



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

Gnó an tSeanaid - Business of Seanad	387
Nithe i dtosach suíonna - Commencement Matters.	388
Community Development Projects.	388
Further and Higher Education	390
Human Rights	393
An tOrd Gnó - Order of Business	396
Death of Former Member: Motion.	412
Data Protection Act 2018 (Section 60(6)) (Office of the Ombudsman) Regulations 2022: Motion	413
Online Safety and Media Regulation Bill 2022: Committee Stage.	413
Automated Data Exchange for Police Co-operation: Motion	455

SEANAD ÉIREANN

Dé Máirt, 26 Aibreán 2022

Tuesday, 26 April 2022

Chuaigh an Cathaoirleach i gceannas ar 2.30 p.m.

*Machnamh agus Paidir.
Reflection and Prayer.*

Gnó an tSeanaid - Business of Seanad

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

The need for the Minister for Rural and Community Development to make a statement on the next round of supports for the town and village renewal scheme.

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

The need for the Tánaiste and Minister for Enterprise, Trade and Employment to ensure that human rights defenders are named stakeholders in future mandatory human rights and environmental due diligence legislation.

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

The need for the Minister for Further and Higher Education, Research, Innovation and Science to make a statement on the report from the European Commission Directorate General for Structural Reform on the future of higher education funding in Ireland.

I have also received notice from Senator Róisín Garvey of the following matter:

The need for the Minister for Health to make a statement on the waiting times at Limerick University Hospital for colposcopy procedures and test results following a referral under the cervical screening programme.

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

The need for the Minister for Communications, Climate Action and Environment to provide an update on the strategy to combat energy poverty.

I have also received notice from Senator Robbie Gallagher of the following matter:

The need for the Minister for Housing, Local Government and Heritage to make a statement on circular letter EUIPR 01/2021 regarding changes to the extension of the duration of planning permission.

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

The need for the Minister for Health to provide an update on the status of the new emergency department at University Hospital Galway.

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

The need for the Minister for Education to provide an update on the appointment of a design team and project progress for the proposed new build for Summercove National School, Kinsale, County Cork.

Of the matters raised by the Senators suitable for discussion, I have selected those of Senators Boyhan, Ahearn and Malcolm Byrne and they will be taken now. Senator Garvey has withdrawn her Commencement matter, which I had originally selected. I regret that I had to rule out of order the matter raised by Senator Maria Byrne on the grounds that it is a repeat of a Commencement matter raised on 9 February. The other Senators may give notice on another day of the matters that they wish to raise.

Nithe i dtosach suíonna - Commencement Matters

Community Development Projects

An Cathaoirleach: I welcome the Minister of State to the House.

Senator Victor Boyhan: I also welcome the Minister of State to the House. My Commencement matter relates to the rural community development scheme in terms of supports for town and village renewal. I note at the outset that it was a highly successful scheme, particularly around Covid-19 and post Covid, in terms of the challenges for rural communities and bringing them on. Supports for the town and village renewal schemes were very welcome indeed. The town and village renewal scheme was funded by the Department of Rural and Community Development as part of a package of the Government's national and local support measures to rejuvenate towns and villages.

As I said at the outset, it has been a very successful scheme. While I acknowledge the Government would like to give more money, it is not always possible. In recent times, however, the scheme has placed great emphasis on projects that support and encourage remote working and enhance town living. That is a really important part of all of that.

When we look back at the funding over the past two years, I am quite impressed by the fact that it links into Ireland's policy document, Our Rural Future: Rural Development Policy 2021-2025, which is also critically important. That is Government policy and I wish to acknowledge that it is really progressive Government policy. It is about the sustainable development of our communities and supporting our community stakeholders in enhancing their rural and urban communities. The maximum grants were increased to €500,000 to allow for bigger projects, as

well as early buy-in for those projects.

This is the real key issue I will ask the Minister of State about today. This scheme is advertised on the Department's website, which suggests that it will be open for submissions at the end of April - this is timely because we are now heading towards the end of April - and that the scheme will close June. While that may have changed since, that is what was on the website in the last few minutes before I came into the Chamber. It is timely that I should ask the Minister of State about the Government's intentions for the scheme and how we can engage and encourage people. I do not think we need to encourage too many people. We know many people in the communities want to avail of this scheme. We know the importance of people needing the support to stay and work in their own communities. We have seen the enormous benefit, particularly post Covid, for people who want to co-work or work part-time in their offices. We have seen the benefits of community hubs and there need to be more of them. People do not want to work in isolation; they want to work with some support and with some connectivity but they also want to be involved in meaningful childcare and community participation.

