



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Máirt, 18 Bealtaine 2021

Tuesday, 18 May 2021

Chuaigh an Cathaoirleach i gceannas ar 9 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: I have received notice from Senator Rónán Mullen that, on the motion for the Commencement of the House today, he proposes to raise the following matter:

The need for the Minister for Foreign Affairs to make a statement on the authentication and apostilling of documents by his Department.

I have also received notice from Senator Ivana Bacik of the following matter:

The need for the Minister for Defence to make a statement on the use of Defence Forces playing fields by local sports clubs in the Dublin 6 and Dublin 6W areas.

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

The need for the Minister for Housing, Local Government and Heritage to review the commercial rates model of local government funding given the increased growth of e-commerce and online retail.

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

The need for the Minister for the Environment, Climate and Communications to outline the Government's position ahead of the upcoming negotiations on the modernisation of the Energy Charter Treaty.

I have also received notice from Senator Emer Currie of the following matter:

The need for the Minister for Education to provide an update on the status of negotiations for the purchase of the playing field beside St. Patrick's National School, Diswellstown, Dublin 15.

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

The need for the Minister for Transport to provide an update on the backlog of people awaiting driving tests in County Tipperary.

I have also received notice from Senator Sharon Keogan of the following matter:

The need for the Minister for Health to make a statement on the roll-out of a minor ailment scheme through the national network of pharmacies.

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

The need for the Minister for Housing, Local Government and Heritage to make a statement on whether Irish Water has sufficient resources to upgrade ageing pipe networks to ensure continuity of supply in communities nationwide and if he will make a statement on the matter.

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

The need for the Minister for Health make a statement on the withdrawal of dentists from the dental treatment services scheme in recent months.

Of the matters raised by the Senators suitable for discussion, I have selected those raised by Senators Mullen, Bacik, Byrne, Boylan, Currie and Ahearn and they will be taken now. I regret that I had to rule out of order the matter raised by Senator Dooley as the Minister has no official responsibility on the matter. The other Senators can give notice on another day of the matters which they have raised.

Nithe i dtosach suíonna - Commencement Matters

Departmental Records

An Cathaoirleach: I thank the Minister of State at the Department of Foreign Affairs, Deputy Colm Brophy, for coming into the House to answer the question put forward by Senator Rónán Mullen. The Senator has four minutes.

Senator Rónán Mullen: Go raibh míle maith agat, a Chathaoirligh, agus cuirim fáilte roimh an Aire Stáit.

Official documents that are produced by the authorities of one country, and which are intended to be submitted to the authorities of another, would ordinarily need to be certified as authentic by the government of the originating country in order to be accepted abroad, with further inquiries then taking place after authenticity in the receiving country. This has been simplified in a number of ways - for example, by the Hague Convention abolishing the requirement of legalisation for foreign public documents of 1961 or the Apostille Convention, which put procedures in place for an apostille stamp to be affixed to documents. That means that in instances where both countries are party to that convention, the second country will accept the document as being authentic without any further inquiries being made. This is an international certification of sorts that is comparable with notarisation in domestic law. A notary certifies

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that a document is authentic or that the signatories on it are authentic, and this is accepted by anyone receiving it. The apostille operates the same principle but on an international level. Matters were simplified further in 2019 by the EU regulation on public documents. That has meant that certain public documents that are produced by the authority of a member state and being presented to another member state will no longer require any legalisation or an apostille.

Both Irish citizens and companies still require this for some public documents for use within the EU as well as a range of documents used outside the EU. Authentication is most often required for foreign adoptions where significant amounts of documentation are required to be sent abroad but also for immigration and citizenship matters, for certain business transactions, share sales and so on. Covid-19 has meant that, instead of being processed very quickly by the Department of Foreign Affairs, documents are now taking a month or more to be processed. We are talking here about the consularisation of documents by the authentication and apostille public offices of the Department of Foreign Affairs. These offices in Dublin and Cork have been closed to the public since last December and they have accepted documents by post only. This has led, as I have said, to delays of four weeks or more in the processing of documents. Ordinarily, the public offices process documents on the same day they are submitted. The lawyers in the House will be painfully familiar with this area. These documents are usually processed by law clerks in solicitors' offices, who are diligent and competent people who know their stuff. During the summer holidays, however, it has often been delegated to apprentice solicitors, many of whom will have spent quite a few summer afternoons queuing in the Department of Foreign Affairs' public office waiting for documents to be authenticated. I hope that by raising this matter, those who might be aware of this are not caused an outbreak of post-traumatic stress disorder, PTSD.

It is a matter which affects businesses and, therefore, affects people. My question to the Minister of State, therefore, is why this delay is happening. How can a month-long backlog have built up? How can a same-day turnaround in person turn into a four-week turnaround when this is being operated by post? Have some of the staff operating the back office of the consularisation section been redeployed during Covid-19? If not, surely the process should not take longer than a few days when postage is taken into account. It is a simple question for the Minister of State. I also ask when the public office will reopen.

Minister of State at the Department of Foreign Affairs (Deputy Colm Brophy): I thank Senator Mullen for raising this matter. The Department's authentication and apostille unit is responsible for the authentication of documents to be used abroad, as the Senator stated in his contribution. The unit provides the essential consular services to Irish citizens and businesses by verifying a document's origin and by confirming that a signature and seal or stamp appearing on it are genuine.

The service, like many, has faced significant challenges in its operation during the Covid-19 pandemic. In line with public health restrictions, public-facing offices were closed in Dublin and Cork in March 2020. Despite this, the authentication and apostille service was quickly identified as essential, and I can confirm that the Department has continued providing this service throughout the Covid-19 pandemic. Staff in both Dublin and Cork have continued to attend and work in the office, throughout all restriction levels, to access the applications and operate specialist printing equipment.

The Covid-19 restrictions have, of course, presented significant challenges to the functioning and delivery of the service. The closure of public offices due to public health restrictions

necessitated operational changes to the service by moving it from a public-facing same-day turnaround service to a registered postal-only service. This has led to an inevitable increase in waiting times and a disruption to well-established work practices.

Furthermore, the duration of level 5 restrictions has required the rotation and division of staff to separate locations in order to respect public health and safety requirements, protect staff and ensure the continuity of the business. The level of applications has also remained extremely high throughout the Covid-19 pandemic and there is currently a backlog.

The Department is aware of the longer than usual turnaround times, and strenuous efforts have been invested in managing and minimising these. These efforts have included the setting up of a postal and registry system in conjunction with An Post, the purchasing of new specialist equipment and the sourcing of additional office space to accommodate staff. Further measures have also been taken to address turnaround times and additional staffing has been assigned.

Despite the numerous challenges, the unit processed more than 46,000 applications last year and, to date, has processed 18,477 applications this year. Staff have also been as responsive as possible in accommodating the many urgent requests. I wish to acknowledge the professionalism of the staff in Dublin and Cork in particular, who have continued to operate the service throughout all the levels of the pandemic with great patience and dedication.

I also wish to acknowledge the continuing dialogue and good working relationship with the stakeholders and the public on this matter. We really do appreciate their patience. I assure the Senator that work is ongoing to address the issue and to reduce waiting times as quickly as possible.

Senator Rónán Mullen: I thank the Minister of State for coming in but, unfortunately, the response which has been prepared for him is rather lame. Why is it inevitable that a switchover from an in-person, public-facing system to a registered postal-only service would cause any delay at all? One could argue it may speed up the process in certain circumstances. I have been given no good reason for the delay, apart from the claim that the necessary spacing out of people may contribute to a delay. Surely something such as that could have been overcome relatively quickly.

Certainly, an argument has not been made that staff have been redeployed to deal with other aspects of the Covid-19 emergency. Why do the changes consequent on Covid-19 always seem to lead to delays? The delays in this case have not been justified.

On another matter which relates to the Department of Foreign Affairs, I do not understand why such an enormous backlog has built up in terms of passports. There is a backlog of 92,000 applications at present. That is approximately 9% of the number issued in a normal year. By any yardstick, that is enormous. The Minister, Deputy Coveney, stated it could be cleared in eight to ten weeks, but that is difficult to believe, given the passport application system has been under immense pressure for many years now.

I thank the Minister of State for coming in but I am not satisfied with the answer. I understand that staff have to socially distance but in the case of passports, it takes just one person to man the machines which produce passports. Surely, in the case of the apostille system, it would have been possible to get over the initial adjustments which needed to be made for safety purposes and to get the system working fast.

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A situation in which one has gone from an in-person service to a delay of four weeks is not acceptable. It needs to change quickly.

Deputy Colm Brophy: Unfortunately, Senator Mullen expresses an alarming lack of knowledge on what it takes to produce a passport. There is not just a single machine, as I hope the Senator is well aware. In a number of instances, there is a process of authentication of documents and all the necessary things. These are essential protections to ensure our passports, which are highly valued-----

Senator Rónán Mullen: That is just bluster.

Deputy Colm Brophy: -----as passports are protected and not issued in error. Senator Mullen's figures on the Passport Office are, unfortunately, also out of date, as he may be aware from previous replies.

Senator Rónán Mullen: It is a pity the Minister of State did not come in with the information I wanted, instead of supplying information I had not requested.

Deputy Colm Brophy: I beg Senator Mullen's pardon. First, he raised something which was not in his matter to which I am responding, because his lack of knowledge and information on it was regrettable.

Senator Rónán Mullen: The Minister of State is reading out a prepared speech instead of answering the question.

Deputy Colm Brophy: The functioning of the Passport Office has significantly improved, as Senator Mullen might have been aware if he had attended the other times I talked about it, and we are clearing that backlog.

As for the matter the Senator did raise today, the staff are working diligently to carry out their work. There is a delay because the service required a certain amount of space and way of delivering the service, pre-Covid-19. I am sure Senator Mullen would not want to put staff's health and safety at risk by continuing in the manner in which we were doing this pre-Covid-19.

(Interruptions).

An Cathaoirleach: The Minister of State, without interruption.

Deputy Colm Brophy: We had to reallocate the work practices, as to how we deliver the service during Covid-19, but we will clear the backlog.

By the way, we process more than 290,000 passports in a normal year and we are well within our capacity limits to deliver the passports.

An Cathaoirleach: I thank the Minister of State and apologise for the repeated interruptions by the Senator.

Sports Facilities

Senator Ivana Bacik: I welcome the Minister of State to the House. I have put down this

matter to ask the Minister for Defence if he will make a statement on the use of Defence Forces playing fields in the Dublin 6 and Dublin 6W areas by local sports clubs.

This relates to an ongoing issue which has been the subject of some correspondence between the Minister and me and has been the subject of a motion before Dublin City Council. It relates to the serious lack of playing fields and sports amenities for local children in the Rathmines, Ranelagh and Harold's Cross areas. Councillor Mary Freehill, our local Labour Party councillor, and I have been working for some time to try to secure access to playing fields for local children and their sports clubs because of this serious shortage.

We have requested the Minister for Defence to make available greater access in particular to the playing fields at Cathal Brugha Barracks. These barracks have a playing field on the southern end, which has been well established as a playing field for many decades. Local sports clubs currently have access, notably Ranelagh Gaels and Portobello GAA. However, the Ranelagh Gaels club, in particular, is growing fast and has large numbers of children. The access is not sufficient.

We are glad to see the significant increase in demand for playing fields in recent years. It is partly due to a welcome rise in the participation of young girls in sport. Ranelagh Gaels projects it will have equal participation between girls and boys by 2023. However, because there are no other publicly owned playing fields in the Rathmines area, the lack of access to facilities is hampering the growth of the clubs and the development of children's sports. I wrote to the Minister for Defence, Deputy Coveney, on this matter in April. My colleague, Councillor Mary Freehill, put down a motion at Dublin City Council on 12 April to transfer the pitch to council ownership in order to rezone it as Z9 to preserve, provide and improve recreational amenities, open space and green networks in the area. The transfer would enable the council to invest in the pitch and develop the facilities there as an important public amenity. Unfortunately, the Minister has responded by saying that the fields are used as training fields by the Defence Forces and he is not willing to accede to the request that the aforementioned motion be supported.

I am raising this as a Commencement matter to ask the Minister to commit to providing greater access to the fields for the local clubs. Opening up the grounds could serve local primary and secondary schools as well, including the new Educate Together schools campus on Harold's Cross Road, near the old greyhound stadium site. Those schools, both primary and secondary, are looking for access to playing fields. All children and young people in the area should be enabled, facilitated and encouraged to play sport in recognition of the essential role exercise plays in their development and well-being. We have all become very conscious over the last year or more of the enormous loss to children and young people not just of school and education through prolonged school closures but also of other development opportunities through the lack of availability of sports training and extracurricular activities.

According to the Government's own website, the Defence Forces property portfolio consists of approximately 70 sites, with lands comprising approximately 21,000 acres. Clearly, Cathal Brugha Barracks is a small part of that, but in relative terms in the area it comprises a large green space that is publicly owned and that should be made available, in an enhanced way, to local clubs. Those clubs really would benefit from the development of facilities there. I also speak here in my capacity as a parent. My own children have played sport there so I am well aware of what is there and I understand the importance of that green space to the local area. It could benefit from greater development and greater access to clubs and local people.

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Deputy Colm Brophy: I thank the Senator for raising this matter and for giving me the opportunity to respond on behalf of the Minister for Defence, Deputy Coveney.

Since the establishment of the Defence Forces, it has been a long-standing practice to allow sporting organisations and local community groups access to military lands. This policy reflects the importance to the Defence Forces of being front and centre within the communities in which their military installations are located. In 2019, in a pre-Covid context, in excess of 100 sporting organisations and community groups throughout the country were facilitated by having access to military property. This is a proud tradition which has served both the Defence Forces and generations within communities in good stead and I am happy to say that it is intended that this practice will continue into the future.

The Department of Defence receives numerous requests for the use of Defence Forces facilities throughout the country and always endeavours to process any application for use in a fair, equitable and community-centred fashion. In relation to the playing pitches at Cathal Brugha Barracks, the Department fully appreciates that the lack of facilities available to sporting groups in the Dublin 6 and Dublin 6W areas is a huge challenge and, as such, it authorises the use of these pitches to two GAA clubs in particular. Indeed, more than 40 hours of use every week is authorised to these clubs on the military training field. The question of how the clubs use their individual allocations is a matter for themselves, and the Senator will appreciate that it would not be appropriate to prioritise one club at the expense of another.

The military training field is actively used by the Defence Forces for induction, team sports and military training on a regular basis. In these circumstances, it is paramount that the Defence Forces maintains this training field in Cathal Brugha Barracks which provides an appropriate, safe and secure location for military training. However, the Senator can be assured that the Defence Forces will continue to facilitate use of the facility, outside of military exigencies, by a number of local sporting organisations and schools in the Dublin 6 and Dublin 6W community. Again, I thank the Senator for raising the matter.

