



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Teachtaireachtaí ón Dáil - Messages from Dáil	607
National Maternity Hospital: Statements	607
Civil Law (Miscellaneous Provisions) Bill 2021: Second Stage	622
Civil Law (Miscellaneous Provisions) Bill 2021: Committee and Remaining Stages	632
Civil Law (Miscellaneous Provisions) Bill 2021: Motion for Earlier Signature	639
Climate Action and Low Carbon Development (Amendment) Bill 2021: Committee Stage	640

SEANAD ÉIREANN

Dé hAoine, 2 Iúil 2021

Friday, 2 July 2021

Chuaigh an Leas-Chathaoirleach i gceannas ar 9.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Teachtaireachtaí ón Dáil - Messages from Dáil

An Leas-Chathaoirleach: Dáil Éireann passed the Land Development Agency Bill 2021 on 30 June 2021, to which the agreement Seanad Éireann is desired. Dáil Éireann passed the Civil Law (Miscellaneous Provisions) Bill 2021 on 30 June 2021, to which the agreement of Seanad Éireann is desired. Dáil Éireann passed the Defence (Amendment) Bill 2020 on 30 June 2021, to which the agreement of Seanad Éireann is desired.

National Maternity Hospital: Statements

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Mary Butler. She will speak to us for approximately eight minutes. All Senators will have five minutes thereafter. The Minister of State will be called on to reply not later than 10.38 a.m. Statements are to conclude at 10.45 a.m. I call on the Minister of State to make her statement.

Minister of State at the Department of Health (Deputy Mary Butler): I thank the Leas-Chathaoirleach and Senators for inviting me here today to speak to them on the new national maternity hospital. At the outset, the Minister for Health, Deputy Stephen Donnelly, is currently in Dáil taking statements, questions, and answers, in relation to the vaccine roll-out. I am delighted to have the opportunity to discuss this critical and nationally important project in the Seanad. As many here will be aware, the practice of having stand-alone maternity hospitals, as is the case in four of our maternity services, does not reflect best international practice. Ensuring that mothers and babies have access to the full range of medical and support services, should the need arise, is of paramount importance. It is widely accepted that the best way to achieve this is to co-locate maternity services with adult acute services. That is why it is Government policy, as supported by the national maternity strategy, to co-locate the four remaining stand-alone maternity hospitals with adult acute hospitals.

It is important to recognise that our stand-alone maternity hospitals have served the people of this country very well, in some cases for hundreds of years. However, they are not the modern facilities a 21st century society needs. In particular, it is well-known that the buildings housing the National Maternity Hospital at Holles Street are no longer fit for purpose. Therefore, the new national maternity hospital is planned to be the first of the four remaining stand-alone maternity hospitals to be co-located. The new hospital is a vital piece of infrastructure, one that will help underpin the development of maternity services and the implementation of the national maternity strategy in the future.

The programme for Government recognises the importance of this project and clearly sets out our commitment to its development. It is worth reiterating that commitment today, which falls very much in line with our commitment to develop better health outcomes across the board for women in Ireland. In that regard, we are placing greater focus on women's health, and we are investing more than ever before to ensure that the progress achieved in women's health is consolidated and expanded for all women and girls into the future. The Government is aware, however, of concerns voiced in relation to the new hospital. Those concerns centre on the ownership and clinical independence of the new hospital. We understand those concerns, and we understand where they are coming from. We also recognise that the State does not have an automatic right to the uniform trust of the women of this country, given the way they have been failed in the past. However, I must point out that many of the concerns raised have been to the fore since the project was conceived and a significant amount of work was achieved through the Mulvey agreement, which was finalised following an extensive mediation process between the National Maternity Hospital and the St. Vincent's Healthcare Group. The agreement was subsequently published and noted by the Government in 2017.

The Mulvey agreement provides for the establishment of a new company which will have clinical and operational, as well as financial and budgetary, independence in the provision of health services. Most importantly, the agreement ensures that a full range of services will be available at the new hospital without religious, ethnic or other distinction.

Following on from the Mulvey agreement, a draft legal framework has been developed to copper-fasten these arrangements and to address the State's core objectives: firstly, to ensure all clinically appropriate services that are legally permissible are provided for women who need them in the new national maternity hospital and to prevent any undue influence, religious or otherwise, in the operation of the new hospital; and secondly, to protect the State's investment for the public good.

Many Senators will also have heard the Minister, Deputy Stephen Donnelly, speaking on the issue of ownership of the hospital and ownership of the site on which the hospital is to be built. As stated previously, the preferred option for the Government would be to build the new hospital on land that is owned by the State.

As noted by the Government in 2017, the Minister for Health formally asked St. Vincent's Healthcare Group to consider an outright site transfer. However, this was not agreed and the current position is that the draft framework ensures that the hospital will be owned by the State and will be built on a site held on lease by the State for a period of 99 years, with a potential extension for a further 50 years. The HSE will, in turn, provide an operating licence to the new national maternity hospital and St. Vincent's Healthcare Group to facilitate the provision of health services in the building.

2 July 2021

The Senators will no doubt have heard the Minister for Health state categorically that he will not be bringing any proposals to the Cabinet unless he is absolutely satisfied that the State's clear objectives are met through a cast-iron framework. In this context, the Minister for Health has stated that he wants to have further engagement with all stakeholders in the national maternity hospital project, as we move toward finalisation of the arrangements.

I would like the Seanad to know that we all share the same vision for maternity and women's healthcare services. We all want the very best for the women and babies of this country and we want to see them treated in the best possible environments. The best way to achieve this is by providing modern, safe, compassionate services that are delivered with dignity and respect. The planned move of the National Maternity Hospital to the Elm Park campus is a key part of achieving that aim and providing the state-of-the-art facilities that women not only need but deserve.

I look forward to hearing what the Senators have to say and I will conclude when everyone has spoken.

Senator Lorraine Clifford-Lee: I welcome the Minister of State, Deputy Butler, and thank her for outlining the Government's position.

I come to this debate as somebody who has a keen interest in women's healthcare and reproductive health and rights. I campaigned for a long number of years to repeal the eighth amendment with many Senators here in this Chamber, and beyond with civil society groups. We have a very complex history here in this country about how we treat women, in particular, in relation to their reproductive health, well-being and care. I suppose we are looking at this in light of the referendum, the mother and baby homes report and that deep trauma that is still there in Irish society for women. I suppose people are terrified. There is a great fear. They do not trust the assurances of independence. That is the hill we have to climb here with this. It is incumbent on all of us here to work together. We should not stoke up fear and anxiety, because there is already enough of that out there, but we should work constructively to solve this issue.

There are two main issues here: the ownership issue and the ethos issue. There are ways that we can come around both of these. My big fear is that the current National Maternity Hospital is not fit for purpose. In terms of the facility, the women of Dublin deserve better than what we have currently. I am not talking about the clinical oversight there or the excellent care they get. They deserve state-of-the-art co-located facilities. That is international best practice.

I would be fearful that this is used as a battering ram and as something to make a point on, and who will lose out only the women of Ireland again? That is my main concern - that we do not go off down some mad tangent path and the women do not get the hospital that they need desperately and deserve.

The compulsory purchase order, CPO, issue has been mentioned. I would be fearful if we go down that path that this hospital would never get built.

There are substantial fears around the ownership and the ethos but we can come around those. On the leasehold of 149 years, many have been fed the line that we will not own the land and we will not own the hospital. We will own the building on it and leasehold is a substantial form of ownership. Many houses and apartments, certainly in Dublin, are held in leasehold. There is no issue with the ownership of that. You can get bulletproof long leases there and it is *de facto* ownership.

That issue leads into the ethos issue. I am mindful of the battles that we have all undertaken in the past number of years. I am a proud feminist. I am somebody who has worked very hard to ensure reproductive health rights are provided for every woman and girl in this country.

The assurances of independence are not trusted but these issues can be overcome if we come together and work in a substantial fashion to make sure that the independence of the hospital is maintained, the golden share is bulletproof, and no Canon Law is attached to anything within the structure of the trust or within the hospital board itself. The Minister, Deputy Stephen Donnelly, understands these issues, is on board with many of the fears here and will not railroad the State into a massive investment where the lads from Rome will come and start imposing some sort of Canon Law on our hospital. That will not happen.

I have seen many posters stating, “Take your rosaries off my ovaries.” The nuns are gone as well. The nuns do not want to have anything to do with this hospital. I understand that deep fear but we have a complex system of voluntary hospitals, State hospitals and privately owned hospitals in this country. I strongly believe we need to start unravelling that system but that unravelling will take a long time and I do not want the women of Ireland to fall victim to this and for their healthcare needs to be put on the back burner while we undertake that project.

Let us build this hospital. Let us get the guarantees we need. Let us do everything to make this as bulletproof as possible. Let us accept the bona fides here of the St. Vincent’s Hospital Group and the religious orders here.

The religious orders have done an awful lot of good in this country as well. I was educated by the Mercy nuns in Waterford city. They educated generations of working-class women and give us the start in life that we would not have got elsewhere.

I just want to make sure that we get this hospital built and that everybody is brought into the process and given the assurances that they need.

Senator Sharon Keogan: I welcome the Minister of State to the Chamber and I also welcome her statement on the new national maternity hospital. This week an article entitled “National Maternity Hospital doctors fear ‘misinformation’ could delay move”, was published by *The Irish Times*. “Misinformation” is the keyword in this debate, as far as I am concerned. The national media, the Taoiseach and some of the public seem to be of the belief that should we proceed with the relocation of the National Maternity Hospital to Elm Park on the site of St. Vincent’s Hospital, that this will in some way affect the services available to patients. The reality, of course, is that all the services now legal in this country will be provided in the new hospital.

We have the assertion in that regard of 42 senior clinicians in the National Maternity Hospital. They have issued a letter to persuade us of that point. In their words, “We, the consultants of the National Maternity Hospital, are concerned by the potential for misinformation”. They go on to state that the project is a vital one “to create a world-class maternity hospital for the women and babies of Ireland”. Yes, it is a vital project, and we need a world-class maternity hospital. The proposed facility will be that in many ways. However, it is a tragedy that we must go hand-in-hand with services to deny unborn children their lives in circumstances where their lives could and should be saved. We know what the law is, though, and we know what the political and medical establishments are insisting on.

Why then the delay, despite the cast-iron guarantee in the proposed operating licence that

2 July 2021

all the services will be provided? Past instances of State decisions influenced by the Catholic Church have nothing to do with this new situation. The Catholic Church is entitled to be involved in healthcare, and it has a great record in providing excellent and ethical care, but it has clearly stepped back from involvement in the new national maternity hospital. Enough is enough, therefore, when it comes to beating down the Catholic Church in this country. Abortion, sterilisation and assisted reproductive services were unthinkable in the old Ireland. Now, these services are provided here. Regardless of whether the Religious Sisters of Charity retain ownership of the land at Elm Park, the new national maternity hospital is going to facilitate all services it is legally permitted to do in law. Furthermore, the religious order has said that it has nothing to do with the hospital. The order has not tried to undermine this and has not expressed any desire to interfere, nor will they.

Some will wish that the order had sought to retain a Catholic ethos at its hospitals, even if that meant that the new national maternity hospital was sited elsewhere. Would that have been such a problem? Do all the hospitals in this State need to remove their religious ethos? I reiterate that the Catholic Church is a pillar of compassion and understanding in this country and shame on us if we cannot show it the same respect and understanding. It would have been entitled to say “No” to the leasing of the land and to the new national maternity hospital. It could have, but did not. Therefore, anti-Catholic Church people in politics and in the medical establishment are having their cake and eating it. They have got the nuns out of the governance of the hospital, which Christian people have helped to pay to establish, and they are still engaged in the anti-Catholic Church invective and fearmongering. They are having it both ways.

The Taoiseach is said to retain concerns around governance and possible religious influence in the facility, but why? It is because political commentators have told him to be wary. Political commentators have weighed in on the matter and because they have, that is why this is happening. It is because political commentators have decided to make the new national maternity hospital their new point of issue with the Catholic Church. If this matter concerned any other religious denomination outside of Catholicism, would we be standing here today giving statements? Would political commentators have been involved? Would we waste our time like we are here? It is unfair to the Catholic Church and to the mothers and babies of this country to continue to talk like this. There is no reason for the Taoiseach to retain concerns, there is no reason for him to be wary, and there must be an end to this misinformation campaign, the cost of which will fall on taxpayers. We need a new national maternity hospital and I am as eager as the senior clinicians to ensure this happens quickly and without unnecessary delay concerning further debate on whether the religious orders retain ownership of the land. I, and many others would prefer harmful and-----

An Leas-Chathaoirleach: I thank the Senator.

Senator Sharon Keogan: This is why it is important that we get the new national maternity hospital built and that we just get and do this project. I thank the Minister of State.

Senator Martin Conway: Senator Keogan has given a stellar and robust defence of the Catholic Church. However, I remind her that plenty went on in this country that the Catholic Church should rightfully be ashamed of.

Senator Sharon Keogan: There were many good things too.

Senator Martin Conway: I do not believe that it has any place in healthcare in this coun-

try. With that said, I welcome the Minister of State to the House. As always, she is very welcome. This is a key commitment in the programme for Government. It is a pity that successive Governments did not deal with this issue and facilitate the building of a new national maternity hospital on a greenfield site which had no hand, act or connection with any religious bodies whatsoever. It is fair to say that the nuns and the religious bodies played a key role in providing healthcare when the State did not step up to the plate and provide it. Over the past 40 years, however, the State has incrementally improved the level of healthcare it is providing. Unfortunately, when it comes to maternity care and reproductive care, we fall far short. This project, which is probably going to cost €1 billion, if not more, should have been done years ago. It has to be done now, but it must also be done right. There is no reason St. Vincent's Hospital Healthcare Group should not gift this site to the State so that we can clear up all the issues to do with ownership. There is no reason whatsoever that cannot happen, but it is not happening. I was most disappointed with the statement from the St. Vincent's Healthcare Group last week which threw confusion and ambiguity into the waters, instead of the type of clarity which one would have expected.

The Catholic Church and any religious ethos can have no influence, ever, in respect of the services and the governance of the National Maternity Hospital. I have heard commentary that we must prevent undue influence. I do not know why people would even suggest that any influence of any kind is appropriate, because it is not. We must completely detach any religious ethos of any kind or any denomination from having any future role in the National Maternity Hospital. There should have been no need for a Mulvey report because we should not have been in that position in the first place. Like the Minister of State, however, I want to see this essential facility, which the women of Ireland have been deprived of for generations, built as quickly as possible. I welcome that the Minister for Health is engaging with the St. Vincent's Healthcare Group to devise and identify a workable solution. However, that workable solution must ensure total independence regarding the governance and the services provided in the new national maternity hospital. It would be ideal if we had ownership of the site as well.

Let us get the hospital built. That is what needs to happen now. In future, however, we may need to look at a constitutional referendum in this country to take ownership of the site so that in 50 or 100 years' time no future representatives from a future St. Vincent's Healthcare Group can try to create a scenario where there is undue influence. We cannot have any of that kind of influence. We must, however, ensure that the facility is built as quickly as possible. A significant amount of taxpayers' money has been committed to this project and spent. The project, though, must go ahead.

10 o'clock

I take seriously the statements by clinicians that it will be independent, the governance of it will be independent and the services which are legally available in maternity hospitals will continue to be available. However, there is concern and that concern has to be dealt with. The Government and the Minister have a duty to ensure that in all circumstances they can stand over the independence of the hospital before the country spends €1 billion on a site which is not ideal.

As I said at the beginning of my remarks, the ideal site would be a greenfield site which we would own, control and manage and the taxpayers and citizens of this country would have full control and influence over the maternity hospital. Unfortunately, because of the inaction of previous Governments and the failure of previous Governments to deal with this issue, we are

in the situation we are in today.

An Leas-Chathaoirleach: Is í an chéad chainteoir eile ná an Seanadóir Ivana Bacik.

Senator Ivana Bacik: I welcome the Minister of State to the House. I thank her for coming in, on foot of a request I made last week to the leader of the Seanad, to have this important debate. I ask her to relay our concerns back to the Minister, Deputy Stephen Donnelly, as I know she will. This has been a long saga. We have seen many years of obfuscation, Byzantine legal deliberations and much lack of clarity. Nobody denies the need for a new maternity hospital and we are all agreed it should be co-located with an adult acute service. That is something we are agreed on. However, valid and serious concerns remain about the ownership and clinical independence of the proposed new maternity hospital.

It boils down to this, after many years of discussion and debate, without State ownership of the land on which the new hospital is to be built, valid and serious concerns will remain in terms of clinical independence. I pay tribute to Dr. Peter Boylan who has been making this point for some time now. His concerns are being borne out and he is being vindicated. The Government has accepted this because we have heard the Taoiseach saying when the State is investing, the State should own. We saw an all-party consensus emerging in the Dáil last week, in the motion of 23 June. The key question we must all ask is what the Government has done since last week to move ahead on the motion to ensure this hospital will be built on Stated-owned land.

There are so many concerns about the structures which have been devised. We have to step back and remember the discussion and negotiations commenced well before our laws changed in 2018, to enable the provision of legal abortion in Ireland. As somebody who campaigned for many years - indeed decades - to see repeal of the eighth amendment, I am glad our laws have moved into the 21st century and women can now access the reproductive healthcare we need in this State. Unfortunately, that moving forward of laws has not been reflected in the negotiations on the new maternity hospital and especially on the structures around what we may call this Catholic successor company, into which ownership will pass, the St. Vincent's holding company.

I have spoken about this before. We know we have a legacy issue in this State whereby 90% of our schools being State-run and State-maintained in that the State pays teachers' salaries and building maintenance, but the land on which the schools are built and sited remains owned by religious orders or church authorities, and in a large part by the Catholic Church. I have called a syndrome, which we have seen emerging in recent years, a "developer's wife syndrome" in that we have seen the orders divesting ownership into what we may call a Catholic successor company, in the same way a male developer will often divest assets to his spouse in order to free himself of asset ownership. The liability is attached to him but he owns no assets. The partner or spouse has the asset ownership but no liabilities.

We have seen this used to serious effect by religious bodies in the past, especially the Christian Brothers divesting ownership of schools to the Edmund Rice Schools Trust. It is an ostensibly lay company but is, in fact, a Catholic successor company. I have been involved in a school divestment in which we saw this happen and we have seen endless difficulties with a lease arrangement in this context. That is what I fear about the structure the State is proposing. A 99- or even 149-year lease is a short-term lease in the eyes of the Vatican and the church authorities. The church takes a long view. I am quoting from Government people who have talked to me about this.

I attended the Oireachtas briefing with the Minister, Deputy Stephen Donnelly, two weeks ago, when we were told by officials that attempts had been made by the State to transfer the land into State ownership. The question, asked just now by a Government Senator, remains: why will the St. Vincent's holding group not simply gift the land to the State? Why is it so anxious to retain ownership? We have multiple examples of other hospitals, such as St. James's Hospital, in which we see different owners of the land. There is no requirement that it be owned by the same entity. There are five separate entities on the site of St. James's.

We must ask that question and without a sufficient answer, we are lacking the necessary assurances about clinical independence and protection of this State investment of €800 million. We no longer, in a 21st century republic, have to accept that religious entities continue to own land in which the State is investing large sums of money. We have moved on. I have sought freedom of information requests from the HSE and the Department of Health to see what attempts have been made to buy the land. We certainly do not need a constitutional amendment. We have a compulsory purchase order procedure and that should be used.

What has happened with the business case of the national maternity hospital, apparently submitted to Government and rejected? Different answers have been given. I would like clarity on that. We have no clarity as to whether abortions have been carried out at St. Vincent's Hospital. There is a serious concern when we see a Catholic religious order divesting itself of healthcare holdings into a successor company, that this is not a secular successor company and will not have the clinical independence we require as women living in a 21st century republic.

An Leas-Chathaoirleach: It is good to hear Senator Bacik's voice holding in prevailing conditions.

Senator Pauline O'Reilly: I welcome the Minister of State to the House, although she is no stranger to the convention centre. This boils down to a stranglehold the Catholic Church has had on Irish society. It is important to point out those who have been heckling others today, defending the Catholic Church and saying the Catholic Church has a right to be involved in healthcare are anti-choice. That is the concern we have. I am not a religious person. I am not Catholic. I have a right to go into a State hospital and have the kind of care I want and am legally entitled to in this country.

Someone else has a right to go into a church and pray. He or she has religious freedom. The whole point of this is the Government is in a difficult position and successive Governments have probably been in a difficult position, because our schools and hospitals have been under religious control for so long it is part of the legal basis upon which they are founded. To move from that into something else, which is completely State-owned, is difficult. It has taken eight years to get to this point.

I am also concerned by what the Mulvey agreement says in that the religious order shall not have undue influence. The term "undue influence" is the concern. It should not have any influence. Senator Conway pointed that out. The agreement which is the basis for this hospital is the concern. I am not convinced it is as straightforward as some people are pointing out to move into a different situation. I know the Minister and the Government are trying all they can and there are ongoing negotiations. What we really want is to be assured every avenue is being chased up, because the land should absolutely be in State ownership.

Most of us - not all - would say the land should be in State ownership. How we get to that

2 July 2021

point is the problem. How do we get to the point of moving the 90% of our schools which are also owned by the Catholic Church in one way or another, whether through another company or not, over into State ownership? It is not an easy task. I do not have all the answers but most of us are on the same page and know what we want to happen. I have brought forward motions about contraceptives and worked for a long time on repealing the eighth amendment. Most of us are coming at this with the best of intentions, the Minister of State included, though we might disagree on different things. I would love to hear from her what steps are being taken to ensure we can move not just this hospital but Irish society into a different place. We are quite entitled to feel we have been let down by the Catholic church for generations because we have been. All those who are contacting us are quite right to be concerned but we also need to make sure the hospital is built because these negotiations have been going on for eight years too long and there is still not any groundwork done on that site.

I thank the Minister of State for listening to me. I wish I had all the answers but I do not. I just know we need a hospital built. It should be on State land and now we need to get to that point through some form of negotiation, unfortunately. My concern about using a CPO is that it could take the same length of time again. If the church was to do the decent thing and earn back the respect of the women of this country, which it has lost, then it would gift the land to the State. People within the Catholic church might like to think about what kind of pressure they can put on their own church in that regard.

Senator Lynn Boylan: Sometimes it can feel like Groundhog Day in Ireland because every time we take a leap forward and become a more open and progressive society for our people, and especially our women, we seem to get dragged back to an Ireland of the past. That is what it feels like to stand here and have to make the case for why the national maternity hospital must be publicly owned and, more important, publicly controlled. If we do not learn from our past then we will repeat its mistakes. Nobody is denying that the church in Ireland has played a significant role in providing education and healthcare to many when the State did not, but we also have to recognise that it played a significant role in stymying the provision of care and maintaining control of the type of care provided.

St. Ultan's hospital was a child-centred hospital that catered for women and children and was run by multi-denominational, independent women who recognised the impact of poverty on health. My own father, who was reared by a single mother in the 1940s, was a patient of St. Ultan's and benefited from its foresight. When proposals were put forward to expand the hospital and amalgamate it with the national children's hospital, there were echoes of what we are seeing with the national maternity hospital today. Archbishop Byrne opposed such a merger solely on the grounds of religion. To quote him, "The danger of naturalistic and wrong teachings on sex instruction or adolescent problems is a powerful argument for retaining the custody of children in Catholic hands." The power of the Catholic church in the Irish Free State was such that the proposed merger of the two hospitals never took place. Instead, the Catholic church placed the faith of Catholic children over their health, and it was another 20 years before we got a new children's hospital.

Likewise, when it comes to the influence of the church on maternity care in Ireland, my own mother had first-hand experience of it when she gave birth to my brother in the 1960s. My brother died in childbirth and my mother never got to see him. The nuns took him away and immediately buried him in an unmarked grave in Glasnevin. She was simply told to go home and try again. My mother never got over the loss of my brother and the cruel manner in which the nuns treated her. An unbaptised child was not deemed worthy of mourning or a proper

burial. In fact, it was not until the 1990s that the State recognised the existence of children like my brother.

People will argue that times have changed and that we have moved on but have we really? Look at the mother and baby institutions and how we are still treating the survivors today. Women deserve so much better than the assurances we are being given by the Government that they will be able to access all services, including future services that will be legal in this State, in our national maternity hospital. Women deserve cast-iron guarantees. For too long, women's health has been at the back of the queue and even today, after repealing the eighth amendment, only half of our maternity hospitals and one in ten GPs offer abortion services.

If the Sisters of Charity are sincere in their offer to gift the land for the national maternity hospital to the State, then it has to be just that - a gift, with no strings attached. There should be no subsidiary boards. It must be a full transfer of ownership. People say that the nuns are gone. Yes, the nuns might be gone but the Catholic vested interests are still there. They are still controlling think tanks in this country that get on the airwaves every day and dictate about women's healthcare. Nobody wants to delay the delivery of first-class maternity care to women in Ireland but if we have learned one thing from past experiences of church and medical care in this country, it is that at the core of the church's role in medical care is control. It always has been and it always will be. That is why the women of Ireland deserve a national maternity hospital that is publicly owned and publicly controlled.

Senator Alice-Mary Higgins: We all know that we need a national maternity hospital. With respect to the Minister of State, with whom I have discussed this matter before, that is not the question. I am quite concerned by references to misinformation. What we are hearing again and again are simple assurances and reminders that we need a hospital but, in fact, the information related to this matter has been very concrete and real. It is written down in negotiating texts, in the Constitution and in documents that have come from the Sisters of Charity and other organisations. A pile of evidence is building up. This is not a matter of who wants to show they care about women's healthcare. This is about the very real, concrete evidence of the dangers we face if we move ahead with the model suggested.

On the timeline of this project, I spoke about this issue in my very first year here in the Seanad. As the Minister of State acknowledged to me previously on the floor of the House, the Mulvey report is outdated. It comes from a time before the referendum to repeal the eighth amendment and a very different fiscal time. The State now has access to funding that we did not have at that time. We are in a very different context and the Mulvey report is not adequate and not acceptable as regards the idea of undue influence.

The debate must now move on to how to ensure State ownership of this site. Will it be acquired via CPO or will the church and the Sisters of Charity gift that site to the State? Those are the only questions. People talk about delay. Campaigners and consultants such as Dr. Peter Boylan, who has done incredible and detailed work on this issue for years, asked that the State start the CPO process four years ago so we would be much further along if they had been listened to at that time. They should not be blamed for any delay. Let us be clear: most of the delay since 2016 has been in waiting for the Pope to write back to us. That is what we were waiting for; a letter from the Vatican. That was the delay. The delay now is due to the complex negotiations and the fact that the Government is spending years in rooms negotiating with St. Vincent's Healthcare Group. If it is negotiating for years with that group and the Sisters of Charity, that is for a reason. Those reasons have been made very clear by the Sisters of Charity

2 July 2021

and were made clear again this week. They said they will not sell the land because they want to have clinical consistency. If we all operate under the same rules and healthcare laws in the State, why do they need to have an extra layer of control? We know we have co-location of other public and private hospitals. Why can this not be the case? Are they telling us they will not be able to work with the public hospital? This in itself raises questions.

The key is that we know what the law is. We do not suggest they will break the law but there is a lot of room for interpretation. We know that, for example, when we were debating the eighth amendment, at a time when people could only get an abortion if they were going to die, how that might have been interpreted varying from place to place. It is about the services people want and are entitled to. It is not just that there might be three abortions in a year for people at death's door or that there may be one or two circumstances. It is not about having a national maternity hospital that simply does what it must do because the law makes it but having a national maternity hospital that leads the way, that embraces and is driven, and that has as its only priority women's rights and women's health services and not the interests of a private holding company, whatever they may be.

The arguments do not stand up and nor does the idea that we would be negotiating again in 150 years. We have read there is a lien on the site. This might be why it cannot be compulsorily purchased. There is nothing to stop there being a greater lien on the site in 100 years. The independent board can pile up the mortgages on the site. Here is the thing. The arguments do not stand up but, most importantly, we should not need to have this argument. We should not be condemning for another 100 years women in Ireland to further arguments or to complex power plays in the board of the national maternity hospital about who is on it this decade and who is on it that decade to inquire into the details. There should be no more arguments and there should be State ownership.

Senator Mary Seery Kearney: I thank the Minister of State for taking the statements. The ideal would be that we already owned the site and we already owned everything about the co-located hospital and were able to build our national maternity hospital unfettered from having to negotiate with anybody else other than developers and keeping them in check. In this instance, who do we trust? Given the legacy of the religious in the care of women and children in the State, I certainly do not trust the religious orders. This has been overwhelmingly demonstrated in report after report and commission of investigation after commission of investigation. Who do I trust? I trust the Government. I trust our negotiators of recent years. I trust those negotiating in the here and now that we have a very fine realistic balance in getting to a place where we have this hospital built. There is a danger that the perfect becomes the enemy of the good and the provision of services for women is delayed for years more. I am concerned about this balance.

We do not have the ideal and we do not own the site. We are on the back foot. If we start compulsory purchase why do we not use it for all of the other hospitals? I also campaigned for repealing the eighth amendment. I also believed in the right of women to their bodily integrity and to make choices and decisions over their bodies. Here we are, a number of years on, and back in March the health committee heard that only 50% of the hospitals throughout the country are delivering all of the services they should, and only one GP in ten is doing so. We need a wider debate. Why are we not using compulsory purchase orders for the schools that are trotting out an ethos and education programme contrary to the rights of parents and the complexity of families and the eclectic families we have at present? There is a larger debate to be had on severing the connection between the church and the State once and for all. If we are paying for

it we should own it and we should have control.

Senator Emer Currie: There are incredibly clever and well-respected people on both sides of this debate and I want us to be fair to them all. Here is what I believe we can all agree on. We all agree we need a new maternity hospital. While Holles Street is full of rich clinical experience, it is infrastructurally poor and no longer fit for purpose. We all agree a new maternity hospital should be co-located with an adult hospital. We all agree the single biggest investment in women's healthcare is well overdue, that Irish women's healthcare has been neglected and abused, and that there should be absolutely no religious influence, interference, involvement or oversight in the operation of medical clinical practice or decisions. We all agree that legally permissible services need to be provided without question and that the investment of the State needs to be protected. We all agree that we live with the legacy of control and shame that is at the root of our understandable mistrust.

This is about control but it also needs to be about the quality of healthcare that women need and deserve as soon as possible. How do we ensure both? Owning the land seems to be the cleanest solution. A total of 42 clinicians have given a cast-iron guarantee, and State legal advice states, that all legally permissible services will be provided and that there will be no interference in the running of the new hospital. The Campaign Against Church Ownership of Women's Healthcare still states clinicians will not have the same level of control at the new site and that the only way to do this is to own the land. While the Minister of State navigates through the issues of governance and ownership, and makes a decision on the memo that will be brought to Government where much work has gone into this and continues, until she gets it right I want her to remember the trauma of control and shame. I ask that the Government shows commitment to delivering the healthcare women deserve in a place and in a way they deserve.

Acting Chairperson (Senator Pauline O'Reilly): Ten minutes remain and we have three speakers so perhaps Senator Mullen could contain his contribution to three and a half minutes, if he would not mind.

Senator Rónán Mullen: I am not responsible for the ordering of business in the House and I have frequently criticised it.

Acting Chairperson (Senator Pauline O'Reilly): All right. That is a "No" then.

Senator Rónán Mullen: I will be grateful if I could have my usual time.

Acting Chairperson (Senator Pauline O'Reilly): That is fine. You can take it then.

Senator Rónán Mullen: I listened to some of the debate on the way in and I have to say I found myself strangely in agreement with some of the most hostile adversaries of the Catholic Church's role in medicine, even while being astounded at the disingenuousness of some of their arguments. I say this because it is quite clear the Sisters of Charity have abandoned any desire to be in a position to influence the ethos of anything that goes on at the St. Vincent's Hospital campus in future. As I understand it, it has appointed a board, which will in the future appoint itself, and they have not retained the ability to nominate the members of St. Vincent's holdings or, indeed, the directors.

It is a great tragedy they have allowed this to happen. We all understand the vocations crisis and the situation the religious have found themselves in. We also understand they do not have the energy or the resources to continue to play an active role, but they were, in one sense,

2 July 2021

a bulwark against statism. What we hear now is an almost universal call for State-controlled medicine. There is almost something of an unintended compliment to the Catholic Church in the arguments coming from Dr. Peter Boylan, Senator Bacik and others, which is to say they do not think the religious ethos should have any role in medicine but they seem to have some kind of residual fear that a day will come in the future when public opinion would support a more Christian concept of the ethos that might run the maternity hospital. That would be a very good thing. When we think about the procedures they are upset about and anxious to ensure happen, they are all elective procedures. Some of them involve the destruction of innocent life. I have heard a person who sees themselves as a spokesperson for persons with disability speak here who seems to have no realisation that it is religious-run healthcare that speaks out against the destruction of people with disabilities in abortion, something that is routine throughout the world. When we think of the procedures that are being advanced in the area of gender reassignment, some of them are not established on an evidence base and some of them may even be harmful. More knowledge in the future may turn out to show that they are quite harmful.

