agenda.

If a significant musical artist approaches YouTube and says there is a post on the platform that infringes on the artist's copyright of song X, YouTube is very quick to react to that. On the other side of the coin, in Ireland when somebody contacts Facebook, Twitter or the like to say there is an image of the person on the platform with which the person is unhappy or that is in contravention of whatever it might be, not only are those platforms slow to take it down but, more often than not, they do not take it down and take no action. One of the reasons corporations respond to copyright issues is the strong legislation in the United States in respect of copyright infringement protection, so they must have regard to it. They are transnational cor-

porations so it is not even the case that we must put similar legislation in place because the infringement takes place across the world and, therefore, can be enforced through US legislation.

My idea is that if somebody is the subject of an intimate image, or the purported representations we discussed earlier in the definition section, and owns the copyright of that image, if the person goes to X social media platform and tells it that it is infringing the copyright, there is a greater likelihood it will take what the person says on board and take action on it. The reality is that when such an image is put on a platform, the damage is done. It is exacerbated every time it is shared or every time somebody sees it and so forth, but the damage is done and one cannot put the genie back in the bottle. The best approximation we have to putting the genie back in the bottle is by stopping the further sharing of that image, by ensuring that the platforms that facilitate its sharing take it down every time it goes up. At present, that is not happening.

With regard to section 6, are there offences in it that can be used to impress upon the social media platforms, many of which have head offices and a significant corporate presence in this jurisdiction, that action will be taken if they facilitate the offences this Bill creates? The second issue is a general question about copyright. I did not table an amendment and this is not the appropriate Bill for it, but is there anything we can do in respect of either ascribing copyright to individuals or enforcing copyright infringements in respect of social media platforms?

Deputy James Browne: With regard to the issues involving the regulation of social media, it is not a matter for the Department of Justice and does not come under this Bill. It would lie with the new Department of Environment, Climate and Communications. I understand the Minister, Deputy Eamon Ryan, has published a scheme for an updated Bill on the issues of on-line safety and media regulation. There are commitments in the programme for Government in that regard and on the establishment of a digital safety commissioner, which will certainly help.

Similarly, copyright law is not under the remit of the Department of Justice. Copyright can be a very powerful tool. Unfortunately, many people are not aware of the power of that law and how one can use it. When I was doing my masters in law, one of the issues that arose was the case law on it at the time where, perhaps, when there had been a bereavement in a shocking manner and newspapers wanted a photograph of the child or family member. A newspaper would somehow get it, possibly surreptitiously. However, it would then start charging other newspapers for using that image, even though it had no copyright over it and no right to do it. We are going off on a tangent, but the point is that I know copyright law can be a very powerful weapon. Its potential is probably not understood and it is certainly something that must be understood more and should be more accessible to the ordinary person. The Senator is right that if people had access to copyright law and could use it as a tool, it could be even more effective in terms of getting quick action taken by relevant social media bodies.

Question put and agreed to.

SECTION 7

An Cathaoirleach: Amendments Nos. 19 to 21, inclusive, are related. Amendments Nos. 20 and 21 are alternatives to amendment No. 19. Amendments Nos. 19 to 21, inclusive, may be discussed together by agreement.

Senator Lynn Ruane: I move amendment No. 19:

In page 6, line 22, to delete “within 2 years” and substitute “within seven years”.

Amendments Nos. 19 to 21, inclusive, relate to time limits under which summary proceedings can be taken under this Bill. I am concerned that two years since the offence was committed is too short, especially given the nature of these offences and the psychological distress and resulting delays in reporting that can occur. I am proposing three alternatives, that the time limit would be extended to seven years, that the clock would start from when the victim became aware of the crime or that it would start when the victim could have reasonably been expected to become aware of the crime.

Senator Barry Ward: Amendments Nos. 19 to 21, inclusive, put forward by Senator Ruane are alternate to each other. I like the provisions of section 21. I have grave misgivings about the notion that we would extend the Statute of Limitations to seven years. However, my interpretation is that this can only apply in respect of summary prosecutions, that is, prosecutions in the District Court. In circumstances where something is prosecuted on indictment in the Circuit Court, the Petty Sessions (Ireland) Act does not apply. We are talking about the lower end of the scale in terms of offences under the Bill.