This scheme, therefore, has many benefits but particularly in terms of urban rejuvenation and the structures within communities. I would be very interested if the Minister of State could provide a rough outline of the vision and plan for the scheme going forward this year and of the timelines for the opening for applications.

Minister of State at the Department of Further and Higher Education, Research, Innovation and Science (Deputy Niall Collins): I thank Senator Boyhan for his remarks and for raising this issue. I also congratulate Senator Clonan on his recent election to this House. I wish him well.

On behalf of my colleague, the Minister for Rural and Community Development, Deputy Humphreys, I thank the Senator for raising the matter. The town and village renewal scheme aims to assist with the rejuvenation of rural towns and villages throughout Ireland, making them more attractive places to live, work and visit. It is one of a range of schemes implemented by the Minister for Rural and Community Development as part of her Department's rural development investment programme in line with the commitment contained in the Government's five-year rural development policy, Our Rural Future: Rural Development Policy 2021-2025. The 2021 town and village renewal scheme was refocused with provision for the purchase of vacant properties. Priority was given to projects that bring vacant and derelict buildings and sites back to use as multipurpose spaces or remote working hubs or for residential occupancy or both.

The Minister recently announced funding of almost €18.5 million for 99 projects under the 2021 scheme. This includes 28 remote working projects, the majority of which seek to bring vacant and derelict buildings and sites back into use. For the 2021 scheme, the Minister also announced an additional measure, namely, the project development measure, which provides funding of up to €50,000 to local authorities to assist them by contributing to a pipeline of significant, well-developed projects that might progress to construction stage, subject to the availability of further funding. The Minister also increased the scale of projects eligible under the 2021 scheme, with funding of up to €500,000 made available. I am happy to confirm she has secured increased funding for a range of rural development schemes implemented by her Department in 2022, including an additional €2 million for the town and village renewal scheme. Officials are working to finalise the town and village renewal scheme for 2022. While the details are still being finalised, there is no doubt that the scheme will again prioritise projects that bring vacant and derelict buildings back into use and promote residential occupancy

in town centres. The Minister will announce details of the 2022 scheme shortly, with a view to announcing successful applications by the end of the year.

In addition to these developments regarding the town and village renewal scheme, the town centre first policy framework was launched by the Minister and the Ministers of State at the Department of Housing, Local Government and Heritage, Deputies Peter Burke and Noonan, earlier this year. This policy is a major new cross-governmental strategy that aims to breathe new life into towns and villages and make them better places to live, work and raise a family. It contains a range of targeted actions and is underpinned by a number of funding schemes such as the town and village renewal scheme to ensure it will help deliver on the Government's future vision for rural Ireland, as outlined in *Our Rural Future*. I am confident the forthcoming opening of the 2022 town and village renewal scheme will continue its track record of delivering benefits in towns and villages throughout Ireland.

Senator Victor Boyhan: I thank the Minister of State for his response, which was hunky-dory and nice, but I reiterate the departmental website today indicates this scheme is to be launched at the end of April, so he might ask the relevant Minister or officials to change that. It states it will close in June, but clearly there will be a later start and a later close. People plan and wish to get on with these important pieces of work.

I reiterate that I am very supportive of the scheme and acknowledge the Government would like to give it more money than it has. It is an impetus and an important source of funding, so I thank the Minister of State for his response. Perhaps he might give some more details in his concluding remarks.

The Minister of State referred to the local authorities and the new and additional project development measure in the scheme. He talked about providing €50,000 to local authorities but, as he will be aware, there are 31 local authorities. Was he referring to all 31 local authorities? I ask the Minister of State to revert in the coming days with some details on the exact sum. Will it be paid equally to each of the 31 local authorities or are certain local authorities being selected over other ones? We need greater clarity in the ministerial response to that matter.

I thank the Minister of State for coming to the House and for providing this important information.