We have an ideological trust that says the State must be in charge of everything and there is no generosity in that. Remember, one third of the people voted against the destruction of innocent children in the repeal referendum. Are they not entitled to a model of healthcare that would guarantee excellent maternal care for women, including all life-saving and health-saving procedures? The religious orders always guaranteed that in their hospitals but without killing unborn children. A lot of non-believers would see the religious orders as potential champions of that ethos. That field has been abandoned.

I completely get it that the majority have a different view in this country. Senator Bacik will be elected as a Deputy next week, despite being an unremitting opponent of any protection for unborn babies down through the years. That is the fashion. I hope a day will come when there will be a more generous vision of healthcare that goes for excellence but protects everybody. It is a strange thing that it is the religious ethos that is seen by many people, believers and non-believers, as one of the few bulwarks against an aggressive statism that would target little babies in the womb and just treat it as a matter of rights.

I said the other day in the Seanad that we have some doctors who are only interested in the profit motive and who are not guided by any profound ethical procedures. You should be worried when you get highly skilled body mechanics in charge of the running of a hospital who are not moored to strong, ethical procedures about protecting the dignity of every single human being. You will reap the whirlwind of a statist mentality in healthcare. I get it though.

While the majority want something different, the national maternity hospital should not be under any religious ethos. The State is entitled to and should use compulsory purchase orders to guarantee that. I would prefer that unborn children were not being killed in a hospital under any kind of nominal patronage of the great St. Vincent and many people would share my view. There is an alternative vision for how excellent maternal care could be run. It is not on offer in this country but I hope the day would come when the State would provide the services and pay for them but that it would recognise that there are people who do things excellently but differently.

Acting Chairperson (Senator Pauline O'Reilly): Thank you Senator Mullen.

Senator Rónán Mullen: If taxpayers want those services and there are taxpayers in the country who would want those services-----

Acting Chairperson (Senator Pauline O'Reilly): Sit down Senator Mullen. You have had your time.

Senator Rónán Mullen: -----then why should they, as taxpayers, not have a State that pays for some of those services some of the time?

Senator Erin McGreehan: I count myself as a Christian and a republican and I really think Senator Mullen's comments are regrettable when you consider the past and the history of this country or when you think of what Dr. Noël Browne was forced to do. He was forced to resign because of the hierarchy of this State back 70 years ago. It is 70 years later and we are still dealing with the Catholic Church taking control and putting its words, thoughts and so-called moral teaching into our medical care. I am so sick of that kind of rhetoric and talk because Christians and Christian teaching want women to have proper medical care and babies to be taken care of.

Senator Sharon Keogan: Absolutely.

Senator Erin McGreehan: We will agree on that Senator Keogan. However, this State is a republic. As we enter into the next 100 years of this republic, when we start investing in our State care and hospitals, we should own everything to do with our hospitals. I feel really deeply worried and concerned about how this conversation has gone in the last five minutes but I am not going to rehash the arguments that have been made because we see that a new hospital is needed and that co-location is needed. We need to move on. I trust those doctors when they say that they will be able to do all procedures. I trust the State but I do not trust an organisation that has been set up by a Catholic institution. My trust in the Catholic institutions has gone. I discussed this endlessly and we are constantly dealing with legacy in this country, whether that be the North, the mother and baby homes or institutional abuse.

I believe to my core that this State should own every single morsel of the new hospital. In 149 or 150 years, we should not be kicking the can down the road and having the Fianna Fáil Government of 150 years time dealing with the renegotiation of another lease and the questions about whether it is Catholic-run or waiting for the Pope to write another letter. It is not acceptable and we must start a new century as a new Irish Republic looking forward and owning our mistakes that have allowed 100 years of religious interference in our medical care. There is a lot of work to do and I hope we have a proper resolution to this issue. I will stand by the Government but my core belief is that we should own what we are paying for.

Senator Maria Byrne: The development of the new national maternity hospital is an issue that we cannot ignore. While there is no doubt that the issue is complex, we must find a solution. The debate largely receives media attention in correlation to the religious association but we must recognise the commitments the religious order has made. The commitments in the national maternity hospital vision statement aim for an Ireland where all maternity services ensure that women and babies have access to safe and high-quality care in a setting that is most appropriate to their needs. Women and families are placed at the centre of all services and are treated with dignity, respect and compassion. Parents are supported before, during and after pregnancy to allow them to give their children the best possible start in life. This is the priority that must be met. We must continue to be at the forefront for the maternity services aimed for.

The Religious Sisters of Charity made commitments when arranging the gifting of the land. The charity said it was standing back and would gift the entire hospital to the Irish people.

2 July 2021

While I understand that there is a debate and that there are reservations around the ownership of the site and the hospital, I was heartened to hear both the Minister for Health and the Tánaiste say recently that they were confident that it would be resolved and that there was ongoing engagement. To me, that was a good commitment.

Regardless of the individual reasons, the commitments to have women and families at the centre of all services have been at the forefront and the Religious Sisters of Charity have committed that they would stand back and gift the hospital to the Irish people. We must follow through with these commitments.

Acting Chairperson (Senator Pauline O'Reilly): I apologise that I could only give you a minute and a half. It is just that Senators ran over time.

Minister of State at the Department of Health (Deputy Mary Butler): It is my first time being here when Senator Maria Byrne was present. I congratulate her on her election back to the Seanad and it is great to see her here. I am sorry her contribution was cut short but the debate was guillotined.

I thank the Senators for their time and for the contributions that were made by those who spoke. The quality and emotion of today's debate is indicative of the value we place on women's healthcare and of the critical importance of the new national maternity hospital. I have listened carefully to everything that has been said in today's debate and I thank Senators for their input. Regardless of all the comments that have been made, there is a common denominator that we all see. We all want to see a national maternity hospital built that is co-located on State land and we want to see all services that are required by women, girls and babies provided as soon as possible. There is no ambiguity there and everybody wants to see that.

As I mentioned in my opening statement, we all share the same goals across politics and our health services. The goal is best summed up through the vision of the national maternity strategy, which seeks that:

Women and babies have access to safe, high quality care in a setting that is most appropriate to their needs; women and families are placed at the centre of all services, and are treated with dignity, respect and compassion; parents are supported before, during and after pregnancy to allow them give their child the best possible start in life.

In our efforts to realise this vision, the Government has deliberately placed an enhanced focus on the progressive development of maternity and women's healthcare in the country. This year, we allocated increased funding of €12 million for the implementation of the national maternity strategy and for the development of gynaecology services. We have, for the first time, provided funding of €5 million to the women's health fund to build on the excellent work of the women's health task force. This focus and investment reflect our commitments to promoting women's health and to improving health outcomes for women and girls across our society. The provision of appropriate environments and facilities is central to ensuring that the services we invest in now continue to deliver for women and babies in the future. However, it is plain to see that the infrastructure of our four remaining stand-alone maternity hospitals cannot provide the proper environment for the delivery of modern maternity care.

The planned move of the National Maternity Hospital is a key project of national importance and will serve as both a flagship and a cornerstone for the development of maternity and women's health services in the country. It aims to provide a state-of-the-art hospital delivering

a full range of services to women and families for years to come, and to ensure the availability of on-site adult acute services for the safety of the women in its care. It is a complex project and many people have spoken about the next steps to be taken. It is important to acknowledge that the national maternity hospital project is unprecedented and inherently complex as we relocate one voluntary hospital on to the campus of another voluntary hospital and into a hospital building owned by the State. While a hospital building using State funds should, ideally, be fully owned and operated by the State, the integral role of public voluntary hospitals in our public healthcare system means that it has been necessary to examine alternative solutions.

I want to put on the record of the House today that the Minister for Health has been clear in saying that he will not bring anything to the Government unless assurances around all legally permissible services that are to be provided in the new national maternity hospital are provided. I fully agree with that and many Senators in this Chamber will know my position on the eighth amendment in 2018, and my position has not changed. However, I categorically state that I believe all services should be provided in the new national maternity hospital as is done in the current hospital building. The safeguarding of the State's investment must also be affirmed beyond doubt. In that context, the Minister for Health, as he stated, intends to have further engagement with all stakeholders in the national maternity hospital project as we move towards the finalisation of the arrangements.

I would like the Senators to know that many of the concerns they raised were identified at an early stage and have been the subject of significant and protracted discussions over several years. In particular, the issues of governance and clinical independence have been at the core of those discussions, and nothing has been spared to ensure that those concerns are addressed. That is why so much time and effort has gone into developing the draft legal framework, a framework that provides the assurances we need in relation to the hospital's ability to provide the full range of women's health services in accordance with the laws and policies of the State.

As I mentioned earlier, issues of governance and ownership are a priority for the Minister and the Government. These matters will continue to be considered in the context of the Minister for Health's intended engagement with the relevant stakeholders. The bottom line is that the new hospital must, and will, provide the full spectrum of services without any undue influence that could put women's reproductive healthcare at risk or endanger any woman's safety. That, as the Minister has strongly stated, is a red line issue for him and for the Government. We must move on as best as we can because too much time has been lost. As many stated, we have been talking about this project for many years. It is important that no further time is lost.

I thank the Members of the House for inviting me to speak on the issue of the new national maternity hospital. The Senators have articulated their concerns very well and I thank them for that. It is obvious that the critical nature of this project is very much appreciated by the Senators, as is the need to ensure the independence of the hospital in its provision of care. In that regard, I assure the Senators that we are very much on the same page and that we share the same vision. The most important thing we can all do now is to try to work together and continue our efforts to ensure we provide this much needed, state-of-the-art facility for the women and babies of this country.

2 July 2021

Civil Law (Miscellaneous Provisions) Bill 2021: Second Stage

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

Minister of State at the Department of Justice (Deputy James Browne): This Bill is a pragmatic and urgent effort to address the ambiguity that requires clarification for businesses, local authorities and the gardaí to facilitate and support an outdoor summer. The Covid pandemic has seen businesses adapt to public health guidance in this unprecedented time. Today, we seek to ensure that the adaptations, which relate to outdoor seating areas for pubs, restaurants, and clubs, can be accommodated within this time-bound legislation.

As we are all acutely aware, due to the significant risk of the incidence of the Delta variant of Covid-19, the Government has decided that the next phase of reopening will be based on a cautious approach with an emphasis on lower-risk activities. This highlights the necessity for emergency legislation to bring clarity for licensed premises offering an outdoor seating area for their customers and members. We are here today because of the complex interactions between the licensing laws and, in many parts of the country, the various licences and permits issued by local authorities which were causing ambiguity. This Bill, as a temporary enactment, seeks to remove that uncertainty for permissible outdoor seating areas as defined in this Bill. It is important that An Garda Síochána has clarity on its powers for public order purposes, and that licensed premises operators understand their obligations to conduct business in a peaceable and orderly manner in outdoor seating areas where they are selling alcohol.

The Senators will note that it was considered a priority by this Government to include an urgent provision on matters dealing with an increase in the number of ordinary judges of the High Court. It had been the intention that this would be provided for in the forthcoming courts and civil law (miscellaneous provisions) Bill. However, it is being facilitated in this Bill due to the quicker and more timely progression for the High Court to better manage the pressures faced due to the Covid-19 pandemic. I take the opportunity to thank the House for facilitating this urgent Bill.

I will now outline the main provisions of the Bill. Section 1 is the interpretation section. It sets out the definitions of the Bill, and the key definition set out is that of the “outdoor seating area” of a licensed premises. Part A seeks to ensure that where a licensed premises is operating an outdoor seating area, such areas are lawfully permitted by the local authorities. Section 254 of the Planning and Development Act 2000 is the most commonly relied on authorisation. Part B provides for outdoor seating areas on private land abutting a licensed premises with a number of further conditions, including ownership or other entitlement to use the land, and that it is not already the subject of a licence. The number of seated patrons - the customers or members who can be accommodated in the area - must not exceed the number of patrons who may be accommodated in the licensed premises. The area should contain sufficient seating to accommodate the number of patrons. In addition, this cannot contain any barring area across which intoxicating liquor can be served to the public. The sale or supply of intoxicating liquor by the licensing of this outdoor seating area should not be the primary purpose of the business.

Section 2 covers the temporary licensing of an outdoor seating area. For the purposes of this legislation, the section facilitates the necessary linkage between the liquor licence and permission to operate an outdoor seating area. It proposes that for the period during which the section remains in operation, such areas are deemed to be part of the licensed premises. Section 2(1) A provides clarity that no new arrangements can be interpreted as now being in place. Section

2(1)B is an important provision to ensure the regulation of the license trade in the context of the annual renewal of licenses. It outlines that the failure to operate an outdoor area in accordance with the legislation shall be grounds for objection to the renewal of the licence or a certificate of registration in respect of clubs. This shall apply irrespective of whether at the time of the renewal the licensee ceased to operate the outdoor seating area. Section 2(3) sets out that notwithstanding the type of licence held, the sale or supply of intoxicating liquor in an outdoor seating area shall not be lawful, where the intoxicating liquor is sold or supplied for consumption off the premises or outdoor seating area. Section 2(4) seeks to bring clarity to the issue of operating hours, and to ensure that the use of these outdoor areas is in compliance with what has been authorised. This will allow the relevant local authorities to ensure the conditions of their permits are adhered to, where applicable. Section 2(5) is an important clarifying provision, that the temporary licensing of an outdoor seating area under this legislation shall not be taken to absolve the licensee from a probate authorisation under planning legislation. This provision also confirms that these temporary permissions do not allow for any activity in an outdoor seating area, which is otherwise unlawful.

Section 3 deals with directions for members of An Garda Síochána. It provides that in instances where a specified person on a licensed premises must comply with the direction of a member of An Garda Síochána. This power of direction operates in a similar manner to the powers provided under the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020. It also allows that where a member suspects with reasonable cause that a person is not complying with the licensing legislation, this legislation, or the authorisation, insofar as it relates to the outdoor seating area, a member of An Garda Síochána can direct the specified person to take the steps considered necessary to ensure compliance. A specified person who is a licensee, occupier, manager, or any other person in charge of the premises at the time who fails to comply, shall be guilty of an offence. Offences in this provision are liable on summary conviction to a class C fine or to imprisonment for a term not exceeding six months, or both.

Section 4 deals with the application of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 to the outdoor seating area in respect of the relevant enactment.

Section 5 deals with the extension of the application of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 to outdoor seating area. It is useful to understand that the section provides that the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 shall apply to an outdoor seating area as it applies to a relevant premises. This means that powers of An Garda Síochána under the Act to ensure compliance with the relevant Covid-19 health regulations, to an outdoor seating area. These powers will cease to apply when the Act ceases to operate.

Section 4 provides that the powers of a member of An Garda Síochána under the 2020 Act to enforce the enactment specified by that it, will apply to the enforcement of the Licensing Acts, 1833 to 2018, the Registration of Clubs (Ireland) Act, the Bill authorisation, and directions made by a member under section 3(1), as they apply to an outdoor seating area. This facilitates the gardaí to ensure compliance with those Acts and with directions made under section 3(1) by availing of, among other things, the process outlined in the 2020 Act on a temporary closure order and repeal systems.

Section 4(2) expressly states that the enforcement powers under the 2020 Act will continue to apply in respect of the enactments referred to, and directions under section 3(1), notwithstanding that the Act ceases to be an operation, to ensure that there is no uncertainty on these Garda powers on the operation of this legislation.

2 July 2021

Section 6 deals with the applications of Criminal Justice (Public Order) Act 1994.

Section 7 deals with regulations. It provides that the Minister may, by regulations, restrict a time period by which a licensee is permitted to sell or supply intoxicating liquor in an outdoor seating area.

Section 8 deals with amendment of section 9 of the Courts and Court Officers Act 1995, which provides for an increase in the number of ordinary judges of the High Court. It provides with a maximum number of ordinary judges of the High Court to be increased by five from 37 to 42. It also provides that the Government may by order allow for an additional judge of the High Court over the maximum number permitted. The Minister for Justice must consult the Minister for Public Expenditure and Reform before requesting the Government to make such an order.

Section 9 deals with the Short Title, collective citation and commencement.

The importance and urgency of progressing this legislation without delay is obvious to everyone of us. It is an appropriate response to remove the ambiguity relating to the uncertainty that arises in the application of licensing matters to outdoor seating areas. It is also appropriate that it is time-bound, as we facilitate licensed premises to support the objective of outdoor socialising within the context of Covid-19. It ensures appropriate and proportionate oversight and enforcement within these circumstances. The co-operation of Senators on this legislation is greatly appreciated. I commend the Bill to the House and look forward to engaging with Senators on its content and purpose.

An Leas-Chathaoirleach: I thank the Minister for State. Contributions will be for five minutes. I call Senator Barry Ward.

Senator Barry Ward: I am sorry that we have as little time as we do to debate this Bill, particularly given that we are taking all Stages. There is inadequate time to properly examine it. I am surprised that no amendments were made in the Dáil. However, I praise the Office of the Attorney General and the advisory counsel within that office, who put together their response to this issue as quickly as they did. I presume they relied on advice from the small number of practitioners who are experts in licensing law. It is a rapid, swift response. On the whole, it is an excellent response. It is appropriate that we address this problem. Many publicans and restaurant owners around the country were concerned about this, so it is right that we should address it. I have tabled a number of amendments and, therefore, I do not propose to take too much time. The Bill, in all considerations, is measured. I particularly like the fact that gardaí on patrol have the power to address a problem where they see one, rather than having to go to a higher authority to get permission or authorisation to raise the issue with the occupier. It makes sense to me that a garda who spots a problem can address it there and then.

Senator Robbie Gallagher: I welcome the Minister of State to the House. I also welcome this legislation. I compliment the Minister of State on the expeditious manner in which he has moved on this. I raised this issue in the Seanad a week or ten days ago. I voiced my concern about the conflict that might arise if alcohol was served in an unlicensed, both from the point of view of the license-holder and the Garda. The Garda Commissioner issued guidelines to members of the force, where he talked about using discretion. In this particular instance, laudable though that may be, I still had concerns about that as indeed had many licence holders and the Garda Síochána, as voiced by the representative associations - the Association of Garda Ser-

geants and Inspectors, AGSI, and the Garda Representative Association, GRA. I am delighted that this issue has been addressed in an expeditious manner. I am glad that the concerns of all those I have mentioned earlier have been listened to. This brings great clarity to the situation because, heretofore, there was potential for a conflict to arise. Nobody wants that. The vast majority of people, whether they are licence holders, publicans, or members of the public, have behaved in an excellent manner throughout this pandemic. I would like to compliment everyone involved in that. I am glad that this brings clarity to the situation. Rural publicans in particular have greater potential to encompass areas around their premises for outdoor dining or outdoor enjoyment.

11 o'clock

There is potential for that, which I welcome.

I also welcome the move by Government to increase the number of judges of the High Court from 37 to 42. We are all aware of the substantial backlog in the legal system due to Covid-19. Indeed, I welcome there is potential to expand that number further if people feel the need arises to do that.

I praise everyone concerned, including the Minister of State, Deputy James Browne, for the expeditious manner in which he has moved to address this anomaly. Now, everyone can look forward to clarity in this area. Hopefully, people will be able to enjoy themselves in an environment where they know that there is no ambiguity in the legality of them being there consuming alcohol in the first place.

Senator Ivana Bacik: I welcome the Minister of State to the House and welcome this urgent and practical Bill. Clearly, it is important that we have certainty and clarity in the law around outdoor hospitality for licensed premises. It simply was not good enough, either for the Garda or for those running such premises, to be told that it would be left to the discretion of gardaí. Nor, indeed, was it good for those seeking to partake of outdoor hospitality.

My party welcomes the Bill. We would like to facilitate its passage. It is urgent, as the Minister of State said. It is particularly urgent now that we are seeing the very worrying developments with the Delta variant and increased transmissibility because the need to maintain socialising out of doors rather than indoors will be with us for some time. That is a particularly pressing matter now.

I want to make a few points. First, we need to facilitate safe outdoor socialising, not only in licensed premises but also in other ways. I have been contacted by cafés, in Ranelagh and in other areas across Dublin Bay South, which do not have licences and which are concerned about being facilitated to provide outdoor seating.

The Government has made available significant funding and I commend Dublin City Council on some creative uses of outdoor space and of pavements for the pedestrianisation of parts of the city. It has done a great job on Merrion Row, albeit that there is no space for bicycles cycling through that area now. It means, however, there are increased seating areas. We have seen innovative approaches being taken in, for example, Rathgar village with the collaboration between the local authority and the Presbyterian Church where we see outdoor seating provided. I understand a similar arrangement is to be made in Terenure and in other areas. Unfortunately, we have seen in my local community in Portobello some difficulties with facilitating those who want to socialise safely out of doors and also huge difficulties for local residents who

2 July 2021

have been faced with in some cases very distressing incidences of anti-social behaviour and late-night drinking, etc. More needs to be done to create safe spaces that will not interfere with quality of life for local residents in residential areas but which will enable the facilitation of outdoor dining. Provision of additional public toilets in areas away from residential communities, provision of additional bins and waste facilities as well as outdoor seating are all essential. I would put that to the Minister of State as well.

In terms of the broader picture of how we proceed with the outdoor summer in a way that is mindful of the increased risk of transmissibility with the Delta variant, we need to look at how we will manage this. This week, we saw real heartbreak and distress for many of those in the hospitality business who are running restaurants, pubs and cafés, where they do not have significant outdoor space and who had been gearing up to open indoor spaces. We all know people who have been utterly devastated. We have listened to interviews with restaurateurs. Mr. J. P. McMahon, for example, spoke about the devastation of having to cancel all the bookings he had made and facing into the huge financial and human cost of that. All of us are thinking of those people and those businesses. There are very serious concerns about how we can proceed to ensure supports for those businesses and how they can reopen, at least partially, safely.

Concerns have been expressed to me about the idea of the vaccination certificate, of the separate categorisations, the difficulty for businesses of trying to police it, the difficulty for family groups with different age cohorts, and for me, as a lawyer, the difficulty with seeing potential for indirect discrimination on the basis of age when different age cohorts do not have access to vaccine. These are all very serious problems with the concept of a vaccination certificate, albeit that all of us understand why the Government is putting this forward. What we really need is clarity on how this will proceed.

I very much welcome today's announcement that 18 to 35 year olds will now be able to access Janssen vaccine from pharmacies from Monday next. As that significant acceleration of vaccination rolls out, it may address some of the issues and concerns about this concept of a vaccination certificate but it still leaves huge uncertainty about this for businesses. I would ask that the Government would take on board the new modelling that will arise from the accelerated vaccination and that the Minister will come forward with greater clarity for businesses on reopening and for all of us on what can be done this summer.

Finally, an issue that has been raised with me extensively is the huge concern among the 60 to 69 year old cohort who feel they have been left behind and that there was an inequity with their vaccine because they received AstraZeneca. I welcome the news that they will be seeing an acceleration of the second vaccine dose but wish to acknowledge that the huge success of the vaccine programme has been reliant on public goodwill and buy-in. Where there is a perception of inequity, unfairness or lack of clarity, we see the programme being undermined. That is not in any of our interests. I put those concerns on the table and thank the Minister of State again for bringing this Bill to us this morning.

Senator Paul Gavan: It is nice to see the Minister of State, Deputy James Browne, who is welcome. Before I address the detail of this Bill, I extend to all of the workers affected by recent Government decisions, and particularly those workers in the catering and pubs sector, my party's support and solidarity in these difficult times. I thank them for their patience as they have had to manage so many false dawns when it has come to reopening their premises as well as the hardship they and their staff have experienced with many workers losing their livelihoods in recent months.

We were all surprised when it became clear that much of the work that was done by people around the country, who set up beer gardens and outdoor drinking areas for which in many cases they received grants from the State, was done in the absence of proper authority from the point of view that the terms of their licences did not cover it. Of course, when we spoke to people who would know this, particularly solicitors, and, indeed, many vintners, they were always suspicious and asked if they were really doing the right thing, yet we the Government proposed that this was the thing to do for months without checking and making sure the legislation was in place. It is late in coming but it is very welcome.

I have been contacted by numerous people who are involved in the hostelries, pubs, bars and restaurants and by members of the general public who are annoyed and frustrated. They cannot understand why we are different from everywhere else in Europe. There must be some clarity in this regard. This legislation has a solid legal basis but, as was heard from expert witnesses at the Joint Committee on Justice over the past year, the Government has often blurred the lines, whether deliberately or accidentally, between what are legal obligations and what is health advice.

Sinn Féin is broadly in support of this Bill. It is particularly important to be clear as to what constitutes an outdoor seating area and section 1 endeavours to do this. It specifies the seating must be on public land under licence or private land beside the premises and there must be no bar or counter within the seating area. Section 2 makes it clear there will be no drinks sold in the seating area. Of course, this is to ensure there is no so-called “takeaway pints” facility. The section also allows for the Garda to object to a licence being renewed if this section is not complied with.

I am concerned about the powers given to the Garda in section 3 to charge people with an offence. These people are: the licensee of the premises, the occupier of the premises; the manager of the premises; or any other person for the time being in charge of the premises. It seems a sweeping and indiscriminate power that could result in an injustice, especially in respect of staff who are workers and not owners of the premises. Its application must be judicious and prudent.

I also have concerns about the powers of entry into a private premises that section 6 grants to the Garda. Although this power is legally routed in the Criminal Justice and Public Order Act 1994, it seems to be an extensive power to grant in these circumstances.

Although the Government is late in bringing forward this legislation, and with my observations in mind, Sinn Féin will be supporting the Bill. We would also support the amendments tabled.

Senator Gerry Horkan: I thank the Minister of State for his opening remarks and for bringing this Bill so speedily to the House. When the Garda became aware of this issue, it was unfortunate that the way it implemented the initial process was to go and tell publicans that they may not have been legally entitled to do what they were doing. It was particularly unfortunate, as other Members have said, that this came after the State had facilitated, through various and very welcome local authority schemes, the provision of infrastructure to allow publicans to do such things. Perhaps lessons have been learned, or at least I hope they have been learned, so that in future when the Garda becomes aware of an issue it will flag the matter with the Minister in advance of it coming up, rather than going out and doing what it had to do. Thankfully, at an operational level, certainly, the Garda has been very understanding of the situation and this legislation will regulate it.

2 July 2021

I understand that this is a time-limited provision until 30 November. Hopefully, we will not need it again at that stage. I do not really fancy the idea of too much outdoor dining and drinking in December, January and February, given the weather we are likely to have. This Bill, however, is very welcome. I echo the sentiments expressed by other Members. This was an appalling, terrible and devastating week for the entire hospitality industry, but particularly for those in the licensed trade and the restaurant business. After 16 months, they had seen the prospect of some level of hope on the horizon. We have learnt in recent days that this Delta variant is devastating, impactful and has a great capacity to wreak havoc on our society. We know that, and I think publicans understand it. Still, however, it was a very frustrating week for them, their staff and their customers who were all hoping we were going to get back to some level of normality.

I note that if we all spoke for five minutes, we would not have time to do Committee and Report Stages. Thankfully, though, there are not as many people here as the schedule allowed. I am not going to delay the passage of this legislation, because I welcome it very much. I thank the Minister of State, Deputy James Browne, his Department, the Office of the Attorney General and all the people involved in progressing this legislation so speedily. As Senator Gallagher said, this Bill was only introduced in the last week or two and we already have laws coming into effect speedily. There is also a motion to ensure the legislation will take early effect when it is passed to give clarity to the hospitality industry. Therefore, I welcome all the provisions in the legislation regarding the Garda and publicans.

I ask that the Minister of State clarify the aspect of this legislation concerning increasing the number of High Court judges from 37 to 42. Is there an expectation that 42 will then be the level in future or is this increase because of the pandemic? As judges retire and get promoted over time, will their complement return to the base level of 37, or is it envisaged that having 42 judges will be the new standard level? That is my only question regarding the legislation.

I welcome this Bill. Publicans and restaurateurs and others in the hospitality industry welcome it as well. It makes perfect sense to do this. Through local authorities and other State bodies, we have already been facilitating the provision of outdoor seating and infrastructure. I acknowledge what Senator Bacik said. I tried to cycle through Merrion Row, but I have given up now and I go a different way. It is not ideal, but this is an emergency situation we are dealing with. I again thank the Minister of State and his Department, and, hopefully, we can get this legislation passed as speedily as possible.

An Leas-Chathaoirleach: I thank Senator Horkan for his contribution and his collegiality. Next, I call my next-door neighbour on the fourth corridor, Senator Emer Currie.

Senator Emer Currie: I was not going to speak on this legislation, but I then engaged with some publicans during the week and I want to reflect some of their views in this regard. I welcome the clarity that this legislation gives to them, the Garda and the local authorities. The point made to me by the publicans concerned how stressful it has been for publicans in recent months to be aware of the parameters regarding their responsibilities concerning outdoor areas since they opened. Publicans have told me that it takes more work to manage people outside, because it is necessary to have enough staff to cover everybody and to be able to monitor everything. Therefore, this Bill has given publicans some reassurance. This is happening, of course, in the context of rising concern regarding the Delta variant as well. This Bill, therefore, is to be welcomed on many levels.

We have an opportunity now to step up our game regarding outdoor hospitality, not just for this summer but also for future summers. I welcome the funding being provided to local authorities for the provision of general areas to be developed. That aspect is particularly relevant as we consider more local tourism opportunities and attracting people into their local areas. I hope to see more funding being directed towards events like festivals in local areas as we enjoy our new sense of localism.

I will briefly touch on some issues. Mention was made of public toilets. We must change our view of public toilets and public infrastructure. We need them. What happens when public toilets are opened in public parks is also incredibly frustrating, however. In my area, some €170,000 was allocated to provide five unisex toilets for Millennium Park in Blanchardstown, where we have our first changing places facility. However, those new toilets were damaged the day after they were opened. They were vandalised, and that has happened three times now. We must think about the infrastructure we need, look to other countries and ask why we do not have the outdoor spaces and public infrastructure we require. We must call out those people who are trying to undermine this endeavour and tell them it is just not acceptable for public money to be wasted.

It is also important for local authorities to work with local businesses that are struggling as they operate in outdoor areas. They must be helped to maximise the spaces they have. When it comes to their dining tables and possibly using car parks in this regard, such endeavours could mean the difference between survival and failure in the months to come. Therefore, I appeal to local authorities to ensure they work with those businesses as closely as possible.

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy James Browne, and I invite him to respond to the contributions made during this Second Stage debate.

Minister of State at the Department of Justice (Deputy James Browne): I thank the Members of the House for their contributions on this Bill. I thank the Attorney General, the Office of the Parliamentary Counsel, OPC, the officials in the Department of Justice, the Minister for Justice, Deputy Humphreys, and the Minister of State, Deputy Naughton. It really has been a case of all hands on deck to try to get this legislation introduced as quickly as possible due to the importance of bringing clarity to this issue.

This important legislation comes at a sensitive time. We are seeking to remedy a situation where no current avenue exists to address the gap regarding liquor licensing for outdoor seating areas within the public realm. However, to ensure there is Government regulation and guidance for outdoor activities in the context of the Covid-19 pandemic, it is sensible to provide some clarity and assurances for licensees who are relying on private property immediately adjacent to their licensed premises to provide outdoor seating. This Bill achieves a balance in addressing the needs of the businesses, the Garda and the local authorities in having certainty in regularising this situation with this time-bound measure.

I previously outlined the main provisions of this Bill. It is clear that this will be an effective measure to address this matter for licensees for the period ahead. What is clear to us all is that it is important for the Government to deliver on its commitment to modernise alcohol legislation without delay. I am pleased that the Department of Justice is driving this long-needed reform. The complexity of the law in this area and the challenges associated with this matter demonstrate the real impetus for this change. We are determined to progress this legislation and we will work with this House to codify the licensing laws and to bring a more permanent solution

2 July 2021

to the issues arising in this legislation and those wider issues concerning the licensing laws.

Several Members raised the decision to increase the number of judges in the High Court. Significant delays have arisen in the courts system because of the impact of Covid-19, but delays in the system have also been ongoing for several years. Justice delayed is always justice denied. Therefore, we must create a situation where we can ensure there is a significant way to address the delays in our court system. There is a judicial planning working group in existence. Its aim is to identify, through an evidence-based process, how many High Court judges we need into the future and proposals around the planning courts and things around that area. These are needed. The permanency of them will centre around the needs, as identified, by the judicial planning network.

Section 8 is an urgently-needed measure which provides an opportunity to address the challenges facing the courts. It is important to note that, in creating an offence and in the application of the Criminal Justice (Enforcement Powers) (Covid-19) Act 2020 to these outdoor seating areas, the overwhelming majority of licencees complied with the enforcement powers Act provisions and it is anticipated these provisions will similarly be adhered to with few exceptions.