As the Senator is undoubtedly aware, at the moment we have a provision whereby summary matters cannot be prosecuted after six months. That would apply to standard speeding fines and minor matters and so on. The Senator identifies an important issue insofar as the offence could be committed today and the person in the intimate image might not find out for several years or until some friend or colleague sees it online. That could in 18 months' time or even three years' time. If that were the case, then the two-year period in the Bill has already passed and there is no opportunity to prosecute someone if it is a minor infraction. I believe this is an issue.

In civil law we have the concept of the date of accrual of knowledge. In personal injury actions it is only when the person who has been injured becomes aware of the injury that the clock starts ticking in respect of the limitation period during which the person can take the action. That is essentially what amendment No. 21 does. The Senator referred to a period within two years from the date on which the person against whom the offence was committed became aware of, or should reasonably have become aware of, the offence. I believe that is a reasonable accommodation. For example, if someone who might be totally unaware that an image of her is floating around the Internet becomes aware of it three years after the image was shared but could not reasonably have been expected to see it because it was not brought to her attention, then that person still has a two-year period from the time it was brought to her attention. That is reasonable. Notwithstanding the fact that section 7 only applies to summary applications and prosecution of summary matters, these are nonetheless important offences. It may well be that the prosecutorial authorities take the view this is not something that should be prosecuted on indictment.

As currently drafted, it means a person who is a victim and who suffers grossly by the fact that the image is posted, but perhaps not at a level that warrants a jury trial or trial on indictment, is still a victim and is still grossly prejudiced by the fact that the image is out there. The provisions of section 7 further compound this injury by providing that although the person did not know the image was posted - perhaps it happened three years ago - and there was no way the person could have known about it, since it happened and was posted three years ago it is tough cheese and the matter cannot be prosecuted. Since it is not an indictable matter, that is the end of it. There seems to be a fundamental injustice in that proposal. Senator Ruane's amendment No. 21 addresses it comprehensively.

Senator Mary Seery Kearney: I believe amendment No. 21 should be considered for the

future and should be put in. Otherwise we are creating a situation where there is an obligation on me to constantly google myself and search to ensure that I am in control of any images that are or may be posted about me. I believe that puts an obligation on everyone to be vigilant of their own concern and it creates a duty of care about themselves rather than the situation of providing for when the person becomes aware that something happened. We have had instances where media campaigns have been sufficient to put people on notice of the time limit for applying for some statutory funding and so on. How do we determine when someone could reasonably have become aware? We have to mind that. We have some work to do in defining what that means, especially when we are talking about social media platforms. At the same time, we need it not to be from the date that it got posted. There needs to be some latitude to extend that out. Otherwise we create an environment of paranoia where we are all obliged to be paranoid about our images or else we may be negligent or we may remove the opportunity to have an offence prosecuted.

Senator Regina Doherty: Will the Minister of State explain to me what the legislation means by the words “anytime within two years from the date on which the offence was committed”? On the face of it, I agree with amendment No. 21, if my understanding is that the date the offence was committed is the date that someone sold an image to Pornhub rather than the date I found out my image was on Pornhub. In the view of the Minister of State and the Department, is the law based on when is the date the offence was committed? It is easy for us to define this from an image posting perspective. When is the date? We now understand that someone can be harassing me but in this new law what if I do not know about it until I do know about it? When is the date of the criminal offence? Is it the date when the person posts about me on Twitter, Facebook, Snapchat or TikTok? Is it the day that I find out and it causes the harm, psychologically or otherwise, to me?

