



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

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SEANAD ÉIREANN

Dé Céadaoin, 20 Deireadh Fómhair 2021

Wednesday, 20 October 2021

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

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

The need for the Minister for Housing, Local Government and Heritage to broaden the commercial to residential planning exemption to include former pubs.

I have also received notice from Senator Mary Fitzpatrick of the following matter:

The need for the Minister for Housing, Local Government and Heritage to provide an update on the restoration of the National Monument Museum on Moore Street, Dublin, and the regeneration of trading on that street.

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

The need for Minister for Housing, Local Government and Heritage to make a statement on blockages in the planning system associated with solar panel installation and microgeneration.

I have also received notice from Senator Paddy Burke of the following matter:

The need for the Minister for Agriculture, Food and the Marine to make a statement on the penalties imposed on farmers in respect of farmland that has been damaged by fire.

I have also received notice from Senator Barry Ward of the following matter:

The need for the Minister for Education to make a statement on the lack of parity between the use of traditional and simplified Chinese characters in leaving certificate Mandarin Chinese.

The matters raised by the Senators are suitable for discussion. I have selected the matters raised by Senators Cummins, Fitzpatrick, Boylan and Burke and they will be taken now. Senator Ward may give notice on another day of the matter he wishes to raise.

As today is near out last sitting day, and as next week is Austria's national day, I will mark

the occasion of that day. The relationship between Ireland and Austria has deep roots in history. The Irishman Fearghal was Bishop of Salzburg in the eighth century and died there in 784. The Irish monk Colmán was martyred at Stockerau near Vienna in 1012 and for centuries was venerated as Austria's national saint. In 1155, Irish monks founded the Schottenstift Abbey which still exists in the centre of Vienna.

Austria also gave refuge to a number of Wild Geese, and names like O'Donnell, Lacy, Kavanagh and Laudon have their place in Austrian military history. Maximilian O'Donnell saved the life of Emperor Franz Josef from an assassination attempt in 1853 and received the title of Count of the Emperor. The longest serving Prime Minister under Emperor Franz Josef was Eduard Taaffe, a descendant of an Irish exile.

We have also enjoyed shared academic and literary links, from Wittgenstein in Dublin to Oliver St. John Gogarty's time in Vienna. Professor Erwin Schrodinger of the Dublin Institute of Advanced Studies lived for longer in Dublin than in any other city. Our two countries enjoy excellent relations, have much in common and cooperate in international jointly achieved common goals. We wish all Austrians, including Austrians living in Ireland, a happy national day, *einen schonen osterreichischen Nationalfeiertag*. If I got that right it will have been a small miracle. I wish all Austrians a happy national day.

Nithe i dtosach suíonna - Commencement Matters

Planning Issues

Senator John Cummins: I welcome the Minister of State, Deputy Burke, to the House. Page 112 of the Housing For All document talks about extending planning exemptions to 2025 to complement Town Centre First objectives, "We will review and extend the regulations that exempt certain vacant commercial premises, such as 'over the shop' type spaces, from requiring planning permission for change of use". It puts the timeline of quarter 4 of this year beside the objective.

I have been raising this issue since my election to the Seanad. It was one of the very first issues I raised on the floor of the Seanad. The changes that were introduced by the Minister of State's predecessor with the same portfolio, the Minister of State, Deputy English, in February 2018 to exempt certain classes of commercial premises from the requirement to seek planning permission if the building was to be utilised for residential use was a very welcome move. The aim of the exemption was to add much-needed housing stock while also maximising the use of vacant and underutilised spaces. I have seen evidence of it working in my own city of Waterford where more than 20 housing units have been delivered via this planning exemption. Many more, however, could, and should, have been delivered with the use of this exemption if it had been extended to former pubs. I do not believe it was ever the intention of the Minister of State or his officials to exclude former pubs from the planning exemption but the issue lies in the fact that pubs are not a particular class of building covered by the exemption. Pubs, in fact, do not have a particular class, to my knowledge.

While I understand that some local authorities have been using a liberal approach to the regulations, there is no doubt that an issue will arise down the line if and when the owner tries

to sell the building as they were not be in compliance.

Article 6 of the planning and development regulations, 2001 to 2019, exempts certain changes of use, including change of use from use as a public house to use as a shop. Article 10(6) permits a change of use from a shop to a residential use. However, I understand that to avail of this particular exemption, it has to be considered that the premises was in use as a shop for a period of 12 months, which is counter-intuitive and would again add to delays when we are trying to speed up delivery here. Logic suggests that someone should be able to go from a pub directly to residential use without establishing that intermediate retail use.

As the Minister of State will be aware, Waterford has been to the forefront in bringing derelict and vacant properties back into use under the repair and leasing scheme. Some 50% of all repair and leasing units in the country have been delivered in my own county and I compliment the team at Waterford City and County Council and the owners of properties who have engaged with the scheme to bring these properties back into use.

This exemption needs to be extended to pubs because I have examples in the past 12 months alone of people who have been looking to deliver units under the repair and leasing scheme to Waterford City and County Council and have been stuck in a planning process of six, eight or nine months while attracting large development contributions for bringing back a pub into residential use. The owner of the shop, however, on the other corner of the street directly facing that former pub can deliver its four units without the need to go to the planning process. I know that this is something that the Minister of State is looking at and that as a Government we are committed to doing more in this space to bring former derelict and underutilised spaces back into use but I ask him to expedite the extension of this exemption to pubs without delay.

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): I thank the Senator for raising this important issue and I acknowledge his work in this area because he has been consistently bringing this matter to the forefront of our Department since his election to the Seanad.

By way of background, the Planning and Development (Amendment) (No.2) Regulations 2018 which came into operation on 8 February 2018, provide for an exemption from the requirement to obtain planning permission in respect of a change of use of certain vacant commercial premises, including vacant areas above ground floor premises, to residential use. This measure was aimed at facilitating the productive reuse of qualifying vacant commercial buildings as homes, while also facilitating urban renewal and the bringing on stream of increased housing supply.

The 2018 regulations were due to lapse on 31 December 2021 but this deadline was extended to February 2022 arising from a Covid-related extension of planning timelines last year. The Government and I recognised that to resolve the housing crisis, we need to give consideration to every viable and sustainable option at our disposal, including converting existing vacant commercial premises to residential use. Current measures to facilitate this include, as mentioned by the Senator, the repair and leasing scheme, which was introduced to assist property owners in bringing vacant properties back into use for social housing purposes, and the buy and renew scheme, which supports local authorities in purchasing and renewing housing units in need of repair which can then be made available for social housing use.

The recently published Housing for All - a New Housing Plan for Ireland includes a further

number of new measures to help revitalise towns. These include a new local authority-led programme to help local authorities buy or compulsorily purchase 2,500 vacant homes in their areas, which can then be sold on the open market, with a view to ensuring those homes do not remain vacant. The croí cónaithe (towns) fund will be delivered by local authorities for the provision of serviced sites for housing to attract people to build their homes and to support the refurbishment of vacant properties, enabling people to live in small towns and villages in a sustainable way.

Housing for All further commits to reviewing and extending the 2018 regulations that exempt certain vacant commercial premises from the requirement to obtain planning permission for change of use to residential purposes to the end of 2025. This review is currently under way in my Department and will be completed by the end of the year. This review is looking at a number of potential amendments, including the provision of an exemption for the conversion of pubs to residential use, which could be made to the current regulations.

A notable feature in recent years, as the Senator mentioned, is the number of pubs that have closed, particularly in rural towns and villages, which is impacting on their vibrancy. While the idea of exempting the conversion of pubs to residential use may initially seem positive, we are taking a few considerations into account in this regard, including the size, location, the zoning of pubs and what exemption thresholds might be applied in this regard. My Department is currently working on a detailed review of this proposal with a view to feeding into the draft regulations, which it is intended to submit to the Oireachtas for approval shortly.

It should be noted, however, that under section 262(4) of the Planning and Development Act 2000, as amended, legislative proposals on exempted development require the approval of both Houses of the Oireachtas before they can be signed into law.

Once again, I acknowledge the Senator for raising this important issue. We will be in a position to bring forward draft legislative proposals, including the extending of the timeline, and scope, as alluded to in his contribution, of the current 2018 regulations, to the Oireachtas shortly.

An Leas-Chathaoirleach: I thank the Minister of State and I welcome him to the Chamber, as always. I ask the Senator to respond to him and he has one minute to do so.

Senator John Cummins: I thank the Minister of State. We all know that this is about speed of delivery and removing roadblocks. In my experience of dealing with this scheme, particularly the repair and leasing scheme, this is one such roadblock. Former public houses in Waterford city have been transformed and they have people currently living in them. It is a great success so I ask the Minister of State when those regulations are being revised not to set any sort of onerous threshold on people being able to bring former pubs back into use for residential use. We all know that there are former pubs in every town, village and city, many of which are derelict and are a blot on the landscape of an area. I cannot think of any better use if those buildings could be utilised for housing purposes at this time of housing need. I ask the Minister of State to expedite this matter, as I know he is committed to doing so, and I hope that the regulations will allow for the liberal use of the exemptions. I thank the Leas-Chathaoirleach.

Deputy Peter Burke: I thank both the Leas-Chathaoirleach and Senator Cummins again this Commencement matter. It must be very workable for everyone to achieve a balance in our towns, villages and cities, as the Senator has referred to in Waterford, to ensure that we

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can bring vacant properties back into use. I have not had sight of the finalised review as of yet but I am in full agreement with the Senator that it should allow for the bringing of commercial premises, such as pubs, into residential use.

I do not believe that anyone in Government wants any onerous, difficult conditions that have to be met to do this because the figures speak for themselves in the challenge we have to address in getting vacant properties back into use. We do not want to put any impediments in people's way to deliver that.

I acknowledge the great work that has been done in Waterford in having such a share of the whole country in the repair and leasing scheme and the way in which the Senator's own local authority, together with him, are working proactively with developers to try to bring vacant properties back into use as sustainable tenancies for all in the community. I acknowledge that great work and thank the House.

National Monuments

Senator Mary Fitzpatrick: I thank the Minister of State for coming to the House to take this Commencement matter. I am looking for an update on when works will commence on the 1916 commemorative centre in Moore Street and on the regeneration of the street market. The Minister of State knows that Moore Street is at the heart of our capital city. It is a street where there has been market and street trading for generations, dating back to the 18th century. Fruit and vegetable traders are on the street, as well as shops and traders who live and trade on the street.

Over recent decades the street has deteriorated. It has been terribly neglected by the State and the city council to the point where there are very few owner-traders left on the street. Buckley's and Troy's are the only shop owners on the street, and street traders have been neglected for years and left without public lighting, running water and access to electricity. It is absolutely disgraceful how Dublin City Council has treated street traders. Those people have kept the street alive.

The street is also the birthplace of our Republic. Back on 24 April 1916, Pádraig Pearse, James Connolly and Joseph Plunkett led their soldiers to the GPO. For five days they battled with the British to assert our independence. They evacuated the GPO through Henry Street and Henry Place, onto Moore Lane and into Moore Street. The last meeting place and headquarters of the 1916 Rising was at 14-17 Moore Street. It was in 15 Moore Street that nurse Elizabeth O'Farrell made the surrender.

That site has been designated as a national monument for a very long time. Since I was first elected in 2004, no more than all of the relatives and those who trade on the street, I have worked for years with the State to try to regenerate the street and commemorate our history. I brought all of the reports on Moore Street with me today. What I have here is only a fraction of them. I could go on. There is a report on the Moore Street battlefield site, an architectural report, a securing history report and a citizens plan. There are nearly more reports than there were volunteers in the GPO. The State needs to step up to the plate.

There are two final reports. I chaired the Moore Street expert group on Dublin City Council before I was appointed to the Seanad. We made strong recommendations to create a vibrant and

diverse market that speaks to the future as well as respecting our past. In May this year, I was delighted to be the Fianna Fáil representative, along with my colleague, Councillor Eimear McCormack, on the Minister's advisory group. We produced a third securing history report which makes strong recommendations for the national monument and street market.

It is unreasonable for us to expect anybody to respect the street when the State is not respecting history and street traders. I hope the Minister of State can give us some good news today regarding a commencement date for the work on the national monument at 14-17 Moore Street and a commemorative centre. A great vision document has been produced by the Irish Heritage Trust. I hope the Minister of State will be able to advise the House today on a commencement date for that. I also hope he will be able to advise us on when Dublin City Council will get its act together and regenerate the street market.

Deputy Peter Burke: I thank Senator Fitzpatrick for her very important Commencement matter. In March, €121,285,388 was allocated to Dublin City Council in respect of the north inner city concept area 1 under call 2 of the urban regeneration and development fund. The north inner city project involves the regeneration and redevelopment of several areas of the north city that have experienced a degree of decline and dereliction over a number of years, resulting in poor perception issues and the depiction of an area that the market has now forgotten.

The main objective of this project is to achieve long-term sustainable regeneration around the redevelopment of various areas, centred around the fruit and vegetable market, Parnell Square and Mountjoy Square. Complementary projects include the Moore Street public realm renewal works, with the intention of reactivating one of the most important trading assets in the city, along with structural and restoration works to the national monument at 14-17 Moore Street. Work on the national monument, which is in the ownership of the Department, will facilitate the protection and use of these historical buildings as an iconic heritage and visitor attraction in the form of a 1916 commemorative centre, along with the rejuvenation of the historic street.

The regeneration of Moore Street market and street is a matter for Dublin City Council and I am assured by the expert advisory group appointed in this regard. The Moore Street advisory group, of which the Senator is a valued member, recommended in its report to the Minister, Deputy Darragh O'Brien, and the Minister of State, Deputy Malcolm Noonan, earlier this year that the process embarked on by the OPW and the national monument service of the Department to restore the national monument and open it up to the public as soon as possible will continue.

Officials from the Department and the OPW have liaised in order to progress this. I understand the OPW is in the process of appointing a team to carry out phase 1 essential works to the monument which will ensure stability and provide a pathway for the phase 2 completion works to commence. I am sure the Senator will appreciate that the Minister and Minister of State are keen that these essential works commence as soon as possible and without any further delay. I can assure the Senator, on their behalf, that plans are under way for the sensitive and respectful restoration of the monument, along with a visitor centre to the rear, to progress as soon as possible.

Senator Mary Fitzpatrick: I thank the Minister of State. I am really concerned. I have no doubt that the Ministers of State, Deputies Burke and Noonan, and the Minister, Deputy Darragh O'Brien, understand the value of Moore Street. They are committed to a sense of regeneration and commemoration of our history on Moore Street and the rejuvenation of the

street market.

I have grave concerns that despite the €121 million given to Dublin City Council it is not moving ahead and using those funds in a way that would deliver the type of restoration of the national monument and regeneration of the street market that is desperately needed. I ask that the Minister of State have a meeting with the CEO of Dublin City Council and seek from him a report giving absolute timelines that work will progress on the street. It is not good enough for us to allow the neglect, decay and deterioration of the street to continue. There was some excuse during Covid, but we are all re-emerging from it now.

We have a vision for Moore Street that respects the past and embraces the future. The Minister of State, along with the Minister of State, Deputy Noonan, and the Minister, Deputy Darragh O'Brien, share that vision. I ask them to seek an urgent meeting with the CEO of Dublin City Council and secure from him an absolute commitment on when works will commence on the street. I also ask him to arrange a meeting of the Moore Street advisory group with the OPW and the Department to understand their timelines for the commencement of works on the commemorative museum.

Deputy Peter Burke: I thank Senator Fitzpatrick for her comments and acknowledge the genuine concern that she has about this area. We all share that and it is very important that we put that point across.

I will raise with the Minister and the Minister of State, Deputy Noonan, the Senator's request to meet with the Dublin city manager to try to progress a distinct timeline for when work will commence. I met the management of Dublin City Council last week to discuss projects in other areas of the north inner city that have been delayed and which we are trying to progress. This specific issue is the responsibility of the Minister of State, Deputy Noonan, and the Minister. I will seek a commitment from them to have a meeting.

I will also seek a meeting with the advisory group and OPW in order to establish a timeline for the commencement of phase 1 of the works. I appreciate the value Moore Street has for the community and how important an area it is. We need to display urgency on behalf of the State in getting works under way because it is something that will underwrite the community into the future once it is done.

11 o'clock

Renewable Energy Generation

Senator Lynn Boylan: Cuirim fáilte roimh an Aire Stáit. Across the country, homes, schools, community buildings, farms and businesses are crying out to generate their own solar energy but, unfortunately, the restrictive planning framework for solar generation has undermined progress in this regard. Planning regulations currently require planning permission for all but the smallest of solar panel installations on homes or businesses which are exempt. This has had a major chilling effect in rolling out solar energy generation. The problem is even worse for schools and community groups because there is no exemption, even for smaller installations, on their buildings. This means that planning permission is required for all solar installations on educational or community buildings. As a result, schools and community groups are locked out and cannot share the benefits of renewables. In the rare circumstances where

schools decide to plough ahead, they are at a disadvantage because the requirement to obtain planning permission adds €5,000 to €7,000 to the cost of installing solar panels.

Before I go on, I want to make it very clear that I am not against strong planning regulation. In fact, I am in favour of greater democratisation of the planning system and more curbs on the ability of vested interests to manipulate that system to their own benefit. I also very strongly oppose any attempts being made by this Government to undermine the public's ability to engage with the planning process. If there was ever a case for less red tape in the planning system, then surely putting in place rooftop solar arrays on primary schools in the middle of a climate crisis is it.

For the past two years, there have been nothing excuses and delays. Successive Governments have committed to updating the regulations. There were specific commitments in the Climate Action Plan 2019, including a commitment for the Department of Housing, Local Government and Heritage to complete a review of the regulations in the fourth quarter of 2019. In 2020, the Department was still conducting that review and it is still doing so in 2021. What is the status of the review?

A new roadblock was then thrown up. I refer to the supposed need for a review of the potential for glare and glint to impact on aircraft around airports. This is news as Dublin Airport has just opened its own solar farm. At this stage, it is farcical that schools are not able to put up solar panels without planning permission. In response to a parliamentary question tabled in June, the Minister of State indicated that the tendering process for this research had not been completed, let alone the research itself. When is the research on glint and glare going to be completed?

In January we were told that we would get interim planning regulations which would at least allow for greater solar installations, excluding installations in the vicinity of airports to allow for detailed analysis of the potential for airport exclusion zones to be finalised. In April we were told that the revised regulations for solar panel exemptions would be submitted to the Oireachtas for approval shortly. In June it was claimed that a strategic environmental assessment was needed and that interim regulations would instead be put in place in the fourth quarter. However, the full strategic environmental assessment process only started in earnest in September and an associated public consultation will only commence in November. The result of this is that the interim regulations are now set to be completed in early 2022.

Why is it that Ireland suffers these difficulties when other European countries do not? It does not bode well for the climate action we are going to have to take. Can we hear when we will be done, once and for all, with the excuses and delays? When will the interim regulations be delivered to the Oireachtas to allow schools and community groups to participate in the transition to a decarbonised future?

Deputy Peter Burke: I thank Senator Boylan for raising this very important issue. To provide some background, under the Planning and Development Act 2000, as amended, all development, unless specifically exempted under the Act or associated regulations, requires planning permission. Various exemptions from the requirement to obtain planning permission are set out in the Act and regulations and these exemptions are subject to compliance with general restrictions on exemptions set out in the Act and regulations. Included among the planning exemptions are those applying to the installation of solar infrastructure on a variety of building types including houses, business premises and industrial and agricultural buildings, to which

specific conditions are attached. My Department, in the context of the climate action plan and in consultation with the Department of Environment, Climate and Communications, has undertaken a review of the existing solar panel planning exemptions set out in the regulations, with a particular focus on facilitating increased self-generation of electricity and in recognition of the limitations of the current exemptions. This review is now complete. Substantial changes to the current planning exemption thresholds for solar panels are proposed, in addition to the introduction of new classes of solar panel planning exemptions relating to their use in apartments and in educational, community and religious buildings.

In light of the need to appropriately address aviation safety concerns arising from the glint and glare impacts of solar panels and the easing of the solar panel planning exemption thresholds, my Department is in the process of commissioning the development of detailed aviation safeguarding maps which will identify and delineate specific but limited areas in the vicinity of airports and aerodromes, referred to as exclusion zones, within which the exemptions will not apply. Project scoping feedback has been received from interested parties through the draft request for tender process and has been considered by my Department in the development of the final tender documentation. My Department intends to publish the call for tender imminently.

While this work is ongoing, my Department has advanced interim regulations, adopting a temporary, albeit more stringent, approach incorporating initial defined exclusion zones around airports and aerodromes. These interim regulations, allowing for increased solar panel planning exemptions, will cover the vast majority of the land area of the country, only excluding those limited exclusion zones around airports and aerodromes.

The draft interim regulations have been reviewed under the strategic environmental assessment, SEA, directive, 2001/42/EC, and it is considered that they are likely to have significant effects on the environment, thereby necessitating the undertaking of a full SEA on the draft proposals. The Senator referred to this in the context of the need for a robust planning system. The completion of the SEA screening stage has been delayed by a further requirement for completion of screening for appropriate assessment, AA, under the habitats directive, by my Department's ecological assessment unit. Once this AA screening process is complete, a formal SEA process will commence with scoping of the SEA. Following the latter, the SEA environmental report will be published alongside draft interim regulations for a period of public consultation of not less than four weeks. This public consultation is expected to commence in December. Written submissions or observations will be taken into consideration before finalisation of the draft interim regulations in the first quarter of 2022.

As required under planning legislation, the proposed exempted development regulations must be laid in draft form before the Houses of the Oireachtas and receive a positive resolution from both Houses before they can be made and the SEA process concluded. Accordingly, the process for finalising the interim solar panel planning exemptions as referred to above, with interim exclusion zones around airports and aerodromes and allowing for the vast majority of the country to be covered by the exemptions, is now expected to be completed in early 2022.

Work on the development of the aviation safeguarding maps for airports and aerodromes is expected to be completed in the second quarter of 2022. The final supplementary set of regulations, which will delineate the final exclusion areas around airports and aerodromes in which the exemptions will not apply, will be prepared thereafter and, subject to environmental reporting considerations, will subsequently be laid in draft form before the Houses of the Oireachtas for approval.

Senator Lynn Boylan: I thank the Minister of State for outlining all of the roadblocks that are in place and for saying there is a deadline of early 2022. I hope that deadline will actually be the deadline and that it will not move again, as it has previously. This will come as little comfort to schools and community groups that are desperate to be part of the transition and to do their part for climate action. It does not bode well because this is the low-hanging fruit as regards climate action. When we know there are enormous changes to be made, if we cannot get the low-hanging fruit right, I have serious concerns as to how we are to implement carbon budgets when they finally come before this House.

Deputy Peter Burke: I again thank Senator Boylan for raising this very important issue. I appreciate the concerns in the community with regard to getting this up and running because it is the low-hanging fruit and will aid in building a sustainable model in our communities. We will progress as quickly as possible and there is urgency in the Department on it. We have to comply with the directives and ensure we have the scoping documentation and seek public consultation on it. We will come back to both Houses of the Oireachtas to approve the draft guidelines. I assure the House there is huge urgency in the Department to progress this and get it right. Communities need it. It is essential and it will make them more sustainable.

Agriculture Schemes

Senator Paddy Burke: I welcome the Minister of State to the House. I am sharing time on this with Senator Kyne, who comes from the same type of area as I do, as does the Cathaoirleach. There was a huge fire in Killarney during the summer. Fires pose great problems for many people and many farmers. A fire on commonage, in forestry or on any land can be started by fishers, campers, hillwalkers or various people who can be lackadaisical in throwing away cigarette butts or starting a campfire for a picnic and failing to put it out properly, with the result that commonage, land or forestry in many cases can be burned. This leads to the destruction of habitats. The penalties are in place because of the destruction of habitats. This is most unfair. A fire can be started on one farm and spread to the next farm. All farmers are penalised. Commonage holders are also penalised. The result is that their farm payments are reduced. The penalty is that no payment is made on the burnt land. There is also a penalty on the payment for the farmer's remaining land. Many farmers have appealed these decisions and where evidence was provided that the farmer did not start the fire the Department removed the penalty on the remaining lands but still issued no payment on the burnt land. This is very unfair if a person is not responsible.

Farmers must always appeal in these circumstances. They should not have to do this. Only the person found to have been responsible for starting the fire should be penalised. There should not be any penalty imposed on any other farmer, landowner or recipient of farm payments. This is a big issue. The National Parks and Wildlife Service has a huge part to play in this. I expect a very positive reply from the Minister of State. If not, I ask him to bring it back to the Minister for Agriculture, Food and the Marine. This is creating great hardship for many farmers. In some cases there is a lot of money involved. Every year brings its own story.

Senator Seán Kyne: I welcome the Minister of State. I concur with Senator Burke on the concerns about penalties being imposed on farmers. Farmers are very aware of their responsibilities. This has been rumbling for a long number of years with regard to responsibilities for protecting habitats and environments. Depending on conditions and at certain times of the

year, fires can spread if started maliciously or accidentally by another individual. They can spread – pardon the pun – like wildfire across commonages, protected areas and forestry. In the Connemara area I have seen the aftermath of such destruction. I have seen fires that have taken place. Depending on the conditions and the time of year, they can run wild. Farmers are penalised and their payments are held up or stopped until such time as investigations take place. I look forward to the response from the Minister of State.

Deputy Peter Burke: I thank Senators Burke and Kyne for tabling the Commencement matter. I concur with their sentiments. Notwithstanding this, I am stepping in for the Minister for Agriculture, Food and the Marine so I will read the response from him. I will raise with him the very valid issues the Senators have raised.

The basic payment scheme is a critical income support paid to farmers. It is fully funded by the EU and is subject to EU regulations. Applicants under the basic payment scheme are allocated payment entitlements and are paid annually on the basis of the number of entitlements held, with the requirement to have an eligible hectare of agricultural land for each payment entitlement. I am sure the Senators are very well aware of this.

It is specified in the 2021 basic payment scheme terms and conditions that land burned during the closed season of 1 March to 31 August in any given year is not eligible for the purpose of payment under the basic payment scheme. Where land has been burned, it is not in a state suitable for an agricultural activity such as grazing or cultivation and, therefore, it is not eligible, except where controlled burning is carried out in accordance with all relevant legislative requirements. Burning of land between 1 March and 31 August in any year is prohibited by law under section 40 of the Wildlife Act 1976, as amended by the Wildlife (Amendment) Act 2000. We are all aware of the loss of wildlife habitats and biodiversity caused by fires, as well as the risk to human life and property.

As required under EU regulations, all applications under the basic payment scheme are subject to robust administrative checks prior to payment. Only valid applications under the basic payment scheme that fully comply with the requirements of the EU legislation are paid. The main element of these administrative checks is an area of assessment which is achieved by using the land parcel identification system. These administrative checks are critical in ensuring the Department meets the rigorous audit requirements at EU and national level. Failure to undertake these administrative checks can result in severe financial penalties for the Department.

As part of these required administrative checks, the Department actively investigates incidents of illegal burning using the most up-to-date technology and satellite imagery. Land declared as eligible on a basic payment scheme application that has subsequently been identified as burned during the closed season may give rise to an overclaim. Such an overclaim will result in a reduction in the eligible area. In addition, as required under the EU regulations, administrative penalties are applied where the area overclaimed is greater than 3% of the area declared. The administrative penalty applied is 1.5 times the difference in hectares between the area declared and area determined, or the number of entitlements held, if lower. The penalty will not exceed 100% of the amount based on the area declared.

Where an overclaim occurs, departmental officials write to the affected applicants setting out the options available to them, including the right to seek a review. Each review is carefully considered individually based on the individual facts of each case. Should applicants disagree with the Department's decision on any review, they have a further right of appeal to

the independent Agriculture Appeals Office. All the circumstances are taken into account when considering an appeal.

The Minister for Agriculture, Food and the Marine has raised this matter directly with the Minister of State, Deputy Heydon, and he has advised that farmers should appeal any decision taken regarding the basic payment scheme when fires occur through no fault of the applicant. His Department will examine potential ways to bring these farmers back into the scheme. It should be noted that the land is only ineligible in the year the burning took place. It does not affect the land eligibility in subsequent years.

Senator Paddy Burke: What the Minister of State is saying is that if a fire takes place between 1 March and 31 August the farmer loses money unless the appeal is successful. Even at that, the farmer will have to go through the rigours of the appeal process. These appeals should be fast and simple. They should not be complicated. Farmers who are not responsible for the fires should be fully recompensed immediately. This is the view of all farmers. As the Minister of State well knows, there can be great hardship. Farmers have commitments such as bank payments. There is huge hardship in some cases. I ask the Minister of State to bring back to the Minister for Agriculture, Food and the Marine our argument that the appeals process should be easy and determined quickly. The only person who should be responsible at the end of the day is the person who caused the fire.

Deputy Peter Burke: I thank Senators Kyne and Burke again for raising the matter. I am from a large rural constituency and fully appreciate and understand how delays can affect farm management. As we all know, farmers are dependent on cash flow and they only receive payments, in many cases, once or twice a year. Farmers must make their cash flow management work for the full year. I understand there should not be any delays in that regard, especially if those farmers have not committed any wrongdoing to cause the fire. I will raise the matter with the Minister, Deputy McConalogue, and report the comments made by both Senators. We can try to see if we can get further movement in terms of reducing the timeframe of the appeals process.

I also note, as I referenced earlier, that farmers must be conscious of the strict regulatory environment of the EU audit service which is required for these payments. We will do our best to see if we can reduce any burden on our farming community. That is the key and it is what we are all trying to do.