However, the powers contained within this legislation are necessary for enforcement on those rare occasions the legislation is not being adhered to. It is also noted there is a sunset clause in place until 30 November and this House will have an opportunity to consider whether it is appropriate for this legislation to be renewed at that time. Of course, we hope all licensed premises will be able to return to indoor services as soon as possible, but in the meantime, the importance of this Bill is in evidence to us all.

Before going into law, I studied at the Dublin Institute of Technology, DIT, on Cathal Brugha Street, in the hotel and catering areas. I worked in hotels, pubs and restaurants for approximately 13 years of my life. I worked up-house, in kitchens, as a porter and in bars. I did everything and anything that could be done. I have a real understanding of the hospitality sector and the preparation and work which goes into getting a premises ready for opening. There has been serious mental and financial stress on our hospitality sector and I very much understand the stresses on it. No decisions are made lightly.

This urgent and practical Bill aims to provide certainty and clarity and provides some help to those pubs, both in urban and rural areas. I compliment Wexford County Council, An Garda Síochána and the businesses in Wexford, which have worked well together in resolving issues around the outdoor spaces. They all deserve compliments in that area. There is a specific challenge. I have dealt with a number of pubs in County Wexford that simply do not have those outdoor spaces. The county council and An Garda Síochána have worked with those businesses to provide car parking spaces on the street and allow those to be converted, where possible.

I understand the stresses on the owners, those who hold the licences and the staff. It has been a stressful situation. I hope this legislation can, in some way, help that situation and we can all get back inside those premises as soon as possible.

An Leas-Chathaoirleach: I thank the Minister of State for sharing that interesting experience with us.

Question put and agreed to.

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

Senator Robbie Gallagher: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Civil Law (Miscellaneous Provisions) Bill 2021: Committee and Remaining Stages

SECTION 1

An Leas-Chathaoirleach: Amendments Nos. 1 to 5, inclusive, are related and may be discussed together. Is that agreed? Agreed.

Senator Barry Ward: I move amendment No. 1:

In page 4, line 18, to delete “and” where it secondly occurs and substitute “or”.

I will speak on all five amendments together. These are largely technical amendments. Some are more important than others. Amendment No. 1 deals with a provision in the definitions section, section 1 of the Bill. It is to create a list and replace an “and” with an “or”, rather than to have a requirement. It is under the definition of authorisation and defines what an authorisation given by a statutory authority is. It refers to a licence granted under section 2(5)(4) of the Planning and Development Act 2000 and a consent given under section 71 of the Roads Act 1993. I am suggesting they should be two separate things which would ground an authorisation.

Amendments Nos. 2, 3 and 5 relate to the same issues. In the definitions section, terms such “Licensing Acts”, “Minister” and “Registration of Clubs Acts” are defined as relating to various different things. I am suggesting the definition section should give the term which would replace the term used throughout the Bill. If that is the case, the word “the” is missing. That is a technical amendment I am suggesting.

Amendment No. 4 is much more important. Amendment No. 4 refers to the definition of “licence”. “Licence” is a defined term in section 1 of the Act. It means a licence for the sale, by retail, of intoxicating liquor whether granted with or without of production of the Circuit Court or District Court. It is what we think of when we talk about a liquor or bar licence. It is a licence in the context of the service of alcohol.

The term is used again in the definitions section when defining an outdoor seating area. An outdoor seating area is an important part of this Bill. That is what it is all about. The definition of an outdoor seating area is all-encompassing and complex. The definition states that an outdoor seating area means, with regard to a to licenced premises, an outdoor seating area on private land abutting premises where the land is owned or occupied, by way of a lease or licence, by the licenceholder of the premises.

The use of the word “licence” is quite different from the definition of “licence” in the context of the Bill. The licence used throughout the Bill means a liquor licence, but in this case, it is a licence to occupy. It is a licence for somebody to use or occupy land. It is given in a totally different context. My concern is that without clarifying what this word “licence” means - the way I am suggesting is we call it a “licence to occupy”, so it is differentiated from the use of the

2 July 2021

word “licence” elsewhere in the definitions section - it introduces a confusion or lack of clarity on the word licence. In amendment No. 4 I am suggesting the word “licence” be replaced with the words “licence to occupy”.

An Leas-Chathaoirleach: Ar mhaith leis an Aire Stáit an grúpa sin a fhreagairt?

Minister of State at the Department of Justice (Deputy James Browne): I thank Senator Ward for putting forward these amendments. In terms of amendment No. 1, which proposes a change to the definition of an authorisation, I do not intend to accept this amendment as the definition is sufficient as drafted. The use of the word “and” in both instances is of the proper form and construction and the proposed amendment may have unintended consequences for the interpretation of the Bill.

In terms of amendments Nos. 2 to 5, inclusive, my officials have consulted with the Office of Parliamentary Counsel concerning the language suggested in the Senator’s amendments. The Office of Parliamentary Counsel has advised my officials the definitions in the Bill are in the correct form, as currently drafted. Furthermore, on amendment No. 4, the Senator will be aware section 21 of the Interpretation Act 2005 provides that when an enactment contains the definition or other interpretation provision, the provision shall be read as being applicable except insofar as the contrary intention appears in the enactment or the enactment under which the enactment is made.

On that basis, the Senator will appreciate the additional language he has proposed for the term “licence” is not needed and could cause difficulty and confusion, as the specific term of “licence to occupy” is not defined in the Bill. For those reasons outlined, I cannot accept any of the amendments.

Senator Barry Ward: I do not agree with the Minister of State, especially with regard to amendment No. 4, but I accept what he said. If he is satisfied it will not create a problem, I will not press the amendments.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 2:

In page 4, line 34, to delete “Licensing Acts” and substitute “the Licensing Acts”.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 3:

In page 4, line 35, to delete “Minister” and substitute “the Minister”.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 4:

In page 5, line 6, to delete “licence” and substitute “licence-to-occupy”.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 5:

In page 5, line 21, to delete “Registration of Clubs Acts” and substitute “the Registration

of Clubs Acts”.

Amendment, by leave, withdrawn.

Section 1 agreed to.

SECTION 2

An Leas-Chathaoirleach: Amendments Nos. 6 to 8, inclusive, are related and may be discussed together.

Senator Barry Ward: I move amendment No. 6:

In page 5, line 24, to delete “of a licensed premises”.

These amendments relate to section 2 of the Bill, which deals with the temporary licensing of outdoor seating areas. To a large extent, this comes back to the definitions section. Section 2(1) reads, “Subject to this Act and notwithstanding any other enactment, an outdoor seating area of a licensed premises shall ... “ and so on. However, the definition of an outdoor seating premises in section 1 specifically states that it is an outdoor seating area of a licensed premises. The repetition of the term “licensed premises” in section 2(1) is unnecessary and will create a problem so I suggest that it be deleted.

On amendment No. 7, section 2(1) also states that an outdoor seating area “shall, for the period during which this section continues in operation, be deemed to be part of the premises ...”. Again, “licensed premises” is a defined term within the Bill, under section 1. That part of section 2(1) should read “be deemed to be part of the licensed premises” rather than “the premises”.

Amendment No. 8 refers to section 2(1)(a). This subsection relates to the conditions on outdoor seating area provision and states, “it shall be lawful for the licensee of that licensed premises to sell or supply intoxicating liquor in the outdoor seating area ... “ I am proposing that it instead state that it will be lawful for them to sell or supply intoxicating liquor for consumption in the outdoor seating area. My understanding is that the sale of the alcohol takes place on the licensed premises rather than in the outdoor seating area and the definition of an outdoor seating area in section 1(b)(vi) specifically precludes “the sale or supply of intoxicating liquor by the licensee to patrons in the area ... “ and the presence of a bar over which alcohol might be sold, for example. While there might be service staff in the outdoor seating area delivering drinks, and there is no difficulty with that, it is not the intention of the Bill to provide for the right of the licensee to actually sell alcohol in that area. The idea is that the alcohol is sold from the licensed premises but consumed within the outdoor seating area. There is a gap in section 2(1) (a) and so I am suggesting that the words “for consumption” be included in it.

Deputy James Browne: I thank Senator Ward for his proposed amendments and his detailed analysis of the Bill. When legislation is challenged at such a forensic level it strengthens it and challenges the officials. Amendments being brought forward is always welcome, whether they are accepted or not, because they are a critical part of what we do here.

Amendment No. 6 seeks to delete the term “licensed premises” from section 2(1). This section facilitates the necessary linkage between the liquor licence and the permission to operate an outdoor seating area. Therefore, it is crucial to maintain that term. It is important that An Garda Síochána has clarity on its powers for public order purposes and that licensed premises owners

2 July 2021

understand their obligations to maintain order in public areas where they are selling alcohol. I cannot accept the amendment for the reasons outlined.

With regard to amendment No. 7, the Senator will note that the definition of a licensed premises in section 1 already includes a reference to a premises. Furthermore, the specific reference to a premises concerned on page 5, line 25 of the Bill is directly connected to the reference to a licensed premises immediately preceding it on line 24 and is to be read as such. On that basis, while I appreciate the Senator seeking clarity with his amendments, this amendment is not necessary.

Amendment No. 8 seeks to insert the words “for consumption” into section 2(1)(a), for it to read, “it shall be lawful for the licensee of that licensed premises to sell or supply intoxicating liquor for consumption in the outdoor seating area”. While I appreciate the intent behind the amendment, I advise the Senator that section 2(3) provides that no matter what type of licence is held, the sale and supply of intoxicating liquor for consumption off the premises for an outdoor seating area shall not be lawful. This issue has been sufficiently addressed in that subsection. Furthermore, it is the Government’s intention that, following the eventual resumption of indoor service and dining, alcohol may be purchased and consumed either indoors in a licensed premises or in an outdoor seating area as defined by this Bill. I am sure this is not the Senator’s intention but his amendment would unfortunately limit the consumption of alcohol to an outdoor area and would prevent the free movement of patrons between indoor and outdoor areas with their drinks. That is obviously not his intention but that is the analysis of the officials. It is for these reasons, which I am sure the Senator will appreciate, that I cannot accept the amendments.

Senator Barry Ward: I appreciate what the Minister of State said and I am grateful for his remarks. I accept what he says about amendment No. 8. However, I disagree with him about amendment No. 6. The outdoor seating area definition in section 1 of the Bill states that it relates to a licensed premises and then goes on to define terms. Under this Bill, there is no other outdoor seating area except an outdoor seating area of a licensed premises, so in essence we are talking about an outdoor seating area of a licensed premises. It is a tautology. I accept what the Minister of State said and if he does not think this is going to create a problem I will not push the issue. The same applies to the licensed premises referred to in amendment 7. I do not agree with what the Minister of State said but I accept it. If greater minds than mine have considered this and decided it is not an issue I will not press the matter. In the circumstances, I will withdraw the amendments.

An Leas-Chathaoirleach: I thank the Senator for both his co-operation and his personal humility.

Amendment, by leave, withdrawn.

Senator Barry Ward: I move amendment No. 7:

In page 5, line 25, after “the” where it firstly occurs to insert “licensed”.

Amendment, by leave, withdrawn.

Amendment No. 8 not moved.

Section 2 agreed to.

Sections 3 to 5, inclusive, agreed to.

SECTION 6

Senator Barry Ward: I move amendment No. 9:

In page 8, line 20, after “purposes” to insert “of section 3”.

This is a purely technical amendment and I do not think it is important.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: I thank Senator Ward, who is being beyond co-operative.

Section 6 agreed to.

Section 7 agreed to.

SECTION 8

Senator Barry Ward: I move amendment No. 10:

In page 9, to delete lines 1 to 10 and substitute the following:

“(2) Where the Government—

(a) receives a request from the Minister,

(b) the Minister has made the request after consultation with the Minister for Public Expenditure and Reform,

(c) the Minister and the Minister for Public Expenditure and Reform are of the opinion that, that it is necessary in the interests of the administration of justice to do so, having regard to—

(i) the volume of business to be transacted in the High Court or any other reason arising from the state of business in that Court, and

(ii) the need to ensure the efficient transaction of business in that Court,

the Government may, by order, provide that the number of ordinary judges of the High Court otherwise provided for under any enactment, for the time being in force, may be exceeded by one.”.”.

I very much welcome section 8. It is something we have called for on a number of occasions at the justice committee and elsewhere. There is a serious shortage of judges. I remind the Minister of State this is not just in the High Court but in other courts also. I hope the Minister of State will take on board the fact there is a shortage generally.

The amendment I have tabled relates to the second subsection of the proposed section 9 to be inserted in the Courts and Court Officers Act 1995. I will read the proposed section:

Number of ordinary judges of High Court

8. The Courts and Court Officers Act 1995 is amended by the substitution of the following section for section 9 (inserted by section 1 of the Courts Act 2015):

2 July 2021

“9. (1) Subject to subsection (2), the number of ordinary judges of the High Court shall not be more than 42.

(2) The Government, on the request of the Minister made after consultation with the Minister for Public Expenditure and Reform, and where they are of the opinion that, having regard to the volume of business to be transacted in the High Court or to any other reason arising from the state of business in that Court, and to the need to ensure the efficient transaction of business in that Court, it is necessary in the interests of the administration of justice to do so, may by order provide that the number of ordinary judges of the High Court otherwise provided for under any enactment for the time being in force may be exceeded by one.”.

I have been a barrister for 15 years. Before that I worked for two years in Leinster House dealing with legislation. I read the section 15 times before I had any idea what it meant. It is the most convoluted absolutely illegible and impenetrable paragraph I have seen in legislation since I became a Senator 12 months ago. It is absolutely impossible to dissect exactly what is involved in it.

What I propose in the amendment is a restructured paragraph that does not change the import of it, as far as I am aware, assuming I have read it correctly. I propose that the paragraph be restructured so it is legible to ordinary people as much as to legislators and lawyers and those who have to implement the legislation. The Minister of State can correct me on this as I may have misinterpreted it. Even if I have misinterpreted it, it only goes to further the point that it is impenetrable as a piece of legislative drafting.

It seems that what the section is saying is that the Government must receive a request from the Minister, being the Minister for Justice, that the Minister for Justice must make that request having consulted the Minister for Public Expenditure and Reform, and that both of them must be of the opinion that it is necessary in the interests of the administration of justice, having regard to the volume of business done in the High Court or any other reason, and the need to ensure the official transaction of business in the High Court, and that after all of this is done the Government may, by order, provide for an extra judge in the High Court. This is my reading of it after the 15 times I had to read it. I have restructured this in amendment No. 10 into a paragraph that can be read by somebody who does not deal with this all day every day. This is why I have tabled the amendment.

Deputy James Browne: With regard to the number of judges, the judicial planning working group has been convened and is examining the number and type of judges that will be required in our courts system over the coming years. It will address not only the need for High Court judges but judges throughout the service. This is timely and very badly needed.

Amendment No. 10 proposes restructuring the second paragraph to be inserted in section 9 of the Court and Courts Officers Act 1995. I have discussed the amendment with my officials and have consulted the Office of Parliamentary Counsel on the approach suggested by the Senator. The departmental officials and officials from the Office of the Parliamentary Counsel have advised that the text in the Bill is consistent with the format and approach used for similar provisions elsewhere in the Statute Book. While plain and clear language should be encouraged, the Senator will appreciate that when it comes to legislative provisions on the courts I recommend against deviating against the established drafting principles and norms. In these circumstances I cannot accept the amendment at this time.

I agree with the Senator's sentiment. However, it would appear that the section as drafted does comply with other convoluted legislation and interpretation. It is consistent and will be effective as is. I certainly agree with the Senator's sentiments that in anything we do we need to look more and more at plain language. Other sections of the Department, such as those that deal with domestic violence and immigration, are increasingly engaging, and I am encouraging it, with the National Adult Literacy Agency to ensure plain, simple and clear language is used as much as possible. The law should be accessible for people to be able to understand. It probably requires a much bigger and broader piece of work to get our legislation into more user-friendly language.

Senator Barry Ward: As ever, I accept how reasonable the Minister of State is about these things. I accept what he says. I do not dispute that it probably conforms with existing drafting norms. Perhaps this is part of the problem. I also recognise the Minister of State is quite right in saying this is part of a bigger problem in legislation. It is something that will be required to be addressed to a significant extent at a high level in the draftsman's office.

Notwithstanding this, we have a section that is illegible, and somebody who has been at this for a very long time has to dissect it to understand what it means. I am grateful to the Minister of State because I think I have understood what the subsection means in terms of how I have restructured it but I do not accept that we cannot restructure this. I do not accept that by restructuring it we in any way endanger its meaning. In fact, I think the opposite is the case.

When we have ambiguity, whether it conforms to legislative drafting norms or not, and when we have this level of confusion about what a subsection means, it is a bad thing by any level. I cast no aspersions on the Minister of State or the officials but I regret the Executive and Department have decided they would rather stick to the norm, which I say does not work, than to look at incorporating something that is much more legible and much more functional. I accept what the Minister of State has said. I do not think it will endanger the operation of the Bill and I will not press the amendment on this basis.

Senator Robbie Gallagher: I want to make a comment on Senator Ward's contribution and that of the Minister of State. During discussions on justice matters in this House, we are privileged to have many eminent brains, as I am sure the Leas-Chathaoirleach will agree. If some of my colleagues who are extremely well qualified in this area are struggling to understand the text in these Bills, God help us poor lesser mortals with fewer qualifications in this regard. It is something I know has been mentioned previously and I commend Senator Ward on raising it again. I know it is not a discussion for today, and I will not hold up the proceedings of the day discussing this issue, but it is something I feel needs to be looked at. I would very much welcome if the Minister of State took on board Senator Ward's comments, not only on this section but generally. It would make the workings of the House much more understandable, if I can use that expression, for us all, never mind the general public at large.

An Leas-Chathaoirleach: With the best of intent, Senator Gallagher is being unduly self-effacing.

Amendment, by leave, withdrawn.

Section 8 agreed to.

2 July 2021

SECTION 9

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

Senator Barry Ward: My comments again come back to drafting norms. A practice has grown over time where the Short Title, commencement and those other operational aspects of the Bill have gone into the last section. I know that particularly in the Department of Justice it is the preferred way to do it. I must say I disagree. I say this because there is a minute left at the end of the session. It is part of the simple chronology of reading legislation that what people want to know at the start of reading a Bill are the definitions, which remain at the start of Bills, but also what the Bill will be called, when it will come into effect and all those other details that are contained in the final section. I simply say that as a commentary on the legislative drafting process in general. Those details should be at the start of the Bill rather than at the end. I understand that this is another drafting norm.

An Leas-Chathaoirleach: The Minister of State does not need to respond to that. It is self-evident. I thank the Senator for that and I thank my colleagues.

Question put and agreed to.

Preamble agreed to.

Title agreed to.

Bill reported without amendment.

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

Senator Robbie Gallagher: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

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

Senator Robbie Gallagher: Now.

An Leas-Chathaoirleach: Is that agreed? Agreed.

Question proposed: “That the Bill do now pass.”

An Leas-Chathaoirleach: Congratulations to the Minister of State on the speedy enactment and bringing forward of this legislation and I thank colleagues for their co-operative and common-sense approach to it. It shows a commitment to the common good that we are not grandstanding and delaying this legislation. I also thank Senator Ward for his forensic amendments.

Question put and agreed to.

Civil Law (Miscellaneous Provisions) Bill 2021: Motion for Earlier Signature

Senator Barry Ward: I move:

“That, pursuant to subsection 2° of section 2 of Article 25 of the Constitution, Seanad Éireann concurs with the Government in a request to the President to sign the Civil Law (Miscellaneous Provisions) Bill 2021 on a date which is earlier than the fifth day after the date on which the Bill shall have been presented to him.”

Question put and agreed to.

Sitting suspended at 11.55 a.m. and resumed at 12.30 p.m.

Climate Action and Low Carbon Development (Amendment) Bill 2021: Committee Stage

Sections 1 and 2 agreed to.

SECTION 3

Acting Chairperson (Senator Aisling Dolan): I welcome the Minister to the House. Amendments Nos. 1 and 92 are related and may be discussed together by agreement.

Senator Tim Lombard: I move amendment No. 1:

In page 6, line 29, after “emissions” to insert “minus removals”.

I welcome the Minister to this important debate regarding the climate action legislation. It is an important Bill that I believe, as a society, we need to progress. The amendment, which I have tabled with the help of many of my colleagues having consulting with the majority of Members, will hopefully give due recognition to carbon sequestration and how that could affect carbon budgets under the Bill.

We have seen major projects over the past six to eight months. I refer, in particular, to the Teagasc Signpost Programme, and Farm Zero C, a Carbery-based project in County Cork, with the help of University College Dublin and Trinity College Dublin, that received funding from Science Foundation Ireland. These are unique projects that will work on farms to prove how much carbon is absorbed by our soil and hedgerows. Let us look at the history of where we have gone in Irish farming over the past 40 years. We had a policy in the 1970s and 1980s, the early 1980s in particular, where we moved away from hedgerows. There was a grant scheme available to take them out. An evolving pattern led to the rural environment protection scheme, REPS 1, a significant eco-scheme in the 2000s, which resulted in the replacement of many hedgerows and there was great buy-in from the farming community in the process, which is well noted. Many years ago, we sold our products on the international market saying that this was part of the traceability of our food. Now we sell it because they are sustainable food products

Being involved in this carbon debate is something that the agriculture community has em-

2 July 2021

braced, in particular, over recent years. There have been significant changes in technology. Technology has been the key to many of the changes in agriculture and I refer specifically to the trailing shoe technology. Since the start of the year, the majority of dairy farms have had to spread all their organic manure through a trailing shoe, which entails drilling the manure directly into the ground. That kind of technology is changing the landscape of Irish farming.

The amendment gives due recognition of the volume of carbon we are tying up in our soils and hedgerows. It gives the recognition needed for the farming community to drive forward and to do more. Farmers have the ability and knowledge to do more. As I stated previously, we have the best trained farmers in the world. There are no other farmers in the globe that have gone through the training that our farmers have. Not alone do they go through two to three years in college and then on to an agricultural college followed by a placement, they undergo continuous training after that, in particular, through discussion groups, which are held monthly. Farmers meet for half a day every month to go through the changes in technology and in society, and how they can manage their farm appropriately. Part of this is about education while the other part is about making sure farmers have interactions with other farmers, because, unfortunately, that does not happen as often as it should. No other society has that. No other industry has the ability to have continuous professional development on a monthly basis. That is the knowledge we have on the ground. If we were to implement major changes, the ability for continuous educational change to happen quickly is there because the model is set up. I believe it is about working with our farming communities on the ground.

The Minister was in Courtmacsherry with us approximately 18 months ago at an interesting seminar. We met a number of people, including those who were the drivers behind the local Barryroe Co-op. They were as proud as punch when they told the Minister that Dubliner cheese was made in Barryroe, west Cork. They understand that they can sell a product globally off the back of being sustainable going forward. That was an interesting debate - I am sure the Minister will comment on it - and we had a good seminar that afternoon. The pride within the community about farming, what the farmers achieved and what it meant on so many levels was evident. We must give the farming community the recognition it deserves regarding the ability of soils and hedgerow to store carbon because that is a game changer.

There are emissions coming from the agriculture sector but no other industry in the world can remove carbon. It is because of this that the recognition of the words “minus removals” is so important. The transport sector cannot remove carbon. It can reduce the volume produced but it cannot remove it. The agriculture sector can remove carbon and that needs to be acknowledged in the Bill. When considering the ability of all sectors to reduce carbon, we have a unique dynamic in agriculture whereby we can remove carbon. It is because of that, I believe this amendment is so important. It gives recognition to farmers and it is what they need because, unfortunately, during the climate action debate, they feel they have been victimised. They have been trying to rear their families, run a co-operative society, run a parish, and they have been the bad boys in the equation. If anything, they have followed Government policy and engaged with it. They should not be victimised because of what they did. They have invested thousands of euro in dairy and beef units throughout the country.

There is great uncertainty about this issue at the moment and how sustainable they could be going forward because the media, and others, have said that the farmers are the bad boys. In many ways they have done so, including the introduction of trailing shoe technology, the massive investment in storage over the past ten years, and the changes in, and reduction of, fertiliser spreading. It has also been about the technology used. I can look up my animal records on my

phone and check which animal got what dose of medicine over the past five years. As a dairy farmer who produces milk and milks cows, and milked cows yesterday evening, I believe, as an industry, we need to have that voice here. It is important we have the ability to play a vital role. This amendment gives us that opportunity. It is one of the most important amendments to make sure we bring the agricultural community along this journey.

Acting Chairperson (Senator Aisling Dolan): I thank Senator Lombard. The Senator has a very strong amendment.

Senator Seán Kyne: I concur with all that has been said by my colleague, Senator Lombard. This is an important area. I touched on this in my Second Stage contribution.

The potential for carbon sequestration on farms is huge and unquantified. In terms of research, there is potential to quantify the level of carbon sequestration in hedgerows, trees and soil. It is an area that has huge potential for the industry in terms of limiting reductions that are necessary within the sector.

There is concern regarding future targets in relation to, for example, the national herd and the consequences of the carbon budgets and the necessity to reduce the level of production of greenhouse gases. The potential of hedgerows, trees and soils to sequester carbon needs to be looked at and taken into account in the carbon budgets.

If this amendment, as worded, cannot be accepted, I would ask that the Minister, Deputy Eamon Ryan, would come back on Report Stage with an alternative because it is a hugely important area. It is all about acknowledging at this stage in the context of the legislation the contribution trees and hedgerows throughout our beautiful countryside make to every farm and to the country's carbon targets. The farmers themselves should get the reward for that and they should be taken into account in the agricultural industry's and the country's carbon targets.

The amendment, as worded, acknowledges the need to look at those "removals" of carbon and carbon that is sequestered. I ask that the Minister, Deputy Eamon Ryan, would look at that whole area.

As Senator Lombard said, the focus on agriculture over the past two decades, through the REPS, AEOS and GLAS and through the various requirements under good agricultural environmental practice under all the farm schemes, has been on planting trees and hedgerows, improving storage of farm nutrients, on targets in relation to farm nutrients, on calendar farming and on the closed period for applying agricultural manures, both organic and inorganic. The farming industry has done much in terms of improving its performance, increasing the level of biodiversity and reversing of some of the State-supported removal of biodiversity over the years. I welcome that it has been reversed.

As I said, the hedgerows, the trees, the peat soils and the grasslands need to be taken into account in regard to carbon. Farmers, and certainly the industry, need to be rewarded and recognised for what they are producing and what they are continuing to plant. That should be taken into account for future carbon budgets.

Senator Paul Daly: I am speaking to amendment No. 92, which I propose.

I will have very little to say in regard to the amendment as my colleague, Senator Lombard, has covered it. The two amendments are very much related but complement each other. The

2 July 2021

inclusion of amendment No. 92 with the amendment spoken about previously, amendment No. 1, will strengthen the climate action Bill for all the reasons that have been mentioned. It is vitally important from an agricultural sector point of view.

Senator Lombard spoke about milking cows. In my area, it is more small fields and stone walls or, indeed, hedgerows. In many small family farms, there can be more ground covered in hedgerow than there is arable. It is vitally important at every juncture in terms of the sequestration and storage of carbon, which is being emitted from the other areas.

As Senator Lombard said, transport cannot sequester. Power generation cannot sequester. When we are talking about net figures, the only sector which can have a minus side is the agricultural sector. It is vitally important at every junction in terms of the Minister's and the Department's deliberations, whether in the establishment of their carbon ceilings and budgets or when they try to balance those carbon ceilings and budgets.

The key word in the whole process is "net". As I said, this amendment, in conjunction with the other amendment, will copper-fasten and strengthen it in the Bill.

I welcome the progression of the Bill. Let the Minister not get me wrong. The agricultural sector welcomes the progression of this Bill. There is no sector more eager or willing to get down and dirty in achieving the targets than the agricultural sector. The farmers of Ireland are the custodians of the land and the land, the hedgerows and the trees is the natural sequestration. We will be going forward sowing more trees and more hedgerows and wetting certain areas of our land all for the good of the environment and the purposes of carbon sequestration and storage. It is vitally important that we include those figures and the farming community of Ireland are given credit for the good they are doing. Farmers admit there are CO₂ emissions from farming. We need food so that will always happen. However, we have to give recognition and make allowances when doing our sums to come to net zero in respect of sequestration and storage.

As I said, this amendment, in conjunction with the previous one, will strengthen that in the Bill. Indeed, it will further support the commitment in the programme for Government, taking account of the special role of Irish agriculture in the economy.

Acting Chairperson (Senator Aisling Dolan): There are a number of speakers. They will be in the following order: Senators Ahearn, Pauline O'Reilly, Dooley, Higgins and Chambers.

Senator Garret Ahearn: I support amendment No. 1. I compliment the work of Senator Lombard and his engagement with the farming industry over the past number of weeks in trying to come up with a resolution between both sides. Something we know for sure is that the farming community want to work with the Department and with everyone to get the best result.

The amendment put forward involves only two extra words but they are really important. When we talking about a carbon budget, it seeks to include the words "minus removals". The agricultural industry plays a key role in that and it needs to be recognised.

When we talk, as a Government, about this Bill being put through, agreed and understood, why do we not include this as part of the Bill and strengthen the Bill on the back of that? That is the case the farming organisations have put forward. They have a number of other issues as well but this is predominantly one that we can get agreement on in respect of the Bill.

Senator Lombard talked about dairy farmers. We are tillage farmers but farming, whatever

sector you are in, has a huge impact on society in rural areas. It has a huge role to play in terms of employment, both directly and indirectly, within a region. In my own town of Cahir, the amount of indirect employment that farming creates in the town is phenomenal. We need to support that. Part of that support involves working together on this Bill. In fairness, no sector is more eager to work with the Minister than the farming sector to ensure that this Bill is done right as it progresses. This is about supporting farming communities and small communities like mine in Tipperary. We are trying to encourage people to live in rural Ireland and to live in small towns and villages there. It is a central aspect of the Our Rural Future policy launched by the Minister for Rural and Community Development, Deputy Humphreys, some time ago. Farming, and this Bill on the back of farming, plays a key role in that regard. This is about supporting those families and communities. Therefore, I support this amendment and I hope the Minister can accept it. Many of us have come together to try to work with the IFA and the farming community. The president of the IFA is Tim Cullinan, a fellow Tipperary man. I worked with Imelda Walsh and the north Tipperary IFA and with Erica O’Keeffe and south Tipperary IFA. All those people said that they want to work with the Minister on this Bill as it progresses. However, this aspect is a key requirement. He has given reassurances that this element will happen anyway, but it is important to have it in writing. Therefore, I support the amendment.

Senator Pauline O’Reilly: From our point of view, farmers are the custodians of the land. This climate transition will not happen without the participation of farmers, because they are there on the ground at, literally, the grassroots. Therefore, we must support them. If there is criticism of farming and farmers, it is certainly not coming from me. I state that because we in the Green Party recognise the part that farmers play. If assurances can be provided to farmers through these amendments regarding taking into account the work they are doing, then we must do that.

It is also important to recognise that the part to be played by sequestration and carbon sinks when it comes to farming is quite small. Those aspects will be taken into account anyway, because we are talking about net emissions. We must ensure that we put on the record the importance of following the science in this regard. I sit on the Joint Committee on Environment and Climate Action and we had representatives from the EPA before us this week. We discussed sequestration and carbon sinks. Quite apart from the small part they may play in emissions, investing in carbon sinks and sequestration in respect of farming will do so much for biodiversity. That is apart from this Bill, and it must be supported in any case.

Representatives from Macra na Feirme also appeared before the committee last week. It is interesting that farmers recognise that consumers want greener products and that means farmers know that they must invest in these greener products. It is our responsibility as a State to support them in doing that. When we asked those representatives from Macra na Feirme last week how such support could be provided, they called for support from ecologists. It shows the commitment farming communities have to changing to a greener product, and that is where the money is coming from regarding European funding and that is what we want to support.

Senator Timmy Dooley: I welcome the opportunity to second amendment No. 92. I support both amendments, which are important on several levels. These amendments have been worked on in conjunction with representatives of the farming organisations and farmers generally. The outcome, therefore, is a culmination of the to and fro between the industry, namely, the farmers side of it, and the Oireachtas. As others have said, if we are serious about addressing climate change, and most Members are, then we cannot do it without the support of carbon emitting sectors. The agriculture sector has for a long time recognised, as I see it from my

2 July 2021

vantage point, the role it plays in carbon emissions and it wants to play its role in reducing them. I come from a part of the country where the farms are small and the land is bad. Quite frankly, there is a battle between heather on one side and rushes on the other. I was brought up on one such small farm and I fully understand the role that the use of land can play.