Deputy Niall Collins: I can clarify that the €50,000 is allocated per project and can be spread across any number of local authorities. One project, therefore, can avail of up to €50,000. As an example, in my constituency, Limerick County, a proposal to refurbish the de Valera museum in Bruree received €50,000 to allow it to appoint a design team to take the project forward. Local authorities can apply under that scheme for sums of up to €50,000 per project.

I will convey the Senator's comments regarding the website to the Minister and her Department. I agree we should get these schemes opened as soon as possible and afford local authorities and stakeholders the opportunity to apply as soon as possible. They are great schemes, as we have all seen. I have a list of them to hand. We all know, from our constituencies and counties, that they have contributed a great deal to regenerating rural Ireland.

Further and Higher Education

26 April 2022

Senator Malcolm Byrne: I thank the Minister of State for coming in to address this issue. We are coming up to the seventh anniversary of the publication of the Cassells report, which outlined the crisis facing higher education funding at that time. A number of options were presented in that report. Three options were presented very clearly to the Government, namely, that there be a dramatic increase in public funding, that the fee model be retained, or that we look at the model of income-contingent loans. It is fair to say the Government continued to kick the can down the road, referring the report to an Oireachtas committee and then to the European Commission for its observations. Commitments were given that the European Commission report would be published by now but that has not happened. The Minister for Further and Higher Education, Research, Innovation and Science, Deputy Harris, committed that 2021 would be the year higher education funding would finally be resolved. Clearly, that has not happened. This Government realises the potential of higher education. That is why a new Department was created. It must be acknowledged that some additional funding, on both the capital and current side, has been put into higher education. However, these are sticking plaster solutions. The system is in crisis. Time and again we have heard from the universities and the new technological universities - the former institutes of technology - about the problems they are facing and the impact these things can have on the quality of teaching and research and, in particular, support services for students. There has been a continuous and rapid expansion in higher education over the last number of years. That is the right thing to do because this country's future will be based on talent and investing in talent. We are short-changing the higher education system because we are failing to address the funding issue.

I note with concern that the Minister has been talking about cutting student fees. In an ideal world we would all like student fees to be cut, but my worry is that the commensurate amount of money that will be necessary as a result of the cut to student fees will not be made available to the higher education institutions. Whenever any of the representative groups come before the Joint Committee on Education, Further and Higher Education, Research, Innovation and Science, I ask them where priority funding should be invested. They talk about investment in core funding and the SUSI grant scheme, as well as radical reform of the SUSI grant scheme.

We cannot wait any longer. This can has been continually kicked down the road. This country's reputation is now at stake. In fact, Tony Donohoe of IBEC told the education committee that we have already gone beyond the tipping point. I do not necessarily expect the report from the European Commission on the recommendations of the Cassells report to tell us much more than we already know. We know higher education is in a state of crisis. We know there has been an expectation on the institutions to continue to do more without the necessary additional resources. Respectfully, I am worried the Government does not appreciate the full scale of the crisis. I ask for clear dates for the publication of the European Commission's report and an answer with regard to the Government's strategy for the future funding of higher education.

Deputy Niall Collins: We should thank the Deputy for raising this matter. The 2016 expert group report, *Investing in National Ambition: A Strategy for Funding Higher Education*, confirmed that higher education made a significant positive contribution to the development of individuals, employers, society and the State. It concluded that the approach to funding at the time was unsustainable and that substantial increases in investment in higher education needed to be made to ensure that the sector could remain viable and provide capacity to meet the major increase in student demand that was projected up to 2030.

Since 2015, my Department has been working hard to deliver a significant programme of

reinvestment in higher education. In that period, current public expenditure allocated to the higher education sector has increased by more than €500 million, or almost 40%. In 2022, this allocation will be in excess of €2 billion, including capital investment in the order of €2.4 billion. Funding and policy developments in recent budgets have taken significant steps to address the funding needs of the sector. Most notably, and in line with a recommendation of the Cassells report, a new stream of employer funding was introduced upon review of the National Training Fund. This level of investment responded to demographic pressures and underpinned a range of initiatives in the sector, including a substantial investment in the evolution of technological universities and significant skill-enhancing opportunities for individuals, sectors and regions. My Department is also continuing to address the demographic pressures on the sector through the provision of additional places in further and higher education, and in budget 2022, we secured additional funding for sectoral pensions. This significant allocation of public resources is a clear demonstration of the Government's commitment to meeting the funding needs of the higher education sector in order to realise more fully its potential to contribute to economy and societal priorities that are central to the country's long-term sustainability.