Deputy James Browne: I thank the Senators for their contributions. Section 7 refers to summary offences only or where someone is charged summarily. Section 10(1) of the Petty Sessions (Ireland) Act 1851 provides that summary prosecutions must be initiated within a time limit of six months. The time limits provided for in law for summary offences reflect the fact that an individual should not have a relatively minor offence that is summary in nature hanging over that person for a disproportionate period. Section 7 already extends the time limit for the bringing of a summary prosecution from six months to two years. I support this as I appreciate that there may be difficulties in investigating offences that may occur entirely online, as recognised by the Law Reform Commission. However, I am also mindful that this extension is also an exception to the normal rules relating to bringing prosecutions and should be treated as such. As I pointed out in the Dáil yesterday, this section only applies to summary offences under the Bill and not to indictable offences that attract higher penalties. There is no time limit for the prosecution of indictable offences in Ireland.

While I appreciate the intention behind the Senator’s proposals in amendments Nos. 19 to 21, inclusive, I do not believe it is appropriate to extend the time limit for the bringing of summary proceedings beyond the significant extension being provided for in the Bill already. Amendments Nos. 20 and 21 in particular could have the effect of extending the time limit for summary prosecutions to any point in the future that would mean it could be treated the same as an indictable offence. This is not desirable in practice and could be considered to interfere with the right to a fair trial guaranteed under the Constitution. As we know, summary offences are treated in the absence of a jury. We have to be careful about what we put in and treat as a summary offence. If we start blurring the lines between what is a summary offence and what can

come under an indictable offences, we are at risk of seeing the summary offence being struck down because it is not seen to be a fair procedure or the right to a fair trial guaranteed under the Constitution. That is the concern around it.

I wish to clarify as well that the relevant date is from the date of distribution. We should bear in mind that if there is redistribution or if someone reposts at any stage or posts on to another person, then every post is another offence. I wish to clarify that point.

Senator Lynn Ruane: I have nothing to add. I will withdraw the amendment.

Amendment, by leave, withdrawn.

Amendments Nos. 20 and 21 not moved.

Section 7 agreed to.

SECTION 8

Question proposed: “That section 8 stand part of the Bill.”

Senator Barry Ward: I am unsure whether I understand the reference to the Children Act. I wish to make a drafting point in respect of section 8. It begins “notwithstanding section 52(4) of the Children Act 2001”. Section 52 was substituted for a new section 52 by section 129 of the Criminal Justice Act 2006. The reason I make the point is that one of the difficulties I have with the way we are passing legislation is that it is absolutely un navigable for people who are not acquainted with the system. A person who googles section 52(4) of the Children Act 2001 will get section 52 as it was passed in 2001, which does not contain a subsection (4). They would need to know what they are doing to find out that five years later the 2006 Act introduced a new one. That is perhaps by the way. However, I would have thought that there was room in this section to explain either that there was a new section or that section 52(4) was substituted by section 129 of the 2006 Act, as it might be helpful to people.

My main point is that section 52(4) provides that children under the age 14 cannot be prosecuted without the consent of the Director of Public Prosecutions. This section raises that age for the purposes of the offences created by the Bill to 17. I do not know why we have inserted “Notwithstanding section 52(4) of the Children Act 2001”. What is the benefit does the addition of “Notwithstanding section 52(4) of the Children Act 2001” bring to the section? If those words were taken out, would the section not act in the same way or have I missed the import of what is involved?

Deputy James Browne: I understand where Senator Ward is coming from. The Office of the Parliamentary Counsel recommended using this wording to ensure there was absolutely no conflict between that Act and this one, because of the difference in the ages between the two sections.

Question put and agreed.

NEW SECTION

Senator Lynn Ruane: I move amendment No. 22:

In page 6, between lines 28 and 29, to insert the following:

“Civil restraint orders

9. (1) A Court may, upon an application to it in that behalf, make an order, having regard to the evidence presented and if the court is satisfied that it is in the interests of justices to do, that a person (in this section referred to as the respondent) shall not, for such period as the court may specify—

(a) communicate by any means of communication with or about a named person, or

(b) that the respondent shall not approach, within such distance as the court shall specify, the place of residence or employment of a named person.

(2) If the court accepts that in the interests of the safety and welfare of the applicant and the applicant’s constitutional right to privacy and peaceful enjoyment of their dwelling requires that the address of the applicant be withheld from the court order against the accused, the court may so order that the address of the applicant shall be that of the District Court Clerk.

