



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Teachtaireacht ón Dáil - Message from Dáil	145
Gnó an tSeanaid - Business of Seanad	145
Nithe i dtosach suíonna - Commencement Matters.	146
Enterprise Support Services	146
Greenways Provision.	149
Schools Building Projects.	151
Care Services.	154
Teachtaireacht ón Dáil - Message from Dáil	157
Gnó an tSeanaid - Business of Seanad	157
An tOrd Gnó - Order of Business	157
Sitting Arrangements: Motion.	171

SEANAD ÉIREANN

Déardaoín, 7 Deireadh Fómhair 2021

Thursday, 7 October 2021

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Teachtaireacht ón Dáil - Message from Dáil

An Cathaoirleach: Dáil Éireann has passed the Criminal Justice (Amendment) Bill 2021 on 6 October 2021, to which the agreement of Seanad Éireann is desired.

Gnó an tSeanaid - Business of Seanad

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

The need for the Tánaiste and Minister for Enterprise, Trade and Employment to make a statement on the eligibility criteria for grants from local enterprise offices and Enterprise Ireland for businesses with ten to 29 employees.

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

The need for the Minister for Transport to provide an update on the development of greenways and blueways in County Louth.

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

The need for the Minister for Education to provide an update on plans for new school buildings at Scoil Mhuire, Moycullen; and Scoil Chaitríona Senior and Scoil Chaitríona Junior, Renmore, County Galway.

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

The need for the Minister for Health to make a statement on the role of carers in the healthcare system and to commit to annual support for the carers guarantee proposal.

I have also received notice from Senator Tim Lombard of the following matter:

The need for the Minister for Education to provide an update on the timelines associated with the design and planning for the proposed new building for Summercove National School, Kinsale, County Cork.

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

The need for the Minister for Social Protection to remove receipt of disability benefit as a disqualifying criteria for eligibility for the winter fuel allowance for those persons who meet the income means test.

The matters raised by the Senators are suitable for discussion and I have selected Senators Byrne, McGahon, Kyne and Ahearn and they will be taken now. The other Senators may give notice on another day of the matters they wish to raise.

Nithe i dtosach suíonna - Commencement Matters

Enterprise Support Services

Senator Maria Byrne: The Minister of State is welcome to the House. He had a successful visit to the local enterprise office, LEO, in Limerick recently. When I was a member of the local authority, I served as a member of the local enterprise board, the precursor to the LEO, and saw the benefits of same to business. In recent times, however, I have become aware of the fact that the LEO mainly deals with companies with ten employees or fewer while Enterprise Ireland mainly deals with companies with 30 or more employees. I have spoken to companies and businesses that received wonderful support in the start-up phase from their LEO. Many businesses have started small and grown into multi-million euro turnover enterprises, which is wonderful. However, I am concerned about those that are the meat in the sandwich, namely those companies with more than ten but fewer than 30 employees because they have nowhere to go. They feel that they are squeezed in the middle and I would like to see more supports and services made available to them.

The Minister of State is committed to the small business sector as was clear when he visited Limerick and met staff at the LEO, various companies and the Limerick Enterprise Development Partnership, LEDP. There is so much scope there and he saw for himself what is going on in the area. It is important that we support companies of an in-between size. I look forward to his response.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Damien English): I thank the Senator for raising this important issue. It has come up a lot at meetings of the SME task force set up by the Tánaiste and Minister for Enterprise, Trade and Employment, Deputy Varadkar, last year and it also comes up during our visits to various local authorities, LEOs and development agencies, both voluntary and community, around the

country. As the Senator mentioned, we spent a day in Limerick recently, which was beneficial in getting feedback from businesses and from all of those involved in supporting businesses. Great work is being done on job creation and economic activity in Limerick and I compliment all involved. The combined efforts of the local authority and the LEO, as well as the engagement of LEDP and others, is impressive. I compliment everyone on what was a good visit. I met some enterprising individuals who have a lot of drive and potential to create jobs, but as the Senator pointed out correctly, the system has to be adjusted to suit them and to help them to follow through. Companies are concerned that when they reach ten or more employees, they could lose their connection with the LEO. They might be moved on to Enterprise Ireland or get caught in the middle and miss out. We are trying to deal with that and it is an issue I am determined to address. All of those involved in this area want us to address it too and Senator Maria Byrne is correct to raise it.

The House will recall that the programme for Government commits to examining the role of the LEOs and their interface with Enterprise Ireland and other local stakeholders in supporting local and regional job creation so that ambitious and high-performing companies, regardless of size, are supported in scaling up and achieving their full potential, whether in the export or domestic market. The Senator referred to companies in that situation who have to make a judgment call on whether to scale up. Some say that they are reluctant to do so because they are afraid they might lose the support of their LEO. It is our job in the Department, in conjunction with the LEOs, local authorities and Enterprise Ireland, to address this issue. In that regard, it is vital that our SMEs have a clear roadmap of progression and that the appropriate structures are in place to assist companies on that journey. Approximately 92% of the 250,000 SMEs are microenterprises with fewer than ten employees and are, therefore, eligible to engage with their LEOs. Companies with between ten and 29 employees represent about 7% of the total cohort and these are companies which may be assisted by Enterprise Ireland. These are the companies the Senator is homing in on. The figure is 7% or 8%, maybe a little bit more, which are in that gap and in the grey area. However, it is acknowledged that there may be enterprises, particularly non-manufacturing and non-internationally traded services companies, which can fall outside either the LEO or Enterprise Ireland net. The Government has, in addressing the Brexit and Covid-19 challenges, made it possible for the LEOs, in particular, to extend the reach of their services to a broader base of businesses, both in terms of sector and size, by offering financial support to companies of up to 50 employees, which would customarily not have qualified for LEO funding.

Examples of this include their business continuity, competitive and productivity voucher schemes, for example. Furthermore, Enterprise Ireland now grant aids the retail sector under the successful online retail scheme, a sector which is not usually supported by Enterprise Ireland.

I have to compliment the LEOs in their work around the business continuity voucher. If I remember the figures, more than 12,000 were granted. There were nearly 15,000 applications for that voucher and 12,000 of these were successful in drawing that down. It costs €20 million and is a worthwhile voucher. The business continuity voucher, along with the training online voucher, which was also supplied by the LEOs, has been an immense success. The LEOs reached out to many businesses well beyond their normal reach. We want to build on that success. I compliment all involved, but we want to make sure that we do not let that slip and that we continue with that engagement.

Enterprise Ireland has also to date expended more than €141 million on the sustaining en-

terprise fund, SEF. Companies applying for the SEF are across a range of SME sectors and sizes including those employing ten to 29 employees in areas such as precision engineering, life sciences and construction, food delivery services, ICT, telecoms, international services, and consumer-retail. Indeed, small companies, those employing 50 or fewer, account for 76% of all companies approved funding, and 65% of the value of total funding approved.

We are, therefore, trying hard as a Government. I know this subject is dear to Senator Maria Byrne's heart that we reach in to support those companies, those micro and smaller companies of fewer than ten people, but also up to 50 people, and beyond that.

The success of the above-mentioned programmes and schemes has strengthened our resolve to provide for a comprehensive range of training, advisory and financial schemes, including grant and equity interventions, for regional enterprise development and scaling.

Acting Chairperson (Senator Victor Boyhan): The Senator has one minute to respond.

Senator Maria Byrne: I thank the Minister of State. It is welcome news that there is keen interest from the Government in that grey area. The LEOs and Enterprise Ireland are doing fantastic work. The supports, the level of support and the mentoring they give are important. However, there is a fear factor, as the Minister of State said, among people who are in the middle category. They realistically do not fit into either category, as such. In some instances, they do, although it depends on what services they provide. Certainly, I look forward to working with the Minister of State on this. I come from a small business background, so I have a keen interest in this area. I have been helping a number of companies which fall within that category. I thank the Minister of State again for his response.

Deputy Damien English: I again thank the Senator for raising this, as I know it is dear to her heart. She has a background in business, and she works with businesses. I could see their work in Limerick as well.

I would like to mention the SME task force, which will be in line with the Senator's thinking. It was set by the Tánaiste last September. For two months, we met and engaged with more than 40 entrepreneurs and beyond that to focus in on all the issues they want addressed. Similarly, the growth plan that we published last January on foot of its work provides Government with a set of recommendations directly from the business community of long-term strategic importance for SMEs and entrepreneurs which we are currently pursuing through an implementation group that was jointly chaired by myself and the Minister of State, Deputy Robert Troy, on behalf of the Tánaiste, which is currently taking forward the growth plan recommendations. In that space, there is exactly what Senator Maria Byrne is saying, that is, to make sure that there is seamless transition between our agencies for supports.

I indicated earlier that a number of priority recommendations from that task force are being examined which have the most potential to make a positive impact on the SME sector over the coming year. One of these is to ensure that there is a comprehensive and joined-up range of enterprise responses for all SMEs by the State, public bodies and our enterprise agencies. As part of the development of the new Enterprise Ireland strategy, which is currently under way and due soon, we are also examining how best to sustain that broadening of assistance to ambitious entrepreneurs and businesses, like those in Limerick, with the potential to scale and grow both on the domestic market and internationally.

The issue is in identifying any market failures in respect of potential gaps in Government

assistance to help the business sectors of our economy which have the potential to grow and create employment, whether exporting or not while avoiding any economic displacement and deadweight issues and keeping to the rules on state aid.

Ensuring an appropriate level of resources and capacity will, of course, be a significant determinant in this endeavour. I know it is something the Senator wants us to raise and to achieve and that, in general, the Seanad is supportive of this too. I was in Louth last week with Senator McGahon and we met companies in a similar space and had similar conversations.

Greenways Provision

Acting Chairperson (Senator Victor Boyhan): I welcome the Minister of State, Deputy Josepha Madigan, back to the House.

Senator John McGahon: Today I want to talk about the concept of greenways and blueways and I want to start by referencing to the Waterford greenway. We all know the Waterford greenway, which has become a destination greenway. People go to Waterford, stay there and utilise the greenway. I want to talk about how we can replicate that and create a destination greenway in County Louth. I want to give some of the context to greenways in County Louth.

County Louth has been ahead of its time in developing greenways. I will not use the word “trendy”, but they have become popular in the last couple of years. County Louth was developing the Carlingford to Omeath greenway in 2011, 2012 and 2013. It was quite ahead of its time in terms of the local authority trying to prepare that. The current state of greenways in County Louth is we have a greenway stretching from Carlingford to Omeath. We are currently in the process of building one from Omeath to the Northern Irish Border.

On the other side, Newry, Mourne and Down District Council is building a greenway from Newry to Victoria Lock to meet our greenway at the Border. That is a good example of cross-Border co-operation. We have seen many small indigenous companies spring up around greenways. That is why they are so good. They bring business to an area because they obviously bring people to an area. These are businesses like those providing electric scooters. In Carlingford, for example, companies have sprung up that provide day packages and picnics for anyone who wants to go on the greenway.

That is the context of greenways in County Louth. What is the long-term vision? My long-term vision is twofold. I would love to see the concept of Louth coastal greenway. Louth is so well placed in terms of its geographical area. We are an hour north of Dublin and an hour south of Belfast. Approximately 2 million people live in this region between Dublin and Belfast on the island of Ireland. We are so well positioned in terms of such short trip to make a real business case for something like this.

My goal and long-term vision is to see that coastal greenway stretching from Drogheda right up the coastline with a wonderful view of Dundalk Bay, the Mourne Mountains in County Down, the Cooley Mountains in north Louth, stretching through Blackrock, Dundalk and on out to Carlingford.

Naturally, this is a big project and big vision. Louth County Council is focused on trying to get patchworks of the greenway together. What can Government do to try to help local au-

thorities with that and to find out what about the big picture here? It is a ten to 15-year project. There is no point saying that it will be magicked up anytime soon. How does Government help with the strategy?

I grew up playing on the Navy bank walkway in Dundalk. It is one of the most idyllic walks in Dundalk. However, it leads to a dead end. The big, long-term goal there is to connect that up with some sort of a greenway walkway from the Navy bank in Dundalk to Blackrock, which is a picturesque village outside of the town.

One of the reasons we cannot apply for funding for the greenway yet is that huge amounts of money are required for CFRAM studies. We have to reinforce the sea barriers between Dundalk and Blackrock. Until those CFRAM studies are complete and the sea barriers are built, we cannot put in for planning permission for a greenway. It is a chicken and egg scenario. Until that is done, we cannot get permission for a greenway along there.

This could be huge. We could have our whole country connected by greenways. We are doing that and Louth is a place to start.

I raise the concept of blueways. In County Louth, we have the River Glyde and the River Fane. These are underutilised aspects of tourism. We are only starting to realise the benefit of it now. I would love to know the Government's strategy to encourage local authorities to promote and to get blueways going.

Minister of State at the Department of Education (Deputy Josepha Madigan): I thank Senator McGahon for giving me the opportunity to talk about greenways and blueways, on behalf of the Minister for Transport.

It is important to note that the development of greenways in County Louth is first and foremost the responsibility of Louth County Council, which the Senator referenced. The county council should liaise with Transport Infrastructure Ireland as it has recently taken over the responsibility to develop the roll-out of greenways under the Strategy for the Future Development of National and Regional Greenways. Urban greenways and active travel infrastructure is within the remit of the National Transport Authority. There is a bit of a grey area with cross-Border greenways and Louth County Council should continue to work with the Department of Transport in that regard.

Blueways are a matter for Waterways Ireland. It is not a body that comes under the remit of the Department of Transport. As I am sure the Senator is aware, Waterways Ireland comes under the auspices of the Department of Housing, Local Government and Heritage, which was my old Department, and does a lot of good work in terms of blueways.

The Department of Transport currently funds two greenway sections in County Louth. First of all there is pre-construction funding of €200,000 that was awarded in 2020 from the carbon tax fund for a section from Carlingford to Templetown. The Department is also a co-funder of an INTERREG project for the Carlingford Lough greenway section that runs from Carlingford to Newry. A design team has been appointed for the Carlingford to Templetown section and it has commenced baseline data collection for the project that will go towards informing the route options.

It is important that Louth County Council engages as early as possible with landowners who might be potentially impacted by a route, and that the county council carries out as much work

as possible ahead of the next funding call so that it is well positioned to be awarded funding. The county council should engage with as many stakeholders as possible, particularly the National Parks and Wildlife Service to avoid any potential environmental problems.

In terms of future plans, Transport Infrastructure Ireland has recently commenced work on developing a national cycle network. I note the Senator's comment that small and indigenous companies spring up around greenways and how greenways bring a lot of economic viability to an area. So they are worth creating. The key is to get Louth County Council to work with the TII on developing new greenways. There will always be calls for further funding for other construction projects, under the national and regional greenway projects, to which the county council can make submissions.

Senator John McGahon: I thank the Minister of State. I wish to take this opportunity to pay tribute to the staff of Louth County Council. In particular, I pay tribute to Mr. Pat O'Rourke as he was ahead of his time and advocated for greenways a decade ago when they were not the done thing or seemed to be quite difficult to create when one took into consideration the trouble with compulsory purchase orders, and engaging with landowners. The county council has been really good about greenways and its response has been excellent. It is good to see that we have a good long-term vision for greenways not just in my own county of Louth but across this country, for example, links with the Great Eastern greenway.

The plans are great, aspirational and ambitious. However, I want to make sure they are on track and are not aloof or faraway ideas of nice things that we would like to do. The Minister of State has said that the way for us to do that is through continued engagement between the officials in Louth County Council, the National Transport Authority and such like. I hope these long-term ambitions come to fruition so that we can all see and enjoy greenways in County Louth in the years to come.

Deputy Josepha Madigan: The Senator is correct that it is important to have ongoing collaboration and engagement between the various different agencies, in particular Louth County Council, with Transport Infrastructure Ireland.

As I said, two greenways are being constructed - Carlingford to Templetown, and Carlingford to Newry. Blueways are a matter for Waterways Ireland and it is worth Louth County Council engaging with Waterways Ireland when it comes to developments.

As the Senator alluded to, the Louth coastal greenway would be of huge benefit to the entire area and allow users to view their surroundings from Dundalk to Carlingford. The project is long term and is not outside the bounds of possibility but could be considered. Again, such projects are about engagement and collaboration.

Schools Building Projects

Acting Chairperson (Senator Victor Boyhan): The next matter concerns new school buildings at Scoil Mhuire, Moycullen, and Scoil Chaitríona in Renmore, County Galway.

Senator Seán Kyne: I welcome the Minister of State at the Department of Education. I take this opportunity to congratulate her and the Minister for Education, Deputy Foley, on the voted capital allocations in the national development plan that have increased from €740 mil-

lion to over €1 billion in 2025. Obviously cost inflation will account for some of the increase, and that is something that is increasingly problematic or worrying, but there is a commitment to continue the development of school infrastructure and buildings in this capital allocation.

Last December, I tabled Commencement debates on both of these school projects and on that occasion the Minister replied. We have done a lot of good work on school infrastructure in Galway over the last decade. In my own constituency we have new developments such as Merlin College, Merlin Woods Primary School, Gaelscoil de hÍde, Coláiste na Coiribe, Gaelscoil Mhic Amhlaigh and the new schools in Clifden, Oughterard, Na Forbacha, Claregalway and Lackagh.

A lot of good work has been done and some extensions in places like Rosmuck and Scoil Fhursa in Galway city among others. However, a number of new projects and new schools buildings are needed, including Scoil Mhuire in Moycullen. It is my old *alma mater* that I attended up to 1987 so the project is very personal to me in terms of making progress. There is also Scoil Chaitríona junior and senior schools in Renmore. I seek an update on both of these projects. Scoil Mhuire in Moycullen has nearly 400 children and was put on the five-year Schools Building Programme 2016-2021. I set up a number of meetings and progress was made with the then Minister for Education and Skills, Deputy Joe McHugh. There were also a number of meetings with the board of management. There were a lot of issues concerning the most appropriate site and the associated costs but a decision was made to rebuild on the existing school site. In April or May 2020 sign-off was given for new and rather impressive prefabs that have since been installed. They are quite modern and very large, which is a big improvement on what existed previously. From the excitement of the school being planned from 2016 onwards to still awaiting on the planning application to be lodged and all that goes with that, there is some concern. Therefore, I seek an update.

Scoil Chaitríona, Renmore, has sought a new school building for a number of years. There has been an issue with an alternative site. The school was requested to look at alternatives and when it did it said there were none. The school is located in the middle of a city so it would be difficult to find a new site. There is a green area across the road from the existing school that is in the ownership of Galway City Council. The school sought to incorporate the green area not as part of the school building but as part of a site for recreational amenities. The school sought to reconfigure the existing site but use the green space as part of the play area for the school. I seek an update on the engagement that has taken place. Again, there have been a lot of meetings and a lot of good work has been done by the board of management with the bishop's office in Galway and Galway City Council. The Minister pointed out that a full commitment has been given to get these projects over the line.

The pupils, teachers, staff and parents in the Renmore area have been waiting some time for this project. If the Minister of State could give an update on that project as well, I would appreciate it.

Deputy Josepha Madigan: I am taking this matter on behalf of the Minister for Education, Deputy Foley. I thank Senator Kyne for raising the matter as it provides me with the opportunity to outline what is happening in regard to the schools he mentioned.

The major building project for Scoil Mhuire, Moycullen, of which I am aware Senator Kyne is an alumni so I am sure the school is delighted he is representing it here in the Seanad, is included in the Department's construction programme which is being delivered under the na-

tional development plan. The brief for this project is, as stated by the Senator, to provide for the demolition of the existing school building, removal of the existing temporary accommodation and the construction of a new school building to include 16 general classrooms and a two-class special educational needs base on the existing site, which as Minister of State with responsibility for special education, I particularly welcome.

Stage 1, preliminary design, was approved on 27 April last and the project then progressed to stage 2a, developed design, where the design team develop the agreed design option and accurately cost plan that option to a stage where the project is fully cost planned and can be prepared to lodge for statutory approvals, including planning permission. The design team are currently completing the stage 2a submission and upon receipt and review of the stage 2a report by my Department, the stage 2a stakeholders meeting will take place between the design team, project manager, Department officials and representatives from the board of management. I understand that this meeting is scheduled for 14 October, which is only a few days away. Following the planned stage 2a stakeholders meeting later this month, my Department will advise the school's board of management and its design team of the further progression of the project for Scoil Mhuire, Moycullen. That is the position in regard to Scoil Mhuire, Moycullen. I note the Senator's comments and contribution in that regard.

As the Senator is aware, the building projects for Scoil Chaitríona Junior and Scoil Chaitríona Senior are also included in my Department's school building programme to be delivered under the national development plan. The accommodation brief for both projects are being developed and my Department will continue to liaise with the schools in this regard. The Department has also approved an emergency works grant for roof works to the schools' temporary accommodation. We must ensure that all accommodation, whether temporary or permanent, is fit for purpose for the children and staff.

I note that both schools are under the patronage of the Bishop of Galway. As noted by the Senator, there are ongoing conversations between the Bishop of Galway and the patron in regard to all of these matters. I note the Senator's point that Scoil Mhuire, Moycullen, in particular, is looking at an alternative site. The Senator also mentioned a green space owned by Galway County Council which the school wants to use as a play area. The Department is aware that I am here today so the officials will be listening to this debate and, perhaps, they may take note of that if it is not something that has been already brought to their attention.