Regarding the ongoing work on implementing the recommendation of the Cassells report, the development of a sustainable funding model for higher education is essential, in light of the credibility of higher education and of our progress as a country. My Department's statement of strategy, published in March 2021, contained a commitment to putting in place a sustainable funding model for higher education. In this context, I was encouraged by the completion of a comprehensive economic evaluation of the funding options presented in the report of the Expert Group on Future Funding of Higher Education, as supported under the European Commission's Directorate-General for Structural Reform Support, DG REFORM, programme. The aim of this review was to investigate methods of increasing the sustainability of higher and further education provision, including an examination on the funding options.

On 9 December, a Cabinet committee on economic recovery approved sending the Commission's review to the Cabinet and recommended that the Government note: the contents of the comprehensive independent economic evaluation of the funding options originally presented in the 2016 report and now detailed in a report on increasing the sustainability of higher and further education provision in Ireland, which was funded through the DG REFORM programme; the confirmation by the detailed analysis undertaken in the report of the existence of a significant shortfall in funding for higher education necessary for a high-performing, high-quality higher education system to underpin the achievement of Ireland's economic and social objectives and ambition; and the key recommendations contained in the evaluation report, including that a sustainable model of financing for the higher education system should be prioritised to support the future development of the higher education and further education and training systems in meeting the economy's human capital and skills needs. There were a number of other points to note but since I am running out of time, I will skip them.

I am pleased to inform the Senator that the Cabinet is today considering both the DG REFORM review and my Department's response to it. The Senator is on the money today.

Acting Chairperson (Senator Victor Boyhan): As always.

Senator Malcolm Byrne: I appreciate the Minister of State's comments. The timing of this matter is opportune but, with respect, this has been a seven-year process. As the Minister of State mentioned, the urgency of this situation was realised when the Cassells report was published, yet nothing has really happened bar kicking it to a committee and DG REFORM

26 April 2022

and a series of statements. I welcome that the Cabinet is considering the matter, but what is the Cabinet going to do about it? If we are serious about investing in higher education and research, we need a sustainable model of funding. We cannot continue to talk about it in the way that we have been talking about it. We need to set out a very clear strategy. I do not believe that we need any more reports. We have had loads of reports on the crisis facing higher education and research funding. We now need to get answers. On foot of the Cabinet discussions earlier, when can we hear what actions the Government is going to take?

Deputy Niall Collins: The Senator will appreciate that I am not in Cabinet and, therefore, I cannot specifically speak to when that will happen but it is fair to say that it is a key priority of the Department I am assigned to. He will be aware of that. It is a key commitment within the programme for Government. It is a priority for the Fianna Fáil Party, the Fine Gael Party and the Green Party. Its journey is taking longer than we all expected and wanted it to take. However, today it has moved on significantly. There is, to borrow a phrase that the Senator and I will understand, a lot done but more to do.

Acting Chairperson (Senator Victor Boyhan): I thank the Minister of State and Senator Byrne. We will move on to Senator Ahearn's Commencement matter, which relates to human rights defenders. We are expecting the Minister to come to the House shortly so we will suspend until then.

Cuireadh an Seanad ar fionraí ar 2.58 p.m. agus cuireadh tús leis arís ar 3.10 p.m.

Sitting suspended at 2.58 p.m. and resumed at 3.10 p.m.

Human Rights

Acting Chairperson (Senator Victor Boyhan): I welcome the Minister of State and apologise for the delay. I know that he had to go to the Lower House. I appreciate him coming back to the Seanad to deal with this matter, which relates to human rights defenders.