Senator Ivana Bacik: I thank the Minister of State for the response and for the stated commitment that the Defence Forces will continue to play a role in the community by facilitating sporting organisations and schools to use their facility. I recognise, as does everyone, the enormous contribution of the Defence Forces to the community and should have stated that at the outset. It is very much appreciated that the Defence Forces training pitches and playing fields are made available for use by local communities, not just in Dublin but across the country. That is very much recognised and appreciated and I certainly did not mean to suggest otherwise. However, I hope the Minister of State will relay to the Minister for Defence, Deputy Coveney, the serious wish of the local community that there would be continued engagement with the Defence Forces on enhanced use of the fields at Cathal Brugha Barracks in Rathmines by local clubs and schools beyond the usage arrangements that are currently in place. I look forward to continued engagement with the Minister and the Department on this matter and I know that Councillor Freehill, other local councillors and local clubs look forward to that engagement too.

Deputy Colm Brophy: I thank the Senator for her interest in the matter. I assure her that it is not intended to dispose of any aspect of the military installation and that all of those availing of the facilities at Cathal Brugha Barracks will continue to be able to do so.

Commercial Rates

Senator Malcolm Byrne: I thank the Minister of State, Deputy Noonan, for taking this Commencement matter. The model of commercial rates that we operate in this country can be traced back to legislation dating from 1826, the time of King George IV. At that time, income tax was not even in place. Income tax had been introduced as a temporary measure during the Napoleonic Wars but it did not come back into Britain and Ireland in any real way until the 1840s. Essentially the model that was introduced in Ireland in the 1820s and 1830s as a way of funding local government has not really changed. We still operate the same commercial rates model under which local government is funded based on the size of the shop floor. It is calculated in two ways and the only way that can be changed is when the Valuation Office carries out a revaluation, which happens periodically, or the local authority decides to change the multiplier.

That system was fine in the 1800s but we are in a very different era now. We have moved to a situation where e-commerce now accounts for 50% of all card spending in this country. The pandemic has accelerated the use of credit and debit cards for transactions. What I am asking for here is a level playing field. If we want to ensure that our main street and high street shops, which are also supporting local community activities, survive and if we want to continue to support that retail experience, we must develop a fairer system of funding local government. It is not fair, for instance, that bookshops, of which there are approximately 230 all over the country, are paying commercial rates to their local authority while the largest bookseller in Ireland, Amazon, does not pay commercial rates and will not do so until it opens a warehouse here. This is a question of ensuring a level playing field.

Commercial rates are an important element of funding for local government. Approximately €1 in every €3 contributed towards local government comes from commercial rates, exceeding €1.5 billion every year. Regardless of what new system we put in place, we must continue to fund local government properly and I passionately believe in doing that. During the period of the pandemic the Government has been very good in providing business supports, particularly through commercial rates waivers. However, we are now in a new world where transactions are increasingly being carried out over phones and tablets. That is great in that it gives us a lot more freedom but if we are going to encourage urban renewal and town regeneration, in which the Minister of State is a passionate believer, then we must ensure that those businesses that are offering the main street and high street experience are competing on a level playing field. The model that we have at present does not allow for that. The booksellers are the classic example. They contribute to their communities by sponsoring local sports clubs, arts groups, Tidy Towns committees and so on but they are also subject to commercial rates. We do not see Amazon's logo emblazoned across the jerseys of local soccer or GAA teams.

As we emerge from this pandemic and place a greater emphasis on urban regeneration, I ask that we give a fair deal to those small retailers and consider proper local government funding and reform of the commercial rates model.

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Malcolm Noonan): Like the Senator, I strongly believe in strong and well-funded local government, having spent 16 years of my public life as a member of a local authority. The issue he has raised is important. As he will be aware, local authorities are legally obliged to levy rates on any property used for commercial purposes. Indeed, commercial rates are the single greatest source of income for local authorities, with that income supporting the provision of essential local services. When preparing their budgets for 2021, local authorities budgeted collection of €1.67 billion in rates from approximately 150,000 commercial and industrial properties. This equates to 29% of the overall projected revenue for 2021, although the figure varies

by local authority. The continuing impact of Covid-19 for all society and business may have a significant effect on these estimates.

In 2020, to support businesses and ratepayers and in recognition of the impacts of Covid-19, the Government funded the cost of a commercial rates waiver for nine months. This unprecedented measure offered support to businesses as well as financial certainty to local authorities and cost €730 million. The Government is currently funding a more targeted rates waiver, with modified criteria, for the first six months of 2021, with an expected cost of €320 million. It will equate to a total cost to the Exchequer of more than €1 billion.

The Local Government Rates and other Matters Act 2019, which modernises rates legislation and practice, was passed by the Oireachtas and enacted in July 2019. Plans to commence the legislation and introduce necessary regulations have been delayed due to the impact of the Covid crisis and work on the Government-funded rates waivers. The commencement of the provisions of the 2019 Act is an important element of our commitment in the programme for Government to examining ways to further streamline the commercial rates system post Covid-19.

A property-based charge such as commercial rates has a distinct advantage over sales-based taxes or any tax based on profits or incomes, as it is generally found to be easy to collect and difficult to evade. Rates are levied on any property used for commercial purposes, making no distinction as to whether that commercial activity is online. In that context, there is no intention to alter significantly the commercial rates model.

The trend of customer transition from bricks and mortar shops to online retail is acknowledged and is a matter for taxation policy consideration by my colleagues in the Department of Finance. I support the need to protect footfall on our streets and in towns and city centres. I acknowledge that it is vital to ensure that rates continue to contribute to a stable basis for funding local government and not least to the cost of services provided by local authorities such as public lighting, development control, parks and open spaces, all essential elements to create the environment in which communities can prosper.

I take on board the argument made by the Senator. The issue he raised relating to booksellers is important. My colleague, the Minister of State with responsibility for public procurement, is in the Chamber. Being able to provide contracts to local booksellers and suppliers for libraries and so on is an important part of it. Local authorities will have to give consideration to other mechanisms for raising revenue, such as setting up energy supply companies or getting involved in public banking, something we have been raising for years. Perhaps they could even levy out-of-town car parking to bring funding back into town centres. There is no doubt we have a significant challenge into the future but we can collectively address it. The Town Centres First policy will deliver significant impacts by providing a suite of options to support town centres and people returning to them. These are important elements to be added to the revenue and income streams for local government.

Senator Malcolm Byrne: I have no doubt as to the Minister of State's commitment on this issue but the shift is going to be very dramatic over the next decade. The pandemic has simply accelerated the speed at which we engage online. Travel agents, for example, are very much a minority, with more than 99% of travel transactions booked online. If we are to protect the retail experience, we cannot have a system of funding local government that is based simply on the size of the shop floor.

This has been a problem in rural areas. Large rural pubs, for instance, have been subjected to very high levels of commercial rates and that has threatened their viability. It is simply about levelling the playing field. If somebody is selling something, they should be contributing in the same way to our communities. I appreciate this is a broader taxation question but it is completely unfair that the bookseller on a main street or high street, who contributes directly to the local community, has to pay commercial rates, yet a large multinational does not have to pay for the same services.

Deputy Malcolm Noonan: The Senator has our commitment that we will bring forward the Local Government Rates and other Matters Act 2019, recognising the need for change. I reiterate that not all local authorities are as reliant on rates revenue as others. In Fingal, for instance, it accounts for 51%, whereas in a county such as Leitrim, it is about 16%, so there is considerable disparity. It is important that we examine alternative revenue-raising mechanisms for local government, be it public banking or a levy on out-of-town car parking, to channel funding back into town centres. It could also involve setting up energy supply companies to supply renewable power to developments and large users of electricity. There are other mechanisms whose potential in local government we need to unlock to provide it with sustainable and viable income streams over the coming years and beyond.

Energy Policy

Acting Chairperson (Senator Eugene Murphy): I welcome the Minister of State, Deputy Ossian Smyth.

Senator Lynn Boylan: Only this morning, the International Energy Agency, IEA, released a report calling for radical change if we are to reach net zero emissions and stay within the 1.5°C target of the Paris Agreement. The IEA stated, “If we want to reach net zero by 2050 we do not need any more investments in new oil, gas and coal projects”. If ever there was a clear signal that Ireland and the EU need to unshackle themselves from the Energy Charter Treaty, ECT, this is it.

The ECT, which was sneaked into Ireland without an Oireachtas debate, is an international treaty that gives investor protections to the energy sector, providing access to closed-door arbitration mechanisms for investors to sue states when they decide they do not like the policy changes those states are making because they might interfere with their profits or future profits. Investors are allowed to bypass domestic courts and sue EU member states for, in some cases, billions of euro in compensation. Compensation claims have been made against states for environmental rules and measures, including alleviating fuel poverty or cutting fossil fuel subsidies. These claims have had a chilling effect on governments.

I will outline a couple of examples of investor cases. In 2017, the French environment minister drafted a law intended to phase out fossil fuels by 2040. The Canadian company Vermilion threatened to sue the French Government. This worked, and the government revised its proposals and watered down its climate ambition, allowing for a renewal of oil permits beyond 2040. Rockhopper, a British oil and gas company, brought a claim against the Italian Government following its decision to ban an oil and gas exploration along the Italian coastline, while Uniper in 2019 started a challenge against the Dutch Government because it tried to phase out coal-powered electricity by 2030. It is seeking €1 billion in compensation. Much like the HSE hackers, Vermilion, Rockhopper and Uniper show there is no length to which these companies

will not go to protect their interests, no matter the damage that does to the public good.

We know what needs to be done to avert climate change. Companies will have to leave fossil fuels unburned, and the public should not be left carrying the cost of their stranded assets. After all, the public is already paying the cost of the fossil fuel companies' lies about climate change over decades. The ECT prevents states from taking the necessary action to tackle climate change.

With Italy already having unilaterally pulled out of the ECT due to its nefarious influence, the French and Dutch are also considering pulling out of it and are calling for the EU as a bloc to consider leaving it. Ahead of the next round of negotiations on 1 to 4 June, where does Ireland stand? Does Ireland support the removal of investor-state dispute settlement, ISDS, chapters from the ECT? Does the State support the expansion of the ECT into the global south? Does the State support the French and Dutch positions that the ECT is likely irreformable and that the EU needs to leave it as a bloc?

The Irish public deserve to know, ahead of 1 June, where Ireland stands on the ECT. We sneaked it in without the Irish people knowing we were signing up to it. They now have a right to know where we stand in terms of its future.

Minister of State at the Department of Public Expenditure and Reform (Deputy Osian Smyth): I thank the Senator for the question and am delighted to answer it.

The ECT is a political declaration on international energy co-operation which was signed in 1994 and entered into force in 1998. Currently, there are 53 signatories and contracting parties to the treaty, including all EU member states, except Italy, the UK, Japan and many former Soviet states. The ECT provides a multilateral framework for energy co-operation that is unique under international law. It is designed to promote energy security through the operation of more open and competitive energy markets while respecting the principles of sustainable development and sovereignty over energy resources. The treaty also provides for dispute resolution procedures between states and between states and investors in other states who have made investments in the territory of said states.

More recently, in particular following policy actions taken by EU member states in pursuit of Paris Agreement objectives, a number of cases have been taken against member states by energy investors. In one notable case, a German energy company has filed an arbitration claim against the Netherlands seeking in excess of €1 billion in compensation for the Dutch decision to phase out electricity production from coal by 2030.

Use of the ECT provisions in this way has attracted international criticism and accelerated the process to modernise the treaty to accommodate the objectives of the Paris Agreement, while within this context the European Commission has proposed modernised and revised treaty provisions that could restrict energy investment protection only to those investments that comply with emissions thresholds, effectively ruling out protection for coal power and all but the most efficient gas power plants. The Commission also proposes to extend ECT protections to biomass and hydrogen infrastructure, including hydrogen generated using fossil fuels provided that the associated CO₂ emissions generated are captured and stored.

The Commission's proposed reforms have split the ECT membership, many of whom do not share the same emissions reduction ambition, and the EU bloc itself, with an increasing number of member states calling for the EU to abandon the modernisation process and with-

draw from the treaty altogether. Spain and France have threatened to leave the treaty following Italy's earlier departure in 2016. However, the effectiveness of such a step remains unclear given the continued applicability of the treaty after withdrawal under a 20-year sunset clause under article 47(3) which overlaps substantially with 2050 net zero goals.

The Department's position is to continue to support the efforts of the Commission to negotiate reform of the ECT in the first instance while reserving the option to withdraw from the treaty should these efforts fail and if it is considered the appropriate approach by Government to achieve our national renewable energy and climate ambition. The Department's view is, in a nutshell, in line with the Commission's approach of reform not withdrawal. The rounds of negotiations in 2021 are foreseen for 1 to 4 June, 6 to 9 July and during the weeks of 28 September and 9 November.

Separately, in late 2020 Belgium submitted a request to the Court of Justice of the European Union for an opinion on the compatibility of the future modernised ECT arbitration provisions within EU law. This follows from a recently established position that arbitration provisions in intra-EU bilateral investment treaties are incompatible with the EU law principle of autonomy. Therefore, from an EU law perspective, Belgium's request may provide some clarity on the future relevance of ECT provisions for member states. A decision from the court is expected in the coming months.

Senator Lynn Boylan: I thank the Minister of State. He did not answer my question about the ISDS mechanism in the ECT. Does the Government support the removal of that system? Even if it excluded fossil fuels, is it right that investors have that power over states? We do not know what the future holds in terms of hydrogen or renewables. In fact, RWE, which is a renewable energy generator in Ireland, is riding two horses at the moment because it is one of the organisations taking a case against the Dutch.

It is also interesting the Minister of State mentioned the 20-year sunset clause when the Government is looking to sign us up to CETA which also comes with a 20-year sunset clause. These are nefarious aspects of trade agreements and I do not think the Irish public would like to know that we are signing ourselves up to things we cannot remove ourselves from for 20 years.

Regarding reform, the ECT is irreformable because it has a veto. The decisions taken to reform have to be unanimous. Japan has already ruled out any reform. Surely the Irish State should now join the French and Spanish and say that we need to pull out as a bloc.

Deputy Ossian Smyth: Do I give two replies to the Senator or just one?

Acting Chairperson (Senator Eugene Murphy): It is your final submission.

Deputy Ossian Smyth: The position of the Department is to attempt reform rather than to withdraw. If we cannot get what we want out of reform, we will withdraw. We are clear there is a division between member states. Outside of the EU there is a division between the different parties that have signed up and have different ambitions from us.

The treaty was formed at the end of the Cold War in a completely different world, where the ambitions and long-term strategies of different countries were all about energy security and being in a chaotic world where things were at risk, and the idea of the goals were stability and energy security. Now, our long-term goal is emissions reduction. It is focused on the Paris Agreement, and we are moving away from trying to protect investors and towards trying to

protect our Earth and common atmosphere.

School Facilities

Senator Emer Currie: I welcome the Minister of State, Deputy Madigan. My Commencement matter concerns a licence agreement for a green field beside a school in Dublin 15, St. Patrick's National School in Diswellstown. The agreement is with Park Developments Group. It is a local agreement between the school and the developer for the use of the land. It is zoned for community infrastructure and will not be used for housing. The agreement has worked very well. The school needs it for playing. It is the only green space it has. On 30 June, Park Developments Group has said it will revoke the licence unless there is significant progress on the purchase of the field. I will explain why that is so important, not just in terms of playing.

The school was built as a three-stream school and has been operating as a four-stream school for the past three years. It is on a three-stream site, and even at that it was squashed. For the past three years the school has used two community centre rooms, one of which has only one window, and the library of the school as classrooms. None of those rooms have proper bathrooms and children do not have any green area in which to play besides the field.