Suffice to say, all of these schools are in the Department's construction programme in terms of new infrastructure. There are plans for all of them. I will bring back to the Minister, Deputy Foley, the message that the Senator would like all of these matters to be expedited.

Senator Seán Kyne: I thank the Minister of State for the reply. I welcome the progress in regard to Scoil Mhuire, the meeting that is scheduled for 14 October and that following that meeting the Department will advise the school's board of management and its design team of further progression of the project. It is important there is progress in regard to the development of this much sought project. The concern of the community regarding the condition of the pre-fabs is growing all of the time, so it is important the issue is addressed.

I am disappointed with the Minister of State's response in regard to the Scoil Chaitríona projects. There is obviously a lot more needed in regard to progressing that development. The Minister of State did not provide a great deal of information in regard to the Scoil Chaitríona projects. I would appreciate it if she could seek a more comprehensive reply in that regard from

the Department, in particular in regard to the green space and the liaison between Galway City Council and the Department in that regard.

Deputy Josepha Madigan: I apologise for the misunderstanding. I understood the green space was for Scoil Mhuire, Moycullen, but it obviously is for Scoil Chaitríona. I will take back the Senator's comments to the Department. My understanding is that both schools are to be included in the Department's school building programme and the national development plan. The accommodation brief is being developed, but it probably needs to be done at a faster pace. I will speak to the departmental officials on that.

As I said earlier, Scoil Mhuire will also get two new special education classes. I welcome that. It can be often difficult to get schools to open special education facilities. I commend Scoil Mhuire in that regard. I note that Scoil Chaitríona Junior and Scoil Chaitríona Senior also have special education teaching posts. Most children with special educational needs are within mainstream schools. I will relay the Senator's comments in regard to the building projects for Scoil Mhuire, Moycullen, and Scoil Chaitríona Junior and Scoil Chaitríona Senior, Renmore, Galway, to the Minister.

Acting Chairperson (Senator Victor Boyhan): I thank the Minister of State for coming to the House today. It is much appreciated.

Care Services

Acting Chairperson (Senator Victor Boyhan): I welcome the Minister of State, Deputy O'Donovan, to the House for the next Commencement matter on carers in the healthcare system.

Senator Garret Ahearn: I, too, welcome the Minister of State to the Chamber. I appreciate his presence. I welcome the announcement yesterday by the Minister for Social Protection, Deputy Humphreys, of €308,000 to fund digital training for carers to assist them in gaining employment, the appointment of a new well-being manager and investment under the Dormant Accounts Fund to mark European carers day. In fairness, this investment by the Minister, Deputy Humphreys, is very welcome.

Over the last number of weeks, I have had a number of meetings with family carers, including Clare Duffy and Catherine Cox of Family Carers Ireland and also Councillor Richie Molloy from Tipperary who the Acting Chairman would know very well. He does incredible work in south Tipperary in terms of supporting carers on the ground. Carers have faced huge challenges over the last two years with Covid. We sometimes forget how many people are carers and how much they do for people. Approximately 13% of the Irish population over the age of 15 provide care. Family carers provide an average of 38.7 hours care per week, which means that collectively carers provide 19 million hours of unpaid care each week. The annual replacement cost of the care provided by family carers is approximately €20 billion. Carers provide this State with a significant amount of time. Nobody wants to be a carer; it just happens. As a Government, there is much we can do to support them. The carer's guarantee is one initiative. Carers have been asking for this for a long time. Rather than coming to Government every year with their hands out and asking for particular amounts of money, a guaranteed amount for, say, three or five years, and guidelines around how it is to be spent would make a huge difference. In fairness to family carers, they have shown how through this initiative we can end the postcode

lottery system of carers. Currently, whether you get a carer or not is dependent on where you live. Someone could be in County Tipperary and need a carer for a number of hours a week but not be able to get one because they are just not available but a person in County Meath, for instance, could be inundated with options of carers. Carers say they have a structure in place to solve that problem and if the money the Government is providing for a carer's guarantee is ring-fenced directly for family carers rather than the HSE, it would go to better use. That is something we should do.

Last year, they said they needed €5 million in the carer's guarantee. The €2 million that was put through the budget was welcomed, but it was not enough. The key is that it is not even spent yet. It is 11 months since that budget and the €2 million that was given to the HSE to spend on the carer's guarantee was not even spent. What they need is certainty in the annual funding of carer's guarantee.

There are many other things we can do as a Government to recognise the contribution that carers make. They are only on €216 a week. That is €13 more than standard social welfare payments. It is not something people would race to do. There is need for recognition in the form of an increase. In fairness, last year we gave an extra €150 for the carer's payment grant, bringing it to €1,850. If we did that again, bringing it to €2,000, it would show the commitment of the Government to family carers. I look forward to the Minister of State's response.

Minister of State at the Department of Finance (Deputy Patrick O'Donovan): I am taking the Commencement debate on behalf of the Minister of State at the Department of Health, Deputy Feighan, who sends his apologies. I thank the Senator for raising this important issue.

Family carers are the backbone of care provision across the country. Whether caring for a child or a parent with a disability or illness or an elderly family member, carers, through their selfless hard work, knowledge and compassion, enhance the quality of life of the most vulnerable in our society on a daily basis.

The programme for Government aims to prioritise policy actions that protect the most vulnerable, including both those in caring roles and those they care for, as our economy returns to growth in the aftermath of the pandemic. The Department of Health is committed to improving supports for family carers. The national carers' strategy is a cross-departmental strategy, designed around a core vision which recognises and respects carers as key care partners who are supported to maintain their own health and well-being, care with confidence and who are empowered to participate as fully as possible in economic and social life.

Under the strategy, a range of measures have been introduced or extended by the Department to support family carers in recent years. Since September 2018, free GP visit cards have been extended for persons in receipt of the carer's allowance, and the Government commits to further extending this service to those in receipt of the carer's support grant.

On respite care, the HSE has agreed to fund 27,000 hours of emergency respite through Family Carers Ireland to ensure that immediate care needs of care recipients will be met in the event that a carer is unable to continue in his or her caring role due to Covid-19 or other reasons.

In addition, a carer's needs assessment will be piloted in community healthcare organisation, CHO, 2 this year, which will increase our knowledge of carers' needs. Having a better awareness and understanding of the needs of family carers is crucial to ensure that we develop appropriate services to support carers both within and outside of their caring role.

The programme for Government commits to delivering a carer's guarantee proposal, to which the Senator Ahearn referred, that will provide a core basket of services to carers across the country, regardless of where they live. This commitment is consistent with the national carers' strategy, which seeks to support family carers to care with confidence through the provision of adequate information, training, services and supports.

In budget 2021, €2 million was allocated as a first step towards delivering a carer's guarantee, providing a more standard package of supports to family carers in every region, in tandem with the community and voluntary sector. The Department of Health is actively engaging with the HSE and with representative groups on this matter to ensure the funding will improve equity of access to carer supports across the country.

As the Senator will appreciate, however, I cannot comment at this stage on the outcome of the Estimates process or matters which will be the subject of national service planning in 2022. However, I will bring the matters to which the Senator refers to the Minister of State, Deputy Feighan's attention. He committed, because of his absence today, to meet the Senator following the debate to discuss any relevant matters he raised, which I will make note of.

Senator Garret Ahearn: I thank the Minister of State for what he stated regarding the Minister of State, Deputy Feighan. In fairness, Deputy Feighan was in County Tipperary only a couple of weeks ago and he met a dementia group regarding the work it does and the support it needs. He is well aware of it.

Most of the requests I am talking about are essentially in the programme for Government and all I ask is that we implement the programme for Government over the next number of years. That is a genuine request from Family Carers Ireland and we should do what we say we will do. As the Minister of State said, €2 million was ring-fenced last year. That is welcome, but how we fund and spend that is the significant issue.

In the past two weeks we have been talking about a new bank holiday and whether it will be in November or February. For a carer, a family holiday does not exist. They are working every day. They do not choose to do it; they fall into it. Any one of us in this room could be a carer tomorrow and it is only then one will realise the support one needs from Government.

I appreciate the Minister of State's comments and his contribution and I look forward to meeting the Minister of State, Deputy Feighan.

Deputy Patrick O'Donovan: The Government is committed to improving the supports for carers. Nobody disputes the Senator's bone fides in this. We all deal with these in our constituencies on a weekly basis. The Government is committed to improving services for family carers to enable them to continue caring in confidence and the continued implementation of the cross-departmental national carers' strategy.

The programme for Government commits to providing a carer's guarantee, ensuring a core basket of services is available to carers across the country, in tandem with the community and voluntary sector. The Department of Health is engaging with the HSE and representative groups.

Promoting better awareness and understanding of the needs of family carers is also crucial to ensuring we develop appropriate services for carers. Officials in the Department of Health actively engage with carers' representative groups and with family carers through the annual

carers' forum.

Our commitment to family carers is laid out in an ambitious programme for Government. Both my colleagues, the Ministers of State, Deputies Rabbitte and Butler, have devolved responsibilities in these areas as well. The points the Senator raised cross the remits of all three Ministers of State, Deputies Feighan, Butler and Rabbitte. I will bring the points that the Senator has raised to the attention of all three of them.

Sitting suspended at 11.17 a.m. and resumed at 11.30 a.m.

Teachtaireacht ón Dáil - Message from Dáil

An Cathaoirleach: Dáil Éireann has passed the Official Languages (Amendment) Bill 2019 on 6 October 2021 to which the agreement of Seanad Éireann is desired.

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: Before I call the Leader, I am sure that she will join with me in expressing our sympathies to the family of the late great Mr. Tom Burke. Many Members will have known Mr. Burke from the time he spent taking photographs outside the front gates of Leinster House. We all, including, I am sure, the Leader and many others, had our photographs taken by Mr. Burke down through the years. He was outside Kildare House and Leinster House for nearly 50 years and captured images of people with cups of coffee and in unguarded moments. He was always a great character. We express our sympathies on the sad passing of Mr. Burke to his wife Mel, and his children, Paul, Aidan, Yvonne, Derek and Elaine, and to all his grandchildren. I am sure that his colleagues in the media world will also be sad for the family's great loss as well.

Senator Regina Doherty: I concur with the Cathaoirleach. When I heard the news about Mr. Burke's passing yesterday, it was like someone in my extended family had passed away. That is how sad I felt. When I first became a Member of the Oireachtas in 2011, it would not have been possible to meet a nicer person. Mr. Burke was engaging, warm and friendly. What is so sad about his passing yesterday is that it happened so quickly after his retirement. He was looking forward to a long retirement after having worked so hard in one industry with dedication for so many years. It is a real tragedy. I extend my condolences to Mel and to all the family. We are thinking about them.

An tOrd Gnó - Order of Business

Senator Regina Doherty: The Order of Business is No. 1, motion re the arrangements for the sitting of the House on Tuesday, 12 October 2021, to be taken on the conclusion of the Order

of Business, without debate; No. 2, Criminal Justice (Smuggling of Persons) Bill 2021 - Committee Stage, to be taken at 1 p.m.

Senator Eugene Murphy: On behalf of our group, I wish to be associated with the comments expressed by the Cathaoirleach and the Leader on the sad passing of Mr. Tom Burke. When I entered the Oireachtas as a Member in 2016 I think he was the first person who snapped a picture of me and my family at the gate. He was a kind and jovial man. Right across the political spectrum, Mr. Burke was much liked and admired.

Time is limited, but I will address an issue that our party members have discussed over many months, as has the Leader and many other Members. I refer to the state of childcare services. The budget is upon us. The Minister for Finance, Deputy Donohoe, and the Minister for Public Expenditure and Reform, Deputy Michael McGrath, have long lists of what we are all seeking for different parts of the country. It is important that we all make our pitch. Really and truly, though, as has often been said in this House recently, we have let our system of childcare fall apart. That is the only word that I can use to describe the situation. We must quickly ensure that childcare workers are paid a decent and proper wage. It is a priority. It is a responsible job that must be undertaken when we leave our children in the care of others day after day. We rely on those people, many of whom do a very good job, to look after those children. In situations like that, we must ensure that people are properly paid and that the system is properly funded.

We all know that the finances are tight from time to time. It is hard for Governments to have money to allocate to every cause. I feel strongly about this issue, however, and I am sure that the Leader will inform the relevant Ministers of the need in this area. I hope, therefore, that the budget will ensure, once and for all, that all our childcare workers are paid a proper wage and that more people will be attracted to the job. No childcare workers will be left if we continue in the way we are going now. That is a fact. This is the situation in every part of the country. I have often met many people in the Roscommon and Galway region who have told me about the desperate plight of the childcare system. It is important, therefore, that we all focus on childcare. It is important that it is recognised in this budget that childcare workers do a meaningful and important job. It is crucial for us to pay those people properly and to attract people into the system. People will completely fall away from it if we do not look after them.

Senator Seán Kyne: I concur with the Cathaoirleach's comments on, and tribute to, Mr. Tom Burke. Ar dheis Dé go raibh a anam dílis.

Yesterday was European Carers Day. It was intended, "to coordinate and foster national efforts to raise awareness of carers' issues under a pan-European structure". We have had debates on the value and importance of carers and the key role they play. They are the unsung heroes around the country. Every family is different. Some families can rally around if they have the numbers to look after loved ones, while some people may be on their own trying to look after a loved one alongside the pressure of everything else that they must do in their lives as well. The well-being of carers is important. They are looking after a loved one, or whatever, but they also need to be looked after themselves. Carers have their own needs too.

The national carers strategy is long overdue an update and Care Alliance Ireland, CAI, and other groups have been asking for that to be done. It is an area that we must focus on. Covid-19 has been particularly difficult for all society, but carers who were so concerned of bringing Covid into a home were particularly isolated. Research by Care Alliance Ireland shows that 44% of family carers feel less able to cope as time passes. While they might get more accustomed

and more used to the situation and better at the job, the needs and demands of their loved ones also become more onerous as time goes on. It is a role that is very important. I have personal experience of that.

Every family is different in how it is able to cope. It is not always financial, it is also the number of people who are there. I hope that in the budget we will see an increase in the income threshold for qualifying for carer's allowance, and an increase in the rates. It is doubtful I know. The Leader has experience of that role also.

Many carers felt isolated and underserved by traditional support-group models. The flexibility and access to 24-7, peer-to-peer support means so much to family carers, so they can engage on their own terms and at times that fit in with their living and caring duties. It is that collaboration and collegiality that members crave, so they do not feel as isolated and there is that support and advice from people who face similar challenges in similar roles.

On the budget, the key ask of groups has been the national carers strategy. Respite is also a key area for carers. Caring is an onerous and all-consuming task. In many cases it is a full-time job depending on the condition of the carers' loved ones. Respite is so important. We all know, from doing constituency work, the pressures that people can be under. I hope to see some improvements in next week's budget across that very important sector for carers.

Senator Victor Boyhan: I join with others in the tribute to the photographer Mr. Tom Burke. What an extraordinary man. He caught the expressions, the good times, the sad times, the low times and the high times of many politicians. He stood outside Leinster House at the Kildare Street gate and was occasionally at the Merrion Street gate. I came in that side once and said to him, "You are normally at the front." He said, "I go everywhere. I am at every gate taking pictures." A few of us, including my friends and family, were in here on my very first day. He was very kind and said that he would send us on a photograph. He did more than that: he printed off three copies and he sent them on, one of which is sitting in my dining room. I thank his family for that. I am sure that many of us here have pictures that were taken by him and have them up, which captured a particular moment in the particular political life of us as individuals. I want to acknowledge this.

I raised the issue last week, which I wish to raise again, of the enormous waiting lists in excess of 900,000 people who are waiting to see consultants either for treatment or assessment. The list is now heading into 1 million people who are waiting for assessment or treatment. Subsequent to the day on which I spoke, I received a memo detailing and setting out issues around ophthalmology, dermatology, urology, gynaecology, cardiology, respiratory medicine, endocrinology, paediatrics, breast surgery, neurosurgery and oncology. The memo set out the enormous numbers of people who are waiting for scans, consultations and follow-ups. These are all part of this group.

I contacted the National Treatment Purchase Fund, which is an independent State agency that validates all of these figures for the Department, with which it works closely. The figures have gone up in one year by 66,000 people. I am aware that housing is a big issue for Government, for everybody involved in politics, and in life itself, but these waiting list figures are alarming. I am aware that the Minister has committed to establishing another unit. These functions are meant to be part of the National Treatment Purchase Fund's functions. The Minister has spoken about establishing a national task force to tackle the growing hospital waiting lists. Perhaps we will hear something about this in the budget next week and I do not want to pre-

empt that. I now intend to commit myself to standing here once a month to read out the figures because they are alarming. I would like a debate on this issue at some stage in the future.

I thank all of those involved in the debate on wills in the House yesterday. It was a great debate. It was meaningful and interesting. I referred to Teagasc in last night's debate. Teagasc was bombarded online last night with its seminar on inheritance and succession. One can look at this on the Teagasc website. I thank the people involved. Hopefully the Government might come back with its own Bill. I do not have a hang-up about anybody's Bill, I just want this national register of wills in the future. Hopefully we will see something quicker than the nine months that the Government's motion put to the House, and which was agreed by the House, last night. I thank those who engaged constructively in that debate.

Senator Pauline O'Reilly: I welcomed yesterday's debate on succession. It is something very close to my heart and I believe the debate went very well. There was cross-party support for a change in the legislation.

I wish to address the issue of maternity restrictions. I will not say that it is becoming boring at this stage because it is still so traumatic, and we hear new stories every day. We carried 1,000 stories into Leinster House yesterday from mothers and their partners on how difficult this past couple of years have been. As I stood outside Leinster House yesterday one of my own family members was out there while heavily pregnant. It sends shivers down my spine to think that there are continuing restrictions. The Minister for Health, Deputy Stephen Donnelly, addressed the issue yesterday but, with respect, at the very least we need a timeline. I simply do not understand why we are continuing to see these restrictions when the vast majority of Government and Opposition Members are calling for a lifting of restrictions. It simply has to happen. The Minister put it quite well when he spoke in the Seanad yesterday. He said that if it was men who were giving birth these restrictions probably would not be in place and we would actually have a healthcare system that was set up to put women, or men in that case, at the forefront.

This brings me on to another issue in women's healthcare about which I am passionate, that is, menopause care. I welcome the commitment to set up specialist menopause centres across the country. Having engaged with the Irish College of General Practitioners, I am aware that training for GPs in general does not include menopause healthcare as part of the core training, nor does the training include contraception, as I discovered from the Irish Family Planning Association. Both of these areas need to be brought into core training for GPs so that one does not have to go to specialist services for an initial visit and can get the correct information from any GP in any part of the country, and then by all means be referred to specialist care.

Those are a couple of matters I would like to see in the budget. It is not a huge expense but it means an awful lot to all of us here who have advocated on this issue.

An Cathaoirleach: I thank the Senator for raising the issue of access to maternity hospitals. The Senator has been doing this, along with many other Members and the Leader, for months. Regrettably, we do not see a huge improvement.

Senator Lynn Boylan: I wish to raise a matter that has been bubbling away for a number of years in our city, which is now beginning to come to a head. It is the destruction of our historic, cultural and social spaces in our capital city. The Moore Street Quarter is one of the most important intact battlefield sites in Europe and yet it was threatened with complete demolition a number of years ago. It was only after the heroic campaign by the relatives of the 1916 Rising

that the demolition was stalled. The situation is still not fully resolved. When I raised this matter with the Secretary-General of the Council of Europe at the time, she could not believe that a country would destroy such a site to make way for more retail when other European countries were literally rebuilding, brick by brick, their battlefield sites that were destroyed in World War II.

Moore Street is not the only example of how little respect Ireland has for the fabric of its capital city. The O’Rahilly house is another example that was destroyed by a hotel developer. Now we hear that Merchants Arch and the iconic Cobblestone pub are to be modified to make way for hotels. During Covid-19 young people were blocked from accessing public spaces. They were being moved on and we were told that if public toilets were to be provided it would only encourage people to come into the city. Murals are painted over because they do not have planning permission, instead of platforming our artists like every other European city with their fantastic examples of modern and contemporary artists’ work on the walls.

What is happening to our capital city is tragic. We are fast becoming a capital that is purely for tourists and business and not for the communities which actually live here. There are a number of reasons for this problem. One is the city development plan is far too weak. Too often those weaknesses lead to bad planning decisions so the plan must be strengthened. Second, we need to hear from the Minister for Housing, Local Government and Heritage about Government planning policies that have made matters worse, especially the guidelines put in place by the previous Minister, Eoghan Murphy. They must be scrapped. We need planning policy that actually protects the historical fabric and also the contemporary cultural spaces we have within our city to make it vibrant and livable. Finally, we need Dublin to have a directly-elected mayor because only then will we be able to elect somebody who can set out their vision for the city in holistic approach. This is as opposed to the current system where we have the CEO of the city council and councillors who are working, rightly, for their local areas. We absolutely must have a directly-elected mayor to have a vision for the city.

I encourage everybody to sign the petition to stop the destruction of the Cobblestone and the modification of Merchant’s Arch. We must take a stand and preserve what is left of the fabric of our city.

Senator Rebecca Moynihan: I was going to raise exactly the same issue but in a slightly different way. We see the plan to replace Merchant’s Arch with a nine-bedroom hotel. We see the plan to replace the Cobblestone with a nine-bedroom hotel. We are looking at the city develop and essentially hollow-out all its cultural spaces to have a cookie-cutter version of culture one can find anywhere.