The predominant approach to agriculture in the past 20 to 30 years has been to maximise production to the nth degree. It has been about making every square metre of land viable and productive. I do not know if that has entirely served the agricultural sector terribly well either. The overproduction that resulted in many cases has led to a reduction in prices paid to farmers. Prices have improved in the past year, however, and that is welcome. However, we must manage our land much better. We should not force farmers into a position where they must continue to produce more and get paid less to just stand still. There may be an improvement this year, but up to last year the prices farmers were receiving for beef and milk was probably comparable with 20 years ago in per unit terms, whether that was per kilogram of beef or per litre of milk. The truth of the situation is that the cost of living has inflated considerably in those 20 years. Farmers, to educate their kids and to just live, had to increase production. Often, that was to the detriment of the environment, but that was not their fault. It was the strategy laid out at a national level.

We must focus far more aggressively now on managing farms in a sustainable way. However, we must support farmers in doing that. We cannot have an increase in production to allow incomes to stand still while at the same time talk about reducing carbon emissions. We must work far more collaboratively with the farming community. I refer to farm representatives, the co-operatives and the production sector as well. Agriculture plays such an important part in our economic activity. It is often forgotten the extent to which the jobs are created in the production side of our output. However, it is not lost on the communities that those factories and production facilities serve. There is recognition and greater acceptance among farmers in that regard, quite frankly. I hate this notion of an urban-rural divide, but farmers often feel a little bit slighted by some of the commentary from certain sections of the media. I refer to those outlets that seem to just look at the entirety of the carbon emissions from agriculture and take a lazy approach to the resolution of this problem by then suggesting the simple approach of cutting the national herd, without understanding fully the associated implications. I am often taken by people who make comments such as that. They might be surprised if they were to look at how they manage their own lives, the kinds of unnecessarily large cars they drive and the way they live their lives in the context of carbon emissions. Therefore, all sectors of society must work within their own spaces to reduce their carbon footprints to the greatest extent possible.

The farming community is more focused on that aspect than many of the people I meet on my weekly trips to Dublin and who live in the commuter belts and the urban part of the country. Therefore, I hope the Minister will be able to accept both amendments. They seem logical and fair. He has generally indicated that the sentiment encapsulated in these amendments is how he hopes to proceed in the application of the legislation. It would do a great deal for the agricultural sector and the farming community to know the provision is enshrined in legislation. From my interactions with the Minister over the years, I know that he has been a strong proponent of carbon budgeting. Others would have sought to get out of that implication in the legislation if they could do so. In recognition of the legislation covering carbon budgets and that it is going to put significant burdens on all sectors, we should also enshrine the obvious benefits of carbon sequestration and its resulting impact on our overall carbon output. It would recognise how this approach can act as a catalyst for engagement with farmers, which is already there in any

regard. In addition, however, it would demonstrate goodwill and clearly indicate that we are going to accept as genuine the bona fides of farmers concerning their desire to participate effectively in neutralising carbon emissions in our climate. It would also recognise, though, that they will do so with the tools they have available to them. I state that because this notion of cutting the national herd might sound good, but it is simplistic and does not show an understanding of the wider benefits of agricultural output to this country.

1 o'clock

Senator Alice-Mary Higgins: As a colleague mentioned, we are discussing agriculture in the climate committee. We are hearing the many good ideas and strong commitments from across that sector and especially from young farmers. We heard from Macra na Feirme and others. They are looking to do things differently and want a different policy context around them which supports and rewards them for approaching their practices differently, such as the move towards organic and away from fertiliser, because Ireland cannot forever have a derogation from the nitrates directive.

With regard to the focus on that work of guardianship and wanting to be supported and allowed to maintain areas of biodiversity within their farms, they deserve a better policy context which recognises, rewards and pays them for doing that work. They deserve that, not only at a national level, but at an EU level and they deserve better from the Common Agricultural Policy, CAP, negotiations and Ireland's representation at those negotiations in terms of supporting small farmers and those who are seeking to lead in environmental transition. With regard to just transition, farming is one of the key areas. It needs just transition.

We should be giving financial and policy support, but these amendments and this Bill relate to something wider, which is the amount of emissions being produced at a core level. It is not about what practices are rewarded, but it is about what emissions are being produced. It is in the context of a global crisis in which the world is on fire and we are facing absolutely devastating consequences. We need to be doing everything we can to try to avert or limit the damage done by climate change. Ireland is coming very late to that race against time. We need to do everything we can and I support positive policies on sequestration and removals. However, I support them in addition to our emission reductions.

In EU climate law, there are separate targets for emission reductions and removals. We need to do both things. The reason it is important those elements are separated in the EU climate law is because there is something none of us can afford, which is this being addressed as a matter of accounting. When we talk about dealing with climate change, no amount of moving figures around on a page, beautiful narrative or a story about ourselves will deal with the blunt fact of emissions and increase in global temperature. The science is what matters.

There is a danger of double counting when you blend and muddy the waters around what part of this budget is removals and what part is emissions reduction. We have seen that in other countries. We need to reduce emissions and many of the actions such as re-wetting will be needed to reduce emissions. However, we cannot count it twice. Planting the same tree cannot be counted twice, as reducing emissions and representing a removal. That is a danger, if we are not clear.

On the question of proceeding in this way, I will wait to see what approach the Minister is taking. If we do not choose to treat these things separately, I worry we will blend and lose

2 July 2021

that 51%. When we talk about enshrining things legislation, I greatly regret the 51% emission-reduction commitment is not enshrined in legislation. It is only a proposal of the advisory council.

The approach of including removals has been taken in countries such as the UK. If the proposers and the Minister are engaging between now and Report stage, they will need to be clear about what approach is taken to removals and what is meant by it. A relatively new section was added to the Scottish Act which clarified the amount of Scottish emissions and removals of a greenhouse gas for a period must be determined, insofar as reasonably practical, consistent with current international carbon reporting practices or, for the purposes of assessing and reporting, target-relevant international carbon-reporting practice.

If we were to count removals, we need to be clear about how we are counting them. Is it in line with the best international practice? Scotland included emissions and it has similar concerns, issues and climate to us. Scotland made sure it copper-fastened it so that if removals were to be there, they would be done under clear and consistent guidelines. In the UK and Scotland Acts in terms of removals - maybe the Minister may confirm if this is his understanding - when removals have been calculated it is with regard to changes in land use, land use change or forestry. Those are the areas in which removals have been considered and scientifically measured.

It is important to note if you were measuring removals with regard to land use, land use change and forestry, you need to measure all the emissions in those sectors. As a reminder or reality check of where we are, forestry is a net emitter. We may be planting trees but the forestry area in Ireland is emitting more carbon emissions than it is sequestering. We need to be clear in terms of what the implications may be in the first two budgets, if we are properly and fully calculating land use, land use change and forestry in considering removals. We need to balance that with emissions. There is a question of how that may intersect with the 51%.

There is a credible case for having a policy and possibly a target on removals. It will become quite complicated if there is an attempt to blend it with the emission reduction targets. If it is to happen, it needs to be based on clear measurements and we need to follow the international practice. I have huge respect for Senator Daly and we have worked on many of these issues before but Ireland has a slightly difficult situation because some of the areas we measure removals may not be in the agriculture sector. Peatland restoration on Bord na Móna land will not necessarily be within the agriculture sector. There is a question of where removals are made and where they would be counted.

Probably one of the longest and most intense debates we had in the last Seanad - I think it lasted 25 hours or so - was on hedgerows. Some of the same people who are talking about hedgerows now argued to remove the accounting on hedgerows. I had multiple amendments, which were rejected by the Fine Gael and Fianna Fáil Senators at the time, in which I said let us measure. I pointed out if we did the kinds of changes proposed there, such as individual landowners individually interpreting the road safety Act and not even having to tell the council what they had cut, we move to a position in which we will not have clean, credible records in terms of what hedgerows and measurements of the hedgerows we have and how we can count them when we are considering. That is another factor and problem.

It has been noted that especially grasslands, hedgerows and trees are notoriously difficult to measure. This is an area which needs serious unpacking if it is to be approached. Ultimately, these work and all of the ideas within the removals are all really important good ideas. They

should be rewarded. Farmers should be paid for doing these things, but we need to be careful we do not allow them to skew the reduction in emissions we need to avert catastrophic climate change.

Senator Lisa Chambers: I wish to speak in favour of both amendments, Nos. 1 and 92. We are at a critical time of change for agriculture. This Bill is coming through the House as the Common Agricultural Policy negotiations are coming to an end. The new CAP policy will mean significant changes for farmers. Pillar 1 payments will now have a direct link to an eco scheme for 25%, which has not happened previously. That, coupled with this Bill, means farmers will be dealing with a lot. There is a lot of change happening and they must be supported.

Both amendments highlight the unique nature of the agricultural sector to Ireland, the Irish economy and the Irish way of life in our communities right across the country. We are an agricultural country. We have always been a very strong producer of good quality food and premium products and I hope we will always be. However, in order for that to happen we have to facilitate farming at that level. It makes sense to take removals and sequestration into account in the budget and acknowledge that they play a role in the overall emission outputs. As Senators Higgins and Paul Daly pointed out, it is important to acknowledge the work farmers are doing in this space and facilitate them making those changes in a reasonable manner. I agree with Senator Dooley that farmers are to the fore on this issue. They know the responsibility that is on their shoulders to meet the climate challenge and they are already moving ahead and making innovative changes on their farms right across the country. We have to acknowledge that.

Other sectors in the economy, and not just agriculture, will have to play a role here. Transport is a key sector. Each and every citizen also has a personal responsibility to make those vital changes in their homes and lives to help to meet the climate challenge we face, both in this country and across the globe. The emissions reductions we aspire to achieve, and will achieve, require a significant reduction in this sector. We need to make that achievable and doable and we need to help our farmers to do it. At the end of the day, one of the reasons we have a Common Agricultural Policy and are focused on having a good working agricultural sector in this country is that ultimately, we want to produce good quality food for our citizens at an affordable price. We need to make sure that being in agriculture actually pays people. To focus on that point, we face a particular challenge in encouraging young people into farming and retaining people in full-time farming. Both these amendments are an important step towards ensuring the future of farming viability in this country and supporting farmers in all regions to maintain farming as a way of life and as a sustainable way of making a living and rearing and supporting their families. I am in favour of both of these amendments.

Senator Victor Boyhan: I warmly welcome the Minister to the House. This is perhaps one of the most important pieces of legislation we will be discussing. I am fully supportive of agriculture. I am from a family that is steeped in agriculture and the very humble but very rewarding trade of cattle dealing. We do not see too many cattle dealers around today but that is where my stock is and my origins are and I am always proud to touch base with that. I support agriculture, as everyone does.

The first few speakers all teed up in the first slots of this debate to set out their credentials for agriculture. That is wise and politically clever and very astute. In the next few days, people in their homes will no doubt see extracts of these debates on “Prime Time” or newsreels and it is always important that what politicians are saying is reflected on the ground. However, it has to be more than simply words. There are 142 amendments on Committee Stage. Amendment No.

2 July 2021

I is from Fianna Fáil and Fine Gael, which are in government with the Green Party. I would be surprised if the Minister does not accept that amendment. I hope he does and I am in favour of it. However, that is the only amendment in the names of Fine Gael and Fianna Fáil, which speaks to their commitment to agriculture. That is an important point. That is not to suggest or imply anything because I respect these colleagues in the House. It is their right to submit amendments and they may do so later, on the next Stage of this Bill. I hope they will stick with us for many of the other amendments we will be discussing today.

We have a lot of work to do here today so I do not intend to use too much time. I will speak to my amendments but we have too much business to get through and I do not want these debates to be guillotined. They are guillotined because of how we have allowed them to eat into our time but it is up to each Member how to use his or her time. That is the democratic system and I am not suggesting that they should in any way cut down on that.

These are critical amendments and I am going to support both of them. We talk about just transition, agriculture, farm incomes and the CAP. Senator Chambers is right that there is a new emphasis in the CAP negotiations on eco systems and encouraging, assisting and supporting farmers. They do not need too much encouragement but they need practical and financial support so they can pursue new eco systems. Those systems may be less productive or less profitable and so the farmers must be supported and compensated. I hope the Minister will accept these amendments.

Amendment No. 92 is in the name of Senator Paul Daly, who is an outstanding Senator. I work with him on the Joint Committee on Agriculture, Food and the Marine and he is always there. He is always at the table, advocating for agriculture and farmers, particularly those in his own native Westmeath where there are a lot of smaller farmers. Sometimes they get lost in the bigger debate because farming in this country is so diverse. Farms range from very small 30-acre Land Commission holdings to hundreds of acres, depending on what part of the country they are in.

The Minister has said time and again that we need to bring everyone with us on this journey and I believe him. It will be a longer journey than some might have thought. It will take time. It has to be a just transition and a fair transition. It has to be a just climate and we cannot leave people behind. My concern is that so many people feel they are going to be left behind. That may not always be the case but that is what they feel. We need to reassure them, travel with them and take this journey with them to support them and sustain agriculture but more important, sustain our rural communities. I look forward to the debate. I again welcome the Minister and I hope he will accept these two very simple and reasonable amendments.

Acting Chairperson (Senator John McGahon): I thank the Senator. Let us be brief in order to allow people in. For the record, the Bill is not being guillotined today. The debate will adjourn at 6.30 p.m. and we will be coming straight back to it Monday morning.

Senator Aisling Dolan: The Minister is very welcome. It is so important that we capture carbon removals and sequestration in this Bill. I am delighted that Fine Gael and Fianna Fáil have come together, fought to include this issue and put forward an amendment for the Minister's consideration. I understand that on earlier Stages he took on board many of the amendments that were submitted. We have such valuable land in Ireland but there are regional differences. We have particularly valuable land in the west, in Galway and Roscommon. We have extensive farming systems, which are mostly grassland, dry stock and sheep farming. We need

to value our land when it comes to carbon capture. There is so much in our peatlands and that is valuable. In accounting for removals we will be calculating and measuring how valuable our land is, and that does not solely involve livestock. There are sections of peatland in Pollboy and Kellysgrove, close to Ballinasloe where I am based, that have never been industrially harvested by Bord na Móna. Can the Minister imagine the value of that land and the sphagnum mosses that are there? We need to measure this in a clearly defined way that will show that farmers are giving back, along with all other parts of the community.

I recently spoke to someone from Lahinch. I remember speaking to her about the sea and surfing and everything they had in Lahinch. She pointed to the amazing trees in our countryside in east Galway. Her area is a little bit more barren because of the seascape. This shows we have such greenery and all of our hedgerows need to be accounted for. We need to recognise the regional differences in Ireland and this includes the west.

Farming is the backbone of our communities. Farmers are driving the changes we need to see for climate action. We know there is more than just livestock emissions. Energy-related areas of transport, housing and retrofitting are all crucial also. As spokesperson for Fine Gael on research and innovation, I would like to see the investment. I know there has been good investment to date, and Senator Lombard has also spoken about investment in farms in Cork that are looking to be carbon neutral over the next five years. I would also like to see how we invest in measurement of the land and the value of land and types of land we have. We need to look at it in a broader way and not just at livestock numbers.

I appreciate the amendment and I support it fully. I am very proud the amendment has come from Fine Gael, a party that has represented the interests of agriculture and farmers in this country. In taking this into account, the Minister is acknowledging from the heart that farmers have a part to play and will have a part to play in driving climate action in our country. I thank him very much.

Senator John Cummins: I welcome the Minister, Deputy Ryan, to the House. I echo the comments made by many of my colleagues on these amendments. Senator Boyhan, who has left the Chamber, expressed concern about the time constraints but yet spent five minutes criticising Fine Gael and Fianna Fáil and questioning the validity of us standing up for rural Ireland and the agricultural community. I make absolutely no apology for doing so and nor does my party. The agricultural community and rural Ireland have led this country out of many recessions and will do so out of the current constraints we have as a result of Covid-19.

I have said before and I will say again that we cannot achieve our carbon emission targets without every sector, company, organisation and citizen playing their part. Agriculture will certainly do this and will not be found wanting. Farmers are the custodians of the land and it affects them more than many of us. Although it is an issue that affects all of us and the planet as a whole, farmers see the effects of climate change on their land and farms on a daily basis and they take it exceptionally seriously. The amendments we are tabling are sensible and practical and I hope the Minister will take them on board. If we go anywhere in Europe we see fields as far as the eye can see. We do not see hedgerows and trees delineating parcels of the land as we do in Ireland. It is only right and proper that credit is given for this in carbon sequestration.

With regard to bringing everybody along with us on this journey, I would like to mention the court decision made this morning not to allow leave to appeal to An Taisce to challenge further the decision on awarding planning permission for Glanbia to build at €140 million continental

2 July 2021

cheese plant in Belview. This has been decided by An Bord Pleanála, Kilkenny County Council and now the High Court with a decision by Mr. Justice Humphreys. I am sure the Minister will echo what I say. I ask him to call on all parties involved to engage in constructive dialogue outside the courts. Inside the courtroom no longer has a role to play in this. We can always do things by sitting around the table and talking about them constructively. I certainly hope this will happen. I thank the Minister for bringing this groundbreaking legislation to the House. I certainly hope he will accept the amendments being tabled.

Senator Garret Ahearn: I support Senator Cummins in what he has said on the decision of Mr. Justice Humphreys in the High Court this morning with regard to An Taisce and the development of the €140 million cheese plant. How many times does the same position have to come back before it is accepted? Certain individuals in An Taisce do not seem to accept the decision and I encourage them to speak to Glanbia outside the court on this. The decision this morning is welcome. Many rural families and people are dependent on farming, the farming industry and the dairy sector, and the development of this plant is hugely significant. It needs to be supported. We are speaking about the viability of farming.

Acting Chairperson (Senator John McGahon): This is the second time for the Senator to speak and it is not relevant to the amendment. I ask him to conclude.

Senator Garret Ahearn: With regard to the viability of farmers-----

Acting Chairperson (Senator John McGahon): Yes.

Senator Garret Ahearn: -----today's announcement has a huge impact on this viability and the judgment needs to be accepted. I thank the Acting Chair for his leniency.

Minister for the Environment, Climate and Communications (Deputy Eamon Ryan): I thank the Senators for their contributions. I signal in advance that I intend to accept amendments Nos. 1 and 92. I do so because, as I said in earlier debates on Second Stage in the Dáil, I believe the Bill already provides that we want to encourage the use of sinks of greenhouse gases and carbon, and this was our clear intention. The amendments strengthen this and give clarity on it. As Senator Paul Daly said, the amendments complement each other and they are not contradictory.

I ask for time to respond because there have been many contributions and this is a critical issue. I want to explain some of the thinking on this. Senator Lombard started with reference to Courtmacsherry. I remember more than two years ago we spent a day or two talking to farmers in the brilliant Barryroe Co-operative, which does a really good job in the proud tradition of small co-operatives in west Cork. Carbery has had huge success with a massive expansion of exports. It was good to spend that time there. It has a place in my heart because my wedding reception was down the road. I love that place.

I have a couple of thoughts on the back of it, to take it as a specific example. It probably has some of the best dairy land in the world where the grass grows almost all year round. It has very good soil. Many of the farmers there I spoke to had just come out of the 2018 drought and had really suffered. The grass had stopped growing because it was burned to the core. Many of them realised, if they were honest, looking back at the newspapers at that time, that they were overstocked, that they were too tight and borrowed up, and at risk and exposed because of the climate changing, with dairy being affected as much as anything else. I remember at the time many farming people saying I was right and that we have to begin to protect ourselves from this

climate change. There are ways we can do this. There is mixed sward grass management with very deep-rooted grass that will survive drought better. It improves animal health and other outcomes. We can have clover nitrogen fixing in the mix. Soil and grass management is not easy. This is where the smart farmers are going. I listened to them and this is what they are working at. Our best farmers are going in that direction.

I cannot think of Courtmac without also acknowledging and recognising what the EPA gave me recently as an example. We have a major problem in Courtmac with the pollution of the waterways. It is an incredibly important special protection area habitat with huge bird life in the estuary. It is seriously and serially polluted. Pollution is a real problem in the area. It is not uncommon elsewhere. It was very interesting reading in the newspapers the day before yesterday about a report published by the EPA acknowledging that we have a serious nitrogen, ammonia and phosphate pollution problem in our country. What did the report say? It said that the three sisters, those rivers in the south east, are saturated with nitrogen.

I mention my neck of the woods in Dublin Bay and I walk around the Irishtown Nature Park in Poolbeg. It is a stunning place and a beautiful beach but most summers you are walking through algae rather than sand because the Liffey captures all the excess nitrogen phosphates we have from the midlands and washes them out into Dublin Bay. Dubliner cheese is much appreciated and loved around the world but Dubliners do not particularly want to be walking through algae sludge on their bay and in their beach. At some point they will ask where the pollution is coming from and how it can be stopped. We will stop it and we will protect all of our environment. As Senator Boyhan said, every place and person matters and that issue matters.

Carbery Group is superb with huge exporting and marketing success and is able to switch production into cheese and other products. One thing is clear to me; we will not be able to do that unless we are origin green in everything we do. I met representatives of one of the big international food companies recently. They told me it had just done a bit of research on international trends in markets in China, India, America, South America and elsewhere. The message coming back was that on the dairy side in particular, customers are starting to ask questions and to be concerned about the origin and environmental impact of dairy products. That is happening. It is not just about climate; it is also about the biodiversity issues. The Irish farming community and industry need to know this and they know it. The industry must know it because decisions in the financial markets are increasingly being taken with this knowledge in mind. The ability to raise finance and go out into a market and sell if you are not compliant in environmental standards will become an increasing issue.

I want to make a couple of other points in accepting these amendments. The Bill provides a real opportunity and I might go into that in a bit more detail. Allowing for the removals does not remove the need to reduce emissions. What Senator Lombard and other Senators have said is true. All of the attention is on agriculture and the shaming and blaming have to stop. That is the worst thing because it is not appropriate or right at all. However, what the Senator says is true. Agriculture will not be the most difficult sector to change. Maybe I am biased in that regard because I am the Minister for Transport and I am scratching my head every day thinking how in God's name we will change transport. We do not have the removals capability in transport that there is in agriculture. We are wedded to the existing transport infrastructure and it will be difficult to change.

That means agriculture also has to play its part in real emissions reductions, not just removals and sequestration. That has to be abundantly clear. I could not get on better with the Min-

2 July 2021

ister for Agriculture, Food and the Marine, Deputy McConalogue. I find him the most capable and decent colleague and he is good to work with but we will have to sit down in the coming weeks and months and strike a good balance between emissions reductions and removals. It will have to be both. For the sake of Irish agriculture and farming, there have to be real and significant emissions reductions or else we will get caught in the cross hairs as the world starts to look at what is happening in Canada, for example, with people dropping dead from the heat. Any sector that is seen to be part of the problem and not part of the solution is going to be in real trouble and we do not want to be in that place. There has to be a reduction in methane, nitrous oxide, carbon dioxide and ammonia pollution. All the various pollutants we have are a problem. This is not blaming in any way; it is just facing that reality because if we do not do so, we will be on the wrong end of the way global economies and markets are going.

Accepting these amendments helps to clarify what was already in the Bill, as was said. They open up real opportunities. I have heard the Minister of State at the Department of Agriculture, Food and the Marine, Senator Hackett, speak about this and we are about to deliver these new riparian agroforestry type solutions. That will not just be along rivers but along river courses because we can stop some of the pollutants that way by planting clever strips of forestry without all the regulations and restrictions making it so difficult. Let us give farmers an incentive to be flexible, do this well and start putting new forest systems within our land in combination with farming, rather than switching away from farming. They should get recognition for the carbon that will be stored due to those efforts.

Energy will be slightly difficult on the land but we will be doing anaerobic digestion. We will have to do it in a sophisticated way. Farms working together will work best in this way because the scale will not work for the ordinary sized family farm. It will work with 12, 15 or 20 farmers working on a parish basis and coming together with some, for example, putting dry matter into the anaerobic digester and some feeding cattle or sheep. The slurry from that will feed the anaerobic digester as well so we will be managing a waste problem.

We do not want a massive expansion in new food production systems just to feed this ever-expanding system. Our marketing strategy is clear. We cannot have big increases in production because our land cannot take that. That is a fundamental reality that the food and production companies have to start realising. That model of ever-increasing production will not be the way. It has to be marketed as a niche, high-quality and high-priced product. That form of anaerobic digestion cannot be just pushing yet more fertiliser onto yet more grass with more slurry from pig and poultry production which will be increased further. That would involve everything increasing and the land and water quality taking the hit. That will not work. We can do anaerobic digestion where it involves waste management as well as land management and where it gets a good price to the farmer. It is all about getting an income to our Irish farmers. That is what we need to do and we can do that.

We will have to reduce nitrogen fertiliser use. This is a critical issue. Some of the mixed sward and the use of clover will provide nitrogen fixing in a much better and cheaper way. In a world of climate change, we cannot keep using fossil fuels without regard to the future, not to mention the issue of water quality that I mentioned earlier.

We will do a lot of rewetting in particular. There are certain areas in different parts of the country that will have different circumstances in this. There will even be different parcels on individual farms involved in this. It is the detailed and skilled management of the land with local knowledge that farmers have that will decide which grasslands we will rewet. There is

a huge potential for storage of carbon and a huge income potential in that rewetting of grasslands. Some farms will be doing that more than others. It will be more of the north and the west getting the money if I am truthful and without creating a geographical divide. We know this. Senator Dooley's neighbours might be the ones who benefit more because they will have more of that type of storage potential on rewetted land. What Deputy Danny Healy-Rae and others have said is true. He said in a committee a few years ago that farmers have been told for 50 years that they have to drain land and now they are being told to wet it. That will be the case but they will be getting paid for it because it is bringing back biodiversity as well as storing carbon.

I refer to the mechanisms. The first key mechanism is land-use planning and review, which we are doing, and it will take time. What Senator Higgins says is right. We follow science on this and it will take time. To answer her question, we follow UN measurement systems. It has to be based on land use, land-use change and forestry, LULUCF, and on science. It will take us time to get the granular details we will need to be able to get the income streams to support some of this. That is what this is about. As well as protecting nature, it is about providing incomes into the future for these nature-based solutions. It will be based on measurement systems from the UN and on science. It will take us a few years to get the land-use planning right to make sure this is done on a scientific and a fair basis.

The second mechanism is the policy instruments to deliver. Again this will be in a few years time; it will not be immediate. We should follow the type of emissions trading system, ETS, that they have in New Zealand and other countries where there is a payment and a market for this. It is not just for biomethane, but for carbon as well. We can look at the various emissions, nitrous oxide, and so on. That is complex and why it takes a bit of time to get it done right. We need to give people time to prepare and set it up. The ETS type of system is the policy instrument that will help to deliver the income into farmers. This is what we are about; reduce emissions, increase income.

Someone referred to CAP, I cannot recall who. CAP will be of critical importance to get the details in terms of payments in Pillars 1 and 2, how these new eco-schemes are going to match this and back this up. From my understanding of the negotiations - the dialogue of which have only finished with the details yet to emerge and to be agreed nationally - the European rules now allow payments for rewetting, which they previously did not. We could get European money for some of the work I was speaking about a few minutes ago, among a variety of different ways. It is for all those reasons that we are accepting the two amendments. I thank the Senators for putting them forward.

Amendment put and declared carried.

An Leas-Chathaoirleach: Amendments Nos. 2 to 7, inclusive, and 10, 72 and 75 are related. Amendments Nos. 3 to 7, inclusive, are physical alternatives to amendment No. 2. Amendments Nos. 2 to 7, inclusive, and 10, 72 and 75 may be discussed together. Is that agreed? Agreed.

Senator Rebecca Moynihan: I move amendment No. 2:

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“ ‘climate justice’ means the requirement that decisions and actions taken, within the State and at the international level, to reduce greenhouse gas emissions and to adapt to

2 July 2021

the effects of climate change shall, in so far as it is practicable to do so—

- (a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects,
- (b) safeguard the most vulnerable persons,
- (c) endeavour to share the burdens and benefits arising from climate change, and
- (d) help to address inequality;”.

I will withdraw amendment No. 2 and resubmit on Report Stage.

Senator Alice-Mary Higgins: My amendments are included in that grouping and I will speak to them. As I begin, I wish to note that it would be useful, between now and Report Stage, if I could be provided with more clarity because I did not get the clarity that I asked for on emission removals. It was not clear to me whether we are going for the EU model, whereby there are two separate targets, or the Scottish model, whereby there is a combined target. That is a key principle and a key question in the budget that has not been resolved. I would like more information on that between now and Report Stage. It would be very useful. We all want “removals” included but the question is about how they are calculated and measured, and how they are reflected in our ambition.

The reason that everything counts is because we are in debt. We are starting this process having been one of the great drivers and causes, along with others in Europe and the developed world, of climate change. We are part of that. We have a particular responsibility in regard to taking action. We must look at everything we can do. My concern at the moment relates to how we often speak about different places that mean a lot to us and have a place in our hearts. I have a place that is in my heart when I talk about climate change, it means a lot to me, and that is Malawi. I went to Malawi, where each person produces 0.11 tonnes of carbon emissions compared with more than 8 tonnes for every person in Ireland, and saw, in 2008, the people there dealing with ruined lives due to the impacts of climate change. They are very much in my heart. My heart breaks when I look at the definition of “climate justice” that is proposed in this Bill. I do not believe it is a definition that can be stood over or that people could stand by. I do not believe it is a definition - if I can refer to my figures, because this is important - or language that we can accept.

The language in the Bill adds insult to injury in that it sets out a definition of climate justice that lacks any reference to the injustice and damage that has been done across the world or to the causes of the injustice, or to the basic principles in the United Nations Framework Convention on Climate Change of what it calls “common but differentiated responsibilities”. It is that fact of recognising that we all need to do what we can on climate change but that certain countries have a greater responsibility because they are the greatest cause. Other countries that we have been campaigned with, that I campaigned with to stop climate change alongside the Minister, many years ago, pointing out those who have done the least to cause climate change but have suffered its worst effects. It is a well-established principle which is not reflected in any way in the definition. The definition in the Bill does not refer to the past or the wealth of the developed world which was built on the back of damage done to others. It states: “the requirement that decisions and actions taken to reduce greenhouse gas emissions [so in the future] and to adapt to the effects ... shall, in so far as it is practicable to do so, safeguard the rights of the most vulnerable persons”. This definition states “so far as it is practicable to do so” in terms of safeguard-

ing rights. I have seen language like “progressive realisation” attached to rights. We know that rights are not always able to be delivered immediately. To attach “so far as it is practicable to do so” to the idea of safeguarding rights is a disgraceful abrogation of responsibilities. It refers to “the most vulnerable persons”, again it does not state who or where the most vulnerable people are. It does not acknowledge the international aspect of it. Unfortunately, when I spoke with some of the Minister’s officials, they talked about vulnerable people in Ireland. That comes under the just transition which we will get the chance to speak about, even though a definition of that is not in the Bill. In terms of climate justice, we need clarity that Ireland recognises that it has a responsibility to people throughout the world. I would like clarity from the Minister on that because I have heard different signals on it. It states the sharing of “the burdens and benefits arising from climate change” but with the word “equity” gone.

I will go through the six amendments that I have proposed in this area. One is about the definition that was put forward by the climate committee. The Joint Committee on Environment and Climate Action, put forward, agreed after many hours-----

An Leas-Chathaoirleach: Would the Senator mind waiting until they come up because we are going to have a long day.

Senator Alice-Mary Higgins: It is in this grouping.

An Leas-Chathaoirleach: That is okay.

Senator Alice-Mary Higgins: This was based on what we debated in the committee, after many hours. It talked about the framework convention supporting people who are most affected by climate change but who have done the least to cause it. It was about the human rights and well-being of local communities, indigenous people and the most vulnerable. It was about being informed by science. These are the same principles, by the way, that were put forward by a number of international NGOs to the Minister asking that he reflect the same kinds of principles in the definition he has put forward. None of them are there. This is missing from the definition.

This is something that we need to move forward on, we need a change. This is a stain on the Bill as it proceeds at the moment. I want the Minister to explain where the justice is, where the future thinking is, where the international responsibility within the definition of climate justice is and, crucially, where the UN framework convention principle is. That principle is even in the Mary Robinson definition, which is not the strongest definition of climate justice, and centrally recognises “common but differentiated responsibilities”. They need to be reflected in what we put in this Bill. I tabled the amendment that was proposed by the climate committee, which was not accepted and is not in the Bill. I also tabled the amendment proposed by Concern, Trócaire, Christian Aid and a whole array of international NGOs which have been campaigning on this issue for many years, and for disclosure. I campaigned with Trócaire in 2008 and wrote a campaign on climate justice with others from across South America and Europe that we brought to the 2008 Copenhagen climate talks. There is also a definition, which is the minimal, where we would simply recognise the UN definition, name the UN responsibilities and state they are to do with climate justice.