If the school is not expanded, it will have to revert to three streams because it cannot accommodate any more children. A four-stream school is not sufficient to meet the demand in the area. Every year I deal with disappointed parents who cannot get their children into the school. The pupil-teacher ratio is 30:1.

A two-classroom extension in a new prefab was opened recently, but the cycle will start again in September with the library being used as a classroom for the school year 2021-22. It cannot continue like this. This is just the beginning of the challenges this school faces. It was built in 2006, and in 2010 the presence of pyrite was discovered. Engineers recommended a total removal of the hardcore infill. That work needs to be done but legal proceedings through the Chief State Solicitor's office are ongoing. There were issues as the contractor that built the school in the first place expressed interest but that was not a situation with which the school wanted to proceed. I believe there is mediation going on between the parties but if unsuccessful, the Department will instruct the Chief State Solicitor's office to set the case down for trial with a view to progressing the permanent remediation works, in parallel with legal proceedings. This school faces emergency works every year and has lost more play spaces in its yard because of pyrite.

In the short term we need this field. Going into September of a school year without a green play area, with all the children squashed into the areas the school has, is unthinkable. In the medium term the school needs that field for the permanent remediation works, to accommodate the children in other areas while the work is ongoing in order that the school can continue to function properly. We also need this field for the long-term expansion of the school for the area because there is ongoing development. The school has the field up until 30 June and the clock is ticking. Park Developments has signalled very clearly that it needs to see significant progress when it comes to purchasing this field. The school wants it, Park Developments wants it and the Department has told the school that it should continue to take in students on the basis that it would purchase this field. I ask the Minister of State for an update on this.

Minister of State at the Department of Education (Deputy Josepha Madigan): I thank

the Senator for raising this matter. To put this issue in context, in order to plan for school provision and analyse the relevant demographic data, the Department divides the country into 314 school planning areas and uses a geographical information system, with data from a range of sources, to identify where the pressure for school places across the country will arise. Due to an increase in demand for primary school places in the Diswellstown area, which the Senator mentioned, enrolments for St. Patrick's National School have increased by 13% in the past five years to the current enrolment of 835. The current staffing levels comprise one principal, 31 mainstream teachers and one developing post. The land and building out of which the school is currently operating will not allow for any further expansion, as the Senator has correctly pointed out. The land adjoining the current school site is deemed suitable to meet the Department's requirements to allow the school to expand to a full four-stream school. Acquiring the site of approximately 1 acre to the north of the existing school site would provide accommodation for a displaced car park, additional car parking, displaced ball courts and pedestrian and cyclist permeability to Diswellstown Road.

As the Senator may be aware, officials in the Department are working closely with officials from Fingal County Council under the memorandum of understanding on the acquisition of the plot of land adjacent to St Patrick's National School. This site acquisition process has been progressed in respect of the requirement in question and in line with standard acquisition protocols. Negotiations, which are ongoing between officials in my Department and the owner of the additional 1 acre plot adjoining the current school site, are not straightforward. An offer for the land has been made by Fingal County Council on behalf of the Department. However, the landowner has introduced a number of preconditions unrelated to the sale of this land, which I am not at liberty to discuss. Discussions on these preconditions between the Department and the vendor are at a sensitive stage. I reassure the Senator that everything possible is being done by Department officials because they appreciate the urgent necessity to acquire these lands, for the reasons the Senator has so eloquently outlined. They are working very closely with officials in Fingal County Council to expedite the acquisition as efficiently as possible. I understand the urgency of this matter.

The Senator also mentioned the pyrite issue. That situation is being monitored and there is funding available under the emergency works scheme if needed.

It is important to set out the criteria the Department looks at when acquiring a site and evaluating a site's suitability. First, it looks at the zoning. As the Senator has said, this site is in a community infrastructure zone so it is suitable from that perspective. It also looks at existing services, site orientation, topography, transport and access, which are all very important criteria. As I said, this site is of interest to the Department and, as the Senator has outlined, it is already being used as a play area for the school. The adjoining land is most suitable for an expansion of the current school accommodation. The Department is in negotiations with the landowner but agreement has not yet been reached in order to obtain the best value for money for the Exchequer.

Senator Emer Currie: I thank the Minister of State for that response. I am glad to hear that the Department is committed to this project and understands the urgency behind it. This issue has been going on since December 2019 so I sincerely hope a resolution and an agreement can be found and I hope Park Developments will come to an arrangement with Fingal County Council and the Department. The school would like to have space for the provision of a special class as well. It is in all our interests that this proceeds as quickly as possible. I understand that it is a sensitive matter but information has not been forthcoming. The school feels as if it is in

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limbo. The Minister of State is right that there has been a 13% increase in enrolments and there would be a lot more if there were more space for this school. It is a great school and I hope we can get this across the line as soon as possible.

Deputy Josepha Madigan: I completely agree with the Senator. This issue needs to be expedited, particularly if it has been going on since 2019. However, the Senator will appreciate that the negotiations do not involve just one party. Discussions are ongoing with Fingal County Council as well as with the landowner and these preconditions need to be teased out and deliberated upon. We need to see if commonalities can be found in order to continue and progress with the site acquisition. I note what the Senator said about a new prefab. There is urgency to this matter as a library is to be used as a classroom. We in the Department will be doing everything we can to ensure the negotiations progress as expeditiously as possible. I will also bring this matter to the attention of the Minister for Education, Deputy Foley. The Senator highlighting it today in the Seanad will concentrate minds and may result in the expedition and resolution of this issue in early course.

Driver Test

Senator Garret Ahearn: I welcome the Minister of State, Deputy Ossian Smyth, to the Chamber and thank him for taking this very important debate. It is important to recognise that the last year has been incredibly difficult for many people who have been out of work for the last number of months. I wish everyone who went back to work on Monday well. There have been an awful lot of challenges in so many sectors, from health to employment, and in every facet of society.

10 o'clock

As we reopen the country, get people back to work and restore some normality to society, we face a number of challenges, one of which relates to driving tests and theory tests. A major backlog has built up through no one's fault and it is important that be stated. It is simply a matter of fact. We are where we are on this, but it needs to be rectified. I know the Minister of State is making a great effort to speed up the clearing of the backlog even with respect to online theory tests. I would be interested to hear his contribution on that.

We are in a difficult position in that many people want to go back to work but they do not have the capacity to drive because they have not done their driving test or their theory test. With the backlog, the waiting time for a driving test is approximately 25 weeks. I have spoken to several people who have contacted my constituency office who were either offered jobs or are seeking to take up jobs. They are young people, in particular, who are either in college or starting apprenticeships who want to start working but cannot because they do not have a driving test. I spoke to a lady whose son had his first driving lesson last Saturday and will have to wait three weeks for his next lesson due to the demand. He had planned to start a job this summer as an essential worker but will not be able to do so as the lessons are too spaced out and it will be a number of months before he will have completed all 12 lessons. He was also due to sit his test recently but the test centre cancelled it.

Some 38% of people on the waiting lists are aged between 21 and 30, which is further impacting their employment opportunities. It is particularly impacting in rural areas. I think of my own area especially at this time of the year when agriculture is the beating heart of the

economy in rural Tipperary. Many people would be involved in harvesting and driving tractors carrying grain all over the rural countryside, but they cannot do that if they do not have their driving test. When I spoke to the lady I mentioned, it was suggested that an interim measure might be put in place for learner drivers on a provisional licence, perhaps some leeway by the Garda for those who have had their provisional licence for a certain period and have good driving experience. If those people have been offered a job and are trying to work, it is not feasible for their parents to transport them to and from work. We need to give some leeway for the next number of months to provide for those people.

The key issue is to attack the backlog as quickly as possible. There are different challenges in different areas but in rural Ireland, and the Minister of State will know this, the majority of people need to drive to get to work. We do not have the flexibility of having a fantastic public transport system. The quicker this can be done, the better. I know the Minister of State is taking the issue very seriously. Addressing it would have a major impact on reopening the country and getting people back to work. I look forward to the Minister of State's response.

Deputy Ossian Smyth: I thank the Senator for raising the issue of the backlog of driving tests in Tipperary, which I am taking on behalf of my colleague, the Minister of State with responsibility for transport, Deputy Naughton.

Under the Road Safety Act and as provided by the Oireachtas, the driver testing service is an operational matter for the Road Safety Authority, RSA. Specific details about locations and the backlog in Tipperary are matters for the RSA. If the Senator contacts the RSA and has any difficulty, he can come back to me and my office will assist him. However, I can tell him that currently in Tipperary, across Clonmel, Nenagh, Thurles and Tipperary town, a total of 1,992 people are waiting for an invite for a test. Some 220 people have been scheduled for a test, having booked their test date, and 102 people are in category B - those are applicants who have advised us they are an essential worker and are awaiting an invite for their test. I have more detailed information on that which I can provide to the Deputy afterwards and through my office.

RSA driver testers are undertaking driving tests in extraordinarily difficult conditions, in an enclosed space, where physical distancing is not possible. Testers are also moving between vehicles provided by test candidates, which are not controllable work environments.

The Department of Transport is liaising with the RSA on an ongoing basis on how to meet the growing demand for tests. An additional 40 driver testers have been authorised, along with 36 approved for retention or rehire in 2020. The RSA is making good progress in recruiting these additional testers and they are expected to conduct tests by the end of June 2021. The Department and the RSA will monitor what impact the new testers are having as they come on-stream and as the Covid restriction level reduces. Further recruitment, if necessary, is currently being discussed.

The RSA is also looking at a number of other measures, including whether the number of tests a driver tester can perform each day can be increased within current health constraints. Due to the additional hygiene and sanitation procedures that are required, each testing slot now takes a much longer time to complete. As a result, the number of tests a tester can safely conduct per day was reduced from eight to five when the service reopened. Following experience of managing the tests under Covid restrictions, this was increased to six in mid-September. This may be raised to seven, depending on health assurances, but not until June 2021 at the earliest.

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The Department is in discussions with the RSA on how to return to the normal target for the maximum waiting time, which is around ten weeks. It is clear it will not be possible to arrive at this quickly, given restraints which must be in place due to the pandemic. The safety of staff and test candidates is of paramount importance.

I acknowledge counties like Tipperary are in a different position from, for example, Dublin both because of the distances that have to be travelled and because alternative sustainable means of transport are not always available. Public transport services often do not exist and there are specific requirements for agricultural transport licences to carry out the work of agriculture, which mean it is essential that people can have these tests.

Acting Chairperson (Senator Eugene Murphy): I will allow the Minister of State to come back in a minute. Senator Ahearn has one minute to respond.

Senator Garret Ahearn: I thank the Minister of State for the detailed response. As he said, counties like Tipperary have different challenges but they are not ones that cannot be overcome. We need a little bit of time to address them but we are in a critical stage now. As the Minister of State said, in agriculture with the cutting of silage and harvesting season coming upon us, it is a critical time. The number he cited of 1,992 people waiting to be called for a test is high. I thank him for providing those detailed numbers. It would be helpful if the Department could provide a county breakdown of the number awaiting tests to provide clarity on the position nationally. Some 102 applicants are classed as essential workers, which seems quite low. Perhaps we should examine who is characterised as being an essential and non-essential worker for the purposes of the driving test. I would think those involved in agriculture, people who have jobs in line or the possibility of taking up a job on foot of having passed a driving test should be classed as essential workers. I receive calls on this issue every day. A father whose daughter had her theory test cancelled contacted me yesterday. She will now not be able to get her test until August, which will be near the end of summer. It is very frustrating for people. It is no one's fault. I thank the Minister of State for his response.

Deputy Ossian Smyth: If the Senator has any specific proposals or recommendations he would like to submit to me, I am happy to take them on board. In terms of driver theory testing, at the start of June we are starting a new online driver theory service. It should always have been like that but the need has been underlined by the pandemic. This will mean 3,000 people will be able to do their driver theory test online, which will help us to move forward. We have also had a problem with training and with people getting driving lessons, because one cannot isolate within a vehicle. The RSA is setting up new test centres. Due to the fact that it cannot fit that many testers into the existing centres on foot of the need for social distancing, we need to establish new centres. We have 40 new testers and will hire another 40 once the new test centres are set up, so there is a commitment to not ending up with long waiting lists for driving tests.

Sitting suspended at 10.11 a.m. and resumed at 10.30 a.m.

An tOrd Gnó - Order of Business

Senator Regina Doherty: The Order of Business is No. 1, the Criminal Procedure Bill 2021 - Committee Stage (resumed) and Remaining Stages, to be taken at 11.45 a.m. and concluded at 12.45 p.m. by the putting of one question from the Chair, which shall, in relation to

amendments, include only those set down or accepted by the Government.

Senator Fiona O'Loughlin: I support the Order of Business for today. Today is a red-letter day in that we know that the Moorhead report and recommendations have been brought to Cabinet so it is a significant day in terms of recognising the importance and value of local government and approximately 1,000 councillors around the country. As we know, this sat on the previous Government's desk but my party made a commitment that it would be delivered within 12 months in government, and so it has. Over the past year, the role of local government changed somewhat given the pandemic and the number of lockdowns we had. While recognising the value of local government, it is important that we have another conversation about where local government is going. No more than ourselves as public representatives, many councillors face ongoing issues relating to the GDPR regarding representations they make on behalf of their constituents regarding local authority services and Departments. This is blatantly wrong. If a constituent comes to a public representative with a query or something about which a representation needs to be made, it is important that this word is taken from the public representative as opposed to having to get written confirmation again so I would like to see a debate on the role of local government and councillors.

Last Friday was World Awareness Day for Verbal Dyspraxia. Most of us are able to communicate in a normal fashion, as we call it, and we take that very much for granted, but imagine being locked in a world where you think the world around you understands what you are saying and what your wishes and desires are - even something as simple as getting something to eat - but it does not. Many children are locked in this world. There are not enough recognitions and supports for children diagnosed with verbal dyspraxia. Even getting that diagnosis is really difficult. I want to give a big shout out today to seven-year-old Charlie Byrne, who said his sister Sophie's name for the first time over the weekend. People have no idea of the level of work that went into getting Charlie to say Sophie's name. His mother, who is a superhero, and his father Will have done significant work. They have set up a social media page called Finding Charlie's Voice. They have done work not just on behalf of Charlie but all children with verbal dyspraxia and have developed a fantastic communications board that many schools and preschools are now receiving. For the first time, children can communicate using the board in their classroom or in the schoolyard to indicate what they want to do and how they want to play. Again, this is something we need to examine. The issue falls between the Departments of Education and Health and I feel that we need to pay far more attention to it.

This is UN Global Road Safety Week. The theme for this year is Streets for Life and #Love30. The UN calls for a 30 km/h speed limit to be introduced in cities and large towns worldwide in which people and cars mix. As we know, people travelling slower in cars absolutely saves lives. Again, this is a cause that we need to take on board and support.