Sitting suspended at 11.21 a.m. and resumed at 11.32 a.m.

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: Independence Day in the Czech Republic will be next week. An independent Czechoslovakia was declared in Prague on 28 October 1918, just a year before the first sitting of Dáil Éireann in 1919. Following independence, Ireland and Czechoslovakia had contact at various levels, particularly at the League of Nations. Czechoslovakia established a consulate here in 1929. The Czechoslovakian communist coup in 1948 interrupted the devel-

opment of diplomatic relations. After the Velvet Revolution in 1989, closer relationships were developed, and the first free Czechoslovakian election was held in 1990. In 1993, the independent Czech Republic emerged from the peaceful dissolution of Czechoslovakia. In 1995, an Irish embassy was established in Prague.

Ireland and the Czech Republic share common values and commitments, including membership of the EU and the UN. A bronze bust of renowned playwright Václav Havel, the first President of the Czech Republic, was unveiled at the front of Dáil Éireann in June 2015. This was a symbolic moment for Czech-Irish relations. After the United States of America, Ireland became only the second country in the world in which a national legislative assembly decided to permanently honour the legacy of former president Havel. Our two countries are innovative and like-minded. We share a love of culture and language. Ireland is honoured that the Irish Studies Centre in Charles University, Prague, teaches, researches and promotes Irish culture in European and global contexts, with a focus on modern literature in English and Irish, theatre, film, the Irish language, music and theory. We wish the ambassador and all the Czechs living in Ireland a happy Independence Day.

An tOrd Gnó - Order of Business

Senator Regina Doherty: The Order of Business is No. 1, the Criminal Justice (Smuggling of Persons) Bill 2021 – Report and Final Stages, to be taken at 1 p.m. and to adjourn at 2 p.m. if not previously concluded; No. 2, motion re the directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point, to be taken at 2.45 p.m. and to conclude at 3.30 p.m. if not previously concluded, with the time allocated for the Minister’s opening remarks not to exceed five minutes and that for group spokespersons not to exceed five minutes, and with the Minister to be given no less than five minutes in which to reply; No. 3, Defence (Amendment) Bill 2020 – Committee Stage, to be taken at 3.45 p.m. and to adjourn at 5.15 p.m. if not previously concluded; and No. 4, Private Members’ Business, the Planning and Development (Amendment) Bill 2021 – Second Stage, to be taken at 5.30 p.m., with the time allocated for the debate not to exceed two hours.

Senator Fiona O’Loughlin: I support the Order of Business as outlined by the Leader.

An Cathaoirleach: Could the Leader clarify whether No. 1 is to finish at 2 p.m. or 2.30 p.m.?

Senator Regina Doherty: It is to finish at 2.30 p.m.

Senator Fiona O’Loughlin: Today is World Osteoporosis Day. We must encourage people, particularly women, to make bone health a priority. A recent survey carried out by GPs found that 92% of those who suffer from osteoporosis were surprised with their diagnosis, and that the diagnosis came only after a fracture. Therefore, it is important that people, particularly women over 65, take the opportunity to have a DEXA scan. Early diagnosis is important. I suffer from osteoporosis. I discovered it when I was 30 after a car accident. I was not particularly surprised because my mother and grandmother also had osteoporosis. It can be dealt with through diet

and exercise, and, if needed, medication. There is a good Irish website that provides this information. We should send that message out today.

I was at a three-and-a-half-hour meeting last night with farmers from Kildare and west Wicklow in the mart in Kilcullen. It was part of a consultation process that the Minister for Agriculture, Food and the Marine, Deputy McConalogue, has engaged in around the country. Such consultation is really good. It is happening in 26 places. I was concerned, however, about much of the information I gained. Most of it was not new to me because I have ongoing interaction with farmers in Kildare, just as many Members have such interaction with farmers in their own constituencies. The Common Agricultural Policy, CAP, that is coming down the line seems to be overly bureaucratic. We need the schemes to be simplified. Convergence is a particularly difficult issue for our farmers, and we need to engage more with the Minister on this.

There is a Bloomberg News article in this morning's *Irish Independent* that claims curbs on fertiliser exports are to worsen the global price shock. It is quite scary to read that considering the current scarcity and price of food. We need to have a debate in this House on where we are going with the CAP. We absolutely need simplification. We need to be concerned about the eco schemes, whereby 25% of what farmers can get under the CAP will be tied in with ecological measures. My concern is that schemes coming down the line will not be accessible to farmers.

The final point I want to raise relates to the debate on dyslexia we had last week. It was an excellent debate. We all spoke about how difficult it is for young people with dyslexia and how important it is to have early intervention and diagnosis. Several people contacted me after the debate. One was a parent whose daughter has been diagnosed with dyslexia. The daughter is in fifth class and will be going into sixth next year. The school paid for an assessment and then there was a private assessment. Now the family is told the girl must go to a neurological paediatrician to get the adaptive technology. This is absolutely ridiculous. A child going into sixth class needs to be prepared for secondary school, yet there are obstacles in the form of costs and delays in getting the required assessment. If we really want to make a difference, we must make sure that we cut out some of the bureaucracy.

Senator Seán Kyne: I wish to take up Senator O'Loughlin's point on the roadshow of the Minister for Agriculture, Food and the Marine, Deputy McConalogue. I acknowledge that he was in Maam Cross in Connemara last week. I commend him on that and on engaging proactively with farmers. The difficulties that farmers face in respect of convergence probably depends on which part of the country they are from. Full convergence would be positive in my neck of the woods and on much of the west coast. I acknowledge the campaign of the Irish Natura and Hill Farmers Association, INHFA, on that over the past few years and the difficulties the IFA has faced in trying to create a balance between needs in one part of the country and another. It is a difficult area.

Project Ireland 2040 was recently launched. I would like to see a debate on that matter in the near future. The last phase of the National Development Plan 2018-2027 including many positives, including 26,000 social homes to be created by the Land Development Agency; the creation of the urban and rural regeneration funds; the climate action fund for which €77 million was provided; 526 completed school building projects delivered with more than 48,000 school places; the start of the national broadband plan, which is hugely important, considering where we have gone since with Covid-19 and remote working, which has come into its own, the programme of investment in our cultural institutions such as the National Concert Hall, Crawford Art Gallery, the National Gallery of Ireland and the Abbey Theatre; more than €46

million for support of capital and equipment programmes; new wastewater and water treatment plants; flood relief schemes; phase 1 of National Rehabilitation Hospital; and new primary care centres, to name a few.

However, the updated national development plan, which was published recently, has created a certain level of confusion regarding road projects, which has been much highlighted. It is important to get clarity on those because, for example, the Galway city ring road has been a much talked about road project. The planning application has been delayed a number of times and is due for decision again towards the end of November. On the other hand, the western rail corridor, which has a great deal of support, although not universal, and which many people would welcome, was not included in the plan. It is, however, included as part of the national rail review. As somebody commented, certainly on the road and rail projects, that there was an attempt to please everybody and it has created a certain level of confusion, so we need clarity on those projects. They are too important to left in limbo. I hope both of the projects I mentioned can be progressed. I would like the Leader to arrange a meeting in the near future on that.

Senator Victor Boyhan: I thank the Leader for setting out the Order of Business. I wish to share my concern about it now. Earlier I had a discussion with some of my colleagues regarding an amendment to the Order of Business. On reflection and to be fair to all concerned, Ministers need time to come to this House and need to prepare to come to this House so I will not proceed with moving an amendment to the Order of Business today. It is my intention to do so tomorrow if we do not have a favourable response. It relates to the scoliosis situation and the 172 children lists. I ask anyone to look at the current RTÉ feed in regard to scoliosis, which quotes extensively what the Taoiseach and the Tánaiste have to say. Many members may have seen the issue discussed on RTÉ's "Prime Time" programme last night, yet again the Tánaiste, Dr. Leo Varadkar, talked about his concerns stating "The Government severely regrets that children are experiencing long delays." The Taoiseach, Deputy Micheál Martin, says the delays in treatment are not about a lack of resources but reflect on a systemic failure. The reality is I brought a Commencement Matter yesterday and it was more than disappointing, as it did not address the issues. The Minister of State at the Department of Health took the matter. I then took the time to come to the anteroom in the Seanad yesterday evening to meet directly with the Minister for Health, though not by appointment. I handed him the reply and I asked him to take it for a bit of reading for last night. I expressed my view that it was a disgrace and that whoever wrote it should not have been asked. No Minister should have been asked to take that reply from the Department of Health in here because it simply did not address the issues in regard to scoliosis.

This is all coming about as a result of the people from the Scoliosis Advocacy Network contacting me and I am sure many other Senators and, more importantly, a very engaging interview on RTÉ's "Today with Claire Byrne" programme. The issues are now so serious we can have no further delays. Out of respect for the procedures of the House and timing, I am not going to proceed with the proposal to amend the Order of Business today. After all it is only a proposal, but I ask the Leader to use her good office to make contact with the Minister for Health, and see if we can have him in the House if not tomorrow - and quite frankly it is that serious and that is what the parents are demanding and want - certainly on our return from the recess. I am conscious there is a recess and that is an issue. However, it is critical and I do not doubt that every Member shares my concerns and is supportive of the families and guardians of these 172 children who need medical intervention. They do not care if it is public or private and they do not care if the State is buying the treatment in. They are children. Many of us have children

and we would not want our children suffering from scoliosis and the agony these children have to endure.

An Cathaoirleach: I thank the Senator. I hear what he is saying about the question not being answered in respect of the Commencement matter. The Senator might send that in to me because a number of Members have raised the issue of Ministers reading out replies that do not answer the questions they have asked. I call Senator Vincent Martin.

Senator Vincent P. Martin: I propose an amendment to the Order of Business that No. 19 be taken before No. 1. At the appropriate time I will formally move that request. No. 19 is the introduction of my legislation, the Protection of the Irish Native Honey Bee Bill 2021. Ireland is fortunate to have a pure population of its own native honey bees, which is perfectly adapted to this island, climate and flora. However, it is coming under sustained, ongoing and serious threat from the importation of non-native honey bees. They are less frugal, more aggressive, prone to swarming and they have an adverse impact on biodiversity and ecosystems with the resulting introgression and cross-breeding of the *Apis mellifera mellifera*.

We are one of the last strongholds of this pure native bee. It is under serious threat. Last year, we reported a documented 327% increase in the importation into this country of non-native honey bee queens. After more than ten years of campaigning, the Native Irish Honey Bee Society will be pleased. This is a step in the right direction. The society is not, however, getting carried away. Complacency will not set in. It is not going away. It is going to stick at this under it gets a permanent satisfying result. I acknowledge the work of its wonderful chairperson, Ms Aoife Nic Giolla Coda, secretary, Loretta Neary and so many others engaged in that volunteerism. They do this at their own expense, as they are committed to this cause. I thank the Climate Bar Association, an independent expert body, which has reached the conclusion that to amend the law in this way is not repugnant to EU law. I am also grateful the cross-party support which this Bill enjoys. This is where the future lies. If leave to introduced is granted, Members will see on the Bill when it is published shortly thereafter the names of colleagues, who come from each and every political grouping in this Chamber and that is the way forward. With that in mind I anticipate my proposal will be seconded by Senator Erin McGeehan, who is representative of the cross-party approach that we are taking to this.

Senator Lynn Boylan: I listened with interest to some of my colleagues speaking about the roadshow that Deputy McConalogue is currently undertaking. I wish he would include a stop in this House as part of his roadshow because I cannot get a response to the emails I have sent to him. I have requested a meeting with him three times regarding the lack of enforcement of animal welfare laws, particularly in respect of dogs. This is not the first time I have raised the issue in the House. I raise it again because anybody who watched the BBC's "Spotlight" investigative report last night will have been deeply disturbed by the fact Ireland, as an island, is being used to smuggle puppies into Britain from its ports. This is enabling criminal gangs to make millions of euro and depriving Revenue of millions of euro in tax and it is down to a complete lack of enforcement of the existing laws. While we need better co-operation between the authorities North and South, there is a raft of animal welfare laws in this country and they are just not being enforced. That is not good enough. There are fake microchip numbers, fake dog-breeding numbers and fake seller numbers on websites. Illegal adverts are reported daily by animal welfare organisations but, as yet, even though the regulations have been in place since 2020, not one enforcement case has been taken against an illegal advert on online platforms. It is not good enough. The Minister needs to answer the case.

In June of this year, on my request, Dogs Trust appeared before the Oireachtas Joint Committee on Agriculture, Food and the Marine. Its representatives outlined how simple it would be to fix this. There could be a pre-verification system and a national database including the microchip, the dog-breeding licence number and the online sales licence number. That advert would not be able to be posted until it was pre-verified, which would save the welfare organisations all the work of having to manage these sites. Equally, a microchip system could be put in place just like the system for cars. After a number is entered, the system would identify the breed and age of the dog and the name of the person to whom it is registered. This is not rocket science.

The programme for Government promised to strengthen guidelines and dog-breeding regulations but that is not forthcoming. In light of last night's television programme, there is an anomaly in the Animal Health and Welfare Act, which the Dublin Society for Prevention of Cruelty to Animals, DSPCA, one of the authorities that, unfortunately, has to seize these puppies at the ports, has outlined. It will come before the Oireachtas committee in November to outline the anomaly. When it seizes these puppies, it cannot rehome them within five days, as it could if it had seized them under the Control of Dogs Act. Instead, it has to hold on to the dogs for up to 18 months while the legal proceedings happen. That is bad for both the dog and the animal welfare organisation.

I would welcome the Minister coming before the House. The Leader might write to him inviting him to appear in order that we can have a debate on animal welfare and the lack of enforcement. I cannot get an answer from him, so perhaps this House can.

Senator Rebecca Moynihan: I will support the proposed Order of Business. I raise the changes in restrictions that will operate from Friday and the very unfair treatment of the live entertainment and music sector in comparison with nightclubs. It beggars belief that patrons will be able to dance in nightclubs but will have to remain seated at music gigs. Musicians and artists have suffered particularly badly over the course of the pandemic, having to reschedule shows and losing huge sums from doing so. It is a really unfair anomaly and it shows there was a lack of thought, with the proposals for the sector almost having been written on the back of a packet of cigarettes. I ask that the Government reconsider the restrictions requiring people to sit down during live music shows because it is particularly unfair on a sector that has suffered a great deal during the pandemic.

The second issue I raise relates to the National Asset Management Agency, NAMA, apartments in Finglas, which was reported in *The Business Post* on Sunday last by Killian Woods. For more than ten years, 26 apartments have lain empty. This underlines the need for not just a vacant lands tax but a vacant homes tax. Habitable residential houses and apartments have been lying empty for ten years and an arm of the State is sitting on empty property while children grow up in hotels just down the road.

There is a contradiction between how NAMA approaches this issue and the so-called Government commitment to home ownership. As can be seen in the marketing material for this Prospect Hill site, the agency is selling it directly to investors rather than owner-occupiers or individual people and is touting its potential rental income of more than €1 million a year. It is a great disappointment and a missed opportunity that an arm of the State, controlled by the Government, is selling on a group of apartments to investors and trying to trap people into long-term rental while, at the same time, that same State and Government are not giving renters tenancy and security of tenure. We need a wider debate on how NAMA has operated in the

housing market and how it sees itself as a purely commercial vehicle rather than an organisation that has responsibility for a social good, that is, the provision of land and housing for people who live in this country.

Senator Frances Black: I draw attention to the horrific abuse of adults with intellectual disabilities that occurred at the Ard Gréine Court facility, Donegal. On Friday last, *The Irish Times* ran another piece on the issue after it finally received a copy of the unpublished report into the matter, the Brandon report. We now know that approximately 108 incidents of devastating abuse were experienced by at least 18 residents of this facility, many of them non-verbal, over a period of about 13 years. It is shocking. The HSE management had full knowledge of this abuse, yet refused to supply the Minister for Health with a report on the abuse when it was requested. One of the most shocking aspects of this revelation is that none of the family members of those who had experienced the abuse were informed until December 2018. In some cases, this was more than a decade after the abuse had occurred.

The Brandon report is just one example of the horrendous abuse and neglect of adults at risk in Ireland that has been revealed in recent months. Sexual abuse is not the only issue. “RTÉ Investigates: Care in Covid” highlighted that the neglect of adults in nursing homes during the pandemic violated their dignity and contributed to deaths. This all comes under the umbrella of adult safeguarding. We are in desperate need of adult safeguarding legislation that will enforce the mandatory reporting of abuse in order that those who hide or cover up abuse will become legally culpable for it. We are also in need of an adult safeguarding body to monitor adult safeguarding, with powers to investigate abuse.

In 2017, the then Senator Colette Kelleher of the Civil Engagement Group introduced the Adult Safeguarding Bill in the Seanad and mandatory reporting was at its core. There was positive engagement on the Bill from many in the House and we in the Civil Engagement Group welcomed the cross-party support we received. I again raise this issue, however, to emphasise the urgency regarding adult safeguarding. I worry the Government does not share my sense of urgency. Since Colette’s Bill was referred to the Law Reform Commission, no significant progress has been made to protect adults at risk. It is shocking. The commission’s report is not due until next year. No interim steps have been taken to protect adults at risk of abuse.

I call on the Government to take action on this immediately and to request an interim report from the Law Reform Commission. We simply cannot afford to wait until next year. The HSE management that covered up the abuse in Donegal was repeatedly advised that what it was doing would be seen as complicity in the abuse. We in this Legislature are now at the point where we too are guilty of complicity in this abuse. Again and again, we have received shocking reports of the abuse of adults at risk occurring throughout this island and still we have not taken any concrete legislative steps towards stopping it. I hope other Senators share my sense of urgency regarding the issue. We must end our complicity in the pain and suffering of so many people. If we can save one life, will it not be worth it?

Senator Aidan Davitt: I raise the issue of the upcoming carbon budget. There has been some coverage of it on national media recently and it will be a worthwhile project as part of our programme for Government. I come from a very successful farming region in the midlands. We need assurances the agricultural sector will be afforded adequate funding. Farmers will have to pull their weight on this but they will need the funding to go hand in hand, leading to sustainable means of production.

12 o'clock

There will also be new opportunities in the areas of genomics, grasslands, feedstuffs, carbon sequestration and potential alternative energy production. I refer to the generation and use of such energy on farms themselves and its feeding into the national grid.

One of the biggest problems we face and one of the biggest transformations we must make is in the area of carbon budgets and the changes required in energy networks in that regard. I refer to the ESB and the national grid tapping into the energy generated on farms. There is a serious complication in this area and the ESB must put its shoulder to the wheel in this regard as well. I am seeking assurances from the Leader regarding this issue. It is easy to talk about our herd numbers and there being a need to cull them. The figures speak for themselves and there is no doubt about that. I am also sure, however, that farmers will make these changes if they are given an option in the context of all the modern ways in which it is now possible to address these issues and if good funding is also provided.

Senator Tim Lombard: I raise the issue of water services and Irish Water and the impact this is having on rural towns and villages. The need for investment in water services is apparent. We have a new housing policy and its success is dependent on the provision of adequate water and sewerage services. I am talking about this issue because of an instance I came across yesterday where planning permission was refused in Rosscarbery on the back of not having adequate infrastructure. It is not possible to provide water services on the site because Irish Water's infrastructure does not have the capacity to service it.

If this trend were to continue, we could have similar situations in places like Courtmacsherry and Clonakilty as well as in Rosscarbery. Those areas could, in effect, be sterilised regarding the building of housing for the next five years until such time as adequate water services are provided. That would have a huge impact on rural society and on the constituency of Cork South-West, and we must have a coherent debate on how we are going to provide adequate water services in the short term. We all have long-term plans, but short-term needs exist and they are apparent. We must see a vast improvement in our housing figures and the key to achieving that lies in the provision of water services in the short term.

This aspect must be prioritised, and especially in places like Clonakilty, Rosscarbery and Courtmacsherry. If that is done, then significant developments can happen in the next five years. To have a situation as we now do, where development has been effectively sterilised because of a lack of water services, is bizarre and cannot continue. I ask the Leader, therefore, if we can have a debate on this issue with the Minister for Housing, Local Government and Heritage, Deputy O'Brien, in the context of bringing forward meaningful and short-term remedies to deal with these water issues.

Senator Gerard P. Craughwell: I advise colleagues that RTÉ's "Nationwide" programme at 7 o'clock this evening will feature a film on what it was really like to be at Jadotville. Everybody here should watch it. I will not say any more on that matter because it is *sub judice*.

I am sure the Leader is aware that many of us are receiving emails concerning a statement she made in this House on 14 October. I fully support what she said.

Senator Martin Conway: Hear, hear.

Senator Gerard P. Craughwell: We must have a national conversation about those who

have decided, for whatever reason, that they do not wish to be vaccinated. The Government must step into the frame and provide the education and information required to deal with this issue of people who are genuinely afraid of vaccines. Early in the summer, I stated I was due to have an AstraZeneca vaccination and that I was uncomfortable with it because I was being told it was a case of take it or leave it. Like everybody else, I want to be safe. I said I was not against vaccination in any way but I felt then I did not know enough about the AstraZeneca vaccine. The HSE contacted Twitter to advise the company that I was spreading misinformation. Under the video of me speaking here, there is a statement warning it is misinformation. I expressed a concern and at no stage did I offer misinformation of any sort.

This issue must be discussed openly. Some 300,000 people in the country are saying they do not want to be vaccinated. I fully respect their view and their right not to be vaccinated. I also respect the right of all those workers who must go into an office or workplace to be aware they may be sitting beside colleagues who may not be vaccinated. I also want those not vaccinated to know that I, as a vaccinated person, may be carrying the virus and that people working alongside me may be subjected to transmission and may not have the requisite protections. There is no incitement to hatred, which is what the accusation is. There is no need for any organisation concerned with equality or anybody else to be involved. Education is required and people must understand the risk involved in both directions.

Senator Shane Cassells: I welcome the intervention by the Minister for Health, Deputy Donnelly, yesterday regarding the accident and emergency department in Our Lady's Hospital in Navan. He ordered the HSE to back down over plans to shut that accident and emergency department. The *Meath Chronicle* captured the situation well this morning when it referred to the Minister halting plans to shut the accident and emergency department. I welcome the Minister ordering the management and clinicians to engage now with the community through its elected representatives, something they probably wanted to bypass.

There are gaping holes in these proposals, no more so than the fact that the North-East Doctor on Call, NEDOC, had to issue a public statement this week, and this was again covered by the *Meath Chronicle* this morning, pointing out that the HSE proposals to change the accident and emergency department to a GP referral-led medical assessment unit will not work because the doctor-on-call system in the county is already beyond breaking point. One arm of the HSE had to point out to another arm of the organisation that, in 2019, a normal year before the impact of Covid-19, 33,500 patients were dealt with by that system. This year, and we are still only in October and have two months to go yet before its end, 34,000 patients have already been dealt with.

The figures speak for themselves in this regard. The basis of the HSE's plans to ram this change through using the mantra that services in the accident and emergency department in Navan hospital are unsafe has now been contradicted by another arm of the same organisation, which has stated these plans would be unsafe because the required GP capacity does not exist in the county to deal with a medical assessment unit. It would be a damn sight better if the HSE addressed the existing deficiencies in the system before trying to reconfigure it. I look forward to the HSE listening to the community and dealing with public representatives. I pay tribute to and thank the Minister for halting those plans.

Senator Victor Boyhan: Well said.

Senator Jerry Buttimer: I ask that we respectfully request the Minister for Justice, Deputy

Humphreys, to come to the House to debate antisocial behaviour and protecting our local communities. I make that request cognisant that there are many reasons for antisocial behaviour. I am a member of the joint policing committee in Cork city and it has become clear there has been an increase in antisocial behaviour. This issue is becoming a concern not just in our capital city but also in Cork and other parts of the country.

I want to have that debate with the Minister, while being conscious that 800 extra gardaí were promised in the budget and there has also been an increase of €6.7 million in the budget for the youth justice system in respect of youth diversion projects. This issue, however, does not just concern young people and youth diversion projects. It is about ensuring we tackle the scourge of antisocial behaviour. Documentary evidence captured by the “Prime Time” programme and anecdotal information we have received ourselves demonstrate we must tackle this issue. In doing so, a joined-up approach must be adopted by a combination of Departments and organisations.

I ask, therefore, that we have a debate on this issue at the Minister’s earliest convenience to allow us to discuss how to eliminate the element of fear many people now feel regarding coming into our capital city. Equally, that element of fear is similarly felt when people are walking about the streets of their own towns and my city of Cork and other large urban areas. I hope this debate would take place over time, that it would be a rolling discussion, and that we would bring in and involve other Ministers.

Senator Paul Gavan: Last week we heard many announcements regarding budgets and budget spending. We were told that never have we spent so much before and so on and so forth. You can imagine my reaction when I was contacted by a family in Castleconnell who are residents of a council house and whose shower has completely broken down after 15 years. I wrote to Limerick City and County Council and explained the situation. I received a reply yesterday evening which stated that, due to funding constraints, housing maintenance is not currently in a position to upgrade bathrooms but that it may be in a position to contribute to upgrade works in early 2022. The council went on to state that if the tenant could supply a new toilet, cistern, shower tray and wash-hand basin, then housing maintenance could ring-fence funding to complete the works. I would love to have an explanation for that. Can you imagine a private landlord writing back to a tenant and telling them if they supplied half the equipment, then he or she would do the job? That is the response that Limerick City and County Council is giving to council tenants. Words fail me.

In this time of abundance and unparalleled spending by Government, it appears that our local authorities do not have the money to maintain decency. I am talking about a family of seven. There is a hole in their kitchen ceiling. Yet, Limerick City and County Council is telling the family that if they supply all the equipment, it will get the work done. Is that acceptable or reasonable, or is it just plain outrageous? Why is it that council tenants in my county are being treated as second-class citizens? It is shocking.

I want a debate on local authority funding. I acknowledge that Sinn Féin included a lot more on this issue in its pre-budget submission. We stated that €30 million should be invested in this area next year and that annual funding for the regeneration and upgrading of social housing stock should be increased to €100 million per year. My God, there is something fundamentally wrong when a family of seven cannot have a shower and the council tells them that they should supply the equipment in order to have the work required carried out.

Senator Gerry Horkan: First, I would like to extend my deepest sympathies and condolences to the family and friends of Sir David Amess MP, who I had reason to meet a number of times. He was also an alternate on the British-Irish Parliamentary Assembly, as I was in the last term. What happened to him last Friday was truly shocking. I wish to place on the record my condolences, which I extend to his friends and family. I appreciate the fact that the Ceann Comhairle, on behalf of Members, has arranged a mass to be said for him on Thursday.

I wish to continue on from Senator Craughwell's reference to the Leader's comments, which were, I think, my fault to a certain extent, because the Leader was responding by email to me at the time on the issue of vaccines. As a result, a certain cohort of people replied to all of us about what the Leader said. This is really important, particularly in the context of yesterday. After all, yesterday should have been a really good day. While progress was made yesterday in terms of the relaxing of some restrictions, at the same time we had the largest number of cases in a single day since January. There is no doubt that those who are choosing, for whatever reason, to not be vaccinated are contributing very significantly to the number of cases. Equally, as the Leader rightly pointed out last week, the same is the case in respect of the 70,000 people who got one dose of vaccine - they are clearly not that vaccine hesitant - and who decided not to get a second. It is most important. For those in the hospitality sector, there was certainly a gap between what they expected to happen yesterday and what did happen. There is an enormous amount of confusion and palpable frustration among those individuals regarding the fact that you can do things with a late licence that you cannot do without a late licence and you can do things in nightclubs that you cannot do in bars and various other venues. There is a very frustrating inconsistency in that regard.

There is no doubt that the Government supported the hospitality sector through the employment wage subsidy scheme, EWSS, the pandemic unemployment payment, PUP, and the implementation of digital Covid certificates, but, equally, there were a huge number of anomalies in the context of yesterday's announcement. I encourage the Leader to organise a debate, if possible before the recess, with the Minister for Health. Sláintecare was discussed yesterday. Sláintecare is a long-term plan. This is urgent. We need to talk about the inconsistencies and try to support the hospitality sector as best we can.

Senator Paddy Burke: Like Senator Davitt, I wish to call for a debate in relation to climate change and climate action. There is so much work to be done over the next ten years to meet our targets that a debate in this Chamber would be most welcome. The budget for climate action is going to be €20 billion a year for the next ten years. Ten years ago, that figure of €20 billion represented half the amount that it took to run the country. It is an enormous amount. There are many changes to be made in a number of areas, including those of the parking of cars and parking points, the exportation of energy, the development of autonomous vehicles, traffic light systems, farming and from a commercial point of view. A raft of changes will be needed over the next ten years to meet the targets that have been set by the Government. I would welcome a debate on this issue and on the proposed budget of €20 billion a year for the next ten years.

Senator Erin McGreehan: I formally second the introduction of the Bill to protect our native Irish honey bee. I am glad that we have the Minister of State from the Department of Agriculture, Food and the Marine with us today because this is a most important issue. We are at a crisis point in the context of protecting our native Irish honey bee. It is most important. The bee is a small creature, but this is not a small issue. It is about time that the Department of Agriculture, Food and the Marine looked beyond beekeeping as a mere hobby. It is integral to agriculture and food production in this country. The Department needs to move beyond the

hobby mentality and see what beekeepers have known for generations, namely, that beekeeping is inextricably linked to food production. This matter should be priority for the Department. While we have the Minister of State here, I wish to highlight that we should be looking towards counting active beehives as a unit of livestock. This would assist both beekeepers and farmers to achieve what we need, which is to protect our native bee stock and to realise what is laid out in our all-Ireland pollinator plan. It is most important. I thank Senator Martin for his work on the Bill.