However, there is an even more minimal approach. Senator Bacik made the point eloquently in the previous debate. The Minister would be better to remove a definition of climate justice from the Bill and let us rely on such definitions that are out there in the wider world in UN and

2 July 2021

EU documents and so forth rather than put in a bad definition. That is a sad place to be, but we would be better to remove it and the reference to climate justice and to rely on wider contexts. I also proposed two very small amendments to at least take out the most egregious point, which is “so far as it is practicable to do so” when we talk about the human rights of those affected by climate change and to add the United Nations Framework Convention on Climate Change into the Minister’s definition.

There was a 195% increase in sudden deaths in Canada in the past five days. More than 350 people died in a heatwave directly associated with climate change in British Columbia. It is interesting to note that many of them were indigenous people, who were the most vulnerable within British Columbian society. However, it is also a fact that the World Health Organization has told us that 140,000 people around the world died last year from climate change. People are dying now from climate change. We have a responsibility to them and we must recognise it in how we speak about climate justice. I want a definition that we can stand over and that will not embarrass us when we talk to people from a developing country about this common challenge and that we are able to say that this is a definition that recognises them and reflects our duties towards them.

Amendment No. 72 is extremely important. I have added in that the “common but differentiated responsibilities” would be explicitly named and understood. I know they are already in Article 2 of the United Nations Framework Convention on Climate Change, so there is a reference to them, but that when deciding on our budgets, the advisory council is empowered directly to think about climate justice in a meaningful sense and to think about our common but differentiated responsibilities and the fair share that we should be doing as we tackle this global challenge.

An Leas-Chathaoirleach: I thank Senator Higgins. I now call on Senator Gavan to speak to the grouping.

Senator Paul Gavan: That is the context in which I want to speak, as Sinn Féin tabled amendment No. 3 in the group. I want to start by reading the amendment into the record because climate justice is crucial to this matter. We propose that:

‘climate justice’ means the principle that global climate action should be undertaken, as agreed in the United Nations Framework Convention on Climate Change, ‘on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities’. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof;”.

That is our amendment, which makes perfect sense in terms of our duties to the world. This amendment seeks to replace the definition of climate change. It was offered by the Stop Climate Chaos coalition, consisting of Trócaire, Oxfam, Concern and Christian Aid. The definition of climate justice in the Bill is very weak. It is disappointing that the Minister has failed to accept recommendations 58, 59 and 62 of the cross-party, Oireachtas Joint Committee on Climate Action. It is vitally important that the principle is enshrined in this legislation. We must take seriously the principle of equity in the global effort to hold global warming to 1.5°C. It is very worrying that the definition currently in the Bill omits any reference to the issue of global justice and equity. Failing to consider this amendment is a massive missed opportunity.

I must also comment on that fact that on this crucial issue of how we define climate justice,

there is not a single Fianna Fáil or Fine Gael Senator in the Chamber. That is how seriously they take the issue of climate change. It is an absolute disgrace.

Senator Lynn Ruane: I thank the Minister for being in the Chamber. I would like to add my voice to that of Senator Higgins. I also support Sinn Féin's amendment on climate justice. Climate and climate justice is not a subject I have always felt comfortable with, and this definition has shown me the reason for that. I have always felt somewhat on the outside of the conversation on climate justice. I come from a community experience where there is a lot of poverty, fear and a lack of climate literacy. I was always concerned that we did not have a say regarding climate. We do not enjoy or experience the wealth in the same way, yet we are expected in this definition to experience the burden in the same way. That goes right to the heart of the reason this is an issue of poverty and wealth. To define climate justice well enough would feed into a better definition of justice at a local level in terms of just transition where there is currently an absence of definition.

The capabilities approach to climate change, which has been spoken about in the context of these amendments, was developed in the 1980s as an alternative to welfare economics, which brings it right back again to the issue of poverty. Poverty should be a core focus of the capabilities approach and the impact it has on what individuals, states or nations are capable of doing. The capabilities approach is based on two assumptions. The first is that there is a moral imperative to enable people to have the freedom to achieve well-being. The second is that the freedom to achieve well-being is understood in terms of a person's capabilities and their opportunities to do or be what they have reason to value. Adopting a capabilities approach would seek to understand and address inequity, differences in power, resources and authorities that groups have, stemming from combinations of historic, social, political and ecological processes. Climate and a sustainable development policy that expands choices and increases well-being at a local level would enable a transition from fossil fuel-dependent livelihoods, without risking workers or communities in high emissions sectors becoming stranded. Emphasis should be placed on the adoption of a climate justice definition of promoting trust between communities and decision-makers. This means community capacity-building and incorporating local knowledge and expertise into local climate solutions, which would ultimately feed into the overall national framework. An emphasis on community-based climate action, which can be facilitated through a definition that makes a reference to a common but differentiated approach, would ensure that communities feel that their voices are being heard with regard to climate change and that have increasingly better belief in the bottom-up approach.

Unless the Minister addresses the weakness of the definition of climate justice within the Bill, this is not a Bill that the most marginalised communities will be able to get behind because they are not reflected in the very definitions. I put most of the weight of my support behind amendment No. 4, which was tabled by Senator Higgins, as it is the strongest of the three. As usual, she has been generous in developing a number of variations on amendments. I encourage the Minister to make the Bill as strong as possible, so it is fair and equitable, people can get behind it and it protects the most vulnerable.

2 o'clock

It should also remove the reference to "share the burdens". I do not know how the rest of the Bill can stand if its definitions and principles are not strong enough to protect those who most need protection.

2 July 2021

Senator Pauline O'Reilly: There are four different definitions of climate justice in these amendments. We also looked at the Mary Robinson Foundation definition in our pre-legislative scrutiny of this Bill and many of us were not happy with that. It took a lot of conversation to come up with the recommendations we came up with. What is in the Bill does not entirely align with the recommendations that were made. It shows the difficulty in coming up with a definition and putting it into a Bill.

I would have to take issue with some of the comments from Senator Gavan. He could have come to the committee himself, listened to witnesses and contributed. He did not do so. All Members are entitled to come here and have their voices heard and they all could have come to the committee in the longest pre-legislative scrutiny of a Bill in the history of the State.

Definitions are not put into the Bill with any mal-intent but it shows how difficult it is to get definitions right. Part of the reason the Mary Robinson Foundation definition is not now accepted as the best one is that time moves on and definitions move on. What is missing in this definition is the responsibility of the developed world to the poorest people in the world. We see that with the Covid pandemic as well. There is a failure by developed nations to fully stand up and accept that they have caused the problems.

This Bill is historic and monumental and it is one of the strongest in the world on climate action. That is because of the amount of time it has spent in pre-legislative scrutiny. It has gone on for a year now with one thing and another. It has also taken decades of work by the Green Party to get to this point of us stepping up to the mark and entering into government when it is not easy to do so as the smallest party. It has also taken decades of work by environmental NGOs to get to this point and they have provided excellent wording on climate justice that has to be taken into account.

It has also taken decades of work by the youngest and most vulnerable people. I would agree with Senator Ruane that there are vulnerable and poor people in this country who cannot be forgotten. That comes into the realm of just transition but we also have to consider it when it comes to climate justice as well. There are 2.2 billion children on this planet and it is the people living in the poorest parts of the planet who will be impacted and who are impacted right now by climate change. That is not just in the deaths recorded, as outlined by Senator Higgins, but also from displacement and a quality of life they can no longer have with their families. It is women and children who are impacted most by this displacement.

On balance, removal is probably the better option because of the differences in views and we would all recognise that there are differences in views. There is no mal-intent in the wording that is in the Bill but given everything, including the changing understanding and definitions around climate justice, that is probably the best approach. None of this changes our obligations and none of it changes section 3, which is about our international obligations on climate change. Those obligations include climate justice.

Senator Rebecca Moynihan: We are not pushing this amendment to a vote. We will withdraw the amendment and resubmit it on Report Stage. I would like a bit of indulgence to speak to this amendment and back up some of my other colleagues in the Opposition on the definition of climate justice. The part of the Bill that bothers me more in terms of the weakness of it are the words "as far as practicable" because we all know from other issues in the Constitution that this tends not to be followed through with.

The definitions that have been proposed by Sinn Féin, the Labour Party and Independents, which are all backed by environmental NGOs, come up with a reasonable compromise around what climate justice is. Senator O'Reilly touched on it eloquently when she discussed the consequences for developing nations if we do not have climate justice. We have issues of climate refugees and displacement. The most vulnerable communities in countries in the developing world that are not net contributors, as we are, are the ones that are more vulnerable to climate change. I ask the Minister, between now and Report Stage next week, to have a look at this, and talk to the Opposition and the environmental NGOs to come up with a better definition of climate justice in the Bill and particularly to delete those words "as far as practicable". Those words take away from the definition that is in the Bill.

Deputy Eamon Ryan: I appreciate that this is a critical issue in our transition and I am conscious that the setting of this definition is difficult. In resolving this, I keep going back to the point that the core of the legislation is referring back to being consistent with both the United Nation Framework Convention on Climate Change, UNFCCC, which was agreed in 1992, and the Paris Agreement, which was agreed in 2015. It is being consistent with those that is the strongest possible connection we could make in legislative terms.

I am conscious that when we, as a country, signed up to the UNFCCC, we noted, like every other member, that the largest share of historical and current global emissions of greenhouse gases has originated in developed countries, per capita emissions in developing countries are still relatively low, and the share of global emissions originating in developing countries would grow to meet their social and development needs. A lot of people agree with Senator Higgins that our heart has to be more than in our own home. It is everyone's home, particularly those who are suffering most and who are being most immediately affected by climate change.

Critically, in being consistent with the Paris Agreement and specifically Article 2, again we are committing to this and we are bound by international law that, "This Agreement will be implemented to reflect equity and the principle of common but differentiated responsibilities and respective capabilities, in the light of different national circumstances." That element of climate justice, which refers to international climate justice and the justice that has to apply to those who are poorest and most affected by climate change, is and has to be a clear focus in our approach. Rather than trying to reflect that complex reality, I note that the 2015 Act, which we are adapting, did not provide a specific definition for climate justice, except for providing that the United Nations and other international jurisdictions are appropriate places for that to be defined. That did not affect the efficacy, direction or import of the Bill.

My intention is that I would accept amendment No. 7. Senator Pauline O'Reilly made this suggestion in her contribution, backing up Senator Higgins. The best approach is to accept amendment No. 7, to rely on our commitments within the UNFCCC and within the Paris Agreement that we stand four square behind the need for climate justice in our approach, and that the Paris Agreement in particular gives us the direction and means by which we do so. I intend to accept amendment No. 7 but not the other amendments.

Senator Alice-Mary Higgins: It is good we are removing a damaging section of text that worked at odds with the United Nations Framework Convention on Climate Change, UNFCCC, goals and represented a potentially dangerous dilution of those goals. I am glad to be losing what was, potentially, regressive language in the Bill. However, because it is important we include the output of the work of our many hundreds of hours in the climate committee, I will be proposing and pressing the definition the major environmental NGOs have proposed.

2 July 2021

It is supported by all the Opposition groups that have spoken. Therefore, I still think it would be better if we had a good definition that built on the UNFCCC and embracing common but differentiated responsibilities while also recognising the issues concerning human rights, equality and the rights of the most vulnerable persons, including indigenous persons. Indeed, they originated that concept of climate justice in Bolivia and concepts such as Pachamama, which is the idea that we have a debt not just to each other but to the world and to our planet.

My preference, therefore, in that context remains for that global approach. It is not a brain-storm which has come up with this idea. It is the output of decades of thinking about climate justice. I mentioned the work I was involved in back in 2008 and that has been fine-tuned since. The definition presented by Oxfam, Trócaire, Christian Aid Ireland, the Stop Climate Chaos coalition, Friends of the Earth and many others is the better definition. I still believe we should press that definition and that the Government should consider engaging with those environmental NGOs between now and Report Stage of this Bill to see if we can find and insert a good definition. Certainly, however, if it is not possible to do that, then the better thing to do is to ensure we do not have a bad definition in the Bill.

I did not have my notes with me when I was speaking earlier, but I think about this subject a great deal and I drew on that cogitation. However, one of the reasons I wanted my notes, and this is important, is that I want to read just a few lines from one of the most powerful testimonies in this regard from Professor Kevin Anderson. I recommend it to everyone to watch online, because it is transformative. He was appearing before the Joint Committee on Climate Action in November 2020, when he said:

I ... remind ourselves that even the Paris Agreement's framing of climate change, holding to an increase of 1.5°C to 2°C, is not just. Many people are already dying from climate change and with the 1.5°C to 2°C target, many more people will die. They will be poor. Typically, they will be people of colour, initially the burden will fall disproportionately on women and children, they will live in climate-vulnerable parts of the world and they will be low emitters. Let me be clear. We have, knowingly, in the wealthy parts of the world imposed that upon them by our choice to fail, thus far, to address climate change. I say this regularly to all [developed] countries but today ... [I say it to] Ireland.

It was powerful testimony and a reminder of where we are. We will have a chance to discuss another phrase in that context later, as far as is practicable, and the instances of where it appears in the Bill.

However, I really worry. I am someone who is hopeful about humanity and the world in general. Honestly, though, over recent months I have been watching the failure to introduce a TRIPS waiver and the unwillingness of the wealthy countries in that regard. The cover of *The Lancet* recently displayed a quote which stated that "Rich countries behaved worse" than anyone could ever have imagined. I have been watching the willingness to let millions die for convenience and for profit, and that builds on the thousands who have died in the Mediterranean. That is why I thank the Minister for removing this text. It is very good and we are taking a positive step in taking away negative language.

However, I urge the Minister to spend the next few days engaging with the environmental NGOs to find a strong definition that will allow Ireland not just to deliver on our responsibilities under the United Nations Framework Convention on Climate Change and not to be at odds with and dilute those responsibilities but to allow us to show ambition and leadership. I refer to the

kinds of things we spoke about when we sought to be elected to the UN Security Council. We should be more ambitious than our fellow countries in Europe on the specific aspect of climate justice in this global struggle. I again thank the Minister for accepting amendment No. 7 to remove the damaging language. I will press one of the other amendments and I hope we may be able to take another step forward on Report Stage.

Senator Paul Gavan: I will be brief and ask the Minister for some clarity. I welcome that he has made some acknowledgement of this subject this afternoon, but I am still not clear on one aspect and I seek further clarity directly in this regard. This will probably be the best opportunity I will have to ask him why he will not accept our amendments. What is it in the wording, which has been suggested by the Stop Climate Chaos coalition of Trócaire, Oxfam, Concern and Christian Aid Ireland, that he is objecting to? It is important we understand what the problem is with that wording. I ask the Minister to please clarify it.

An Leas-Chathaoirleach: In the interests of a thorough discussion of all issues, would the Minister like to reply to that specific query? We will then go back to putting the questions.

Deputy Eamon Ryan: To answer the question from Deputy Gavan, I am sorry, from Senator Gavan-----

Senator Paul Gavan: No worries; I have been called worse.

Deputy Eamon Ryan: I keep making that mistake. The Senator does not mind. The point he made is on my mind, but I think we are best served by going back to the core aspect in this regard. The strength of this Bill, and I have said this consistently, is that it is consonant with the Paris climate agreement and the original UN framework. I believe that is the best context, arena and process in which we can deliver climate justice and where it is best defined. It has been very difficult to find an alternative wording. I mean no disrespect to the recommendations made in that regard. However, this approach returns to the strengths of the Bill, which is the Paris climate agreement. That underpins everything in this process, and I think that is the better approach to take in respect of accepting the amendment from Senator Higgins.

An Leas-Chathaoirleach: Is the amendment being pressed?

Senator Rebecca Moynihan: No, we are withdrawing it, with the intention of resubmitting it on Report Stage.

Amendment, by leave, withdrawn.

Senator Paul Gavan: I move amendment No. 3:

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“‘climate justice’ means the principle that global climate action should be undertaken, as agreed in the United Nations Framework Convention on Climate Change, ‘on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities’. Accordingly, the developed country Parties should take the lead in combating climate change and the adverse effects thereof;”.

Amendment put and declared lost.

2 July 2021

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

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“‘climate justice’ means the requirement that decisions and actions taken to reduce greenhouse gas emissions and to adapt to the effects of climate change must—

(a) support the people who are most affected by climate change but who have done the least to cause it and are the least equipped to adapt to its effects,

(b) reflect the United Nations Framework Convention on Climate Change commitment to ‘common but differentiated responsibilities and respective capacities’,

(c) safeguard the rights of the most vulnerable persons, and

(d) help to address inequality;”.

Amendment put:

The Committee divided: Tá, 6; Níl, 24.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Moynihan, Rebecca.	Buttimer, Jerry.
Ruane, Lynn.	Byrne, Malcolm.
Wall, Mark.	Byrne, Maria.
	Carrigy, Micheál.
	Cassells, Shane.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Daly, Paul.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Gallagher, Robbie.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	O’Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

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

Amendment declared lost.

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

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“ ‘climate justice’ means the principle that global climate action should be undertaken, as agreed in the United Nations Framework Convention on Climate Change, ‘on the basis of equity and in accordance with their common but differentiated responsibilities and respective capabilities’;”

I withdraw the amendment with the hope that we can move it forward on Report Stage.

Amendment, by leave, withdrawn.

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

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3 and substitute the following:

“ ‘climate justice’ reflects the United Nations Framework Convention on Climate Change commitment to common but differentiated responsibilities and respective capabilities and—

(a) supports those who are most affected by climate change but who have done the least cause it,

(b) supports the human rights and wellbeing of local communities, indigenous peoples and the most vulnerable,

(c) is informed by science, responds to science, and acknowledges the need for equitable stewardship of the World’s resources particularly biodiversity and ecosystems, and

(d) helps address inequality and progressively distribute the financial responsibility for climate mitigation and adaptation measures;”.

I reserve the right to bring it back on Report Stage and see if we can find another way to progress the elements in it.

Amendment, by leave, withdrawn.

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

In page 6, to delete lines 34 and 35, and in page 7, to delete lines 1 to 3.

Amendment put and declared carried.

An Leas-Chathaoirleach: Amendments Nos. 8, 9, 62, 86, 91, 104 and 109 are related. Amendment No. 9 is a physical alternative to amendment No. 8. Amendments Nos. 8, 9, 62,

86, 91, 104, and 109 may be discussed together by agreement. Is that agreed? Agreed.

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

In page 7, line 1, to delete “, in so far as it is practicable to do so,”.

Amendments Nos. 8 and 9 represent my proposed changes to the Government definition of “climate justice”. That definition has now been removed. I want to be clear that in supporting the removal of the language in that definition, I have not necessarily agreed with the principle that we should not try to have a good definition of “climate justice”. That is why I respect and understand others who were not able to support its removal, because they want a stronger definition reinserted. I am glad the text that was there has been removed. Amendments Nos. 8 and 9 were attempts to improve that text by direct reference to the United Nations Framework Convention on Climate Change, UNFCCC, and common but differentiated responsibilities.

Amendment No. 8 refers to the removal of the language “in so far as it is practicable to do so”. This is probably one of the crucial problems with the Bill as it stands. Many of the recommendations we made in the Joint Committee on Climate Action related to the need for stronger and clearer language and to accountability. The Minister talked about the amendments he has accepted or partially accepted but all non-Government members of the climate committee voted that they disagreed with the Minister’s assessment as to whether he had taken on the committee’s amendments and recommendations and the extent to which he had done so.

One of the clear points we spoke about was strength of language. There have been some improvements. It is important that “achieve” was added. That is stronger language than what was there before. In some places, “have regard to” has been replaced with “be consistent with”. Those are improvements and they strengthen the language. However, a big caveat running all the way through the Bill is the phrase “in so far as it is practicable to do so”. In many places in the Bill where the Minister is told he or she has to comply with something, that caveat is added. I worry about that phrase. It is wide open, in terms of what might or might not be practicable. What might be framed as common sense or economic practicality? What might be practical to satisfy existing interests? What might be politically practicable? It is a very wide phrase. It has loose meaning in the Constitution. We have had cruel and hard debates about the difference between something being possible or practical in the Constitution. In that case, one implied a strong hope there would be an understanding that there needed to be a looser definition of what is practicable, rather than what is possible, in relation to compelling a pregnant person to endure artificial respiration.

We should take “in so far as is practicable” out of the Bill. It is too wide a caveat. In some places where it appears, it is a caveat added onto a caveat. One such area is where Ministers are asked as far as practicable to be consistent with the climate budget or their goals. What that actually says is that it is okay to be inconsistent.

The Minister may need caveats like “progressive realisation” or “make all reasonable efforts”. Those phrases have more substance and require the Minister to be on the right track and do his or her best to move forward on it. However, this caveat, “in so far as is practicable to do so”, attached to “be consistent” means the Minister may or may not need to achieve the climate targets and may or may not even need to be consistent with them. We do not need that dilution in this Bill.

I want this to be a strong Bill that works. We can save ourselves hours, weeks and months

of wrangling with different Ministers, each talking about what he or she thinks is and is not practicable. This is our chance to nail down strong climate legislation. Let us nail it down.

Senator Paul Gavan: Well said.

Senator Alice-Mary Higgins: Let us put it in the law, make it hard and clear. This is our strong moment, as we put it in law and on paper. Let us do it in as strong a way as we can rather than return to the world of persuasion and excuses, which have overshadowed our climate action for many years. Let us not give more ammunition to obfuscation, persuasion and excuses narrative we have all become too familiar with.

Deputy Eamon Ryan: I presume amendments No. 8 and 9 are moot because of the acceptance of No. 7 but I accept what Senator Higgins says on these wordings. My understanding is that, in legislative terms, that wording gives real strength. It is not an easy out. One has to recognise that there will be circumstances where it is impractical to do something but this is not weak in legislative terms and it recognises reality across the Bill in different sections where, in certain circumstances, things are not practically possible. I cannot accept the amendment.

Senator Alice-Mary Higgins: Will the Minister give two or three examples of what might be a reasonable defence of something not being practicable? I want to see how this will play out.

Deputy Eamon Ryan: It will take me some time to go through as there are so many different amendments but I will take the first one beyond Nos. 8 and 9 which, as I said, are now moot, as an example. The proposed section 4(11) provides “A Minister... shall, in so far as practicable, perform his or her functions in a manner consistent with the most recent approved climate action plan and the most recent approved national ... climate action strategy.” I do not see where the wording there weakens the provision or gives any out. A Minister has to be practical in terms of the policy levers one has to hand. A Minister cannot flick a switch and tell elements of society, such as the 120,000 farmers we talked about earlier, that they have to immediately do X, Y and Z. The Minister sets in place the policy measures and mechanisms to deliver but does not have fiat. That wording recognises it.

Senator Alice-Mary Higgins: The Minister is describing progressive realisation, which is a different thing. That means a Minister cannot do it instantly and does only what he or she can what do at the time. That is different from “in so far as is practicable” and “consistent with”. Would the Minister agree that Ministers may not be able to do everything immediately but they should not do things that take us backward or that are inconsistent with our climate plans or climate budgets? Does he see the issue with “in so far as is practicable” being attached to “be consistent with” the goals, rather than to achieving them?

Deputy Eamon Ryan: It does not allow for people to ignore the provision, go backwards or reverse the legislative intent. Who was it who said the revolution takes place in a grinding process in the corridors of bureaucracy? One sets in place policy measures to achieve an objective. That is the reality of our constitutional democratic Republic and the administrative process. My advisers tell me that is not weak language. It is common legal understanding that one does what one can. One cannot do the impossible but it does not provide any reverse engines or any opt-out. I am informed it is a strong legislative provision and I have to agree.

Senator Alice-Mary Higgins: I think we will disagree on that. It is not strong. It allows for actions that are inconsistent. If the Minister wanted to use the language of progressive re-

2 July 2021

alisation, he could have used that language, such as “Each Minister shall make all best reasonable efforts to be consistent with”, for example. That would be a possible phrasing and I will reserve the right to introduce that phrasing on the next Stage. It could be a matter on which a Minister would be required to make all reasonable efforts to be consistent with the climate objectives. At present, the Minister must be consistent with them “as far as practicable”. It may well not be practicable. As the Minister noted, there are many groups and interests. It may not be practicable if the IFA does not want the Minister to do something and there is an election in a year’s time. That is the concern. I will not go into the many examples of what people might do. It is one thing to have grinding slow progress but what I am trying to protect against, and why I am concerned, is that we could see a slipping backwards. The provision allows for this. It allows a Minister to perform a policy that may, in fact, increase our emissions in a way that will be inconsistent with the carbon budget, or to take an action or step in the wrong direction. That is the concern. There is a lot of other legal language to choose from, including, I strongly suggest, “make best reasonable efforts”. That might be a better phrase. I am a little concerned specifically about the attachment of this to “consistent with”.

Senator Paul Gavan: I support Senator Higgins. It occurs to me that while we may disagree on many aspects of how we go about this, I do not think anyone doubts the Minister’s bona fides in facing the challenge of climate change. However, he will not always be the Minister. To be frank and party political about it, if we have conservative Ministers from Fianna Fáil or Fine Gael, there is no doubt this will be a get-out clause for them to say it is just not practicable to continue with a particular policy and they would like to go further but it is just not practicable to do so. Let us not kid ourselves; these words are a get-out clause.

Deputy Eamon Ryan: To answer Senator Higgins on the alternative wording, I will give an analogy. I remember when I was doing my leaving certificate I was not the most stellar student in the class and my mother always encouraged me as I went out the door that all I could do was my best reasonable effort. I fear that if we use the phrase “best reasonable effort”, it will be far weaker than the wording we have here. Ministers will always say they did all they reasonably could. How would we define or measure this? In law, the phrase “as far as practicable” is, I am told, a very strong provision and it is appropriate to keep it on this basis.

Senator Alice-Mary Higgins: I will take on board the Minister’s phrases. He is potentially right that “best progressive realisation” and “best reasonable effort” may have loopholes of their own. My concern still stands on the backward step. I will not press the amendment now but on Report Stage I may introduce other amendments. I agree with the Minister that the phrase, “best reasonable efforts”, opens perhaps a different set of loopholes. I will seek to ensure that the wording, “as far as practicable”, does not include or allow for a step that would diminish progress. I am not a fan of the ratchet clause as it applies in our trade agreements but it might be needed in this regard. I will make other proposals. I take on board that this phrase may not be exactly right but I believe that “as far as practicable” is still very wide and loose.

Amendment, by leave, withdrawn.

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

In page 7, line 1, to delete “in so far as it is practicable to do so” and substitute the following:

“in a manner consistent with the principles of common but differentiated responsi-

bilities under the United Nations Framework Convention on Climate Change”.

Amendment, by leave, withdrawn.

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

In page 7, line 3, after “change” to insert the following:

“in a manner consistent with the principles of common but differentiated responsibilities under the United Nations Framework Convention on Climate Change”.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator John McGahon): Amendments Nos. 11, 12, 25, 26 and 32 are related. Amendment No. 12 is a physical alternative to amendment No. 11. Amendments Nos. 11, 12, 25, 26 and 32 may be discussed together by agreement. Is that agreed? Agreed.

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

In page 7, to delete lines 4 to 6 and substitute the following:

“ ‘complete decarbonisation’ means zero greenhouse gas emissions, combined with nature-based solutions that enhance biodiversity to sequester greenhouse gases from sectors where some emissions remain inevitable. ‘Completely decarbonised economy’ shall be construed accordingly;”.

This is very straightforward and is interesting in the context of what we have been discussing regarding the 2050 targets. It speaks about complete decarbonisation, which is zero greenhouse gas emissions combined with nature-based solutions that enhance biodiversity to sequester greenhouse gases from sectors where some emissions remain inevitable. It is a definition of complete decarbonisation that allows for the fact there will be certain very small and marginal areas in which it is not possible and we need some sequesterisation. It is a protection against a version of net zero, which is effectively what we currently have in the Bill.

It is not clear in “net zero” whether we will be speaking about 50% removal or offset and where it will come from. We are in danger that the reduction to zero we are aiming for in 2050 because it is a net zero may well be made up either of emissions that are traded or removals and, effectively, we will not have reduced our emissions to zero, or as close as we can possibly get to zero, but we will simply have managed to make them disappear in the accountancy tricks, which I spoke about earlier and with which we are very familiar and on which we have heard testimony. We only need to go to the climate talks to see very elaborate forms of accountancy that can help almost anybody get to net zero with imaginative accounting.

Amendment No. 11 in particular is pragmatic, in that it states when we speak about “best reasonable efforts” or “as far as practicable” the neutral economy or zero target for 2050 should be about absolutely everything we can do to reduce emissions to zero, with a small recognition of nature-based solutions only where absolutely entirely necessary and where no other option is available, for example, where there is a natural leakage that cannot be stopped.

Amendment No. 12 is philosophical and I will not speak for too long about it. A carbon-neutral economy is our national climate objective for 2050. In the climate neutral economy we include economy and society. I want to point out what is happening in this, which is that

2 July 2021

we are not aiming for carbon neutrality applied to the economy and society but aiming for a climate-neutral economy and including society in a definition under economy. Perhaps this is philosophical but it is important.

When we speak about 2050 and being able to stand over the fact that Ireland has zero emissions in 2050, we really should be aiming for Ireland to have zero emissions and not just the Irish economy to have zero emissions, be it net or gross, in 2050. It is a small thing but it is a concern. It shows the framework whereby we are placing the economy almost as the permanent thing that may change, and the definition of which may change. We are placing this as the outward frame. I remind Senators of the actual sequence of frames we have. We have an environment and within that environment and our planet we have a society, and within societies we form our states and democracies and we have economies. We need to get the pieces in the right order. That will be key to our survival.

Deputy Eamon Ryan: I am afraid I cannot accept amendment No. 11. The wording as provided is simpler in many ways but I believe this provides better clarity, whereby greenhouse gas emissions in 2050 are balanced or exceeded, which is important, by the removal of greenhouse gases.

3 o'clock

On the exact number, we will not know. That will be an evolving issue on which the Climate Change Advisory Council will be able to assist. It is hard to predict out to 2050 how much will constitute removals, but I do not imagine it will be anything near 50%. I do not see that being a physical reality or a physical possibility. As we discussed earlier, it will provide a contribution in certain areas, particularly in the context of land use and in farming. We will be not able to completely remove anthropogenic biogenic methane. The wording as set out provides a clearer, stronger and more concise definition, and I propose to stick with it.

On the wider issue, I agree on the need for ecology first followed by society and the economy as a subset within that but, again, I think the recognition in this definition that it is both social and economic is appropriate. The Bill is framed on an understanding that protecting our ecological systems is the key imperative of our time and it sufficiently addresses the hierarchy of order of importance.

Senator Alice-Mary Higgins: I reiterate that the term “complete decarbonisation” is clearer. The definition of I have offered in this regard recognises that anthropogenic biogenic methane emissions cannot be fully removed and need to be counterbalanced. I am concerned that this legislation is our landmark in terms of the big picture. I am not happy to leave it to the fates to see how things work out in terms of how much is removals and how much is emissions reductions and for the reasons I outlined in our debate on the first amendment. We know there are huge issues with double counting, with emissions reduced being recounted as emissions sequestered. We know that is fact, with the same trees appearing on different spreadsheets in the context of different work. That is an issue.

I am also concerned about the international implications. I will be frank. I was extremely concerned when I heard the Minister suggest something like an emissions trading scheme in regard to removals, especially if it relates to removals relating to our carbon budgets. When we talk about emissions trading, we are basically talking about passing the problem along. We are talking about some countries using other countries to move their emissions off their

balance sheets. There are elaborate ways of doing that. We have only to look to the financial services district not too far from this centre to know how good people are at moving money around so that it never lands tax systems anywhere. I become very concerned when we talk about emissions moving around on different spreadsheets and never landing anywhere or never really being fully accounted for. The planet is going to heat up. It does not care how good our spreadsheets are or how clever the accounting is. We need to put in this Bill as hard a measure as possible to make it as clear as possible that we are talking genuinely about reducing emissions and that we are not allowing eggs to be put in the future baskets of removals, emissions trading or any kind economic or financial instrument that might emerge.

I am signalling to the Minister that it is not good enough to simply say that we do not know the numbers and that it probably will not be 50%. The Minister needs to put a ceiling on how much is allowed in terms of removals or new forms of offsetting through trading. We need to provide a clear brake on that, which was discussed by the committee as well. We need a brake in regard to how much of the national climate objective is being made up by genuine emission reductions and how is being made up by other measures. We need to have a clear, hard brake in that regard. I signal that this an area on which I will bring forth amendments on Report Stage. I urge the Minister to give guidance on that as well because leaving our national climate objective, which is our statement as a nation, wide open in terms of how it may be achieved is leaving too much of a hostage to fortune.