Senator Rónán Mullen: Last week, I raised the issue of RTÉ's continuing bias on a range of social issues, particularly abortion. RTÉ has failed to represent the views of the one third of voters who opposed the repeal of the eighth amendment, many of whom regard the consequences of repeal as having been catastrophic for human rights, unborn babies and, indeed, good-quality healthcare in this country. Last Sunday, RTÉ was at it again with a guttingly one-sided celebration of the matter on the "Sunday with Miriam" show, with no attention paid to the voices of those who believe that human lives are tragically and unjustly being lost here. I listened to a webinar a couple of weeks ago and heard the voices of women who regret having abortions and who report systemic denialism whereby, at best, they are ignored by the media and, at worst, they experience hostility. I raise this matter on behalf of people who feel indig-

nant about all of this from the public service broadcaster. Those who are going to refuse to pay the television licence fee in the future really cannot be blamed as long as this goes on. We are going to have to keep talking about this until somebody addresses the problem.

I want to raise the issue of what are called patient private property, PPP, accounts. Essentially, these are accounts that are administered by the HSE on behalf of vulnerable people who are in long-term residential care facilities run by or on behalf of the HSE. The people in question are older individuals, those with mental health issues or intellectual disabilities and wards of court. Property is held by these PPP accounts and can be administered and used by representatives of the HSE directly or through a third party or agent for the benefit and care of the person involved. The HSE operates more than 15,000 of these accounts at present. Guidelines are in place to ensure that the accounts are operated ethically and in a transparent fashion, and always in the best interests of the vulnerable.

This system is administered under section 2 of Health (Repayment Scheme) Act 2006. There is a problem with how these accounts operate or, more to the point, with the fact that they apply only to people who are being cared for within the public system. Section 2 refers to “a person ... being cared for by, or on behalf of, the Executive”. People who are being cared for in private nursing homes, no matter how vulnerable they are, do not get the benefit or protection of the scheme. I have received representations on this matter from those who are familiar with the sector and who work in the area of the rights of elderly and vulnerable people. They inform me that they believe that what is being done here puts patients in private homes at a disadvantage. They feel that the accounts and property of those persons should also be capable of being administered and used on their behalf, for their welfare and with appropriate safeguards. This problem could be remedied by a couple of very small changes to the 2006 Act to make it that people in private care could also have their property administered in this way and that there would be safeguards in place to make sure that everything operates ethically.

I ask for a debate on this issue. Perhaps that could take place in the context of a more general debate on nursing homes in the wake of the Covid pandemic. I am very interested to know whether the Government has considered this matter and whether it plans to address the lacuna that exists in law and our policy relating to the protection of persons in nursing home care.

Senator Ivana Bacik: I am delighted to have been selected last night as the Labour Party candidate in the Dublin Bay South by-election. I thank all those who supported me. I look forward to the campaign, although I am conscious that we will be very mindful of public health guidelines as we come through this awful pandemic, which has caused so much heartbreak for so many. I know that issues relating to healthcare, decent public services and housing will be to the fore in the by-election campaign, and I look forward to that.

I ask the Leader to arrange a debate on care, particularly that relating to older persons in our communities. I have called for a new fair deal scheme to enable supports to be provided for people who wish to remain in their own homes rather than prioritising State funding for institutional and nursing home care. I want people to be given an option as they age and I would like to have that debate here.

I thank the Leader for organising last night's debate on Gaza with the Minister for Foreign Affairs. I was proud to speak on the matter. I reiterate the calls that I and others made for the Minister to ensure that Ireland takes a strong stance at the UN Security Council in the context of seeking an end to the awful slaughter of civilians and children.

I ask the Leader for a debate on the processing of visa applications. I am conscious that the Department of Justice has put a hold on the processing of new visas due to the pandemic. The Immigrant Council and Doras Buí have both eloquently called for a change in policy and pointed out the impact on separated families. There is also a serious impact on businesses. One business in my area in Dublin Bay South, the Chimac restaurant, which is owned by Garrett Fitzgerald, is a case in point. The restaurant has a commis chef, Joaquin, who has been stranded indefinitely in Chile. I confirm that I have permission to name those involved. Indeed, Rob O'Hanrahan of Virgin Media News has highlighted this case. The restaurant is now down 40% in terms of staff and is not alone in that regard. So many businesses, as we reopen, are going to face difficulties and strain without the availability of staff so, therefore, we need to ensure a return to the swift processing of visas. I ask the Leader to invite the Minister to come to the House to discuss the strain on families and businesses.

Senator Mullen spoke about bias on the part of our national broadcaster, RTÉ. I remind him that three years ago next Tuesday the people voted by 66% to repeal the eighth amendment. Perhaps it needs to be stressed again that we have repealed the eighth amendment.

Senator Rónán Mullen: What about the other third of voters?

Senator Ivana Bacik: I did not interrupt the Senator.

An Cathaoirleach: Senator Bacik, without interruption please.

Senator Rónán Mullen: I made a simple request.

Senator Ivana Bacik: The Oireachtas has voted and passed legislation. Terminations of pregnancy are legally available in Ireland and women need those reproductive health services. I am proud to be one of the people who campaigned for the repeal of the eighth amendment. We all stand in solidarity in the context of the result of the referendum.

Senator Rónán Mullen: One should not be left out of the debate when one is in the minority.

Senator Ivana Bacik: It is bit rich of the Senator to complain, three years on, about the result of the referendum.

Senator Rónán Mullen: This is intolerance by the pro-abortion side.

Senator Ivana Bacik: I am not pro-abortion. I am pro-choice.

An Cathaoirleach: The Senator is entitled to an extra minute, if she so wishes, because she was interrupted.

Senator Ivana Bacik: I thank the Cathaoirleach. This is an issue on which language is important.

Senator Rónán Mullen: What about the babies?

Senator Ivana Bacik: We must remember the thousands of women in Ireland who have had abortions, their families, women who face crisis pregnancies and the awful catastrophic diagnosis that so many women and their families have faced in the context of fatal foetal abnormality. We need to be sensitive in our language. Talking about people as being pro-abortion, as Senator Mullen consistently does, is insensitive and does not reflect the reality. Those of us

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who campaigned for repeal are pro-choice. We want to see women having choice. Women in Ireland now do have that choice thanks to the campaigners and the people who voted in support of repeal three years ago.

An Cathaoirleach: Senator Bacik, without interruption. I ask Senators to have respect for the rules of the House. When a Senator is on his or her feet during the Order of Business, it is that Senator's time and everybody gets his or her time.

Senator Rónán Mullen: On a point of order, I agree that I interrupted Senator Bacik but the Senator has a different technique. On numerous occasions I have heard her raise points of order that are not points of order at all simply in order to make her political point. Sauce for the goose has to be sauce for the gander, even if the goose and gander are operating in slightly different ways.

Senator Ivana Bacik: I did not interrupt the Senator.

Senator Rónán Mullen: I have never known the Cathaoirleach to give me an extra minute when Senator Bacik jumps up with a bogus point of order to interrupt me.

An Cathaoirleach: In the first instance, Senator, your point of order is not a point of order.

Senator Ivana Bacik: I sat and listened to Senator Mullen. I sat and listened to his insensitive language and I responded, as is my right. I used my time on the Order of Business to do so.

An Cathaoirleach: Correct. Senator Mullen is aware of the rules of the House. In order for him to intervene in a debate or when another Senator is in possession, he must first ask permission under Standing Order 39. Then, it is up to the Senator who is in possession to either allow the Senator to have 30 seconds or not.

Senator Rónán Mullen: On a point of order.

An Cathaoirleach: No, we are moving on.

Senator Rónán Mullen: I have asked to raise a point of order. I am entitled to be heard on a point of order.

An Cathaoirleach: No.

Senator Rónán Mullen: Am I not entitled to be heard on a point of order?

An Cathaoirleach: The Senator has already tried to do that.

Senator Rónán Mullen: If the Cathaoirleach is going to privilege people with an extra minute because they were interrupted, will he introduce a penalty for them when they introduce a bogus point of order? This is Senator Bacik's repeated technique. I applaud her talent but I have to point out she is in breach of Standing Orders when she does it.

Senator Ivana Bacik: I am not in breach of anything today. I sat and listened.

An Cathaoirleach: She is not in breach of Standing Orders. Senator Mullen, please.

Senator Rónán Mullen: Not today, I will agree, Senator Bacik-----

Senator Ivana Bacik: I sat and listened to you.

Senator Rónán Mullen: -----but you are a past master at using bogus points of order.

An Cathaoirleach: Senator Bacik-----

Senator Ivana Bacik: This morning, I sat through Commencement matters when the Senator consistently interrupted and barracked a Minister. This is his own pattern of behaviour in the House.

An Cathaoirleach: Senator Mullen, please-----

Senator Rónán Mullen: I may occasionally heckle-----

An Cathaoirleach: We are moving on.

Senator Rónán Mullen: -----but Senator Bacik introduces bogus points of order.

An Cathaoirleach: Senator Mullen is well aware of Standing Order 39, which states that if a Senator is interrupted, the Chair has the discretion to add extra time because of the interruption. That is within the Standing Orders.

Senator Rónán Mullen: I will hold the Cathaoirleach to that standard, so the next time I am interrupted, as occasionally happens, I will be watching to see whether he shows appropriate equal parity or parity of esteem-----

An Cathaoirleach: There will be no problem in relation to that, Senator. When Senators are interrupting a Senator or asking to intervene in a debate when a Senator is in possession, they must simply ask permission. That is the rule of the House. Senator Mullen did not do that this morning, and if in future he wants to intervene in a debate, it is up to the Senator in possession to allow him to do so. If that Senator does not allow him to do so, I ask him to stop interrupting. I will now move on to Senator Garvey, leading off for the Green Party group.

Senator Róisín Garvey: I remind Senator Mullen that he is a man and 40%-----

An Cathaoirleach: Sorry. May I just remind the House that the Order of Business-----

Senator Rónán Mullen: There will be further interruptions if the Senator continues with that line. I have to promise that.

An Cathaoirleach: This is not a debate through the floor or across the floor. The Order of Business is on issues before the House. Issues can be raised, but please do not refer to other Senators directly or engage with other Senators directly in a debate on the Order of Business.

Senator Róisín Garvey: Women's choice was sorted three years ago. Can we park it, please, and move on and accept the reality of where we are?

I want to speak on the fact it is national biodiversity week. Perhaps we have too much variety sometimes if we look at people in the House. Every individual in the country has a part to play in the importance of biodiversity. It is a term that has been thrown around quite a lot. Not everybody gets the concept because in some ways it is very simple. It has to do with variety being important and the interdependence of all living things. It can get very complicated if we look at soil science, the vastness of the ocean and everything that goes on. I want everybody to realise they can all play a part in a small way or a big way. Unfortunately, many small ways, such as leaving a little strip of dandelions free, will not cut the mustard any longer. We are go-

ing to have to think bigger about biodiversity. It is great that people like to do small things, but I genuinely worry that these small token measures will not be sufficient.

One third of our bees are under threat of extinction. Without bees we do not have fruit or vegetables growing in this country. As it is, we should be growing a lot more fruit and vegetables. We are struggling and I do not think people realise the seriousness of this. Most children in most schools all over Ireland understand biodiversity and the importance of bees and variety. I worry that we have now put it on the children and that the adults are not doing enough. I was in a school last week and every child put up their hand and said they were stressed and worried about climate change. This is wrong. It is not the child's responsibility, it is the adult's responsibility. We have to step up. We have to show future generations we take this seriously and we care. For the week that is in it, I ask everybody to look at biodiversity. Go onto *pollinators.ie* to find out more. There are brilliant resources for free. It is time for the adults to step up and take a role in the huge crisis we face.

Senator Lynn Boylan: I will speak about health infrastructure in Gaza but I also want to make a point on the seemingly increasing trend of elected representatives making veiled threats to public bodies with regard to their funding. It is not a good look for any democratically elected representative. I want to focus on the health infrastructure in Gaza. Last night, we heard how Gaza's only Covid-19 laboratory was destroyed by an Israeli air strike. There is now no clinic to carry out testing for the virus. Gaza was already facing a surge in the virus and had one of the highest positivity rates at 28%. Hospitals were already overwhelmed. Now, after a week of military strikes, the healthcare infrastructure is being inundated with women and children, innocent victims of Israeli state terror. Even road access to medical centres has been targeted. A day before the Covid laboratory strike, two medical workers, a neurologist and the head of internal medicine at Gaza's largest hospital, were also killed. All of this is happening in the context of a healthcare system that has been operating under a blockade for 15 years.

The destruction of hospitals and the targeting of medical personnel is a heinous war crime by the occupiers. The Israeli state follows no international rulebook. With the US vetoing UN action and the EU unwilling to suspend Israel's membership of the Euro-Mediterranean trade agreement, despite flagrant violations of the human rights protocols that underpin the agreement, it now falls to Ireland to show leadership. Ireland must progress the Control of Economic Activity (Occupied Territories) Bill. It has the approval of both Houses. It has the approval of the Palestinian leaders, Amnesty International and the International Federation for Human Rights. The Bill would make the Israeli state feel the economic cost for its actions. It would pave the way for other countries to follow suit. The Government must stop hiding behind the Attorney General's advice. One of Europe's top legal experts on EU law has challenged the Attorney General's position. It is time for Ireland to lead on the issue of Palestine. We can no longer turn a blind eye to women and children being murdered indiscriminately and to health infrastructure being targeted. I was there in 2014, and I saw with my own eyes medical supplies being blocked from entering Gaza. Child trauma kits designed to deal with children suffering from psychological stress were being blocked by the Israel Defense Forces from going into Gaza. It is time for Ireland to lead on this issue and pass the occupied territories Bill.

Senator Lynn Ruane: People might be aware that a few months ago in the Chamber I called on the Minister, Deputy O'Gorman, to look into a scoping exercise on St. John Ambulance. This has moved along and the Minister has been very proactive. I have a huge amount of confidence in the process, particularly with the appointment of Dr. Geoffrey Shannon. What I no longer have confidence in is the fact that St. John Ambulance has stated it will carry out this

review but, according to my investigation, it has not advertised this investigation or review of historical sexual abuse on any of its social media platforms, especially Facebook, where it has a huge following. It seems to want this investigation to happen very quietly.

The reason I raise this today is that I have become very concerned over recent months. This investigation was kicked off because of one person but I believe there are other people and names coming forward with regard to historical sexual abuse. I kept looking at the name of the one person this investigation centres on wondering why I knew it. After a year, I decided to ring a community worker in the Dublin 12 and Dublin 8 area. I asked why I knew the name. I am absolutely terrified now because of why I know the name. It is because for decades the person had full access to people in addiction and in the youth sector in Dublin 12 and Dublin 8, recruiting and teaching first aid, which was the exact thing he used to groom people when they were cadets in St. John Ambulance.

I call on the House and the Leader to contact the Department, the Minister of State, Deputy Joe O'Brien, the Minister, Deputy O'Gorman, and the Minister of State, Deputy Feighan. We need to find a way to contact the youth and community sector and the addiction sector in these areas and figure out how we can support them to make people aware. These are very vulnerable people who will not pick up that an investigation has happened. Many of them do not use Twitter or read *The Irish Times*. They have no idea this investigation is happening. I have held three meetings with three boards of management in these communities. They are trying to figure out how they can put this on people's radar. These are vulnerable people and we are afraid to trigger them. What supports will we have if they do come forward? I ask Senators, particularly those based in Dublin 8 and Dublin 12, to find a way. The Departments and St. John Ambulance should be looking at where this person had access and directly engage on it. It should not be up to me to try to help a local project make a poster that somebody will see when they walk in to use that service, which has no idea about how to support people if they do come forward.