Senator Pippa Hackett: Recently, I spoke in the Chamber about an intensive dairy farmer who does not use chemical fertilisers to grow his grass. Describing how he feeds his cows on a multispecies sward, a mix of grasses, clovers and herbs, I said that I hoped I was seeing the future in the way that he and his family were farming. Since then, in budget 2022, my Department has allocated €1 million to pilot a reseedling programme. We want to support farmers to use multispecies sward seed at no extra cost in order that they can try growing nitrogen-free crops too. I really hope farmers give this a go, because I continue to see more examples of productive pasture management without chemical nitrogen, which instills confidence in me that this can be the future.

Synthetic fertilisers deplete the soil of nutrients and will eventually kill it by destroying its natural functionality. While this may take a long time, and our Irish soils may be a long way from death, in the end, synthetic fertiliser, if we apply enough for long enough, will not just continue to pollute our rivers and air, it will turn our soil barren such that nothing will grow. That is simply a fact. It is a fact which does not have to fill us with dread because while chemical nitrogen helps grass grow, so does naturally fixed nitrogen, but without the damage. Clover is a really effective and natural nitrogen-fixing machine.

I have seen some of the work, enthusiasm and results. Teagasc is doing work on clover at Moorepark and Solohead Farm, while in Johnstown Castle, it has carried out years of research on multispecies swards, to see if adding in herbs can make the grazing even better, the carbon sequestration more effective and improve the soil microbial activity.

Yes, a multispecies sward is managed differently to a monoculture sward. In some ways, it might be more challenging, but in other ways it is easier. I certainly believe it is worth a try. I certainly believe it is worth a try, not just for the potential savings in fertiliser costs, but also for the satisfaction we can all derive from healthy soils and from feeding our animals and land in a way which works for them and us and for the climate challenges ahead. This is the future.

Senator Barry Ward: I support the calls for a debate on antisocial behaviour, but also on general disorder in public and the lawlessness we have seen. I have raised this issue in the House previously. Much of that antisocial behaviour and, in particular, that lawlessness is directed towards people who are not Irish. That is a particular aspect that we need to address. Yesterday, I had the privilege of meeting two Slovak-born men who were recognised by the Slovakian Government for their contribution to society. One of them, Joe Veselsky, a resident of Booterstown, is 103 years of age today. I congratulate him. He came to Ireland in 1949, having been part of the Czech resistance and lost members of his family in Auschwitz. Tomi Reichental was also recognised. He came to Ireland in 1959, having survived the Holocaust in Bergen-Belsen. It strikes me that many of the people we are talking about are the modern counterparts of these men. They are people who have come to Ireland and made their home here and who are contributing at every level of our society. I hope that, 60 years from now, we will be able to recognise the modern counterparts of these men who have come here from Brazil

and other countries that are very far away and very different from Ireland, who have made their homes here and who have made themselves part of our communities and contributed to our society not only economically but culturally and in all the other aspects of a functioning society. They are doing that and there are people in Ireland who do not understand the value they bring to our society. As part of our consideration of lawlessness, public disorder, antisocial behaviour and all of the other aspects of behaviour in society, we must consider that these people are also part of our society. As a Legislature and, more importantly, as a community and a society, we must reach out to welcome them and to acknowledge the contribution they make.

Senator Martin Conway: I too support colleagues in calling for a debate on antisocial behaviour. Senator Ward articulated very well a modern problem in respect of antisocial behaviour. Certain people in our community are suffering and we need to address that. We also need to address what is going on in our streets not only in the city of Dublin, but also in other towns where wanton thuggery is taking place. We need to ensure that the streets of our towns and cities are safe for people to come and go. Ireland is a place of welcome. We hope to rebuild our tourism industry and to return to 10 million people visiting our country a year. When people do come, they need to be able to travel around our country and our towns and cities safely, whether by day or by night. That debate is necessary and, like others, I welcome the announcement of 800 extra gardaí in the budget. That will certainly help increase the complement of gardaí to a figure in excess of 15,000. That is where we want it. We never want to go under 15,000 gardaí again. There has also been significant investment in ICT, equipment and vehicles for An Garda Síochána but the simple reality is that there are parts of the city of Dublin and our towns around the country that are no-go areas and that has to be ended.

Senator Garret Ahearn: I will follow on from Senator Craughwell's comments regarding the emails, which I am sure everyone will have received, in respect of the Leader's comments last week. These comments were in response to comments I made to her in respect of the digital Covid certificate. I just want to show support for the comments she made. Everything the Government is doing in bringing forward measures is meant to protect people, people's lives and industries. The comments made in emails such as those we have received are also made by some public representatives. I know of one in Tipperary who takes a populist view and calls the measures discriminatory, medical apartheid and rubbish like that when all we are trying to do is protect people. I support the Leader in the comments she made last week.

I ask her for a debate with the Minister for Rural and Community Development at some point. I do not recall us having such a debate previously. I would like to discuss the funding of projects under the rural regeneration and development fund. There was good news yesterday for a number of projects that received extra funding. There were two such projects in County Tipperary. A project in Thurles got an extra €500,000 on top of the €3 million it has received to develop a permanent structure for a farmers' market. That is a really good project for the centre of the town.

There is a problem with the rural regeneration and development fund that we need to work to solve. In the latest round of applications, a contingency of approximately 25% was allowed for to take into account the changes in material and development costs to get projects from start to finish. In previous rounds, there was only a contingency of 5%. Some of those projects are only starting now but what they will now cost to complete is far greater than the funding sought from the Department, even with that 5% contingency funding. I ask for a debate with the Minister to discuss increasing the contingency funding to 25% for those applications made in previous rounds, which is what new applications are to receive.

Senator Mary Seery Kearney: I stand in solidarity with the Leader's remarks and support her in them. Last Sunday, Daniel Murray published an article in the *Business Post* with the headline "Government to defer legislating for international surrogacy services". I appreciate that there is momentum and that hard work is going on behind the scenes. I probably know more than most about just how much is going on and how many meetings and so on are taking place. The Ministers from the Departments of Justice, Health and Children, Equality, Disability, Integration and Youth have met five times in the past year to move this along, because it is within those three Departments that needs and issues have arisen. However, headlines like that and the repeated delays do nothing but cause fear and horror for families across the country whose children were born via surrogacy.

It is not that there has not been an incredibly ethical framework put forward that safeguards the rights of children and puts them first and that safeguards the human rights of the surrogates and parents. There are women around this country who are not entitled to sign permission slips for their children in school and who have been rejected and told that they are not the mothers of their children. There are children who are being teased about this in school. There are children who were born via surrogacy who are shortly to turn 18, because that is how long this has been going on in this country, and who will now never have that legal relationship with their parents because they will be adults. Mothers are being denied legal connection with their children and children are being denied legal recognition of their relationship with their mothers and the provisions regarding inheritance from parents and grandparents that flow from that. The delay is appalling. Will the Leader please write to the Ministers to seek clarification and to urge that legislation be hastened through and that, under no circumstances, should the Bill on assisted human reproduction registration be published without surrogacy, both domestic and international, being comprehensively addressed?

Senator Micheál Carrigy: I echo the comments in support of the Leader on the remarks she made last week. She is 100% correct and I fully stand by and support her comments. I also support Senator Ahearn's remarks with regard to rural regeneration projects. In my own county, projects have had to be redesigned because of rising costs. Even this redesigning to bring the projects in line with the funding approved comes at a cost. I support the Senator's comments. I welcome the funding announced for a project in Ballymahon. It is a major project and has received additional funding but, as I have said, other projects are struggling.

I will raise the issue of hospice beds, which I have raised previously. There is just one hospice bed in County Longford to cover a population of 40,000 people. We raised this issue with the then Minister for Health, Deputy Harris, when he was on a visit a number of years ago before the redesign of the St. Joseph's campus. We secured agreement for an additional bed but now the HSE is not prepared to follow through on it. I will read a couple of lines from a letter I got back from the Health Service Executive when I asked about the two beds. It states:

Such a decision will also have a financial impact on the unit, reducing the income to the unit through the fair deal scheme and increasing the cost of care. Any commitment to increasing the number of palliative care beds at the expense of a long-stay bed would have to be accompanied by an appropriate budgetary allocation to compensate for the fair deal income reduction in order to maintain services for the current and future residents in St. Joseph's care centre.

We are putting a cost on placing an additional care bed for people with hospice needs. I do not have the exact figures but I am seeking to get them officially so I can put them on the re-

cord. We have way in excess of the average number of hours of hospice care going into homes because we do not have that additional hospice care bed for families in our county. That is not acceptable.

Senator Maria Byrne: I rise to speak on two matters. The first relates to yesterday's announcements on reopening and the easing of Covid-19 restrictions. I am concerned about healthcare workers and particularly people in nursing homes. I call for priority to be given to healthcare workers because they are dealing with more vulnerable people in nursing homes. They should receive boosters as a matter of urgency. Perhaps antigen testing could be used in nursing homes as well when it comes to infection control etc., which is really important when people are entering nursing homes. Many nursing homes are closed now because there may be infection and people are not able to visit. If antigen testing was in place and a booster injection could be given to healthcare workers and patients, it would help.

Yesterday there were many announcements relating to the reopening of society and a number of restrictions have been eased. In the budget, we have allocated money for marketing the country and encouraging tourism but coach tours are currently operating at 75% capacity and there has been no announcement on that restriction on people on coaches being lifted. The restriction for school buses was at 50% and there was no clear announcement around that either. Perhaps the Leader might be able to find out the story for school and tourism coaches.

Senator John McGahon: I deleted those couple of emails that I got straight away. When it is a copy and paste job, one cannot take it too seriously but I will focus on the rest. Two thirds of the people in intensive care units in this country are not vaccinated so what more do we need to be told about the power of vaccines? It is scientific evidence that vaccines work. This links to some points I will make about Facebook and the prevalence of Covid-19 misinformation on the platform and its groups, about which I have spoken for the past year.

This morning we heard reports that Facebook chief executive Mr. Mark Zuckerberg is planning to overhaul and rename Facebook. That will not remove the toxicity in the concept of what Facebook has become. In August this year Facebook stated it removed dozens of sources of anti-vaccination information but there were anti-vaccination protests nonetheless. They were not huge and comprised a rabble of head-the-balls. A couple of them will be coming along tomorrow, Thursday, and it is all being advertised through Facebook. For example, it is stated that this will not be a child-friendly protest. One post reads: "We are the people demanding this caretaker Government stands down with immediate effect the continuance of medical apartheid and lockdown of this people." These people are being radicalised online.

We saw excellent testimony before the United States Senate by Ms Frances Haugen some weeks ago, who said that in order for Facebook to maximise profits, the company decides the algorithm, leading to outrage and hate bouncing off each other. The algorithm increases the level of toxicity and hatred online and as a result we see events like people going into hospitals to tell people vaccines are killing people and they will save the people, only to see them dying a few days later. There must be something serious done about Covid-19 misinformation spread online, particularly on Facebook. Governments must now step in to regulate the area as social media has failed to do it time and again.

Senator Regina Doherty: I thank colleagues for their support. The mass arranged by the

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Ceann Comhairle for the late Sir David Amess following his tragic death is tomorrow, Thursday, 21 October at 12.45 p.m. at St. Teresa's Church on Clarendon Street. I am sure people will want to pay their respects.

Senator McGahon spoke this morning about the need for an online safety commission and regulator of all our online social spaces. Senator Malcolm Byrne regularly speaks on the same topic. There is certainly a variety of different views on any number of topics that can be discussed on social media. What concerns me and what must be absolutely regulated is when the debate becomes incredibly divisive, abusive, threatening and harassing. It does not seem to take much to get people from just having a conversation or interaction to being called a Nazi. It does not take very long. We must further that discussion and support the Minister in all his efforts to ensure we get that online safety commission and regulator, along with a culture of regulation, into social media. People are allowed to think what they want and we must certainly respect people's views and the differences therein. We do not have to tolerate being threatened and called horrible names.

Senator Maria Byrne spoke about the need for screening in nursing homes. Although we are in a very different place than we were last year, there are definitely some concerns that we did not learn from what happened at the beginning of this pandemic. I very much support the Senator in asking the Minister to provide the resources to our nursing homes, both public and private, to ensure all staff receive boosters and that visitors allowed in are screened. The Senator is right that many nursing homes are not allowing in visitors because of the current spike in numbers.

I will write a letter to inquire about transport capacity. It is interesting that the Senator notes the two relatively private industries - coach tourism and school transport - are at 50% or 75% but the public transport system is at 100% capacity. There seems to be another anomaly there but I will write a letter today inquiring about that.

Senator Garret Ahearn and Micheál Carrigy asked for a debate on rural regeneration and I will write to the Minister today to see if we can get in that debate before Christmas. What Senator Carrigy described this morning is an example of an organisation being penny wise and pound foolish. It makes absolutely no sense that we incur costs in one part of the health service because we cannot afford to expend costs in another that would then save costs on the initial side. I do not know if there is anything I can do for the Senator but I might speak to him after the Order of Business to see if I can help with that hospice bed in Longford.

When I was first elected to the Oireachtas in 2011 and former Deputy Alan Shatter was made the Minister with responsibility for justice, he spent an inordinate amount of time looking at progressing the legislation around surrogacy because he had a huge interest in it. Here we are 11 years later still trying to tell people how difficult it is. I have no doubt it is not easy but that does not mean it should not be prioritised. It is really shocking to read again, in a Sunday newspaper, about extended delays with the three Departments working together. Again, I will send a letter to the Minister but we should ask for a meeting so we can find out exactly what is at the root of the problem and ensure we can give reassurances to the considerable number of families and children directly affected by this debacle. I will come back to Senator Seery Kearney about that.

Senators Martin Conway, Barry Ward and Jerry Buttimer asked for a debate on antisocial behaviour. When we started this conversation a couple of months ago we spoke about big cities

like Dublin, Limerick and Cork but it is not a problem just in big cities any more. I live in a relatively small town and there is a gang of 15-year-olds and 16-year-olds going around beating up 12-year-olds and 13-year-olds. Our noticeboards are alight at the weekend asking if we have seen a particular fellow with a particular colour hair. It is the attitude and culture.

Senator Barry Ward spoke about our larger cities and the prevailing change in culture that affects our new Irish. The gentleman he spoke about is not new because he is 103. He is here a long time. We really must check ourselves and ensure correct measures can be put in place to try to arrest that kind of change in our culture.

The Minister of State, Senator Hackett, spoke about multi-species sward feeds and the use of clovers in grasslands. Her contribution was very welcome. Senator McGreehan seconded the Protection of the Native Irish Honey Bee Bill 2021 that will be introduced by Senator Martin. I really hope it gets cross-party support. Both Senators are right that there is a crisis and it is not a small issue, particularly for people earning their living and producing food.

Senator Burke asked for a climate debate. I will try to arrange this. Senator Horkan asked for a debate on the hospitality sector and the confusion caused yesterday. To be fair to the Ministers at the Cabinet table yesterday, they were trying to react in a timely manner to the information they had and to give as much notice as they possibly could. They really are caught between a rock and a hard place. I have no doubt that based on consultation today and tomorrow those anomalies will be ironed out. There are obviously some, if not many, inconsistencies and they will also be fixed.

Senator Gavan talked about a family renting from the local authority in Limerick. What he said was absolutely outrageous. I do not know whether it is worth my while writing on our behalf to the county manager or the CEO. It is absolutely unacceptable. Can we imagine the headlines on the front of the *Daily Mail* or the *Irish Independent* if a private landlord said not to mind a shower and that people would be grand in a couple of years' time. It is not acceptable. It should not make a difference who the landlord is. Landlords have responsibilities and tenants have rights. I will write a letter and send it to Senator Gavan today. Perhaps he will have a look at it and send it back.

Senator Cassells spoke about the intervention of the Minister yesterday on the accident and emergency department in Navan, which was very welcome. Senator Craughwell reminded us of a programme on Jadotville that will be shown tonight on RTÉ at 7 p.m. He also spoke about the need for a Government information and education programme on trying to encourage vaccination. I really do not think telling people vaccine centres are open and to come along on Saturday will be enough to bring some of the 300,000 people left. If they have genuine concerns we need to address them. A different type of education and information programme might be warranted and needed.

Senator Lombard asked for a debate on water services specific to Cork. We could probably widen it out. A considerable number of housing developments are being delayed because they do not have access to the services required for the sites. We need to iron these out and come up with some short-term solutions.

Senator Davitt asked for a debate on carbon and our climate action budgets. We will try to arrange this. Senator Black spoke about the awful news released over the weekend with regard to the 108 incidents of abuse over many years. What I think is most shocking is that the direc-

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tion of the Minister to publish the report continues to be ignored. This is absolutely astounding. I will certainly send a letter looking for an interim report from the Law Reform Commission for the Senator and we will see where it goes.

Senator Moynihan spoke about musicians and the announcements coming from the deliberations over the coming days. I hope we have them before Friday. Senator Martin spoke about his Bill. Senator Boyhan expressed concerns about waiting lists and I will certainly ask the Minister to attend the House for a debate as quickly as I possibly can. He was here yesterday to discuss Sláintecare.

Senator Kyne spoke about the roadshow of the Minister, Deputy McConalogue. He also spoke about the need for a debate on the national development plan and Project Ireland 2040. The debate request has been made but it will be the other side of the recess before the Minister gets to come back to us with a date.

Senator O'Loughlin opened today by discussing World Osteoporosis Day. She encouraged women to get themselves screened because usually it is only after an accident or a fall that they find out there is something. The earliest intervention would provide the most efficient and best outcomes. The Senator spoke about the debate on dyslexia last week and the continuing road-blocks of bureaucratic nonsense put in children's way when trying to access services. There probably is a need for a debate on it. I will try to arrange it as quickly as I can.

Senator Victor Boyhan: Animal welfare.

Senator Regina Doherty: Sorry.

Senator Victor Boyhan: I am always here to assist.

Senator Regina Doherty: I thank Senator Boyhan. I do not know how I missed it. There is a request in because Senator Boyhan wanted to table amendments to legislation a number of weeks ago. I have written to the Minister but he has not come back to me. I will ring the office again today. We keep coming back to the same mantra again that things are important and yet they slip and slip. We certainly do need to keep the pressure on. I will write to the Minister today and I will come back to the Senator. My apologies.

An Cathaoirleach: Senator Martin has proposed an amendment to the Order of Business: "That No. 19 be taken before No. 1." It has been seconded by Senator McGreehan. The Leader has indicated that she is willing to accept the amendment. Is the amendment agreed? Agreed.

Order of Business, as amended, agreed to.

Protection of the Native Irish Honey Bee Bill 2021: First Stage

Senator Vincent P. Martin: I move:

That leave be granted to introduce a Bill entitled an Act to ban the importation of non-native honey bees with the aim of reducing the threat to and adverse impact upon biodiversity and the ecosystem arising from the introgression/crossing/cross-breeding of the native Irish Honey Bee, *Apis mellifera mellifera*, due to the importation of non-native species or

sub-species of and/or strains derived from *Apis mellifera* and to provide for the appointment of authorised officers; to make it an offence to forge an animal health certificate; and to provide for related matters.

Question put and agreed to.

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

Senator Vincent P. Martin: Next Tuesday.

An Cathaoirleach: Is that agreed? Agreed.

Second Stage ordered for Tuesday, 26 October 2021.

Sitting suspended at 12.45 p.m. and resumed at 1 p.m.

Criminal Justice (Smuggling of Persons) Bill 2021: Report and Final Stages

Acting Chairperson (Senator Eugene Murphy): Cuirim fáilte roimh an Aire Stáit, na Seanadóirí agus gach duine eile. Before we commence, I remind Members that a Senator may speak only once on Report Stage, except the proposer of an amendment who may reply to the discussion on it. Each non-Government amendment on Report Stage must be seconded. Amendment No. 1 arises out of committee proceedings and is grouped with amendments Nos. 14, 15 and 18, which are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 1:

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

“Report on the rights and protections of the smuggled person

5. 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—

(a) the steps which have been taken to ensure that 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, and

(b) the number of cases taken to the European Court of Human Rights and the Court of Justice of the European Union initiated by persons who have been the object of people smuggling or have been prosecuted under this Act and the results of such cases where they are available.”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: We could have separated this grouping of amendments, but I am conscious we are constrained by the 90-minute time limit. I agreed to the grouping in that context. The amendments relate to three separate issues. As we discussed at length on Committee Stage, these are the potentially negative consequences of the legislation, which I believe are unintended on the part of the Minister of State and his office. In addition, we are questioning how effective the legislation is in addressing the problem of smuggling it is designed to address.

Amendment No. 1 relates to a core issue we will have to address, which are the rights and protections of smuggled persons. I have highlighted areas of the legislation where there are inadequate protections for the rights of the smuggled person and where the smuggled person, certainly when they are acting in relation to a family member, could inadvertently be subject to prosecution. Crucially, this amendment focuses on the wider picture. We suggest “the steps [that would be taken] to ensure the State has reflected the...Convention relating to the Status of Refugees, including the principle of non-refoulement in all [areas] of...operation of this Act”. I am not bringing the convention in; I am aware it is already in law and Ireland is already party to it and is bound by it. The question is how we ensure it is being reflected at all stages.

The reference to the number of cases taken to the European Court of Human Rights and the Court of Justice by persons who have been the object of people smuggling is, again, around the question of human rights. I certainly do not think we should have that very high bar because very few people will be in a position to take cases to the Court of Human Rights or the Court of Justice, but those cases would be a very significant red flag if they were to be taken.

I will focus more on the other amendments. I know my colleague may wish to speak to amendment No. 1 as well. Amendments Nos. 14, 15 and 18 are really about the detail of what happens when we change the law. On amendment No. 14, the rationale for this legislation has been the practical impact of the current laws and the fact there is a perceived difficulty with prosecution in relation to them. This amendment is similarly ensuring we get the law right this time. I am asking for a report on an annual basis showing “the estimated number[s of victims] of human trafficking...the methodology...to produce the estimate and potential alternative methods of estimation...[and] a summary of the outcomes for smuggled persons [who are] identified under this Act, including what proportion of those smuggled persons sought or were granted asylum [or] sought or were granted another form of international protection in the State” and “the number of persons [which is one of the stated purposes of the Bill] found guilty of an offence... and a summary of the sentences imposed”.

I will go on to amendment No. 15 because it is not simply about how many people were prosecuted, which is my concern. The Minister of State has said at great length that it is his expectation that those persons who are engaged in humanitarian action will not end up being prosecuted under this Act. He knows I have tabled other amendments where I seek to confirm that by making it clear it is not an offence to engage in humanitarian action, or to act for humanitarian purposes, in the ways outlined under sections 6, 7 and 8. Amendment No. 15, which I hope the Minister of State will accept because it is crucial, is to make sure there is no adverse effect, that is, a potential chilling effect or a stressful prosecution, whereby the burden of proof is moved to the person who is being prosecuted, because that burden of proof is now moving from the prosecutor having to prove criminality. The burden of proof is now being put on a humanitarian actor, which is quite a significant shift.

I ask the Minister of State to lay a report for us detailing how many prosecutions are not pursued due to a humanitarian defence. We spoke at great length on Committee Stage about

the scenario the Minister of State, Senator Ward and others see unfolding, which is that where there is a humanitarian defence a prosecution will not be pursued. I am asking if we can track whether that is in fact happening, in addition to the number of prosecutions that are pursued where a humanitarian defence is employed, which is where somebody has gone through the whole process of prosecution, a potential period of imprisonment awaiting trial, periods of having to access legal support, construct a defence and, effectively, having to make that defence in the dock. Then, and this is crucial because it relates to the chilling effect we spoke about, we should track “any impact this Act may have had in respect of the level of engagement of humanitarian organisations in humanitarian activity in respect of smuggled persons”.

I will not speak at the same length I have before because we have constraints on time. In summary, Ireland believes that humanitarian search and rescue is a good thing. We directed the national resources of our Naval Service to the humanitarian search and rescue of up to 8,000 people a year because we believed it was a good and not simply that it was acceptable. It was something we channelled our national resources to. The reason given for not continuing with that has simply been that we have not been given support from others in terms of bilateral agreements with other countries on pursuing humanitarian search and rescue. The established position from Ireland has been that we support it.

NGOs and humanitarian actors stepped into the gap. We went from rescuing 8,000 people in one year to 1,300 the next year to almost none the year after. Humanitarian NGOs and civil society organisations have stepped in. They are performing what we consider to be a good. It is very important that our legislation does not work against that good. That is why Part C is important.

I would urge the Minister of State to accept all of these amendments and track the outcomes for smuggled persons. Amendment No. 15 is crucial if we are going to see if this Bill unfolds as he has expressed the hope it will.

Amendment No. 18 combines a few of these issues. It is another approach to the same thing. It combines the question of the outcomes for smuggled persons, including the number that have been identified, those who have sought or have been given any form of international protection and an examination of the chilling effect on the work of humanitarian organisations. It also includes the way in which section 9, the section which presents the humanitarian offence, has been used in decisions whether to prosecute and the impact of this Bill in terms of Ireland’s fulfilment of its human rights obligations, including its obligations under the Convention Relating to the Status of Refugees and the European Convention on Human Rights. Maybe amendment No. 18 is even better. I do not know.

Amendment No. 18 combines the principles in amendment No. 14, in terms of the outcomes for smuggled persons, and amendment No. 15, in terms of how the Bill ends up operating and what its effects actually are. My colleague may wish to speak. I would like the Minister of State to indicate whether he is willing to support any of these reports or provide them to the Houses.

Minister of State at the Department of Justice (Deputy James Browne): I thank the Senators for their proposals. These are matters we discussed in length on Committee Stage.

I wish to make two points. The first is that a post-enactment report on the Bill will be prepared in accordance with Standing Orders and laid before the House. This will provide an op-

portunity to address many of the issues raised.

The second point is that I have requested that a briefing be prepared for Oireachtas Members in respect of several of these issues. I would suggest that looking at issues such as the satisfaction of the State's obligations in respect of international protection applicants, people who have been trafficked and how humanitarian organisations engage with migrants before and after they arrive in the State simply through the lens of smuggling offences is not the best way of going about it. People who are vulnerable and require protection may or may not have been smuggled and may or may not have entered the State irregularly.

While there may be situations where law enforcement will be dealing with smuggled persons in difficult situations, such as where a ship has been intercepted, these are a very limited part of the picture. As the Senator will be aware, there is a breadth of work ongoing in this area. As I have said, the appointment of a national rapporteur, the development of the national referral mechanism and the many other initiatives that are ongoing in tandem to this Bill must be allowed to take root.

The Minister of State, Deputy Naughton, this week announced a new public awareness campaign on human trafficking. The key messages it is trying to convey are that human trafficking is a crime that is happening in Ireland, that traffickers often profit from the misery of their victims in forced employment and that the public needs to be vigilant. The #anyonetrafficked 2021 campaign will be rolled out on social media and in key transport hubs across the country until the end of November. It has been undertaken with the support of a number of other State agencies and non-State organisations.

With that in mind, I would like to reassure the Senator of my Department's commitment to the type of inter-agency collaboration between the Department of Justice and NGOs that is being sought through these amendments. Work has also been done on the development of training through NGOs, targeting front-line staff in industries such as hospitality, airline and shipping who may have come into contact with trafficked persons and providing dedicated accommodation for the female victims of sexual exploitation. For the reasons outlined on Committee Stage and today, I am not in a position to accept these amendments.

Senator Paul Gavan: I will be brief. I want to place on the record the support of Sinn Féin for all of these amendments.

Senator Alice-Mary Higgins: I am glad that there is engagement on this area with civil society organisations. There was a lot of disappointment that so many of the recommendations made by the Irish Human Rights and Equality Commission, IHREC, were not reflected in the Bill. I hope there will also be engagement with it on the human rights obligations outlined.

The Minister of State may not be able to come back to the post-enactment report, but I hope he will. Post-enactment reports can be blunt and refer to the number of prosecutions full stop. Detailed issues, such as the number of prosecutions in which section 9 was found to be relevant or the outcomes for smuggled persons who have had engagement with the Bill, might be included. I hope that the Minister of State will indicate whether those very important metrics will be reflected in the post-enactment report and that he ensures they are part of it. We should not have a simple headline figure. I see the Minister of State is nodding, and I hope he is indicating that will be the case. It will be important for us to know how this law is panning out.

I understand a document is not the vehicle for addressing smuggling, but smuggling leg-

isolation is a key intervention within this landscape. That is why it is important that we try to get it right. I will press a couple of these amendments because they are good. I will follow up directly with the Minister of State on the post-enactment report.

Acting Chairperson (Senator Eugene Murphy): Does the Minister of State wish to respond?

Deputy James Browne: I would expect that any post-enactment report would be comprehensive and detailed.

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

Senator Alice-Mary Higgins: I will press the amendment.

Amendment put and declared lost.

Acting Chairperson (Senator Eugene Murphy): Amendment No. 2 arises out of committee proceedings. Amendments Nos. 2 and 3 are related and may be discussed together. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 2:

In page 8, line 10, after “profession,” to insert “whether for profit or otherwise,”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: Amendments Nos. 2 and 3 are a different approach, but build on the discussions we had on Committee Stage. I also want to recognise the engagement of officials in the interim period between Committee and Report Stages. That has been very constructive.