In addition to those commercial enterprises and ventures which are essentially being changed into cookie-cutter versions of hotels, we are also seeing a crisis in artistic spaces and studio spaces which has been going on since 2015. In 2015, myself and Councillor Claire Byrne of the Green Party worked on the Dublin City Development Plan to try to include cultural and artistic spaces in it, such that where there would be large-scale developments, there would be an element of studio and cultural space included in it. That came off the back of Broadstone artists’ studios, which had been in operation for 20 years and paid to its landlord more than €1 million in rent during that time. Through that, what was happening was the Department with responsibility for arts and the Arts Council were essentially giving the studios programme funding to be able to pay that landlord its rent. Then the landlord decided to sell up and the organisation was kicked out. The studios were never re-established. We see this happening all over the city. We

see it happening in my area of Dublin 8 at the moment. Pallas Projects/Studios works within the arts and has provided both exhibition and studio space within Dublin 8 at a number of different sites over the last number of years. Its lease is up in February. When that happened at Broadstone, myself and Councillor Byrne set up a studio arts space but what we wanted was for the Department to provide studio and workspace providers with capital funding so they could buy their own buildings and not be kicked out every couple of years.

As part of the budget next week, I would like to see a commitment to capital funding for arts and culture spaces, in Dublin in particular, but also around the country. It is bad policy and bad planning that when it comes to cultural capital we are essentially providing the housing assistance payment, HAP, rather than social housing. I ask the Government look at providing mortgages and long-term loans to artists' studios to be able to buy the premises they are in and to have a clause that ownership reverts to the local authorities if those organisations end up winding up. It is simply unacceptable that artists' studios and places for people to work are living short term to short term. We must be willing to support investment in our cultural capital and our artists by providing them with places to live and places to work.

Senator Lynn Ruane: I also wish to pay my respects to Tom Burke. I remember starting in politics and him making me walk out and back in repeatedly. Whatever type of embarrassment I first felt in front of a camera, he definitely wore it off me after a few of those struts up and down.

I want to speak about care leavers. Returning to the Chamber this week ahead of the budget, I cannot help but think of many young people across the country who are also returning to further education in the last few weeks, or beginning their journey in it for the first time. It is an exciting time but also one which brings many challenges for young people. First and foremost, care leavers carry the trauma of their pre-care and care histories with them into adult life. This trauma does not simply disappear upon reaching adulthood but continues to impact care-experienced people across the lifespan. We must consider the impact this trauma has on a young person trying to progress through further education and offer trauma-informed support to assist them in thriving in these new learning environments. Second, many care leavers do not have access to the traditional family support networks that many other young people do. While some care-experienced young people will continue to live with or receive support from their foster families, others will be living completely independently shortly after their 18th birthday. In transitioning from being in care to being in after-care, young people lose access to many important figures in their lives, such as foster carers, care staff, social workers and therapeutic support staff. After-care workers continue to offer support to young care leavers but this is contingent on the young person's ability to maintain this voluntary working relationship or his or her ability to maintain an education or training placement. Additionally, the availability of the support is often affected by the after-care workers' caseload, which ultimately means different young people in different parts of the country receive different levels of support. Many of these challenges interfere with a young care leaver successfully navigating this important life stage. We must do better for them. We must ensure adequate support is provided to our care-experienced young people to help them break the cycle, thrive in education and training and live happy and healthy lives.

I hope to see some supports or resources for care leavers in the budget. I ask the Leader that we continue holding a debate on the situation for those living in care or who have experienced care.

Senator Ollie Crowe: I want to raise the issue of driver test delays. I appreciate it has been raised before in the House but it remains a significant issue with more than 100,000 people currently waiting for a test, according to the latest figures from the Road Safety Authority, RSA. I want acknowledge the Government has taken action by hiring additional testers and opening ten temporary testing centres but it is simply not enough. It is a huge issue in Galway and across the county. However, there is also a backlog with the driver theory test, with more than 120,000 people waiting for it. This will obviously have a very significant impact, in terms of increasing the number of people waiting for driver tests, when that backlog of in excess of 120,000 people currently waiting for the theory test is cleared. This needs to be resolved and there is only one way to do so, namely, increasing the number of tests being held on a weekly basis. In addition, serious consideration must be given to introducing weekend testing. This will obviously require the hiring of additional testers, a recruitment process involving advertising positions and holding interviews, and will take time. There is no point waiting for another two months when we know exactly what will happen in terms of the number of people waiting and the length of time they are going to have to wait. It is a significant problem in Galway, where there are more than 10,000 students between NUIG and GMIT and they are travelling longer distances because of the accommodation crisis. As such, there are a number of issues. In the grand scheme of things, the cost of this will be a drop in the ocean but it is something that will make an immediate tangible impact on the lives of thousands of young people, particularly those who are naturally not legally allowed to drive alone and are having to pay significantly higher premiums.

I would be grateful if the Leader could contact the Minister for Transport, Deputy Eamon Ryan, and request he appear before the House at his earliest opportunity.

Senator Aisling Dolan: Imagine running a marathon when you are in sixth class. I have never run any marathon. My pinnacle was half the Connemara Marathon. Galway Sports Partnership and Healthy Galway are investing funds from Sport Ireland in Ballinasloe in preparation for a community sports hub application. Marathonkids Ireland is going to be run out in 30 primary schools, so children in sixth class will have the opportunity to embrace running and jogging.

Being healthy and active at all ages is crucial to a general sense of well-being. Even going for a walk will clear one's head. It is crucial to get the routine of being active from a young age because it lasts and sets people up for life.

The Marathonkids Ireland programme has been proven to increase physical activity. Children can start running 600 m and the programme lasts eight weeks. The children get excited when they see their fitness level improve every week. When one learns the importance of being fit at a young age then one will be fit going into secondary school. Being active means young people have a healthy balance and it assists academically by improving focus and concentration. As part of the programme children will be supplied with workbooks and lessons on the benefits of exercise, and the importance of healthy nutrition and hydration. I thank the primary school pupils, and the principals and teachers who will take part in this activity as well.

There are great athletic pursuits in areas. I wish to highlight the fact that 700 children will participate in the finals of the Community Games that will take place at the University of Limerick this weekend. The scheme is so important in rural areas. I am sure that we probably all remember our first race because it was probably organised by the Community Games. From the start, all of these activities have been run by volunteers and it is the parents who have taken

up the mantel of supporting the running of the Community Games. I wish all of the participants well this weekend and reiterate that sport is really important.

Senator Malcolm Byrne: Like Senator Dolan, I wish all of the participants in the finals of the Community Games well. As somebody who has taken part in activities run by the Community Games, I can attest to the fact that it is a wonderful organisation.

An Cathaoirleach: How many medals did the Senator win?

Senator Malcolm Byrne: Curiously enough, I won a medal for art.

An Cathaoirleach: The Senator is gifted in many ways.

Senator Martin Conway: Did the Cathaoirleach win any medals?

Senator Malcolm Byrne: I wish to refer to a crucial decision that the Minister for Agriculture, Food and the Marine must make about the basic payment system. Under the Common Agricultural Policy, as we know, he was successful in that we have maintained a certain level of discretion that allows us to make our own call on the level of convergence. It is important that we continue to support the productive farmers in this country. I do not believe that we should go beyond a rate of 85% convergence. Even if we moved to a rate of 85% many farmers would lose out and that includes many small farmers simply because they have high entitlement values. We can see the value of food production in this country, so it is important that we protect the farm families where there is productivity.

Now is a really difficult time for agriculture. The work is challenging and farmers will be at the front line in the battle against climate change. Farmers are committed to sustainability but they want not just sustainability from an environmental perspective but that family farms are financially sustainable. When the Minister met the representatives of the Wexford branch of the Irish Farmers Association, they made a number of constructive proposals under Pillar II. There has been much discussion, and I tabled a Commencement matter in this House, on how we can support young farmers. It is a real concern that only 5% of the people involved in farming are under the age of 35. I ask the Leader to arrange a debate on the future of farming, food production and ways to ensure the sustainability of farming not just environmentally, which is critical, but also that there is financial sustainability for family farms.

An Cathaoirleach: I congratulate the Senator on winning a medal in the Community Games and on his marathon run last weekend in London.

Senator Martin Conway: I wish to convey my condolences to the family of the late Tom Burke. Many of us will remember him standing outside of Leinster House in the pursuit of photographs over many years. On my very first day in Leinster House, in May 2011, Tom took a photo of me when I approached the gate. He has photographed many of us over the years. He became a good friend to many of us and gave us plenty of advice. I extend my sympathies to his wife, who is originally from County Clare, and family. Ar dheis de go raibh a anam dílis.

I ask the Leader to arrange a debate on the National Maternity Hospital and update us on who owns the site. Yesterday, women and men were outside of Leinster House to protest against the restrictions imposed by Covid and so on. They were right to protest. The hospitality sector and nightclubs have opened and it is unacceptable to still have restrictions placed on the people who seek to accompany women when they have their babies.

We need a debate on the National Maternity Hospital. I fundamentally believe that the hospital should operate completely independent of vested interests, including the church. That should happen, and we should make that happen. I would like an update on the current situation and ask the Leader to schedule a debate on this issue in the not too distant future.

Senator Maria Byrne: I rise to agree with the national neurology strategy and that we need an extra 100 neurology nurses. On Tuesday, 16 April 2019, in this Chamber I raised the issue of neurology services in regard to University Hospital Limerick as it awaited the recruitment of three or four specialist neurology nurses. On that occasion I was told such appointments were part of the national clinical programme for neurology, and that there was going to be a model of care that would be prioritised by the Government for the next five years. On that occasion, I called for one nurse to be appointed even though there was a recommendation that three nurses be appointed. At the moment, there is a report that shows there is a shortage of eight nurses. The University Hospital Limerick specialises in neurology in the mid-west region and it is quite frightening to learn that there is a shortage of eight nurses.

I ask the Leader to invite the Minister for Health to the House to debate this matter. Neurology services are not just a local issue but a national one. Such shortages have created waiting lists as well. The provision of specialist nurses would alleviate the problem because more people could be seen. Plus investing in the recruitment of neurological nurses is cost efficient.

Senator Vincent P. Martin: More than a year ago, in another Chamber, I commended the newly launched East Belfast GAA Club. The club's crest depicts the Harland and Wolff cranes, a sunrise, a red hand, a shamrock and a thistle. The club's logo is written in English, Irish and Ulster Scots and states, "Together". I did not know when I commended the club that its first president was the Irish language activist, Linda Ervine, who people regard as having impeccable loyalist, unionist and Protestant credentials. Linda Ervine MBE is proud to be the first president of a club that has shown how sport can unify. She is a wise person and today she said that people should give the protocol a little time to be worked out. Do not pre-judge or pre-empt it or tear something down for the sake of narrow political gain when the people lose out. Just give it a chance. In a proverbial sense, and without being flippant, calm the jets.

We all know Ms Ervine's late brother-in-law, Mr. David Ervine, as having a courageous voice of peace and reconciliation. Once again, I commend the calm intelligence of putting people first as practised by Linda Ervine and so many others, which is what is needed in that part of this island at this politically delicate point in time. We need to hear lots of voices like Linda Ervine who plans to say an Irish prayer at a controversial event that is due to take place and concerns the foundation of Northern Ireland. Well done, Linda Ervine and well done to everyone who takes the middle ground thus putting people and peace first.

An Cathaoirleach: I join with the Senator in his praise of Linda Ervine and her presidency of the East Belfast GAA club. I was in Belfast during the summer and attended one of the club's camogie games, which it won.

An Cathaoirleach: I join with the Senator in his praise of Linda Ervine and her presidency of the East Belfast GAA Club. I was in Belfast during the summer and attended one of the club's camogie games, which it won. The club is going from strength to strength with its underage structure in a part of Belfast that would not normally have a GAA club. However, the club welcomes everybody from all over the island. Anybody from Kerry, who ends of in g They are going from strength to strength with their underage structure in a part of Belfast that would

not normally have a GAA club. They bring people from all over the island together. Anybody who ends up in Belfast, whether from counties Kerry, Longford or elsewhere, ends up joining the East Belfast GAA Club because it is such a broad church in every sense of the term.

Senator Rónán Mullen: I have just come from chairing an online event entitled, Countering Human Trafficking in Ireland, hosted by the all-party Oireachtas Life and Dignity Group. We heard from two experts, Ms Sunniva McDonagh, a member of the Irish Human Rights and Equality Commission, IHREC, and Dr. Ewelina U. Ochab. Given Ireland's low, tier two or "watchlist" status in the Trafficking in Persons, TIP, report I am sure the House will agree that this is an issue that needs the attention of Oireachtas Members and the Government. The emerging picture is that while efforts are being made to combat human trafficking, we continue to be behind the curve and behind new and emerging events including, for example, the emerging reality of pregnant women being trafficked for the purpose of illegal adoption. One of the points made was that there is a need to put on a statutory footing measures to combat human trafficking that are only operating on an administrative basis currently. Reference was also made to the role of the Workplace Relations Commission, WRC. The people we encounter in nail salons, car washes and so on may have been trafficked. Is the WRC treating that as a labour issue? If a person is undocumented and is not being paid legal wages, is there a perverse incentive for employers to use undocumented people? Are sufficient inspections taking place? Is the WRC the body that ought to be responsible for dealing with the fundamental problem of illegal human trafficking and its impact on human dignity?

We have a long way to go. The presentations that were given online are available and can be emailed to colleagues. I encourage Senators to seek them out and I would be delighted to forward them. This issue is going to run and run and it will continue to need and deserve our attention.

An Cathaoirleach: I thank the Senator for sharing that information on videos relating to human trafficking, a form of modern slavery in today's world. I call Senator Seery Kearney.

Senator Mary Seery Kearney: I want to give a big shout-out to Dublin 8, which came 15th in the world ranking of "coolest" neighbourhoods to live in. It is an area that is full of historic places and fantastic eateries, and everybody should make it their business to visit Dublin 8 as well as other areas in Dublin South-Central.

I wish to raise a serious issue and ask for a debate on it. I have just come from a meeting of the Joint Committee on Disability Matters where we talked about inclusion in political, cultural and social life. Horrific experiences were recounted by artists with visual impairment who lose their entitlement to the blind pension if they accept a commission. The blind pension is dealt with by the section of the Department of Social Protection that deals with the old age pension, and artists are subjected to audits if they report an income. The blind pension is €203 per week and artists are allowed to earn €140 above that, which does not even reach the rate of the pandemic unemployment payment, PUP, that we set up to compensate people during the pandemic. If they fall in love and have a relationship, their partner's income is taken into account and they may lose their blind pension. It costs at least €200 per week extra for a person with a disability to cater for all of the needs that arise out of that disability. We listened to what the witnesses had to say and person after person spoke of experiencing micromanagement by the State. They have to adopt an almost defensive position and defend themselves against the accusation that they are trying to defraud the State. They named it as an "ableist privilege" and the more I hear from witnesses at the disability matters committee, week after week, the more I believe that this

is the reality across our society. We need a national conversation about this and I am calling for a debate in this House on ableist privilege. We must use the fantastic position of this House to call it out, name it and begin the conversation because it is desperately needed.

Senator Barry Ward: Today is National Women's Enterprise Day and it is appropriate to acknowledge the many women involved in business throughout the country who do sterling work at both local and national level. I want to acknowledge a number of excellent businesses in my own area run by women that are unparalleled. I could talk about numerous shops, restaurants, accountancy firms and lawyers in the area but I want to mention a couple in particular, including Jane Carroll Design in Blackrock, a shop that provides good quality clothing and interesting toys for children. Jane had difficulties in the past year when the lease on her building ran out in Blackrock. She had to move to another premises but it is a testament to the strength of her business that she has been able to do so and continues to meet the great demand for her services. Louisa Cameron runs Raven Books in Blackrock, which is recognised nationally as an award-winning bookshop. Raven Books is a small, independent bookseller that sells used and new books. If one goes into Raven Books, one will get great recommendations. Louisa has also run good workshops for children in conjunction with Blackrock Library to set them on the path of reading the kinds of books they want. I also want to mention Pat Kane's Reuzi shop in Foxrock, which sells items that enable people to genuinely follow a path towards a sustainable lifestyle, and Nuala Woulfe's beauty salon in Glasthule. There are many others that I do not have time to mention but it is appropriate on National Women's Enterprise Day that we recognise that so many women throughout the country are at the core of the local economy, delivering services and providing employment and so many other benefits to their local areas.

Senator Tim Lombard: I call for a debate with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media on media rights for sporting events. I am particularly concerned about the GAA because last year the majority of that organisation's matches were only available on pay-per-view platforms, which was quite distressing for many. In 2020, all three Cork senior hurling intercounty matches were only available on a pay-per-view platform. This year we had to get to the All-Ireland final before we could watch the team on our national broadcaster. It is our national sport. We invest money in the GAA through sports capital grants and we back our clubs, parishes and counties on an almost religious basis. The situation whereby pay-per-view platforms have exclusive rights to 12 or 14 championship games every year needs to be examined.

Negotiations on media rights will happen again in 2022 and we need a debate with the Minister on those rights and on whether the State should step in. The State should step in and ensure that GAA matches are available on free platforms so everybody has the opportunity to watch them. As I said, the negotiations will happen next year and we need to get ahead of the ball. We need to make sure that we are in front of this issue and that the 2017 arrangement is not repeated, whereby the majority of games are on a single platform, which means that the section of society that does not have the ability to pay is alienated. The other issue is that the aforementioned arrangement forcing people to go to pubs to watch matches. I have a difficulty with parents having to take young children to the local pub to see their beloved county play a match. It makes no logical sense and undermines the community ethos of the GAA. It is important that we schedule a debate with the Minister on media rights, sport and society.

Senator Garret Ahearn: Senator Ward named four or five people from Dublin in the context of National Women's Enterprise Day. I would like to mention my sister-in-law, Jennifer, who runs a business at home in County Tipperary. She runs a whiskey business at Tipperary

Distillery. She just had a baby a couple of weeks ago.

Senator Rónán Mullen: Since there is honey going around, we can draw the obvious conclusion.

Senator Garret Ahearn: Like a lot of women who are self-employed and who run a business, she is back at work already, bottling whiskey.

I ask the Leader to organise a debate in regard to the roll-out of broadband. Broadband is being rolled out at the moment and, obviously, it was the previous Government which put this through, essentially. The speed of it needs to increase. There are people in Tipperary at Borrisoleigh and Templederry who have been told they can expect to get roll-out of broadband by 2026 or 2027. It is just too far away. There are people in my own community in Grange who are told they should try to get a private provider, such as Imagine, but they are in areas where they are blocked by mountains or trees and they cannot get satellite coverage. They do not have any alternative. As many people are working from home, the roll-out of broadband is very important. It is something Fine Gael has committed to over the last number of years, and people who voted against it previously are now criticising it because it is not being rolled out quickly enough. They are right but imagine how slow it would be if Fine Gael did not push it through at that time.

We have had a good debate on Housing for All. It has come to my attention that two building sites in Limerick have essentially downed tools for the simple reason of the cost of materials. They cannot justify continuing with work on the sites because of the price of materials. They either have to wait until the price of materials drops or they have to renegotiate the cost of doing the job. This is only going to get worse. I know we are going to debate this further with the Minister but there is an evolving situation in regard to the housing crisis. The cost of materials, whether wood, steel or in particular cement, has increased dramatically in recent weeks. It is a real issue that we need to address as quickly as possible.

Senator Micheál Carrigy: I want to raise a couple of issues ahead of the budget. My own family are involved in the coach and bus business. We all know the tourism industry has been decimated. The cost of fuel has risen far ahead of what it is in Northern Ireland. The fact is that operators cannot reclaim VAT on diesel whereas those in the North can, so they are now totally uncompetitive when compared with the Northern Ireland bus companies in terms of getting contracts here. That needs to be looked at.

A good friend of mine, James Cawley, is the policy officer with Independent Living Movement Ireland. He asked me to highlight a number of its concerns. First, there is no legal right to personal assistance services in Ireland. The Government needs to prioritise investment and enact legislation to enable disabled people to live the life they choose. Second, a specific budgetary commitment needs to be made to cost and resource full and timely implementation of moving people out of congregated settings. Some 7.5% of all new social housing and housing provided by approved housing bodies must be ring-fenced for disabled people. We need to increase the public service employment target from 3% to 6%. We also need to invest in a fully accessible transport system which connects disabled people and enables them to be included in the community. There is a need to continue to embed disability in the commitment to equality and human rights budgeting. Disabled persons organisations should be directly consulted and engaged with in all policy discussions impacting on disabled people's lives as they are the experts with their lived experience. It is very important that any decisions that need to be made

are made in conjunction with these organisations that have the lived experience.

An Cathaoirleach: I call the Leader to respond.

Senator Regina Doherty: I thank my colleagues. James Cawley is a person I know well. It is a long time since I have seen him so I want to send him our best regards. I acknowledge the asks. If there was ever an organisation that amplifies the “nothing about us without us” ethos, it is certainly something for Mr. Cawley’s organisation to be credited with.

I know Senator Carrigy raised the cost of fuel and VAT reclamation with the Minister for Finance. I wish him well, in particular in regard to that industry, as it is going to become a very big issue in regard to losing business to our Northern Ireland colleagues and customers.