11 o'clock

This is a matter of real urgency. St. John Ambulance needs to step up quickly and make an effort to get what is needed in this investigation. It must work with us instead of trying to create a silent investigation which it does not promote in any shape or form.

An Cathaoirleach: When the Senator raised the issue of St. John Ambulance as a Commencement matter some months ago it received widespread publicity. She may wish to raise it again as a Commencement matter.

Senator Aidan Davitt: I raise a matter on which the Cathaoirleach has worked hard for some years. In the eight years since I became a member of the executive of the Association of Irish Local Government, AILG, I have met umpteen Ministers and civil servants to discuss councillors' remuneration and conditions. I am delighted that the revised Moorhead report, on which considerable work was done, was approved at Cabinet today. The Minister of State, Deputy Peter Burke, has primary responsibility for the matter.

I compliment the members of the AILG and the Local Authorities Members Association, LAMA, who have worked tirelessly over the years to get this implemented. I also thank the Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien, and the Minister for Public Expenditure and Reform, Deputy Michael McGrath, the two senior Ministers who rubber-stamped this decision at the Cabinet table today.

I give a special mention to the Minister of State, Deputy Peter Burke, who was very open to meeting the AILG, LAMA and any politician or other interest group that wanted to engage with him. If the Moorhead report had been implemented as laid out, many councillors would have been in a worse position. The report from the Minister of State and the Minister, Deputy O'Brien, is fair and balanced and will help to encourage younger people into politics. As we know, councillors are probably the hardest working politicians. Anyone who was a county councillor knows well the full weight of work that is on the shoulders of county councillors. I welcome this development and thank all those who have made it possible.

Senator Joe O'Reilly: After I raised the need for gambling control three times in the House, the Leader granted a special debate at which the Minister promised action. That emboldens me to ask the Leader yet again about another important issue, one that is dear to the Cathaoirleach's heart, namely, the thousands of undocumented Irish in America. We are seeking to have E3 visas granted to these people. The visa was awarded to Australians in 2005 as part of a US-Australia trade agreement. It is a two-year renewable visa, which also allows recipients and their spouses to live and work in the United States. Under our proposal, Irish citizens would apply for the unused portion of Australia's allocation of 10,500 visas. That would grant us between 6,000 and 6,500 visas per annum, which would be a marvellous start.

The House of Representatives passed a version of a Bill to this effect last March but it has struggled to gain support in the Senate. Under the legislation, reciprocal rights would be given to Americans to retire and work here. Irish groups have asked Nancy Pelosi, the Speaker of the House of Representatives, to expedite the legislation under provisions the pandemic allows. Hopefully, much will come out of that.

My former colleague, John Deasy, is an advocate and full-time professional lobbyist in this area in America. The essential point is that we cannot forget our kith and kin in America who are undocumented. The pandemic brings their situation into even greater focus. I ask that we discuss the undocumented Irish with the relevant Ministers to see where we are now and where we are going, and step up our campaign to get them E3 visas.

Senator Sharon Keogan: I, too, welcome the Moorhead report on councillors' pay going to Cabinet this morning to be signed off. Independent Senators have done considerable work on this issue in recent years. Senators Craughwell and Boyhan have been relentless in representing councillors' needs, as have I since I became a Senator. I am delighted that the Government of Fianna Fáil and Fine Gael has finally delivered for our hard-working councillors throughout this country.

Senator Vincent P. Martin: And the Green Party.

Senator Sharon Keogan: I beg the indulgence of the House to discuss an initiative I started in February 2019. The Feel Good Project is a community-based initiative set up with the aim of providing support services and education to people on a range of issues, from addiction and drug use to mental health and wellness. The hub of the project is in Duleek and it provides free access to mental health and well-being programmes on Tuesday evenings. In March, I tried to broaden the reach of the Feel Good Project nationwide. The simple concept was to erect some bright floral signs in towns across Ireland to show the effects of the lockdown and remind people of the important things in life - love, family, joy, peace, hope, courage and faith. Some 56 independent councillors from 23 counties put up signs in their local communities.

I was curious to find out the effect of the campaign and whether it had succeeded in its objective of generating positive emotions and thoughts. I commissioned a report to investigate this. The consultants performed a survey on social media and analysed the results, which were detailed in the report I received yesterday. I was delighted to learn that the response to the signs had been overwhelmingly positive. Of the 604 people surveyed, almost 95% experienced positive emotional reactions and only three people had a negative response. The executive summary of the report states that the signs provided a subject matter for local conversation. This had a very important impact and helped counteract the effects of isolation caused by the national lockdown and the fixation on Covid-19 in the news and media.

The positive reactions of people were perhaps encapsulated in the following comment by one of the persons surveyed:

I think it was a brilliant idea. It reminded me that the community was there for me on tough days and that I needed to believe brighter days are ahead.

I express my sincere thanks to all the councillors who participated in the project. I have no doubt it brought great cheer to those in their communities.

Senator Erin McGreehan: I, too, raise the fact that this is National Biodiversity Week. It is a real chance for us all to see nature and to appreciate the importance and richness of our biodiversity. The hawthorn tree, for example, which is so common in Ireland, supports more than 200 species and insects. This is absolutely critical and crucial to protecting our environment and biodiversity.

I call for a debate on how we will protect and support our native biodiversity and protect our uplands. We need a proper upland management plan. We have seen the burning of uplands in recent times, which is a symptom of the failure to adequately manage our uplands in the past couple of years. Controlled burning is controversial but it was done for a reason. Bracken and gorse catch fire and will ignite with the smallest spark. We need an upland management scheme to look after and take out invasive species and encourage our native biodiversity to thrive and to survive. It is really important to appreciate what our uplands and native biodiversity give us because they give us much beauty and do much for our mental health when we stop and appreciate nature around us.

Senator Jerry Buttimer: Last week, the Leader facilitated a debate on the European digital green certificate in this House, which is to be welcomed. This morning the Cabinet has not received a memorandum to progress the European digital green certificate and its agenda. This is most disappointing and worrying. I ask the Leader to invite the Minister to come to the House to discuss the ongoing delay in this regard. It is imperative that we get our country open for travel. I implore the Government to work with the travel sector to ensure that our country is open for travel.

I pay tribute to Tim Hayes, a parliamentary usher who has retired from duty in Leinster House. He was a good friend to many of us. I am not sure if we paid tribute to him in the House but if we did, I missed it. I pay tribute to him today. He was a wonderful friend, is a great person and did huge service in this House and I wish him well on his retirement.

Senator Rónán Mullen: Well said.

Senator Jerry Buttimer: I seek a debate on anti-social behaviour, particularly in a post-Covid world. I do so in the context of Cork city, which is becoming a no-go area for many people. People are feeling threatened and worried in the city centre by gangs of youths. I appeal to An Garda Síochána and Cork City Council not to allow a city to become the site of a summer of discontent.

Senator Marie Sherlock: Over the past two weeks, we have seen the Government scramble to contain the outrage expressed by many that entire housing estates were being bought up by cuckoo funds or institutional investors. That will culminate in decisions made by the Cabinet today. What has been really striking about all this is that we are somehow outraged that investment funds are elbowing out prospective home buyers in suburban areas but it is somehow okay that large swathes of our communities in Dublin city and other cities are taken over by build-to-rent investments. Does the Government think that communities in cities do not qualify as communities as well? Does it not realise that we have a thriving network of urban villages and communities and are crying out for them to be made less transient in order that people are allowed to make a home themselves in them? From what we have read about what is coming out from Government today regarding the solutions being targeted at suburban and rural areas, it is clear that they really reek of culchie superiority. I can say that as a proud culchie who was born in a very rural area but is bringing up my young family in a thriving community in Dublin. I think of the areas in Dublin 1, Dublin 7 and Dublin 9, where I am based, where only 1,500 conventional apartments are being developed. Contrast this with the 5,000 build-to-rent student accommodation and co-living units that are being developed with no opportunity for people to purchase homes in those developments or to put down roots in those areas. As Senator Moynihan has stated repeatedly, we need to extend those measures limiting the wholesale purchase of developments to apartments as well, because it is not good enough that we protect rural areas and suburbia. We also need to look after cities and ensure that people can make their lives in those communities.

Senator Mary Fitzpatrick: Ovarian cancer is the sixth most commonly diagnosed female cancer in Ireland. More than 440 women are diagnosed with ovarian cancer in Ireland every year and, sadly, more than 27 of them die. Ireland ranks among the highest countries for female mortality due to ovarian cancer. It is known as the silent killer because it is hard to diagnose, the symptoms can often be confused with other conditions and late diagnosis makes it very difficult to treat and cure. I recently met a woman whose sister had been treated for repeated urinary tract infections. Her doctors then thought it was a hip condition and the woman attended a physiotherapist. Within ten days of the diagnosis, she passed away. It is very sad for that family. It is very sad for any woman and her family. There is a campaign this month to raise awareness globally during the pandemic. We are all distracted but this is certainly an issue of which every woman and society in general need to be aware. The symptoms can be confused with those of other conditions but we should urge every woman experiencing any of the symptoms to consult her GP. We must all be vigilant in our approach to this disease. No woman should go undiagnosed.

Senator John McGahon: I wish to raise the issue of visas and how we are not granting any visas to people from South America. A couple in north Louth are about to get married. The girl, who is marrying a guy from north Louth, is from New York City and is a US citizen. Her family are US citizens with the exception of her mother, who has a Colombian passport. Her mother has lived in New York City since 1985, and the last time she was in Colombia was seven years ago, but she cannot come back to Ireland for a family wedding in two months' time

because we are not giving any visas to anyone from South America. If we want to appear to be an open country that is open again for business, now that the vast majority of our vulnerable and elderly people are fully vaccinated, and this individual is fully vaccinated, we need to be able to look at the nuances of situations instead of having a blanket ban. The nuances of this situation are that we are not allowing an individual to travel to our country because she is operating on a passport from a country she has not been in for the past seven or eight years. I would really appreciate it if the Minister could come to the House or if we could receive some information about what we are planning to do to lift these visa restrictions on other countries as we begin to open up travel and our economy and get our country open again. I do not think it is acceptable any more to just put a blanket ban on everything like this. We need to look at the nuances and to resolve this as quickly as possible.

Senator Shane Cassells: I wish to raise the issue of access to vaccines for rare diseases where the vaccines are only available abroad and the cost of accessing these life-saving vaccines is prohibitive. A very high-profile case in my own county was highlighted last weekend involving a five-year-old boy called Nahyan Javed, who has neuroblastoma. Since last year, when a tumour was discovered behind his heart, he has undergone nine chemotherapy sessions, a stem cell transplant and immunotherapy. While this has stemmed its progression, the condition is so aggressive that there is a 70% chance of it returning. There is a vaccine that prevents relapse but, of course, it is only available in the US and the cost is a whopping €375,000, which is simply beyond the means of his family and indeed any other family. The family is going to fight for their son's life and the chance to access this vaccine. The issue for this family and many other families is access to vaccines to prevent relapses as opposed to the actual treatment itself because they are needed but their cost is prohibitive. It involves bringing such treatments under the scope of the treatment abroad scheme. I pay tribute to the massive fund-raising efforts on behalf of this family to help it to achieve that figure of €375,000. A man who is well known across County Meath, Keith Russell, completed a 263-mile run at the weekend in County Down, which was an amazing feat, to raise money for this family, as he did for many years for his own daughter, Alanna, who tragically died some years ago. I pay tribute to him and all of the families who are trying to help this particular family. I would appreciate it if, as a State, we could look into trying to provide families with access to funding for these rare diseases.

Senator Vincent P. Martin: The carnage, wanton waste of life and slaughter of innocent victims, especially children, in Palestine and Israel has been well documented in recent days. The Minister for Foreign Affairs issued one of the most unequivocal statements made in recent times by an Irish Minister for Foreign Affairs, and ought to be commended on doing so. It is important to call out the disproportionate response of the Israeli military, the war crimes it has committed and how it is in flagrant breach of international humanitarian law.

As the Minister, Deputy Coveney, stated, there is a need for a collective, unified response. My questions for the international community are as follows. How many more people must die before the international community comes together and imposes sanctions on Israel? How many more children must die? How many more displays of grotesquely disproportionate military responses must we have to endure before the international community stands up to Israel and says enough is enough, that it is acting like a rogue democracy?

In recent days, An Taisce and its statutory role in the planning process have received criticism, with people not involved in litigation professor-proofing High Court judgments, offering to interpret them and offering unsolicited legal advice. In every case, there is a constitutional right to an appeal. If there is something baseless or groundless about litigation, it can be sorted

out within the litigation by claiming it is vexatious or bringing an application to have the case dismissed as bound to fail. However, if that is not being done, people should keep their noses out of litigation, respect the independent judicial process and let litigation take its full course, including the constitutional right to an appeal.

Senator Barry Ward: We know the importance of giving blood. It is tremendously important that people give of their time and their blood to feed the reserves of blood that are needed for operations, emergencies, etc. During the Covid pandemic, the Irish Blood Transfusion Service has had great difficulty on the one hand in abiding by the advice of the health authorities and keeping people safe and, on the other hand, continuing to provide a safe and constant supply of blood for our hospitals and emergency services.

The reason I raise this issue today is that while I understand that the blood transfusion service has had to put in place restrictions to ensure safety is maintained and public health guidelines are followed, it seems now some of those restrictions, particularly as we move through the vaccination programme, are a little bit arbitrary. For example, one of my fellow constituents who is a friend of mine and a regular blood donor contacted me about this issue. He is 71 years of age. Due to the fact that he is over 70 years of age and notwithstanding that he has been fully vaccinated against Covid-19 for some time now, he is prohibited from giving blood. That makes no sense to me when we have people who are willing, able and fit enough to give blood. I know that in the normal circumstances those over the age of 70 have to provide an annual certification from their doctor. There is no difficulty with that. However, now we have a situation whereby the guidelines issued by the blood transfusion service restrict those people from giving blood.

They are just one category of other people who are arbitrarily denied the right or the opportunity to give blood, and it seems to make no sense. I understand it is under review, but it is an issue on which we should make a statement as a House. We should say that if there are people who are willing and able to give blood and who can do so safely - this is a person who is fully vaccinated - they should not only be allowed to do so but should be encouraged to do so. We should be encouraging everybody who can give blood to give blood wherever possible.

Senator Lorraine Clifford-Lee: I wish to raise the issue of hyperemesis. It is an issue I have been raising since 2018. I am sure Members will remember me raising it on several occasions. It is a condition suffered by pregnant women. It is sometimes referred to as morning sickness. As someone who suffered it during my second pregnancy, I can say that it is far from morning sickness. It is an extremely debilitating condition. Women suffer from prolonged and severe nausea when they have this condition. They suffer from severe dehydration and low blood pressure and it has a severe impact on the mental health of the expectant mother. This severe impact on mental health prolongs any issues post pregnancy and it has a deep and lasting effect on the mental health of the mother. I have spoken to mothers who have been put off having subsequent pregnancies because of this extremely difficult condition.