Amendments Nos. 2 and 3 relate to a core aspect of the Bill. Saying that a person can have a defence is very different from saying that a person will not be prosecuted or is not committing an offence. We have spoken about the potential chilling effect of the signal that sends. In many cases, humanitarian actors and NGOs are people who are not necessarily very well resourced. They are taking an important step. There is a recognition that we do not want a risk of unnecessary or inappropriate prosecution in the Bill for persons engaged in business. There is provision in the Bill, as it stands, that it should not be an offence to perform activities under sections 6 and 7 in the presence of a smuggled person in the State where a person is doing so in the course of his or her ordinary business or work. It is a sensible element of the Bill. It is designed to ensure that if somebody rents a room in a bed and breakfast, takes somebody somewhere in a taxi, lets somebody on a bus or sells somebody a service in a shop in the ordinary course of events, even where this has an impact such a person would not be prosecuted. We know it is not constructive to have a threat of prosecution hanging over ordinary and good actions.

One of these amendments is about trying to ensure that when we talk about people who are doing things in the course of their work and their professions, we also include NGOs who are doing things in the course of their ordinary work. Employees of NGOs do food runs and support people with shelter or basic needs. As we know, many humanitarian organisations are trying to ensure that vulnerable persons get through the winter. This involves ensuring the kind

of important and supportive work we saw in Lesbos, and which we also see in communities in Ireland, does not carry any risk of prosecution. Amendment No. 2 is to ensure that when we describe kinds of ordinary work, that it includes voluntary work, that it is framed as “whether for profit or otherwise”, and that we are not simply protecting business owners but also protecting those who are volunteers within organisations. Amendment No. 3 is an expansion of that because while the safety net clause may be in the Bill, it relates only to those who have a presence in the State. I would like to see the same exemption applied in relation to “entry into or transit across”. While this would not deal with all of the humanitarian action that I believe should be regarded as not an offence, it would deal with humanitarian NGOs who do this as part of their ordinary work and it would give some more protection to them in terms of their engagement in the kinds of activities outlined under sections 6 and 7, if they are doing so under the rubric of their employment or their volunteer role with a humanitarian NGO. Amendment No. 3 would slightly expand what is in the bill in a constructive way, but it may be halfway to having a full humanitarian action exemption, which I favour, and having a humanitarian defence that the Bill sets out. This would at least take a certain cohort of humanitarian actors out of the realm of having to face potential prosecution. I hope the Minister of State, Deputy Browne, might be able to support these amendments.

Senator Barry Ward: We had this discussion on Committee Stage, with regard to Senator Higgins’s amendments. I appreciate very clearly the difference between an exemption and a defence, and I understand where the Senator is coming from. In the context of amendment No. 2, which adds in the words “whether for profit or otherwise”, I can see the value in that and I do not have a difficulty with that.

On the proposed insert in subsection (3), I wonder if two issues arise there. My understanding is that it expands the provision of the defining section 5 to also include an exemption in respect of section 8, which is the provision of fraudulent travel or identity documents for the purposes of assisting transit into or the presence in the State. While I am very much alive to what Senator Higgins is suggesting for putting in place a layer of protection for people who are doing things in a bona fide way and who might inadvertently provide something without ever intending to commit an offence, I do have a small concern that the kind of activity involved in section 8 is of a different calibre to the potential offences under sections 6 and 7. It is in a different category to those offences and I would be less inclined to extend the provisions of the existing subsection (2) through a subsection (3) in to cover section 8 as well.

In addition to that, I come back to what I said on Committee Stage. I am mindful of the difference between an exemption and a defence, but one of the pitfalls with prosecuting offences like this is that one can hamstring the prosecution and prevent it from ever bringing an action where it thinks it might be appropriate to bring one. However noble it might be, that is the consequence of creating an exemption. I have a concern with the further extension of that to cover certain categories whereby an unintended consequence might arise and that somebody who is clearly a person who should be prosecuted for one reason or another, or who in the opinion of the prosecutor should be prosecuted, would then be able to avail of an exemption and would be able to say “Well you cannot prosecute me for this”. My concern about subsection (3) as proposed through amendment No. 3 is that there is an unintended consequence that might arise from that. We may end up giving an exemption to someone and giving him or her a free pass who might not be deserving of it.

We have discussed how important it is in the context of this legislation to enable prosecutors and also to defend humanitarian activities and those involved in humanitarian activities. At

the same time, however, I come back to what I said on Committee Stage about relying on the prosecutorial discretion of the prosecutorial authority, and trusting in the fact that it does not want to prosecute people who should not be prosecuted, and to a certain extent understanding that we must, even when framing legislation, allow for the discretion of a prosecutor to make these decisions. It is impossible, in drafting legislation of this breadth, to provide for every individual case. The reality is that no matter how many of these amendments go in - I am not saying there are not some that should go in - and no matter how many changes we make, we will never have a piece of legislation that comprehensively addresses every possible scenario. We will, therefore, be necessarily reliant on the discretion of the person who has to make a decision about a prosecution. My concern about amendment No. 3 in particular is that it removes that discretion and we would try to cover everything in a legislative format, which is not possible, and this will have the potential for an unintended consequence of giving somebody a free pass who should not get it.

Deputy James Browne: I thank the Senators for their comments. Section 5(2), while a short provision, is very important for the broader context of the Bill. It provides that a person does not for the purposes of the offences in sections 6 and 7 unlawfully assist presence in the State when providing goods or services in the ordinary course of his or her business trade or profession. It is important to emphasise that it is intended to provide a clarification on the scope of the offences rather than to provide an exception of itself. It does not prejudice the narrowness for specificity of sections 6 and 7, or suggest that other activities not mentioned do constitute assisting presence. Rather, it makes absolutely clear for the avoidance of doubt, that certain activities do not constitute an offence. This is particularly important for accommodation. It is motivated by the work done at European level by the EU Agency for Fundamental Rights and others, and also by the work being done in Ireland to address the practical issues faced by those who come here.

Fears have been raised at an EU level that where a landlord is aware that a person is in breach of immigration law, that providing accommodation in the ordinary course of business could be interpreted as unlawfully assisting the presence of the person. We do not agree with this interpretation and have made absolutely clear that it does not apply in this legislation. That is less about protecting landlords than about ensuring that people can have access to accommodation and other essentials without any question about their immigration status. We do not want a situation where proof of status is sought before letting property or providing any other services.

I will now turn to the specific amendments. The difficulty with amendment No. 3 is that the logic that applies to assisting presence is not the same as that which applies to assisting entry or transit. People assisting entry in the course of their business are very deliberately and correctly within the scope of the offences. I will give an obvious example: a mini-bus operator who knowingly facilitates smuggling cannot escape liability by showing that he or she also has a legitimate transit business. The same applies to truck drivers, boat hire and so on. It is not even a question of where the burden of proof lies. The amendment would exclude conduct that we consider should definitely be criminal and, accordingly, it would be directly contrary to the policy of the Bill. Under the circumstances, I cannot accept amendment No. 3.

Amendment No. 2 is quite different. I am aware that Senator Higgins has been working with the Department officials on the wording to provide additional clarity. The amendment is consistent with the spirit of the existing provision. As I have said, section 5(2) exists to clarify the offences rather than to include or exclude things from them. I do not believe as the Bill stands NGOs providing accommodation, for example, would be committing an offence any

more so than a landlord would. However, while I do not think the amendment fundamentally changes the meaning of the subsection, I am happy to add the clarification sought. On that basis, I am happy to accept amendment No. 2.

Acting Chairperson (Senator Eugene Murphy): We return to Senator Higgins. There was some good news for you there.

Senator Alice-Mary Higgins: I am pleased. It will certainly give some support or assurance to some of those working in the voluntary sector. I thank the Minister of State, and I thank him for the engagement of his officials on this matter.

On amendment No. 3, I accept some of the concerns. I note that amendments Nos. 7, 8 and 9, which are forthcoming, explicitly do not include section 8. I recognise that there is a different quality to the actions taken under sections 6 and 7 versus section 8. If that is the core issue perhaps actions could be taken and an amendment even brought by the Government in the Dáil Stages of this legislation in ensuring that sections 6 and 7 might address the issue. Amendments No. 6 and 7 might be considered for protections. Again, there is a concern. This is really another way of coming at the humanitarian issue. It is not that we are removing discretion. As a whole, this Bill is inserting a very large amount of discretion. Previously, a burden of proof was on the prosecutor but now the prosecutor is being given a very wide swathe of discretion. While we will not come to it until later, I really believe that amendment No. 15-----

Acting Chairperson (Senator Eugene Murphy): Sorry, Senator. I really do not want to interrupt you but, really, I would prefer that we would wait to discuss all those amendments. You will have an opportunity to discuss them-----

Senator Alice-Mary Higgins: This relates to this amendment. I am saying-----

Acting Chairperson (Senator Eugene Murphy): We are discussing amendments Nos. 2 and 3, but-----

Senator Alice-Mary Higgins: We are discussing amendments Nos. 2 and 3. I am saying that this is in response to-----

Acting Chairperson (Senator Eugene Murphy): I am conscious of the time and to make sure we get through all your amendments.

Senator Alice-Mary Higgins: I will move ahead. It is fine. I am simply saying, in response to the question of the discretion, that if we are to leave so much to discretion, it is appropriate we monitor how that discretion is used. That is my simple concluding point. I think it is a relevant one. Again, I thank the Minister of State for accepting amendment No. 2.

Amendment put and declared carried.

Senator Alice-Mary Higgins: I move amendment No. 3:

In page 8, between lines 11 and 12, to insert the following:

“(3) For the purposes of *section 6, 7 and 8* assisting the entry into or transit across a state does not include the provision by another person, in the ordinary course of his or her business, trade or profession, of a good or service to the person.”.

Senator Lynn Ruane: I second the amendment.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Eugene Murphy): If amendment No. 4 is agreed, amendments Nos. 5 and 6 cannot be moved. Amendments Nos. 5 and 6 are logical alternatives to amendment No. 4. Amendments Nos. 4 to 6, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

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

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

“(8) Where a person who produces, possesses or controls a fraudulent travel or identity document does so in respect of a family member, and that person is themselves the object of people smuggling, they shall not commit an offence.”.

Senator Lynn Ruane: I second the amendment.

Acting Chairperson (Senator Eugene Murphy): I will not interrupt you this time, Senator Higgins.

Senator Alice-Mary Higgins: Amendments Nos. 4 to 6, inclusive, relate to a core issue. On Second Stage the Minister of State was extremely clear that his intention was certainly not that a smuggled person would end up potentially facing prosecution under this Act, and I know that that is not the intent. I highlighted on Committee Stage the inadvertent risk that, as the Bill was phrased, a smuggled person - specifically, I have highlighted the issue of traveller identity documents, though I know there may be some wider concerns - who has, for example, the identity document of a child or other family member could find himself or herself falling under the frame of smuggling under section 8. It is therefore really important we clarify this.

I have suggested three different ways in which this might be done. Where a person, as described in section 8, produces, procures, provides, possesses or controls a fraudulent traveller identity document in respect of a family member, and where that person is himself or herself the object of the people smuggling, that person should not be deemed to be committing an offence. In such a situation there might be a whole family being smuggled and one of them may have the identity papers for the others. We should not have a situation in which families, just when they might be trying to enter the international protection process, to seek asylum or whatever else, have, in parallel, one of their family members facing a potential charge of smuggling, even though that person is the smuggled person who is explicitly not the target of this legislation.

Amendment No. 6 contains a slightly different wording. In that amendment I speak specifically about family members under the age of 18, though I think the amendment relating to wider family members is a better framing. There are also, for example, people who may have identification for an elderly parent or somebody who does not speak the language. There may be one family member who can speak English, Spanish or whatever the language might be and who is nominated to engage. Losing that person would be very significant for a family.

Amendments Nos. 4 and 5 are variations of the same. Amendment No. 6, as I said, slightly constrains the matter to family members under the age of 18.

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I have had some engagement with the Minister of State's Department. I think he has recognised that there is a potential lacuna or space for ambiguity in the law in this regard. I would appreciate his response as to whether he feels he can address this or accept these amendments.

Deputy James Browne: I thank the Senators for their comments. As I have made clear throughout the debate on the Bill, we do not intend to criminalise people who are being smuggled, and I think that extends properly to parents travelling with their children, for example. I believe that, as it stands, that would fall under humanitarian assistance. I appreciate that Senator Higgins and I differ on that being framed as a defence, and we will discuss that further when we come to the next group of amendments. I recognise, however, that further clarity may be desirable, subject to it not creating ambiguity elsewhere. On that basis I have asked for further consideration to be given by officials to the drafting on this question and on the non-criminalisation amendments, that is, amendments Nos. 12 and 13. It is a difficult area. We need to ensure that smugglers themselves do not fall under any definition of a smuggled person, for example, by having paid someone else in the chain for false documents in respect of themselves. I would also prefer any clarification to apply to offences under sections 6 and 7 as well as to the documentary offences under section 8. There is also a role for prosecutorial discretion. To cite the most recent DPP guidelines on the decision to prosecute, "a prosecutor should ... [take] particular care where there is information to suggest that the suspect is a victim of crime". The guideline goes on to refer to trafficking as an example.

I cannot commit to a particular form of amendment at this stage - that will be subject to the advice of the Attorney General's office - but if the advice is that further provision would be beneficial, I will introduce the necessary amendments to the Dáil and return to the Seanad with them. Given that, I cannot agree to the amendments at this stage but I am, of course, happy to engage with the Senators further in due course on them.

Senator Alice-Mary Higgins: I thank the Minister of State for his engagement and welcome the fact that he is looking to ensure that that clarification, if it is inserted, will be a little wider than the issue I have addressed of documentation but will look also at sections 6 and 7. That is positive. I again emphasise that I do not believe the humanitarian defence is appropriate in respect of a smuggled person because we are talking about people who, by their nature, are probably entering a different legal process - for example, the international protection process. Even the question of there being a potential prosecution, whether or not there may be a successful defence, could jeopardise the well-being and the access to rights for an entire family unit. I think that that is how the Minister of State is minded but I urge him to be very robust in being clear that the smuggled person is not the object of prosecution. I know he wants to clarify where that smuggled person is himself or herself. I think that that clarification should be able to be teased out because we are quite clear. I almost have two safety nets in some of these amendments, whereby reference is made to people who are the object of smuggling themselves and where it is done in respect of a family member. That should be clear because if a smuggler is engaging in these actions in respect of other persons who are not the smuggler's family members, that would count as an exemption in respect of the actions taken for the family member. However, that same extension would not extend to other actions the smuggler may have carried out for those who are not his or her family members. I think that can be addressed. I urge the Minister of State to make this very clear in the definitions, which is I think what he is trying to address, rather than placing people in a position of having to try to exercise a defence, especially given the likely vulnerability of those persons and their access.

Again, I thank the Minister of State for his engagement on this. I will be watching the Dáil

very closely and I hope we have the Minister of State back in the Seanad with amendments that address this issue.

Amendment put and declared lost.

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

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

“(8) Where a person who produces, procures, provides, possesses or controls a fraudulent travel or identity document does so in respect of a family member, and that person is themselves the object of people smuggling, they shall not commit an offence.”.

Senator Lynn Ruane: I second the amendment.

Amendment, by leave, withdrawn.

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

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

“(8) It shall not be an offence where a person who produces, procures, provides, possesses or controls a fraudulent travel or identity document does so in respect of a family member under 18, and where that person is themselves the object of people smuggling.”.

Senator Lynn Ruane: I second the amendment.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Eugene Murphy): If amendment No. 7 is agreed, amendments Nos. 8 to 11, inclusive, cannot be moved. Amendments Nos. 8 to 11, inclusive, are logical alternatives to amendment No. 7. Amendments Nos. 7 to 11, inclusive, are related and may be discussed together by agreement.

Senator Lynn Ruane: I move amendment No. 7:

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

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

Senator Alice-Mary Higgins: I second the amendment.

Senator Lynn Ruane: I welcome back the Minister of State. I will be brief on these amendments. We covered them a lot on the previous Stage of the Bill. They go back to the recommendation IHREC made. We spoke a great deal in the last session about the journey of a smuggled person and people obviously do not take that journey very lightly. *The Journal* reported a number of weeks ago that on 18 July people were pulled from the Mediterranean Sea and that there were 57 other migrants on the same boat when it had left its port. These amendments would seek to protect those humanitarians and aid workers who help to save those lives that we keep reading about and seeing the reported figures on.

Previously, this work was carried out by the European defence forces under Operation Sophia, with the assistance of some of our own ships given to those stranded at sea. Now that work is being left to NGOs such as Médecins Sans Frontières, MSF, which we need to protect in this legislation. Under the current legislation, this work is in danger of ceasing because the NGOs are threatened with prosecution. I am therefore appealing to the Minister of State to accept these amendments to stop further loss of life and to be able to facilitate humanitarians in their very important work.

Senator Alice-Mary Higgins: Ireland was better than Operation Sophia because we saved 17,000 lives when we were operating bilaterally with our own ship. When we joined Operation Sophia that figure was reduced but there was still search and rescue carried out.

All of this relates to a European directive so it is not us on our own. It is exactly as was said on the question of prosecutions and of a chilling effect. All of those are not simply speaking to what might happen in Ireland but also to how this directive and law is being interpreted across Europe. That is why we are pressing for the best, most thoughtful and most careful interpretation in the protection of humanitarian action and human rights. This is not simply about our own actions because I hope this kind of interpretation will enable the Minister of State and his colleagues, when engaging with their European peers at the Council of Ministers and elsewhere, to advocate for proper respect for humanitarian action. This is an example for us to provide a positive and constructive template. I hope the Minister of State will take these amendments on board and press these points further in situations where we have seen aggressive prosecutions of humanitarian NGOs.

Senator Paul Gavan: I will speak briefly on this issue, which I have addressed in the Council of Europe, our human rights body for Europe. I wish to concur with everything both speakers have said. I have real concerns about the direction of travel with regard to the incredible work that NGOs do and this move to threaten them potentially with prosecutions. It would be wonderful if the Government could include this amendment to ensure we are not in any way, intentionally or unintentionally, aligning ourselves with that train of thought.

Acting Chairperson (Senator Eugene Murphy): If Members wish to speak, I ask them to raise their hands and I will ensure their voices are heard.

Deputy James Browne: I thank the Senators for their proposals. Amendments Nos. 7 to 9,

inclusive, and 11 are similar in that they would effectively reframe the humanitarian assistance defence as being elements of the offence and accordingly it would be for the prosecution to prove the contrary.

Amendment No. 10 provides for a bar to prosecution under similar circumstances.

The question of where the burden of proof should lie was discussed at length on Committee Stage and it is useful to recap now. A significant motivation for this Bill was to increase the effectiveness of criminal sanctions in this area. The very clear advice we received from the Garda and from prosecutors was that the existing framing in the 2000 Act of a requirement for material gain was a major practical block to successfully prosecuting organised criminal smugglers. The reason for that, as I think is widely accepted, is that the payment will not typically take place in the state and the smuggled persons may not co-operate with authorities for fear of the consequences for them and their families at home.

The starting point has to be that the existing legislation falls considerably short of providing an effective deterrent to people smugglers. 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. I wish to make clear that allowing smugglers to operate without risk of prosecution does not further any humanitarian motive. It places more and more people in the hands of criminal gangs who, at the very least, will charge exorbitant fees, will likely place the people smuggled in danger and may exploit them in the most shocking of ways.

The State is not at odds with those providing genuine humanitarian assistance to migrants. We simply have to ensure that well-intentioned measures do not unintentionally undermine the criminal sanctions we are putting in place. Under the EU instruments for assisting entry-in-transit, we cannot incorporate a blanket element of financial material gain either as an element of the offence or as a defence. We can make provision for humanitarian assistance, as we have done. We have done so as broadly as possible. In providing for a broad and generally applicable humanitarian assistance defence, we have gone well beyond what most other member states have done. This discretion has been taken up by just seven other states and in many cases is far more narrowly drawn.

Our terms with regard to where the burden of proof lies rest on the question of who is best placed to meet it. One can take entry as an example. The prosecution must prove that the accused intentionally assisted someone to enter the State in breach of immigration law and that the accused knew or had reasonable cause to believe that the entry was a breach. That is a substantial burden. It is showing that a person intentionally facilitated unlawful entry. If that is proven and if the accused is then claiming that they were acting for humanitarian motives, it is reasonable to require them to provide positive and convincing evidence.

The Senators have raised how significant a prosecution would be for a humanitarian actor. While accepting that being prosecuted is, of course, very serious for anyone, I do not agree that the framing of a humanitarian assistance provision as a defence gives rise to a real risk of unjustified or politicised prosecution. The Director of Public Prosecutions, DPP, is independent in its functions and it establishes clear and well-understood guidelines on decisions to prosecute. Critically, the guidelines state that a “prosecutor should not lay a charge where there is no reasonable prospect of securing a conviction before a reasonable jury.” There is simply nothing to suggest that the DPP charges people to make political points where there is no prospect of a conviction.

I do not think the bar to prosecution proposed in amendment No. 10 is realistic. We would be asking the DPP to make a determination of fact, which would properly be for a court to do. Assuming that the DPP believes there is some prospect of a conviction, then the language would not prevent that. Even if we were to accept the Senators' hypothetical politically motivated prosecutor, these provisions would not prevent that. Such a prosecutor could simply state that they were satisfied that the evidence was there. Given the breadth of the defence as it is drafted, I do not believe 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 do not believe that there has been politically motivated prosecutions in those cases. I simply do not believe that any real risk exists in these circumstances but we need to secure prosecutions against those who are smuggling. In the circumstances, I cannot accept the amendment.

Senator Alice-Mary Higgins: This comes down to a very large transfer of responsibility for the policy outcome that we wish to achieve towards the discretion of prosecution. If we believe that as an outcome, persons engaged in humanitarian actions should not be prosecuted for an offence, and if that is what we are hoping will happen, we should reflect that in the legislation rather than hoping that will come out from the process. If, even having removed the for-profit piece, the burden of proof is now to be placed on those being potentially charged with smuggling, as per the briefing from the Department, they should at least be given the opportunity to demonstrate that burden of proof before prosecution, in that they could say they are not committing an offence.

As the Minister of State has said, if there is a political motivation we might still see a prosecution, but that would be a different situation. If a prosecutor is repeatedly prosecuting people for something that has been found to be an offence, that becomes an issue and a pattern can be clearly identified. If a prosecutor chooses to prosecute people despite them having a defence to the offence, and that prosecutor is operating entirely within his or her permitted discretion, there is nothing we can do to address that pattern except to change the law again. That is why I have suggested that if this is how we plan to have it unfold, we need to track what happens with the prosecutions. This is not in terms of individual instances but if we are seeing cases coming up and the Article 9 humanitarian defence is being used - if, by its nature, that is happening in the dock - we will know that the deterrent or chilling effect that the Minister of State believes the humanitarian defence will have on a prosecutor prosecuting humanitarian NGOs is not working. Again, we are leaving a great deal to chance and discretion.

I ask the Minister of State to note our earlier point. This legislation is not happening in a vacuum; it is happening in the context of equivalent similar legislation throughout Europe. Other European countries have had very aggressive prosecutions. I will not detail the cases again, but numerous members of MSF and other NGOs are being prosecuted. The prosecution is not necessarily to achieve a conviction, but to create a financial, social and psychological burden on NGOs. If we go down the route of prosecutorial discretion here in Ireland, we are also setting the template for that to be the model employed in other countries which are transposing the directive into their own laws.

I believe we should have aimed for something better because the jeopardy relating to the chill effect on humanitarian action is greater than the jeopardy regarding prosecutions in the legislation as framed. I regret that the Minister of State will not accept the amendments. I hope he will consider the issue further in the Dáil and look at it in that context.

Unfortunately, we know of such people. We had a member of a refugee appeals tribunal who said “No” to everyone for years and that person was acting within their discretion. This was somebody who effectively gave blanket refusals to everybody. I do not want us to end up in such a situation. That is not about the individuals; they have their discretion. It is about not putting too much into that space. I hope the Minister of State will reflect upon and engage with these issues further in the Dáil.

Acting Chairperson (Senator Eugene Murphy): I made it very clear as we started proceedings today that a Senator may speak only once on Report Stage except the proposer of an amendment who is entitled to reply.

Senator Alice-Mary Higgins: Can I-----

Acting Chairperson (Senator Eugene Murphy): I did not want to interrupt. It should have been Senator Ruane. Unfortunately, I cannot now let Senator Ruane in. It is just the way it happened, but I want to be straight with the Senator. I apologise because I should not have allowed things to continue.

Senator Alice-Mary Higgins: It was my oversight. I forgot that I had not proposed in this instance.

Acting Chairperson (Senator Eugene Murphy): I hope both the Senators understand.

Amendment put and declared lost.

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

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 14* where the person engaged in conduct alleged to constitute an offence under *section 6, 7 or 14*—

(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.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

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.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

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

“Protection from prosecution

9. Where a person can demonstrate to a level of reasonable satisfaction that they have engaged in conduct alleged to constitute an offence under *section 6 or 7* for humanitarian purposes, that person shall not be liable for prosecution for said conduct.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

In page 11, to delete lines 8 to 11 and substitute the following:

“9. (1) It shall not be an offence under *sections 6, 7 or 8* where a person engaged in behaviour alleged to constitute an offence under those sections—”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

Acting Chairperson (Senator Eugene Murphy): If the question on amendment No. 12 is agreed, amendment No. 13 cannot be moved. Amendment No. 13 is a logical alternative to amendment No. 12. Amendments Nos. 12 and 13 are related and may be discussed together by agreement.

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

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

“Protection of smuggled persons from prosecution

11. A person who has been the object of people smuggling and derives no financial benefit from people smuggling shall not be liable for prosecution under any provision of this Act.”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: I feel terrible because we did not get to tease out some really important points on the last amendment.

This amendment again relates to the protection of smuggled persons. These two issues are constantly entwined because we are coming to the protection of the humanitarian worker and the protection of the smuggled person. The purpose is to ensure that we do not have wrongful prosecution - a prosecution which creates a chilling effect on the humanitarian actor or creates a further damage or harm to the smuggled person, who, as the Minister of State described in his speech, will in many cases have experienced exceptional difficulties and will be extremely vulnerable.

I have proposed a blanket safety clause in amendments Nos. 12 and 13. For both the smuggled person and the humanitarian actor, we need to err on the side of protection for different, but equally important, reasons. While this is not quite here, it is between the lines. When we talk about the damage done by smugglers and the importance of prosecuting them, we must remember that smuggling is happening because some people are desperate to travel and we do not have safe passage routes. I have not tabled amendments because I recognise that is a wider piece. However, I would like to hear a response. We really need to engage on that question of improving our safe passage routes.

Smugglers are not the cause of smuggling; desperation is the cause of smuggling. It is then exploited by smugglers for profit. The core driver is that many people are in extremely terrible situations. In some cases, they are seeking family reunification but are excluded by narrow family reunification laws. In some cases, they are fleeing direct conflict. In some cases, they would seek asylum but physically cannot get to the place where they need to be in order to seek asylum. Those are the people who in many cases are being smuggled. It is important that this legislation does not put a further burden on those people because the responsibility for them being in that situation lies partly with the smugglers, but it also lies partly with states and the failure to provide safe passage routes.

Senator Lynn Ruane: I echo everything that Senator Higgins has said. Under the 2002 EU directive, the facilitator of entry and transit does not need to have obtained any financial benefit from 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 element 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 for 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 for humanitarian grounds.

EU research has found that those involved in providing assistance to irregular migrants report that they fear sanctions. They can also experience intimidation by some national authorities when carrying out their work. Therefore, I ask the Minister of State to accept these amendments in order to protect these vulnerable people and those who assist them.

Deputy James Browne: I thank the Senators for their comments. As I made clear when discussing the previous group of amendments in respect of family members, we do not intend to criminalise people who are being smuggled. However, given how the offences are already phrased, I do not believe a blanket provision is necessary as it would tend to create more uncertainty.

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The issue is that the bar for someone being considered to have been the object of people smuggling may be quite low and may be different from what the Senator intends. For example, as I mentioned, someone who has obtained false documents to facilitate their continuing presence might fall under it. A blanket provision would tend, therefore, to do something an organised smuggler may be able to exploit. I understand that the Senator is trying to avoid that with the reference to “derives no financial benefit”, but that may fall foul of the minimum standards in the directive. It also creates new issues with the burden of proof. In effect, it would be for the prosecution to prove that a person charged with an offence had never been previously smuggled or had not benefited financially.

As I said in respect of the previous amendments, however, we will look at this further. If refinement of the language used is needed to ensure non-criminalisation, then I will introduce the necessary amendments in the Dáil.

Senator Alice-Mary Higgins: Some tightening may be needed here because there is vulnerability. As I said, the impact is not simply on the person who might face prosecution but on his or her whole family unit, and that is what needs to be protected here.

Again, as my colleague articulated it very clearly, the rationale originally for having the criteria of for profit or for financial benefit was because the original legislation and directives were seeking to create a balance. This balance the Minister of State is speaking about now is tilting it but we are at risk of tilting too far, whereas that balance was already there by having that financial criterion. We have not seen a lot of prosecutions, but we are told there is a perceived likely prosecutorial difficulty in engaging on the question of financial benefit.

Amendment No. 13 is quite nuanced in that it addresses the financial benefit and the object of people smuggling. That could also be caveated to include family member actions as well. I look forward to further engagement on this.

We need to send as precise and clear a signal to prosecutors as possible because, as my colleague has said, there is a fear and a perception. We know we have had cases, which we spoke about on Committee Stage. I have spoken about Médecins sans Frontières and there have been cases of Irish persons who have faced prosecution.

I will press the amendment. If the Minister of State cannot accept it at this point, I hope he might engage with us further between now and when the Bill goes to Dáil and maybe we can find forms of words which clarify.

Amendment put and declared lost.