(3) An emergency civil restraint order may be made *ex parte* where having regard to the circumstances of the particular case, the court considers it necessary or expedient to do so in the interests of justice.

(4) Where an application for an emergency civil restraint order is made *ex parte*, the application shall be grounded on an affidavit or information sworn by the applicant.

(5) If an emergency civil restraint order is made *ex parte*—

(a) a note of evidence given by the applicant shall be prepared forthwith—

(i) by the judge,

(ii) by the applicant or the applicant’s solicitor and approved by the judge, or

(iii) as otherwise directed by the judge,

and

(b) a copy of the emergency civil restraint order, affidavit or information sworn under *subsection (4)* and note of evidence shall be served on the respondent as soon as practicable.

(6) A person who fails to comply with the terms of an order under *subsection (1)* is guilty of an offence and is liable—

(a) on summary conviction to a class A fine or to imprisonment for a term not exceeding six months or to both, or

(b) on conviction on indictment to a fine or to imprisonment for a term not exceeding two years or to both.”.

The new section proposed in this amendment would reinstate the section allowing applications for civil restraint in respect of perpetrators. This section was deleted in the Dáil and is crucial in the suite of measures needed to combat these kinds of crimes. I have also made a number of changes to the section originally contained in Deputy Howlin’s Bill, including the

opportunity for emergency *ex parte* orders when needed. I recognise that the Minister of State plans to introduce additional justice legislation on the issue in the new year, which is why the section was removed from the Bill. Therefore, I would appreciate some information on the status of that legislation. Have the heads been drafted? Has it gone to Cabinet? Is it largely identical to Deputy Howlin's section or is the Department making changes? Most crucially, will the Minister of State give a commitment on when he intends to introduce the Bill to the Oireachtas? As a member of the Oireachtas Joint Committee on Justice, I assure him that he will have our full support in the speedy progression of that Bill. I would appreciate as much detail on that Bill as he can provide today.

Senator Regina Doherty: I believe all Members have been contacted by Safe Ireland, which expressed disappointment that the section was removed yesterday. This year has been unprecedented in so many ways, but particularly for the victims of domestic violence. The Garda, Safe Ireland and other agencies have done a sterling job, as has the Government in the context of tweaking schemes to ensure that we try to look after people. The Department of Justice has also had ongoing campaigns. We have stepped up to try to ensure that not only are the people who are presenting minded but also that we make people aware of the societal issue and particularly the growth in the issue this year.

It is weird that we would be given the opportunity to fix a glaring problem and that we are not taking it. What are the Department's plans for the new legislation? When will we see it? When will pre-legislative scrutiny take place? Why has this opportunity been missed?

Senator Barry Ward: I agree with what the other Senators said. I spoke at length with Deputy Howlin after one of the recent meetings of the Joint Committee on Justice about this matter. I understand that the Department believes that civil and criminal remedies should not be mixed. I do not agree with that. There are many statutes in Ireland that have both criminal offences and civil aspects to them. I agree with Senators Ruane and Doherty that this is a missed opportunity.

These civil orders are much more accessible to many people and do not involve the rigamarole, the proofs and the hoops through which the Garda and the prosecution need to jump to establish criminal convictions. Even as interim measures, these are as important an aspect of the Bill as the criminal offences it creates. If we truly want to pass legislation to address this behaviour and deal with the people who are behaving in this way, this is a tool that should not be denied to the victims of these crimes.

I agree with what Senator Doherty said about Safe Ireland. I suspect it has contacted all Senators. Other organisations mentioned in today's debate have identified that is the case. It is regrettable that what is an administrative decision rather than a justice-based decision has been made that his should not be included in the Bill. I agree with Senator Ruane that if there is to be new legislation, let us bring it forward quickly. We will facilitate it in whatever way we can. Removing these restraints represents a missed opportunity.