There is a drug that is prescribed by the HSE, which I have taken myself. It is called Cariban. However, it is not available to those with medical cards or through the drugs payment scheme. It is a very expensive drug and can cost up to €3,000 during the course of the pregnancy. That is an absolutely prohibitive cost for anybody to bear, but especially for those who are on the medical card scheme. They cannot get it. I have spoken to people who have bought the drug on the Internet just so they can function and can continue with their pregnancies.

We have a very poor record of supporting pregnant women in this country and providing them with the healthcare they need. The lack of access for women to the drug due to financial constraints is an outrage. I want the message to be sent loud and clear from this House today that, whatever the issue that is preventing the drug from being available under the medical card scheme or the drugs payment scheme, it needs to be resolved. Women and their families are suffering severely. It is not okay to put it on the long finger and allow this to go on.

As I said, I have been raising this issue in this Chamber since 2018 and it is still an issue for women in Ireland. I want the message to go out loud and strong today.

Senator Aisling Dolan: The menopause is the taboo subject. Today, I am speaking on the subject on behalf of someone very close to me. I am giving her a voice and a voice to all the women who are going through it.

Last week, on RTÉ Radio 1, Joe Duffy offered two women from the Irish Menopause group a chance to raise this subject. Talking about it really helps to make the stigma fall away. The average age of the onset of the menopause is in the 50s, but it can start for some women much earlier, for example, when they are in their 30s. This includes women who have gone through chemotherapy. Can Members imagine dealing with chemotherapy, which then triggers early menopause and myriad symptoms from treatment?

There are so many women who are dealing with these symptoms that are not easily recognised or diagnosed. These are women with restless leg syndrome who have not slept properly for years. Hormone replacement therapy, HRT, treatment solves this. There are women with symptoms like poor concentration, anxiety, depression - serious mental health concerns - who are misdiagnosed and given antidepressants. Thanks to this conversation, it has lifted a huge burden off women - women who thought they were going mad.

The menopause is a normal life event for women. It can last for up to 15 years. It is not an illness or a medical condition. Many women suffer in silence and do not realise how effective HRT can be at improving not only their symptoms but also their quality of life and future health. It is available through the medical card scheme. Doctors and healthcare specialists need to be educated and updated about these types of symptoms in the early stages of menopause in order that women can end up being treated with respect and the medication they need.

Last week, the Minister of State at the Department of Health with responsibility for public health and well-being, Deputy Feighan, launched the Healthy Ireland strategic action plan. It is part of Sláintecare, which is all about reducing inequalities and making sure we have the right care at the right time and in the right place. We need it now and we need it for women throughout Ireland. I call on the Minister of State to ensure there is care for women's health, information on HRT and specialised training for the more than 7,000 planned-for healthcare professionals to identify early symptoms, especially across our primary care centres and within the proposed 18 new Sláintecare healthy communities across Ireland. We need care now for women in Ireland in all our towns and villages.

Senator Niall Ó Donnghaile: From one Seanad to another, I note and welcome the resolution passed in the US Senate last night reaffirming its unwavering support for the Good Friday Agreement and its full implementation. A similar motion was before the Seanad last week in which we reiterated and reaffirmed our collective support. We called for the full implementation of the Good Friday Agreement. Following the passing of an amendment I had tabled, we

included the Stormont House legacy mechanisms, while a successful amendment tabled by Senator Black called for the establishment of a citizens' assembly to plan responsibly for constitutional change down the line.

Furthermore, 25 Members of the US Congress have called on their President, Mr. Biden, to appoint a special envoy to the North. That is a welcome call and one we can support. It is necessary in these uncertain times post Brexit, given it is crucial we all not just reaffirm our support for the implementation of the agreement but also work to ensure the implementation will take place for the benefit of all. If it is agreeable to the Leader and the House, I propose she write to colleagues in the US Senate to welcome that unwavering support for the Good Friday Agreement and the call for a special envoy for the North. She could indicate to them our shared support for their call for the agreement's implementation.

An Cathaoirleach: I thank the Senator for raising that issue. The support of the US Senate for the Good Friday Agreement and the peace process is very important for maintaining peace. I call the Leader to respond to the matters raised on the Order of Business.

Senator Regina Doherty: It is a really good idea to write a letter on behalf of all Senators on this side of the pond to congratulate and thank our colleagues in the US Senate and to support the call for a special envoy. I will do that today and send all Senators a copy of the letter.

Senator Dolan raised an issue that has been raised on a number of occasions in recent days. It is interesting that what women consider to be normal life events are almost taboo topics that are never raised. We might suffer in silence and never talk about them. The campaign by Joe Duffy over the past week has been very welcome. It has dispelled a number of mistruths in regard to the symptoms and the benefits of HRT. Nevertheless, the Senator is correct that a national campaign on behalf of the Department of Health would be valuable because not everybody listens to "Liveline". We will request one, although a debate in the House on women's health is pending and will include what Senator Clifford-Lee raised. A number of colleagues have raised the issue, including Senator Ahearn on a number of occasions. It is welcome to see our male colleagues in support of what is a debilitating disease and affliction during pregnancy, namely, hyperemesis. I have written to both the Minister for Health and the drugs company that manufactures Cariban. The difficulty seems to be that no application has been made to include Cariban on the drugs refund scheme. I have invited the manufacturer not only to make an application to be included but also, if it needs any assistance from any of us, not to hesitate to seek our support because we will be very willing to help. I will follow up on that and revert to the Senator.

Senator Ward spoke about encouraging people to give blood. Anybody who wants to give blood should be encouraged to do so. We have all been acting under certain public health guidelines, but as they are removed and we are relieved of them, we should encourage anybody who wants to give of their blood to help other people to do so.

Senator Martin again raised issues in Palestine. We had a very worthwhile discussion in the House last night, as is happening in every other parliament in the civilised world. Another day goes by and we do not have condemnation from the US of the activities and atrocities being carried out by the Israeli Government, and that needs to happen now. The issue should be raised until we get some reaction from not only the UN but also the US Government.

Senator Cassells talked about a lovely young boy in County Meath, Nahyan Javid, who is

raging against a disease. I understand that given the cost of vaccines, it is very difficult to include all of them, but I wish his family every success in their fundraising events. I hope that, with all the goodwill we have, Nahyan will recover or at least achieve some recession of his disease.

Senator McGahon raised the issue of visas. Many people are making representations about the suspension of visas, the issuing of which, alongside passports, we expect to return to normality in the coming weeks.

Senator Fitzpatrick talked about ovarian cancer, an issue that will form part of the debate on women's health we will have in the coming weeks.

Senator Sherlock spoke to the housing debate that started in the House last night, with a very worthwhile start to Second Stage of the Affordable Housing Bill 2021, a debate that will continue next week.

Senator Buttimer made two significant requests, both of which are reactions to the restrictions we have had in the past 14 months. It is disappointing the memo on travel was pushed off the Cabinet agenda today, notwithstanding the housing and cybersecurity issues we have among others, which constitute a very long agenda today. The message it sends out to the 150,000-odd families is not the message the Government wants to give, so it must be on the agenda next week.

The Senator also sought a debate on antisocial behaviour in Cork city but it is not just about Cork city. We are encouraging everyone to have an outdoor summer for all the right reasons, but along with that come some negative connotations. I refer not just to litter and the lack of outside loos, which people have complained about and which needs to be addressed by local councils. There has been a definite increase in unacceptable and unwarranted antisocial behaviour, without an accompaniment of an increase in Garda patrols to man these outdoor meaningful dining experiences and summer activities we are supposed to have. That needs to be addressed and I will try to arrange a debate for as soon as possible.

Senators McGreehan and Garvey spoke about the fact that this is National Biodiversity Week. I will try to arrange a debate in the next couple of weeks on some of the objectives and challenges we face as a country and how we are going to achieve them.

Senators Keogan, Davitt and O'Loughlin welcomed something long overdue. We all know what politicians do in this country and the hard work councillors do. The Moorhead report used certain language that did not reflect the 24-7 nature, in some cases, of the work councillors do for what was pitifully called a part-time job. It absolutely is not a part-time job and I am glad the memo accepted by Cabinet today reflects the value local communities place on the work councillors do. I acknowledge the Senators who raised that issue.

Senator Joe O'Reilly requested a debate on the undocumented Irish in the US and outlined the really worthwhile proposition in regard to unused visas allocated to Australians. I will arrange a debate on that as soon as I can.

I do not know where to start to respond to Senator Ruane. If not on behalf of St. John Ambulance then on that of the Department that has requested it, there must be a report, scoping exercise and investigation into sexual abuse, historical and otherwise, at St. John Ambulance. There is no point in conducting a review, scoping exercise or investigation without singing from

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the high heavens that this happened under our watch and this is what we are going to do to fix it. I will write to the Minister, Deputy O’Gorman, today to highlight the issues the Senator raised, not least of which relates to the limitations of the advertising campaign on behalf of the organisation but also the affected people whom the Senator spoke about, who are probably some of the most marginalised people and would not normally read the types of publications where such issues are publicised. I will reflect on that and revert to the Senator.

Senator Boylan raised issues in Gaza and the overwhelming impacts the Israeli strikes are having on the community. We need to talk about that for as long as we can.

Senator Bacik asked for a debate on the care of older persons and I will arrange that in the coming weeks. I am aware there have been changes to the fair deal scheme and there is a view to putting statutory entitlement to home care on an equal footing with the fair deal scheme in nursing home care.

Senator O’Loughlin talked about general data protection regulation, GDPR, issues and sought a debate on local government. I will arrange that insofar as I can.

The back-and-forth between Senator Mullen and other Senators at the beginning of the Order of Business probably shows there remain many opinions on the divisive issue of the response of the people to repealing the eighth amendment in recent years. While two thirds of the people voted in favour of its repeal, we should not discount the opinions or views of those who did not. Just because they were not in the majority does not mean their views are any less worthy than those of the people who were. We need to be mindful of respecting one another in the course of debates and I encourage the continuation of that. Finally, on behalf of all Senators, I want to wish Lesley Roy the best of luck in the Eurovision contest tonight. Hopefully she will go through to the further stages. She is an incredibly talented woman and she will do us incredibly proud. On behalf of us and all the Irish people I wish her every success in the Eurovision contest tonight.

An Cathaoirleach: We all join with the Leader in wishing her the best of luck in the Eurovision. I am sure that if we could all vote for her we would do so.

Senator Rónán Mullen: Amen to that. It may have just been an omission but I had raised an issue about patient private property accounts. I suspect that the Leader had intended to respond to that.

Senator Regina Doherty: I will come back to the Senator.

Order of Business agreed to.

Sitting suspended at 11.42 a.m. and resumed at 11.48 a.m.

Criminal Procedure Bill 2021: Committee Stage (Resumed) and Remaining Stages

SECTION 6

Question again proposed: “That section 6 stand part of the Bill.”

An Leas-Chathaoirleach: When we finished the last day we had nearly completed our discussion of section 6. Does anybody else want to contribute on section 6? I do not see any

hands.

Question put and agreed to.

NEW SECTION

Senator Michael McDowell: I move amendment No. 4a:

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

“7. (1) The court of trial may permit any witness to be cross-examined in relation to evidence given by that witness in the course of any preliminary trial hearing where the court is satisfied that it would be in the interests of justice to do so.

(2) The court of trial may permit evidence of matters dealt with at a preliminary trial hearing having to be tendered in rebuttal of any other evidence adduced in the course of the trial where the court is satisfied that it would be in the interests of justice to do so.”.

This amendment seeks to insert a new section 7 into the Bill.

What I intended with this amendment was to make it clear that although the preliminary hearing could take place prior to the trial and at a different time, what happened at the preliminary hearing would not be out of bounds for consideration, were it relevant, when the trial actually commenced. There are several possibilities as to how this would work. For instance, if a member of An Garda Síochána disputed a claim that he or she had intimidated a person into making a confession, that garda could be cross examined again in relation to the evidence he or she gave, before the jury, if the trial proceeded. Likewise, the jury could hear of what happened at a preliminary trial hearing where that was relevant to rebut any evidence given or proposed to be given in the course of the trial. What I want to make absolutely clear, by tendering this amendment, is that the separation of the preliminary trial hearing from the trial itself should not in any sense make it out of bounds for the matters dealt with to be rehearsed again before the jury. If this were not so, we would have the strange situation where people could say things at the preliminary hearing in order to make a confession or other evidence admissible, in terms of whether they had proper suspicions before they carried out a search, for example, but that might not be revisited in the course of the criminal trial itself.

The real underlying purpose of this amendment is to ensure that the accused is not prevented from fighting an issue again just because the judge has declared an exhibit or a confession, for example, to be admissible. The aim is to ensure that the accused is not prevented from disputing that again before the jury, as to whether a confession was voluntary or involuntary, for instance. Likewise, the prosecution authorities, for their part, should be permitted to tell the jury that at a preliminary trial hearing, the accused gave entirely contradictory evidence to that given in the trial. The purpose of this amendment is to ensure that what happens at a preliminary trial hearing is not declared out of bounds just because the court has ruled that evidence was admissible, an arrest was lawful or a confession was voluntary, for example, in the absence of the jury. The aim is to ensure that the jury is not effectively bound by such a determination and prevented from hearing the accused’s version again in relation to these matters. That is the purpose of this amendment.

Senator Sharon Keogan: I second the amendment.

Senator Vincent P. Martin: In many criminal trials, one’s liberty is at stake. After one’s

health and life, one's liberty is right up there as a fundamental freedom, so all and any admissible avenues ought to be made available and accessible in a criminal trial to ensure justice is done. Except for very good reason, there should be no limitations or strictures placed on the substantive trial. In my experience as a practitioner, I have detected clear evidence in recent times of a disrespect for the oath or affirmation taken before our courts. Often a trial judge, whether in a civil or criminal case, can obtain or stumble upon a game-changing, probative piece of evidence by looking into the recent past. Once, where an allegation has been made, the person on the receiving end is afforded full rights to refute and rebut, I see no difficulty at all. In fact, to deprive a person whose liberty is at stake of the opportunity to go there - let us say it is against a garda - could trammel on the constitutional right to a fair trial. All and every piece of evidence in a non-jury trial which can assist the judge, or in a jury trial which can assist the members of the jury, ought to be put properly before them. There should be no prohibition, except in certain exceptional circumstances that are not likely to arise too often. Let us say a preliminary trial happens and for whatever reason, a significant period of time elapses before the trial itself and, in the meantime, the accused is temporarily incapacitated. Let us say it goes on 20 or 30 years later. Perhaps in that instance there would be a prejudicial effect whereby bringing back and adducing that evidence would outweigh its probative value. I can think of very few grounds, apart from such exceptional circumstances. We must ensure that all is done to guarantee justice between the parties. The stakes cannot be higher when one is dealing with one's liberty, from the point of view of both the accused and the victim. This must be done as thoroughly and fairly as possible and as much information as is feasible ought to be brought into the realm of admissible evidence at the trial of the substantive action.

Senator Barry Ward: Tuigim go soiléir an áit óna bhfuil an Seanadóir ag teacht. The provisions of section 6, which we have already approved, give fairly wide latitude to judges dealing with preliminary trial hearings to address issues like this. The proposed section 7(1) from Senator McDowell clarifies what the court may permit in terms of cross-examination but I am not sure it is necessary. The wide purvey that is available in section 6 of the Bill probably covers that and there is fairly wide discretion afforded to a judge in a preliminary hearing to deal with those issues. Perhaps more salient is the proposed section 7(2) in relation to whether the judge can provide information to the jury at the actual trial of the offence as to what was heard in that preliminary trial hearing and, for example, issues that may have changed between the time of the preliminary hearing and the trial itself.