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

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

“Protection of smuggled persons from prosecution

11. A person who has been the object of people smuggling and derives no financial benefit from people smuggling shall not be considered to have committed an offence under any provision of this Act.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

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.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

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 number of prosecutions not pursued due to a humanitarian defence,

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(b) the number of prosecutions pursued where a humanitarian defence was employed, and

(c) any impact which this Act may have had in respect of the level of engagement of humanitarian organisations in humanitarian activity in respect of smuggled persons.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

Acting Chairperson (Senator Eugene Murphy): Amendments Nos. 16 and 17 are related and may be discussed together by agreement. Is that agreed? Agreed.

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

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

“Report on training

11. The Minister shall, within 12 months of the passing of this Act, lay a report before both Houses of the Oireachtas outlining—

(a) the training provided to frontline staff involved in the identification of smuggled persons,

(b) measures which may be taken to improve such training in particular in relation to the provision of supports that a smuggled person may need in order to exercise their rights under international protection, and

(c) consideration of the need for additional personnel, including independent civilian experts.”.

Senator Lynn Ruane: I second the amendment.

Senator Alice-Mary Higgins: Amendments Nos. 16 and 17 relate to training. My colleague, Senator Ruane, is the person who first highlighted this issue on Committee Stage.

A lot of the rationale for this legislation being brought forward is the perception that Ireland has been rated as tier 2, so less than best practice levels, in terms of our reports on how we are doing with identifying trafficking, and dealing with smuggling and other issues. In terms of the issues that were identified as problems, to be honest, prosecutions and successful prosecutions were a small part of . A lot of the issues that were identified as concerns in Ireland concerned the failure to identify trafficked or smuggled persons - I have focused in these amendments on smuggled persons because this is Bill on smuggling - and that there was a lack of knowledge and understanding on the part of front-line staff who were engaging with these vulnerable persons, first in identification and then in following up . Also, there is a concern about ensuring the smuggled person is given the supports he or she needs to access his or her rights, including his or her rights under international protection and under the European convention. That is the area

where Ireland has been marked as falling down and that is where we have got a poorer ranking. Therefore, this is an area that needs to be improved.

In amendments No. 16 and 17, we specify the “additional personnel, including independent civilian experts” and “the potential for human rights experts from non-governmental organisations to assist in identification and support of smuggled persons”. This is an issue that was discussed at great length in the past and which was happening, in fact, coming up to about 2003 and 2004. There had been a practice whereby you had independent human rights and civilian experts who were in a position to be, which we cannot expect every front-line security officer will be, experts in international protection law and due process and who had an expertise when it came to legislation on smuggling. That was a really important resource and, crucially, as the Minister of State himself spoke about the fear a smuggled person will have when he or she encounters a person of authority or the fear he or she will have of both the smuggler and, potentially, a member of the police force or authority, especially if the smuggled person comes from an authoritarian situation, having those independent personnel as someone a smuggled person can talk to and engage with on how he or she accesses his or her rights is a very good idea which tends to lead to more honest communication which, as a result, also leads to better prosecution of smugglers. That is something we had in 2003 and 2004. It was being trialled, it was happening and then it stopped happening. It is something we should revisit and I hope the Minister of State can revisit it. It would make a huge difference if, for example, as well as having the security and officials we have, there was also an independent NGO, member of civil society or independent expert at the key points of entry at Ireland’s ports and airports. It would be best practice. I believe it has been brought in in New Zealand and a few other places. I am happy to engage further with the Minister of State on it.

My colleague has other points about training, so I will pass on to her.

Senator Lynn Ruane: The most basic entitlement that people deserve and which this Bill seeks to protect is to be treated with respect and dignity. This starts with the training of the people who will be the first responders to anybody who enters this country.

The Council of Europe’s Group of Experts on Action against Trafficking in Human Beings, GRETA, committee recently recommended that Irish authorities ensure their front-line staff involved in the identification of victims of trafficking should be provided with regular training and guidance on best practice. By placing a provision in the Bill committing the State to reporting on the level of training provided to officers and officials dealing with smuggling and trafficking, we offer these vulnerable people the best possible chance of being dealt with in a dignified and respectful manner.

In regard to amendment No. 17, to ensure the vulnerable people this Bill seeks to protect are given the protections and rights to which they are entitled, it is crucial smuggled persons are properly identified. Currently, Ireland and Romania are the only two EU states that are placed on the tier 2 watch list of the recently published Trafficking in Persons report. The report, compiled by the United States Government to combat human trafficking, suggests with this ranking that the estimated number of victims of severe forms of trafficking or smuggling in Ireland is either very significant or is significantly increasing. It is, therefore, essential that there is a commitment in this Bill to the establishment of a proper identification process which ties in to the rights and entitlements laid out in it. I am asking, therefore, that this amendment be accepted in order to ensure that the State is properly identifying highly vulnerable people.

Deputy James Browne: I thank the Senators. I will speak to amendments Nos. 16 and 17 together because they are closely related. I acknowledged in our discussions in the House last week that there is a fine line between people smuggling and human trafficking. The Senator made some poignant points about the difficulties the most vulnerable people face when seeking safe passage for themselves and their loved ones. I said the following at the time and feel strongly that I must reiterate it now. The issues raised here are more appropriately dealt with in the context of human trafficking discussions. As a result, I cannot accept either of the amendments. In respect of the specific statistics regarding the outcome relating to smuggled persons, I mentioned on the Committee Stage that the Department of Justice publishes detailed statistics on the international protection process. We must also consider the focus of this Bill and the wider measures that are being put in place, such as those announced by the Minister of State at the Department of Justice, Deputy Hildegard Naughton, which will further enhance Ireland's capabilities in protecting those who are victims of people smuggling or human trafficking.

As the Senator will be aware, there is a breadth of work ongoing in this area. As I have said before, the appointment of a national rapporteur, the development of the national referral mechanism and the many other initiatives that are ongoing in tandem with this legislation must be allowed to take root. The Minister of State, Deputy Hildegard Naughton, just announced a new public awareness campaign on human trafficking. The key message this will convey is that human trafficking is a crime which is happening in Ireland, that traffickers often profit from the misery of their victims in forced employment and that the public needs to be vigilant. The #AnyoneTrafficked 2021 campaign will be rolled out on social media and in key transport hubs across the country until the end of November. It is being undertaken with the support of a number of other State agencies and non-State organisations.

I referred to aspects of the broader work being done on Second Stage and again on Committee Stage. There are many actions being implemented by the Government to address the issues faced by victims of trafficking, not just the national referral mechanism, but also the designation of the Irish Human Rights and Equality Commission as a national rapporteur and the development of a new action plan on trafficking with legislation to go alongside it. There has also been work on the development of training through NGOs targeting front-line staff and industries such as the hospitality, airline and shipping industries who may have come in contact with trafficked persons and provide dedicated accommodation for female victims of sexual exploitation. There are also improvements being made to the criminal justice system to support victims through the implementation of Supporting a Victim's Journey, the running of a new awareness-raising campaign in partnership with the International Organisation for Migration to build on the success of previous campaigns, an increase in funding for supporting victims of crime generally and increased funding dedicated specifically to supporting the victims of trafficking.

I was also able to confirm to Deputy Christopher O'Sullivan in the Dáil last night that the Minister of State at the Department of Enterprise, Trade and Employment, Deputy English, the Minister for Agriculture, Food and the Marine, Deputy McConalogue, and I have agreed to a review of the atypical working scheme for migrant fishers. The officials already met last week and will be meeting again this week. That will be another important step to ensure that human trafficking in this country is tackled, acknowledging that there may be certain rogue elements abusing the system. The scheme was urgent when it was brought in five years ago but it is now time that it was reviewed. In the circumstances, I cannot agree to the amendment.

Senator Alice-Mary Higgins: The review the Minister of State has mentioned may be an opportunity for engagement on these issues. This is something that needs to be looked at. As

my colleague outlined, we know that things are not working as they should at the moment. I look forward to engaging with the Minister of State on that review. The training component is pressing, as we know, and we need that, regardless of the review. It would be good to see that happening and to know it would be happening.

As the Minister of State mentioned, there are larger issues relating to An Garda Síochána and training right across the board. We have focused our discussion on border points but there are issues about the wider understanding of these issues within An Garda Síochána. We talked, for example, about presence in the State rather than the exit point. In general, there needs to be much more understanding of that. The Minister of State will note that we do not just talk about knowledge, training and information in our amendments, but also address the question of support. It is not enough for people to be aware of others' legal rights. It is key that the issue is framed on the basis of supporting people to access their rights. Training should not simply be about the limitations of one's power but almost as a positive duty of support.

We will be engaging on this matter. I know an ongoing process is under way but it would be good to send a signal with this Bill that addresses the question of support. It would show that we have listened to the full gamut of the expression of concern that was expressed. I hope the Minister of State might consider bringing in a provision, even it is not worded exactly as we have it, for the ancillary supports that will be put in place around addressing the issue of smuggling. It would send a positive signal if the Minister of State found a way to include that language in the Bill and in the reporting on the Bill. The Minister of State mentioned the post-enactment review. Perhaps, in parallel with that review, there could be a report on implementation and whether sufficient training has been implemented and so forth.

Amendment put and declared lost.

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

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

“Report on identification of smuggled persons

11. The Minister shall, within 12 months of the passing of this Act, lay a report before both Houses of the Oireachtas setting out proposals to strengthen the identification of smuggled persons and the potential for human rights experts from non-governmental organisations to assist in identification and support of smuggled persons.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

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

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

“Review of operation of Act

11. The Minister shall, within 12 months of the passing of this Act, lay a report before both Houses of the Oireachtas reviewing the operation of this Act, with such a review to include—

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(a) outcomes for smuggled persons, including the number of smuggled persons identified and the number who have sought and the number who have been granted international protection,

(b) an examination and any evidence of whether the provisions of this Act have had any chilling effect on the work of humanitarian organisations,

(c) the manner in which section 9 was used in the decision not to prosecute and in court proceedings, and

(d) the impact of this Act on Ireland's human rights obligations, including obligations under the 1951 Convention relating to the Status of Refugees and the European Convention on Human Rights, with a particular focus on the principle of non-refoulement.”.

Senator Lynn Ruane: I second the amendment.

Amendment put and declared lost.

Bill, as amended, received for final consideration.

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

Senator Barry Ward: Anois.

An Cathaoirleach: Is that agreed? Agreed.

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

Minister of State at the Department of Justice (Deputy James Browne): I thank Senators for their engagement on this matter. I look forward to engaging further regarding some of those issues.

Senator Alice-Mary Higgins: I thank the Minister of State for his engagement. I urge him to reflect further on where the balance might be. If we are going with what I regard as the risky strategy of relying on prosecutorial discretion, I suggest that we put measures in place to track how that pans out. I also recommend a review. The review we proposed had a number of caveats but there is nothing to stop the Minister of State from putting in an amendment providing for a review with those factors considered. I know there will be a post-enactment report but a review would be merited if we found in that post-enactment report that there had been unintended consequences. We talked about the metrics for what happens with regard to prosecutorial discretion, the outcomes for smuggled persons and, crucially, whether those other, ancillary issues are actually being addressed. Matters such as how we are reviewed on our human rights performance are going to be core considerations.

I thank the Minister of State for indicating that he will engage on some matters. I think we are taking something of a risk with this approach. I believe an exemption for humanitarian action would be a safer position but if the Minister of State cannot accept that, I urge him to build in a review in one year or two years' time, ideally during the lifetime of this Oireachtas and while the Minister of State is still in office, because I believe he has an understanding of these issues and cares about them. That would allow us the opportunity to ensure that we have not

gone down the wrong path.

I again ask the Minister of State, in his capacity at the Council of Ministers and in the context of engaging through his colleagues, to ensure that Ireland will be a champion of humanitarian action. There are many forces arrayed against such action right now. If we are in a situation where the law and prosecutions relating to smuggling are being circumvented, can we make sure that Ireland speaks up? We may not have our Naval Service out there doing search and rescue any more, which is heartbreaking, but we can at least speak up whenever we are in a room where these matters are discussed. I hope the Minister of State will do that.

Question put and agreed to.

Sitting suspended at 2.20 p.m. and resumed at 2.45 p.m.

EU Regulations: Motion

Senator Robbie Gallagher: I move:

That Seanad Éireann approves the exercise by the State of the option or discretion under Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the area of freedom, security and justice annexed to the Treaty on European Union and to the Treaty on the Functioning of the European Union, to take part in the adoption and application of the following proposed measure:

Directive of the European Parliament and of the Council amending Directive (EU) 2019/1153 of the European Parliament and of the Council, as regards access of competent authorities to centralised bank account registries through the single access point,

a copy of which was laid before Seanad Éireann on 18th August, 2021.”

Minister of State at the Department of Justice (Deputy James Browne): I thank the Senators for agreeing to debate this motion at relatively short notice. I request the House to approve Ireland’s opting into a new proposal on facilitating the use of financial and other information for the prevention, detection, investigation or prosecution of certain criminal offences.

Ireland has an option, provided for in Article 3.1 of Protocol 21 annexed to the Treaty of Lisbon, to opt in to individual proposals in the area of freedom, security and justice. The protocol provides that Ireland has three months, from the date a proposal or initiative is presented to the Council, to notify the Presidency of the Council in writing of its wish to take part in the negotiation, adoption and application of any such measure. The three-month period for this proposal is due to end on 1 November. Following approval by the Government on 12 October, Oireachtas approval is required under Article 29.4.7° of the Constitution. The Dáil gave its support to the motion yesterday. Ireland will still be able to accept the proposal any time after it has been adopted, but in such a case Ireland will not have been in a position to vote on the final contents of the proposal. It must also be noted that Ireland made a declaration appended to the Treaty of Lisbon of its intention to opt in to measures in the area of freedom, security and justice to the

maximum extent it deems possible.

This proposal is linked to a suite of EU proposals on reforming the EU's anti-money laundering framework published in July. The proposals include a proposed 6th anti-money laundering directive, 6AMLD, which, among other things, would provide for a cross-border interconnection between member states' bank account registers, BAR, via a single access point. The amending directive we are discussing today seeks to extend access to the BAR single access point to the bodies designated with responsibility for the prevention, detection, investigation or prosecution of criminal offences under directive 2019/1153, which Ireland has already opted in to. My officials have consulted the Office of the Attorney General and have been advised that there is no legal impediment to Ireland opting into this proposal. Work is in progress to transpose Directive (EU) 2019/1153 into Irish law. That directive requires member states to designate authorities competent in the prevention, detection, investigation and prosecution of criminal offences in order for them to access and search the centralised BARs. In Ireland, these competent authorities include the Criminal Assets Bureau, CAB, and a cohort in An Garda Síochána at senior level.

The 4th anti-money-laundering directive, as amended by the 5th anti-money-laundering directive, requires member states to put in place BARs. It is anticipated that Ireland's BAR mechanism will go live in the third quarter of 2022. The new anti-money-laundering directive will provide access to the BAR single access point at EU level only to the financial intelligence units of member states. Wider access for other authorities with responsibilities for preventing, detecting, investigating or prosecuting criminal offences will facilitate effective financial investigations. This is why the directive we are discussing is necessary.

By interconnecting the national and centralised BARs at EU level, authorities with access to the BAR single access point will be able to establish quickly whether an individual holds bank accounts in other member states. The information that will be available through the BAR single access point includes names, IBANs, dates of account opening and closing, and the duration of the lease period in the case of safe deposit boxes. The same limitations and safeguards created in Directive (EU) 2019/1153 will remain in place. Not opting into this amending directive will present risks regarding Ireland's perceived commitment to the EU anti-money-laundering framework. Furthermore, given Ireland's status as a hub for business and investment, it is important to have appropriate preventive measures in place, including robust legislation, to address a range of interconnected economic crimes, such as corruption, fraud and money laundering. I look forward to hearing the views of the Senators. I urge them to support the motion.

Senator Barry Ward: I welcome the motion. An entirely common-sense provision is being suggested by the Minister of State. Considering that this measure relates to the Treaty on the Functioning of the European Union, including Article 5, as mentioned by the Minister of State, it is good that these motions are discussed in the Houses of the Oireachtas. Constitutionally, it is appropriate that the relevant measures be ratified by both Houses. In the context of European legislation, it has stood us in good stead that these things interact with the national legislatures and, in a broader context, the people. The danger with some of these measures is that they proceed at a supranational level, or at European level, such that citizens do not know about them or understand what is happening. Then, all of a sudden, something happens and people wonder why or how it has come about. I welcome the fact that there is an opportunity to speak about this.

I accept what the Minister of State said about the urgency of this matter. There is a deadline

and it makes sense to meet it. There is no reason we should not.

In the context of citizens and others who are going to interact with the system and who wish to understand it, I was contacted by somebody about the proposal. Very often, these motions are debated in a vacuum in some respects because there is no interaction, but somebody did contact me. One of the concerns the person had was on the protection of their information. I will say what I said to the individual concerned. It is important to note that all the protections we expect in connection with this kind of activity remain. GDPR, for example, continues to pertain in regard to any of this information. It is important to recognise that the sharing of the information in question happens at a high level only. It is not the case that ordinary officials in a bank, ordinary civil servants or people who are not connected with anti-money-laundering activities would ever have access to the information. The system operates as a high level. In this regard, the Minister of State referred to gardaí and others who are operating specifically in this sphere. Anybody who does not particularly want somebody in Poland, Sweden or Italy to know about his or her bank account details should consider the motion in the context of how the data will be used, who will have access to them and why they will be accessed. We have spoken a lot in this House about anti-money laundering provisions and provisions to stop or stymie effectively the sharing of money across the EU. We have bodies such as CAB, which celebrated its anniversary this year and which does good work. It has been effective at shutting down certain criminal organisations that have acted with impunity. Bodies such as the bureau will be enabled by the legislation. They will now be able to contact a single point of access to find out about bank accounts of people in their own jurisdiction. Previously, the bureau, for example, would have had to write to its counterparts in every EU state. That is an unsustainable system. It allows things to fall through gaps. It is much better to have the information held centrally for those who need to have access to it, and only them.

When we talk about the centralisation of information, we already know that the information is available to CAB in the context of Irish bank accounts. I do not believe anybody has a difficulty with it. It is appropriate that the authorities in this country would know, or would be able to find out, where bank accounts are held, when they were opened, etc. Having this information available to us across the EU is a natural extension of our partnership with our EU neighbours. That a border exists between us and France, for example, should not mean that the bureau cannot find out whether a person of interest to it has a series of bank accounts in Lyon, Marseille, Paris or elsewhere. This motion is a common-sense extension of the anti-money-laundering legislation that we have supported in these Houses. It is a common-sense conclusion to come to, even though I realise there are more matters to be dealt with and a 6th protocol coming down the line. It is logical to get to a point where we are sharing information with our European colleagues. Perhaps more important, we benefit from the information they share with us. This is an important motion to support because it will facilitate greater action by authorities such as CAB and An Garda Síochána in tackling money laundering, other criminal activity and the assets derived therefrom.

Senator Victor Boyhan: I will be brief. I welcome the Minister of State to the House and thank him for introducing the motion. It is important to have collaboration and co-operation, as Senator Ward said. It is important if we are serious about tackling crime and the money from criminal activity. We need to know that knowledge is power. I thank the Minister of State for making his statement to the House and allowing this debate. It is essential. Engagement is important so we will know what is happening. I fully support the motion.

Senator Robbie Gallagher: Cuirim fáilte roimh an Aire Stáit ar ais go dtí an Teach. Fi-

anna Fáil is delighted to support the motion, which is about an aid for the EU in its fight against criminal financial activity. The proposal, as I understand it, would create a central register where bank accounts would be accessible all across Europe. That makes perfect sense. I understand this motion must be passed in both Houses of the Oireachtas. We have had a three-month window in which to pass the measure. It expires on 1 November but I have no doubt that we will meet the deadline.

The Attorney General has given the proposal his blessing, which gives us some comfort. When I was researching this matter last year, I discovered illegal revenue generated by criminal activities in the EU amounted to €139 million in 2019. This shows the magnitude of the task that lies ahead of the EU. Any measure we can introduce to assist with the sharing of information is to be welcomed. In that regard, I am delighted we are discussing this motion this afternoon. If Ireland were not to support it, it would send a bad message about our commitment to fighting money laundering and other criminal activity of a financial nature. I fully support the motion.

Senator Lynn Boylan: Cuirim fáilte roimh an Aire Stáit. Criminals, as the people of this State and the North know only too well, are becoming increasingly sophisticated as they ply their dangerous trade, whether it is peddling drugs on the streets or killing each other and many innocent people over personal and territorial disputes.

3 o'clock

Even last night we saw with the BBC “Spotlight” programme that they are now diverting their activities to puppy smuggling because it is a cash-rich business. I welcome the debate on this motion, although I question that the time allowed for debate on such EU directives is very short and it is rushed. Perhaps we can reflect on that and make more time for the debates.

Sinn Féin supports the motion and believes wherever the criminal is, the State must be as well. The motion is, of course, about making it clear to criminals in the State that we will pursue criminal behaviour wherever it surfaces and in whichever guise it surfaces. Sinn Féin brought forward its proceeds of crime Bill to make it crystal clear it supports measures of this nature to dismantle criminal infrastructure wherever it exists. There is no better place to start than the pockets and seizing the financial assets of criminals, such as money in this instance. Sinn Féin fully supports the Criminal Assets Bureau and its ability to seize the assets of criminals. Nevertheless, it is disappointing the Government has delayed unnecessarily the bringing forward of our Bill. We are three weeks off the deadline so there is an urgency in the matter.

We welcome the proposal at an EU level aimed at stopping money laundering by criminals through financial institutions. Although, as I have said, we have no problem supporting that, we call for greater debate around EU directives that have profound implications on the people in this country. That should not be rushed and it should be given the time warranted in both Houses.

Senator Marie Sherlock: I thank the Minister of State for coming to the House. We in the Labour Party very much welcome this motion. Picking up on Senator Boylan’s comments on the timing of the debate, we know the deadline is 1 November for opting into this security directive. It is a little uncomfortable being so close to that date, and we have seen this rushed through both Houses of the Oireachtas within 48 hours. Again, we would like to see more time being allocated to really important developments like this.

Speaking to the directive, as everybody has said, it makes absolute sense to have a centralised register and there should be no administrative hurdles in the way of our police force in it trying to combat financial crime across Europe. An Garda Síochána and the Criminal Assets Bureau, CAB, should not be beholden to national borders. I am sure many Members saw the article a number of days ago in *The Irish Times* about 50 young persons being identified as recruited to be money mules. There are consequences for those young people, who in a variety of circumstances we can only imagine, have allowed themselves to be duped into effectively processing money illegally for an international crime gang. They will, of course, suffer the consequences and live with them for a long time.

The important issue is to get to the top of those gangs so they are not allowed to prosper and continue. We must strengthen the tools used in policing and investigating those gangs. We very much support this motion and our opting into the directive. We would like to have more time to discuss these very important EU directives in future.

Senator Vincent P. Martin: On behalf of the Green Party, Comhaontas Glas, I confirm the party's support for this motion. A previous contributor commented that where crime should be, the State should be. That may be the case but it is often a reaction rather than being proactive. It is easy for me to say from the Seanad Chamber but if at all possible we must get ahead of the criminals who are so sophisticated in their lust for greed. Human life means nothing to them.

I also agree with the comments that this Chamber has great potential to devote much more time to important initiatives and directives from Europe. It is an exciting development that we will see in the Upper House in the months and, I hope, years to come.

Acting Chairman (Senator Fiona O'Loughlin): To clarify, only spokespersons are allowed to contribute. I acknowledge that Senator Paddy Burke is in the Chamber and wished to speak but only one speaker is allowed per grouping. I thank Members for their contributions.

Minister of State at the Department of Justice (Deputy James Browne): I thank Senators Ward, Boyhan, Gallagher, Boylan, Sherlock and Martin for their contributions. Unfortunately, under the protocol there is only ever a three-month window for opting in, and passing it requires a recommendation to the Government, Government approval and passage in both Houses. I regret that it will always be a tight timeline in dealing with options for the protocol.

I thank the Senators who contributed to the discussion and I welcome the broad support for the proposal. As I indicated earlier, the proposed directive amends a directive we have already opted into, Directive (EU) 2019/1153, widening access to bank account registers, otherwise known as BAR, single access point. This proposal is linked to a suite of EU proposals in reforming the EU's anti-money laundering framework published in July that do not fall within the freedom, security and justice legal basis. This proposed directive is still subject to negotiations on the overall suite of anti-money laundering reforms.

I reiterate that there are clear reputational reasons for opting into the proposed directive and our opting in will reflect on our status as a committed EU member and our visible commitment to an EU anti-money laundering framework, as well as adding to our reputation as an attractive and safe place to invest in and do business.

Ireland's opting into this directive will be an important element for the smooth functioning of our national anti-money laundering framework as it requires that the information from the national centralised bank account registries be available through the bank account registers

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single access point at EU level, which will be developed and operated by the European Commission.

Ireland continues to enhance our anti-money laundering framework. The Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021 transposes the criminal justice elements and several non-criminal justice elements of the 5th EU anti-money laundering directive. This Act ensures our regulatory framework keeps pace with the increasing integration of financial flows in the internal market and evolving trends and technological developments in the prevention of organised crime. It enhances the range of measures countering money laundering by reflecting modern developments and it will also help bring us in line with EU obligations.

Ireland and the EU share a strong commitment to the fight against money laundering and terrorist financing. Law enforcement and financial institutions are reporting an increasing trend towards cyber-enabled economic crimes. There should be zero tolerance for illicit money, as criminals will exploit all possible avenues to pursue their illicit activities to the detriment of society. We remain determined to ensure criminals do not benefit from the proceeds of these crimes.

The targeting of money laundering is central to fighting organised crime. Ireland has a robust legislative framework, both criminal and civil, that allows for the freezing, seizure and confiscation of assets derived from criminal conduct. By pursuing those proceeds, we can bring those responsible to justice and meaningfully reduce the incentives to commit crimes in the first place.

This proposal is minor and practical and opting in will enable us to participate more fully in and reap more benefits from the EU's anti-money laundering framework. The action plan for a comprehensive EU policy on preventing money laundering and terrorist financing adopted by the Commission in May 2020 emphasises that the Union-wide interconnection between centralised bank account registries is necessary to speed up financial intelligence unit and law enforcement authority access to bank accounts and information, as well as facilitating cross-border co-operation. The EU's security union strategy of July 2020 also stresses that such interconnection could significantly speed up financial intelligent unit and competent authority access to financial information. For all these reasons and those outlined in my opening statement, I once again ask Senators to support the motion and Ireland's continued engagement with the EU's anti-money laundering framework.

Question put and agreed to.

Sitting suspended at 3.10 p.m. and resumed at 3.45 p.m.

Defence (Amendment) Bill 2020: Committee Stage

Section 1 agreed to.

SECTION 2

Senator Alice-Mary Higgins: I move amendment No. 1:

In page 3, to delete lines 22 to 25 and substitute the following:

“ ‘international force’ means the United Nations or an International United Nations Force to which a contingent or a member of the Defence Forces may be assigned to for service outside the State for any purpose specified in section 3 of the Act of 2006;”.

The amendment seeks to change the definition of “international force”.

Let me give an example of other legislation. The Defence (Amendment) Act 2006 contains a definition for “international organisation” that lists a number of different sub-categories such as the UN, the Organisation for Security and Co-operation in Europe, OSCE, and “any regional arrangement or agency”, which includes the EU. I am concerned that the Defence (Amendment) Bill 2020 contains an extraordinarily wide definition as it states: “‘international force’ means an International United Nations Force or any force to which a contingent or a member of the Defence Forces may be assigned to for service outside the State for any purpose specified in section 3 of the Act of 2006”. However, section 3(1)(a) of the 2006 Act simply states that a person may be seconded to another force so the purpose is literally secondment. That provision does not have a qualitative constraint in terms of what force somebody might be transferred to yet the definition in this Bill also does not have a qualitative constraint on what kind of force or international force that people may be transferred to. Section 1 of the Defence (Amendment) Act defines subcategories for an international organisation. Some of the subcategories need a little examination but at least they were spelled out in the Act whereas the proposal in the current Bill refers to “any force” and I think that is too wide. My amendment seeks to constrain it by stating “the United Nations or an International United Nations Force” rather than “any force”. I am open to and reserve the right at Report Stage to refine my amendment somewhat further as forces may operate with a UN mandate and some of my later amendments relate to that aspect. Perhaps the OSCE or other categories should be included but the provision in the Bill for “any force” is too wide. I have suggested the parameters for a force and I am interested in the Minister’s view on how we can set parameters. Perhaps he will confirm whether he wants to accept my amendment or intends to bring forward an amendment or clarification.

An Cathaoirleach: I call Senator Craughwell.

Minister for Defence (Deputy Simon Coveney): Am I up now?

An Cathaoirleach: No, I think Senator Craughwell has a contribution.

Senator Gerard P. Craughwell: The Minister is anxious. I do not agree with my colleague, Senator Higgins, because we should not put in anything that will constrain us because we do not know what will happen in the future.

There has been a lot of talk about European armies and the like so this debate is an opportunity to convey that there is no possibility of a European army where there is not an independent European intelligence gathering agency. I do not see a European army happening now or at any time in the future so I am not concerned about the leeway that the legislation gives. We are never sure of what we will be called upon to do. We have been involved in European actions in various parts of the world so I support the Bill as it stands.

An Cathaoirleach: Anois a Aire.

Deputy Simon Coveney: I am sorry for jumping the gun a little bit.