Senator Ahearn talked about the roll-out of broadband. I very much welcome the all-party consensus on the fact it was a good and right investment to make. To be honest, I do not think there is anything wrong with us clamouring to improve the speed at which it delivers on behalf of the people we serve. I will certainly organise a debate because it seems to have slipped just a little bit. To expect people to wait until 2027 is not on. I will organise that as quickly as I can.

With regard to Senator Lombard’s point, I am reminded that when my children were small, although this is probably not the most politically correct thing to say, the only time we would get to go out for a pint was on a Sunday, when we went down to watch the match in the local GAA club. I take on board the merits of what the Senator is saying and that it is not and should not have to be a necessity. We did it for pleasure and to get out, but the fact families are being forced to do it, in particular to go to pubs in our villages, is just not on. They certainly should not have to do it. It is a debate that we definitely should have. We all cherish different sports and I do not think any sport that is in the national interest, and certainly one that has a national team, not least of which is the GAA, should have to be paid for to be watched. I will certainly raise that and ask for a debate.

Senators Ward and Ahearn extolled the virtues of women in business. I would say that this is something us women knew, long before National Women’s Enterprise Day. I do not think this can be overemphasised and, although we have been talking a lot about women’s issues, it is probably new to me, as a Member of the Seanad, because it is certainly not something we ever did very much of in the Dáil for the last ten years. It is to be commended from the perspective of the Seanad. Women do not just run businesses; they run homes, communities, families, school libraries and they are involved in every single facet and asset that we call this great country of ours. I have to tell the House that I am sorry that they are not recognised a fraction enough, given what they contribute to our society. I thank both Senators for raising National Women’s Enterprise Day.

The coolest place in the world to live is a pretty high accolade, so congratulations to Dublin 8 and to all of the people who represent Dublin 8 here today.

Senator Seery Kearney is right that the Joint Committee on Disability Matters, as an organisation and as a committee, is certainly the right place to highlight what are injustices in the delivery of services and the provision of income supports for people with disabilities. Although this is probably bold and cheeky, when I was Minister with responsibility for social welfare, I obtained some €60,000 in the budget of 2019, I think, and Senator Boyhan might remember this-----

Senator Victor Boyhan: Yes, I do.

Senator Regina Doherty: It was to commission a report on the cost of disability because the €203 flat fee or income support for all people who have disabilities, at entirely different levels of the spectrum and entirely different levels of outgoings because of their disability, just does not cut it. Senator Seery Kearney might ask the Minister where that report is and we might have a debate on that because it will then be based on structured research, and we can have a proper discussion as to what needs to be done.

Senator Mary Seery Kearney: The difficulty is that it is across every Department.

Senator Regina Doherty: It might be a good place for us to start. Let us have a look at the report and see what the recommendations were. I ask the Senator to contact the Minister for that one.

Senator Mullen talked about the meeting he organised this morning. I thank him and I think he is right. I do not know about sending it to everyone but he could definitely send it to me and to all colleagues. I did not have an opportunity to attend this morning. That recent court case in the midlands concerning women totally abusing other women really shocked me. In my mind, we nearly expect men to abuse women and, again, maybe that is a stereotypical image, which is wrong. However, we have a real, serious and growing issue in this country, and it definitely needs to be highlighted. I thank the Senator for that.

Senator Martin talked about East Belfast GAA Club, which was founded just over a year ago. Again, we can shine a light on the fact that Linda Ervine is a very calm, intelligent and respectful woman, and to acknowledge what she said this morning.

Senator Maria Byrne talked about the extra 100 neurology nurses needed around the country and I will certainly ask for a debate. It is shocking that eight are required in one setting that looks after one region of the country. I will try to do that as quickly as I can.

Senator Conway asked for a debate on the continuing saga of the ownership of the national maternity hospital. The recent announcement by the audit and risk committee certainly highlights some of the things that some of us have been saying for quite a long time, that is, there is no way that hospital can be built without it being in full public ownership and without us having full control over it. This is certainly the time for a new debate.

Senator Malcolm Byrne talked about the CAP payments system and the negotiations on CAP. The Senator is absolutely right. We cannot talk about sustainable farming from an environmental perspective without ensuring we have sustainable incomes for those people who work, love and cherish our land. I will organise that debate as quickly as I can.

Senator Dolan talked about Marathonkids Ireland, which is a great initiative and I wish them every success. Senator Crowe raised the issue of the 100,000 people, most of them young, awaiting driving tests. His idea of extending to weekend testing is a great one. I will send a letter in that regard to the Minister.

Senator Ruane asked for a debate on care leavers. I am happy to be able to tell her that a debate on children in care and thereafter is scheduled for 11 November. The Minister agreed to that this morning. I look forward to that debate.

Senator Boylan raised the issue of Merchants Arch and the announcement in recent weeks

of the plans in that regard, which are ludicrous. Why one would knock down something that is so beautiful and precious to build something that is new and average is beyond me. The Senator highlights that there is need for stronger planning legislation and a better plan on behalf of Dublin City Council.

Senator Pauline O'Reilly spoke about last night's debate on succession, which was very welcome. She also raised the issue of maternity restrictions. I am mindful that we will probably have to continue to raise this issue on a weekly basis. Although everybody is singing from the same hymn sheet in regard to the removal of restrictions for one nominated partner in the maternity journey, it does not seem to be happening. Everybody says they want it to happen, but we cannot seem to put our finger on the person who is responsible for making it happen. We need to keep raising it until it does happen to show respect and solidarity to some of the women who came out yesterday. For those who did get the opportunity to go down to the protest yesterday outside Leinster House, it was a warm and emotional protest. The feeling was lovely, perhaps because there were many babies there. It was really lovely, but they do need all of us to support them. I thank Senator Pauline O'Reilly for raising the issue.

Senator Boyhan spoke about waiting lists. It is shocking that there was an increase of 66,000 in one year. I hope it was because of Covid and that it is an overlap, but it means we are right back to trying to catch up on catching up. I will ask for a debate on hospital waiting lists but I encourage Senators to continue to raise the issue even more regularly than once a month.

Senator Kyne spoke about European Carers Day and his requests in regard to the budget, in particular for a review of the national carers strategy. Senator Murphy opened today's Order of Business with a request for a debate on childcare. It was also raised by a number of other colleagues this week. It certainly is timely. I have asked for that debate. I do not think it will happen before the budget but it will have to happen as soon as it possibly can.

Order of Business agreed to.

Sitting Arrangements: Motion

Senator Regina Doherty: I move:

That, notwithstanding anything in the Standing Orders relative to Public Business, the Seanad on its rising on Thursday, 7th October, 2021, shall adjourn until 12 noon on Tuesday, 12th October, 2021, and the following arrangements shall apply:

- (a) Commencement matters shall be taken at 12 noon;
- (b) Standing Order 30 shall stand suspended;
- (c) The Order of Business shall be proposed at 3.30 p.m.

Question put and agreed to.

Sitting suspended at 12.33 p.m. and resumed at 1 p.m.

Criminal Justice (Smuggling of Persons) Bill 2021: Committee Stage

Section 1 agreed to.

SECTION 2

Senator Lynn Ruane: I move amendment No. 1:

In page 6, between lines 8 and 9, to insert the following:

“ “humanitarian assistance” means the provision of services that help migrants to access their fundamental rights (including to health care, shelter, hygiene and legal assistance) and to live with dignity, or any action guided by the principles of humanity, solidarity, impartiality and independence;”.

I welcome the Minister of State. While it may not be apparent as we stand here today in the Chamber, the language used in this Bill has real life and death consequences. At the height of migration into Europe from conflict areas in 2016, military ships, including the Defence Forces’ *LÉ Róisín* and *LÉ Eithne*, were assisting boats that smugglers had left stranded in the middle of the sea. In 2019, however, the EU mission named Operation Sophia, which called on those ships, was wound up. At the time, this drew criticism from organisations such as Amnesty International and the Irish Refugee Council.

No definition of what constitutes humanitarian assistance is provided in the Bill or in the EU or UN legislation that the Bill is seeking to transpose into Irish law. The lack of definition has been a consistent issue with each of those legislative measures. This issue was highlighted in the European Parliament’s 2018 study, which was commissioned by the European Parliament’s Policy Department for Citizens’ Rights and European Affairs and aimed to assess how fit for purpose the facilitation directive, which this Bill is seeking to transpose into Irish law, was. The department decided to use the definition in our proposal as the study’s basis.

The Irish Human Rights and Equality Commission, IHREC, has made it clear that it is crucial that a definition of what constitutes humanitarian assistance be made explicit in the Bill. Since we sit on the UN Security Council, the simple addition of this definition would set us apart as standard-bearers for the protection of vulnerable people worldwide. There have been more than 1,300 deaths in the Mediterranean since the start of the year. Adding this definition would go a long way towards preventing the future loss of life. I hope that the Minister of State will consider accepting this amendment on defining “humanitarian assistance” in the Bill.

Senator Alice-Mary Higgins: I will speak briefly. Later, we will discuss amendments dealing with how humanitarian assistance is treated under legislation. The definition that we have proposed is based on the European Parliament’s report. It relates to fundamental rights and, in the wider sense, human rights. We have gone with a definition that has been used and that has strong agreement, but the core of our argument is that there must be a definition and that humanitarian assistance should be recognised.

In terms of fundamental rights and human rights, the list our amendment contains is not exclusive. Rather, it contains inclusive examples such as healthcare, shelter, hygiene and, crucially, legal assistance, in which regard we will discuss specific measures later, for example, rights under the European convention and refugees’ rights.

I wish to note something that the IHREC highlighted in its original submission on the Bill. Although they do not need to be enumerated in this amendment, the specific rights of women, children, including girls, and persons with disabilities must also form part of the framework of rights that need to be regarded where humanitarian assistance is relevant.

Senator Barry Ward: I have a brief question on order and procedure. I recognise what the Senators are doing. In light of what they have said about the definitions they propose to insert in the context of later amendments that make reference to the term “humanitarian assistance”, for example, a proposed new section 9 under amendment No. 12, is it in order to discuss those amendments now to give us all clarity on where the Senators are coming from? If amendment No. 1 is not accepted, what will happen to amendment No. 12? It might make more sense to discuss them all together.

Acting Chairperson (Senator Eugene Murphy): My understanding is that they are not grouped, so we have to move as set out on this paper. Regrettably, we cannot discuss the others now.

Minister of State at the Department of Justice (Deputy James Browne): I thank the Senators for their proposal. I recognise the desire to increase clarity in this area. In providing a general defence of humanitarian assistance, we are going well beyond what most other member states have done in the implementation of the same directive. The discretion in Article 1(2) to exclude humanitarian assistance from the scope of the offence has been taken up by only seven member states and in many cases, the exemption provided by those states is more narrowly drawn than what we have proposed within this legislation.

The defence in the Bill is broad and generally applicable. It covers those active humanitarian assistance purposes otherwise than for material gain. It also makes special provision for those who are paid employees of humanitarian assistance organisations.

While I understand the desire to define each and every term used, there is a balance to be struck between attempting to foresee every eventuality as legislators and leaving the courts open to interpret, apply and, indeed, develop the law based on the facts of specific cases.

The EU Commission conducted a comprehensive review of the facilitators’ package in 2007 and the majority view among member states is that adding a definition of humanitarian assistance would not be helpful in increasing legal certainty. The conduct within the scope of the EU instruments is diverse. Smuggling can take many forms. Conversely, the humanitarian assistance it looks like in specific cases cannot always be envisaged in advance. Attempts to define the term tend to set it either too broadly as to be potentially applicable in any situation, legitimate or otherwise, or too narrowly by listing some factors and not others.

I would also mention in passing that while we are naturally looking at this through an Irish lens, those seeking the protection of the defence might not be based or operating in Ireland. What we might consider clear-cut here is not necessarily so elsewhere. In my view, this is more appropriately dealt with within the facts of individual cases that may come before a court.

Given the breadth of the defence as it is drafted, I do not believe that there is a real risk of an unjustified prosecution and I do not accept that bona fide organisations now find themselves in jeopardy. Similar language has been used in the Illegal Immigrants (Trafficking) Act 2000 and I have not seen any evidence that it has created difficulties for humanitarian organisations. A similar conclusion was reached by the Commission in a 2017 evaluation.

In the circumstances, I cannot accept the amendment.

Senator Alice-Mary Higgins: I will be brief because we will come to the points the Minister of State was making later regarding the adequacy of a defence approach. We will have an opportunity to go back and forth on that.

I do not agree that a defence versus an exemption is an adequate approach or, indeed, an approach of leadership when, as we have heard, seven countries have given a full exemption. We will have an opportunity to discuss that in subsequent amendments in more detail.

I note what the Minister of State has said on where cases might take place. There have been prosecutions which have been designed to chill engagement in humanitarian activity. In fact, there is a large number of examples of that we might get to discuss later.

Acting Chairperson (Senator Eugene Murphy): How stands the amendment?

Senator Lynn Ruane: I will press the amendment.

Amendment put and declared lost.

Senator Lynn Ruane: I move amendment No. 2:

In page 6, between lines 26 and 27, to insert the following:

“ “smuggling of people” means the procurement, in order to obtain, directly or indirectly a financial or other material benefit, of the illegal entry of a person into a state party of which the person is not a national or a permanent resident;”.

This also relates to the definitions in the Bill. One of the key issues of the Bill is the lack of precision in its use of language. This lack of precision ultimately leads to vulnerable people falling between gaps in the legislation.

There is no definition provided for the smuggling of people, despite the fact that this is the central tenet of the Bill. The definition provided is transposed from the EU protocol against the smuggling of migrants by land, sea and air, which the legislation is seeking to implement.

One of the key issues of the Bill is the lack of precision in its use of language. This lack of precision ultimately leads, as I said, to vulnerable people falling through the gaps of the legislation. By adopting this amendment and accepting this working definition of who constitutes a smuggled person, it will ultimately help officials in the practical reality of identifying who is and who is not a smuggled person.

Senator Alice-Mary Higgins: I support the amendment.

Senator Barry Ward: I understand where the Senators are coming from. Given the Long Title makes it clear what this Bill is and the link into the international treaties and agreements to which we are subject, I wonder if this is necessary. I acknowledge what Senator Ruane has said but I would be interested to hear what the Minister of State has to say. I would have thought that this is probably covered by what is in the Bill.

Deputy James Browne: I thank the Senators for their comments. There are two aspects to the amendment: adding a definition of “people smuggling” in the first place and including in that new definition a qualification that it is for the purposes of obtaining a financial or other

material benefit.

In terms of having a definition at all, the specific term of “smuggling of people” is not used in the offences as drafted and it would not have an immediate effect in terms of the Bill. I can see, however, that the term is used in subsequent proposed amendments and would assume it is added for the purpose of those amendments rather than for the Bill as a whole.

Ultimately, the offences themselves, in sections 6, 7 and 8, define what smuggling of persons is for the purpose of the Bill and do so with the necessary precision. Where necessary, those sections are referred to and I do not believe that a stand-alone definition is needed.

The second element is whether smuggling of persons should be considered to necessarily involve a financial or material benefit. This question arises in several of the amendments and I intend to speak to them now because it will be relevant to those as well. This is something we debated at some length on Second Stage. I accept there are differences in approach between the UN protocol, which includes the necessity for an element of material gain, and the EU instruments, which do not have that requirement. However, these instruments set the minimum standards for what must be considered criminal activity and do not preclude the approach that we have taken.

The EU Fundamental Rights Agency, EUFRA, has considered this in some depth. Broadly speaking, the agency’s conclusions were that the regime should have financial or material gain as an element of all the smuggling offences or exclude humanitarian assistance from those offences. Similarly requiring financial or material gain as an element of all offences is not an option currently under the EU instruments. It is possible to require it for facilitating residence as opposed to facilitating entry but there are clearly practical difficulties where those concepts start to overlap.

As we discussed on Second Stage, including financial or material gain in the offence places the burden of proof on the prosecutor in situations where payment has taken place outside the State. Based on this and the vital imperative of being able to prosecute serious offences, we have sought to strike an appropriate balance that reflects our intention, which is to focus on for-profit smuggling while also not placing an impossible burden on prosecutors. That approach, as we have discussed, is not to require financial or material gain to be proved by the prosecution as an element but to provide a broad humanitarian assistance defence.

We have also included an important provision in respect of facilitating presence in the State. Section 5(2), which makes clear that a person does not commit an offence by providing goods or services in the ordinary course of business, addresses a key EUFRA concern regarding the possible criminalisation of, for example, landlords providing accommodation.

I believe that, taken together, this is the most practical and balanced solution and one that will most effectively target the for-profit smuggling. In the circumstances, I cannot accept the amendment.

Amendment put and declared lost.

Section 2 agreed to.

Sections 3 and 4 agreed to.

NEW SECTION

Senator Lynn Ruane: I move amendment No. 3:

In page 7, between lines 10 and 11, to insert the following:

“Rights and protections of smuggled persons

5. The State shall ensure that all its functions carried out under this Act are in a manner consistent with—

(a) the 1951 Convention relating to the Status of Refugees, and

(b) the European Convention on Human Rights.”.

This amendment relates to the rights and protections of smuggled persons. As noted by my Civil Engagement Group colleague, Senator Black, on Second Stage last week, the Constitution as well as European and international law offers several fundamental protections to everyone who is born on our island or arrives at our shores regardless of his or her migration status. People who have been smuggled are entitled to these rights and they should be clearly stated within this Bill.

This amendment does not look to exceed any standard set by the EU directive, which this legislation is seeking to implement in domestic law; rather it looks to merely meet the standard set by them and explicitly state them within the Bill.

This amendment looks to make explicit the rights afforded to some of the world’s most vulnerable people. To make these rights afforded to smuggled people explicit within the Bill would also bring it in line with the Court of Justice of the European Union. In 2014, the court confirmed that personal rights afforded to European citizens and laid out in the European Convention on Human Rights Act 2003 as well as the Charter of Fundamental Rights are also afforded to those people who are smuggled.

I hope the Minister of State can accept this amendment.

Senator Alice-Mary Higgins: As Senator Ruane outlined, we are aware of these existing but the core is that the functions under this Act are carried out. We have had a litany of cases. Many parts of the Bill, for example, relate to Irish ships and to ships in the Mediterranean Sea. We have had situations of serious concern, with breaches of human rights in interventions in the Mediterranean. I know that Belarus is not directly concerned here but we heard about it in the debate. A member state, Poland, is effectively denying people their rights under the Convention Relating to the Status of Refugees, by *refoulement* and pushing people back into Belarus who have crossed that border. It is important that we are clear that no matter what means people have come into contact with the Irish State through, and indeed other states, they are entitled to their rights under the Convention Relating to the Status of Refugees. The European Convention on Human Rights, ECHR, must also apply. This is a core issue and there is a danger. There has been a sense of jeopardy and of systematic efforts by the European Union in some of the immigration control deals that it signed with Libya, Sudan and others, and in practice, with practical measures relating to how borders have been treated, the militarisation of borders, and how people have been pushed back across them, with a refusal to recognise that somebody is physically within European Union protection and entitled to those rights. These are not additions. This is to make sure that the State puts in place measures and scrutinises them to make sure that they are being reflected in the way that the different functions under this legislation

are being delivered.

Senator Barry Ward: I am sympathetic to what Senators are proposing to put in here. However, the Convention Relating to the Status of Refugees and the ECHR already apply. There is no doubt about that. That fact has been recognised by courts in this jurisdiction, in Strasbourg and elsewhere. In the circumstances, I do not think it is necessary to put this in, notwithstanding the legitimate concerns and issues that Senator Higgins has raised, the justifiable difficulty she has mentioned, and transgressions of these international agreements. I am concerned that if we put this amendment into the Bill, it would then suggest in other Acts where it has not been inserted that there is somehow less clarity about the obligations of the State under the Convention Relating to the Status of Refugees. I would be interested to hear what the Minister of State has to say but I wonder if we are creating a knock-on consequence that is unforeseen at this juncture.

Deputy James Browne: I thank the Senators for their comments and I appreciate why this amendment is being sought. It is important to emphasise that the State protects the rights of all of those who come into the State, whether they have been smuggled or not, and those rights arise under the Constitution as well as the 1951 convention, the ECHR and other instruments. Both the ECHR and the 1951 convention are given effect across the breadth of our law. In respect of those seeking asylum, this is most notable in the International Protection Act 2015. The principle of non-*refoulement* is included in sections 50 and 50A of the Act. We believe that the instruments were given full effect already and in the circumstances, I cannot accept the amendment.

Senator Alice-Mary Higgins: On Senator Ward's points, we have tried to address that in our phrasing. We did not say that the State shall perform its functions in a manner consistent with this. We are conscious that the State is already obliged to do that. We are really looking for an extra level of the State ensuring the operation of these functions, especially since there are sections of this legislation where power is delegated and we have engagement with other states within the protocol. At present, Poland is clearly signalling that it will not abide by the Convention Relating to the Status of Refugees and blatantly disregarding the European Convention on Human Rights. When we come to it, which we will because of the state of origin rules, it will place an obligation on us because we cannot simply delegate if there is non-*refoulement*. We will also have a responsibility to ensure we do not allow persons to be placed in jeopardy of their rights because of these conventions not being recognised.