12 o'clock

We have to look at these things from the point of view with which we would look at a *voir dire* hearing, a hearing in the course of a trial in the absence of a jury. The jury is excluded in order that the judge and the parties to the case can discuss an issue and decide, for example, whether evidence is admissible. The jury is excluded because the law takes the view, I believe correctly, that if it was to hear evidence that was subsequently decided to be inadmissible, it could not simply forget that it heard that evidence. It knows the evidence is there and even though the court has deemed it inadmissible it is quite difficult for a person, who is expected to act dispassionately in a case, having heard the evidence to then forget it and move on as if he or she had never heard it.

The provisions of the Bill already cover the notion that a trial judge would deal with decisions made at a preliminary trial hearing in the same way as he or she would deal with decisions made in a court's *voir dire*. The good and progressive aspect of this legislation is that it allows those hearings to be done in advance. Everyone would agree that to be able to do that in advance

is an advantage, from the point of view of getting business done and not having juries sitting in windowless rooms in courthouses throughout the country while lawyers are arguing points. It allows trials to run more efficiently and quickly and to be completed in a shorter period of time. As the Bill stands, it is already in the power of the trial judge simply to view the decisions of a preliminary trial hearing in the same way as he or she would view decisions made in the course of a *voir dire* hearing during the trial. On that basis, I also suggest that the proposed insertion of subsection (2) is unnecessary because we have to look at it from the point of view of a parallel with a *voir dire* hearing. In that regard, trial judges must have regard to whether the evidence adduced there is probative or prejudicial and create that balancing exercise that they have to do all the time at present. The big advantage with this Bill is that they get to do it in advance of the trial and thereby shorten the trial, short-circuit many of the legal issues and avoid the waiting around for witnesses, complainants, defendants and jurors.

An Leas-Chathaoirleach: While there is no restriction on this quality discussion on important amendments, as a courtesy I am making Senators aware that the debate on the sections of the Bill must be completed by 12.45 p.m., according to the order of the House agreed on the Order of Business.

Senator Niall Ó Donnghaile: Tuigim an méid atá ráite agat, a Leas-Chathaoirligh. I will take your advice in regard to the tightness of today's debate.

Senator Ward has broadly outlined my read of this amendment. I spoke to it at an earlier stage regarding the experience of concerns in the North about some of these pre-trial hearings and, in some instances, how they could potentially be used to test witnesses. I broadly support subsection (2) of the amendment in principle, but the experience and the growing concerns about the reference in subsection (1) to cross-examining are of concern. The experience points to where that could become problematic. We are sympathetic to the rights of defendants but we are satisfied that they are sufficiently balanced here already. Introducing a specific clause about cross-examination could potentially lead to defence teams testing witnesses and their stories. That proved to be a significant issue of concern during a particularly well known and controversial trial in the North. Arraignment hearings are being abolished in the North due to some of these issues, as they have been allowed to expand too far in practice. We must keep their boundaries very specific in this jurisdiction. While defence teams have a job to do, any type of potential for tactical moves, such as calling a pre-trial hearing to probe witnesses, should be a matter for concern.

I will adhere to the guidance of the Leas-Chathaoirleach. I offer my views respectfully to the proposer of the amendment, but I will have to oppose it.

An Leas-Chathaoirleach: While I appreciate that, I am by no means trying to shorten contributions. I again welcome the Minister of State, Deputy James Browne, to the House.

Minister of State at the Department of Justice (Deputy James Browne): I know what the Senator is seeking to do with this amendment. The concern is that evidence given at a preliminary hearing might somehow be inconsistent with the evidence given at a trial and, therefore, there should be a facility for the court to allow these inconsistencies to be brought into the open and challenged and interrogated. Clearly, such situations can arise from time to time, whether at a preliminary hearing or in various scenarios that already exist in trials at present. Let us say, for example, that an expert witness gives evidence during a *voir dire* which is not consistent with the version he or she gives later during the main trial. This can already

happen and moving the *voir dire* to the preliminary hearing does not change that fact. In such a scenario, such inconsistencies, if not adequately explained, could clearly be used to undermine a witness's credibility. Of course, where evidence is ruled inadmissible it will not arise during the trial, as is currently the case.

We have carefully examined the issue the Senator raises and, although I agree that the courts must be able to deal with this type of scenario, I am satisfied that it is nothing it cannot deal with already. In fact, I am concerned that to pin it down in this way in a statute might interfere with the existing powers of the courts to deal with these situations effectively in their own discretion or using the flexibility already built into the statutory provisions which govern the various types of orders which may be dealt with at a preliminary hearing. I emphasise that the facility of a preliminary hearing merely moves the timing of these matters rather than changing the applications themselves. I should also mention that there is a discretion in the Bill in section 6(15) which allows a trial court to vary or discharge an order made at a preliminary trial hearing where the court is satisfied that it is in the interests of justice to do so. Furthermore, there is nothing in the Bill that would prevent additional applications during the trial itself, notwithstanding that there has been a preliminary hearing, where the court permits. As Senator Ward correctly pointed out, section 6(12) says it shall be the same judge who will deal with the matter both in the preliminary and the main hearings. Section 6(20) provides that the court in the preliminary hearing shall have all the powers it would have during the trial, while section 6(5) deals in particular with the timings of hearings with admissibility.

Finally, in the event that the prosecution or defence feels that the court has not dealt with matters in a way that is fair and just, there is always the right of appeal. That is the ultimate safety net where one side feels that the usual safeguards have not worked as they should in the hearing. In summary, we must rely on the judges to conduct trials fairly, and they have the necessary powers at present to do so. That faith in those judges to run those trials is very important.

Senator Martin raised an important point, which is the increasing disrespect that may be offered to the oath. The Perjury and Related Offences Bill 2018, which was initiated in the Seanad by the former Senator, Pádraig Ó Céidigh, and supported by Independent Senators, went to the select committee last week on Committee Stage. We should have it on the Statute Book as soon as possible to address Senator Martin's and other Senators' concerns in that respect.

I understand Senator McDowell's concerns, but we are satisfied they are addressed in the current law and in section 6. However, we will keep how it works in practice under review.

Senator Michael McDowell: I understand the point that Senator Ward and the Minister of State are making. What I was worried about, and perhaps I did not express this adequately, is that section 6(14) states that a determination of a point at a preliminary trial hearing shall have binding effect. It is all very well to say that a statement is going to be admissible or inadmissible but if that were interpreted as meaning, for example, that a garda had not made a threat to obtain a statement, it should not be applied as somehow saying that the matter has now been determined and the jury cannot consider that issue afresh. That is the point I am making. However, I will not push the matter any further as I wish to proceed to the other two amendments, if I can. I will leave it at that.

Amendment put and declared lost.

SECTION 7

An Leas-Chathaoirleach: In this section we are working to the list of additional amendments dated 29 April 2021. Amendments Nos. 4b, 5 and 5a are related. Amendment No. 5 is a physical alternative to amendment No. 4b. Amendment No. 5a is consequential on amendment No. 4b.

Amendments Nos. 4b, 5 and 5a may be discussed together by agreement. Is that agreed? Agreed.

Senator Michael McDowell: I move amendment No. 4b:

In page 11, to delete lines 18 to 25 and substitute the following:

“(2) An appeal referred to in this section shall only lie where it is contended by the prosecution that the relevant order made by the trial court erroneously excluded evidence which is—

(a) reliable,

(b) of significant probative value, and

(c) such that when taken together with the relevant evidence to be adduced in the proceedings a jury, or in the case of an offence before a Special Criminal Court, that court might reasonably be satisfied beyond a reasonable doubt of the accused’s guilt in respect of the offence concerned.”

Senator Sharon Keogan: I second the amendment.

Senator Michael McDowell: This is a technical amendment. I ask the Minister of State to consider it. The appeal provision in section 7(2) states an appeal referred to in this section shall lie only where the relevant order concerned made by the trial court erroneously excluded evidence which is reliable and such that when taken together with the other relevant evidence would be of significant probative value in the minds of a reasonable jury. The language there says that the appeal only lies where the “erroneously excluded evidence” is of that character. The question is, and the amendment put down by myself and Senator Boyhan seeks, to make it clear that it is the prosecution that is asserting that that is the case. The present phraseology of subsection (2) seems to say there is no appeal unless it is of a particular character. It does not say who decides the character. Presumably it must be the appellate court, but it seems to me that it should be made clear that the prosecution has to assert that the evidence is of that character, and that this gives it the right to go to the Court of Appeal, and that the Court of Appeal would then determine whether the appeal is of that character or not. At the moment it is open to interpretation that the appeal does not lie at all unless the aspects of the evidence in question are, as a matter of fact, satisfied under subsection (2). It was intended to make it clear that this was a matter for the Court of Appeal to decide whether the evidence is of that character, and not for the trial court to determine that.

Senator Barry Ward: My amendment No. 5 from the initial list of amendments, which proposes to delete “erroneously” in page 11, line 19, largely does the same thing that Senator McDowell’s amendment proposes to do. The word “erroneously” suggests that before an appeal can be taken there has to be some form of establishment that the evidence was excluded erroneously. It is, of course, a subject of contention by the prosecution. I discussed this with the Minister of State, Deputy Browne, after the last Committee Stage discussion, and what he

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said to me is probably correct in that it is a matter of interpretation by the Court of Appeal. Notwithstanding the difficulty I have with the way this is drafted, I cannot foresee a situation where an appeal would be refused, or where the prosecution would be declined the opportunity to bring an appeal, merely because it had not in some way satisfied the court in advance of a hearing that the evidence was excluded erroneously. It is a subjective position it takes. I will withdraw my amendment No. 5 on that basis.

Deputy James Browne: I will speak to amendment No. 4b. The Senators' intention with this amendment may be to try to adjust the wording to reflect whether the evidence is in fact compelling enough to meet the threshold that is undetermined at the point of going to appeal. I believe that this addition is unnecessary. Furthermore, I have a real concern that, in reality, the wording proposed would have the unintended effect of changing the threshold for permitting these appeals under section 7 of the Bill, so that appeals could now lie wherever the prosecution contends that the threshold, in relation to the type of evidence excluded as inadmissible, has been met rather than the current wording that requires that the evidence actually meets the threshold. I appreciate that this may not be what is intended. The wording of this section and the other sections has been carefully and expertly crafted by the Office of the Parliamentary Counsel precisely to ensure that such unintended effects are avoided. I consider that the wording of the section as currently drafted is more appropriate, and therefore I cannot accept the amendment. We are satisfied that, as drafted, it is the Court of Appeal rather than the prosecution that will effectively decide the threshold. If there was any change to this wording, it could have that unintended consequence.

Senator Michael McDowell: If I may say so, Senator Ward is too easily persuaded by the Minister of State. An appeal, referred to in this section, shall lie only in certain circumstances. It seems to me that what is really intended is that it shall succeed only if it is established that it is erroneous that it excluded evidence that was reliable, had significant probative value, and when taken with the other evidence could have affected the outcome of the trial. With the greatest respect to the Parliamentary Counsel involved, they are saying that the appeal only lies where it is bound to succeed. I do not follow that. I probably agree with Senator Ward that the Court of Appeal would say that it would be slightly nonsensical to interpret the term "shall only lie" as excluding something, but I believe that it should have been stated that the appeal only lies where that contention is made and then, when the appeal is heard, the Court of Appeal decides whether or not the appeal succeeds. That is the point I make. I will not push it any further.

Deputy James Browne: The wording mirrors almost identically that in section 23 of the Criminal Procedure Act 2010. This has worked effectively, so far, but we will certainly keep it under review. If there were any change in this Bill, it could impact those cases also. If it were to be changed, it would need to be very carefully considered. I take the Senator's point.

Amendment, by leave, withdrawn.

Senator Michael McDowell: I move amendment No. 5:

In page 11, line 19, to delete "erroneously".

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 5a cannot be moved, as the question on amendment No. 4b has been negatived.

Amendment No. 5a not moved.

Question proposed: “That section 7 stand part of the Bill.”

Senator Michael McDowell: I do not follow this at all. Amendment No. 5a was to make sure that the Court of Appeal can “allow, quash or vary the order under appeal.” It is not predetermined by any previous decision. It is to allow the Court of Appeal to vary an order. This is hugely important. At the moment there is a binary provision in the Act that it either allows the appeal or quashes the order under appeal. It may well be the case that the Court of Appeal will find itself in a situation where it determines that a confession or evidence has been, say, wrongly admitted as to half of it but rightly admitted as to the other half. If we leave this section as it is, without the right to vary the order, there will then be an unfortunate circumstance whereby the Court of Appeal will state that there is some evidence which satisfies the test and should be allowed in but some other evidence should not have been allowed in. All I am trying to do is to put in the word “vary” to allow the Court of Appeal to vary the order rather than simply to allow or to reject it. I do not think the previous decisions on my amendments or Senator Ward’s amendments affect that point at all. Of all the things I am saying here today, I would ask the Minister of State especially to carefully consider whether it is appropriate to leave section 7(10) exactly as it is. It states: “On an appeal referred to in this section the Supreme Court or the Court of Appeal, as the case may be, may affirm or quash the order under appeal.” It is not given power to vary the order. I can imagine a case in which a ruling will be made that, for example, a statement is admissible and the court finds that three quarters of the statement was admissible and should have been admitted but one quarter should not have been. It is wrong to prevent the Court of Appeal or the Supreme Court from varying an order and requiring them to make a binary choice to the effect that a piece of evidence is right in its entirety or wrong in its entirety. I ask the Minister of State to consider carefully whether the right of the appellate court, whichever it is, to vary the order where it considers it appropriate should be added to the legislation.

An Leas-Chathaoirleach: The Minister of State can come in again before I put the section.

Deputy James Browne: I thank the Leas-Chathaoirleach. I can tell the Senator that the current wording is intentional. The provision was considered very carefully in drafting, taking into account the views of the Attorney General and the Parliamentary Counsel as to the nature of the decision or appeal and the best wording to achieve that. In effect, if the appeal is successful, it is remitted to the trial court to take into account what has been stated. The trial court will then have to attend to the matter, rather than the appeal court.

Question put and agreed to.

Sections 8 to 10, inclusive, agreed to.

Amendment No. 6 not moved.

Section 11 agreed to.

NEW SECTION

Senator Barry Ward: I move amendment No. 7:

In page 14, after line 34, to insert the following:

“PART 3

AMENDMENT OF THE JUDGES’ RULES

Definitions

12. In this Part, “the Judges’ Rules” refers to nine common law rules of guidance set out by a 1972 decision of the Supreme Court.

Power for Minister to amend the Judges’ Rules by regulation

13. The Minister may, where she feels it is in the interests of justice and efficiency, make regulations under this section, to amend Rule 9 of the Judges’ Rules to allow for the taking of statements from a person, otherwise than to require such a statement to be immediately recorded in writing, provided the statement is recorded in another form.”.