Deputy Eamon Ryan: One could project an estimate but I do not think any projection would be 50%. We could undertake the scientific research and provide the figure. I want to make a key point in respect of the earlier debate and the comments just made in terms of a trading system. Nothing has been specifically designed yet. There are proposals coming forward from various quarters as to how this transition could be funded, particularly in the context of land use and agriculture. We have a challenge in this country, particularly when it comes to climate. We need to invest massively in a transport system for change and we need to retrofit housing, particularly social housing, and all public buildings. Each of these will require tens of billions in investment. There is a massive requirement in housing that requires tens of billions in investment. In agriculture, the key parameter in the context of climate is increasing incomes. Nobody is going to disagree that we need a whole generation of young farmers, foresters and wildlife managers and they have to be paid well. There will be funding from the Common Agricultural Policy and carbon taxation, namely, the effective hypothecation we have introduced in respect of using some that funding for land use. There will be further Exchequer funding for forestry and other initiatives. I refer to the €150 million that was allocated to bog rehabilitation as an example in this regard

The scale of the change we need to make and the scale of the investment we require, particularly in the context of young people in farming, land use, forestry and so on, are appropriate. It is not an opt-out. It will take a period to develop the detailed, scientific analysis to know when exactly we need to do a specific rewetting of grasslands or develop a specific amount of carbon storage, and how we are going to pay for that. We need mechanisms for paying. People will come up with a wide range of options but, as I have said, what I want to see is options in regard to how we can get money into the rural economy and a new generation of foresters, farmers and wildlife workers.

Senator Alice-Mary Higgins: We should learn from housing and take the position that we cannot leave this to the market and market-based solutions on climate change because they will not fix what we need fixed. There are farmers all over the world who are struggling with the ef-

2 July 2021

fects of climate change. There are farmers who are struggling now with drought and farmers in Ireland who are struggling. I was one of the first to speak in the Seanad about the fodder crisis, which directly related to climate change. I agree that there are a number of associated factors and investments needed. There is a fiscal space at the moment in which that money is available. We are trying to remake not just Ireland but a Europe and a world that is fit for purpose and resilient. We are going into the next 100 years of the State and that does require investment but how we do that is important. Let us not make the mistake of relying on mechanisms that have other motivations, which are not bad but necessary motivations, in terms of profit maximisation and return and allowing them be the drivers on something that is fundamental to human life.

I will bring forth another amendment to build on those before the House. I urge that there would be a pathway to considering the issue of how we balance these things. I am hoping that I will be able to engage with the Minister on how we can ensure that our emissions reduction targets and our removals targets are counted separately and that we aim for the greatest possible ambition in respect of each of them.

Amendment put and declared lost.

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

In page 7, line 4, to delete “neutral economy” and substitute “neutrality”.

Amendment put and declared lost.

Acting Chairperson (Senator John McGahon): Amendments Nos. 13 to 17, inclusive, 141 and 142 are related, amendments Nos. 14 to 17, inclusive, are logical alternatives to amendment No. 13, and, therefore, amendments Nos. 13 to 17, inclusive, 141 and 142 may be discussed together by agreement. Is that agreed? Agreed.

Senator Victor Boyhan: I move amendment No. 13:

In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition principals’ means the principals which identify the importance of taking action to reduce net Irish emissions of greenhouse gases in a way which—

(a) supports environmentally and socially sustainable jobs,

(b) supports low-carbon investment and infrastructure,

(c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of agriculture, business and industry and such other persons as the Climate Change Advisory Council considers appropriate,

(d) creates decent, fair and high-value work in a way which benefits the current workforce and overall economy,

(e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty;”.

In this amendment I seek to achieve the inclusion of just transition principles. The Minister and all of us will be aware of the NGOs that have worked tirelessly during recent years to get to

where we are today, and I acknowledge the importance of their work. Some of them have been disappointed while others believe this is worth continuing to fight for. I am conscious that in government the Minister cannot get everything he wants but he endeavours to do his best. I also acknowledge that. It is important we acknowledge the trade unions, communities and NGOs. Just transition principles should create “decent, fair, and high-value work in a way which benefits the current workforce and overall economy” and contribute to resources, efficiencies and sustainable economic approaches, which are helpful. I am particularly mindful of the mushroom sector in the context of jobs, of not leaving people behind and of bringing people with us. I do not want people in Wexford, the midlands, Monaghan and other places where, for example, there is mushroom production, left behind. What are those people thinking of this Bill? Just transition is also about climate justice and bringing people with us. The Minister has said that time and again. I do not want workers, particularly those in small businesses, small groups and niche sectors such as the mushroom sector left behind. I do not want them to think they will not have a job because we cannot produce, permit or allow under this legislation the production of a certain volume of milled peat, which will continue to allow people to work in the mushroom sector, bring money home and put food on the table. People following the debate on this legislation will be aware some people will be disadvantaged. That is not all about just transition. Just transition is about bringing all the people with us. We will not succeed in doing that all of the time but we need to ensure there is a just transition when people jobs and livelihoods are at stake, whether they be growers, mill peat workers, those involved in the transport end of the business, pickers and all the various people related particularly to the mushroom sector, which I know well, otherwise they will be left behind.

Amendment No. 14 also deals with just transition. The interpretation of “just transition”, as stated in the amendment, “means a transition that ensures the economic, the environmental and social consequences [about which I have just spoken] of the ecological transformation of economies and societies are managed in ways that maximise opportunities for decent work for ...” leaving nobody behind and bringing all the people with us. Members have spoken eloquently about the farming community. There are not many of them in the Chamber now but they may be working on other matters. They said that they stand in solidarity with the farming community and the workers of the land. They acknowledged the significance and importance of agriculture, horticulture, forestry, fisheries and the marine, but mere words are not enough. We have opportunities in the context of this Bill to support those people and those important communities, industries, workers and people whose livelihoods could be on the line, if we do not bear this in mind. In essence, I am an environmentalist. I support the idea and the concept of an emerald Ireland; an Ireland of good quality, organic food and small businesses that can become medium businesses, which, in turn, can become large businesses but we must have social justice and we must support industries and workers and leave nobody behind. I hope the Minister will be agreeable to accepting these amendments.

Senator Alice-Mary Higgins: Everybody has focused on this issue. All the Opposition groups and Senator O’Reilly, a Government senator, have brought forward amendments on it. One of the gaps in the Bill is the lack of sufficient recognition of just transition and engagement on it. We and others have taken two approaches to it in our amendments. One is to insert a definition of “just transition” and the other is to insert just transition principles. That is the type of approach taken in the Scottish Act where just transition principles were reflected in the legislation and in the climate policy arising from it. Those just transition principles are about environmentally and socially sustainable jobs, low carbon investment in infrastructure, decent, fair and high-value work, resource efficient sustainable economic approaches and, crucially, the

2 July 2021

development of social consensus through engagement with workers, trade unions, communities, NGOs and others. That is provided for in amendment No. 16. It is also reflected in amendment No. 15 tabled by Sinn Féin colleagues, which references social dialogue. Amendment No. 14 refers to social justice and social dialogue. All the definitions of “just transition”, including in our first amendment in this grouping, refer to social dialogue, which is important. It has been a concern that just transition seems to have been understood on a narrow basis, whereby we would give those who lose their jobs some other jobs rather than recognising what just transition really is. It is almost the reimagining of communities and new work opportunities and the dialogue unions led in talking about just transition but sometimes they do not always get to feature at the centre of it, rather than simply talking about the terms and conditions of specific workers in a specific company.

That is very much part of what unions are doing but the other element they are engaged in and want is social dialogue with the wider community to ensure the places and sectors affected by the necessary action on climate change can transform and reimagine themselves. I urge the Minister to note that all these amendments focus on and reference two elements. It is not only about employment but quality and sustainable employment and social dialogue, genuine engagement and empowerment. We have seen positive initiatives such as just transition communities and, for example, initiatives in Phibsboro and Donegal where there are community-led just transition projects. I commend NESC and, in particular, the researcher, Sinead Mercier, who has done incredible work on examining best practice in just transition across Europe and how to do it right and avoid the pitfalls that have been encountered in the past.

The concern is that without a definition of “just transition” or with a very narrow reference to the element of employment and one other element in the Bill, just transition may end up being interpreted in the narrowest way, as literally being some extra jobs or, in the worse possible way, in the context of the arguments against making transition. We talk about justice in the transition. That is not an argument against making necessary transition; it is about how we make the necessary transition in a way that is fair, socially just, that listens to people, brings people with us and ensures the most vulnerable in every society and community are protected across our island. The EU has asked Ireland to come forward with just transition plans and I understand researchers have been asked to do that work. However, considerable discussion and social dialogue will be needed on how we can do better than we have in our piloting of just transition in the midlands. We need a far more ambitious vision for what it is considering how many sectors and parts of the country are going to need to be reimaged.

The Minister can read all the proposed definitions. I agree with everybody else’s definitions in addition to my own but I wanted to highlight to the Minister the three key elements: addressing social justice and poverty; community and social dialogue, including the voices of workers and unions; and high-quality sustainable employment. I ask the Minister to really take these on board and, ideally, do so by accepting one of the definitions or inserting his own.

Senator Lynn Ruane: In 2017, *The Guardian* released its famous article referring to the fact that 100 companies are responsible for more than 70% of the world’s emissions. Critics of the article pointed to the fact that if we did not buy what these companies were selling, they would go out of business or have to change their ways. The fact remains that it is simply not that easy. A just transition should be people and community centred. This means using the just transition to tackle inequality and raise standards of living through the delivery of climate solutions. Taking such an approach would allow us to wean ourselves off fossil fuels while developing climate action that is rooted in the community. We need to embrace a capabilities

approach. This is an approach that has been championed by NGOs and think tanks such as the highly respected TASC. A capabilities approach ensures that actions for the benefit of the climate are developed on a foundation of equity. This means developing a structure that recognises that those who are disadvantaged must have their needs met first to ensure meaningful participation. This gives communal value to the concept of just transition. This is missing in the current draft of the Bill.

Just transition has its roots in the labour movement and unions. That the context is modern means adopting a definition that is embedded in communities, listens to the hopes and aspirations of people and responds accordingly. It means developing climate action that is tailored to the needs of local development while simultaneously tackling inequality and expanding the capabilities of people. The concept is rooted in social dialogue and participation by those who are affected by policy at every stage of the development process. If done correctly, the just transition should be a unifying process that is place based. Recently, the European Green Deal has called for just transition that is just, fair and inclusive. The call for a just transition in the European Green Deal, affirming similar calls in the Paris Agreement and Silesia Declaration, recognises that there are workers and communities at risk of being stranded as the world moves away from fossil-fuel-based development. Furthermore, it acknowledges that a poorly implemented transition, which neglects to care for those in positions of vulnerability, will not benefit from the enduring public support necessary to achieve the long-term goals of the Paris Agreement.

My first introduction to just transition or to trying to understand what it was led me to the conclusion that it was especially for communities in urban spaces where there is a massive amount of poverty. We must ask how we incentivise people to engage first of all. If they cannot engage initially in the wider climate change conversation, how can they be incentivised to engage daily? In 1990 or 1991, I won the Can Collector of the Year award. It was probably my first experience of a community-based approach to recycling. Did I engage in collecting because I really wanted to recycle? I did not. The aluminium factory in Tallaght village paid people enough pounds to incentivise them to bring their cans down to it in black bags. I remember that the only reason I decided to stop going around Tallaght with a black bag collecting cans to bring down to the aluminium factory was that my mam informed me there was a local man up the road who went around with trolleys every week collecting cans and that everybody left their cans out for him. He did not have much money and lived in considerable poverty. I remember realising at the time that I was just being greedy looking for a few extra pounds for my recycling and that recycling was very much a necessity for the man I referred to. It also incentivised him to engage in his community. That was 30 years ago. The man's community began to engage with him by ensuring they left out all their cans and aluminium for him to collect. This is a simplistic view but I felt what was happening was community led and driven. It provided an incentive and also allowed the man to meet his basic income needs. It would not have been enough in any case but the Senators catch my drift.

It seems like a bit of a leap but I was listening to Commissioner Harris speaking about the legalisation of drugs, including cannabis. I always wondered how this kind of subject fits in with the concepts of just transition and land use by farmers, and the question of our even beginning to legalise marijuana in this country, which would have a massive impact and create a whole industry that we could probably call nature-based solutions. I will shoehorn it into that category. A just transition that takes a grass-roots approach would be highly effective in our rural communities. These communities are highly reliant on nature and their environment so climate change would have a severe impact on them, and this would only get worse over time.

2 July 2021

In Ireland, the agriculture sector has come under great pressure to adapt as it is currently the sector with the highest emissions profile. A key tenet of the thinking on the rural economy is that agricultural emissions are set to continue to rise as farmers need to continually produce more to make ends meet. This has led to farmers being unfairly pitted against environmentalists. However, the agriculture sector is suffering from serious inequality. A 2009 report by the Foundation for European Progressive Studies and TASC found that the agriculture sector was the most unequal in Ireland with regard to income. This is an income that is set to be increasingly further challenged by extreme weather events driven by climate change. This is a considerable stress for the agricultural community. This is not a challenge unique to Ireland. In France, farmers have incomes that are among the lowest in the country, and the suicide rate among farmers is 20% higher than it is in the general population. This is all connected because farmers are forced to produce increasing amounts to put food on the table and, by doing so, they are increasing the emissions they produce. In turn, climate disasters are more common.

The first step for a just transition is engaging with communities. This allows local leaders to gain an understanding of the needs and priorities of communities rather than making assumptions about these needs and legislating downwards. Research conducted by TASC found the key issues in rural areas are the integration of rural services, indebtedness, increasing overheads, and unsustainable workloads due to outward migration from rural communities. In rural communities, due to the challenges faced by farmers in making a profit, there has been outward migration. This leads to a loss of community culture and identity. It also leads to a lack of capacity as young people migrate to the cities. The agricultural community is central to the rural community and it supplies the local shopkeepers, butchers, bakers, creameries and so on. The need for a just transition for agriculture in Ireland is self-evident. The combination of the inequality in the sector, the reliance on an increase in emissions, intensive activity and the deep-seated concerns within the farming community over the potential negative ramifications of climate action all point towards a transition that could fail to take root if not carefully planned and defined. Plans should be designed with these inequalities in mind. Climate change that increases the cost of fuel in the absence of affordable alternatives will regressively impact upon those living in remote areas. Climate action that further diminishes the margin of return being made by farmers in precarious situations or that makes agricultural livelihoods less viable will meet strong resistance.

To date, agriculture has not been a central focus of just transition discourse and planning in Ireland. The focus of just transition activities has centred on the winding down of peat extraction. Ending the production of peat as a fuel has multiple environmental benefits, including reducing emissions, enabling peat bogs to act as efficient carbon stores, preventing negative impacts on water quality and lowering flood risk. It is essential that we draw insights from key stakeholders in rural regions in any just transition. This means taking a community-based approach and including support for collaborating and strategising with local stakeholders to drive economic and community development. Taking a grass-roots approach to the just transition will prevent sectors such as agriculture from being pitted against environmentalists by allowing those involved to access resources that would allow them to be paid a fair price for the food they produce. A living wage in our local communities would allow them to buy the products. Taking such an approach would allow us to transition away from an economy in which meats that already are being produced on the island are being imported and to offer farmers and rural communities, who make up 30% of the Irish population, a real input into the future of Ireland's climate approach. The just transition is a concept with its roots in workers, people and the labour movement. It is important to remember that when defining it to ensure everybody can

participate and that just transition is for all.

Senator Paul Gavan: It is hard to follow the speeches that have been made because they encapsulated everything I am going to say. I am going to be political in what I say because we are politicians, if anyone needs to be reminded of that. As Senator Boyhan said, a hell of lot of people were here this morning to speak up about the farmers, and rightly so because their concerns are important. We are, however, now talking about just transition and the concerns enunciated by trade unions across the country and it is a different Chamber.

I will speak to Sinn Féin amendment No. 15, which seeks to define “just transition” as meaning “the bringing together of workers, communities, employers and government in social dialogue to drive the concrete plans, policies and investments needed for a fast and fair transformation to a low carbon economy and to ensure that employment and jobs in the new economy are as decent and as well-paid as those left behind”. What is it in that statement that is potentially causing the Minister a problem? Surely that wording is something to which all of us could and should sign up. The amendment seeks to include a definition of “just transition”. To be direct with the Minister, it is outrageous that the Bill does not contain a definition already. The original Bill brought forward last autumn lacked a single mention of just transition. The version now before Members mentions it but does not define what it actually means. It is very telling of what the Government’s approach to just transition is, namely, merely lip service.

The Minister has indicated there will be stand-alone legislation dealing with the just transition separately. This appears to be putting the cart before the horse. The just transition should be at the heart of climate action, not just an afterthought. This is where successive Governments have failed time and again. They have left people behind. Fine Gael, Fianna Fáil and the Green Party have opted, all too comfortably, for punitive measures which hurt the most vulnerable in our society. As a result, for the vast majority of ordinary families, climate action is associated with cost. This climate Bill must not be blind to the concerns of local communities. We need a just transition and this amendment and others we are proposing will seek to do that.

I will speak again briefly about another Sinn Féin amendment, amendment No. 16, which sets out just transition principles that are taken from the Scottish Act. If they are good enough for the people of Scotland, why on earth are they not good enough for the people here at home? The amendment states:

‘just transition principles’ are the importance of taking action to reduce net emissions of greenhouse gases in a way which—

- (a) supports environmentally and socially sustainable jobs,
- (b) supports low-carbon investment and infrastructure,
- (c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Minister considers appropriate,
- (d) creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy, [and]
- (e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty.

2 July 2021

What is it about the wording of the Scottish legislation that the Minister objects to? Why does he disagree with its inclusion in this Bill? As a proud trade unionist, I must say that the Irish Congress of Trade Unions, and SIPTU in particular, are hugely disappointed with the lack of attention given to the issue of just transition. It stands in contrast and, to be frank with the Minister, it seems to be a blind spot for the Green Party. The party does not seem to listen to the needs of working people through their trade unions and constantly misses their input. The party has an opportunity to take a different stance today. I invite, encourage and implore the Minister to support these amendments.

Senator Pauline O'Reilly: There is a difference between politics and taking cheap, populist shots at other people who have spent hundreds of hours on this Bill. I will point out to Senator Gavan again that he was absent during those hours and his colleague, who was present, is not here today. We absolutely put a just transition at the centre of everything we do. I intend to propose my own amendment, No. 142, which is about a just transition. It is important to ensure that a just transition is part of the Title of this Bill. We discussed climate justice earlier and it is important to include both climate justice and a just transition in the Title of the Bill. Climate justice is in there already and my amendment would insert a reference to a just transition. I ask the Minister to support that amendment from the Green Party Senators.

I will, however, point out that at every point in this Bill, there are checks relating to just transition. Additionally, we are putting money into a just transition outside of this Bill. This legislation is one part of climate transition. As everybody knows, we have already put in €108 million into the midlands for re-wetting and for supporting Bord na Móna workers. However, Senator Ruane is quite right that a just transition is also about the custodians of the land about whom I spoke earlier. It is about farmers. The Minister earlier accepted amendments intended to support farmers. Farmers have been vilified in the press but certainly not by the Green Party or by our Minister of State, Senator Hackett, who has responsibility for biodiversity and land use and is a farmer herself or by the Minister, Deputy Eamon Ryan. We always stand up for farmers because getting farming right and supporting farming families is also about supporting the planet.

I will leave my contribution at that. I hope the Minister will say he will support amendment No. 142. It is preferable to Sinn Féin's amendment, which merely inserts the word "just" but does not talk about promoting climate justice and a just transition. I believe that we will get support from environmental NGOs in that regard.

Senator Victor Boyhan: Senator Gavan said some telling words to the effect that just transition should be at the heart of climate action. That is the message and I fully believe and support it. I will be supporting both Sinn Féin amendments, Nos. 15 and 16.

I have already spoken about my own two amendments that are a part of this group of which I hope the Minister will be supportive. I failed earlier to acknowledge the enormous work of the just transition group within the Green Party. It is an amazing group of people who have done an amazing amount of work.

Senator Pauline O'Reilly: Hear, hear.

Senator Victor Boyhan: They find themselves at the edge of their own political party and many of them have had to leave and take another road. Some others have stayed and I admire them too. They face difficulties. They have engaged with me, someone who is not a member

of the Green Party but supports many of its aspirations. I have always been willing to engage. Those of them who are listening to today's debate know who they are. I thank them for their continuous efforts, emails and communication with me and others in this House. They have been a source, indeed a fountain, of knowledge. They believe in a just transition and have set up their own just transition group within the green movement. They stayed the pace, against the odds. I have no doubt but that we will see many of those people engaging in local, national and international politics in the future. From my engagement and experience, I thank those people. What are just transition groups within the Green Party, An Taisce, Friends of the Earth and the Irish Environmental Network saying and telling us? They are saying that the environment is important. However, we cannot isolate it from commerce, jobs or supporting people and families. I talked earlier about the people in Monaghan in the mushroom sector. This very day they are looking in and asking whether they will have jobs in a year's time.

Lip service is paid to the need to support people, workers, farmers and others but it is by our actions in this House that we will be judged, not by our words. This amendment needs to be voted on because we need to have it on the record. We will have another day and we have a story to tell. We have to hold people to account for their actions rather than rely on platitudes or words. I thank those who stayed the course and are committed but feel in some way locked out.

I referred to amendments Nos. 13 and 14. My thanks go to the Deputies in Dáil Éireann who did not have an opportunity to debate them. There is no magic or wisdom of mine here. I salute Deputy Whitmore in the Dáil. She came up with these versions of what a just transition means and Sinn Féin had several excellent amendments in a similar vein. The Deputies in question did not have an opportunity to put them to Dáil Éireann, however. The same applied to Deputy Duncan Smith and members of the Labour Party. The genesis of many of the amendments the Minister can see today was in Dáil Éireann but Deputies did not have an opportunity to discuss them. It is another House and this is another day. This is now Seanad Éireann.

Before I address amendment No. 142 from Senator Pauline O'Reilly, I will deal with amendment No. 141 from Sinn Féin, which I fully support. I also support amendment No. 142 from Senator O'Reilly and the other Green Party Senators. It proposes only to insert a phrase but it is an important phrase. Senator O'Reilly made that point and to be fair to her, she was right to do so. Words are important as well as actions. I fully support the Green Party amendment to include the term "just transition" in the Title. We have to send a clear message. At the end of the day, we have to bring people and communities with us. Bringing small, medium and large farmers with us is critical.

I have followed the career of the Minister for many years. I know he is absolutely committed and I understand the dilemma he finds himself in as a member of the smallest party in government. I say that genuinely. I have absolute respect for the Minister and the road he has taken over many years as the champion of our environment, ecology and the green movement.

I believe this is a reasonable, fair and pragmatic series of amendments. Many of them came initially from Dáil Éireann and are being introduced in this House in different forms. I urge the Minister to send out a message of unity to people with whom he may have disagreed previously. This is an important and mature debate and we need a decision. I appeal to the Minister to support this series of amendments.

Senator Paul Daly: I will be brief because I am aware of the number of amendments and the length of the debate so far.

2 July 2021

The just transition is the cornerstone of everything we have to achieve to meet the targets we have set. It is something of a buzzword. As Senator Boyhan said, we need actions as well as words.

I do not believe any of the amendments will change anything I intend to say. Change is needed but it does not necessarily have to be part of this Bill. This goes back to where Senator Boyhan started with the mushroom and horticulture industry. We have a debate about just transition but we should start with the just transition. The sectors should know, be told and have *in situ* the interim arrangements they will have to make, which are, in essence, the just transition. We have a habit of putting the cart before the horse. We ceased peat production before having an alternative. I spoke to a haulier recently who is based in Munster. His lorries draw peat that comes from eastern Europe through Drogheda Port to Munster. We spoke earlier about wanting to bring farmers with us and the changes we want them to make. What they are seeing here is nonsense and contradictions. Until they see positives rather than nonsense and contradictions, it will be increasingly difficult to bring them with us.

While I say the amendments today will not change anything, there is one issue outside the scope of this Bill in respect of which the Minister needs to take control. He needs to get Irish peat back into the mushroom and horticulture plants until such time as an alternative product is available. Likewise, he needs to get German briquettes off the shelves and Irish briquettes back until such time as we have alternatives. That is the only way we will bring the people with us. That is work the Minister needs to do immediately. None of the amendments we have discussed will change any of that. The issue needs immediate action.

Senator Paul Gavan: I wish to correct the record as a matter of fairness. Amendment No. 16 is only a Sinn Féin amendment. Our colleagues in the Civil Engagement Group signed up to it as well. I recognise that and emphasise that all we are asking for is what is already in the Scottish environmental Act. Sinn Féin has put forward several detailed amendments relating to just transition, not simply a proposal for a one-word change.

Deputy Eamon Ryan: We have been working with the trade union movement and others for many years now on defining, understanding and delivering what a just transition is as we make our transition to a zero-carbon future. My sense of this over the years has been that much of it is about jobs and employment. The unions have a particular role. We believe in working with trade unions in social partnership. However, it is not only unions. It is also about the farming community and other communities. We should not be too quick to define exactly how communities are being impacted or adversely affected. It is about protecting immediately those companies and jobs that are at risk.

Deputy Gavan asked that I respond on what wording was different. I was thinking in terms of amendment No. 15. The amendment suggested we should try to keep jobs in the new economy that are as decent and well paid as those left behind. I believe we have to aim for better paid jobs. We should be going for better paid jobs. The current economic model is not delivering for many people, especially in jobs where the green economy will deliver, including construction, retrofitting, managing our land and the energy sector. There is an incredible opportunity to create a better economy as well as responding to those who are adversely affected.

Deputy Gavan made reference to another point. Let us consider the history of the Green Party going back over many years. I had the great privilege of meeting one of the founders of the Tasmanian Greens, one of the founding and first green parties. My experience in dealing

with green parties throughout the world, in every country, is of a common understanding of four key principles of green politics. One is that we are facing an ecological crisis. This pre-empted the need to transition out of that. It is a fundamental change that is needed. This has not been recognised historically by others, although increasingly it may be recognised by other political philosophies. In any event, it is in the green political philosophy. The second key principle is that in the transition we ensure social justice and ecological justice go hand in hand.

The third principle of green politics is pacifism. We come from anti-war roots and that is deeply ingrained in our psyche. This includes respectful politics, by which I mean showing respect to other political philosophies. The last of these four principles is a belief in democratic politics, engagement and democratic participation. This involves trusting people to make decisions at the lowest effective level. These are the four principles that are ingrained in the Green Party. That fourth one concerning participation and engagement includes social dialogue. I had the honour of attending the national economic dialogue late last week. We also met representatives of the social pillar last week. Our views are ingrained in Government in no small way. Ours is one of the main political philosophies in the world today. There is a Green Party in every single country. In many countries, we are increasingly seen as mainstream and as representing a very large percentage of the population, which I hope to deliver here as well. Social justice and ecological justice very much go hand in hand.

Our time was limited in the Dáil debate because there is a problem. We need to get the Bill passed because Government needs to start delivering the just transition in reality. We are operating on a very tight legislative timeline to deliver that before this summer session comes to an end. The debate was primarily around whether to include wording supporting a just transition in the Long Title to the Bill. That was the key item discussed in the Dáil. Reflecting on that and on the words of Senator Pauline O'Reilly, which I agree with because they come from a similar political philosophy, I intend to accept amendment No. 142, which the Senator and her colleagues have tabled. I am afraid I cannot accept the other amendments.

Acting Chairperson (Senator Gerry Horkan): Does Senator Boyhan wish to come in again?

Senator Victor Boyhan: I absolutely do, as is my wont. I will just reply. I take the Minister's point about respectful politics. I agree on that. The Minister has always operated on that basis and I acknowledge that. It is disappointing he is not accepting the amendments because, as I said earlier on, they were on the schedule for debate in the Dáil so they are not new in this House, although we are making the same efforts with them the Deputies in the Dáil could not. They seek to define "just transition". I am somewhat surprised the Green Party does not wish to include such a definition. It may explain why there was such a divergence of views in the run-up to the formation of Government and, in the past 12 months, with regard to groups which have worked very hard and with regard to trying to build momentum to bring about this significant change. It is clear those who thought themselves pragmatists decided to go one way while others who decided to stay out of Government and all of that kept beavering away, resulting in this distance. I am now beginning to understand.

This is quite a profound statement from the Minister and it is important to trap it on the record of the House. He has set out clearly here today that he is rejecting the definitions of "just transition" that have been set out in these different forms and shapes. This does not sit comfortably with what I have been led to believe was the Green Party position, with what the people who came to my door advocated or with what the Green Party has set out on its website

2 July 2021

with regard to its commitment to a just transition. The Minister is accepting the amendment of one word. I would have been surprised if he had not accepted the Green Party amendment as he is a member of that party. That is no big surprise. That is what it was. The Minister is prepared to accept that. I have no difficulty in accepting that and I have indicated I will support it. I thought that was important.

If I may seek some guidance as to Standing Orders from the Acting Chairperson, am I the only person who is allowed to reply to the debate given that it is amendment No. 13 which has been moved? Am I right in that?

Acting Chairperson (Senator Gerry Horkan): It is Committee Stage.

Senator Victor Boyhan: Okay, anyone may speak. We can go ahead. I will finish up in a few minutes because I understand others will want to come in.

Acting Chairperson (Senator Gerry Horkan): They will, yes.

Senator Victor Boyhan: I appreciate that. I am somewhat disappointed. I will certainly be calling “Vótáil” in respect of my own amendments. We will have that opportunity in a few moments.

Senator Pauline O’Reilly: I just wish to say that the Green amendment inserts three words. It is the Sinn Féin amendment that only inserts one. I will also make another point. It is a similar case to that of the definitions of “climate justice”. If I have counted correctly, five different wordings have been suggested for a definition of “just transition”. I will make the same point as I made in respect of the definitions of “climate justice”, which is that it is not easy to define these things. Everything we have said regarding our support for a just transition, which is on the record, is the basis for including the principle of a just transition in the Bill and for everything we do internationally and nationally, which includes providing funding for such a transition and supporting the farming community. A just transition is very much about workers. That is where the definition comes from. However, it has to be as broad as possible so that those who do not or cannot work are also supported in a just transition. Those are the points I will make. If you look at the new section 3(3) proposed in section 5, you will see that everything being done in respect of carbon budgets is being done on the basis of the United Nations Framework Convention on Climate Change, UNFCCC, and the Paris Agreement, which also recognise the principle of just transition. We can overcomplicate things by having too many definitions in a Bill. These could stymie the kind of action we want to take.

Senator Lynn Ruane: With all due respect to Senator O’Reilly, it is important to say that, even though many definitions are being put forward, we have not put forward so many because they are difficult to draft. There is one which is our number one priority and which we stand over as the strongest definition. The others represent compromise and further compromise in the hope that, if our preferred solution is not accepted, one of these will be. The number of definitions is definitely not a result of difficulty in defining the term. We are just trying to compromise to various degrees if we cannot take people along with the strongest definition presented. I just wanted to say that.

Senator Alice-Mary Higgins: We have seen this narrative a couple of times now. The Opposition is not fighting tooth and nail among ourselves about the definitions. A number of people have come up with proposals to offer. To return to “climate justice” as an example, I am glad the bad language has been removed but I still want to see a good definition inserted. In

some cases, these proposals directly reference the language used in the UNFCCC and a definition suggested by environmental NGOs. This was co-signed by many of us. We have been trying to work with the Government. We recognise that the Minister is in government with others and he may not be able to give us everything we want or he himself may want but we have been trying to put forward proposals. It would be dangerous to start saying the existence of multiple suggestions means agreement cannot be reached. I am quite confident all of us in the Opposition could walk out of here and into the lobby and within ten minutes agree on a definition of “climate justice” and “just transition” from among those suggested. Most of us have grounded our suggestions in the definition provided by the International Labour Organization, ILO, which introduced and put forward the concept. Others have relied on the Scottish principles. I imagine most of us would accept either. We have come with two different ideas to try to give space to the Government. It would set a poor trend if being reasonable and giving the Government options was to be framed as division, confusion or some kind of difficulty. I am very confident we could bring forward joint amendments defining “just transition” and “climate justice”, and perhaps we may do so on Report Stage.

It is clear we are capable of doing so but what we were trying to do was to give space to the Government to indicate to us what it is willing to consider. Is the Minister willing to look at principles? Does he want to start from the ILO suggestion? Where is he coming from with regard to setting the tone in the legislation as to how Ireland is to approach a just transition? It would be regrettable if this Bill were to leave the Houses while we still did not have a clear direction from Government.

4 o'clock

It is a little different because there is not the same language on just transition in some of the international agreements and it does need strengthening. It would be good if the Government were to look at this issue between now and Report Stage and tell us if it can work with one of these versions. It sends an important signal because this is one of those concepts that can be very loosely invoked. I liked some of the things in Sinn Féin’s definition. Senator Boylan worked extremely hard on the areas of just transition and climate justice on the joint committee. I also acknowledge that Senator Bacik has put forward a very strong amendment on just transition. Neither of those people’s commitment to this issue can be doubted. We should be very clear on that. I hope the Minister will look at those definitions and come back to us between now and Report Stage to let us know if there is a definition we can work with. We need to do more.