I understand that the Minister of State is telling us that these rules apply and we all agree that they should apply. Different kinds of actions that will happen under this legislation will be looked at in a granular way. We need risk-proofing. There might be an opportunity between Committee Stage and Report Stage for us to meet the Department and for the Minister of State to tell us how we can be sure these will be applied. What will the checks be? I have no doubt that the checks for certain functions under this legislation are robust but there are also new functions. Perhaps we might need to press that now. It is core to our concern so I would appreciate if we could sit with the Department and talk through what steps ensure that this is applied. It is unfortunate that we cannot be confident that other signatories to these conventions will apply them. We need a practical test. We do not need to be solely in the letter but also in the spirit and practice of these conventions. It is unfortunate that we are seeing an erosion of their implementation.

Deputy James Browne: I am happy to facilitate the conversation with the Department. I

did that with the Conveyancing Act and will certainly make sure that happens again with this legislation. I understand the Senator's concerns. I have seen videos of what is happening on the border of the European Union with Belarus. Our duty is to ensure that these rights are upheld. I do not think the proper approach is to put it in this individual Bill and I share Senator Ward's concerns that having it in one Act and not others may lead to it being leveraged to say that it is more important here than elsewhere. I hear what Senator Higgins is saying. I will certainly facilitate that conversation. Perhaps we can look at it later.

Senator Lynn Ruane: On the basis that we may have a conversation about this amendment, I will withdraw it with the right to resubmit on Report Stage.

Amendment, by leave, withdrawn.

Section 5 agreed to.

SECTION 6

Acting Chairperson (Senator Eugene Murphy): Amendments Nos. 4 and 5 are related and may be discussed together, by agreement.

Senator Lynn Ruane: I move amendment No. 4:

In page 8, line 13, after “intentionally” to insert “and for financial or material benefit”.

Amendments Nos. 4 and 5 were highlighted in the Irish Human Rights and Equality Commission's recommendations on the Bill. Under the 2002 EU directive, the facilitator of entry and transit does not need to have obtained any financial benefit from the smuggling in order for it to be considered a crime. However, Article 6.1 of the protocol requires that the act be for financial gain or other material benefit. The United Nations Office on Drugs and Crime has gone further and stated that the financial and material benefit of the crime is a key component of the international definition. It notes that it was intended by the drafters to ensure that those who provided support for smuggled persons for humanitarian and family reasons were not prosecuted. Criminalising people-smuggling without requiring a financial or other material element to the crime may have the effect of criminalising a wider range of circumstances not intended under the protocol including, for example, people providing assistance on the basis of family or humanitarian grounds. Research by the European Union has found that those involved in providing assistance to irregular migrants report that they fear sanctions and can also experience intimidation by some national authorities when carrying out their work. This research is further corroborated by a report on *The Journal* by Gráinne Ní Aodha, which found that such a clause is scaring rescue ships in the Mediterranean, operated by Médecins Sans Frontières. This comes at a time when, as I said on earlier amendments, 1,300 people have lost their lives making the treacherous journey across the sea.

I ask that this amendment be accepted to protect those vulnerable people and those who look to assist them for humanitarian reasons.

Senator Alice-Mary Higgins: On Second Stage the Minister of State spoke of why the specific language on “for material benefit” had been removed. I suggest there is always balance. The danger presented by removing that caveat that it is for financial and material benefit is greater than the benefit outlined. It is a danger in creating a chilling effect on humanitarian action, human rights, search and rescue and ships. There is a sense of jeopardy. We will come

to that in the humanitarian part. Look at the scale. Previously there was a position where there was a clear requirement that smuggling was only smuggling where there was material benefit. That is why we tried to address it in the definitions. Smuggling is smuggling when it is done for financial and material benefit. That is the understanding. That should be reflected in cases and prosecution and legal action. That is consistent with the original principle.

The Minister of State raised the prospect of prosecutions becoming difficult but in the report on why Ireland was on the tier 2 list in the smuggling of persons, prosecution was only a small part. Much of the cause was the lack of an independent human trafficking rapporteur and the lack of a formal national anti-trafficking forum. Again, we are speaking a lot about trafficking here. It also referred to the need for increased funding, particularly for victim assistance, and for anti-trafficking public awareness campaigns and the need for better training.

There are many things that can be improved in how Ireland identifies, which was another crucial issue, and prosecutes smuggling and ultimately convicts human traffickers. It identified many areas where there was a need for improvement. I believe those should be pursued rather than creating an unintended consequence or jeopardy by eroding or changing the grounds of prosecution by removing the requirement that smuggling would be for financial or material benefit. It is a little bit of a hammer. Look at the one position where we are really clear that one can only be prosecuted where it is for financial and material benefit.

We look to the extreme where someone can be prosecuted even when it is humanitarian action or intervention, which is the proposed law now. Even if a person is working for a human rights NGO, he or she can be prosecuted. Such people may use it as a defence but they are still being prosecuted. Then there is the in-between position, perhaps, which would be an exemption for humanitarian and human rights actions. We are almost moving two points away. We are taking two steps where we are creating a jeopardy. We are trying to remove a defence for smugglers or traffickers that the Minister of State feels they may abuse but creating a jeopardy for good actors. I do not believe the balance between those two things is right in this Bill. Because the balance is not right and there is no clear exemption for human rights actors and for humanitarian action, we would be better to maintain the current requirement that smuggling and trafficking be shown to be for financial and material benefit.

Senator Barry Ward: I had not looked at this from the perspective that the Senators are coming from and had not considered it in the context of the protocol. On Second Stage I indicated that there should be additional references to recklessness in sections 6(1)(b) and 7(1)(b) in terms of whether the person had a reasonable cause to believe or whether the person was reckless as to whether he or she believed that. The fewer stumbling blocks we put in the way of prosecutions in general from the point of view of achieving not only prosecutions but convictions under this Act the better. Therefore, I was in favour of the notion that the principle of recklessness would also be considered as part of these offences. I spoke to the departmental officials and I understand the Minister of State is satisfied that is not required. I have not put in an amendment and I accept that.

This amendment and amendment No. 5 seek to create two elements to the offence in terms of intention and a purpose for the offence to be committed, being the financial or material benefit. The Senators are coming at it from the perspective that they are following the protocol and they want to avoid a situation where individuals who do it for the right reason, which is obviously a subjective thing, would not fall foul of the Act. However, I would make two points on that. First, even if we are talking about, say, a family member who assisted the smuggling of a

brother, sister, son or daughter or whoever it might be, across the border there is no guarantee that the material benefit aspect of that would exclude the person from a prosecution.

Second, I refer to section 9(1)(b) of the Act. I say this accepting the legitimate distinction that Senator Higgins particularly draws between a defence and an exemption. Section 9(1)(b) essentially says the defence is available where activity takes place “for the purpose of providing humanitarian assistance, otherwise than for the purpose of obtaining, directly or indirectly, a financial or material benefit”. It is my position that this covers exactly what the Senator is trying to do. I know she does not agree with me. To a large extent we need to rely on the prosecutorial discretion that is operated by the DPP or whatever the prosecutorial authority is in respect of dealing with these offences.

Senator Higgins is quite right in distinguishing between an exemption and an offence but the reality is in the practice of these matters, when the DPP or whatever prosecutorial authority is making a decision about whether or not to prosecute a person or how that prosecution happens, a factor they will consider is whether or not a defence exists. There are three factors that come into consideration when a prosecution is being decided on. One is whether a conviction is likely or possible under the Act. Whether an offence exists or not is a key component in that. It strikes me as extremely unlikely that a prosecution would proceed in circumstances where somebody could avail of the defence under section 9(1)(b). Therefore, although there is a distinction between an exemption and a defence, I cannot envisage a situation where a prosecutorial authority would proceed to charge someone and prosecute someone under this Act when that defence is available to the person.

There might be a dispute about whether the defence is available to the person or not but in the same way there might be a dispute about whether the exemption applies to the person or not. Therefore, while I recognise the absolute bona fides of amendments Nos. 4 and 5, and I had my own concerns about the phrasing of sections 6 and 7, in framing this Bill, we need to rely on the fact that there is a significant mechanism for prosecuting these matters that involves the good judgment of people who very much know what they are doing and therefore will take into consideration the provisions of section 9. In those circumstances I would be loath to add in another hurdle for prosecutors to get over simply to possibly safeguard people who I suggest are already safeguarded. I would rather rely on the common sense of a prosecutor to decide that a prosecution is not an appropriate path in the particular circumstances of a given set of facts.

Deputy James Browne: These amendments would include financial and material benefit as an element of the offence to be proved by the prosecution. I have discussed this at some length in respect of the previous amendments and it is, of course, something which has been considered in-depth by officials in consultation with the Office of the Attorney General. I do acknowledge that there is a difference between the UN protocols and the EU instruments in their approach. It is not an option available under these instruments to require financial or material gain in respect of entry or transit. However, more broadly, as I set out in my contribution on the previous amendment, the approach of not requiring a financial material gain element of the offence but providing a comprehensive humanitarian assistance defence, complemented by the clarification in section 5(2), is the most effective and balanced one. Under the circumstances, I cannot accept the amendment.

Senator Alice-Mary Higgins: I have a few points to make. As a legislator, I do not and cannot rely on prosecutorial power. I believe in the separation of powers. Therefore, we need to take our powers seriously and I would not abdicate our responsibilities to ensure the best pos-

sible quality of legislation be deferred, in the hope of prosecutorial discretion. I am also aware that circumstances change. We would not have believed five or ten years ago some of the practices that we have seen happening across Europe. I do not believe we would have seen some of the erosions of the basic European Convention on Human Rights, ECHR. We need to legislate for good law and then hope for good interpretation. We need to legislate to the highest standard.

On prosecutorial discretion, it might be useful to have a sense as to what extent prosecutorial discretion is being used to not prosecute cases? How many cases have been prosecuted, but have been unsuccessful because of the failure to prove financial or material benefit? In my understanding, we have not had a huge number of prosecutions. We, therefore, have not tested the premise that proving financial and material benefit will be so difficult that a conviction cannot be achieved. That has not been robustly and lengthily tested. We have a small number of cases in that respect. Again, that could be addressed by looking at what we consider as adequate evidence of financial or material benefits. There are many ways to approach that, if prosecutors are genuinely encountering an obstacle. On one side, we are going from the impression that it would be hard to prove this but, on the other side, we are creating a danger. As I said, the exemption is the middle ground here. It is not that Ireland has something quite good. Moving away from the requirement to prove financial or material benefit is a big thing. This would be to move to the point whereby humanitarian organisations and humanitarian individuals will end up in the dock. We know what it is to be put into the dock and to be in the position of defending oneself. We know there is a litany of people in the defence position in the State. They may become extremely vulnerable, face an inequality of arms, be disempowered and need free legal aid. In some cases, they may not receive free legal aid. We create a set of stresses and pressures on these people. This is not a simple position to be in. An exemption can be shown to ensure that we will not have needless wrongful prosecutions. A defence only comes into place after prosecution.

As Senator Ward put it, we should not prosecute cases where there is clearly a humanitarian role or humanitarian purpose, or if somebody is working for an NGO that has a clear human rights agenda and record. That might be manifest to a Director of Public Prosecutions. However, as legislators, we should not merely hope that the Director of Public Prosecutions would do the right thing in those situations. We should send a signal in law that such circumstances are exempt.

I would suggest we keep the defence. There will be cases whereby that exemption may not be applied when it should have been. There is more danger of the exemption not being applied when it should be applied, than it being applied when it should not have been. In those circumstances, the defence may come in.

What we do not want is that every time there is an action of humanitarian search and rescue, the case will go to the Office of the Director of Public Prosecutions for an invisible pre-trial in which we are not included, where it will decide whether or not to prosecute. From there, the case would have to be argued out in the defence dock. If we know that we should not be prosecuting these cases, let us make them exempt from prosecution.

Senator Lynn Ruane: Briefly, as I was listening to Senator Ward, I was thinking about the practical application of including an amendment where we create that exemption. I was listening to Senator Ward talk about the recklessness piece. He has obviously decided that it is accounted for here. There is direct correlation between not having an exemption and creating a situation of recklessness, because the exemption piece is not in it. Therefore, if humanitarian

aid workers and their family members do not feel that they are protected by the law, they may then make decisions on how they move across borders in a completely different way. This, in fact, increases the possibility of reckless journeys. Recklessness in another sense would relate to people who are doing this for financial benefit and to those who do not pay attention to people's care needs as they move. However, to not have the exemption piece in would increase the possibility of reckless situations. This is because people would have to take more risk if they are not protected by the law, while they are moving people from a humanitarian crisis.

Deputy James Browne: One of the reasons we have not had prosecutions is that the DPP is of the view that it cannot secure prosecutions. This is because of the almost impossibility of proving material or financial gain in a situation where that has occurred somewhere outside of the State. It is not open to the DPP to run test cases. It has to make decisions on whether or not to prosecute, based on principles and guidelines. One of those guidelines is a defence. We hope that where the DPP believes a defence is available that it will not prosecute. That is one level. The defence obviously is available if the case ends up going to court. However, we would hope that if it were a clear case of humanitarian assistance that that would not happen. Even if we put in a definition, the DPP will still have to make a decision as to whether it believes it came within the definition within this legislation. No matter what way it is done, there will always be a judgment call by the DPP, based on its guidelines and principles, on whether or not to prosecute. What we do have, and all the research would certainly point in this direction, is that there is an almost impossibility of getting prosecutions against those who are smuggling. That is what we need to get to, and what we are trying to do with this legislation. In the circumstances, the balance is found here within the legislation as we have drafted it.

Senator Alice-Mary Higgins: I am sorry to keep pressing on this. As the Minister of State said, the decision has been not to prosecute. Of course, we want the DPP to be able to do its work. We try to produce good laws so that it can do that. However, the fact is that we are not being given an evidence base that it cannot secure prosecutions. Even if we decide to give the DPP the benefit of the doubt, and listen to the concern that has been expressed and try to give it a better opportunity, that is only one step. Another step is that we would then delegate the question of whether it should be prosecuting humanitarian cases and humanitarian actions.

As a legislator, who is separate from the courts, and who is trying to produce laws that will be used and interpreted by the courts and by our justice system, I am not happy, but I am willing to take this one step. However, it is a step too far to remove this potential defence whereby the courts must prove financial and material gain. That is one thing. We are also creating the burden of defence, which is taking two steps. This is taking it too far. We have not had evidence of why these prosecutions do not succeed. We were merely given an interpretation that it was believed that they would not succeed.

We are now saying that we will leave it to the DPP to interpret whether or not it would prosecute in cases where the new defences around humanitarian rescue around humanitarian action are present. In my view, this would abdicate too many of our responsibilities. If there were an exemption, it would send a clear signal in terms of prosecution. It may be that the DPP or others may say that they do not believe the exemption applies in this case. They can still then prosecute a case because they have deemed that the exemption does not apply. In stating that the defence may come later, that is really the same argument as used previously, in that there is a belief that it will not be possible to win a case against a person. It is a different relationship. There is still an adversarial relationship. It is still being envisaged that the person will be prosecuted and an estimation being made of whether it would be possible to win the case or

to use this defence. The person concerned would still be placed in a position where he or she is a defendant and a potential offender. It is a different relationship to one where the DPP's office states that it does not believe that the law has been breached and chooses not to prosecute because there is an exemption.

An exemption is an empowering tool. It is a clearer one than a defence relationship. Many things are defences and must be argued out in courtrooms. We see that happening all the time. This is a step too far. The discretionary space is not an appropriate one to allow us to abdicate our responsibilities regarding the core intention here. The reason that there was an option for exemption in the directive is because there was a recognised jeopardy faced in cases of humanitarian action. It was recognised as a danger and that is why an exemption was presented as an option. I do not believe that hoping for discretion from the DPP is a sufficient response to that jeopardy.

Amendment put and declared lost.

Section 6 agreed to.

SECTION 7

Senator Lynn Ruane: I move amendment No. 5:

In page 8, line 27, after “intentionally” to insert “and for financial or material benefit”.

Amendment put and declared lost.

Section 7 agreed to.

SECTION 8

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

In page 10, line 1, to delete “or has reasonable cause to believe”.

I will not spend long on this amendment, but I am concerned with the interpretation here. Section 8(1)(b) refers to a person who “knows or has reasonable cause to believe that such entry into, transit across or presence in the State is in breach of a specified provision”. What was unclear regarding this section was the role of understanding of the laws of the state in the context of somebody entering, transiting across or becoming present in it. Is the meaning in this regard perhaps related to travel identity documents and their validity?

In many cases, where people are rescuing others who are drowning or in abandoned ships, there is not a reasonable mechanism to allow someone to be aware of or know about the validity of a travel or identity document. The hard reality is that NGOs are rescuing people from the Mediterranean. Our navy was doing that before. The figures concerning the loss of life are stark. The Minister for Foreign Affairs, Deputy Coveney, spoke about the substantial loss of life which has already occurred this year. NGOs intercepting a ship, abandoned boat or dinghy and taking the rescued people into port will not necessarily be in a position to know or to be sure whether the identity papers of the people being brought to safety are valid.

I am concerned that the “reasonable cause to believe” phrase could be interpreted in two

ways. It could be framed as it being known that certain people are not accepted or that laws exist against accepting certain types of travel documents in respect of bringing people into the State. We have talked about NGOs. It should be borne in mind that individuals sometimes save the lives of others under the law of the sea. We have seen that happen in Calais and sometimes in seas closer to home. In circumstances where individuals or the crews of fishing boats have saved people, those rescuers may not know the law of the land where they come ashore. They also may not know and may not be able to find out the validity of a travel document.

I am, therefore, a little concerned about this wording. “Knows” is a sufficient bar. Those people undertaking acts they know are against the law should be prosecuted. The “reasonable cause to believe” standard, however, is one that I could see being used to aggressively prosecute people in respect of a situation where there could be a question of whether they may have reasonably suspected that someone’s papers may not have been in order or that a certain country is tired of receiving immigrants. That could be the case in some European countries. There is a lot of interpretative space contained in the “reasonable cause” wording. It is sufficient to say that a person may be liable to prosecution if he or she “knows” and is aware of the law and committed an act knowingly and intentionally.

Senator Barry Ward: This amendment is misplaced. It misunderstands the importance of giving as many tools as possible to prosecutors. In making amendments to this Bill intended to ensure that the wrong people do not get caught up in prosecutions, there is a danger that we may end up making it more difficult for legitimate prosecutions to be undertaken. If it was only necessary for a person to know that “entry into, transit across or presence in the State is in breach of a specified provision”, then, arguably, a simple statement that those being prosecuted did not know would be sufficient to avoid conviction or to mount a defence against prosecution. The inclusion of the phrase “a reasonable belief” is to counter a situation where people say they did not know. Even in situations where somebody does say that, it will still be open to a juror or decision-maker to take the position, that even though a defendant is claiming that he or she did not know, there are reasonable grounds, and reasons X, Y and Z, for believing that the person concerned should have known the relevant information.

There is a danger that we may go too far in this regard. I refer to the purpose of this amendment, which is to avoid a situation where the wrong person gets convicted of an offence under the Act. The existing wording is a tremendously important component. It is required to facilitate not just the prosecution but the conviction of people who should be convicted under this Act. If we remove this phrase there is then a danger that we may tie the hands of prosecutors in trying to get convictions.

The purpose of this section is to do with, “Provision [...] of fraudulent travel or identity document[s] for [the] purpose of assisting entry into, transit across, or presence in [the] State or [a] designated state”. The people we are talking about here are not rescuers. They are not the members of our navy or good Samaritans who intervene. My understanding is that this section is targeted at people who are undertaking actions deliberately and with a view to facilitating people smuggling. I do not have a concern with the way the section is phrased now. I do not think that the kind of people that Senator Higgins is seeking to protect are in any way going to get caught up in this provision. Therefore, I do not think this amendment should be made.

Deputy James Browne: I thank the Senators for their suggested change in this regard but, unfortunately, I cannot accept the amendment. The elements of defence have been considered carefully with the Office of the Parliamentary Counsel and the Office of the Attorney General.

Removing the phrase, “having reasonable cause to believe” would significantly weaken the offence and would inevitably create issues in prosecuting such an offence. It would, effectively, mean the prosecution having to establish that the person knows. In cases of criminal prosecution, it would be necessary to prove that proposition beyond a reasonable doubt. It would lead to a situation where it would almost be impossible to obtain a prosecution in circumstances where the defence raised any issue around a defendant’s knowledge of the law.

Where smuggling has taken place under circumstances where it is clear, for example, that the entry into the State is unlawful, it cannot be a defence for a people to say that they did not know the immigration status of a person with absolute certainty.

The humanitarian assistance defence would also apply in many of the circumstances the Senator has outlined. In the circumstances, the formulation is reasonable and is balanced.

Senator Alice-Mary Higgins: To clarify, this section does apply to rescue ships and it does apply to anybody doing any of those actions, and it does not only apply because we have chosen not to put in an exemption. In fact, this applies to everybody, and then they may have a defence. That is the problem. We will come across this in many places, whereby it applies to everybody and then they may have a defence. That is not the same as saying “This law will not target ...”. This law affects anybody engaging in search and rescue.

When we talk about the people we want to defend, I want to be clear that the people about whom we are concerned are not solely those who engage in humanitarian rescue or those who engage in human rights activity. The people I am concerned about protecting are those people who are drowning in the Mediterranean Sea or those people who die on our borders, for example, those who died of hypothermia just last week on the borders of Europe.