Deputy James Browne: I appreciate and understand the Senators' concern on the issue. I want to see civil restraint orders happen. Section 13 of the Bill as initiated provided for civil restraint orders. On Report Stage in the Dáil, it was agreed to delete the civil restraint orders provisions from the Bill. I understand that the Minister, Deputy McEntee, and the sponsor of the Bill, Deputy Howlin, had agreed that they would support the deletion at this time. Amendment No. 22 now seeks to introduce such provisions. The Minister gave a commitment to ex-

amine the issue in further detail in the context of another Bill that will be progressed in 2021. Orders of this nature are complex. I understand there are issues with the amendment, including, for example, not specifying the categories of persons who could apply for such an order and within what parameters. The Minister will seek to introduce orders of this nature in another legislative vehicle, following further consideration and consultation with relevant stakeholders. I therefore ask the Senators not to press the amendment.

In the new year, the Minister intends to introduce a miscellaneous provisions criminal procedures Bill. I am also working on introducing a civil procedures (miscellaneous provisions) Bill. I hope these issues can be addressed in that legislation. I also want to introduce amendments needed in section 117 of the Succession Act and more importantly section 120 of the Succession Act to address the issue of benefit under joint tenancy where one person murders their partner. Several important civil amendments are needed. I am working with the Minister to introduce the Bill to which I refer in the new year. I hope these two Bills will tackle the many important issues that do not need to be dealt with by means of stand-alone legislation but that need to be addressed as quickly as possible.

Senator Lynn Ruane: My main questions were on the timeline. The Minister of State has suggested that it has not begun but that there will be a consultation process. Does that apply to both Bills he mentioned? Is there a timeline for the consultation? For example, it is hoped to have it in the first quarter of the new year?

Deputy James Browne: I cannot give a specific timeline now. However, when we come back in January, I expect to be able to give a more definitive timeline on both Bills.

Amendment, by leave, withdrawn.

SECTION 9

Question proposed: "That section 9 stand part of the Bill."

Senator Barry Ward: Section 9 amends the Schedule to the Bail Act to list the offences under this Bill as being serious offences for the purposes of section 2. Sometimes there is a political rush to suggest that people should not get bail. I am aware of Private Members' Bills that have come before the Houses providing that on the third strike people should not be allowed to get bail, which to my view is patently unconstitutional. As Members will know, section 2 of the Bill provides that bail can be refused solely on the basis that there is an apprehensible risk that the person will commit another offence while on bail. It was approved by the people in a referendum in 1996. There is a coterie of allegations relating to certain offences to which that specifically applies in a very important way. The kinds of harassment, bullying and abuse of offences contained in the Bill are in that ballpark.

It is very important that the persons who are victims or alleged victims of the offences described earlier in the Bill would be able to avail of the option to bring evidence before the court to suggest that the person is likely to commit an offence. In order to do that or to rely on that, it is necessary to make the offences in this Bill scheduled offences under section 2 of the Bail Act. This section introduces a very important provision in the protection of persons who are the victims of these offences.

Question put and agreed to.

SECTION 10

An Cathaoirleach: Amendments Nos. 23 to 25, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 23:

In page 7, line 2, after “her” to insert “and the deletion of “persistently” “.

These amendments all relate to proposed changes to the harassment offence contained in section 10 of the Non-Fatal Offences Against the Person Act 1997. I am delighted the Minister of State is making these changes. I have had my concerns about the operation of that section and the harassment offence for some time. However, I am concerned at the relatively limited scope of the changes the Minister is proposing. I would take the view if we are reviewing that section and making changes, why not do as comprehensive a job as possible. This is the intent of these amendments. Amendment No. 23 would delete the word “persistently” as a qualifier on the harassment offence. Amendment No. 24 would delete the word “seriously” as a qualifier on the offence. Finally, amendment No. 25 would include additional factors in determining sentence length.

I appreciate the Minister of State may be of the view that this Bill cannot contain a specific harassment offence as there are already statutory provisions in this area. I would therefore urge him to ensure that the 1997 Act is fit for purpose in this regard.

Deputy James Browne: I thank the Senator for bringing forward these amendments. Amendments Nos. 23 to 25, inclusive, all refer to the amendment to section 10 of the Non-Fatal Offences Against the Person Act 1997. My officials have considered this issue in detail and had extensive consultations with stakeholders in the criminal justice system. There was broad support for the existing harassment offence as one that works and I would caution against changing it too much.