We talked about the democratic principles. I will be frank: I have had concerns about this Government and the shrinking space for certain parts of how our democracy functions. I am aware that there are circumstances around that but I note it as a concern. I also note that climate justice is not simply about those who are impacted by the changes or bringing those who may be reluctant with us. There are also people involved in just transition who have been ahead of us and have been coming up with new ideas for years, such as environmentalists who now find themselves pushed to the margins of a certain pragmatic interpretation of climate change. There are people who want access to justice so they can talk about how the climate transition is done, how we consider biodiversity issues, how social and environmental sustainability and biodiversity issues are properly reflected and not skipped over when we make our choices about the kinds of climate actions we take. They are part of just transition too and many of them are members of the Just Transition Greens. It is important to mention that. It is not that we need to bring these people with us because some of them have been the strongest advocates on just

transition. They are ahead of us and we need to catch up.

Senator Paul Gavan: We are not here making personal points this afternoon. We are making political points and there is one very clear political point that is beyond debate and is hugely disappointing, and that is that the Green Party is rejecting defining just transition in this Bill. I find that very surprising. I invite the Minister to take on board what Senator Higgins has just suggested. Why not try to work collectively on this? The Minister should come back to this issue on Report Stage and look at the definitions in the Sinn Féin amendments, in Senator Boyhan's amendments and in the amendments from the Civil Engagement Group. There is tremendous commonality there already. There will be no disagreement on this side of the House. Why does he not commit to us that he will look at that with a view to bringing in wording on Report Stage so that there is a definition of just transition rather than the stance he is currently taking, which is to reject putting a definition of just transition in a climate change Bill?

Senator Pauline O'Reilly: I take on board the points Senator Ruane is making. However, myself and Senator Higgins are probably the only people here who sit on the Joint Committee on Environment and Climate Action committee and we had extensive discussion and back-and-forth on how to define a just transition. That is fact. We also had witnesses before the committee talking about just transition. It is not easy. The point was taken on board previously as regards climate justice. The environmental NGOs have said that when it comes to climate justice, it is better to have no definition than a wrong one. There are understandings of a just transition and we are taking the steps towards it. That is the most important thing and that is why we need to get this Bill over the line. We are taking the steps for a just transition for this country and for those most at risk, such as workers and those who cannot work but must be supported out of incomes that were reliant on fossil fuel industries and so on. That is the most important thing to remember.

Let us also put something into this Bill about promoting just transition. We have a record in this area. We are not trying to be evasive. It is simply a case that defining a just transition is quite difficult and having a definition over which we cannot stand would stymie the types of transitions we are looking for. While I take on board the points Senator Ruane has made, the committee on which I sit had hours of debate and back-and-forth on definitions. Just transition is not that easy to define and we should make sure that in ten years we are still able to stand over whatever changing understanding there is of a just transition and climate justice. Fundamentally it comes back to the point that the actions taken have to be consistent with the UNFCCC and the Paris Agreement, as referred to in section 5 of the Bill.

Senator Rebecca Moynihan: We have an amendment similar to this one. It does not seek to define just transition but to incorporate just transition into the Bill. Two things are coming up here. One issue is the principles, the framing and the definitions and the second is the real meat of it, which is the targets. I suggest that the Minister engage with the members of the Opposition over the next week or so to see if they can come up with an agreeable compromise amendment to allow a definition, taking on board what Senator Pauline O'Reilly said about it not being that easy. I accept that. I ask the Minister to commit to doing that between now and Report Stage. Members of the Opposition will be quite happy to engage with him to see if we can come up with a framing that will back up the targets.

Senator John McGahon: I am on the same committee as Senator Pauline O'Reilly. We all have our own jobs and our own committees. I do not expect people who are not on that committee to be able to go to all those meetings and I do not think it is fair to say that they can-

not talk about something because they did not go to the meetings. I would not expect people to be able to do that. However, I would expect people to take our word for it, whether that is me, Senator O'Reilly or Senator Higgins, when we say that this has been done to death already through hundreds of hours of debate. We are now nearly four hours into this debate and we are just going around in circles. I know we are politicians and a lot of us like the sound of our own voices but let us just get on with it. We should just call a vote on this now.

Acting Chairperson (Senator Gerry Horkan): I thank Senator McGahon for assisting me in chairing.

Senator Victor Boyhan: He has great experience.

Acting Chairperson (Senator Gerry Horkan): He came in at a time when I was about to put the question anyway but-----

Senator John McGahon: Let us just do it. It is all talk today.

Acting Chairperson (Senator Gerry Horkan): I will bring the Minister in first and then I will go back to Senator Boyhan and see what he wants to do with his amendment.

Deputy Eamon Ryan: We will obviously engage with the Opposition before coming back on Report Stage, as well as during that Stage, on this and every other amendment in an open way. We always do that. I want to come back to what Senator Pauline O'Reilly said. All the way through it, this Bill takes a just transition approach and the key thing is action that delivers on that. I listened to what everyone said and we will engage again on Report Stage. What the Senator said is true and the arguments have been well made. We have the highest regard for Senator Boyhan from many years of co-operation. I have always looked from afar and said he had a slight Green tinge to him. If at any stage Senator Boyhan would care to leave that glorified, lovely Independent status and become a member of the Green Party, I would be the first to provide the membership card and the induction to the principles I mentioned. I think he would find it a very happy home.

Senator Victor Boyhan: You have been losing members.

Deputy Eamon Ryan: We are gaining a fair few too. I take on board the arguments the Senators made. No one disagrees on their motives or intentions. This Bill has been crafted with a lot of consideration and we believe we have the wording right. We believe it reflects the core requirement of just transition to address those who risk losing employment or income, as well as the communities that may be affected. That is at the centre of everything we do. It is true, as Senator Pauline O'Reilly said and her amendment proposes, that committing to promoting a just transition in the same way as we promote climate justice in the Long Title is appropriate. I will accept her amendment when we reach it. I look forward to an ongoing debate on Report Stage.

Acting Chairperson (Senator Gerry Horkan): How does Senator Boyhan wish to proceed?

Senator Victor Boyhan: I have heard what the Minister has had to say. I will withdraw the amendment with the right to re-enter it on Report Stage.

Amendment, by leave, withdrawn.

2 July 2021

Senator Victor Boyhan: I move amendment No. 14:

In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition’ means a transition that ensures the economic, environmental and social consequences of the ecological transformation of economies and societies are managed in ways that maximise opportunities of decent work for all, reduce inequalities, promote social justice, and support industries, workers and communities, all of whom shall be brought together in social dialogue to drive forward the national long term climate action strategy;”.

I will withdraw the amendment with the right to re-enter it on Report Stage.

Amendment, by leave, withdrawn.

Senator Paul Gavan: I move amendment No. 15:

In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition’ means the bringing together of workers, communities, employers and government in social dialogue to drive the concrete plans, policies and investments needed for a fast and fair transformation to a low carbon economy and to ensure that employment and jobs in the new economy are as decent and as well-paid as those left behind;”.

Amendment put:

The Committee divided: Tá, 8; Níl, 29.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Moynihan, Rebecca.	Byrne, Malcolm.
Ruane, Lynn.	Byrne, Maria.
Wall, Mark.	Carrigy, Micheál.
Warfield, Fintan.	Cassells, Shane.
	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Daly, Paul.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Gallagher, Robbie.
	Hackett, Pippa.

	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Fintan Warfield and Paul Gavan; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

Senator Paul Gavan: I move amendment No. 16:

In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition principles’ are the importance of taking action to reduce net emissions of greenhouse gases in a way which—

(a) supports environmentally and socially sustainable jobs,

(b) supports low-carbon investment and infrastructure,

(c) develops and maintains social consensus through engagement with workers, trade unions, communities, non-governmental organisations, representatives of the interests of business and industry and such other persons as the Minister considers appropriate,

(d) creates decent, fair and high-value work in a way which does not negatively affect the current workforce and overall economy,

(e) contributes to resource efficient and sustainable economic approaches which help to address inequality and poverty;”.

Amendment put:

The Committee divided: Tá, 8; Níl, 29.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Moynihan, Rebecca.	Byrne, Malcolm.

2 July 2021

Ruane, Lynn.	Byrne, Maria.
Wall, Mark.	Carrigy, Micheál.
Warfield, Fintan.	Cassells, Shane.
	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Daly, Paul.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Gallagher, Robbie.
	Hackett, Pippa.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Fintan Warfield and Paul Gavan; Níl, Senators Robbie Gallagher and Seán Kyne.

Amendment declared lost.

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

In page 7, between lines 8 and 9, to insert the following:

“ ‘just transition’ means a transition that ensures the economic, environmental and social consequences of the ecological transformation of economies and societies are managed in ways that maximise opportunities of decent work for all, reduce inequalities, promote social justice, and support industries, workers and communities negatively affected, in accordance with nationally defined priorities, and based on effective social dialogue;”

Amendment put:

The Committee divided: Tá, 8; Níl, 29.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.

Seanad Éireann

Gavan, Paul.	Ardagh, Catherine.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Moynihan, Rebecca.	Byrne, Malcolm.
Ruane, Lynn.	Byrne, Maria.
Wall, Mark.	Carrigy, Micheál.
Warfield, Fintan.	Cassells, Shane.
	Clifford-Lee, Lorraine.
	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Daly, Paul.
	Doherty, Regina.
	Dolan, Aisling.
	Dooley, Timmy.
	Gallagher, Robbie.
	Hackett, Pippa.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Loughlin, Fiona.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

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

Amendment declared lost.

An Leas-Chathaoirleach: Amendments Nos. 18, 70 and 71 are related and may be discussed together by agreement of the House. Is that agreed?

Senator Alice-Mary Higgins: I wish to signal-----

An Leas-Chathaoirleach: Sorry. Could we wait for the Minister? I did not realise he had not arrived.

Senator Alice-Mary Higgins: I wanted just to signal that I am happy for-----

An Leas-Chathaoirleach: Sorry, Senator Higgins. Could we just wait for the Minister, please?

2 July 2021

Senator Alice-Mary Higgins: Sure.

An Leas-Chathaoirleach: Sorry about that. I called on you too soon.

I call the House back to order. We are at amendment No. 18. My apologies, Senator Higgins, to have you start twice.

Senator Alice-Mary Higgins: I was just indicating that I am happy to discuss amendments Nos. 18 and 71 together because they relate to the concept of-----

An Leas-Chathaoirleach: Yes, and we got agreement to that effect.

Senator Alice-Mary Higgins: Excuse me, a Leas-Chathaoirligh. We did not get agreement on amendment No. 70. I would like amendment No. 70 not to be in this grouping as it relates to a different matter. It relates to the functioning-----

An Leas-Chathaoirleach: The House had agreed to it being-----

Senator Alice-Mary Higgins: No.

Senator Lynn Ruane: No, a Leas-Chathaoirligh, you just asked us to wait for the Minister to come in.

Senator Alice-Mary Higgins: The House had not agreed to the grouping.

An Leas-Chathaoirleach: Do you want me to pose the question again?

Senator Alice-Mary Higgins: Yes. If we could have amendments Nos. 18 and 71-----

An Leas-Chathaoirleach: We did agree to it, though. I posed-----

Senator Alice-Mary Higgins: We did not. I indicated very clearly that I did not agree. I do not imagine this is super controversial. We normally accommodate when-----

An Leas-Chathaoirleach: All right. We will uncouple amendment No. 70.

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

In page 7, between lines 12 and 13, to insert the following:

“ ‘national minimum interim target’ has the meaning of the proposed 51 per cent reduction in greenhouse gas emissions by 2030, as set out in section 9(5);”.

I am happy to speak to amendments Nos. 18 and 71 in combination. They both relate to the concept of a minimum target. If amendment No. 18 is carried, there will be consequential amendments, which I would be very happy to table on Report Stage. I have not tabled all the amendments that would be consequential on amendment No. 18 today for the reason of focusing our debate as much as possible. It is important to highlight that the recommendation the Joint Committee on Environment and Climate Action made was for a minimum interim target to be set out in law.

This is the same kind of thing we have seen in Scotland, where a legal minimum interim target in terms of emissions reductions was set out in law. This is not what is in the Bill before the House. What is in this Bill is simply a requirement that the advisory council might propose

two budgets that would reach 51%. The nature of where that 51% sits and whether it covers the entire period or just that year is something we will come to later when we discuss section 9.

Again, when we talk about things being debated at length in the Joint Committee on Environment and Climate Action - let us remember that we came to agreement and voted in order to get the value from the hours we put into the committee - I would like to see more of its recommendations properly reflected in the Bill, including having an interim minimum target set in law. I do not really understand why we have not seized this moment or, more specifically, why the Minister has not seized it to really ensure that if the programme for Government commitment is for 51%, it is put in law in the most concrete form possible rather than simply leaving it to the advisory council, which is meant to be independent and come up with recommendations based on the science and all these other factors we asked it to consider. The council is meant to come up with ambitious recommendations and carbon budgets that may include more than 51%, but the 51% in law is a political commitment the Minister made going into Government. The commitment to 51% was one of the key arguments in respect of going into Government. It should be included in this Bill to ensure that whatever happens at Cabinet meetings in the future regarding proposals that come forward, it will be there as a requirement and sits as an anchor for all future Governments to be aware of between now and 2030. As a result of the fact that the next ten years matter so much, that 51% is an interim target in respect of which we are all, including the Government, happy to be held to account. At the moment, there is really no provision to hold the Government to account on the 51% as strongly as should be the case. I am sure it will be held to account politically but it is not there in the way that I, as a legislator, would like to see it.

The other key aspect - I believe this is why the amendment was grouped with amendment No. 71 - is that even if the Government had taken a different approach to the 51%, then one of the crucial components really should still be there. This is the idea of the 51% being a minimum to say that we will at least do 51% and are leaving space for greater ambition. As the Bill is set out, it is very specific. It is 51% and it is just 51% in 2030. This is another point in terms of when we talk about the programme for Government and the recommendations of the committee - the strong divergence in this Bill from the programme for Government commitment and the recommendations of the committee. The Bill sets out a 51% target for 2030 that is based on the emissions for the year 2018. Going into the Dáil debate, there was some ambiguity. People were saying that it was not clear if the Government meant that it is going to deliver the 7% year-on-year reductions. Eminent professors such as John McSweeney and others pointed out their concern that there was no clear glide path, which was one of the key recommendations we heard again and again at the Oireachtas committee. We heard that there needs to be a clear pathway, that the Government needs to take an approach of building on and then reducing piece by piece and that it would be 7% per annum. We all know how compound interest works and how it adds up to a lot more than simple interest, so the idea is that we would have 7% and that this would be built on year by year. A question was asked as to whether this was how the Government was interpreting it or whether it was simply about a 51% reduction in emissions in 2030. Unfortunately, the narrower and less ambitious interpretation is the one that is being copper-fastened in the Bill at section 9. Amendment No. 71 simply tries to give the Minister or his successor leeway and, crucially, tries to give the advisory council discretion to be consistent with its actual mandate to be consistent with all of the various UN requirements. It gives the council permission to propose a budget that is more ambitious than 51%. The Bill ties the hands of the advisory council in the context of 2030.

2 July 2021

Including the word “minimum” in is a small thing but a minimum of 51% will show that there is an understanding that 51% is what was negotiated in 2020 in the context of the programme for Government but that the world might look different by 2025. Things are even looking different now, as we see from Canada and the shift in ambition around the world. Crucially, use of the word “minimum” also safeguards the independence of the advisory council and allows it the discretion it needs to be more ambitious than what was agreed between three political parties. It frees the council and sends a signal that it is independent and responsive to the information and science as it sees it and is not simply there to rubber-stamp a political minimum and a political goal that was negotiated in the past.

I accept that the 51% target needs to be in the Bill. It should be there as a stand-alone legal target. I hope the Minister considers that. I realise that this amendment will need further consequential amendments if the Minister decides to take that approach, as I hope he does. As an absolute minimum, I hope he will accept amendment No. 71 when we come to it, which would place the word “minimum” before the 51% target.

Deputy Eamon Ryan: I am unable to accept amendments Nos. 18, 70 and 71. The Joint Committee on Environment and Climate Action did an incredibly good job. As Senator Pauline O’Reilly stated, there has not been a previous example of such detailed recommendations coming from pre-legislative scrutiny. Equally, I do not believe there has been such an example of where so many of the recommendations were accepted and nor will there be for a long time. Significant swathes of proposals were accepted, which very much informs and changes this Bill. We made further amendments on Committee Stage in the Dáil to respond to concerns that certain academics had concerning the risk that the way the 2030 target was framed might see attempts to deliver it all in the past year, which was never really feasible. To avert this risk, we amended the Bill further.

Section 6A(5) sets out what the Climate Change Advisory Council must do in the context of its first two budgets. There is an urgency in getting the Bill through the Houses before the summer recess in order that we can include this year in our calculations and, hopefully, go to Glasgow with some of the work done in terms of setting these budgets or agreeing the approach. It is appropriate to do it in that way on the basis of a 51% reduction in 2030 based on the emissions for 2018. There was no expectation in any public utterances from me or anyone else in our party or in the programme for Government negotiations that it would be an exact reduction of 7% per annum. The figure of 7% was used to give an estimate of what the science is indicating.

5 o’clock

The 7% figure is an estimate in line with what the science says, which is that we have to halve emissions in this decade. That is no small challenge. It is incredibly ambitious. No other country has ever halved emissions in a decade and we are starting from a baseline where we had not reduced emissions so we have almost all of the journey still to go. People might think that other countries in Europe with an average emissions reduction target of 55% are more ambitious but most other countries have already achieved emissions reductions of up to 30% and have a much smaller gap to cover to reach that target. The output sharing arrangement system in Europe will be teased out. We have set a radically ambitious goal, which international comparison will show is of the scale of change that we need to make.

It will not be done on a year-to-year basis. The Climate Change Advisory Council is the

best body to decide on the five-year chunks. I expect that its analysis will show that a lot of the gap that we need to close will be in the latter part of this decade. It takes time to implement land use change measures. We do not have workers at the moment to conduct retrofitting. We need to scale up apprenticeships. It takes time to build the public transport and other projects that we need. This cannot be managed by fiat. One cannot say to the economy that it will be a 7% reduction this year and have everyone turn up the following year with a 7% reduction. It will take detailed policy implementation. The Climate Change Advisory Council can estimate what the timelines are. This was given as a political commitment, not just for the programme for Government but because that is what the science says we should do. We are following the science. I appreciate all the work that was done in that committee. We have accepted the vast majority of recommendations but I will not be able to accept this amendment. I believe that the current wording in the Bill is sufficient and more appropriate.

Senator Alice-Mary Higgins: The issue of the language has not been addressed. The issue that was identified by Professor Sweeney, Dr. Jackson and many others has not been addressed. The Bill states: “The first two carbon budgets proposed by the Advisory Council shall provide for a reduction in greenhouse gas emissions such that the total amount of annual greenhouse gas emissions in the year ending on 31 December 2030 is 51 per cent less than the annual greenhouse gas emissions reported for the year ending on 31 December 2018, as set out in the national greenhouse gas emissions inventory.” The change made in the Dáil made clear that it is not a matter of whether it would be 7% by 7% and that the only commitment is to the year ending in December 2030. That is all that is there in writing.

There are many ways to arrive at that. It can be arrived at in the way that was recommended. I note that the amendment relating to an average reduction of 7% yearly, which might scale down, was ruled out of order and we will not get to vote on it. It can be done as an arrow, a line, or a diagonal that moves slowly downwards. It can also be done by continuing with high emissions for quite a while and then trying to take a dive in the last two or three years. This allows for something closer to a parallelogram than a triangle of emissions. It allows us to continue with high levels of emissions.

Crucially, the wording means that if by some miracle we manage to really improve and hit 46% or 47% in the first five-year period, the Bill requires us to be at 51% and that the advisory council should provide recommendations that aim for 51% less. The Bill does not state a minimum of 51% but that the council has to aim for exactly 51%. The Minister is tying its hands to what he believes is the most ambitious target that can be achieved now. It is a political commitment. The thing to do with a political commitment is to follow through and put it in law for politicians to deliver on. That means putting that political commitment in this Bill as a legal minimum interim target, which the Government and the Minister must deliver on. Instead, the Minister has devolved the responsibility for his political commitment to an advisory council, which is meant to be independent and is meant to be able to be more ambitious if it wants to be. In section 7, it gives its reasons for its proposed carbon budget programme under subsection (4). One reason will be from subsection (5), which has already told it the outcome that it needs to have. The Minister is using the wrong instrument.

I will address accountability later. It would certainly help if the Minister accepted some of the later amendments, which make it clear that the Minister and Government, not just the advisory council, have to be accountable about the 51%. The Minister did not deal with the concern raised by experts who have followed this issue for many years. If anything, the amendment in the Dáil has solidified our concern. We will come to a vote on that section later. I am disap-

pointed that the Minister will not accept the word “minimum.”

We talk about ambitious targets. It will be hard to get to 51%. Can we stop giving ourselves prizes, rosettes and awards for starting late? There should not be a prize for starting to do the right thing 20 years later than every other country. There might be a prize upon achieving the 51%. That is maybe the point when we can start congratulating ourselves. Congratulating ourselves for starting late, having dragged our heels when others have moved forward, is a little much. We need to temper that and have some humility about where we are in Ireland and our record to date.

Amendment put and declared lost.

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

In page 7, between lines 12 and 13, to insert the following:

“ ‘nature based solutions’ means locally adapted, resource efficient, costeffective and systemic interventions supported by nature, which simultaneously provide environmental, social and economic benefits incorporating more diverse, nature and natural features and processes into cities, landscapes and seascapes;”.

Amendment No. 19 inserts a definition of “nature based solutions”. This is based on amendments tabled in the Dáil. It makes sure that we are clear about what we mean by “nature based solutions”. There are many definitions of nature-based services and nature-based solutions. This is a positive definition that talks about “locally adapted, resource efficient, costeffective and systemic interventions supported by nature, which simultaneously provide environmental, social and economic benefits incorporating more diverse, nature and natural features and processes into cities, landscapes and seascapes”. I give credit for this to Deputies Whitmore and Christopher O’Sullivan. I worked with them on a biodiversity sub-committee of the Joint Committee on Climate Action. They championed and pressed for the idea of a stronger focus on biodiversity and nature-based solutions. I borrowed this definition from them and particularly like that cities have a role to play in nature-based solutions and biodiversity. I give credit to them. It would be useful to have a definition of nature-based solutions, ideally this one, in the Bill.

An Leas-Chathaoirleach: I thank the Senator. It is clear that she is not involved in any forms of plagiarism.

Deputy Eamon Ryan: The term, “nature based solutions” is defined under section 7 of the Bill that sets out to amend the National Oil Reserves Agency, NORA, legislation, with provisions being made so that projects will be open to apply for funding under the climate action fund. The definition is in line with and informed by the definition provided by the European Commission. The Bill was further amended, following an amendment which came from a previous Dáil debate on the climate action fund and how it operates. We have prepared that. I believe that the approach we are taking is appropriate. Therefore, I cannot agree to the amendment.

Senator Alice-Mary Higgins: I believe that previous amendment came from Deputy Whitmore and her previous engagement with the Minister. This amendment is designed to complement that. However, I am willing to withdraw it and examine how it fits with how it is referenced in the NORA Bill, which is a slightly narrower use of nature-based solutions. I reserve the right to reintroduce the amendment on Report Stage.

Amendment, by leave, withdrawn.

Senator Rebecca Moynihan: I move amendment No. 20:

In page 7, between lines 31 and 32, to insert the following:

“(e) by the insertion of the following new subsection:

“(2) The references in section 4(11), section 5(8) and section 6B(13) to a Minister of the Government shall each be construed as including a reference to the Government.”.”.

I propose to withdraw this amendment, while reserving the opportunity to reintroduce it on Report Stage.

Senator Alice-Mary Higgins: I wish to speak briefly to the amendment to ensure that we get the chance to discuss it on Report Stage. I have ten or 15 amendments that do the same thing. They ensure that when a reference is made to a Minister of the Government, it is construed as also including a reference to the Government. The Minister will be aware that it is also a response to the fact that his Department argued a case.

An Leas-Chathaoirleach: Senator Higgins-----

Senator Alice-Mary Higgins: The reason I am speaking to it is because I have a number of amendments-----

An Leas-Chathaoirleach: We can discuss them later.

Senator Alice-Mary Higgins: Pardon?

An Leas-Chathaoirleach: We will discuss them as they come up.

Senator Alice-Mary Higgins: No, it relates to this amendment. I want to signal that in relation to my-----

An Leas-Chathaoirleach: The amendment is being withdrawn by Senator Moynihan and she will reintroduce it on Report Stage. Anyway, go ahead, Senator.

Senator Alice-Mary Higgins: I am quite confident in the relevance of what I am saying, which is to note that this amendment is a single amendment which does the work of about 15 amendments of mine. If the Government is able to accept this amendment when it is reintroduced on Report Stage, it will save me from having to move my 15 amendments. Senator Bacik’s experience has allowed her to draft a single amendment that does the work of around ten separate amendments that I have drafted. That might be useful information for the Government to have as it engages with Senator Bacik on her amendment during the interim period.

An Leas-Chathaoirleach: I thank Senator Higgins for that helpful information.

Amendment, by leave, withdrawn.

Section 3, as amended, agreed to.

An Leas-Chathaoirleach: Amendment No. 21 has been ruled out of order as it is deemed to be outside of the subject matter of the Bill.

2 July 2021

Amendment No. 21 not moved.

SECTION 4

An Leas-Chathaoirleach: Amendment No. 22 has been ruled out of order as it places a potential charge on the Revenue.

Amendment No. 22 not moved.

An Leas-Chathaoirleach: Amendment No. 23 has been ruled out of order as it places a potential charge on the Revenue.

Amendment No. 23 not moved.

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

In page 7, after line 38, to insert the following:

“(2) No remedy or relief by way of compensation shall be available to investors with respect to actions taken to comply with any provision of this Act or any obligation or duty created thereunder.”.

This amendment relates to one of the most problematic aspects of the Bill as a whole. It is an aspect that we did not have the opportunity to discuss at the Oireachtas joint committee because it was added in subsequently. It is an aspect which I believe gives the lie to much of the narrative on just transition, bringing people with us, minding families, caring about rural Ireland and everything else. The clause in section 4 that I seek to amend concerns the limitation of liability. If we talk about get-out cards, this is probably one of the widest and most dangerous loopholes I have ever seen inserted into a Bill.

It is important to read out what this clause, which has been added by the Government to the Bill, states, namely, “For the avoidance of doubt no remedy or relief by way of damages or compensation is available with respect to or arising out of any failure, of whatever kind, to comply with any provision of this Act or any obligation or duty created thereunder.” What the Government is saying is it is not liable if it does not deliver what is in this Bill. The clause mentions “any failure, of whatever kind”, not failure even though one made best reasonable efforts. It does not even contain that weak language we discussed earlier. It specifies a failure of any kind “to comply with any provision of this Act or any obligation or duty created thereunder.” It is a great washing of the hands of responsibility and accountability. Its existence is notably at odds with the key concerns that were raised at the Citizens’ Assembly on climate action, namely, justiciability and accountability. Through this clause, the Government is saying that people in Ireland will not get any damages or compensation if it chooses not to deliver on the climate plan, sectoral targets or anything else. No compensation or damages will be available.

In the past, people marched and protested on issues such as mica and radon. Let us be clear, through this clause, the Government is washing its hands of responsibility in respect of any of those whose ground is flooded as a result of policy choices that the Government has made, for whatever reason. It does not include failure because the Government is making hard choices. It is not even a caveat of failure having made best reasonable efforts. It is concerns “any failure, of whatever kind”. That is what is contained in the clause.

That limitation of liability needs to be placed in a number of contexts. I regret that my

amendment which references the European Convention on Human Rights has been ruled out of order, apparently as involving a cost to the State. Even the very fact of it having been determined that it would involve a cost to the State if, as my amendment states, the right to redress or “the right to effective remedy under the European Convention on Human Rights” was ensured, which may include compensation or damages. The very fact that it was decided that including reference to the right to effective remedy under the European Convention on Human Rights, which has already been signed up to, is regarded as creating a charge appears to indicate an intention not to deliver effective remedy under the European Convention on Human Rights.

An Leas-Chathaoirleach: I ask the Senator to speak to amendment No. 24, despite the subtlety of the point.

Senator Alice-Mary Higgins: I will proceed to speak to the amendments which are in order.

As well as the individual damages that are done through this, we also see a great disjoint between how we treat the consequences for individuals in their lives in respect of compensation and damages, and the consequences for companies. I am speaking to my amendment, which relates to the compensations available for investors.

In the framing of limited liability, in the world of insurance companies, individuals can become just numbers but they are people. One of the most chilling rooms that I entered as the climate talks in Madrid was the room in which the insurance companies were talking to municipalities. Given that we all knew that countries represented across the corridor were not in fact going to do enough to stop climate change in its worst impacts, the insurance companies were talking to the municipalities about how they could take out insurance to try to protect some of their citizens. They were pitching that on the basis of what would be the deductible. Would it be 100,000, 200,000 or 500,000? They are talking about the first 100,000 or 200,000 dead because of climate change. This makes sense because we see entire cities being evacuated around the world because of temperatures in which people cannot live and the human body cannot survive. There are entire cities flooded. These are the consequences and some of them will be seen in Ireland.

Set against the limitation of any liability by the State in that as we try to remove our accountability to citizens, the State is currently in the process of adding brand new liabilities that investors can exploit. We do not want citizens to get compensation but with the proposal to introduce investment courts, we are proposing to add brand new liabilities and expose ourselves to investors making claims. These are liabilities that could bring about compensation of potentially vast amounts, as we have seen billions of dollars being the subject of other investor-state dispute settlement cases around the world. We do not have that.

At the same time as he is trying to remove accountability to the citizens of this State, why is the Minister trying to add new liabilities? Why is that still on the table? My clause in amendment No. 24 is very simple and states, “No remedy or relief by way of compensation shall be available to investors with respect to actions taken to comply with any provision of this Act or any obligation or duty created thereunder.”. If we are saying we do not want to be liable to citizens if we fail to do what is in the Bill, it seems extremely reasonable to me that we would add a clause saying that, by the way, we will not be liable for compensation for investors in respect of any of the actions we take to comply with and deliver the provisions of the Bill.

2 July 2021

If we do not put in this clause, it is not just about consequences for individuals. We will also skew the wider environmental context. We would create a dynamic whereby not taking action on climate change would not come with a price tag but taking climate and environmental action may come with a hefty price tag in terms of compensation. We are systematically weakening our hands.

We can take an international example of the successful litigation we have seen around the world of climate litigants and citizens who take climate goals more seriously than the State. We are weakening their hands and strengthening the influence on future Governments of investors and corporate interests. When we state “as far as practicable”, it is exactly the kind of place where this might kick in.

We can look at Ecuador where a case was taken against Chevron. It was not taken by the Ecuadorian state but rather thousands of farmers in the Amazon and it was ruled they were entitled to compensation. On the other side, the investment courts decided Chevron was entitled to a pile of compensation from the state for having to stop damaging the Amazon. We are looking at this balance so the Government and the Minister must be really clear about where they sit in such a balancing act. The chilling effect of investor courts is not simply directly on a government; this is about chilling the impact and weakening the strength of litigation to press for better policy in the future.

I will vote against the section and I ask the Minister to remove it from the Bill. If he cannot do it, I ask him to ensure he puts the limitation of liability so as to limit what investors can claim for when positive action is taken. That limitation of liability should be the same as how citizens are limited in what they can do when no action is taken at all. Will the Minister please try to address the imbalance being created?

Senator Fintan Warfield: I speak on behalf of Sinn Féin to support the amendment tabled by the Civil Engagement Group. The chapters of CETA that relate to investor courts will impact on every aspect of public policy and severely hinder the power of a progressive government and this Government to make significant changes to people’s lives. This is no less true in terms of how we tackle climate change and implement this Bill.

Investor-state disputes, as mentioned by Senator Higgins, are already having a chilling effect on governments looking to take meaningful action on climate change. Under the Energy Charter Treaty, ECT, which has dispute mechanisms, fossil fuel companies are suing states for doing what is necessary to limit fossil fuels and states are rightfully petrified. The Energy Charter Treaty is an international investment treaty that protects investments in the energy sector. It allows investors to challenge state measures in a private arbitration mechanism called an investor-state dispute settlement. Rather than having to use national courts, like everybody else, investors can use these courts.

Senator Higgins also mentioned compensation claims have been made against states for implementing environmental measures to alleviate fuel poverty and cuts in subsidies. Recently we have seen a number of cases where the ECT is being used against governments limiting the use of fossil fuels. I will highlight some of those examples.

In 2017, the French environment minister drafted a law intended to phase out fossil fuels by 2040 and soon after the Canadian oil company Vermilion threatened to sue the French Government. The threat of costs via an unpredictable arbitration seems to have had the intended effect

because the French Government passed a revised version of the law that included the possibility for companies to renew oil exploration licences until 2040 and in some cases for even longer.