I spoke to Senator Higgins on similar issues to this following the Second Stage debate. At the outset it is important to clarify that the purpose of section 2 is to provide for the delegation of a level of operational control to the force commander of international UN forces. The legislation simply provides for the current de facto position. The Senator's amendment would neuter the effect of section 3 of the Defence (Amendment) Act 2006, which recognises that certain missions, including humanitarian and training operations, would usually not be subject to a UN Security Council resolution as such operations do not constitute a threat to international peace and security for the most part. While I am certain that this was not the intention of the Senator, it is important to note that if this provision was enacted certain humanitarian operations and training missions, conducted using military forces and capabilities, would not be possible as they would not be a UN or a UN-mandated operation yet may be justifiable in terms of an Irish intervention. As such, I cannot accept the amendment.

In practical terms, when I make a decision as to a consideration around sending Irish Defence Forces personnel to certain parts of the world, the triple lock is a major factor in terms of getting Government approval, Dáil approval and having a UN mandate. However, there are both training and humanitarian missions that do not necessarily fall into that category but may well require the co-ordination, under a force commander, to ensure that there is proper operational control and so on.

Let us not forget that the delegations that a Minister would offer are under the control of the Minister. I would, therefore, always prioritise the well-being and involvement of our Defence Forces personnel but for line of command and leadership within a humanitarian or training mission, which may involve multiple contributors, one must make sure that there is a decision-making process to ensure that groups of Defence Forces personnel are interoperable with each other. That is kind of the space we are in here. It is not trying to find a way of sending Irish Defence Forces personnel, to parts of the world, with less scrutiny or anything like that. This is about having the capacity to respond quickly.

I can vividly remember, when I was last Minister for Defence, that I made the decision to recommend to the Taoiseach that we should send ships to the Mediterranean Sea. We did that without a UN mandate. We did so because it was a humanitarian response to an appalling human tragedy and Irish people supported that. It had nothing to do with the triple lock. As it happened, a delegation was not needed because there was not a structured operation in the Mediterranean at the time. We helped on a bilateral informal basis with the Italians and the Italian coast guard but later that developed into Operation Pontus, Operation Sophia and so on where there is a lot more structure. It is just like when we send troops on a training mission to Mali. That is an EU mission, not a UN mission, even though the UN very much approves and even though what is happening in Mali at the moment is concerning to put it mildly.

For me to be limited in terms of a delegation that I could give, in order for our troops to be safe and function under a force commander, because there was not a UN mandate for a training mission such as that, would be unnecessarily restrictive. Part of being a neutral non-aligned country militarily is that we decide where our troops go and when they should intervene whether it is a humanitarian or training mission, or whether it involves a large number of troops.

Yesterday, in Limerick, I inspected a battalion that is going to UN Interim Force in Lebanon, UNIFIL, in a few weeks, and I am conscious of the risks and sacrifices that they make along

with their families. In normal structured missions this is straightforward in terms of a UN mandate but specific missions sometimes require me to make decisions, and sometimes with a tight timeline, to make humanitarian interventions, or support others in whatever crisis may need, or may justify, an Irish intervention, that do not have a formal UN mandate. We need to be careful we do not tie our hands too much in this regard.

I understand that the amendment seeks to introduce appropriate checks and balances before Irish troops would go to a part of the world and, effectively, operate under a force commander from another country. However, there needs to be sufficient flexibility for a Minister for Defence, either an existing one or future one, to be able to make a recommendation to Government to make an intervention when Irish troops can make a real difference. That is why I think it would not be helpful to accept this amendment as we want the flexibility to intervene when necessary.

4 o'clock

Senator Alice-Mary Higgins: I note that in the Minister's own example he gave there, he spoke of a United Nations force commander, which is one of the examples he gave on Second Stage. The core point is that this may not be a United Nations force commander. I accept there may be some constraints in this framing and the Minister will note that some of my later amendments explicitly deal with certain areas of secondment but in fact leave and have a separate provision for the humanitarian action. That is an example of where we need to have that flexibility. At the moment, as set out in the Bill, the erring is very much on the other side in that it refers to "any force". I urge the Minister to consider constraining that, and I will bring further amendments on Report Stage. It is one thing to say we do not want it simply confined to the United Nations but it is another thing to have it completely wide open in having any force in that space.

We have a concern there. The Minister mentioned the Operation Sophia example and the bilateral operation. That is a very interesting example because it is an example whereby Ireland and the Naval Service were operating with a humanitarian mandate. It then joined Operation Sophia, transferred force command, and the priorities of that mission explicitly moved away from humanitarian search and rescue towards securitisation and intervention with ships. We were told Ireland would have a great influence in ensuring the humanitarian aspect of Operation Sophia would continue. It did not; it stopped.

Deputy Simon Coveney: That is because we stopped sending ships because we do not have the capacity to send ships.

Senator Alice-Mary Higgins: The point is, when you transfer command, there is a very significant consequence. That is why it is very important to know who you are transferring command to, what their criteria will be and what the means and mechanisms as to how you relate to them will be. Any force is simply too wide in this regard.

I note the Minister's point on time constraints. I know we have limited time for this debate so I will not extend as far as I might on the issue of the Mediterranean. Amendment No. 2, however, this seeks to address the fact there may be emergency circumstances but it also puts some safeguards in place, because there is currently quite a lot of ministerial discretion on the delegation of operational control to any force. Again, as I said, it is not even as constrained as it is under the international organisation definition which is in the original Defence (Amendment) Act 2006. This is a much wider framing in this section.

Deputy Simon Coveney: Ministerial discretion is not a bad thing. I regularly appear before this House and the Dáil to answer questions and to be held to account, and I am held to account in many ways. That is part of being a Minister, and sometimes ministerial discretion is a good thing in terms of having the flexibility to use judgement and to make an intervention quickly that could be life-saving.

We did that recently, for example, with regard to Kabul Airport. I did not come to the Oireachtas for that but I was certainly answerable to it after I made the decision. I am not saying that is relevant to the Senator's particular amendment but I am saying it is relevant to the comment around ministerial discretion. Sometimes Ministers need to be empowered to make decisions and, of course, they need to be fully answerable for those decisions. For me, however, this is an area where if there is a delegation from me to a force commander relating to Irish Defence Forces personnel who are part of a combined mission to ensure it runs efficiently and safely for our personnel and to get the outcomes it needs, that is the kind of decision a Minister for Defence needs to make on the advice of his Department and of the Defence Forces.

There is no way I would ever be signing delegations the Defence Forces or the Department were recommending against. I understand the issue the Senator is raising and it is a legitimate issue for us to debate, but I also think it is important the political system allows a Minister to do his or her job in making appropriate interventions. There then needs to be, as there is, a very robust process of accountability as to the basis for those decisions, whether they were right or wrong, and so on. That is ultimately at the core of this here. If we try to legislate to such an extent that we tie the Minister's hands on when and where he or she could send Defence Forces personnel, whether it is an expected or planned mission or whether it is a short-term humanitarian response or rescue mission that involves multiple other forces, these are things we must be able to make decisions on quickly as opposed to having potentially to go back to the Oireachtas. What if it happens over the summer months, for example?

I am all about accountability for these decisions but I am also about allowing a Minister, and this is not about me as Minister but whoever is the Minister for Defence in the future, to make decisions on the advice of his or her Department, the Defence Forces and the Chief of Staff, to make appropriate interventions, and to use the skill sets and experience we have in an international setting. To confine that too much means potentially our hands could be tied by legislation when we should actually have Defence Forces personnel on their way to a part of the world that desperately needs them.

That is the only motivation I have here. This is a useful debate to have, however, and the Senator's amendments have got me thinking about it and I have had a conversation with our team in the Department about it. I believe this is a case for ministerial discretion as opposed to ministerial discretion being the problem.

Senator Alice-Mary Higgins: What is the timing for the debate, a Chathaoirligh, because I am just keen to ensure we get through all of the amendments?

An Cathaoirleach: The debate adjourns at 5.15 p.m.

Senator Alice-Mary Higgins: I thank the Cathaoirleach for the clarification. I do not believe the Minister and I will agree on this so perhaps either or both of us may come back with revised amendments on Report Stage on this matter. I point to that core issue of the fact that "any force" is wider than the definitions we had previously of international organisations or of

other groups. I urge the Minister to consider how wide that space is. He has spoken to the time piece and I am not going to respond to him on that because the next amendment, in fact, will relate to the matter of timing and discretion in that regard.

On the matter of which forces this applies to, that is an issue we may need to tease out further on Report Stage. My amendments propose to confine it to the United Nations, and while the Minister has given reasons he feels it should not be so confined, I also argue that neither should it be so wide open. The Defence (Amendment) Act 2006 did not have as wide a framing as we have seen in this regard. That is why this is perhaps an area that needs a reference to “international force”, but simply saying “any force” is just too wide in this regard.

Deputy Simon Coveney: To be helpful to the House, the following has been pointed out to me and is worth mentioning. There are already quite strict limitations in law on the roles and functions for which the Defence Forces can be deployed overseas.

If you look at the 2006 Act, under section 3, it is quite clear on this:

(1) A contingent or member of the Permanent Defence Force may, with the prior approval of and on the authority of the Government, be despatched for service outside the State for the purposes of—

(a) carrying out duties as a military representative or filling appointments or postings outside the State, including secondments to any international organisation,

(b) conducting or participating in training,

(c) carrying out ceremonial duties, participating in exchanges or undertaking visits,

(d) undertaking monitoring, observation or advisory duties,

(e) participating in or undertaking reconnaissance or fact-finding missions,

(f) undertaking humanitarian tasks in response to an actual or potential disaster or emergency,

(g) participating in sporting events, or

(h) inspecting and evaluating stores, equipment and facilities.

(2) Nothing in this section shall prevent the Government from giving general approval, for such period of time as they determine, to such classes of any of the activities specified in *subsection (1)*

We already have quite a lot of clarity in the legislation on the kind of duties we can ask of our personnel in respect of interventions and so on. My fear is that if we put too many restrictions in place, we just do not know what, in a month’s, a year’s or ten years’ time, may trigger an appropriate intervention that involves Irish Defence Forces personnel. We are and have become used to the classic peacekeeping roles under a UN mandate, whether it is in UNIFIL, UNDOF in Mali, in Kosovo or wherever.

However, I think we are likely to see in the future peacekeeping, peace enforcement and humanitarian interventions that in many ways are more complex and more challenging. The Irish Defence Forces are really good with those interventions. We match any country in the

world, in my view, when it comes to training and equipping our personnel for those kinds of interventions. I just want to make sure a Minister can make a decision in a timely manner that is appropriate while, of course, being accountable for that decision to the Oireachtas. However, I would caution against putting in legislation anything that ties the Minister's hands further. I take the point the Senator has made, though, and I will think about it between now and Report Stage. For now, I do not think I can accept the amendment.

Senator Gerard P. Craughwell: We saw how Ireland's ability to train with other armies around the world benefited us recently in Kabul. When our people went on the ground out there, they knew people on the ground there and were able to interact with them, and that is really important. I agree with certain restrictions on how troops might be used overseas, but Kabul is an example of how quickly things can change and a Minister and a government can find themselves in a crisis situation in which they have to get people on the ground quickly in a humanitarian effort to get people back home as quickly as possible. I am one of the people who was screaming during the Kabul issue to get troops out there. I would be one of the people screaming that we should have heavy lift aircraft to bring people back from wherever in the world a crisis hits. In the early stages of Covid-19, for example, we had people dispersed around the world. I would want a Minister to be in a position to make a decision to send aircraft, to bring people home and to send troops out to bring people home in such situations. I am therefore anxious we do not use something as crude as legislation to tie hands that we may regret deeply tying in a few years' time or a few months' time. We live in a very strange world where things change very rapidly.

Amendment put and declared lost.

Senator Alice-Mary Higgins: I move amendment No. 2:

In page 4, between lines 35 and 36, to insert the following:

“(5) A delegation of operational control by the Minister under this Act shall only exceed a period of eight months, where a Minister has laid a motion before, and that motion has been passed by, both Houses of the Oireachtas authorising an extension of such a delegation of operational control.”.

I believe the Minister has made the case for amendment No. 2 very strongly in his own speech because the amendment addresses the issue of timing. It recognises, in terms of the time constraints, that situations may arise in which delegation needs to take place. However, we do not want that to become long-term, over a sustained period, without recourse to the Oireachtas. With respect, the Minister has spoken about the Minister's responsibility, but part of democracy is that we have an Executive and a Legislature, and we as the Legislature also have a responsibility. The Minister may be a Minister and may be very good at being the Minister for Foreign Affairs. There will be other Ministers in time. We as the Legislature - I will probably be in the role of legislator for some time - need to hold the Executive to account and need to be satisfied with our legislation. It is therefore literally our responsibility to ensure there are checks and balances in place. This is part of one of the things Ireland has championed, that is, the idea of having democratic structures and checks and balances. I am not saying there is never a case for ministerial discretion; there is. I will tell the House one area where I would like to see it. I know this comes under not solely the Minister's Department but also the Department of Justice. We talked about Afghanistan. We should be taking in more than 500 people from Afghanistan in terms of visas right now if we are concerned about and care about that issue.

Deputy Simon Coveney: We are taking in many more than 500, I am glad to say.

Senator Alice-Mary Higgins: I know the number is increasing, but the core point is that it has been increasing only partially. I believe there is scope in that regard; nonetheless there have to be checks and balances on this.

Amendment No. 2 is extremely reasonable. It states that where there has been a delegation of operational control under the Act, that delegation - and this seeks to account for, as the Minister says, when this happens in the summer or over Christmas - should not exceed a period of more than eight months without a proper motion having come to both Houses of the Oireachtas and without there having been an opportunity for proper scrutiny. Therefore, if a decision needs to be made in August, I think it would be reasonable that by the following January, February or March, before we continue with the secondment of Irish troops to another force commander, there would be a motion whereby the Minister would have such an opportunity. The Minister talked about accounting afterwards but, of course, lives are at stake in these issues and the consequences are very significant. It is a matter of coming before the Houses and accounting for what is happening. The core thing is that when authority is transferred to another force commander or to another force - any force - there are different reasons.

I will not go back to section 3. As the House will be aware, I have three amendments in respect of section 3 that I will move later. There are core elements of what the purposes within that would be. Take, for example, a force commander of a country that has had a NATO mandate or has a mandate in terms of the military protection of interests, which many countries have, versus the military protection of principles, versus the protection of rights, versus the humanitarian and human rights mandate. Those are the mandates of Irish military actors. That is why we are so proud of them. It is one of the reasons they are so effective. I am just saying there is something to be lost here if we make it too wide or too ambiguous as to what might happen and what kinds of things the Irish military might do. As a Legislature, we have a responsibility to be confident, if we are having force command transferred, that the purposes for which it is being transferred are consistent with Ireland's policy and very proud record, which outlives and predates any one government and will outlive the next government. I refer to the mandate we have had and the tradition Ireland has had of being a very strong peacebuilder and being regarded as a good faith actor and as not engaging in military action out of self-interest or for the purposes of simple power alignment. That is a really strong record Ireland has, and it is really important we maintain it. This amendment would give the Minister, or any Minister who may come after him, the opportunity to come before the Houses of the Oireachtas and explain the decisions he has made, why there has been delegation, what its purpose is and why it is good or necessary. Then we can continue on that basis. Again, the amendment addresses exactly those issues of timely action the Minister spoke about.

Senator Barry Ward: I wish to respond to some of the issues Senator Higgins raised. There are two things primarily, the first of which is the suggestion the Minister made in his speech and the case for this amendment. I think, if I have understood what the Minister said in his last response, that the opposite is the case. I do not see how this amendment in any way addresses the fact that these issues might arise quite rapidly or during a recess, for example when the Houses are not sitting, which would create a significant difficulty.

The other point - and I think it is often talked about here - is the role of the Legislature. I,

more than anyone, value the role of the Legislature and I think it is incredibly important to hold the Government and the Executive to account. However, when we talk about the separation of powers, let us be in no doubt at all that there is really no separation of powers between the Executive and the Legislature in our constitutional system. In fact, the Constitution de facto mandates the Executive to have control over the Legislature. It has to do so. It has to have a majority in the Houses; otherwise, it cannot function under our system. Therefore, when Senator Higgins talks about democracy and its application, the democratic element of this is in fact the Minister's decision. He is the delegate of the Houses of the Oireachtas, specifically the Dáil, to make these decisions as a member of the Executive. To a certain extent we have to trust in him or her - whoever the officeholder is at that time - to make those decisions. The Senator is quite right when she refers to these being matters of life and death, but again, we must trust in the Minister to make those decisions appropriately. We should also remember that whatever decision the Minister of the day makes, he or she is accountable to these Houses.

As for rendering an explanation to these Houses, there is ample opportunity for the Minister to do that. The problem I have with this suggested amendment, however, is that it would essentially tie the Minister's hands behind his or her back in making decisions as required because he or she would have to take a relatively long lead-in to get a motion passed before both Houses. It is all very well to say we will have plenty of time to do that and we will have plenty of time to get around before that decision has to be made, but what happens if the issue or the difficulties arise, for example, in mid-July? As for extending the delegation of operational control, we have to trust in the Minister to make that decision himself or herself at the right time while, equally, as the Minister said in his response earlier, being accountable to the Houses for how or why that decision was made.

Senator Gerard P. Craughwell: Force commanders have a certain amount of control over our troops on the ground but a senior liaison officer from the Irish Defence Forces is always on the ground, and if a force commander is trying to bring us into something in which we should not be involved, the senior liaison has a route straight back to the Minister's office and it can be stopped at that point. I am not, therefore, sure that people understand the limited control a force commander has. He or she does not have absolute control over all our troops.

Senator Alice-Mary Higgins: For clarification, perhaps it was not clear for Senator Ward. I am happy to try to tighten the language if that helps him. Under this amendment, the Minister would be able to delegate operational control but simply not for a period longer than eight months without coming back to the Oireachtas. It was, therefore, specifically trying to address that issue of the emergency action of June or July. Under that action, for example, a Minister may have delegated operational control to a force commander for a six-month period but then might have come back to the Oireachtas. That is why I have given the eight-month period. It is not as the lead-in but, in fact, the time the Minister has before he or she would have to come to the Oireachtas.

In terms of the delegation of powers to the Minister, that is what the legislation is doing. Therefore, that is us; the Legislature. In deciding when we delegate powers to Ministers, it is appropriate that we also put in place what we regard as appropriate safeguards and checks and balances. I am suggesting here that the Minister would come, discuss and seek approval. Again, the Government, if it has the majority, will probably pass that motion but it would allow that decision to be made clear, not simply within the internal Department of Defence mechanisms, which I accept are in place, but in terms of the legislative mechanism. The power is not, therefore, delegated simply by becoming Minister. The delegation of powers comes through

legislation. In fact, we give a large amount of delegation but we also put in place safeguards. I believe that is an appropriate balance. I honestly believe amendment No. 2 is incredibly reasonable.

Acting Chairperson (Senator John McGahon): Okay. We have been back and forth a bit. Before I call Senator Ward, it might be a good idea to let the Minister respond.

Senator Alice-Mary Higgins: Yes, I know there are time restraints.

Deputy Simon Coveney: I know the Senator is aware of how peacekeeping missions actually work but it is important to put on the record that, first, we do not decide on the mandate of UN missions. The UN decides on it. We influence that through the UN process. In fact, we have been very successful at influencing a slight change in the mandate of our largest mission, that is, the United Nations Interim Force in Lebanon, UNIFIL, over the summer months to allow UNIFIL to be more proactive in assisting the Lebanese armed forces, which are under enormous financial pressure at the moment because of the condition of Lebanon as a country in terms of financial strain and so forth whereby basic salaries are not being paid. That is, therefore, a good example of Ireland trying to influence a mandate for a mission that has been in place for a very long time. Ultimately, however, what a UN-mandated mission actually does is decided in New York at UN headquarters.

A force commander is then chosen and sometimes we have had Irish force commanders in UNIFIL, the United Nations Development Assistance Framework, UNDAF, and others. The job of that force commander then is to implement the UN-mandated mission. In the context of UNIFIL, many countries and thousands of troops are involved. The idea that there would not be some delegation to a force commander to ensure that he or she can make practical decisions to make sure there is interoperability between different troop-contributing countries in the context of the implementation of a UN mandate to my mind is-----

Senator Alice-Mary Higgins: That is not what is opposed.

Deputy Simon Coveney: I am not saying the Senator is opposing it. I am just outlining the steps that are taken for anybody who is listening. The suggestion seems to have been made that we need to have an Oireachtas check and balance over a delegation we have given for many years. We are now simply putting in a good piece of legislation for the practice that currently takes place.

The Senator said repeatedly that Irish people and the Oireachtas are very proud of the role that Irish peacekeepers have held for many decades. I am glad they are because I am very proud of it. What we are doing in this legislation, however, is maintaining the same approach we have taken across those decades in terms of what has been a delegation process, which was not written into legislation. That has now been corrected. We are not, therefore, putting anything new in here. What is being suggested with the amendments is that we put something new in here, that is, an extra check and balance, which requires a Minister to come through the Oireachtas and limits him or her to giving a delegation for more than eight months. As it happens, we have rotations every six months for the UN missions, which require a new delegation each time. Every time I inspect a battalion, therefore, which I did yesterday in County Limerick with the one that is on its way to join UNIFIL in southern Lebanon in the next few weeks, under the new leadership, that will require a new delegation that will allow the force commander to work with that contingent in the way he or she has done for many years.

Let us be clear. This is not a policy decision involved in the delegation that needs scrutiny, checks and balance and so on. This is something we have done for many years. It is simply a practical arrangement that allows countries that are sending troops to a UN-mandated mission, under a force commander who has been chosen by the UN, to ensure that they can operate under that command structure. Senator Craughwell is correct. If the lead officer in the Irish contingent at any point feels that Irish troops are being asked to do something that is outside the mandate or that he or she is uncomfortable with doing, there is a check and balance here that can allow him or her to effectively call a stop to that.

It is not like I am giving an instruction allowing a force commander to do things outside a UN mandate or in the case of non-UN-mandated missions. I am simply using the same principle to allow a force commander to be able to operate a large contingent to keep everybody safe and perform the mission they are being asked to do.

Senator Higgins knows much of that but perhaps other people listening may think this is some new piece of legislation that allows a Minister for Defence to do new things or send Irish troops to parts of the world under the command of foreign force commanders and, somehow, that is new. It is not. This is putting into legislation what we have been doing for decades and simply putting a proper legal structure around it with all the safeguards that come with that.

Senator Alice-Mary Higgins: I will certainly be happy to bring one but perhaps the Minister would like to bring forward an amendment that clarifies matters with regard to UN missions. I do not believe that is the concern and the Minister will see from my many other amendments that UN missions are not the main concern.

I accept that we seek to influence them and we have sought to influence UNIFIL. I believe that Ireland should, for example, continue to engage with and seek to influence the UN mission in Western Sahara at the moment to expand it to have a human rights observatory function rather than simply a referendum - which is not happening - monitoring function. That is fine. All the examples the Minister gave were the United Nations, however. Going back to what we discussed previously, the fact is that these are not all United Nations missions. They are not all United Nations mandates. Yes, there is a structure and, perhaps, I or the Minister might bring a revised version of this whereby he would say that where it is not a UN mission or a UN-mandated mission under, for example, an established structure with the six-month rotations, and if there are-----

Deputy Simon Coveney: Can the Senator give me an example? I am trying to understand what the concern is here. What kinds of missions is the Senator concerned about in places where we currently have a presence?

Senator Alice-Mary Higgins: The concern we have is not what we have currently but what we might have. There is a new element in this, which is that the Minister can delegate to any force. It goes back to that phrase “any force”, and it is not any force as constrained even by the definition of international organisation in the Defence (Amendment) Act 2006, although I personally think that is quite wide. It is any force and there is a concern in that regard. Yes, checks and balances are put in place in terms of our United Nations missions. Such missions are certainly not the target or intention of this provision but, rather, where there are other forces or engagements. With respect, when we talk of the things we are proud of, I was in the Chamber three or four years ago when we were debating joining Operation Sophia. Everybody spoke about how proud they were of the navy and I pointed out that, in fact, the legislation we were

passing would lead to our delegating operational control differently and working, in effect, within Operation Sophia rather than to the mandate we had. I know there are reasons-----

Deputy Simon Coveney: We did not have a mandate; there was no mandate.

Senator Alice-Mary Higgins: We had a bilateral arrangement with Italy. It was an Irish command and it was not delegating command to the Italian coast guard but working in collaboration with it.

Deputy Simon Coveney: There was no formal arrangement; that was the problem.

Senator Alice-Mary Higgins: I know that, but that mission was under our direct command, whereas we delegated operational control under Operation Sophia. The nature of the mission changed and that is where circumstances changed. It is good that when it was decided under Operation Sophia to stop doing search and rescue completely, we withdrew ships. However, this amendment would mean that if we had a situation such as Operation Sophia and the force command, to which the power had been transferred, decided to change the focus of the operation, including what it was doing and prioritising, there would be an opportunity for the Oireachtas to express concern about the continuation of that mission where, as in this instance, it was not a UN mission and was not operating under UN parameters.

It is appropriate that we should have that capacity. I am glad there is a line command mechanism for the expression of concern but it is reasonable that the Legislature would also have a mechanism for expressing concern. I may bring forward amendments on Report Stage if the Minister does not want to have to seek the approval of the Oireachtas. We should have mechanisms whereby the Oireachtas can express concern, in a similar way to what we have heard happens internally in the Department, where there are issues regarding the continuation of a mission. Whether it is a matter of the Minister coming to us or our being able to request that he or she come to us, it is something that needs to be addressed. We have been discussing examples of UN missions but that is not what is in contention. The issue is the other, wider parameters applying, as the Minister said, to international forces, which may be any force. If we had addressed that core issue of being clear on exactly what kinds of international forces are in question, most of these other concerns would not arise. Given that the provision is so widely framed, we need to have an additional safeguard in place. I will bring forward another version of this amendment that specifically excludes UN missions but requests that there be a mechanism in respect of other missions.

Senator Gerard P. Craughwell: I am a little concerned at what is being proposed. Force commanders, whether they are on a UN mission, EU mission or any other mission that has been jointly agreed, are constrained by the criteria set out in the mission. If, by some manner or means, we have a force commander who runs wild and decides to undertake something that was not in the mandate, then it falls to the senior Irish officer in the mission to get on to the Department and say, "Look, we are being ordered to do something here." Let us say there is a force commander in UNIFIL who orders an attack. That is not the role of such a mission nor the purpose of such a force. We have a senior liaison officer in place who is going to put a stop to it.

As the Minister said, we have delegated authority since the late 1950s to force commanders. The latter must have manoeuvrability and be able to move a company from point A to point B where there is a problem. If he or she has to come back seeking permission to do it every time and there is a requirement to go back to the Oireachtas every eight months to get authority, that

will prolong every mission. As the Minister said, we are rotating troops every six months, delegation goes out at that stage and the force commander has limited command over Irish troops. He or she does not have *carte blanche* to do whatever he or she wants. The Minister has pointed out that when the most recent Irish force commander in the UNIFIL mission in Lebanon had control over other troops there - her name slips my mind; I am having a senior moment - their countries retained the right to say “No” at any given stage. I am a little concerned about this proposal given that we do not have the facility for a force commander to run rogue.

Deputy Simon Coveney: I want to make a final point. First, we are involved in Operation Sophia and we have Defence Force personnel - I believe there are three of them; certainly, there are two naval officers - in the headquarters of the operation. The reason we do not have a ship in the Mediterranean is that we do not have the crewing resources and so on to do so right now. Unfortunately, some of our ships are tied up because of the challenges posed by staffing numbers in the Naval Service. That is something we are working on fixing. We did not pull out of Operation Sophia because we did not like the direction it was taking. Ireland has always maintained - I was the person involved in ensuring this is the case - that EU operations in the Mediterranean need to have a humanitarian aspect as well as an enforcement aspect. That is what we bring to the debates. In the case of the practical operations in the Mediterranean, Ireland brought a fantastic capacity around humanitarian interventions, which is something I would like to do more of in the context of both our Naval Service and Air Corps being involved in UN-mandated missions, in particular, in different parts of the world, but also, from time to time, taking part in EU-mandated missions, if that is the right thing to do.

We are quite constrained by law in how and under what circumstances we send Irish Defence Forces personnel to other parts of world and with whom we can co-operate in that regard. We will talk a bit more about the Defence (Amendment) Act 2006 presently. In that legislation, an “international organisation” is defined as comprising:

- (a) the United Nations,
- (b) the Organisation for Security and Co-operation in Europe,
- (c) the European Union or any institution or body of the European Union, or
- (d) any regional arrangement or agency that participates, or has participated, in operations as part of an International United Nations Force;

That definition is quite constrained. Senator Higgins wants to tighten it further, which we will discuss shortly. We already have quite a lot of safeguards in place, more than in virtually any other country in the European Union. In addition, of course, we have the triple lock system, which I am very supportive of because it gives reassurance for the political system. Ministers in this country are part of the Legislature as well as the Executive; that is not the case in many other countries. If I were not part of the Legislature, I would understand that there might be a need for a strong debate on checks and balances between the Legislature and Executive. In Ireland, however, Ministers are part of both and are accountable in that context.

I do not accept that it is appropriate to layer in an eight-month limit on top of all the checks and balances that are in place. In practice, most missions have rotation periods that do not exceed six months. That goes for both UN missions and non-UN missions. There is a requirement every six months to update them. I emphasise the point that a delegation order is not that big a deal in the context that it is what we have been doing for many years. It has been agreed

by the Defence Forces in terms of its appropriateness and also agreed by the Department of Defence. This is not a major policy consideration; it is an operational issue in terms of command structures when multiple countries are involved in a peacekeeping mission together. I do not want to read more into this issue than perhaps is really there.

Amendment put and declared lost.