People are dying in great numbers. There is a danger and a moral jeopardy. There is also a legal jeopardy in terms of our human rights obligations and Ireland and other EU countries not fulfilling those obligations. I want the traffickers prosecuted and I want criminal activities that manipulate and take advantage of vulnerable persons prosecuted, but I am looking at the balancing of jeopardy, and the jeopardy at the moment is situations. I will come to this again later, but this is why Ireland should be giving leadership. There are deaths constantly in the Mediterranean Sea.

I do not want a situation where somebody is producing a clearly terrible and fake nonsense piece of paper and saying, “Here are my papers”, and somebody else who sees that the paper is terribly nervous of bringing that person to safety because it might be said that they had reasonable cause to know it is a badly photocopied document and is clearly a terrible ID. People are desperate and they are travelling with inappropriate documents, or documents that they are told are valid and that they genuinely believe are valid, but are not. We know that these are the realities of people’s journey to safety and journey from desperate situations. This is the context.

Many of these cases would be avoided if there was a clear exemption. Because we do not have an exemption we have to go after so many of the aspects of this. We must assume that the people who are experiencing these laws are also going to be human rights workers and humanitarian workers. These people are good Samaritans.

Deputy James Browne: I thank the Senator and I understand where she is coming from but making it almost impossible to prosecute smugglers is not going to help those people in the sea

who are dying or at risk of dying. Of course, we want to protect the humanitarian organisations and the individuals who rescue people and this is why we have sought to strike a balance here. Effectively, nullifying the legislation in its ability to be able to prosecute smugglers is not going to help that situation. We feel that there is a balance in this Bill. Human rights organisations or individuals who act out of humanitarian assistance will have that defence. The prosecutors, in deciding whether to prosecute, will under their guidelines and principles take into consideration whether there is a defence available, as they do in all cases. Even with the Senators' amendments, the DPP would still have to make a judgment call on whether to prosecute. If those amendments are made to the Bill, there is a risk that they would tie the hands of the DPP, where that office would then be mandated to bring a prosecution against someone who is perhaps acting with humanitarian motivation but who does not fall within a very particular definition. That is the risk there. This is before it even ends up in court. If a person inadvertently ended up in court, he or she would also have this defence available to him or her. We have a robust system in this country between the DPP, our courts system, our judges and our juries, in whom I have a lot of faith.

I believe the balance has been found in this legislation to protect humanitarian assistance organisations and people acting with humanitarian assistance motives, while ensuring we can prosecute those who smuggle. All the research from the EU Commission shows that when one takes the alternative approach it is almost impossible to secure those prosecutions. Certainly, if we were to reduce this section down to mandating a proof that a person knows that the other person was acting in such a way, which must be proved beyond a reasonable doubt, it would become an issue. I have defended in criminal cases for 12 years and I know how difficult it is to get prosecutions. If we have to fix a knowledge clause solely, I believe that it would become almost impossible to get a prosecution in that regard.

Amendment put and declared lost.

Acting Chairperson (Senator Eugene Murphy): Amendments Nos. 7 to 9, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed. Amendment No. 8 is a logical alternative to amendment No. 7. If amendment No. 7 is agreed, then amendment No. 8 cannot be moved.

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

In page 10, between lines 18 and 19, to insert the following:

“(5) Where a person engages in conduct described under *subsection (4)* in respect of a family member under 18, such conduct shall not constitute an offence.”.

Amendments Nos. 7 to 9, inclusive, address the same issues. Amendments Nos. 7 and 8 do it in a wider way. Amendment No. 8 is probably the widest framing, and amendment No. 9 is certainly our attempt at doing a more restrictive and more measured balanced framing. In his speech on Second Stage, the Minister of State was clear that was one of the absolutes, while we continue to debate the humanitarian aspect, but that a very core part of the Bill was ensuring that the persons who are being smuggled are not themselves criminalised by the legislation. I appreciate that there are many parts of the Bill that make efforts in that regard. I am worried about a potential loophole, and I know that later in the Bill there is a catch-all phrase, but I am still concerned about it. The section states: “A person is guilty of an offence if he or she produces, procures, provides, possesses or controls a fraudulent travel or identity document ...”.

In circumstances where a family member is holding the passport, the ID or the document of another family member, and especially where the family member is a minor, I am concerned that there could be a situation whereby a mother is holding an ID or a document in respect of a child and she could be regarded as committing an offence under this section because she is holding the ID of her child, even though in other aspects she would be protected because she is the person who is being smuggled. We do not want a situation whereby if a family is being smuggled that one member of the family is somehow considered as smuggling other members of the family. The tighter balance on this is possibly in our amendment No. 9, which states:

The possession or control of a fraudulent travel or identity document with the intention that it shall be used for the purpose of assisting the entry into, transit across or presence in a designated state of another person, shall not be an offence in cases where the other person is a family member and the person in possession or control of the documents is themselves being smuggled.

I did not know if we needed to include “if the person ... is themselves being smuggled”, and perhaps we do need to include that, but I am conscious that amendment No. 9 is a little bit narrow, that we are just addressing possession and control of the documents, and that we are not addressing “provides”, which perhaps we should include. For example, let us consider the situation where a person offers to an immigration officer or to some other border officer or other authorised official, documents on behalf of somebody else. I might reserve the right to bring in and include the “provision of a travel document” within amendment No. 9. I am interested in the Minister of State’s response.

Deputy James Browne: I thank the Senator. We discussed the definition of “humanitarian assistance” at length, and I do not propose to go over that again. The conduct that has been outlined in the amendment would be covered by the humanitarian assistance defence, as provided, and the phrasing of the defence in general terms is more appropriate than identifying specific instances where that assistance defence would apply.

Senator Alice-Mary Higgins: It is really important to be clear this is not the humanitarian assistance space. There are two parties who are in jeopardy of wrongful prosecution, basically, and in some cases there is a chilling effect from this. They are those who are offering humanitarian assistance. I refer to those who can, for example, show they are employees of a human rights NGO etc., and who are using that as a defence. Again, I believe that should be dealt with as an exemption in the Bill. However, this relates to the smuggled persons themselves. It would not be appropriate that a smuggled person would have to be in a situation of trying to prove he or she is providing humanitarian assistance to his or her own child. As the Minister of State has outlined it, the idea of relying on a defence in relation to this would be inappropriate. This is specifically relating to family members, to one’s own family and minors. It would not be very useful for families, who have in many cases endured significant trauma in being smuggled, that we would have one family member who is in fact entering a prosecutorial system where he or she must defend himself or herself as a humanitarian, particularly when that might be the caregiver or the person who needs to be navigating the immigration process. Even the fact of being in a potential prosecution could compromise somebody’s ability to even seek asylum, for example, or other legitimate immigration status.

Most of these amendments are around that humanitarian space. This is around the smuggled

person. The Minister of State himself was crystal clear in his Second Stage speech that there is no intention to prosecute, regardless of defences, smuggled persons. I am pointing out a danger, a jeopardy, whereby a smuggled person could be prosecuted. I do not mind if he wants to accept these amendments or to come up with other proposals for how we address it but I want to be absolutely assured that will not happen.

Deputy James Browne: The Senator raises an important point. I suggest that to ensure there is no lacuna there, she not press her amendment at the moment but reserve her right to bring it on Report Stage and we will engage and look at it more specifically to ensure no lacuna is slipping in there.

An Leas-Chathaoirleach: Is the amendment being pressed?

Senator Alice-Mary Higgins: We will withdraw it and look to engage and address this issue, which we all want addressed.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 8 was already discussed with No. 7. Is it being moved?

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

In page 10, between lines 18 and 19, to insert the following:

(5) Where a person engages in conduct described under *subsection (4)* in respect of a family member, such conduct shall not constitute an offence.”.

I will withdraw it, while reserving the right to reintroduce.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 9 was already discussed with No. 7. Is it being moved?

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

In page 10, between lines 18 and 19, to insert the following:

“(5) The possession or control of a fraudulent travel or identity document with the intention that it shall be used for the purpose of assisting the entry into, transit across or presence in a designated state of another person, shall not be an offence in cases where the other person is a family member and the person in possession or control of the documents is themselves being smuggled.”.

I will withdraw it, while reserving the right to reintroduce.

Amendment, by leave, withdrawn.

Section 8 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendments Nos. 10 to 12, inclusive, are related; and amendments Nos. 11 and 12 are logical alternatives. As amendments Nos. 10 to 12, inclusive, are related they may be discussed together, by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 10:

10. In page 11, between lines 6 and 7, to insert the following:

“Protection from prosecution

9. A person shall not be considered to have committed an offence under *section 6, 7 or 8*, where the person engaged in conduct alleged to constitute an offence under *section 6, 7 or 8*—

(a) in order to provide, in the course of his or her work on behalf of a *bona fide* humanitarian organisation, assistance to a person seeking international protection in the State or equivalent status in another state if the purposes of that organisation include giving assistance without charge to persons seeking such protection or status, or

(b) for the purpose of providing humanitarian assistance, otherwise than for the purpose of obtaining, directly or indirectly, a financial or material benefit.”.

Each of amendments Nos. 10, 11 and 12 relates to the protection from prosecution. Again, this set of amendments was written on the back of the recommendations made by IHREC that those who smuggle for humanitarian purposes should be entitled to use this as an exemption from criminal prosecution. Once again, if the purpose of the Bill is to bring Ireland in line with the legal instruments for the prosecution of traffickers and smugglers, then to add such an exemption to the Bill would only bring Ireland further in line with the 2002 European Council directive on smuggling. The current provision within section 5 of the Bill is cast as a defence rather than an exemption or an exclusion, which is not in line with the European provision. To continue to not explicitly state that smuggling for humanitarian purposes is an exemption rather than a defence puts the good work of the likes of Médecins Sans Frontières, MSF, at risk. I therefore ask the Minister of State to accept these provisions.

Senator Alice-Mary Higgins: These are the core points again. I am aware the decision was made to go with a certain approach in terms of a defence but I urge the Minister of State to strongly consider the point on the exemption and to consider the fact the exemption, as I stated earlier, is in fact a middle ground. We are already seeing a more robust set of laws that might be applied. An exemption for humanitarian actors is the centre ground in this and it would ensure we do not have a number of jeopardies. The jeopardy he is talking about concerns the defence and that we would have people convicted. However, the danger is not simply that we would have people wrongly convicted; the danger is wrongful prosecution. There is a danger we would have people prosecuted and that legally, they should be prosecuted, and maybe they have a defence. They would be prosecuted and then would have to use this as a defence. The defence sits in between prosecution and conviction, but the danger is in prosecution.

The greater danger which then flows from that is the danger of a chilling effect on humani-

tarian action, on good Samaritan acts and on search and rescue. We must look at that in the context of there having been a very significant withdrawal from humanitarian search and rescue. Ireland should be leading on this. I ask whether it might be appropriate to engage with the Minister for Foreign Affairs and for Defence, Deputy Coveney, on this as well because he spoke just last week about how disappointing it was and how he felt Ireland had to withdraw because the Naval Service could not have a bilateral arrangement for search and rescue. While I may not agree with him on every detail of that, as I believe Ireland could have taken a stronger position on search and rescue, the core point was that NGOs have been stepping into the breach in an area where the Naval Service, according to the Minister for Foreign Affairs and for Defence, has been constrained.

The facts are that Ireland is not just another EU country trying to find an in-between, half-way around humanitarian obligations; we are meant to be the leaders on humanitarian rights. As a sign of that, Irish ships, during a previous period, rescued 16,800 people in the Mediterranean Sea. My colleague listed the ships and we know their names because we were very proud of them. During the period when there was an average of one Irish ship in the Mediterranean, it rescued 16,800 people. During the same period, when five to ten other EU ships were in the Mediterranean simultaneously, they rescued 34,000 people. Thus one third of all those rescued in the Mediterranean during that period were rescued by our Naval Service. That is the record we have on humanitarian assistance. We were the leaders beyond compare in Europe. We gave a humanitarian example and it was something right across Ireland of which people were incredibly proud. Then there was a withdrawal from the bilateral arrangement, and the Minister, Deputy Coveney, believes we did not have the option of another such agreement. We then joined Operation Sophia. The former Minister of State with responsibility for defence, Deputy Kehoe, speaking directly to me in this Chamber said of that operation that we were now moving from a primarily humanitarian function to a primarily security function. Thus we stepped away from humanitarian work in that regard. If we look at the figures, 8,500 lives were rescued in 2015. In 2016 it was 7,000. After we had the change in policy with Operation Sophia, that 7,000 figure plummets to 1,888 in 2018. Then, as we know, we have had the total withdrawal from search and rescue. The Minister, Deputy Coveney, told us, I think earlier this week, that 1,300 others have died in the Mediterranean this year so far, that we know of. That is the reality. We are talking about prosecutions and how we want to tackle different forms of criminal activity but as an island nation, let us place ourselves physically in the world. These are the realities. Ireland gave leadership. We may not be able to give leadership through our Naval Service any more - I really regret that and wish that alternatives and ways where our navy could step in could be found - but organisations, NGOs and individuals have stepped into the breach when there has been a systemic withdrawal from search and rescue and they are being aggressively prosecuted. In March, Italian prosecutors charged dozens of rescuers from Save the Children and Médecins Sans Frontières who were accused of collaborating with people smugglers when they saved thousands of people from drowning in the Mediterranean. Dozens of investigations have been launched by Italian prosecutors. I spoke on Second Stage of a humanitarian volunteer from County Cork who was arrested for human trafficking while volunteering in Lesbos, Greece. That was someone who clearly had absolutely no financial or material benefit but was stepping into the breach in respect of human rights. It is a thing where people, particularly those who are not wealthy, will be afraid to take these actions if they know they are facing prosecution regardless of whether they are confident that they will have a great defence. As we saw on some of the Greek islands, some of the people who are most pressed themselves and have the least resources have been the most willing to offer humanitarian support or give humanitarian help. Those people should not be in a position where they have to balance the possibility

of being imprisoned awaiting trial, facing prosecution, that they might have to find and access legal resources in order to mount a defence. They will have to balance out those risks and the risks that they represent to their family or to others who immediately depend on them versus what they wish to do for the common good and what they wish to do for others who are also part of our shared humanity. We should not be putting people in that situation or relying and hoping that a Director of Public Prosecutions, whoever he or she may be - and there could be ten different people over the course of the years this law applies - will probably not choose to prosecute them. It is the chill effect and that leads to people drowning. I am saying drowning because so much of this relates to ships but we know that it is not only that. We are also looking at land borders. Ireland will have land border components and there are many other areas. I am focusing on that part because it is something I feel passionate about. If it is true that Ireland was forced to stop rescuing and forced to stop humanitarian action, that we were unwilling and did not want that to happen, let us now show leadership by giving active support and recognition and an active exemption to those humanitarian actions for those who are stepping into the breach when we have had to step back.

Senator Barry Ward: I think we have got away a little bit from what this Bill is trying to do. It is important to recognise that there is an enormous distinction between what happens in Italy, in terms of this kind of issue and what happens here. The Bill is designed to have effect here and is designed to refer to the prosecutorial authorities here in Ireland, not those in Italy. One of the most important distinctions that exists between the prosecutorial authorities in Italy and those here is political independence. The 1974 legislation that established the Office of the Director of Public Prosecutions here mandates specific political independence in terms of the job. That is not true in civil law jurisdictions in places such as Italy where the prosecutor is a political officer. What you might see in Italy in terms of aggressive prosecution is actually the carrying out of a political policy. That does not and cannot happen here in Ireland. I referred to this earlier, citing section 9(1)(b) in this Bill, which specifically precludes prosecution of people or creates a defence for those people who are accused of offences under this Bill, who are doing so for humanitarian reasons and do not have a pecuniary interest or benefit accruing to them as a result of it. Senator Higgins says we cannot rely on the DPP or we should not sit back and abdicate our responsibility to legislate and instead allow the DPP to make these decisions. That is the way our system works. While I understand what the Senator is saying, nor can we seek to involve ourselves in every decision, nor can we so significantly proscribe the activities of the DPP that we would tie the hands of the DPP. There will be a new DPP this year so that office will change, but the DPP herself is not the sole decider within that office. There is a raft of people who are highly qualified and I think it is fair to say are compassionate, and who will recognise the purpose of this law.

Therefore I do not share the concerns of these amendments that would suggest that, for example, there is somehow going to be an aggressive prosecution of people who were never intended to come under this Act, who were never intended to become the target of prosecution such as people who have helped out family members and have done so without any benefit to themselves. By the same token, in respect of these three amendments, I do not think we can single out people who are below a certain age. In fact, I believe there are drafting difficulties with the amendments anyway, because there is a lack of definition in respect of what constitutes a family member, for example, but that is semantics. My concern is that there is a tenor to this debate which suggests that there is a danger that somehow there will come into being an autocratic prosecutorial system that will hammer down the heads of the people who are down-trodden, the victims who we are trying to protect in this Bill. There is no such danger. We have

in this State, perhaps more than in the vast majority of our European neighbours, or indeed, the protocol states in this Bill, a system that in the first instance goes some distance to protect victims but also even those who are accused. It is a system that goes an even greater distance than most of our European counterparts to protect those people in the context of any criminal proceedings against them. I do not share the concerns of the proposers of these amendments. We have a very good system and it is incumbent on us to have trust in that system. If the system fails and becomes dysfunctional in the manner which Senator Higgins anticipates, then fine, we can come back to it but I do not see any problem with it. I see a system where we have built into the Bill, under section 9(1)(b), a provision that protects people. I do not see the aggressive prosecution of victims under this proposed legislation. In fact, I see a move by the Government to establish a regime that allows us to prosecute the people who are creating victims. It is a move that allows us to put in place a regime that allows the prosecution of people who are doing exactly the things that Senator Higgins, along with the rest of us, are totally opposed to. That is what the Bill does. I am concerned that if we go down the road of these amendments, instead of doing what the Senator is suggesting will be achieved, we will tie those prosecutorial hands, prevent convictions and make it more difficult to take action against the people smugglers, rather than the people smuggled.

Senator Alice-Mary Higgins: I want to be very clear. I am not suggesting that we interfere in the DPP process. I am precisely pointing out that we cannot. That is why we do law. That is why we make and write laws, so that they can be interpreted. We absolutely have a political separation. It is important that we do and just as we have that, maybe we will not have a situation where you have countries where there is a political pressure to take an aggressive approach. Similarly, however, we are not in a position to say this is how we hoped the DPP would interpret it. That is why we need to be clear in our law. That is why we put it in the law. It does not matter what people are like and if they are good, wonderful people. I am sure that they all are and I am not in any way impugning persons but I am saying that I have a mandate and I am elected. We talk about giving trust. I trust those to perform their functions but I am also entrusted with carrying through on some of the things that I said I would do when I came in here, which is that I would ensure that rights are protected and that I would ensure that we have a society we are proud of and that Ireland would be a decent country, doing the right thing. Those are some of the things that I try to do through my political work and through our political and legislative work. I have not seen anyone give the case for why it is so incredibly important that we would have persons who are clearly engaged in humanitarian action or who are working for humanitarian NGOs prosecuted and forced to defend themselves in the courts. If we have not seen why that is so incredibly important then I do not know why we are not legislating for what we all say we want, which is that those engaged in humanitarian search and rescue, working for a human rights NGO, are not in a situation where they are being considered for prosecution.

I am making a political point here and I do not apologise for doing so; we are politicians. I referenced the position that Ireland has taken politically in the past on humanitarian issues and the value of human rights work. It is one of the reasons we got elected to the UN Security Council. I have referenced the political position the Minister for Foreign Affairs has taken on this issue, as have Ministers for Justice in the past. We have spoken about these issues being important. Ireland has tried to be a champion on human rights and humanitarian issues politically. What is unique and special about Ireland is that we have very often taken that position across party lines. There has been a common concern among many people right across the Oireachtas on these issues. I am saying we should reflect that in this law we are about to pass.

Let us have a clear exemption for humanitarian organisations. Let there be eight countries rather than seven with an exemption in law for humanitarian and human rights action. We can define the exemption as we wish. The Minister of State said the exemption was more narrowly determined in certain cases. Perhaps we should have the narrower exemption and a wider defence. Perhaps we should opt for a belt and braces approach in this regard. It is really important that we do not have a situation where, because none of us would dream of intervening in the DPP's actions or decisions on prosecutions, we end up just seeing prosecutions happening, or there is a fear of such prosecutions, and the consequences of that. For those who are victims of smuggling, it is not the only bad thing that has happened to them. They are usually victims of smuggling because they are victims of war, devastating climate impacts and many other issues. I will not go into the safe passage issue, which we will come to later, but we need to be really clear on this. People will keep trying to travel, they may do so with the assistance of smugglers and the latter may take advantage of them. As I have said - I said it many years ago when we were debating Operation Sophia - the cause of deaths in the Mediterranean is not simply the existence of boats; it is the existence of desperation.

Deputy James Browne: We are all very proud of our Naval Service and the commitment it has shown in its humanitarian efforts in the Mediterranean in the past. The Department of Foreign Affairs was extensively consulted on this legislation and it was approved by Cabinet to take to the Houses. I cannot speak to what prosecutions have or have not happened in the Mediterranean but I understand that in similar legislation in several countries, there is no defence of humanitarian assistance. I noted that there are only seven countries putting any kind of defence into their legislation in enacting this directive. We are one of those countries. Most states are allowing no defence at all in terms of the humanitarian assistance side of it. There are different systems and we are not comparing like with like. We are a common-law country with a Legislature and an independent DPP who decides whether or not to prosecute. We have the Constitution, the courts and appeals mechanisms. It is a very different system from that of some other countries. We must be careful in comparing what is, or is not, being prosecuted in other countries as somehow reflecting on what is being done in Ireland.