Amendment No. 23 appears to be technically flawed insofar as it is adding text to the phrase that is to be deleted. That being said, I think I understand what the Senators are aiming to do. I would disagree with removing the persistence element of the harassment offence. Taking the persistence element out of the harassment offence would possibly set the bar too low in terms of a conviction and it would be a significantly lesser offence.

Also, I note the Law Reform Commission had supported the retention of the concept of persistence because the conduct criminalised would otherwise be lawful. It only becomes harassment where there is persistence. I would also note that we are introducing three separate offences to deal with one-off harmful behaviour in this Bill.

Amendment No. 24 proposes to change the existing offence where it requires seriously interfering with a person’s peace or privacy and to replace it with merely interfering with a person’s peace or privacy. This would also represent a lessening of the offence of harassment. Similar to amendment No. 23, it may lower the bar in terms of securing a conviction but it also makes it a lesser offence. In accordance with the harm principle, only the most serious behaviours should be the subject of criminal law. For that reason, I cannot support amendment No. 24.

The section 10 harassment offence is regarded by many stakeholders in the criminal justice

system as an effective offence that works. The 2016 Law Reform Commission, LRC, report listed many examples of cases that resulted in convictions under section 10. Rather than dilute it, the Government is proposing to bolster it with an increased maximum sentence of ten years and by extending it to include communications about another person.

Amendment No. 25 is also technically flawed insofar as it is proposing to insert a new subsection (5) into section 10 of the Non-Fatal Offences Against the Person Act 1997. Section 10 already has a subsection (5). Leaving that aside, I am also not entirely convinced that these two elements represent an aggravating factor for the purpose of sentencing. Looking at the first element on its own, making use of personal information about the other person that would ordinarily be known only to the other person or members of the family, or friends, of the other person, it would strike me that this could be a regular feature in many harassment cases. Accordingly, I am not convinced that this should be an aggravating factor for sentencing purposes. Senators may be aware that there is already an aggravating factor that is relevant to the existing harassment offence where the perpetrator is the spouse or civil partner of the victim or is or was in an intimate relationship with the other person. This was provided for in section 40 of the Domestic Violence Act 2018 and it is difficult to see how amendment No. 25 would improve on the current aggravating factor. Consequently, I cannot support the amendment.

Senator Lynn Ruane: On how one defines what “seriously” means, I understand having to qualify particular things in terms of meeting a certain requirement for a certain offence. I do not necessarily think that removing the word “seriously” makes the offence a lesser offence. I am saying the word “seriously” is so arbitrary that not many people understand within the justice system what serious is. My problem is not that it lessens the offence whatsoever. It is that there is a real problem understanding and interpreting what types of abuse are serious and what are not, and it is too arbitrary. On making sure somebody is not in court for a lesser offence because we change wording, there has to be some other way to pick up on all those other types of abuse that some people within the justice system, whether it be within their interpretation of the law or within the judgments, believe are not serious and do not meet a particular requirement when in most cases for many women who try to use the harassment law it is very serious but for some reason it does not meet the Director of Public Prosecution’s, DPP’s, definition of “seriously”. There is some disconnect between what people experience and the qualifiers that are set out for people to be able to take successful cases in the courts.

Deputy James Browne: I suppose it will always be a matter for the courts to interpret, and in judicial discretion to assess, whether the event is or is not serious. However, as I say, the concern is that if one does not have that word there, the bar would be set extremely low and could bring in many issues as a criminal offence that it may not be intended to do so.

Senator Regina Doherty: Does one know then, if it is up to the court to interpret whether the offence against me is serious, whether it might be a different level of seriousness as for Senator Ruane? Is there a definition of serious or is it that each case is taken on its merits and that the people who happen to receive the information on a Monday determine what serious is on a Monday while different sets of people, or judges, might interpret it differently in a different case on a Thursday?

Deputy James Browne: To be clear, it is not the behaviour of the perpetrator that is considered serious; it is the effect on the victim. It is if it seriously interferes with the victim’s peace or privacy. It is from the perspective of the victim as to whether or not it could be considered “seriously”. As I read it, the victim’s voice is what is relevant in determining whether some-

thing has been serious or not.