Section 2 agreed to.

Sections 3 to 16, inclusive, agreed to.

NEW SECTIONS

Acting Chairman (Senator John McGahon): Amendments Nos. 3 to 5, inclusive, are related and may be discussed together.

Senator Alice-Mary Higgins: I move amendment No. 3:

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

“Amendment of section 1 of Act of 2006

17. Section 1 of the Act of 2006 is amended by the deletion of “, or has participated,”.”.

The Minister has usefully read the definition of “international organisation” into the record, which saves me having to do so. I would note that in the Bill in front of us, it is not “international organisation” that is in the definition section but “international force”. It refers to a “United Nations Force or any force”, so the definition that applies to international organisation is relevant to section 3(1)(a) of the 2006 Act. However, that definition does not constrain international force as it is set out in this Bill. One of my concerns is that “international organisation” is quite clearly constrained in the original 2006 Act whereas “any force” is far more widely construed in this legislation and as it relates to those other parts of section 3 and those other actions under that section.

I am concerned about how the original definition in the 2006 Act is framed and believe it is framed too widely. The United Nations is there, appropriately, as is the Organization for Security and Co-operation in Europe, OSCE. The latter has an important role to play in election observation and so forth. The European Union or institutions or bodies of the EU are there too but it is very important we are clear on our mandates in terms of what we engage with and how we do so at that level. Concern arises with regard to “any regional arrangement or agency that participates, or has participated, in operations as part of an International United Nations Force”, specifically with “has participated”. It should not be the case that we would be engaging with a regional arrangement or agency that is not conducting operations as part of an international UN force and that we would engage simply because it has done so in the past. My example falls within the EU, so it is not perfect, but Germany engaged in certain activities as part of NATO but has also engaged in UN activities. Clarity is required because many countries may engage in UN peacekeeping activities but they may also engage in other things. Similarly, regional arrangements or agencies may engage in international UN-mandated missions but they may also engage in other kinds of missions. The fact they have participated at some time in the past in an international UN force does not mean, therefore, that every single thing we might do with them is fine. In fact, I would say it should only apply where they are participating in operations

as part of an international UN force.

I propose that the language that would be used would be any regional arrangement or agency that participates in operations as part of a UN force and that we remove the phrase “or has participated” so that we are not simply saying the fact an entity was once involved in a UN mission means everything it does militarily in the future is fine, that it is fine for us to engage with it and that such an entity is an international organisation to which we can second Irish forces under section 3(1)(a). It would be appropriate to give both narrowness and clarity on that matter. There are a range of different kinds of actions and very few countries have the same military position and military history as Ireland, which is important in terms of how we engage with them. Similarly, many agencies and regional arrangements will have a different military history.

Are amendments Nos. 3 to 5, inclusive, grouped?

Acting Chairperson (Senator John McGahon): Yes.

Senator Alice-Mary Higgins: Amendment No. 4 also relates to section 3(1)(a) of the 2006 Act which lists the different kinds of purposes for which people may be seconded. Section 3(1)(f) refers to humanitarian tasks and I have no problem with that. Many of the others are also very appropriate although “reconnaissance or fact-finding” could be problematic, depending on what we are doing them for and for whom we are doing them. I will leave that aside for the moment but I may come back to it. Section 3(1)(a) refers to “carrying out duties as a military representative or filling appointments or postings outside the State, including secondments to any international organisation”. It is made clear elsewhere in the Act that those secondments may apply to whole portions of troops. I am proposing in amendment No. 4 that in section 3(1)(a), we should say “an” instead of “any” to make it very clear and that we should insert the following subsection:

(3) In exercising its functions under subsection (1)(a), the Government shall only approve secondment of a contingent or member of the Permanent Defence Force to an international organisation which is not the United Nations or part of an International United Nations Force, where such a secondment is for the purposes specified in subsection (1)(f).

Subsection (1)(f) refers specifically to humanitarian or emergency action. I have proposed an alternative version in amendment No. 5 which provides for secondment to an international organisation “under a United Nations mandate”.

Amendment No. 4 seeks specifically to protect the capacity for emergency and humanitarian action by naming it, but amendment No. 5 is probably better because I do not think we need to name subsection (1)(f). There is capacity under the Act for the Minister to delegate control to a force commander for any purpose under section 3, which includes humanitarian action under section 3(1)(f). The Minister can already delegate directly and does not have to go through section 3(1)(a) to do so. He can delegate to a force commander for any of the purposes listed in section 3(1), but I am trying to caveat that where he is not employing section 3(1)(b), 3(1)(c), 3(1)(d) or 3(1)(f) and is employing 3(1)(a), which specifically refers to the secondment of a contingent or member of the Defence Forces to an international organisation, the organisation in question should be operating under a UN mandate.

I have approached it in two different ways but I believe amendment No. 5 is the better way. I have sought to clarify my intent by offering an alternative approach in amendment No. 4.

Deputy Simon Coveney: I will read my written response to these amendments but also respond verbally to Senator Higgins. I understand the point she is making but there are other roles to be considered. For example, we have a military representative in Brussels and in New York. We can have a military representative to the OSCE. These representatives are not on humanitarian missions. I can second someone to an organisation for many different reasons, potentially, including to try to influence policy, for example. That could be the women, peace and security agenda which Ireland is trying to drive through the Security Council and reinforcing that within organisations and so on. When I decide to second a member of the Defence Forces to an organisation in some other part of the world, it does not necessarily mean it is for a mission on the ground that involves peacekeeping or other interventions. It could be for something much more mundane.

The OSCE is not operating to a UN mandate and neither is the EU but both work with the UN. NATO often operates and works in partnership with the UN but it often does its own thing as well. It is the same for organisations like the African Union, the Southern African Development Community, SADC, the Association of Southeast Asian Nations, ASEAN, and so on. There are lots of different organisations around the world where we may choose to have a military person seconded and that may make sense for us to try to influence outcomes or to gain a greater understanding. For example, we have two military personnel seconded to Europe's cybersecurity research centre in Tallinn because we think that we can gain knowledge and expertise in the cybersecurity space when we bring them home again. It is important to emphasise the point, because Senator Higgins has linked the delegation to a force commander, which makes the assumption that every time I decide to send a member of the Permanent Defence Force to some other part of the world, it is always on a mission under a force commander. A lot of the time it is not. Much of the time it is a different kind of role related to training, operational assistance or whatever else.

The Senator is proposing a number of amendments to the Defence (Amendment) Act 2006. However, if accepted, her amendments would result in fundamental change to what is a long-standing and settled policy on the dispatch of military contingents for overseas service. The effect of the amendments would be that the Minister for Defence could not appoint any personnel to a posting in the EU or to the Partnership for Peace, in terms of the liaison office, the OSCE, or similar organisations. It is vital to our national interests in terms of engaging with and influencing developments in these spheres that we have that capacity.

The amendments to the Defence (Amendment) Act 2006 set out in section 17 are separate and focused on removing the prohibition contained within section 3 of that Act on members of the Reserve Defence Force, RDF, serving as members of a contingent, which can be dispatched for overseas service for the purposes specified in the 2006 Act. Having carefully considered the matter, I have serious concerns about the implications of the amendments. I hear where the Senator is coming from on it, but there is a broader issue here as well whereby a lot of our Permanent Defence Force personnel get seconded overseas for periods of time, as they are nearly all temporary secondments. Sometimes it is not a boots-on-the-ground type mission. It is often something very different to that, which is why we have a very active military person seconded to Brussels and to other key decision-making bodies where we need to try to influence outcomes as best we can.

Senator Alice-Mary Higgins: I appreciate the secondment of individuals and I am very aware that there are some individuals from the Irish armed forces who play very important roles internationally and in some cases have gone on to take on significant UN roles. John Ging is

one such individual who has contributed very much in the international sphere. The concern, however, relates to contingents.

The Minister referred to the Reserve Defence Force. There was much discussion of the RDF on Second Stage. That is generally widely welcomed. I have not tabled amendments in that regard. The point is that the secondment does not just relate to individuals, it sometimes refers to contingents. In that case, numbers are involved. I accept that I may need to refine the amendment, but I have concerns. Perhaps the way to do it would be to look at having a different standard for a member versus a contingent of the forces, or it may be about tying it more directly to where section 3(1)(a) is being used for the delegation of operational control. The question is whether we address the delegation at the point of operational control. Perhaps instead of saying under section 3, it is under section 3, except for subsection (1)(a) where certain things apply. I do not want to stop us having individuals contributing at a high level in these organisations - I hope contributing very much from Ireland's perspective and from the perspective of principles rather than power and simply alliances.

This is a real crunch point at the moment internationally about whether we pursue the politics of principle. There is quite a lot of pressure internationally to move away from that multilateral system towards a politics of power and alliances. If we can be a force for good in that respect, that is great, but we also need to have safeguards so that we do not get pulled in a direction. In some senses, when I am trying to put safeguards into the legislation, I am also trying to make sure that Ireland has safeguards and that we are clear on why we cannot do things and what we cannot do and what is not part of what we can do. That is why I wish to add a caveat here.

I accept that I need to word the amendment differently, but I would prefer if the Minister would offer clarification on Report Stage on section 3(1)(a). Perhaps the difference is when it is a contingent versus when it is an individual. There is also a difference where there is a transfer of operational control involved. For example, we must ensure we have clarity on that. I return to the point I made, which the Minister might address, on the question of having participated in a United Nations mission versus doing so on an ongoing basis. We must also be clear on that. The OSCE and the European institutions are there, but I am concerned about any regional agreement or agency. The Minister mentioned NATO. I know we have co-operated with countries. We even have a group with whom we have co-operated on the one hand that has also engaged with NATO. This was debated when we looked at what-----

Deputy Simon Coveney: So does the UN.

Senator Alice-Mary Higgins: But nonetheless, we need to be very clear on where and how we engage. Of course the UN has to engage with NATO, because NATO involves many of the military actors in the world. If Ireland is going to be a champion of peace-building and peace-keeping involving NATO, which is ultimately an alliance of interests and like-minded countries in a particular military pact, we must be clear on the lines where things come in. As the Minister said, NATO may have engaged in activity with the United Nations, but that does not mean that we should do things with NATO. In that sense, where I refer to any regional arrangement or agency, it is reasonable that we would engage with any regional arrangement or agency that is participating in operations for a United Nations force and we also have the European Union there and the OSCE. The reference to "has participated" is a little loose.

Deputy Simon Coveney: If the Senator takes some of the organisations that I mentioned previously – NATO, the Economic Community of West African States, ECOWAS, the African

Union, SADC, ASEAN, they are all organisations that have at different times been involved with NATO on certain projects but currently, as far as I know, probably are not. Perhaps one or two of them are, but most of them are not. We do have to ensure that we can work with credible international organisations when the case is justifiable.

Let me give an example of working with NATO, which some see as controversial. When the mission justifies it and it is consistent with Irish values and what Ireland wants to contribute to international peace and security, then we make decisions to co-operate with international organisations. We had Permanent Defence Force personnel in Afghanistan working with NATO on a demining programme which had a UN mandate. That is how the world works. Organisations work with each other to try to intervene. When we regard the mission as one consistent with our values and there is accountability around all of that, we can intervene. Most of the time the triple lock applies. To me, that is what neutrality means. It is active neutrality. We decide when and where we intervene. We have a system of checks and balances around that. We operate to a value system and to a model that respects international law and works for the most part under a UN mandate or a UN-approved mission. On the odd occasion we do that within the confines of the EU also. That is what has made Ireland as effective and as impactful as we have been in the past five or six decades.

5 o'clock

When we choose to make an intervention, it is because of a humanitarian driver or value system that we espouse. That could be in the Mediterranean, a training mission in Mali, or a de-mining programme in Afghanistan. The partners we use are the partners that allow us to do the job most effectively. We do not necessarily take a principled stand because we do not like something else that the partner has done. For example, we do not always agree with the EU on everything, but we are an EU member and we work together. We are not a member of NATO. We are not proposing to be a member of NATO. That does not mean, however, that we cannot work in partnership with NATO on certain projects that are consistent with an Irish value system, from a foreign policy or defence perspective. That is all I am saying.

I will take the Senator's specific proposed amendments one after the other. I have answered the first one regarding "or has participated". We do not want to exclude organisations because they are not currently working on a UN mandate. Most organisations who work with the UN do so at different times, and at other times they will not be working with it. By excluding "has participated in", one would essentially only allow us to potentially deploy or work with organisations that are currently working under a UN mandate. That is unnecessarily restrictive.

On the second issue, the Senator wanted to remove the term "any international organisation". She wanted to replace it with "an international organisation under a UN mandate". In section 1 in the Defence Amendment Act 2006, any "international organisation" is defined as:

- “(a) the United Nations,
- (b) the Organisation for Security and Co-operation in Europe,
- (c) the European Union or any institution or body of the European Union, or
- (d) any regional arrangement or agency that participates, or has participated, in operations as part of an International United Nations Force;”

That is a defined list of organisations. It does not open us up to any alliance, or anything like that. The Senator is most concerned about section 1(d), which states, “any regional arrangement or agency that participates, or has participated in, operations as part of an International United Nations Force.” In order for one to participate in a UN force, one has to be credible, and one has to have been shown to be credible. That narrows down significantly the list of organisations to which we could potentially second people for duties as a military representative, filling an appointment, or posting outside the State. Most of the time, secondments are of individuals or small numbers of people being posted. If it were a larger contingent of permanent Defence Forces, other cheques and balances would apply. Most of the time, this refers to the triple lock, unless it is a specific humanitarian intervention or training intervention, which is not seen as a military intervention, *per se*. When a situation potentially involves arms, it would, from my understanding, require a triple lock.

I think I have addressed the key issues that the Senator has raised in those three proposed amendments. I will think about this debate between now and Report Stage, but honestly, we are quite well covered with the 2006 legislation. Changing it in the direction that these proposed amendments suggest could potentially exclude Ireland from making a constructive contribution when the Irish public might well want us to intervene in partnership with another international organisation that is credible.

Senator Alice-Mary Higgins: Nothing in my proposed amendment about the removal of “or has participated” would have precluded the example the Minister gave of Afghanistan. There is a big difference between working with NATO under a UN mandate, which again, would still be allowed under my proposed change. That would be then a regional force that was operating or participating under a UN mandated mission. That would be covered by my language that I proposed-----

Deputy Simon Coveney: When the Senator previously mentioned NATO, she mentioned it in the context that it is an organisation we should never be working with.

Senator Alice-Mary Higgins: No, it was in the context that we have worked with NATO under a UN mandate. That does not simply mean that it is always fine to work with NATO.

Deputy Simon Coveney: We can agree on that.

Senator Alice-Mary Higgins: This is my concern. My concern is with the way this is worded and framed at the moment. It suggests that any organisation that has worked under a UN mandate could become an organisation to which we could second staff, or to which we could second a contingent of the Irish Defence Forces. Moreover, with this new legislation, it could be an organisation to which we could delegate command. In that context, that is exactly my point. If we are working with NATO under a UN mandate, that is fine. That is what we are doing. However, simply having done that before, by working with NATO on mine clearance under a UN mandate in the past should not mean that NATO should be given a stamp of approval, because it has once done something with us for the UN. Therefore, it might become a regional force to which we second persons or to which we may delegate command control. That is the concern. That is where the “or has participated” is relevant. This is my-----

Deputy Simon Coveney: How is NATO different? If we were considering this while NATO was working under a UN mandate on a project in Afghanistan, under the Senator’s amendment, NATO would have been an organisation we could work with. However, under the

Senator's proposed amendment, as soon as that UN mandate is over we could no longer work with NATO.

Senator Alice-Mary Higgins: That is what I am suggesting.

Deputy Simon Coveney: How does that make sense? The organisation does not change.

Senator Alice-Mary Higgins: It makes sense because we are militarily non-aligned. We should not be working with a military bloc, a military contingent, and a regional grouping that is aligned, that acts on the basis of interests, and that acts on a completely different mandate to us, except in situations where we share a common mandate in a United Nations activity. That is appropriate-----

Deputy Simon Coveney: We are talking about-----

Acting Chairperson (Senator John McGahon): The Senator should be allowed to make her statements without interruptions.

Deputy Simon Coveney: Sorry. We are talking about seconding people here.

Senator Alice-Mary Higgins: Yes, I am talking about seconding people in that context. I have taken on board the Minister's point about the difference between seconding individuals and seconding contingents. However, the legislation as it stands allows for the seconding of a contingent - a whole group of Irish military forces - to an international organisation. These international organisations could, as has been outlined, include NATO. The new legislation allows for the formalisation of command control. I do not think that this scenario is likely to happen, but our laws should be clear on it. That is part of international credibility. Our international credibility should not just be down to a series of good decisions. It should be around being clear that we are militarily non-aligned in politics that are based on interest, and on military blocs that take action in preservation of their own members' interests. That is not what Ireland does. I am trying to ensure that we are clear on that.

Acting Chairperson (Senator John McGahon): We have only seven more minutes.

Senator Alice-Mary Higgins: Can the Minister respond so we can put the question?

Acting Chairperson (Senator John McGahon): We want to get to Report Stage for next week.

Deputy Simon Coveney: I am listening to Senator Higgins. However, let us not layer in the issues around delegation of command to force commanders with the issues of secondments into international organisations, whether it is the African Union, the European Union, the Organization for Security and Co-operation in Europe, OSCE, or whoever. These are entirely different issues. We have had good debate with a delegation from the Minister around what it means to operate with a force commander. It is good to have had that discussion. However, that is simply doing what we have always done. We are now putting that now into law. The issue the Senator raised could potentially tie a Minister's hands about where they could send someone on secondment or posting outside of the State to any international organisation. If we start linking that to an organisation that has a UN mandate at that point in time, we are into a crazy space of saying that we can only second somebody to, for example, the NATO Cooperative Cyber Defence Centre of Excellence in Tallinn, if they have a UN mandate at the time.

Senator Alice-Mary Higgins: That is not the effect I meant, because it said “any European agency”. I did change that.

Deputy Simon Coveney: I take that point. I may be exaggerating for effect to make a point. However, that scenario could be interpreted by the Senator’s amendments. I know she makes a distinction between sending a contingent of Defence Force personnel on a peacekeeping mission, or an intervention mission of some sort, with postings. The wording of the Senator’s proposed amendments, however, do not make that distinction.

From an Irish perspective, there are a lot of checks and balances. The idea that I would send a contingent of Defence Forces personnel anywhere in the world without it being thoroughly scrutinised in the Oireachtas is very unlikely. We are very careful before we make decisions, and before we choose a partner to work with, of the obligations that I have in the Executive but also as a part of the Legislature to ensure the appropriate checks and balances are there. I think the 2006 Act does a pretty good job at setting the parameters around the circumstances in which we can send permanent Defence Forces personnel overseas, where we can send them, under what conditions we can do so and with what partners we can do so. It is pretty defined.

Honestly, my only motivation is to ensure that if a Minister for Defence who follows me in the future wants to be able to respond quickly and efficiently to something terrible that is happening in some part of the world, he or she does not get tied up in legislation that prevents him or her from doing that. The legislation at the moment does a pretty good job in terms of getting the balance right but I will reflect on our conversation before Report Stage.

Amendment put and declared lost.

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

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

“Amendment of section 3 of Act of 2006

17. Section 3 of the Act of 2006 is amended—

(a) in subsection (1)(a) by the substitution of “an” for “any”, and

(b) by the insertion of the following subsection after subsection (2):

“(3) In exercising its functions under subsection (1)(a), the Government shall only approve secondment of a contingent or member of the Permanent Defence Force to an international organisation which is not the United Nations or part of an International United Nations Force, where such a secondment is for the purposes specified in subsection (1)(f).”.”.

Amendment, by leave, withdrawn.

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

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

“Amendment of section 3 of Act of 2006

17. Section 3 of the Act of 2006 is amended in subsection (1)(a) by the insertion of

“under a United Nations mandate” after “international organisation”.”.

Amendment, by leave, withdrawn.

Sections 17 and 18 agreed to.

Title agreed to.

Bill reported without amendment.

Acting Chairperson (Senator John McGahon): When is it proposed to take Report Stage?

Senator Barry Ward: Dé Máirt seo chugainn.

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

Report Stage ordered for Tuesday, 26 October 2021.

Sitting suspended at 5.14 p.m. and resumed at 5.32 p.m.

Planning and Development (Amendment) Bill 2021: Second Stage

Senator Rebecca Moynihan: I move: “That the Bill be now read a Second Time.”

I am sharing time with Senator Sherlock.

An Cathaoirleach: Is that agreed? Agreed.

Senator Rebecca Moynihan: I welcome the Minister of State, Deputy Peter Burke, to the House. I hope we can have a respectful and robust debate on the planning and student accommodation crisis. The student accommodation crisis is affecting students throughout Ireland. Third-level education is becoming less accessible every year because of continual rent increases and hikes in the cost of living. Owing to rent increases and a lack of suitable accommodation, young people are staying in hotels with no access to proper cooking facilities, often having to get up in the middle of the night to commute for hours for a 9 a.m. lecture. Students from low- or middle-income backgrounds will be completely locked out of third level education away from home because of the cost of high rents.

In 2017, the Government published its student accommodation strategy to tackle purpose-built student accommodation and the lack of it. It sounded good, but the strategy borrowed heavily from the Fine Gael approach to housing, that is, that the private sector will provide and prioritise the provision of luxury high-cost student accommodation rather than affordable student accommodation. The only tangible mention of affordable housing in the strategy was confirmation towards the end of it that Part V of the Planning and Development Act, which relates to social and affordable housing, did not apply to purpose-built student accommodation. For the property developer or investor the attraction to student accommodation was that standards were lower than for apartments and there was no requirement to provide the 10% social

and affordable housing. Some of what was built was of good quality and was an enhancement of what were previously derelict sites. That was welcome, but I had never been convinced that the intention on the developer side was to provide student accommodation in the long term.

In my area, there were applications to close what had been promised public spaces, followed by applications to turn the student accommodation into tourist accommodation for the summer term, from May to October. When co-living briefly became the favoured planning route for developers, Point Campus was granted change of use from student to co-living accommodation. For somebody who represented one of the areas where so much student accommodation was being built, there was a glaring contrast between the large number of student accommodation applications being submitted as compared with applications for apartments even though we are in the middle of a housing crisis. Like the ghost estates that blighted this country during the late 2000s, it had the feel of a speculation bubble. These luxury student accommodation complexes boast facilities such as cinemas, bowling alleys, 24-7 gyms and rooftop terraces. One of the complexes in Dublin 8 that applied for change of use was advertising rooms starting at €305 per week, which amounts to €1,200 per month. To put that in context, the SUSI grant for those not living near college is €3,025 per annum or €252 per month before the student eats, travels or buys a book. What good was a pool table or a rooftop terrace bar when students did not have enough money to put food on the dinner table?

The real purpose behind what was happening became clear as student accommodation providers took the opportunity of a once-in-a-lifetime pandemic, even though there were hints of it happening previously. In my area of Dublin 8, The Tannery on Mill Street applied for a temporary change of use on the basis that Covid had impacted the number of international students attending third level. This was despite that at the time Government had made an additional 2,000 places available to compensate for the drop-off. Incredibly, the developer argued that the tourism market was recovering, unlike the student market. This was just as we were entering a level 3 lockdown.

Another Dublin 8 provider applied to change student accommodation into tourist accommodation for the academic year 2021-22 once students were returned to campus. Councillor Darragh Moriarty and I submitted an objection arguing that this, as in the case of the Mill Street application, created a bad precedent. In another part of the city, Uninest was allowed to convert 571 student beds into tourist accommodation. The Minister belatedly responded to the outcry on this issue by issuing a circular to planning authorities with guidance on dealing with change-of-use applications. The circular issued to the planning authorities was and is weak, vague and full of get-out clauses. For example, it provides that developers should be able to demonstrate that there is no longer a need for such use in the area in question. For an area like Dublin 8 where, along with Dublin 1 and Dublin 7, a large amount of student accommodation has been built over the past number of years, there is no large student population or institution and, therefore, a case could be made that it is not needed in that area. Why then allow so many to be built in that small area?

This Bill seeks a ban of 15 years on the conversion of purpose-built student accommodation to residential or tourist accommodation. We also do not want to see lower standard co-living by the backdoor. There needs to be a clear line in the sand on this issue. Developers need to be told that they cannot game the planning system to make greater profits elsewhere. If the demand is not there at current prices, the student accommodation providers should reduce their prices. It is not the responsibility of a planning system to underpin a high-yield business model. Long term, we need to base our response to the student accommodation crisis in the reality of

life for a student, which includes making sure that the options we provide are affordable for those expected to be in full-time education and reliant, as some of them are, on the SUSI grant. That means cost-rental student accommodation. It can be done with third level institutions or student unions set up as approved housing bodies, AHBs, but the accommodation must be local to the colleges students are attending and it must be affordable. I hope Government Members and the Minister of State will support my Bill because this is an issue on which we should all be united. Student accommodation needs to remain as student accommodation. We should not allow developers to game the planning system when it does not suit them.

Senator Marie Sherlock: I thank the Minister of State for coming to the Chamber. I thank my colleague, Senator Moynihan, for bringing forward this important Bill. I am sure the Minister of State, like many us, has not been immune to the many stories in recent weeks of students finding it near impossible to get accommodation and of students having to undertake arduous commutes to college simply because they cannot find accommodation for the academic year. In certain parts of the country there is a very serious shortage of affordable accommodation, let alone student accommodation. Some of those issues will not be resolved overnight, but there are issues particular to Dublin that we believe can be resolved overnight. That is the purpose of our Bill today. When we heard students telling us about their experiences, we went to the effort of ringing a number of local student accommodation facilities in the Dublin 1 and Dublin 7 areas. It was galling to discover that in the likes of Ardcairn, Dominick Street and Dorset Point there were vacancies and the prices ranged from between €240 to €253 per week. To put that in perspective, the 100% adjacent SUSI grant - Senator Moynihan spoke about the SUSI grant - would not even cover three months in one of these facilities. While the latest increase in the grant in the budget is welcome, it would not even cover one extra week. We have students crying out for affordable student rooms in this city and all the while there are purpose-built student rooms lying empty.

The key question that must be asked is why we have not seen a fall in prices to meet student demand. The reason is that we have repeatedly seen decisions made by Dublin City Council and An Bord Pleanála to grant permission to student accommodation operators to let their accommodation to tourists and for other uses. In Dublin 1 and Dublin 7 right now we have 987 student rooms that can potentially be rented for short- to medium-term use until May 2022. It is worth quoting from An Bord Pleanála's inspector report of February with regard to one of these applications:

The applicant has stated that the operator of the site has recently received enquiries from key workers, construction workers, recent graduates and interns who have been struggling to find suitable short-term accommodation in Dublin at reasonable cost. The applicant sees the current proposal as a way of meeting the identified present need.

Addressing the concern that allowing student accommodation to be used in this way would interfere with or damage hotels and those truly offering tourist accommodation in the city, the inspector suggests that this type of accommodation "provides a different type of offering for visitors and tourists alike" and believes it would not "have a significant negative impact on the existing hotel or other tourism accommodation stock". There we have it. If that is not co-living by the back door, I do not know what is.

According to a report published by planners from Dublin City Council on 30 July last:

The COVID-19 pandemic has significantly reduced the need for student accommodation

20 October 2021

and therefore, the [Dominick Street] development will remain vacant for the academic year unless an alternate use is established ...

The Government announced on 15 June last the wide-scale return of students in September and October 2021. The Minister, Deputy Harris, spoke about 200,000 students going physically back into college this academic year, and yet we have planners relying on Covid-19 to justify a request by student accommodation operators to change the use of student accommodation facilities. When we look at the circular that came from the Government; the holes that are in government, as we would see it; and the ignoring of the reality of student demand, we believe there has to be a legislative intervention. It is simply not acceptable that student accommodation operators and their owners can use the planning system to cushion themselves against future losses.

On a wider point, there are real questions to be raised about the purpose and intent of the planning system to shape communities for the long term. Do we really want to introduce so much flexibility into the planning system that we have little or no assurance as to the use of a building 12 or 24 months after it opens? The question we must ask about this temporary conversion is this: what is temporary? In a number of facilities in Dublin 1 and Dublin 7, applications have been made on at least two occasions to have a temporary conversion. The goalposts have shifted each time. First it was because they could not meet the construction schedule in time and had missed the start of the academic term. Then it was because of the supposed severe drop in student demand. God only knows what the next excuse will be when they want to apply next year. Is the Government prepared to stand over the planning system as it currently stands? Are we going to allow operators and investors to change the use of buildings at a relative whim?

I would like to reflect on my own experience. When I came to Dublin 21 years ago as a college student, there was a serious student accommodation crisis. I lived in a rundown old house in Ranelagh where we paid below the market rate. I was lucky. I was living on the grant, my part-time job and small support from my parents. It was the only place I could afford. Many of my friends were living in cramped accommodation. One group had to take a penthouse in the IFSC which was grand because their parents could pay, but so many other parents, including my own, could not. Are we going to entrench that divide between students who have financial backing and those who do not? That is what this student accommodation crisis is really about. Time and again we talk about the very high share of college graduates in our workforce but what kind of educational outcomes do we expect if people are forced to commute to class for very long hours or to stay in a hotel or on somebody's couch? What are the conditions that are going to be conducive to students surviving college and doing well?