Senator Garret Ahearn: I thank the Minister of State for coming to the Chamber to take this matter. This is an important issue and the fact that the Minister of State is here is evidence of that. This matter arose on foot of the publication of a directive from the European Commission on mandatory human rights and environmental due diligence. Most people across Europe would welcome that document but there is one aspect of it that is of concern, namely, the absence of a specific clause on the protection and empowerment of human rights defenders. The reason that is surprising and alarming is because, on the basis of Article 21 of the Treaty on European Union, support for human rights defenders is an EU priority. When a mandatory human rights and environmental due diligence directive is put forward and there is a priority for human rights defenders in an EU treaty, one would think that would be included in it.

I met Mary Lawlor, the UN Special Rapporteur on Human Rights Defenders. We had an interesting meeting and she had a number of concerns that she wanted to get across. She believes that Ireland can play a key role in the following ways. First, the Commission should include a specific obligation on companies to take steps to prevent retaliation against human rights defenders across the world because they are subject to serious acts of retaliation when raising concerns. In 2020, there were just in excess of 600 attacks on human rights defenders in countries in South America, Africa and Asia and this happens with European companies. Some

of those acts of violence resulted in the killing of individuals who have spoken up. All EU member states will be obliged to introduce some form of human rights and environmental due diligence for businesses as a result of this EU directive on corporate sustainable government. The protection of human rights defenders is a key priority in the context of our foreign policy, and we can lead on a number of human rights defender initiatives at the UN. Environmental and indigenous people's rights defenders face particular risks, often for raising human rights violations in the context of business practices.

The recommendations contained in the implementation review of the first national action plan on business and human rights stated that Ireland should be a global leader in this policy area and that it should consider moving ahead of the EU in the context of legislation. Could the Government commit to ensuring that human rights defenders will be named as stakeholders in our human rights and environmental due diligence legislation when we publish it? Can they further ensure that companies will be required to publish zero-tolerance policies regarding attacks on human rights defenders? We have a great record as a country in defending free speech, human rights and whistleblowers, and we can play a leading role from a European perspective in defending those rights across the world. These situations have happened with big European companies, particularly in South America. Unless we put this legislation in place, we will not fully protect those individuals. I look forward to the Minister of State's response.

Minister of State at the Department of Enterprise, Trade and Employment (Deputy Robert Troy): I apologise to the House. Strangely enough, I was not able to arrange a pair so I had to go to vote in the Dáil.

I thank Senator Ahearn for raising this important issue and for giving us the opportunity to discuss it. A proposal for a directive on corporate sustainability due diligence was published by the European Commission on 23 February 2022. The proposal aims to address the adverse environmental and human rights impacts arising from the operations of companies and those of their subsidiaries and value chains. Such companies will be required to conduct human rights and environmental due diligence to identify actual or potential adverse impacts and prevent, mitigate or minimise the extent of such impacts within their own operations, their subsidiaries and their value chains. The effectiveness of the due diligence measures must be assessed at least annually. Company directors will be required to take into account the consequences of their decisions in areas such as human rights, climate change and environmental impacts.

Companies will be required to establish procedures to handle complaints from those adversely affected by company operations and from other key stakeholders. The proposal also provides for the designation of supervisory authorities at national level and a civil liability regime in terms of companies who fail to meet their obligations.

The proposal contains a definition for "stakeholder" which is broadly defined and encompasses a company's employees, the employees of its subsidiaries, and other individuals, groups, communities or entities whose rights or interests are, or could be, affected by the products, services and operations of the company, its subsidiaries or its business relationships. I remain committed to ensuring that the interests and rights of all stakeholders are appropriately protected under the proposal and, should it be warranted, consider whether it is necessary for specific stakeholders to be defined under the directive.

I want to reassure the Senator that the proposal is at a very early stage and is ongoing across EU member states. My Department is engaging at EU working party level to clarify the prac-

26 April 2022

tical implications of what has been proposed. Given the complexity of the issues being addressed, negotiations at EU level may well continue through the remainder of this year and, in fact, go into 2023. Decisions on how the proposal will be legislated for in an Irish context will be taken once the directive has been finalised.

Recognising the importance of this directive, my Department has begun a process of engagement with key stakeholders and intends conducting a public consultation on the proposal in the next number of months to help inform the Government's position. Ultimately, in informing the Government's position, it can ensure that we have our ethical values and, indeed, as mentioned by the Senator, our strong track record on human rights enshrined in this directive when it is published later this year or early next year.