There are other examples, including Rockhopper, the British oil and gas company, which brought a claim against the Italian Government under the Energy Charter Treaty. The company's application for an oil production concession was rejected following a ban introduced by the Italian Government on oil and gas exploration near the country's coastline. Rockhopper's claim is funded by a third party funder, an investment bank or other funder that is paying Rockhopper's legal fees.

There is another example from when the Dutch Government in 2019 enacted a law to phase out coal-powered electricity production by 2030. A German company, Uniper, challenged the measure under the ECT. That company owns a coal-fired plant near Rotterdam, which was opened in 2016 and would not be required to use another fuel type, such as biomass, or to close. Uniper is reportedly seeking €1 billion in compensation.

Much like the HSE hackers, the Vermilion, Rockhopper and Uniper cases demonstrate there is no length to which these companies will not go to protect their interests, no matter the damage to the public good. These are not hypothetical cases and they are already happening. The Government must oppose CETA and trade agreements like it if we are stand any chance of addressing the climate crisis. I am disappointed our amendments were ruled out of order but we will support amendment No. 24, which has been tabled by the Civil Engagement Group.

Deputy Eamon Ryan: I am afraid I cannot accept amendment No. 24. It would not be appropriate for us to place provisions in this Bill where every flood victim in the country, for example, could seek compensation on the back of it being a function of climate change. Similarly, it would not be appropriate for us to try to involve every other matter, such as investor-state disputes or other mechanisms. This Bill is designed for us to set up the process within which we manage the complete change of our policy system and approach to give effect to our climate targets. The provision in the Bill on limited liability is appropriate and it is replicated in numerous other Acts, including the Environmental Protection Agency Act 1992, the Roads Act 1993 and the Chemicals Act 2008. The entire Bill is justiciable. The action taken by the Friends of the Irish Environment and others, which was successful last year and led to the Supreme Court effectively annulling the mitigation plan in the 2015 Act, is the sort of justiciable action that is appropriate. To make provision in the Bill for liability for either an investor or individual who suffers a loss as a result of climate action would make it impossible. I cannot accept the amendment.

Senator Alice-Mary Higgins: I am not asking the Minister to put liability into the Bill. I am asking him not to put a limitation of liability into the Bill. I note that the previous climate Bill did not have a limitation of liability clause. It is, therefore, perfectly possible to have climate legislation that does not include a limitation of liability clause. It is not standard in this practice. It is a decision and a choice to insert a limitation of liability. The reason it is important is that it represents a number of areas whereby instead of responding to the Climate Case Ireland judgment and some of the other measures, there seems to be a curtailment. There have been arguments used in terms of limiting the exposure, some of which I will come to later, for example, regarding whether the Government or just the Minister will be accountable.

Those taking cases, including group cases and cases taken together, are not always environmental NGOs. They are sometimes groups of citizens. Young people have taken cases together

and groups of people who live in areas that are due to be flooded have take action together. It is collective action that is taken, as well as individual action, when human rights are violated. People are entitled under the European Court of Human Rights, ECHR, to redress.

Limitation of liability was not in the 2015 Act or in the heads of Bill sent to the joint Oireachtas committee. I am concerned that it has been added to this Bill. It is not for me to say why liability should be included. It is for the Minister to explain why he has chosen to insert a limitation. This is related to investors. If the Minister accepts the idea that we need to be careful because we cannot have every person whose ground has been flooded taking a case, let us be clear, we cannot provide for every company that is disappointed about a licence for extraction or which has expectations. The phrase “legitimate expectations” is one which is used a lot in investor courts. Many people who have secured planning permission, for example, may have legitimate expectations that the place for which they have obtained planning permission will not be flooded. That is an example of a legitimate expectation. It is not clear how deep down this exclusion of liability goes. It refers not only to the text of the Bill but also to the obligations or duties created thereunder. It is not clear how deep into the sectoral strategies this limitation of liability will extend. That needs clarity.

I would like the Minister to address the text of my amendment which relates to investors. Does he believe the State should have a liability to investors and have to pay them compensation in respect of actions it takes on climate change under the provisions of this Bill? That is what my amendment relates to.

Deputy Eamon Ryan: I believe the State does not have such liability and there are widespread laws that will support and back up that view. I do not believe the amendment would necessarily address all those different circumstances. We would have to have incredibly complex piece legislation to do that. The answer, therefore, is “No, I do not believe so.”.

On the other issue in terms of liability, one of the reasons this is contentious is that it is such a powerful Bill. It is so strong in its import because it attaches itself to - I keep coming back to this point - and is consistent with the Paris climate agreement. Increasingly, in international law and various agreements - in a widespread range of laws - there is a recognition that meeting the Paris climate agreement’s objectives is an imperative and gives policy support for that. That gives us the greatest protection. I cannot accept the amendment.

Senator Alice-Mary Higgins: Will the Minister clarify whether he believes that there are no circumstances in which a policy decision would be made in respect of climate with a view towards potential exposure to claims for compensation or, indeed, legitimate expectations?

Deputy Eamon Ryan: The State is vulnerable in all aspects of its existence to judicial review and sanction. It happens all the time. I cannot protect against the variety of different judicial areas, but I do not believe, in relation to this Bill, that we can solve or determine every single protection for the State. I have not seen, having been the Minister with responsibility for the environment and energy for many years, circumstances where policies to address climate change are subject to judicial review to seek compensation.

Senator Alice-Mary Higgins: To be clear, I am not only speaking about judicial review. I am speaking also of the other forms of arbitration that it has been proposed to introduce. The investment court systems are arbitration courts. As Senator Warfield outlined, we know in regard to the energy charter treaty that climate legislation in France has been targeted by claims

for compensation. This led to the dilution of some legislation and the actions it provided for. This issue is, therefore, highly relevant. It is not a hypothetical situation. Why was it decided to limit the liability to citizens but not to include a clause limiting liability to corporations or investors? Why was that choice made?

Deputy Eamon Ryan: I do not believe it is appropriate for us to try to address every international agreement, trade or otherwise. Climate will affect every aspect of our lives, not just trade but other aspects as well which could be subject to compensation or judicial review from investors or others. I do not think it is appropriate.

Time and again, I have seen that some of the amendments are trying to solve other problems through this Bill. This Bill focuses on the specifics of how the State organises itself. Its primary target is how Departments, Ministers and the agencies of the State act. To try to address every international trade or other agreement and to determine the approach that may be taken in that would be an impossible task.

Having said that, in regard to the limitation of liability, it is appropriate to make provision for that because justiciability is a significant and important part of the Bill. The decision taken last year by the Supreme Court under Chief Justice Frank Clarke, and the approach it took in effectively annulling a Bill, is an appropriate measure. For us to bring this Bill to the courts on an unending basis, where every single action would be seen as potentially subject to compensation, would have been inappropriate. For this reason, the Government agreed to an amendment, as set out, on the limitation of liability. It is not to weaken the courts actions but to clarify the kind of remedy the court might take. That is an appropriate decision. It has been made in other legislation and we repeated it here.

Senator Alice-Mary Higgins: I will come back to this because it is key-----

Acting Chairperson (Senator Mary Seery Kearney): This exchange is going backwards and forwards.

Deputy Eamon Ryan: It is not a cross-examination.

Acting Chairperson (Senator Mary Seery Kearney): The Minister is not accepting the amendment and there are other Senators who would like to speak.

Senator Alice-Mary Higgins: If other Senators have indicated, I will be happy to allow them to come in at this point. However, I wish to contribute again on this amendment, as is my right.

Senator Paddy Burke: I am sure the Attorney General has examined the Bill in great detail and covered most angles. In any event, the President could well refer this Bill so I am fully on the Minister's side and am sure all the angles are covered. The President has the option of referring this to the courts if he wishes to do that.

Senator Alice-Mary Higgins: The aspect I am addressing in my amendment relates to what is not in the Bill. Opening up this topic was, again, a choice by the Government which decided to include this new section. It would perhaps require less debate now if it had been in the original Bill sent to the climate action committee but it was not. This is a late addition by the Government in its new draft of the Bill. I am speaking not so much to what is in the Bill as to what is not. While there is a limitation of liability in respect of citizens in it, of individu-

2 July 2021

als who might take cases, we do not have huge amounts of precedence of individuals taking cases for compensation but we have a long list of companies and investors who have sought compensation directly related to climate action. I am not talking about trade agreements; this is not about trade whatsoever. This is to do with investor arbitration. It relates to the investor courts system that is proposed to be brought in under CETA, which would be disastrous for the State, but it relates more specifically to the Energy Charter Treaty which we are already under. I put it to the Minister that he is choosing to limit liability in one area and choosing not to limit it in respect of other very powerful and very strong actors, which have a long record of actually seeking compensation and damages in relation to climate law right across Europe. We therefore have the hypothetical danger we talked about whereby every individual would look to take the Government to court because of their house being flooded, and we have the real situation of investors and corporations actively and regularly seeking compensation because they do not like the impact that climate action taken by states has on their profitability and their expectations of same. They regard this impact as unfair. As such we have a real threat and a hypothetical one.

I will finish on this because it is clear the Minister is not going to accept the amendment. He is dealing with this hypothetical threat but the real threat is left unaddressed. In doing so the Minister chooses to strengthen the hand of those who would take cases. The Minister might not accept my amendment but I would like to hear an indication from him that there will never be a case or situation whereby a decision in relation to this Bill and action on it is influenced by the possible danger of a compensation claim a company might make. Is it the case that this will never happen? Can the Minister testify that nothing in this legislation, or in any of his other actions this year, is influenced by concerns about potential exposure the State may have?

Deputy Eamon Ryan: This Bill is about system change and managing system change. Much of our legislation is modelled on the UK climate bill which has been effective. It too has used this climate advisory council and it too has used this five-year, ten-year or 15-year idea of looking forward and setting budgets and parameters within which the state acts. One of the things we want to avoid is this Bill becoming the source of intense non-stop litigation as the solution to every problem, the addressing of every issue or the resolution of every individual action. It is not about individual actions but about system change. As I said, my understanding is that the UK legislation has not been subject to such use, although I will have to check the legal record on that. In our country we have had the likes of the Friends of the Irish Environment case last year. I was privileged to attend the court hearings which were remarkable events and a real testament to our justice system. What they were looking at was the broad import and response from the State. It was a question of whether we were applying the scale of system change that was wanted. That was an appropriate legal question, as opposed to us resolving every single issue of contention that may arise either on the investor side or the liability one.

Amendment put and declared lost.

Question, "That section 4 stand part of the Bill", put and declared carried.

SECTION 5

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

In page 8, line 7, to delete "climate neutral economy" and substitute "completely decarbonised economy".

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 26:

In page 8, line 7, after “economy” to insert “and society”.

Amendment put and declared lost.

Acting Chairperson (Senator Mary Seery Kearney): Amendments Nos. 27 to 30, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 27:

In page 8, line 22, after “1992,” to insert “including the principle of common but differentiated responsibilities in respect of that objective,”.

This amendment seeks to make it explicitly clear that in considering the UNFCCC, the principle of common but differentiated responsibilities in respect of the UNFCCC objectives shall apply. As I understand it, the section to be amended sets out what the Government’s actions must be consistent with. At the moment, the Bill sets out that the Government’s actions should be consistent with the “ultimate objective” of the UNFCCC. I am trying to specify that it is not about the ultimate objective, but about the ultimate objective and specifically the “principle of common but differentiated responsibilities”. The ultimate objective is the emissions reduction goal we must get to. The inclusion of “the principle of common but differentiated responsibilities” is really important because it is about how we get there. That is why I am proposing that this phrase be included and specified. Again, it may be implied but I want it to be included and specified.

Amendment No. 28 is a strange one because we talk a lot about the Paris Agreement but the Bill only talks about “the steps” set out in the agreement. I am proposing that there should be a reference to the “commitments made” in the agreement as well as the steps set out in it. One is a process piece again and the other is about the what and the how. I am looking to ensure we reference both the commitments and the steps. I also suggest we should be dealing with the full Paris Agreement - we should be consistent with that agreement as a whole and not just, as the Government suggests, Articles 2 and 4(1) of the agreement. There are many articles in the Paris Agreement and I get a little concerned when I see a narrowing of those articles which we are going to consider. It is not even just Articles 2 and 4, which, incidentally, was recommended by the Oireachtas Joint Committee on Climate Action, but Articles 2 and 4(1). The reason that matters is because - again I may have my reference slightly wrong - it is Article 4(3) which talks about the highest possible ambition. We talk about progression and the idea that countries should be aiming as high as they can, doing as much as they can, and having the greatest levels of possible ambition, and that countries should be progressing. That is the idea, that year on year, decade on decade, countries should be doing more to address climate change. Those are some of the important things that are in the other parts of Article 4 of the Paris Agreement. It seems to me very reasonable that if the Minister cannot accept the wider amendment No. 28, he might accept amendment No. 29, which simply deletes the caveat on Article 4(1) and would mean the Bill, the Government, and the Minister in all of their functions would recognise and would act consistently with Articles 2 and 4 of the Paris Agreement.

Amendment No. 30, which again relates to the functioning of the agency, uses small language where I try to pull out that specific sentence similar to how I pull out the particular language on the principle of common but differentiated responsibilities. I also pull out that language in terms of the State’s highest possible ambition and progression. It is a very impor-

tant principle to remember and to apply in the various suites of climate instruments that will be created under this Bill.

Deputy Eamon Ryan: I will not be able to accept these amendments. The reason I am focusing on Article 2 is because it sets this core objective, which is the key one, to halve the emissions in this decade, the net zero target. The core of it is trying to keep global temperatures below 1.5°. That is the appropriate focus. Within that, Article 2(2) recognises, as I referred to earlier, the principle of common but differentiated responsibilities. Article 4 sets out the basic key mechanisms for achieving these sorts of reductions.

First, we are signatories to the Paris Agreement on climate. It is a strange document in that it does not write out the specific legal requirement for each state in how the emissions reductions are achieved, but it sets the overall international mechanism where nationally determined contributions have to increase, which is only way in which we will get 200-plus countries to agree and come to a coherent meeting of the objective. We are bound internationally to each of the provisions.

Going down the road of very technical provisions within the Paris Agreement on climate are not appropriate for this system change legislation. The key thing I keep coming back to is that everything in this Bill is consistent with the key provisions in this international agreement, and the key consistency is trying to hold the increase in global temperatures to well below 2° and to pursue efforts to limit the temperature increase to 1.5°. That is the core strength, and included within that, in both the Paris Agreement and the founding 1992 United Nations Framework Convention on Climate Change, UNFCCC, agreement, is a recognition of common but differentiated responsibilities. I do not see that we need to accept these amendments and to go beyond that.

Senator Alice-Mary Higgins: Will the Minister specifically address the question of greatest and highest possible ambition and the principle of progression? As I understand it, those are not included in those sections of the Paris Agreement that have been pulled out at the moment.

Deputy Eamon Ryan: As I said, as we are signatories to the Paris Agreement on climate and the UNFCCC, we go for the highest ambition. This is particularly the case in respect of the 2050 target. I was reflecting on an earlier discussion we had on the 2030 deadline as to why you would go further. The whole Bill is within the objective and the strategy of reaching net zero by 2050, which is a very significant ambition. Therefore, in any actions that you would be taking in the immediate decade, you have to read the Bill in its entirety and see we are not just thinking of 2030 but of 2050 and how we achieve that target. That will drive ambition in the immediate ten, 15 or 20 years because that is a target that is also going to be very challenging but one that will benefit our country as we achieve it.

Senator Alice-Mary Higgins: I will conclude and then we can go to the votes. I note it is precisely because this Bill covers the period to 2050 that I urge the Minister to consider that the language on “highest possible ambition and progression” should be included. While he may well have set his limits on his ambition for 2030 already, in the years 2030 to 2035, 2035 to 2040 and so forth, ideally we should be looking at a scenario where we would be aiming higher and even achieving this by 2045, because, and it is important to note this and I may bring in amendments on it on Report Stage, Northern Ireland is now debating legislation that sets a goal of carbon neutrality by 2045. That is why including the principle of greatest possible ambition and naming that is very important and positive because you are then giving a mandate to future

governments and Ministers to say that while the first ten years will be the most difficult, and everybody knows this, having made those changes, perhaps we may be in a position to accelerate our ambition. My issue here is to put the question constantly and regularly whether where we are now is our highest possible ambition in the functions and delivery of actions under this Bill, as this would be a very useful reminder. I regret that having pulled out certain other aspects of the Paris Agreement, we do not pull that aspect out also.

Senator Pauline O'Reilly: My issue here is around the language in amendment No. 30 where it speaks of being “consistent with the State’s highest possible ambition”, which suggests this is written somewhere. The Bill is actually saying “by no later than” and therefore leaves room for that.

We did considerable work in the committee on changing the language to be consistent with the Paris Agreement. That is all in this Bill. The strength is already in the language and I believe this amendment makes the Bill weaker in some ways because it is referring to something but not really describing what the thing is.

Senator Alice-Mary Higgins: That is my less-preferred amendment.

Acting Chairperson (Senator Mary Seery Kearney): I ask the Senator Higgins kindly to speak through the Chair, please.

Senator Alice-Mary Higgins: My apologies, Acting Chairperson. I agree with Senator O'Reilly in that my preference is that we would just reference Articles 2 and 4 of the Paris Agreement rather than trying to pull that language out of the agreement, but I was just trying to narrow this down to the particular piece I had in mind. I agree that amendment No. 29 would be stronger and I would prefer that amendment.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 28:

In page 8, line 26, to delete “in Articles 2 and 4(1) of” and substitute “and commitments made in”.

Amendment put and declared lost.

6 o'clock

Senator Alice-Mary Higgins: I move amendment No. 29:

In page 8, line 26, to delete “(1)”.

I will withdraw this amendment and bring it back on Report Stage because it merits consideration. I hope it can be examined.

Amendment, by leave, withdrawn.

Senator Alice-Mary Higgins: I move amendment No. 30:

In page 8, line 31, to delete “Agency.” and substitute the following:

“Agency, and

2 July 2021

(c) that is consistent with the State's highest possible ambition and progression.”.

In recognition of Senator O'Reilly's point and given the hope I still hold out for amendment No. 29, I will withdraw amendment No. 30.

Amendment, by leave, withdrawn.

Section 5 agreed to.

SECTION 6

Senator Alice-Mary Higgins: I move amendment No. 31:

In page 8, between lines 37 and 38, to insert the following:

“Proactive dissemination of information

6. Notwithstanding anything elsewhere in this Act, the Advisory Council, any Minister of the Government, the Government or a Local Authority shall be obliged to publish in full within 3 days any report, or proposal which is required to be provided under this Act particularly where it is subject to approval or amendment under this Act.”.

Amendment No. 31 relates to information. We know there are many issues in terms of access to environmental information. If we talk about bringing people with us and giving confidence in this, one of the key things is transparency and engagement for the public in order that people would be able to see how decisions are being made and why they are being made. The amendment proposes that notwithstanding anything else in this Act, the advisory council, any Minister, the Government - I am naming the Government to be clear and it would be useful for the Minister to clarify this - or a local authority shall be obliged to publish in full, within three days, any report or proposal required to be provided under this Act, especially where it is subject to approval or amendment under this Act. I am open to seven days if that is suggested.

There are a number of different processes, such as the advisory council, the climate plan, the sectoral targets and the processes around the budgets. Any report or proposal which arises out of the functions in this Bill should be published and available for the public to see climate action in effect in terms of the decisions which have been made and the proposals or reports and to ensure the public has that engagement. This is consistent with the Aarhus Convention and the principles of access to environmental information and participation and transparency in environmental decision-making.

Deputy Eamon Ryan: Again, I cannot accept the amendment. The Bill provides under each relevant section that the climate plans and strategies prepared under the Act will be published as soon as possible following adoption. The original 2015 Act also provides the climate change advisory council will publish its annual report within the required timeframe, no later than 30 days after having submitted it to the Minister. A three-day timeframe would not be workable. We would run into all sorts of difficulties around translation into Irish, finalising graphic presentations and other requirements.

There is provision within the existing Bill for full sharing of all the plans and data and within the existing 2015 Act for the climate advisory council to publish its report within 30 days. That is an appropriate timeframe.

Acting Chairperson (Senator Mary Seery Kearney): Did Senator Moynihan want to come in?

Senator Rebecca Moynihan: Senator Higgins will move and withdraw amendment No. 41 for me when it is reached.

Senator Alice-Mary Higgins: To be honest, three days is quite narrow when I look to it. Nonetheless, 30 days is a little bit too wide. We could look to improve the transparency and information on this and the timelines so they work better. I accept the three-day issue is considerable. While I will press this amendment now, I reserve the right to try to come back with a compromise period, somewhere in between three and 30 days.

Amendment put and declared lost.

Acting Chairperson (Senator Mary Seery Kearney): Amendment No. 32 has already been discussed with amendment No. 11.

Senator Alice-Mary Higgins: I move amendment No. 32:

In page 9, to delete line 25 and substitute “completely decarbonised economy,”.

Amendment put and declared lost.

Acting Chairperson (Senator Mary Seery Kearney): Amendment No. 33 and amendment No. 40 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Fintan Warfield: I move amendment No. 33:

In page 9, between lines 31 and 32, to insert the following:

“(2A) The Climate Action Plan must also, with reference to the just transition principles—

(a) explain how the proposals and policies set out in the plan are expected to affect different sectors, households, communities, and regions, including how they are expected to affect employment in those sectors, communities, and regions, and

(b) set out the Ministers’ proposals and policies for supporting the workforce, employers and communities in those sectors, households, communities, and regions.”.

We have had a long conversation about this in that this amendment seeks to put just transition policies and principles at the heart of the climate action plans. Climate action plans are where the rubber meets the road in terms of policies and actions which will achieve emissions reductions. This amendment is based on the much spoken about Scottish example. It is a pragmatic amendment based on a working example and a serious way to make sure the transition is just.

Amendment No. 40 seeks to achieve a similar thing and I know they are grouped. I will speak to it now. This amendment seeks to put the transition principles at the heart of the long-term strategy. We need to make sure the just transition is to the fore of the Government’s mind when it is planning in the long term. The just transition cannot be an afterthought again. This pragmatic amendment is based on the working Scottish example.

2 July 2021

The Minister has spoken about looking to Britain. One thing Brexit presents the Irish people and the Administration here is the opportunity to look beyond Britain and work with our European neighbours and take best practice and form relationships with those administrations.

Deputy Eamon Ryan: The climate action plan process will, in a variety of different ways, embody and encompass just transition principles, starting with what we have already been engaged in with regard to its extensive public consultation which will continue on an ongoing basis. That is, as was discussed earlier, one of the characteristics of just transition. It has to come to Government for decision and approval. Government decision-making is also conditioned by a variety of different requirements for us to assess social and other consequences of Government proposals. That is already a requirement within our existent Government decision-making process.

I do not propose to accept amendments Nos. 33 or 40. The process set out already covers such a perspective and provides for it.

Senator Fintan Warfield: I am disappointed the Minister will not accept either of these amendments. I know we have had a long discussion. I was here for it. I did not weigh in at the time, but it is outrageous the Bill does not contain a definition already. The original Bill also lacked a single mention of just transition. The version we have now mentions it but does not define what it actually is. I urge the Minister to accept both these amendments.

Amendment put and declared lost.

Acting Chairperson (Senator Mary Seery Kearney): Amendments Nos. 34 to 39, inclusive, are related and may be discussed together.

Senator Fintan Warfield: I move amendment No. 34:

In page 9, line 33, to delete “, in the Minister’s opinion,”.

We believe this wording is a get-out clause and nothing more. Professor John Sweeney from Maynooth University said that this Bill is peppered with weasel words and this is a particularly good example of that. The part of the Bill that this amendment seeks to change reads:

(3) The roadmap of actions referred to in subsection (2)(b) shall—

(a) specify measures that, in the Minister’s opinion, will be required for the first budget period ...

This is a get-out clause and nothing more. The issue at stake here is accountability. While I am sure the current Minister fully intends to specify the measures required for the budget period, we cannot be sure that any future government will do the same. We need to tighten up the language in order that any Minister in the office will abide by the provisions of the Bill and take the necessary action to reduce emissions. As it stands, this is far from guaranteed because of a litany of weasel words. I do not need to speak to amendments Nos. 36 and 38 because they seek to remove the same language.

Senator Alice-Mary Higgins: This is one of those caveat phrases that feels a little too like a loophole. It is already implied that the Minister’s opinion is in play because it is the Minister who is taking the actions in question. We do not need to say “in the Minister’s opinion” because if the Minister is setting out the roadmap, he or she is giving an opinion because he or she is

the one proposing it. Putting “in the Minister’s opinion” into the Bill creates a caveat that the actions do not have to be based on clear evidence or proposals. It would give an incredible weight to a personal opinion.

This is also a concern because we have seen a similar issue come up in areas such as housing and health. Instead of having accountability over a long period of time for Ministers and the Government, we just have the opinion of the individual Minister again and again. Each Minister who comes along can say that certain actions were based on the opinion of the previous Minister, for whatever mysterious reasons. In agriculture, we had three Ministers in a year. If decisions were being made based on the opinions of those Ministers, we would be in a situation where we lacked accountability about the basis of why those actions were taken and why the opinions were as they were. That is why I and others have proposed removing the phrase “in the Minister’s opinion”. I support Senator Warfield’s amendments in that respect.

However, if the Government is going to include “in the Minister’s opinion” in the Bill and if roadmaps, actions and measures will be based on it, then the Minister should publish that opinion. That is what amendments Nos. 35, 37 and 39 seek to do. If the actions are to be based on the opinion of the Minister, it would be very reasonable for that opinion to be set out and published. That way, successive Ministers could see the opinions of previous Ministers and we could build on that and understand why the decisions were made and why certain measures were chosen or not chosen for a roadmap. The current language is ambiguous, redundant and could potentially be a loophole but if that level of discretion for the Minister is to be included, then let it be transparent and clear and let us have sequential accountability for the many Ministers who will be making decisions on roadmaps and actions under this legislation over the next 30 years.

Deputy Eamon Ryan: Senator Higgins has got it absolutely right. The reason the Minister’s opinion is recognised is that the Minister has a role and a place in this, with the Department responsible for administering, delivering and managing this process. I look forward to Minister Higgins or Minister Warfield fulfilling that role that in the future.

I will not be able to accept these amendments. Those words are not included in the Bill as an opt-out clause or a weakening of the language. It is the exact opposite. If we do not give the Minister responsibility for these things, they will become administrative actions. It is right and appropriate for us as elected representatives of the people, in our form of parliamentary democracy whereby we form a Government which forms a Cabinet, not to undermine the role of the Minister. We must recognise the need to retain that power and understand that doing something administratively does not necessarily bring benefits or strength. That is the core of our system. We have a Cabinet and, akin to the way we trust a jury of 12 citizens to make difficult judicial decisions, in the administration of our government we trust a Cabinet and its members to make those decisions. That is no disrespect to our public servants and their skill and critical and important role but, in the end, the democratically elected political system is responsible for delivering the actions of the Government. It is almost the exact opposite of what the Senators are saying. The whole Bill is structured around this approach and we should not shy away from holding Ministers to account and giving them authority and responsibility.

As regards publishing opinions and so on, we have a mechanism in our Parliament, that is, in the Seanad and the Dáil, whereby Ministers are held accountable and are on the record. What we say here is written down, recorded live and transmitted to the country in a way that is completely transparent and unbiased. Even our mechanisms of speaking through the Chair and

so on are part of that process. That is our process of transparency and accountability.

It is appropriate that Ministers have this responsibility in this section and in a variety of other ways. I understand the Senators' intentions but I tend to take the contrary view because I see this wording as a strength, not a weakness.

Senator Alice-Mary Higgins: With respect, this is not happening in a void. There is a Government and then there is the Parliament. There is the Executive and there is the Legislature. As the Legislature, one of our political responsibilities is to try to ensure the best possible legislation and the greatest transparency and accountability in that. In speaking about transparency, I do not understand, given the Minister's eagerness to have discretion and accountability for Ministers, the reason he does not accept my amendments that would require the Minister to publish the reasoning behind the Minister's opinion in respect of what measures should be taken. That is an appropriate level of accountability and transparency. As somebody with political responsibility in the Legislature, it is appropriate that such a measure would be in the Bill, especially given the context of the impact they may have.

In terms of the Minister's opinion, I believe there should be political accountability for Ministers, but we should also bear in mind that we have Ministers on this island who are climate change deniers. It is not in this Government, but on this island. We have had situations whereby all of the evidence points in one direction and a Minister who has a very particular set of opinions. In that context, the least the public need and the Legislature want is not to have to get it piecemeal by asking the Minister questions or tabling Commencement matters, in a committee or wherever else, but that we would have clarity on the basis for the Minister's opinions on something as important as a roadmap of actions.

When we talk about accountability, the Department this year argued successfully in the High Court that because the reference in the previous climate Bill was only to the Minister and not to the Minister and the Government, that the Government could not be held accountable in respect of actions concerning the climate Bill, specifically in sections 4 and 15, as it was not a relevant body. It is one thing to say a Minister can be held accountable, but it is crucial that the Government can be held accountable given the scenario I outlined concerning agriculture where there could be three different climate Ministers in a year. It is appropriate that the individual Minister is clear and accountable, but it is also important that the Government is accountable and that there is transparency on the basis of the decisions. The conversation often goes back to getting into the nuts and bolts of what we do. These are the roadmaps of measures. They are the real actions. This is the nitty-gritty of delivering. There is a lot of choice in that space. As the Minister outlined, there are choices on transport and being willing to step up on public transport and retrofitting. We are all at that space; and this is that space. It is important that there would be a publication of the reasons for the Minister's opinion in respect of the measures that should or should not be taken. Given that the Minister accepts the central role of the Minister in that regard, even if he wants to keep that language, I do not understand the reason he does not accept my requirement for publication.

Deputy Eamon Ryan: I will respond first on the issue concerning the Government. I keep coming back to section 5(3) because it is the core of the Bill in terms of having to be consistent with the ultimate objective specified in Article 2 of the United Nations framework and Article 2 of the Paris Agreement. The reference is "The Minister and the Government shall carry out their respective functions" in a manner that is consistent with the requirements. There is provision for the whole of the Government to be centrally involved.

With regard to publication, again central to this will be the involvement of the Oireachtas. As we go through the stages in terms of agreeing budgets and sectoral provisions, the Oireachtas will be centrally involved. As a mechanism whereby the Minister can be tested and questioned and will have to present and explain the budget, the national climate strategy, the climate action plan and the budget process, at every step of the way we will have the same sort of opportunity we have had here today for the Minister to explain his or her thinking on the approach that is made. That is the reason I come back to saying that we should retain the power with the Minister.

The reason the Bill is such a powerful system-change legislation is that it does set the overall objectives that any Minister, whoever he or she is, is going to have to follow. That is a protection and that is the reason this legislation is so powerful and so important.

Senator Alice-Mary Higgins: The concern still stands that the context of the specific road-map and specific measures only relate to the Minister and not the Minister and the Government. I am not the proposer of the first amendment.

Acting Chairperson (Senator Mary Seery Kearney): Is Senator Warfield pressing the amendment?

Senator Fintan Warfield: Yes. I would have been delighted if the Minister had at least accepted amendment No. 36, which was an alternative, rather than our own proposal to delete “in the Minister’s opinion”. I do think that is going to happen so I will press the amendment.

Senator Eugene Murphy: Listening to the three speakers - Senators Warfield and Higgins, and the Minister, Deputy Ryan - the Minister has clarified the position for me. During the discussion the unfortunate situation was raised when we had three Ministers for Agriculture, Food and the Marine in the past year or so but that did not change Government policy. We should remember that. Overwhelmingly, Dáil Éireann has voted for climate change. While I acknowledge the point being made by the speakers, as far as I am concerned the Minister has clearly set out how the process will operate and how the provisions in the Bill will be protected. I do not think we should have any major concerns on this issue.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 35:

In page 9, line 33, to delete “in the Minister’s opinion” and substitute “in an opinion set out and published by the Minister”.

Amendment put and declared lost.

Senator Fintan Warfield: I move amendment No. 36:

In page 9, line 36, to delete “, in the Minister’s opinion,”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 37:

In page 9, line 36, to delete “in the Minister’s opinion” and substitute “in an opinion set out and published by the Minister”.

2 July 2021

Amendment put and declared lost.

Senator Fintan Warfield: I move amendment No. 38:

In page 9, line 38, to delete “, in the Minister’s opinion,”.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 39:

In page 9, line 38, to delete “in the Minister’s opinion” and substitute “in an opinion set out and published by the Minister”.

Amendment put and declared lost.

Progress reported; Committee to sit again.

The Seanad adjourned at 6.31 p.m. until 10.30 a.m. on Monday, 5 July 2021.