We heard today from the Union of Students in Ireland, USI, which we have met over many weeks now, that there are very real fears that people are going to leave college because they cannot secure accommodation. Students might be forgiven for thinking that nothing has changed in the two decades since I came to Dublin to go to college. However, there has been a significant change. Senator Moynihan referred to the 2017 report which identified the need for purpose-built accommodation, and we have had that purpose-built accommodation built in this city. In the area where I live in the inner city there were concerns at the time that we needed to see more residential accommodation and that was a legitimate concern. However, there was also a realisation of the fact that with our brand new and amazing Grangegorman campus and our proximity to the city centre and to Dublin City University, we also needed to have student accommodation. What people are not prepared to accept is that these facilities would now be changed to some other use.

We would like to see the Government support this Bill. We believe there is an urgency to this legislation. Places cannot be built overnight. This legislation could be progressed very quickly. We hope that the Government does the right thing and supports the legislation.

Senator Mary Seery Kearney: I welcome this Bill and commend the Labour Party, particularly Senator Moynihan who has been passionate on this subject. There is no question but that there has been a tremendous shortage of student accommodation. None of us has been untouched by parents contacting us. As there are Members of the Seanad from all over the country, we get a good flavour of the demands and the needs in the city. I also commend the original vision of responding to the foreseeable crisis on student accommodation while having a view of Dublin as a city where students live and bring energy to the city. That is a great vision for the city so it was right to set up a system to induce the building of student accommodation in the city centre. I had a problem with where it was built. In the Dublin South-Central constituency, there was a particular overconcentration of student accommodation at a time when there was, as there continues to be, a huge demand for residential accommodation for the local community and others wishing to live in the area. There seemed to be a disproportionate level of building of student accommodation in the area. I would challenge how An Bord Pleanála permitted this, at times, and how its planning process did not seem to give due regard to the development plan. I welcome the recent legislation, which has come through pre-legislative scrutiny in the housing committee, to address and arrest that non-adherence to the development plan and to the view of the city council. From that point of view, we are moving in the right direction.

A long number of years ago at this stage, in 2001, I was involved in building supported social accommodation in Dublin city centre. As an organisation taking a major leap of faith in the provision of supported sheltered housing, we had a fallback plan. In the worst-case scenario, we could convert the accommodation into a hotel. It was all individual self-contained units of accommodation or studio apartments with a view to housing young people coming out of homelessness. In the worst-case scenario and it all went pear-shaped, which it did not, that was our fallback because it was a major step of faith. It never came to pass and the accommodation never needed to be converted into a hotel. That particular facility is very successfully run by the Society of St. Vincent de Paul to house people. The hotel use was never needed but it was certainly a cushion to have the possibility of change of use as a girder to underpin our step of faith into something that was very big. We were setting up a housing association and changing a charity. We were not people of major means and were relying on a lot of Government funding. Even in that context, we knew that if we ever needed to change use, we would have a difficulty in that there would be a major clawback of funding and supports, if we ever went down that commercial route.

I welcome the concept at the core of this Bill, which is that we set up a bespoke system to encourage investment in student accommodation, because it is needed. However, it strikes me as peculiar that we have, as Senator Moynihan cited, a reduction in the number of international students, which is true, while at the same time we have a major outcry for accommodation from domestic students. This disparity and unbelievable situation are being put forward by developers, while at the same time the cost of their accommodation is so prohibitively expensive that it is out of the reach of most families where there are students.

Do I agree developers should be blocked from being able to change use? Yes, I do. I also understand there needs to be some sort of mechanism for a cushion when we develop accommodation. Every time the Minister of State is in the Chamber, I always reference the housing needs and demands assessment, but there is a need for metrics to decide. The metrics can come

through, and be supported by, the colleges. There is a means of gathering the metrics of student accommodation needs. We also need to examine, through some sort of survey within the colleges, if there should be change. Students in other countries get the opportunity to move out of home at earlier ages. Should we be supporting and looking at that? Should we have some sort of task force within the Department of Further and Higher Education, Research, Innovation and Science that looks strategically at how we support students and whether Student Universal Support Ireland, SUSI, is enough. I know the Minister, Deputy Harris, is bringing forward a review, but these are all things we need to address within that.

It is not okay for developers to benefit from an accelerated planning process, tax benefits and all those associated inducements to get them to build and then, suddenly, within a year or two or less, in some instances without anyone ever occupying one of the rooms, they get to turn around and change the use. That is not okay. We need to arrest that rather aggressively. I understand the Government is not opposing this Bill, but we need to arrest that. I also understand there is a retrospective provision within the Bill that just will not work in law.

I looked up the advertisements today and there is huge availability. We have students crying out for affordable accommodation and yet there is this huge availability because it is overpriced and too expensive. One wonders has it been pitched at that level to oblige a situation for change of use. We need to stand against that.

Senator Mary Fitzpatrick: I thank the Minister of State for coming to the House for the second time today. We will be charging him rent next. I commend Senator Moynihan and the Labour Party and I support their Bill, which is very welcome. It deals with one aspect of the student housing crisis but it is an important one. The proposal in the Bill to restrict the possibility of changing purpose-built student accommodation to short-term lets or short-term holiday lets is one I am glad the Government is supportive of. It is a proposal we need to progress.

I am a parent of third level students so I know the demographic very well, warts and all. I met with the Union of Students in Ireland. I commend it on the work it has done, not just in recent times. Since the Government was formed more than a year ago, it has engaged very constructively and the Government has worked with it and taken on many of its suggestions. I have spoken to third level students outside of my constituency of Dublin Central, where for the past ten years it has been very hard and very galling to see, as others have mentioned, new buildings being built to a very high standard and quality, animating and putting into productive use what were derelict sites. It is, however, so detached from the local housing need and so devoid of any consideration of it, in addition to being out of reach of the students it is supposed to be serving, that it is very hard to accept it. It is something I have complained at length about.

On the pressures, Senator Sherlock mentioned there was a student housing crisis 20 years ago. There probably was and I am not disputing that, but what has made it so much worse this year is the undersupply of housing over recent years, the unaffordability of these purpose-built operated units and the Covid pandemic. Where families would previously have offered digs, because of Covid, that option has either been reduced or removed entirely from the market. That is compounding the crisis. I welcome what the Minister of State and the Government have done in terms of the €600 million in rent support payments and the direct supports for students with the increase of SUSI and hardship grants, which are very important. The work the Government has done in reducing the upfront payments for students and the 28-day notice period is very important, as is the money that has been given to the Residential Tenancies Board, RTB, to ensure the rent caps are legally enforced and inspections are taking place, and to local authori-

ties for inspections.

Housing for All will deliver over the next number of years, with €20 billion assigned to it and 300,000 homes as a target, but it will take time. I will draw attention to the commitment given in Housing for All to allow technical universities to use the land available to them to reduce the cost and to deliver not-for-profit, purpose-built student accommodation. That is very welcome and it is important we support all the third level institutions to use the facility they have been provided with to access funding through the Housing Finance Agency and start to deliver purpose-built student accommodation at a not-for-profit point.

In the short term, has the Minister of State met with the CEO of Dublin City Council? I appreciate that the applications that have been made for change of use concern a small number of developments, but whatever the number is, it is unacceptable if they are being granted. Has the Minister of State met with the CEO of Dublin City Council and will he advise us on what he is saying on that?

The circular has been issued and that is very important. The tax treatment, which was mentioned, that was in place, originally required that students came from a list of predefined third level institutions before it would apply. Is that being enforced and will Revenue supply us with information on that? The vacant property tax this Government has committed to and that will be delivered through Housing for All should apply to any of these purpose-built student accommodations that are priced at a point way beyond our students. I do not know if the Minister of State can speak about that, but it is important.

The work we have done on Housing for All to ensure the housing needs assessment will be completed by the end of November by each local authority needs to be respected.

6 o'clock

Manners need to be put on these developers and operators. They need to either reduce their prices and make their properties available or we need to tax them for that vacancy. It is immoral to have a student housing crisis in our cities when there are purpose-built, vacant properties available to them. I know the Minister of State has also met with the Minister, Deputy Harris, and I would be interested if he could update the House on the Minister's initiatives in this respect.

Senator Rónán Mullen: Cuirim fáilte roimh an Aire Stáit. This is a simple, one-issue Bill which deserves support from any Senator who has a genuine interest in solving the student accommodation crisis. It would prohibit, for 15 years, any application for the change of use of student accommodation to either residential accommodation or to a hostel, hotel or any other kind of tourist or short-let accommodation. As the Bill is drafted, this would also prevent such accommodation from being used in any kind of Airbnb-type letting arrangement.

I imagine most people would be amazed to hear that no such provision exists in law. The construction of student accommodation was, in times past, encouraged through the use of a generous tax incentive under section 50 of the Finance Act 1999, which was repealed in the wake of the property crash. In view of that tax break, it is surprising that no prohibition on a change of use of such accommodation back into residential units or hotels was introduced as a kind of *quid pro quo*. Although, I presume there was some kind of claw back provision in place to recover the tax forgone, if the use of the development was changed. If this was the case, it is a prime example of the short-sighted and often developer-led focus of planning policy during the

boom years. What we wanted and need - then as now - was a good supply of student accommodation and not additional tax revenue.

There is a student accommodation crisis in our four largest cities which needs to be tackled urgently and prohibiting the conversion of existing accommodation is surely a very small step, but one which must be taken. The crisis has been exacerbated by the wider housing shortage, but the Covid pandemic also hit many students who were the victims of some very sharp practice from landlords on the refund of rent and deposits as a result of the pandemic. One of the landlords who attempted to gouge money from students was one of our third-level institutions, the University of Limerick, which only repaid €3.5 million in rent to students for accommodation they could not use due to Covid after several weeks of being publicly shamed in the media.

I have raised this before, but I would be grateful if the Minister of State could tell us whether there are measures which might be put in place to assist students who find themselves in such a position in future. Sinn Féin pressed a Private Members' Bill in the Dáil on this issue last April but the problem has not been, or begun to be, remedied by Government legislation in the interim.

I take this opportunity to raise two other connected issues. Can the Minister of State please comment on the story from Limerick in recent days about Focus Ireland outbidding Limerick City and County Council for the development of a number of houses? Reports stated the developer said rising building costs meant it could not fulfil the contract with the council and only a new contract with Focus Ireland at a higher price would allow the development to continue. It is a strange world indeed, if housing charities are in a stronger position than local authorities to purchase houses or commission their construction. I would be grateful if the Minister of State had a comment on that.

I will also mention the vacant site levy and the plans to phase this out. I proposed amendments, as the Minister of State may recall, to various housing legislation earlier this year which would have introduced an element of self-assessment into the application of the existing charge, to increase the revenue generated and reduce the widespread avoidance of the levy. At the time, when the Minister of State did not accept my amendment, he said the Government was looking at a way to improve the situation. I acknowledge that commitment has been met. The budget has proposed a new 3% zoned land tax which will be phased in over a three-year period. I am somewhat sceptical about how this will work in practice. Is this new tax not just a rebranding of the vacant site levy, while simultaneously cutting the rate from 7% to 3%? I am also sceptical about the two- to three-year phasing in of the tax.

All of that said, I am glad to see a willingness to change the vacant site levy because it was virtually useless in how it operated in practice. I hope this new tax will free up land for development, including student accommodation. I welcome and support this legislation.

Senator Frances Black: I am delighted to be here to speak in support of this Bill. I commend Senator Moynihan and her colleagues for their work on this important and pressing issue. The words “housing” and “crisis” are intimately intertwined in Ireland and often they appear inseparable, but they are not. We can do better on housing across the board and the Bill, as introduced by the Labour Party, will go some distance in alleviating some of the pressure in the housing market. There is little doubt the housing crisis we are experiencing is unprecedented. It is a crisis affecting people in every corner of the country and every part of Irish society, but we know it is disproportionately affecting those with fewer social, cultural and economic re-

sources than are available to many others.

Housing is more than just a roof over one's head and it frustrates me that the conversation around housing is often reduced to that. Housing is a reflection of who we are and where we stand in society, but it also shapes who we are and where we stand. Education is more than what is taught in classrooms and lecture halls, especially further and higher education; it is a reflection of who we are and where we stand. Education provides an opportunity for us to discover the person we are and the kind of person we want to be. It provides an opportunity for us to build friendships and networks that can support us throughout our lives. It provides a ladder through which people can overcome the barriers placed in front of them by their social class and family circumstances.

I have been disappointed in recent weeks to hear stories from Irish colleges and universities about young people struggling to find affordable accommodation which is proximate to their place of study. We have heard stories of young people commuting from one end of the country to the other to attend their classes and lectures; stories of young people living in hostels and hotel rooms because they cannot afford to live anywhere else; and stories of young people not being able to pursue their dreams through education because they cannot afford to live away from home.

I live in a part of Dublin that has seen huge numbers of purpose-built student accommodation built in the past few years, alongside an influx of hotels and aparthotels. Very little, if any, residential accommodation has been built in recent times. The local community was sceptical about the nature of this development and all short-term accommodation that would see people passing through the community, as opposed to integrating into it.

Despite these concerns, much of the development was welcomed as being an investment in the local community. Students bring vitality and energy to an area and support local businesses. Much of the land had lain derelict for decades and any development was to be welcomed and, perhaps, the purpose-built student accommodation, PBSA, would relieve pressure on the private rental market and free up some of the housing stock for other renters in the area. However, as the accommodation was being built, one had to wonder for whom exactly it was being built. Advertising billboards for the student accommodation advertised cinema rooms, bowling alleys and roof gardens overlooking the city.

Then the prices were advertised, ranging from €250 to €350 per week. It became immediately apparent this accommodation was not developed with most students in mind. Instead, the accommodation was marketed at wealthy international students who many of our third level institutions have had to attract in recent years to plug gaps in funding. While this strategy may have been profitable pre-pandemic, the past 18 months or so saw the few students who occupied the accommodation leave, with many of the PBSAs lying vacant and inactive, just like the brownfield sites on which they had been built.

In 2015, the Higher Education Authority advised there was a deficit of 25,000 student beds in Ireland. The 2017 national student accommodation strategy was devised to tackle this problem and the construction of PBSAs was prioritised in local development plans. Developers licked their lips at the prospect of building lower standards of accommodation in smaller units, all the while gaining planning priority and yielding higher profits. Dublin now has around 9,000 or 10,000 PBSA rooms, most of them concentrated in Dublin 1, 7 and 8.

I am thankful we have legislators like Senator Moynihan and her colleagues in this House bringing attention to issues like this. This Bill, if enacted, could have an immediate effect on the student accommodation and housing crises. It is important we give it all our support and move it expeditiously through both Houses.

While the circular issued by the Department of Housing, Local Government and Heritage ought to be welcomed, it does not prevent the future change of use of PBSAs to a sufficient extent. The Bill, as introduced by the Labour Party Senators, is important as a result, as it prevents the change of use of student accommodation for a period of 15 years post construction. This would be a strong piece of legislation and could change the trajectory of the housing crisis in Ireland, especially as it relates to students.

In choosing not to address the student housing crisis specifically, we are facilitating the creation of another barrier to entry to further education. This is very problematic as it makes education the reserve of the fortunate. Access to high quality education ought to be the birth right of everyone who grows up in Ireland, not just those who can afford to access it. We need to remove barriers, instead of erecting them. I call on colleagues in both Houses to support the Bill, which will go some distance in achieving this end.

Senator Lynn Boylan: Cuirim fáilte ar ais go dtí an Teach roimh an Aire Stáit. Sinn Féin will support the Bill and I am speaking on behalf of my colleague, Senator Warfield, who could not be here and wanted to speak on this issue because it is of great importance to him.

We are absolutely behind the proposal to restrict applications for the change of use of student accommodation and commend the Labour Party Seanad team who tabled the Bill. Student accommodation is defined in legislation. It is defined in section 2 of the Planning and Development Act 2000, as amended by section 13 of the Planning and Development (Housing) and Residential Tenancies Act 2016. Student accommodation “means a building... used to accommodate students.” It is not for use as permanent residential accommodation or as a hotel, hostel, aparthotel or similar type accommodation. However, use as tourist or visitor accommodation is permissible outside the academic year. These are the grounds on which permission is granted for student accommodation.

This Bill will ensure no application can be made or granted for a change in use of student accommodation for 15 years after the completion of a student accommodation development. I listened to the debate on Sinn Féin’s renters’ motion in the Dáil last night and the Minister of State at the Department of Housing, Local Government and Heritage, Deputy Noonan, said approximately 40% of students who rent accommodation do so in purpose-built student accommodation with 60% in the wider private rental market. If 60% rent in the private rental market, it follows that there is a huge need for student-specific accommodation that is, most importantly, affordable for students. For this reason, I fundamentally believe there should be no change of use of student accommodation that has been or is yet to be developed. Students are protesting over a lack of student accommodation and affordable accommodation. All the while, purpose-built student accommodation is being turned into more lucrative tourist accommodation.

People can see all the wrongs happening around them. They see cultural and social spaces being knocked in favour of hotels or high-grade office space that currently sits empty. The potential loss of The Cobblestone pub is the latest example of the hollowing out of this city. Not only can people not afford the rent to live in this town, its cultural life is being strangled in favour of the next big investment opportunity for developers.

The only way we can be sure of stopping the loss of student accommodation is to insert in the legislation that no change of use can take place for 15 years after the completion of that development. It is a fair recommendation and a sensible approach. To think a developer can be granted planning permission for a change of use because its investment has not yet paid off makes a mockery of our planning system and a joke of our communities. As usual, the Government's response to date has been light touch and ineffective. It is afraid to spook developers or interfere in the market. It is not enough for the Minister, Deputy Darragh O'Brien, to issue a circular reminding planning authorities of the critical need for purpose-built student accommodation. Does he not think those authorities are aware of that need? They have been granting permission for expensive luxury purpose-built student accommodation for years.

We have to amend the legislation and this Bill is the vehicle to do that. This is simple: we need to keep student accommodation for students. If a change of use is allowed, we are facilitating high rents for developers by allowing them to change to whatever the most lucrative type of housing is. This is not in the interests of ordinary people or the communities where these developments have been built. It is madness. If we are all on the same page, let us use the tools of legislation. That is why we are here as legislators, to stop it.

I commend the Union of Students in Ireland, USI, and students across Ireland who have made their voices heard very loudly on this issue. Students and their unions should be treated with respect when they engage on these issues and are not deserving of the sarcasm we have seen over recent weeks. They deserve the respect of the people who so-called represent them in this city.

Senator Pauline O'Reilly: I welcome the Minister of State. I support the legislation and thank Senator Moynihan, in particular, and the entire Labour Party group. Students are another cohort of the population who are victims of the housing crisis. Costs are so high that students and their families are hard-pressed to fund accommodation, when they can find it. Other students commute vast distances to college. I know that is the case in the west of Ireland. In many cases, they sleep on couches during the week to carry out their education. Clare Austick, the president of USI, has come from NUIG and is passionate and speaks well on this issue. She states that, while there is much talk about barriers to education, one of the greatest access issues at the moment is accommodation. It has become a barrier to many students, especially those who do not live in the cities and towns of their chosen third level options. Housing availability and cost act as a constraint to many sections of our population but perhaps one of the most worrying is the effect that is having on our young people. Commuting is onerous, inefficient and, importantly, it reduces the third level experience of our students, who can no longer partake fully in college life as they might have done and expand the realm of their experience beyond course work. Covid has had a devastating impact on our young people but as normality begins to return, the housing crisis will continue to negatively affect students in terms of financial hardship, mental health and their ability to flourish.

It is extremely worrying that planning permissions for change of use have been granted by planning authorities to reduce the number of units available for our students. The recent circular from the Department of Housing, Local Government and Heritage should help to address this. The Government has introduced or promised a number of initiatives to help students, including increasing SUSI grants, thresholds and student assistance fund, promised legislation for technical universities so they can access Housing Finance Agency funding and new laws regarding deposit and notice periods for students. We know demand is set to rise so this needs to be a central priority so our young people are not curtailed at this crucial period for their future

success. The projections are a rise of 30,000 students between 2014 and 2024. Change of use permission is specifically addressed in the national student accommodation strategy. It can only happen if a student need is no longer there.

The Bill raises another important issue regarding our planning authorities. We have seen An Bord Pleanála is willing to give planning permission for the likes of co-living developments to go ahead despite a Government ban on this type of accommodation. An Bord Pleanála has said it has granted the permission where planning applications were before the board in advance of the Government ban. Even still, the rulings seem to fly in the face of Government policy. Independence in the planning process was an important step forward in Ireland, given many of the political corruption controversies we faced in planning in the past. However, independence of decision-making is not meant to be divorced from Government policy. Are planning authorities to be allowed to fly in the face of national policy in the name of independence? What, if any, cognisance, do they take of the explicit changes in Government policy, which we have clearly laid down? This is why we must examine whether legislation is the appropriate way to do this. An Bord Pleanála and local authorities must heed the circular but they could, and should, have heeded the student accommodation strategy before that. Many people are asking how we are we supposed to solve the housing crisis if our planning authorities are becoming a law unto themselves. Government policy is clear. How do we ensure it is carried through?

What we have laid down in the affordable housing Bill is the principle that houses should be more than houses; they should be homes. This includes the community around them and who all of us want living around us. We would much rather it be young people rather than people who come for a week or a few days adding to that lack of community. We must have intergenerational communities and this includes our young people. I very much support this Bill.

Senator Mark Wall: I support Senator Moynihan for bringing this Bill before us. It is very important to give the support that has been given throughout the House given its importance to our student population and how we treat those who are the future of our country. As my Labour Party colleagues said, we have a crisis in student accommodation but it is one that did not need to happen. I am glad the Government is not opposing this Bill, which would stop developers using the loopholes they are using at the moment to convert purpose-built student accommodation to accommodation for tourists thereby creating a crisis for so many of our student population.

What is happening here is having a knock-on effect throughout the country as students are left with no option but to continue to live at home and commute to college. In many cases, students are paying the equivalent of Dublin rents to commute but they are losing out on college life due to the lack of accommodation near their colleges. Over the past number of weeks, my office has been inundated with stories from students who are paying a phenomenal amount to commute to college. This should be good news for them from one perspective in that staying at home gives them the opportunity to save. However, the problem is that train stations such as Portarlinton, Monasterevin, Athy, Kildare town and Newbridge are outside the short hop zone and students cannot use their Leap cards. One student from Monasterevin contacted me to say he is paying €20 in train fares and €7 in bus fares per day to get to college so instead of saving, he is paying more than €100 per week. He might as well be staying in Dublin, if only he could get the accommodation to do so.

The delay in the first instalment of the SUSI grant is also have a significant impact on students who are commuting. A student from Newbridge told me recently that she is paying €288 for a monthly ticket to Dublin. Under the SUSI grant, she is due €320 but this has not yet

kicked in so she is already out of pocket and the year has just started. In a year where seasonal work was interrupted to an unprecedented degree, students deserve better than this. Before the pandemic, SUSI grants were not enough to cover the basic costs of living and the delayed payment is adding to the financial worries of families at this stressful time. The budget included the welcome introduction of the youth travel card but it seems as if this will take some time to get up and running and will not help these students at this particular time who find themselves paying so much for staying at home while losing out in such an important year in their college life.

What has been created for many students this year is a perfect storm just as so many of them are coming out of the nightmare of the past two years. I have spoken to many parents and students from the towns of south Kildare who are forced to travel at massive cost or bunk in with other students in overcrowded accommodation because of the greed of some. Some have told me that the accommodation available previously to them and their fellow students is simply no longer there and the search had to go on and on. Of course, this crisis is not helped by the words of some in authority who should know better. Student-specific accommodation should be for students, not for some developers to move the goalposts at times convenient to them and then profit on the back of those changes.

Developers have applied for more than 1,000 students beds to become tourist accommodation. This is simply not good enough. Students from all over the State are struggling to find accommodation. It is easy to see where the problem is when one hears that purpose-built beds are being taken out of the market for students. This Bill will ensure that students and their families have the choice, and, as important for so many given the current constraints in SUSI grants, affordable accommodation. Our students deserve more and it is about time we recognise their long-term value to this country. It is time to stop rewarding others with short-term gains at the expense of our students, who are our future.

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): I thank Members for the debate and the genuine views expressed by all. I also thank the Labour Party for bringing this important Bill before the House and acknowledge the work of Senator Moynihan in association with her party colleagues. As has been outlined by her, the primary purpose of this Bill is to restrict the submission of change of use planning applications in respect of student accommodation developments where such proposals relate to change of use to permanent residential accommodation or a hotel, hostel, aparthotel or similar visitor or tourist accommodation. The Bill further provides that such restriction on the submission of change of use planning applications shall be for a period of 15 years from the completion of the development.

While the Government is not opposing this Bill primarily and absolutely in recognition of the difficulties relating to student accommodation and the need to further address this issue, I have a few reservations regarding its content. The Bill seeks to operate retrospectively by imposing restrictions on student accommodation planning permissions that have been granted. This is not possible as legislation can only be applied prospectively. The Bill also undermines the neutrality of the planning code along with other key principles underpinning it, including the right of an individual to submit development proposals for consideration and have them assessed in a fair and transparent manner while it also predetermines the outcome of any such planning applications to be submitted. I also have concerns about the restriction of the submission of student accommodation change of use planning applications for a period of 15 years from the completion of the development. Such restrictions would apply irrespective of any change in circumstances relating to the development concerned and would thereby be an

infringement of the rights of the property owners concerned to respond to any such change in circumstances and could be open to legal challenge. There is no question that like virtually all sectors of the economy, the student accommodation sector has been adversely affected by the Covid-19 pandemic. Students have had to operate remotely from home and off campus for a considerable period, thereby impacting on the demand for and use of student accommodation complexes in turn impacting on their viability and business model. This has led to the submission of some planning applications for change of use of student accommodation facilities to residential or hostel-type use on a temporary basis.

However, with the return to campus-based delivery of higher education, this situation has changed and matters are returning to normal. Notwithstanding the changed scenario, my Department responded to the situation relating to the submission of change of use planning applications by issuing a clear circular in September requesting that when considering student accommodation change-of-use applications, planning authorities and An Bord Pleanála satisfy themselves that there are compelling non-Covid-related grounds to grant permission for any such proposed change of use while demand for student accommodation remains high. In effect, change of use from student accommodation to tourist accommodation or other purposes, either temporarily or permanently, should not be granted unless the property owner can adequately demonstrate that there are compelling reasons for doing so. It is considered that this approach, which is aimed at maintaining the maximum availability of accommodation for students in designated student accommodation facilities, addresses many of the issues underpinning this Private Members' Bill at this point in time. However, should there be any further change in circumstances, my Department will reflect on the situation and come forward with further responses, as appropriate, including any further legislative changes that may be required.

The recently published Housing for All action plan recognises the need to create a long-term sustainable housing system for all of Ireland that will benefit all those seeking affordable and secure accommodation, including the growing student population. My Department is working closely with the Department of Further and Higher Education, Research, Innovation and Science to deliver on this commitment.

It is also worth noting that the fasttrack strategic housing development, SHD, process in terms of planning arrangements, had resulted in the granting of permission for just under 14,000 student bed spaces in the past three or four years with many of these developments having already been completed. In this regard, the development of on-campus purpose-built student accommodation can help in alleviating pressure in the wider private rental housing market.

Universities have developed significant numbers of student accommodation units in recent years through borrowing from the European Investment Bank. There are now provisions for our technological universities to avail of such borrowing. The Government will support technological universities that pursue this development of purpose-built student accommodation where such need exists through the appropriate funding or financing.

I thank Senator Moynihan and her Labour Party colleagues for bringing forward this Private Members' Bill. I thank them for continuing to shine a spotlight on this very important issue of student accommodation, which we all share and we all will do our very best to resolve in any way we can in the coming weeks and months.

Senator Rebecca Moynihan: I will direct my comments to the official who wrote that speech rather than the Minister of State because the reply includes a number of quite troubling

aspects.

The first aspect is that putting a limitation on somebody's right to develop property probably infringes on his or her right to private property. The reply effectively says that planning does not matter and that planning laws do not matter.

The student accommodation that has been developed is set down in the student accommodation guidelines that were issued in 2016. Included in that are very different standards of accommodation than normal accommodation. There are different standards in terms of transport, lifts, bed space, balcony space and shared space. Also, student accommodation providers got tax breaks in previous years, although not in recent years. I have no problem with saying that if standards have applied for 15 years then there should not be convergence.

The circular is not very clear and is quite watery. I can pick a couple of holes in it and I imagine that certain student accommodation providers will do so. I am very disappointed that the Government has decided not to progress it or at least amend it in such a way that would make it more workable rather than rely on a fairly weak circular.

There are certain people, particularly people in Dublin 1, 7 and 8, who have warned about this situation for a long time. I tabled this Bill last March and way before the controversy over the student accommodation crisis blew up because it was very clear to me at a really early stage that this was the game that developers were playing.

Planning should be about good sustainable planning and not support a business model and viability, which the Minister of State mentioned in his speech and reply. That is a fundamental problem with how we approach planning in Ireland. We always look at it from the developer's perspective. What developers are doing here is trying to promote a very high yield business model because even though Members are all quite well paid most of us would struggle to pay €1,200 a month for a small studio one-bed with shared facilities and one can imagine how students would struggle to pay that.

I ask that the Minister of State looks at putting this matter on a legislative framework rather than relying on the circular. I believe that the circular will be abused in the years to come because I have always thought that applications to build purpose-built student units would be abused and that has come to pass.

Question put and agreed to.

Acting Chairperson (Senator Pat Casey): When is it proposed to take Committee Stage?

Senator Rebecca Moynihan: Next Tuesday.

Acting Chairperson (Senator Pat Casey): Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 26 October 2021.

Acting Chairperson (Senator Pat Casey): When is it proposed to sit again?

Senator Mary Seery Kearney: Tomorrow morning at 10.30 a.m.

The Seanad adjourned at 6.35 p.m. until 10.30 a.m. on Thursday, 21 October 2021.