We have to get back to the starting point of why this legislation is needed, which is that it is almost impossible at present to prosecute the smugglers who are benefiting from the vulnerable people they are bringing into Ireland. We must take appropriate action to ensure we strengthen the law where it is weak and in a context where we are not getting those types of convictions. We want to get convictions against smugglers while also ensuring that those who are acting under humanitarian assistance are protected. There are different approaches but we are confident this legislation will protect people, whether individuals or organisations, who are acting on the basis of humanitarian assistance.

I have spoken extensively about how evidence to satisfy a prosecution can be very hard to come by, especially where, as is often the case with smuggling, there is a criminal enterprise, with many different people involved at different stages. If we have to prove the element set out in these amendments, it would become almost impossible to achieve the prosecutions we very much need to take against those who are engaged in criminal activity. If the relevant amendments were accepted, the DPP would be faced with an almost impossible threshold. We have tried to find a balance to ensure those acting out of humanitarian assistance will not be convicted. We have given a direction here to the DPP, with the defence being put in place, which is something the DPP does and must take into account when deciding whether or not to bring a case. A case will only be brought where the DPP believes there is an opportunity to get

a conviction. We have seen tragic cases in the past where a wrongdoing has happened but the DPP's office has not brought a prosecution because it does not believe it can secure a conviction in front of a jury.

We have discussed this issue extensively. In the circumstances, unfortunately, I cannot accept these amendments.

Amendment put and declared lost.

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

In page 11, between lines 6 and 7, to insert the following:

“Protection from prosecution

9. A person shall not be prosecuted for an offence under *section 6, 7 or 8*, where the person engaged in conduct alleged to constitute an offence under *section 6, 7 or 8—*

(a) in order to provide, in the course of his or her work on behalf of a *bona fide* humanitarian organisation, assistance to a person seeking international protection in the State or equivalent status in another state if the purposes of that organisation include giving assistance without charge to persons seeking such protection or status, or

(b) for the purpose of providing humanitarian assistance, otherwise than for the purpose of obtaining, directly or indirectly, a financial or material benefit.”.

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

Senator Alice-Mary Higgins: I will withdraw it and reserve the right to raise it again on Report Stage.

Amendment, by leave, withdrawn.

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

In page 11, between lines 6 and 7, to insert the following:

“Protection from prosecution

9. A person shall not be considered to have committed an offence under *section 6 or 7*, where the person engaged in conduct alleged to constitute an offence under *section 6 or 7—*

(a) in order to provide, in the course of his or her work on behalf of a *bona fide* humanitarian organisation, assistance to a person seeking international protection in the State or equivalent status in another state if the purposes of that organisation include giving assistance without charge to persons seeking such protection or status, or

(b) for the purpose of providing humanitarian assistance, otherwise than for the purpose of obtaining, directly or indirectly, a financial or material benefit.”.

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

Senator Alice-Mary Higgins: I will withdraw it. With the Leas-Chathaoirleach's permission, I want to point out that this amendment relates only to sections 6 and 7. The provision of a direct and clear exemption could relate to any one of sections 6, 7 or 8. In this amendment, I recognise that section 8 is a little more complicated than sections 6 and 7. I give notice that I intend to look at this matter further.

An Leas-Chathaoirleach: The Senator's observation is noted.

Amendment, by leave, withdrawn.

Section 9 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendments Nos. 13 and 14 are related and may be discussed together. Amendment No. 14 is an alternative to amendment No. 13. If amendment No. 13 is agreed, amendment No. 14 cannot be moved.

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

In page 11, between lines 21 and 22, to insert the following:

“Protection of smuggled persons from prosecution

10. A person who has been the object of people smuggling shall not be considered to have committed an offence under any provision of this Act.”.

These amendments relate to the protection of persons who are the object of smuggling. I have tried in previous amendments to address a specific jeopardy under section 8 in terms of the documentation. That might not even be necessary if we had this very clear caveat regarding persons who are the object of people smuggling. The Minister of State indicated in his Second Stage speech that it is very clearly not his intention that such persons should be prosecuted. We have spoken about the dangers of smuggled persons being subject to prosecution. These are catch-all clauses that seek to ensure the wrong persons are not prosecuted and we do not create a further trauma and difficulty for those who have been smuggled. I have phrased the provision in two different ways, both referring to “the object of people smuggling”, but I am open to different phrasings.

In July this year, there was a case where fishermen in the Mediterranean pulled the bodies of 18 people from the sea, including people from Nigeria, Ghana and The Gambia. There were 57 other people on that boat who are still missing and presumed dead. The fact is that all these people were taking these very treacherous and dangerous journeys because the situations they were leaving were sufficiently desperate and dangerous. We know we are going to see more people travelling from places where we see conflict. We are now seeing people coming from Eritrea and Ethiopia. We will see people fleeing Afghanistan. It was a really regrettable moment that one of the first responses by the European ministers of the interior, after their meeting on what we saw unfolding in Afghanistan, was a collective statement that they wanted to be assured that there would not be any illegal entries and that they wanted to avoid another migrant

crisis.

I said on Second Stage that these are humanitarian crises. These are crises of war. The migrant crisis is very much framing that the difficulty and problem is simply the fact that countries have to fulfil and meet human rights obligations. That is not a crisis. A crisis is where those people have to flee from everything they own and everything they know to save their lives and the lives of their loved ones.

Again, this is just a little reminder. I am saying it because we need to keep placing this law in the context of why smuggling is happening and what is driving it, while addressing abusive bad practice and criminal activities. We need to see that one of the drivers is that kind of desperation. We want to ensure that persons who have experienced that kind of war and trauma are not in danger of being criminalised. The 2002 European Council directive on smuggling is very clear that persons who are being smuggled should not be criminalised. The Irish Human Rights and Equality Commission's recommendation is also really clear around that. There is a danger still that persons who are being smuggled could end up being prosecuted under this Bill. I know that is not the intention but I have identified one potential lacuna. I feel that amendment No. 13 or amendment No. 14, as the Minister of State prefers, would give us that security and give a foundation to ensure that families who have experienced great trauma do not experience further trauma through one of their members being prosecuted for smuggling.

Deputy James Browne: I have listened to the Senator and I think there is a small possibility of a lacuna here. We can look at this again and revisit it at Report Stage.

An Leas-Chathaoirleach: Does Senator Higgins wish to press the amendment?

Senator Alice-Mary Higgins: I will engage with the Minister of State around ensuring that we close this gap.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 14 is again in the names of Senators Higgins, Ruane and Black. It has already been discussed with amendment No. 13. Does Senator Higgins wish to move the amendment?

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

In page 11, between lines 21 and 22, to insert the following:

“Protection of smuggled persons from prosecution

10. A person shall not become liable to criminal prosecution under this Act for the fact of having been the object of people smuggling.”.

Amendment, by leave, withdrawn.

Section 10 agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendment No. 15 in the names of Senators Higgins, Ruane

and Black is in respect of inserting a new section.

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

In page 11, after line 40, to insert the following:

“International protection in respect of smuggled persons

11. A person who has been the object of people smuggling and subsequently sought international protection may not be transferred or deported to either a state of origin or a state including protocol states and states which have entered into agreements with the European Union in respect of migration, where the human rights of that person, including rights under the 1951 Convention on the Status of Refugees, are not fully protected.”.

Amendment No. 15 refers to the international protections of the person who is the object of people smuggling. It is around *non-refoulement* but it is a little bit wider than that. This is, therefore, to ensure that there would be measures to ensure that, “ a person who has been the object of people smuggling and [...] sought international protection may not be transferred or deported to either a state of origin or a state including protocol states and states which have entered into agreements with the European Union in respect of migration”.

I want to clarify that I will be proposing a different version of this on Report Stage. I believe the requirement that persons would have to have sought international protection is perhaps even too high a bar because that implies that somebody has already entered into a system. My real concern is for persons in a much more immediate sense, not those who have necessarily subsequently sought international protection. Any person who is an object of people smuggling and who comes into the care of the State in whatever shape or form, whether he or she has gone through the process of applying for international protection, should not be transferred or deported either to a state of origin or a state including protocol states. We know there are states which are party to the protocols being addressed here but they are not necessarily currently upholding or can be guaranteed to uphold the human rights of a person under the Convention Relating to the Status of Refugees. This is, therefore, my concern.

We know there were situations that relate to ships. I am talking about the Mediterranean because Irish ships are covered by the provisions of this Bill. We have, however, heard stories of persons who have been taken from the Mediterranean and transferred back to the Libyan coastguard, for example, rather than the issue being addressed and those people being supported by the country, taken to a European country or treated under the laws of the ship by which they may have been rescued. We know people have been transferred to Libya. We know very strongly the extraordinary human rights abuses that have unfortunately taken place in Libya. This is a whole area we cannot fully unpack now but I believe 11 migration control agreements in total were put in place following the migrant crisis we had previously in Syria back in 2015 and 2016. We have seen European money, in some cases, funding situations of human rights abuse and situations in which persons’ human rights and their rights under the convention are not being accessed. We have seen that in Sudan and Libya, and some would believe we have also seen it in Turkey in some instances.

Unfortunately, we have also seen that there may be European Union states to which it is not safe to move people back, where their rights will not be fully protected or where they will not be able to access their rights under the Convention Relating to the Status of Refugees. There are states with which the European Union has a migration agreement. Then there are protocol

states, which is a little bit wider than the European Union. However, those states are part of the protocol but not part of the European Union.

This amendment should in fact probably be stronger. I have placed it in terms of where international protection is filed and I think that is very clear. Perhaps, however, to be really crystal clear, I am going to try to strengthen it on Report Stage to say we should not have a situation whereby persons who have been smuggled are being transferred into any situation in which their human rights, and their rights under the Convention Relating to the Status of Refugees, are not guaranteed or protected. We should not be complicit in that in any way.

I am sorry that the amendment is not as perfectly worded as I wanted. It is a sad reality that we saw a media blackout in Poland whereby they enforced a state of emergency which said that no media or, indeed, NGOs would be allowed into a 3 km space around the border. We do not, therefore, know what is happening exactly in some cases. That is why I want to copper-fasten it here.

Deputy James Browne: I thank the Senator for her comments. This is somewhat related to amendment No. 5. As I said in my contribution on that amendment, the State protects all of those who come into the State, whether they have been smuggled or not. The principle of non-*refoulement* is given effect to in sections 50 and 50A of the International Protection Act 2015. International protection is granted based on the criteria set out in the Act and persons who are smuggled and seek international protection are granted or refused that based on the same criteria as those who are not smuggled.

Some of those present in the State without permission will have had contact with criminal smuggling organisations at some point in their journey. In the vast majority of cases, however, those organisations have not been, and will not be, prosecuted or convicted under Irish law or prosecuted or convicted in any state. All those who have been smuggled are, nonetheless, for the reasons set out by Members, in need of particular consideration by the State. Similarly, it is often the case that those who are particularly vulnerable to exploitation may have entered the State legally. Attempting to link criminal offences under the Act to the protections needed is not the correct approach. We have taken care to avoid criminalising those who have been smuggled. However, to provide that those who have been smuggled are in a legally better position than those who have not is to create an incentive to interact with the smugglers. This is a critical distinction between smuggling and trafficking. Trafficking takes place without the consent of the person, and a different range of supports is absolutely required.

Senator Alice-Mary Higgins: I recognise this is complex. I am not seeking to create a hierarchy of rights but I am concerned that we have sometimes built in assumptions as to what constitutes non-*refoulement*. That is really the core of it. That is why I am trying to tease this out. The matter is probably a little wider and relates to the Dublin Protocol. I might seek to engage with the Minister of State on that. It is an issue on which I engaged with the Minister for Justice, Deputy McEntee, when she was responsible for this area. The key comprises the principle of non-*refoulement* and our understanding of that. It has often been the case that we have had a quite narrow interpretation of it. At one point, there was a press for safe country lists and so forth. Internally within the EU, there is the principle that if somebody has transited through another state, that state might be the relevant state, but where it is explicit that the state is not going to vindicate the individual's human rights and intends to directly reject his or her rights under the European Convention on Human Rights, we are in a position that is very ambiguous. Those may be the two sets of circumstances I was seeking to address here. I am going

to withdraw my amendment because it is not perfectly worded but I would appreciate it if the Minister of State's Department could engage on non-*refoulement* and its interpretation. I am conscious that an issue arose before over a narrow interpretation. New issues have also arisen whereby, very unfortunately, some of our EU colleagues that may be part of agreements have been very clear that they will not be fulfilling their obligations under them. We do not want the rights of the individual to be jeopardised as a consequence. I recognise that this issue is wider than that of smuggling alone; it is just that smuggling is a point of intersection. I would prefer the matter to be addressed for everybody, not simply those who have been smuggled. In that context, I might seek to engage further.

An Leas-Chathaoirleach: This Minister of State has nodded in assent. Does Senator Higgins wish to press amendment No. 15?

Senator Alice-Mary Higgins: No, but I reserve the right to re-introduce it.

Amendment, by leave, withdrawn.

An Leas-Chathaoirleach: Amendment No. 16, in the names of Higgins, Ruane and Black, is out of order because it is outside the subject matter of the Bill.

Amendment No. 16 not moved.

An Leas-Chathaoirleach: Amendments Nos. 17 and 18 are related. Amendment No. 18 is a logical alternative to amendment No. 17 so it cannot be moved if the latter is agreed. Both may be discussed together, by agreement.

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

In page 11, after line 40, to insert the following:

“Report on operation of the Act

11. The Minister shall, on an annual basis following the passing of this Act, lay a report before both Houses of the Oireachtas detailing—

(a) the estimated number of victims of human trafficking identified under this Act, the methodology used to produce the estimate and potential alternative methods of estimation which may produce a more accurate result,

(b) a summary of the outcomes for smuggled persons identified under this Act, including what proportion of smuggled persons sought or were granted asylum and sought or were granted another form of international protection in the State, and

(c) the number of persons in the previous year found guilty of an offence under this Act, and a summary of the sentences imposed under this Act.”.

These are amendments on the reports of the operation of the Act. The Act represents a shift in policy. It is not about balancing in that instead of moving one notch, we are moving two towards a narrowing space in that regard. I am concerned about the balance in the Act. We have spoken about it. I believe the exemption is the balancing point whereas the Minister of State believes a defence is. We have a difference of view on it. There was agreement on willingness to move from the previous position but we may have moved too far in this Act. In that regard, the way we find out what is actually panning out is by reviewing the performance. I am aware

that there is a standard for the reviewing of all Acts but I am trying to tease out, in the two amendments, some really specific aspects that I believe may need to be tracked and that will be measures of the success of the Act or any unintended consequences of it.

Regarding the numbers of victims of human trafficking that are being identified, perhaps the Minister of State will take my next point on board even if it is not deemed to be in order. My colleague, Senator Ruane, tabled the amendment on training. The Minister of State will be aware that one reason Ireland had the tier 2 status as opposed to tier 1 status in respect of trafficking, and that one of the reasons we fell down, related explicitly to training because we did not have the training to identify victims of human trafficking.

On a corresponding note, because I realise the other amendment will be ruled out, officials are not really trained to ensure people access their rights, including their rights under the convention. There is a lack of training of front-line staff. Perhaps it is a sign of how long I have been going on about these matters but I remember that there was a time when we had human rights observers in Dublin Airport, for example. There was a conscious decision made to end that practice. It was regrettable. It was a really good practice whereby experts in human rights law and international refugee law were present in our ports of entry to the State. I may reserve the right to introduce an amendment on that on Report Stage.

One of the flaws identified was that people are not being identified. That was one of the issues associated with our tier 2 status. Are we estimating and measuring in the right way? If we say this is a law that is not just about protecting Ireland's borders or stopping people entering Ireland but about protecting smuggled persons, and if that is our core or principal function, as the Minister has stated, the most important measure of the success, or otherwise, of this Act is the outcome for smuggled persons. It is a matter of the proportion of smuggled persons who sought or were granted asylum or another form of international protection from the State. Part C was mentioned in respect of the issue of successful prosecution and conviction. Successful prosecution and conviction have been very much centre stage but they are ultimately under the international law. That is one part but the outcome for the smuggled person and her or his protection also have to be centre stage. That is the reason we try to prosecute.

I cannot see the difference between the two amendments but I am aware that there was a very small and nuanced difference when we drafted them. Could the Minister of State address the issue of how we will track the success of this Bill when it becomes an Act?

Deputy James Browne: The Senators have introduced several amendments that would require the Minister to prepare reports on several issues. The issues arising are similar in each case. While all the relevant amendments are not grouped, I will speak to the one in question and perhaps refer to others, where possible.

As noted on Second Stage, it is correct to say this Bill is relatively narrow. It focuses on the criminal offences in regard to people smuggling. It is primarily addressed at organised for-profit smuggling. It is not addressed at the State's response to human trafficking broadly. It is not correct to say the broader issues are not receiving attention. As Members of the House will be acutely aware, legislation is rarely a timely or effective way of implementing operational changes.

The Minister of State, Deputy Naughton, recently made a statement on the work on human trafficking. I referred to aspects of this work in my Second Stage speech. It has included: the

recent Government decision on improving the national referral mechanism for human trafficking; the designation of the Irish Human Rights and Equality Commission as the national rapporteur; and the development of a new action plan on trafficking, with legislation to go alongside that. There has also been work on the following: development of training through
3 o'clock NGOs; targeting front-line staff in industries, such as the hospitality, airline and shipping industries, who may have come into contact with trafficked persons; and providing dedicated accommodation for female victims of sexual exploitation.

There are also improvements being made to the criminal justice system to support victims through the following: the implementation of Supporting a Victim's Journey; the running of a new awareness raising campaign in partnership with the International Organization for Migration to build on the success of previous campaigns; and an increase in funding for supporting victims of crime generally and increased funding dedicated specifically to supporting victims of trafficking.

I suggest that the issues that have been raised are more appropriately dealt with in the context of those human trafficking discussions and, in the circumstances, I cannot accept this amendment.

In respect of the specific statistics regarding the outcomes of smuggled persons, I will consider this further but I note that the Department of Justice does publish detailed statistics on the international protection process. This may be better addressed through that and through the post-enactment report required under Standing Orders.

Senator Alice-Mary Higgins: I appreciate the Minister of State's engagement and I understand there is separate trafficking legislation. I thank the Minister of State for indicating he will look at the question of outcomes for smuggled persons. The international protection process is one piece but I think it would be appropriate, since we have specific legislation targeting smuggling, that we would be looking to what are the outcomes for smuggled persons. It is important for us to know that and to track that. On a wider level, I will reserve the right to bring in an amendment on Report Stage but, given I am concerned about how we measure whether a chill effect is happening, I am not sure how we frame that. However, on the issue of outcomes for smuggled persons, it is very important that we can be sure they are accessing their rights, that they are not being blocked and that the law is not indirectly serving to effectively criminalise smuggled persons. I know that is not the intent and I know the Minister of State is going to engage with me to ensure that does not happen, but this is one of the ways we need to break it down a little.

I mentioned other forms of international protection and asylum. I was not sure how to frame this. In some cases, smuggling relates to family reunification. We have had situations where people have had family members who are very well established in Ireland and who have tried to seek family reunification where family members have ended up in different parts of Europe and they are seeking to find each other. There are situations where, because our definition of family reunification is so extraordinarily narrow in the State, family members can fall slightly outside the definition of family reunification. I will reserve the right to come back on that one. We need to look, for example, at breaking that down so we know to what extent those smuggled persons were family members of persons already living in Ireland, to what extent they were asylum seekers and to what extent they got international protection, as that will give us a better understanding. I will address some of the other issues later. I will withdraw the amendment but I reserve the right to reintroduce.

Amendment, by leave, withdrawn.

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

In page 11, after line 40, to insert the following:

“Report on operation of the Act

11. The Minister shall, on an annual basis following the passing of this Act, lay a report before both Houses of the Oireachtas detailing—

(a) the estimated number of victims of human trafficking identified under this Act, the methodology used to produce the estimate and potential alternative methods of estimation which may produce a more accurate result,

(b) for smuggled persons identified under this Act, including what proportion of smuggled persons sought or were granted asylum and sought or were granted another form of international protection, and

(c) the number of persons in the previous year found guilty of an offence under this Act, and a summary of the sentences imposed under this Act.”.

Amendment, by leave, withdrawn.

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

In page 11, after line 40, to insert the following:

“Report on compliance with human rights obligations

11. The Minister shall, within 12 months of the passing of this Act and on a bi-annual basis thereafter, lay a report before both Houses of the Oireachtas outlining which steps have been taken to ensure the State has reflected the 1951 Convention relating to the Status of Refugees, including the principle of non-refoulement in all aspects of the operation of this Act.”.

This amendment is related to one of our earliest amendments when I spoke about how we ensure, not just that Ireland is a signatory, but what steps we have taken. Effectively, this is the companion or equivalent to the amendment we discussed in regard to the practical implementation of human rights and the Convention Relating to the Status of Refugees. It was that conversation which the Minister of State has agreed to have with me on a granular basis, although I will probably be bringing this back on Report Stage and I think we should have a report on how it is being reflected. We know that what is reported tends to get done and tends to get considered at more points in the process. If the Minister of State wants to accept the amendment, that would be great; if not, I will reintroduce it.