Senator Mary Seery Kearney: On that, my difficulty would be that the more resilient one is, the more one is liable to have to tolerate interference and harassment. Therefore, we have this sliding scale that if one is resilient then it has not had a serious effect. That is a little arbitrary and unfair.

Deputy James Browne: There is also a reasonable person-test then applied to that. One could have somebody who might think something is serious that simply is not. On the other hand, the Senator is correct that just because that person is a little more robust should not mean that somebody can get away with something more there as well. The courts have to take into account what they consider to be a reasonable person. There is much case law around that as well. It can be, I suppose, if one is simply taking the word on its own, a question of what it means but there is much case law around that as well once one applies the reasonable person test as well. All of those have to be taken into consideration.

Senator Lynn Ruane: The problem happens with “persistently”. Something that is deemed not persistent, in terms of it happening daily and weekly, undermines seriousness because it seems that something has to be persistent to be serious. Leaving the word “serious” and looking at the word “persistent”, persistence could be even setting the bar too high in terms of people thinking that it has to be daily and nightly, and not concentrated on different times of the year. If it is not deemed persistent, it is not deemed serious. If, for instance, only three events happen every year, they are so serious on the person’s well-being but they are not seen as persistent because it has only happened three times a year. Already, we know that if something is not happening regularly or every day, its seriousness is diluted somehow. That does not seem to make sense.

Deputy James Browne: My understanding is that the courts have interpreted persistent as being effectively two or more events. It should not require daily or weekly occurrence, or anything like that. The Senator is certainly correct that harassment can be seasonal with the perpetrator acting in waves, and where one is dealing with it on and off. As I understand it, however, the courts have interpreted “persistence” as being on two or more occasions. That should be covered under that section.

Amendment, by leave, withdrawn.

Amendments Nos. 24 and 25 not moved.

Question proposed: “That section 10 stand part of the Bill.”

Senator Barry Ward: With regard to this section, I welcome what is being proposed to broaden the scope of section 10 of the Non-Fatal Offences Against the Person Act 1997. I am fully in agreement with what the Minister of State is proposing to do in section 10(a) of this Bill with regard to subsection (1) of the Non-Fatal Offences Against the Person Act, which essentially creates the offence of harassment. Section 10(3) of the Non-Fatal Offences Against the Person Act 1997 creates a power for the court to prohibit a convicted person from communicating with the victim. That is the subject of an amendment to section 10(b) of this Bill. Currently, section 10(3) of the 1997 Act states, and I am paraphrasing, that where a person is convicted of harassment, the court may, in addition to or as an alternative to any other penalty, order that the person shall not communicate by any means with the other person, being the victim of the offence of harassment. Section 10(b) of this Bill proposes to change section 10(3) of the 1997

Act so that it reads, and again I am paraphrasing, that where a person is guilty of the offence of harassment, the court may, in addition to or as an alternative to any other penalty, order that the person shall not communicate by any means with or about the other person. It strikes me that if the court were to make an order that the person may not by any means communicate about another person, the mere utterance of the latter's name or, perhaps more cogently, if the former were asked about the offence or asked what happened and then described what happened, that would constitute a communication about the latter for which the former would be liable under section 10(c) of this Bill to a sentence of up to ten years. That applies more to the offence of harassment but the person will be liable to a criminal conviction, potentially of up to ten years, because the penalty provisions in section 10 currently apply to any offence under that section, which would include a breach of the court's order in respect of not communicating with the other person but, under this proposed change, about the other person.

If the Minister of State sticks by the provisions of section 10(b), he is saying that where a person convicted of harassment under the 1997 Act who is also the subject of an order under section 10(3) merely utters the name of the person he or she harassed or describes the circumstances, even without uttering that person's name, and thereby communicates about that person, the perpetrator - he or she is a convicted perpetrator at that stage - commits a further offence for which he or she attracts a liability of up to ten years' imprisonment. I wonder if that is disproportionate. I agree with the expansion of the definition of harassment in subsection (1), and I can see that essentially the same thing is done in section 10(b), but the latter applies to the order the court might make. I am concerned that it takes that section 10(3) offence in the 1997 Act out of the realms of what might reasonably be considered a criminal offence that attracts a liability of ten years in prison.