I am here proposing to insert a new Part relating to the Judges’ rules into the Bill. The Judges’ rules are a set of common law procedures that are to be followed in relation to persons in custody, the gathering of evidence and other areas. In this amendment, I am specifically considering Judges’ rule 9, which relates to the taking of an account of what a person said while being interviewed in custody by members of the Garda. The Judges’ rules are common law and go back to the early 20th century. They were affirmed into Irish law in the Pringle case in 1981. In that case, the Chief Justice, Mr. Justice O’Higgins, affirmed them from the point of view not of making them a rule of law but more of a guideline for the Garda, specifically with regard to two aspects. The first was to have accuracy on what a person says when interviewed in custody and the second was affording that person the opportunity to amend that record within a short time in order that he or she has a clear recollection of what was said.

When that decision was made in 1981, there was no video recording or audio recording in the way that there is now. Today we have a situation where almost all Garda stations, and certainly any major Garda station, have video recording facilities. It is par for the course that when a person is arrested and subject to all the other protections that exist for that person during the time he or she is in custody, he or she will give an interview to the Garda that is recorded by video, with a clear audio recording. After the fact, in a criminal trial, it is standard practice for that interview to be reproduced as a transcript for the benefit of the parties involved in the trial. Although the handwritten note of the members of the Garda involved is also produced, the reality is that we rely on either the video recording or the transcript, or both, of the interview that was given in custody.

The reason I am proposing this amendment is that although the Judges’ rules are only guidelines and do not have force of law, the reality is that the Garda sticks by them because its members know they are a template for the admissibility of that evidence gathered while a person is in custody. The difficulty that arises from the point of view of the Garda and, indeed, the person being interviewed, is that the interview can therefore only proceed at the pace at which one Garda member can write down the questions and answers in the interview. The result is that interviews take a great deal longer than they need to, meaning that the person involved will be detained for a longer period than is necessary, and the gardaí involved do not have the opportunity to regulate the flow of that interview to get the best effect from the questions they want to ask. Anybody who has witnessed a criminal court case will see that the barristers or solicitors involved will ask questions at different paces. At different times, they will ask quick, short questions while at other times, the questions will be longer and more discursive. That is

a mechanism that is used to elicit the best quality of answers from the witness involved, obviously depending on what side one is. The reality is that the way the Judges' rules operate in practice, specifically rule 9, is that members of the Garda cannot regulate the flow of the interview. They cannot, in essence, cross-examine a person who is being interviewed. They may only ask a question and receive an answer at the speed at which one Garda member can write it down. That must be frustrating for both the gardaí and the interviewee and it is unnecessary. The reality is that we now have technology that renders that level or manner of recording unnecessary and superfluous.

What I am suggesting is that rather than just sweeping away rule 9, which is tremendously important, we would, through this Bill, empower the Minister to make a regulation to change that and to acknowledge the fact that the Garda no longer needs to write down those interviews but can rely on the digital recordings of the interview, both audio and video, because the reality is there is always going to be a video recording. It will make everything much more streamlined and efficient. Garda members can still do it by writing in the very odd case where video recording facilities are not available. That is the purpose of these sections.

Senator Michael McDowell: I am supportive of what Senator Ward is attempting to achieve. I do not know whether the particular mechanism by which he is proposing it should be done is the correct one. It may be of interest to him to know that when I was Minister for Justice, the exact same point occurred to me. Rather than seeking to cut across the Judges' rules, I asked the Chief Justice at the time to look at the question as to whether this was one which the Judiciary wanted to look at again or whether it thought it was proper for me to attempt to legislate on. Unfortunately, my request was never addressed in substance. The only thing that I can say is that it is absurd that there is a recorder, a video and somebody taking down in longhand the questions and answers as they are given. I remember another anecdote relating to representing members of the Garda at disciplinary inquiries where the same procedure applied. The question was typed out by a two-finger typist, a sergeant clerk, and the answer was then typed out when it was given. The effect was that the cross-examination was completely subverted because it took about two minutes for the witness to consider very carefully why the question was being asked and what kind of answer would be most supportive of his or her case.

I agree with Senator Ward that the time has come to scrap the requirement that a written record, as well as an electronic one, be taken of any matter. The point could be made that the recording system might collapse and there might be no record at all of what went on, although I do not think that is valid anymore. In this House we do not operate on the basis that every word is written out and that every response from a Minister awaits the writing out of a speech made in support of a motion. In the 21st century, we should look at the Judges' rules again to see whether that particular requirement is antiquated and counterproductive.

An Leas-Chathaoirleach: It is probably prudent that we do not do that here.

Senator Vincent P. Martin: To add to the comments made by Senators McDowell and Ward, that archaic device also finds its way into sworn depositions and people have to laboriously write out every word. I recall taking a deposition from the governor of a prison when I was a very young barrister. It was just me and the governor and there was nothing controversial about the deposition but the process went into a second day. We had to do this in the old Special Criminal Court and it seemed like something from a different century. It was highly inefficient and hugely delaying and at the end of the day it did not serve justice because justice delayed is justice denied.

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Deputy James Browne: The Senators raise a very important point. I thank Senator Ward for bringing this amendment forward. It proposes quite a substantial change but it is a very important and helpful proposal. He spoke about writing things out in longhand. The accuracy of auto-transcription software on mobile phones now is phenomenal. This proposal must be assessed from a legal and policy perspective and I ask the Senator to engage with the Department of Justice and the Minister, Deputy Humphreys, and Deputy McEntee when she returns, on this very important issue. I ask him to withdraw the amendment because this Bill is not the best home for such a substantial proposal. In that context, I will not be able to support it. That is not to take away in any sense from the importance of the issue he is raising here. It is something we need to pursue.

Senator Barry Ward: I appreciate what the Minister of State said and I am happy to engage with the Department. This proposal is also contained in a Private Members' Bill, namely, the Criminal Procedure and Related Matters Bill 2021, which is in my name. I am happy to engage with the Department and, on that basis, to withdraw the amendment.

Amendment, by leave, withdrawn.

SECTION 12

An Cathaoirleach: Amendments Nos. 8 and 9 are related and may be discussed together.

Senator Barry Ward: I move amendment No. 8:

In page 15, to delete lines 16 and 17.

Section 12(2)(b) states that a judge may provide specific documents or audio recordings of statements made in the course of a trial to the jury at the time of its deliberations. That includes a transcript of the opening speeches of counsel, a transcript of the whole or any part of evidence given in the trial, a transcript of the closing speeches and a transcript of the judge's charge. There is a case to be made for the importance of the second and fourth of those, that is, the evidence and the judge's charge, as they might benefit a jury in reaching its decision. However, the other documents referred to are the opening and closing statements of counsel. It is important to remember that opening statements are almost invariably made only by the prosecution. In the context of the closing statements made by both sides, such statements are not evidence. They are the opinions of the lawyers. They are the strategies and language lawyers use to convince the jury of one side of the argument or another but they are not evidence. I have a significant problem with the notion that a jury might be allowed to return to the jury room and have with it the arguments of either side, rather than the evidence their oath requires them to consider. That is why I suggest that subparagraphs (i) and (iii) be removed from section 12(2)(b).

Senator Michael McDowell: I support Senator Ward's amendment. This unnecessary provision to start giving juries prosecution or defence counsel speeches undermines their oath, which is to consider the evidence rather than the arguments that are put before them and to confine themselves to their judgment of the evidence.

The other thing I am slightly worried about, and which I raised on the last occasion on which this Bill was before the House, is that jury trials are becoming immensely lengthy. The implication here is that transcripts of speeches and the judge's charge will be prepared for the

jury before it retires. Think about that. If a judge stops proceedings at noon, is a transcript to be prepared of what he said to the jury and handed to its members before they start considering the case? That would be another day gone. I am opposed to section 12(2)(b) in its entirety. It is a mistake and will lengthen cases rather than shorten them. The whole purpose of this Bill is to shorten trials but it will considerably lengthen them if these kinds of transcripts are to be prepared.

There is another issue, with which Senator Ward did not deal, in that there will be arguments about whether people actually said what the transcript shows, if they misspoke or uttered the word “not” when they did not intend to do so, and so on. There would then have to be a hearing on the transcript and the lawyers on both sides would have to go through it and decide if that is what they think the judge, prosecution counsel or defence counsel actually said. If the defence counsel made a remark in the course of his or her speech to the jury and the judge’s eyebrows went through the roof, would that be included in the transcript that goes to the jury? This is a mistake and section 12(2)(b) should be scrapped completely.

Senator Vincent P. Martin: I flagged this issue on Second Stage. The jury is to consider evidence. I understand that this proposal came about on foot of recommendations from the Law Reform Commission so I looked into those recommendations. The commission’s concern seemed to be about very complicated and fraudulent matters and allegations that come before the court. The Government is proposing to extend that to all indictable criminal offences.

The word “not” only has three letters. It is one of the shortest words in the English dictionary but it can utterly change the complexion of a statement. As Senator McDowell said, counsel could, for example, misspeak. The matter about which I am open-minded is the charge to the jury by the trial judge, but that may have to be edited. I am implacably opposed to this section. It goes against the whole ethos of a jury considering evidence. It also states that they can be given audio recordings. There is some great stuff here about giving juries charts. Give them as much information as possible. That was the rationale behind the Law Reform Commission’s recommendations but the information must be evidential in nature, not a stylistic opening speech from a counsel, although no doubt they are very cogent.

It is good to have the Minister of State in the Department. This is no criticism of his predecessors or his current justice team but it is always an added benefit. It might not be a necessary or essential prerequisite for someone in the Department to be a competently trained lawyer but that can only help and enrich the Department. The Minister of State can call on his experience.

I am a huge advocate of reforming juries and making the law and workings of the legal system more accessible to the public. The Minister is going to talk to Senator Ward about issues. That could open up some other dialogue but it is not a discussion for today. All of the wonderful trials of yesteryear could be video-recorded under the safe management of the Courts Service. Students, including those studying history, could benefit from looking back at those trials in years to come.

The hook line of the RTÉ television programme “Gunplot” was a nugget of information that was saved and recovered, namely, the utterances live in court from the late Seamus McKenna, who comes from a wonderful line of experienced barristers in the Farney county, including Mr. Justice Herbert McWilliam, Paul Callan, Paddy McEntee and, in more recent times, Pat Hanratty, Hugh Mohan and a long list of other up-and-coming barristers. To store their words for years to come would be a huge oracle and treasure for students of history and law. That is

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for another day. I am digressing. I am implacably opposed to this, but I am not opposed, in the right supervised circumstances, to audio-recording major trials in this country.

Deputy James Browne: Section 12 of the Bill implements a recommendation, as Senator Martin pointed out, from the Law Reform Commission's 2013 report on jury service to the effect that the types of information already available under section 57 of the Criminal Justice (Theft and Fraud Offences) Act 2001 would be extended to other trials on indictment and that a trial judge may order that copies of any or all certain documents can be given to a jury in the form that the judge considers appropriate. That includes a transcript of the opening speeches of counsel, a transcript of the closing speeches of counsel and any other document that, in the opinion of the trial judge, would be of assistance to the jury in its deliberations. That is what is contained in section 57 and has been operational for some time. The Bill proposes to extend this provision.

I have heard the Senator's concerns around this issue. However, it is not automatic and will be a matter for a judge to decide in the circumstances whether the information should be provided to juries. It has been operational under the Criminal Justice (Theft and Fraud Offences) Act 2001. I am not minded to accept the amendment in the circumstances in which it is proposed.

An Cathaoirleach: Is the amendment being pressed?

Senator Barry Ward: No, I will withdraw it.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 9:

In page 15, to delete lines 20 and 21.

Amendment, by leave, withdrawn.

Section 12 agreed to.

NEW SECTION

Senator Barry Ward: I move amendment No. 10:

In page 16, between lines 10 and 11, to insert the following:

“Amendment of section 4A of Act of 1967

13. Section 4A of the Act of 1967 is amended—

(a) by the substitution of the following for subsection (1):

“(1) Where an accused person is before the District Court charged with an indictable offence, the Court shall send the accused forward for trial to the court before which he is to stand trial (the trial court) unless—

(a) the case is being tried summarily, or

(b) the case is being dealt with under section 13.”,

and

(b) in subsection (5), by the substitution of “in accordance with that section” for “on the accused”.”.

This is a technical amendment. I will withdraw it.

Amendment, by leave, withdrawn.

Section 13 agreed to.

NEW SECTION

Senator Barry Ward: I move amendment No. 11:

In page 16, between lines 12 and 13, to insert the following:

“Amendment of section 4B of Act of 1967

14. Section 4B of the Act of 1967 is amended in subsection (1)(a), by the insertion of the following new subparagraph after subparagraph (ii):

“(iii) in the case of an offence that may be tried on indictment only, the prosecutor directs that the accused should be sent forward for trial, or”.”.

This is a proposal to amend section 4B of the Criminal Procedure Act 1967, a very important provision which relates to the service of a book of evidence or, essentially, a collection of documents, on an accused person in the District Court before he or she is sent forward to a trial court of indictment. The reason I am proposing this amendment to include a third subparagraph is that the section currently relates only to matters where directions of the DPP are required. For example, in what are commonly referred to as hybrid offences, where a person can be tried summarily or on indictment before a judge and jury, the Office of the Director of Public Prosecutions must, in the first instance, provide directions as to what it wants to happen with the case, in other words, whether it is happy for it to go forward on indictment. The difficulty arises in respect of certain cases that are indictable only. It would appear that section 4B makes no provision for such cases and, consequently, the time limits. The time limits are very important because there is a 42-day time limit built into the legislation, which means that accused persons do not languish in the District Court while waiting to get into the indictable court. That time limit does not apply to people accused of indictable only offences such as murder or certain firearms offences, section 4 assault or whatever it might be. The reality is that such persons do not benefit from the protections of section 4B or the time limits. I suggest we change that to include a subparagraph 3 which will state: “in the case of an offence that may be tried on indictment only, the prosecutor directs that the accused should be sent forward for trial, or”. It includes a subparagraph which includes those offences that are currently left out by section 4B.

I would also suggest that in making this amendment we do not in any way prejudice the prosecution because the District Court judge, whoever he or she may be, has a very wide discretion to extend the time where it is in the interests of justice to do so. Therefore, the DPP loses nothing by this.

In addition, even if the District Court judge was to decide to strike out the matter, there is no dismissal with prejudice and it is still open to the DPP to re-enter the matter. This is an amendment to include a cadre of offences currently admitted and, therefore, to afford the protections available to people who are charged with hybrid offences to people who are charged with more

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serious offences.

An Cathaoirleach: As it is now 12.45 p.m., I am required to put the following question in accordance with the order of the Seanad of this day: “That amendment No. 11 is hereby negatived in committee, section 14 is hereby agreed to in committee, in respect of each of the sections undisposed of, the section is hereby agreed to in committee, the Title is hereby agreed to in committee, and the Bill is accordingly reported to the House without amendment; that Fourth Stage is hereby completed; and that the Bill is hereby received for final consideration and hereby passed.”

Question put and agreed to.

An Cathaoirleach: When is it proposed to sit again?

Senator Robbie Gallagher: On Monday, 24 May, at 10.30 a.m. in the Dáil Chamber, or earlier if necessary.

The Seanad adjourned at 12.47 p.m. until 10.30 a.m. on Monday, 24 May 2021.