Senator Garret Ahearn: I thank the Minister of State for his detailed response. He is right that the proposal is at a very early stage and the most important aspect to take into account is his openness. He has said that he is "committed to ensuring that the interests and rights of all stakeholders are appropriately protected under the proposal and should it be warranted consider whether it is necessary for specific stakeholders to be defined under the directive", which is a fair reply and I thank him.

Ms Mary Lawlor, the UN's special rapporteur for human rights defenders, has requested a meeting with the Minister of State and his Department. I hope that he is willing to meet her because she can give a very good insight, from her perspective, on her work around the globe to protect human rights defenders. Her insight will give us a good insight into the role that we can play as Members, the Government and the Department. I would be grateful to the Minister of State if he meets Ms Lawlor.

Acting Chairperson (Senator Victor Boyhan): I thank the Minister of State for his very comprehensive reply and written response. It is one of the most comprehensive responses that I have ever seen here for which I thank him and his officials.

Deputy Robert Troy: I wish to reassure Senators that we, as a country and a Government, are very supportive of the objective of the proposed directive, which will promote responsible business conduct. I am aware that some stakeholders have expressed concerns about the perceived shortcomings of the proposal. I recently met representatives of the Irish Coalition for Business and Human Rights and I look forward to hearing the views of all those with an interest in this proposal.

I believe that it is important that we do hear all views on this important matter. I confirm that I intend to host an event in the coming months to open a public consultation with stakeholders in order to ensure that we have a robust discussion on the obligations and responsibilities of the companies regarding the environment and human rights. In doing that, we will inform the Irish position on this directive and ensure that our values can be enshrined in it.

I have no difficulty in facilitating the Senator's request to meet Mary Lawlor. My office may already have offered a date to her. If not, we will certainly offer a date to her before the end of the week. It is an important directive and it is important to have broad consultation and engagement in order to inform the Government's position. I look forward to leading on that.

Cuireadh an Seanad ar fionraí ar 3.20 p.m. agus cuireadh tús leis arís ar 3.35 p.m.

Sitting suspended at 3.20 p.m. and resumed at 3.35 p.m.

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: For its information, I advise the House that our superintendent, Ms Teresa Dolan, has tendered her resignation and has left the service to move to the Department of Justice. On behalf of Members, I wish her well and thank her for the outstanding, diligent and committed work she did while she was here. She is a person of the utmost integrity, ability and dedication. We wish her well in the future. It is significant that in the 100 years of the House, she was the first female superintendent. Mr. Noel Murphy is going to take on the responsibilities as superintendent. He is well-known to us all and very well liked. He is highly respected within the parliamentary community, not least for the outstanding work he has been doing for many years in the committees section, including for the Joint Committee on Foreign Affairs and Defence and the North-South Inter-Parliamentary Association. We wish him well in the duties he is undertaking.

The position of captain will be occupied until further notice by Mr. Liam O'Brien, formerly of the communications unit. He has spent two years working in the superintendent's unit. We are grateful both to them and to our retiring colleagues who are moving on for the roles and responsibilities they have fulfilled and will fulfil, and for their assistance. We wish them well.

I know colleagues are aware of the sad passing of Mr. Michael O'Kennedy who was a Member of this House. He passed away on Friday, 15 April. He was a native of Tipperary and a Nenagh boy at heart. He excelled as a student, winning prodigious scholarships before qualifying as a barrister. He joined Fianna Fáil in 1957 and won a seat in Seanad Éireann in 1965. During his term, he was chosen as a member of the Committee on the Constitution, a special all-party review group on the Constitution. Following his first term in Seanad Éireann, Michael won a seat in Dáil Éireann in 1969 where he would go on to represent his beloved Tipperary for more than 30 years. He held six different ministerial posts and was hailed for his work in diverse areas, including foreign affairs and economic planning. Michael campaigned for Ireland's membership of the European Union and held a strong belief in a confident and outward-looking Ireland that embraced the ideas of European co-operation. He served as a European Commissioner in the early 1980s. Michael has left an extraordinary legacy, spanning almost 40 years of political service. At this sad time, our thoughts are with his family and on behalf of the House, I convey my sincere sympathies to his wife, Breda, and his children, Brian, Orla and Mary. We also extend our sympathies to his extended family and friends for their sad loss. Ar dheis Dé go raibh a h-anam.