Deputy James Browne: With regard to these conditions, the section extends it the definition to include "about", which can be quite a serious extension. Judicial discretion does not have to apply in this matter. If, however, judges apply discretion, they can attach conditions. If that is the case, I expect that counsel for the person who has been convicted will apply for conditions to be attached. If there were specific circumstances that required that to be done, counsel could appeal to the judge to apply his or her discretion to the effect that it would now apply in certain circumstances. It might be somewhat unwieldy but the interest here is to protect the victims and therefore it is a worthy measure.

Question put and agreed to.

Amendment No. 26 not moved.

Section 11 agreed to.

SECTION 12

Senator Lynn Ruane: I move amendment No. 27:

In page 7, to delete lines 21 and 22 and substitute the following:

"(1) The Minister shall, not later than three years after the commencement of this Act, carry out a review of the operation of this Act.

(2) Without prejudice to the generality of the foregoing, the Minister, as part of the review, shall:

(a) concurrently review all enactments relating to harassment and related offences,

(b) the extent to which such enactments comprehensively address the relevant issues,

(c) the extent to which the State is complying with relevant obligations under the Council of Europe Convention on Preventing and Combatting Violence against Women and Domestic Violence, and

(d) whether further legislation is required to address issues arising under *paragraphs (b) and (c)*.

(3) The Minister shall, not later than 12 months after the commencement of the review under *subsection (1)*, make a report to each House of the Oireachtas on the findings of that review.”.

I welcome that this Bill, when enacted, will be reviewed. I am glad an amendment from Deputy Cairns was accepted on Committee Stage. My amendment seeks to put more detail on the shape of that review. It would require the Minister to ensure that all of our laws relating to harassment would be reviewed and strengthening legislative amendments would be considered. Concerns have also been raised with me that the significant changes made to this Bill mean that, unfortunately, it may not fully comply with the Istanbul Convention on combating violence against women. This review would also ensure that such compliance would be checked and determined. This is an important direction to be giving in the review process. I would appreciate if the Minister of State could confirm that it is his intention to address all these issues in the review of the Act.

Senator Regina Doherty: To wait three years before a review would be done is far too long.

Deputy James Browne: Senators will be aware that the requirement to review the Act within three years of its commencement, in section 12 of the Bill, was introduced by way of an amendment on Committee Stage in the Dáil. While there is already a requirement under Standing Orders to carry out a post-enactment report in respect of all new legislation within one year from the date of its passing, I appreciate that this is not always enough time to gather clear data on the impact of the new legislation. It was agreed, therefore, that the Bill would be reviewed within three years. It is not necessary or desirable that such a review should encompass a review of all legislation relating to harassment or related offences or the requirements of the Istanbul Convention. The requirement to review the Bill is sufficient and will naturally encompass other issues surrounding the Bill.

My Department engages in regular consultation with other justice stakeholders and interested groups regarding the operation of the criminal law and where gaps or issues are identified, they are reviewed and addressed as appropriate. I am satisfied that, for these reasons, the amendment is not necessary. Unfortunately, I cannot support it.

Amendment, by leave, withdrawn.

Section 12 agreed to.

Section 13 agreed to.

18 December 2020

Title agreed to.

Bill reported without amendment.

An Cathaoirleach: When is it proposed to take the next Stage?

Senator Regina Doherty: Now.

An Cathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

An Cathaoirleach: When is it proposed to take the next Stage?

Senator Regina Doherty: Now.

An Cathaoirleach: Is that agreed? Agreed.

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

An Cathaoirleach: When is it proposed to sit again?

Senator Regina Doherty: At 2.30 p.m. on Tuesday, 19 January 2021 in the Seanad Chamber.

The Seanad adjourned at 5.50 p.m. until 2.30 p.m. on Tuesday, 19 January 2021.