I was trying to ensure that we have a report that would outline exactly which steps have been taken to ensure the State is reflecting the convention, including the principle of non-*refoulement* in all aspects of the operation of this Act. I do not need to elaborate further as I have already told the Minister of State why I have concerns in that regard and why I want to ensure that our practice matches the principle.

Deputy James Browne: I refer to the answer I gave in regard to amendment No. 17. I do not believe the criminal justice Bill is the appropriate means to address international protection questions and, in the circumstances, I cannot accept the amendment.

Senator Alice-Mary Higgins: The amendment refers specifically to “this Act”, so it is not wider and it is only in regard to the aspects of “this Act”. I take the Minister of State’s point in regard to amendments Nos. 17 and 18 but amendment No. 19 is specifically on how the Convention Relating to the Status of Refugees is being reflected in the operation of this Act, so it is quite targeted in that it only functions under this Act in regard to smuggling. We discussed further the relationship when power is ceded and when there is an intersection with another protocol state in regard to Irish ships, for example. This is the granular piece and quite a lot of powers are given.

There is another specific point that I wish to address because I did not see it in the amendments, but I see that we will deal with it under amendment No. 21. I got a little worried because that was one of the areas where, for example, I saw a danger of a failure to properly apply the convention. That perhaps relates to our discussion on amendment No. 3 rather than on amendment No. 17.

Deputy James Browne: At this stage, I am not minded to accept the amendment but we can look at it again on Report Stage.

Acting Chairperson (Senator Pauline O’Reilly): How stands the amendment?

Senator Alice-Mary Higgins: I will press the amendment and I may bring a revised version of it forward on Report Stage.

Acting Chairperson (Senator Pauline O’Reilly): Is the Senator pressing or withdrawing?

Senator Alice-Mary Higgins: Yes, I will move and withdraw.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Pauline O’Reilly): Amendment No. 20 has been ruled out of order.

Amendment No. 20 not moved.

Section 11 agreed to.

SECTION 12

Acting Chairperson (Senator Pauline O’Reilly): Amendments Nos. 21 and 23 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 21:

In page 12, between lines 22 and 23, to insert the following:

“(3) Where an enforcement officer exercises functions under *subsection (2)*, a written report outlining the reasonable grounds upon which such functions were exercised must be submitted to An Garda Síochána or the Minister and a copy of the report must be provided to any court with jurisdiction which hears proceedings in respect of the ship searched under

that subsection.”.”

This is in regard to amendments Nos. 21 and 23. Very wide discretionary scope is given to enforcement officers under this legislation. Wide discretion is given and, in many cases, many quite significant things are authorised where an enforcement officer has “reasonable grounds” to believe. Some of the things they can do if they have reasonable grounds to believe include searching persons without warrants, searching of vehicles, searching persons and apprehending and confiscating items. There is a whole section and I could have gone through it with a lot of individual amendments. A simple requirement should be that we do not want this law to become in any sense a danger. I have talked of the very real issue where we had intimidation of boats engaged in rescue activity in the Mediterranean. We want to ensure the law is not used to create a sense of jeopardy or intimidation, or that it is not abused.

In order to ensure that, I have simply suggested that where an enforcement officer has reasonable grounds as a basis for the exercise of any function under the section, that officer would give a written report outlining the reasonable grounds upon which his or her functions were exercised. In some cases, it will be to An Garda Síochána but in other cases, the Minister can delegate enforcement officer powers outside of An Garda Síochána. In those cases, those individuals will provide the Minister, who had delegated them with those powers, with a clear explanation of what were the reasonable grounds. That is a reasonable bar to put. If one said one had reasonable grounds, one would explain exactly what were those reasonable grounds to form a belief or for those actions. It would increase accountability in respect of this issue.

We had similar questions when debating the canals legislation regarding the issue of enforcement officers being given certain powers to search canal boats. The question arose that there needs to be a clear basis for such actions. We should be able to see what were the reasonable grounds in future prosecutions and in future actions that might happen.

Deputy James Browne: I thank the Senator. As a general rule, the question of whether powers have been properly exercised is a matter for evidence for the courts. It can be challenged in court. Enforcement officers are routinely required to provide evidence that reasonable grounds existed for the exercise of the powers. I do not believe this amendment is necessary. For the most part, those officers will be members of An Garda Síochána, the Revenue Commissioners, or the Naval Service. Their powers cannot arbitrarily be delegated to those who are not members of An Garda Síochána, not officers of the Revenue Commissioners or not Naval Service personnel.

Senator Alice-Mary Higgins: My concern is that while the laws of evidence may apply in terms of an actual prosecution, we have already stated that cases may arise where there will not be prosecution, particularly in relation to humanitarian actions, actors and search and rescue. The Government has expressed the view and hope that it will not proceed to prosecute in these cases. However, we may have situations where goods are confiscated. In those cases, the question of evidence may not come through in court. My concern is that there could be a potential for intimidation. There could be a situation whereby a ship is repeatedly searched or individuals are repeatedly searched. Even if these searches never lead to a prosecution, that could exercise a chilling effect in humanitarian actions or human rights interventions. That is the concern. I am not saying that An Garda Síochána or whatever other enforcement officer might be delegated cannot take these actions. However, it would be useful were they clear about the basis for the actions they take and that those were documented. For example, an Irish ship could be searched multiple times, as could Irish individuals. We have some high-profile

individuals, such as the nurses and doctors on Lesbos who have been leading in humanitarian intervention with some of the most vulnerable refugees. If they are getting searched in Ireland or if they are getting affected by the powers here, there should be documentation as to why this happens and what the grounds are.

Deputy James Browne: It is reasonably rare, thankfully, that any of our enforcement officers, whether from the Naval Service, the Revenue Commissioners or An Garda Síochána, abuse their powers. When this does occur or when a person may feel abused, there are outlets to complain about those, such as to the Garda Síochána Ombudsman Commission, GSOC, for example. Of course, there is the option for the person who feels that there have been abuses against them to take civil action. There are already appropriate and well-trodden protections in place against enforcement officers abusing their powers. This includes, for example, that they would have to establish those reasonable grounds, if perhaps the case has not gone as far as being tested in court.

Acting Chairperson (Senator Pauline O'Reilly): Is the Senator pressing the amendment?

Senator Alice-Mary Higgins: I will press the amendment. Even leaving aside the question of abuse, in general, when we have discretion we should have accountability. It is a thing of trust. Wherever we give discretion, discretionary power or interpretative power, it is good practice to have accountability around how that interpretation and discretion is used. Even in general, we should be aiming higher in this area.

Amendment put and declared lost.

Section 12 agreed to.

Section 13 agreed to.

SECTION 14

Senator Alice-Mary Higgins: I move amendment No. 22:

In page 15, line 11, to delete “or recklessly makes a statement which is false in a material particular”.

I know there is concern and Senator Ward is rightly concerned about recklessness in relation to human life. I would support that. We should penalise those who take actions which are reckless in terms of the safety of human life. My concern with this phrasing is that potentially criminalises somebody. The section is outside sections 6, 7 and 8 but it potentially criminalises somebody who makes a statement but who cannot know whether it is true. For example, somebody could be engaging with an enforcement officer on a ship. That person may make a statement about persons they have rescued and who they do not know. That person will be relying on the information they have been told. They will not have means to prove or disprove what they have heard from the people they have rescued. They will be in a situation where they have rescued persons and are relaying information in good faith. I am concerned that the “reckless” line is quite high in that it refers to “a material particular” that may be inaccurate or false. It is quite a high bar to expect such a person to be completely confident that material particulars of everything they say in the circumstances is accurate.

I gave the example of fishing boats that have engaged in search and rescue and those concerned are passing on information that they believe to be true. The word “reckless” should be

removed, as it relates to the truth or falsity of a material particular. That material particular could be as simple as somebody's birth date, or the ages of persons who have been rescued and in respect of whom one is engaging with the enforcement officer. These are the kinds of things that people will get wrong and we should not create a situation whereby persons are in danger of having breached the Act because of that.

While I have suggested a deletion, perhaps a way to balance it in a more nuanced way is to insert a different bar around excepting where such statements are made in good faith. I have concerns at the moment as people have had, for example, their immigration applications dragged through the coals because they have made what seems to be a falsity in a material particular. They may have, for instance, stated a certain town, when it was a different town. They may have mistakenly stated a date of travel, when in fact it was a date before or after. We know how falsity in material particulars often has been a huge source of distress. I do not want a situation whereby those who are helping people are in situation where they are giving a material particular that might be technically false but that they do not do it in bad faith or with reason to deceive.

Senator Barry Ward: I want to be clear, because I mentioned the issue of recklessness earlier. I support the presence of the word "reckless" in this provision. It expands upon and allows for greater scope for prosecutors to identify people who have been involved in offending under this legislation. It is important to note, however, that there is a difference in law between recklessness and a mistake and they cannot be equated. Senator Higgins raised the point that somebody could make a mistake or misspeak and that could be deemed as recklessness. I do not think that would be the case and I think he or she would have a good defence in any subsequent prosecution if he or she simply made a mistake. Recklessness is a function of intention rather than mistake and it deals with a level of disregard for the person. It is when a person claims he or she did not know something but everyone knows he or she should have. When I spoke earlier about recklessness, I suggested that perhaps it should have been included in some of the offences in section 6, for example. I support entirely its retention here. To remove it would tie the hands of prosecutors and make it more difficult for us to achieve prosecution and conviction and that is why it should remain.

Deputy James Browne: I thank the Senators. Unfortunately, I cannot accept this amendment. Effectively, recklessness is being aware of a risk and deciding to take it anyway. As Senator Ward said, it is not about a mistake. If the decision as to why action taken is made in good faith, it is not recklessness either and such a person should be okay in that regard. It is not absolute liability for the making of an incorrect statement either. It is reasonable in the serious situation where a ship is boarded using proportional powers, that a person does not make a reckless false statement to the enforcement officer. Otherwise that is not someone who acts in good faith or someone who makes a mistake. Such people must know there is a risk with what they do and yet go ahead and do it anyway. Similar powers exist in drug interdiction and I am not aware of any issues that have arisen there either in the circumstances. To remove reference to recklessness would make it difficult for enforcement officers to perform their role.

Senator Alice-Mary Higgins: My concern in this area is particularly strong because the defence, as stated previously, in terms of humanitarian assistance or humanitarian action does not apply to this section. The defence in any proceedings only applies to offences under sections 6 to 8, inclusive, and does not apply to actions taken under this section. This not only concerns making a mistake. Is it regarded as being reckless if a person does not and cannot know people's ages? A mistake is if I misspeak when saying something I know to be true but

say it incorrectly.

Let us consider the owner of a ship, or an actor such as a humanitarian worker or a human rights advocate on the ship, who rescues a family and engages with an enforcement officer in regard to them. If the person speaks about the ages or country of origin of those rescued and cannot be sure of the facts but states them anyway, would that be recklessness or would it not be? I am concerned about the situations of the enforcement officers. We are creating offences in how people engage with enforcement officers. In many cases, it will be human rights volunteers or humanitarian workers who engage with enforcement officers and they will not have the defence under section 9. That is why I want to ensure they would be afforded a defence and I will bring an amendment on Report Stage on this whereby they will, at least, have a defence of good faith rather than being considered within the context of recklessness. It is not mal-intent. Recklessness is when a person does not know if something is true. Persons concerned might be told that they should be able to tell if people do not have proper papers, for example, and reply that they do not know of or have evidence of the country of origin of these people beyond what they have been told and passed that information on. The smuggled person will have protections but I am concerned this is an area where human rights or humanitarian workers, or people who act as a good Samaritan in relation to a ship, become a point of engagement with an enforcement officer and find themselves in danger of committing an offence. I am concerned about the framing of this. I appreciate it is quite blunt to remove the reference to recklessness. A way around that would be the inclusion of “good faith”. I note in section 9 humanitarian defence does not apply to these offences and that is why I am particularly concerned.

Deputy James Browne: Recklessness has been well defined by the criminal courts over the years and they have dealt with this situation through our criminal code. It is more than mistake and more than negligence. It is just shy of actual deliberate intent. It concerns someone acting with a lack of regard in the face of a situation he or she should be very much aware involves a real risk. To remove the reference to recklessness would leave the prosecutorial system in an almost impossible situation falling back of trying to show intent. It is extremely difficult to prove intent in court beyond a reasonable doubt.

Amendment put and declared lost.

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

In page 16, between lines 15 and 16, to insert the following:

“(17) Where an enforcement officer relies on reasonable grounds as a basis for the exercise of any functions under this section, that officer must submit a written report outlining the reasonable grounds upon which such functions were exercised to An Garda Síochána or the Minister and a copy of the report must be provided to the legal counsel of and to any court with jurisdiction which hears proceedings in respect of the individual detained under this section.”.

I will withdraw this amendment and reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Section 14 agreed to.

Sections 15 and 16 agreed to.

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

In page 19, between lines 15 and 16, to insert the following:

“Report on the gathering of data in respect of smuggling

17. The Minister shall, within 12 months of the passing of this Act and on an annual basis thereafter, lay a report before both Houses of the Oireachtas outlining emerging patterns in respect of the smuggling of persons and what steps have been taken to establish safe passage routes to reduce reliance on or vulnerability to people smuggling.”.

This amendment seeks to ensure that within 12 months of the passing of this Act and annually thereafter a report be produced which outlines the patterns in regard to the smuggling of persons and what steps have been taken to establish safe passage routes to reduce the reliance on and vulnerability of persons to smuggling.

As I said earlier and when we discussed Operation Sophia a number of years ago in this House, the cause of smuggling is not the existence of smugglers or boats. The driver of smuggling is the existence of desperation, war, conflict and, crucially, the lack of alternative legal safe passage routes. There is a deep inadequacy of safe passage routes, as we know. That is why I suggest we should use the tracking of smuggling, and when we respond to it, the responding measures should not simply be prosecutions and convictions but instead moving our policy forward. That is what I ask to be tracked. Does it concern people seeking family reunification? Where are people coming from? Do they come from countries in which we need to have direct humanitarian assistance programmes in place? Where are the points of vulnerability? What are the drivers of smuggling? What are the situations involved? As outlined, people go to smugglers with everything they have and get into boats or vehicles, or cling to the undercarriage of airplanes as we have seen out of desperation. People would not do that unless they considered it to be the only option available to them. One of the main drivers of smuggling is not simply criminal gangs. It is a demand-led not supply-led business. In that regard, we must address the need and vulnerability of persons to smugglers and criminal gangs, and - closely related to that - traffickers.

I ask the Minister of State that we have an annual report where we look at the patterns in regard to how and where people are smuggled; the kind of people who are smuggled; and the kinds of protections people seek when they reach Ireland or other protocol countries. Could those protection mechanisms, perhaps, have been offered through better family reunification laws?

The Minister of State will be aware that we have legislation that passed all Stages in this House and is on the Dáil Order Paper which addresses the fact that Ireland narrowed the definition of family to such an extent that significant numbers of families fall completely outside of the remit. It relates now to only spouses and children. It means that some people who are 19 or 20 years of age, in many cases, have no family member who they are entitled to be reunified with.

The purpose of what I propose is to identify the patterns and countries of origin which may

be in need of specific programmes, either from Ireland alone or collectively with the UN or our EU partners. It is also to identify the types of visas that people seek when they arrive, to which, perhaps, we could be providing better and safer routes. I ask that this matter be addressed.

Deputy James Browne: I acknowledge that a broader discussion needs to happen in respect of safe passage. Ireland has to be part of this. It has to be part of an international discussion. I do not believe that a relatively narrow criminal justice Bill is the appropriate place for these provisions. In the circumstances, I oppose the amendment.

Senator Alice-Mary Higgins: I am of the view that this is particularly relevant. If the intention behind the Bill is to address smuggling, then the drivers of smuggling and the creation of vulnerability to smuggling are relevant. I will press the amendment.

Amendment put and declared lost.

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

In page 19, between lines 15 and 16, to insert the following:

“Report on search and rescue operations

17. The Minister shall, within six months of the passing of this Act, lay a report before both Houses of the Oireachtas outlining the State’s record and current practice in respect of humanitarian search and rescue in the Mediterranean, including the number of individuals which the Irish Navy rescued in the years 2018 to 2020, future plans or strategies to restore and increase humanitarian search and rescue and proposed supports to non-governmental organisations.”.

I have already outlined the issue to which this amendment relates, namely, our humanitarian obligations. It is appropriate that we have a review. The question of smuggling directly relates to this because smuggling is one of the issues addressed under the European directive. It relates directly to the Mediterranean. I have focused the majority of my comments today on the Mediterranean because it is a place with which Ireland has a relationship and where Irish ships and Irish humanitarian workers and NGOs have played a key role, a vocal role and, in some cases, quite an heroic role.

I would like if we could have a report looking at the State’s record and its current practice in humanitarian search-and-rescue missions in the Mediterranean. We have gone from rescuing 8,500 people in one year to 1,888 in another and on to almost none at all. This was as a result of a policy and political shift. I recognise that the policy and political context is not entirely within our control, but it is a policy and political context in which we are engaging. It would be very appropriate if we had a report looking at humanitarian search and rescue, including of persons being smuggled in the Mediterranean.

I have quoted figures up to 2018. I do not have figures for the period 2018 to 2020. What are the future plans and strategies to restore and increase humanitarian search and rescue in the Mediterranean? If it is not the case that the Irish Naval Service is in a position to do so or that our European partners are willing to do so by means of a successor to Operation Sophia, what steps will the State take to support civil society interests, NGOs and international humanitarian organisations so they can continue the work of humanitarian search and rescue? People will still be setting out into the Mediterranean. They will still be vulnerable and they will sometimes

be trafficked and smuggled. We cannot simply turn a blind eye or wait for cases to arrive before our courts. We need to have political and policy responses in this regard. I hope the Minister of State will be able to engage on this matter.

Deputy James Browne: Any involvement by the State in international humanitarian search-and-rescue missions and operations, including the involvement of the Naval Service, is done in co-operation with our EU partners and in the context of our UN missions. The Naval Service's involvement in the Mediterranean was as part of Operation Pontus and Operation Sophia. The Naval Service has not been deployed to the Mediterranean since 2018. The decisions to participate in Operation Pontus and Operation Sofia were subject to the approval of the Government and the Dáil. This will apply to future similar deployments. Given these circumstances and the safeguards provided by the need for Government and Dáil approval, there are several ways in which the Houses of the Oireachtas can be updated on such deployments by the Minister for Defence. In such circumstances, it would not be appropriate for the Minister for Justice to provide reports to the Houses of the Oireachtas on the activities of the Defence Forces, including those of the Naval Service.

Senator Alice-Mary Higgins: I accept the point made by the Minister of State. In my earlier contributions I recognised that this area cuts across the Departments of Defence and Foreign Affairs, as well as the Department of Justice, but they do intersect. We have seen a great increase in judicial measures relating to preventing illegal entry. Much attention has been focused on the security aspect. There is a related neglect, and a consequent withdrawal on a European basis, from the humanitarian work which is linked. The Departments are closely linked in this regard.

I will not press the amendment at this time. I will word it slightly differently and resubmit. It is vital that there is engagement between the Departments of Justice, Defence and Foreign Affairs in this regard. If there is a chill on humanitarian action in the Mediterranean, not just because of our implementation of these laws but also in parallel with other laws throughout Europe, it is an issue for Ireland to look to what role it wants to play. We are not simply in the business of prosecutions. We are in the position of policy-making as political actors. Our laws create policy and political environments. They affect society and social action.

We have focused a great deal on the question of prosecutions and convictions. The chill effect and the jeopardy I mentioned are recognised in the directive by the fact that an opportunity was given for an exemption in respect of humanitarian action, and a specific opportunity, choice and discretion were given to the State. It is very important that our decision is measured not just against the number of prosecutions and convictions but that the chill effect is tested by monitoring what happens. It seems the decision of the Department at present is not to use this discretion to include an exemption in respect of human rights and humanitarian activity.

I agree that it spans Departments. The Department of Justice needs to engage very actively with the Departments of Defence and Foreign Affairs in order that we can track the patterns. We know the number that used to be saved was 7,000 or 8,000 a year. We know the number being saved now is close to zero. The figures I received earlier this week from the Minister, Deputy Coveney, indicate that 1,300 people have drowned in the Mediterranean this year. In that context, the conversation needs to be ongoing.

I will withdraw the amendment but I might table another version for Report Stage asking for very active engagement between the Departments of Justice, Foreign Affairs and Defence

7 October 2021

on what Ireland has indicated is a policy goal. We stated that when we ran for membership of the Security Council. This policy goal is to prioritise humanitarian action and human rights and ensure that the laws from the Department of Justice do not have an inadvertent negative or chilling effect on those other State policy goals in terms of humanitarian rescue and human rights.

Amendment, by leave, withdrawn.

Sections 17 to 30, inclusive, agreed to.

Title agreed to.

Bill reported without amendment.

Acting Chairperson (Senator Pauline O'Reilly): When is it proposed to take next Stage?

Senator Gerry Horkan: Next Tuesday.

Acting Chairperson (Senator Pauline O'Reilly): Is that agreed? Agreed.

Report Stage ordered for Tuesday, 12 October 2021.

Acting Chairperson (Senator Pauline O'Reilly): When is it proposed to sit again?

Senator Gerry Horkan: Next Tuesday at noon.

The Seanad adjourned at 3.51 p.m. until 12 noon on Tuesday, 12 October 2021.