An tOrd Gnó - Order of Business

Senator Regina Doherty: I welcome everybody back. I am looking forward to a productive number of months ahead. I will move a motion for the expression of sympathy by the House at the end of the Order of Business.

Today's Order of Business is No. 1, motion re the Data Protection Act 2018 (Section 60(6)) (Office of the Ombudsman) Regulations 2022, back from committee, to be taken on conclusion of the Order of Business without debate; No. 2, Online Safety and Media Regulation Bill 2022 - Committee Stage, to be taken at 4.45 p.m. and to adjourn at 7.30 p.m., if not previously concluded; and No. 3, motion re the proposed approval by Seanad Éireann of a proposal for the regulation of the European Parliament and of the Council on automated data exchange for police co-operation, Prüm II, to be taken at 7.30 p.m., to conclude after 45 minutes, if not previ-

26 April 2022

ously concluded, with the opening contribution of the Minister not to exceed five minutes, all Senators not to exceed five minutes and the Minister to be given five minutes to reply.

Senator Lisa Chambers: I support the Order of Business as outlined by the Leader. I will raise a number of issues. I alert everybody in the House that Saturday, 30 April is the annual Mayo Day celebration. I invite my colleagues to attend if they would like to visit Mayo. It is a festival we started a number of years ago and we were the first county in the country to do so. That is not a surprise because we like to shout about our Mayoness. This year's theme is home to where the heart is and home to Mayo. It is about getting people back to the county and getting all our diaspora back to visit. There are many events on for the day, including in the fields of music, culture, art and food. There will be a lot happening across the county. People can link in online as well. I look forward to welcoming anybody who would like to visit; I ask them to give me a shout.

Senator Timmy Dooley: Councillors in particular.

Senator Lisa Chambers: In particular, but also my colleagues in the Seanad of course.

Senator Gerard P. Craughwell: Galwegians would not be welcome there.

Senator Lisa Chambers: Everyone is welcome. The Senator knows we are the most welcoming county in the country.

I also welcome the recent announcement of the Brexit adjustment local authority fund, where we had approval for seven projects throughout the county, including Ballina Quay, Rosmoney Pier and Killala Harbour to name but a few. We are a large coastal county so money like this is very important. We are trying at present to update our marine strategy and our marine policy, and encourage local fishing communities to survive and thrive in what is a very important part of our local economy. I wish those projects well.

I would like to raise an issue which, I suggest, we might put on the agenda at some point for discussion in the Chamber, namely, the ongoing cost of childcare and access to childcare places. My little boy started in crèche yesterday. Thankfully, we were very lucky to get a place in a brilliant local facility. I feel fortunate to have that place for him but many families are struggling to get childcare places and when they do, not so much in rural areas but particularly in our cities and other urban areas, the cost is astronomical. A show on RTÉ last night highlighted how much this cost is crippling families and, in particular, how it is making it more difficult for women to return to the workplace. That is half our population and if we do not allow women to return to work when and if they want to, we are doing our country a disservice.

The cost of childcare is something we should debate more openly in this House. We have a new programme or policy in place with the Minister for Children, Equality, Disability, Integration and Youth, Deputy O'Gorman, whereby there will be core funding specifically for childcare facilities. The Minister has yet to publish guidelines as to how this money will be allocated so I would welcome a debate with him. It is my view that we should ultimately move to a public system of childcare, publicly funded and publicly run, to complement the private sector that is there. Currently, all we have are private facilities. As a country, we need to acknowledge that we have the third most expensive childcare in Europe with no sign whatsoever of those costs reducing. It is an important issue for a significant cohort of the population.

I will draw attention and invite all Members to the women's health policy conference I am

hosting in Smock Alley Theatre. It is taking place this Thursday, kicking off at 9.50 a.m. and running until 2.30 p.m. We will cover issues such as menopause, menstrual health, fertility - including IVF and surrogacy - mental health and eating disorders, in addition to a look to the future of healthcare in Ireland. Everybody is most welcome to attend. It is a very good and positive event because it will be a full day dedicated to addressing the deficiencies in women's healthcare as well as a positive outlook on what we can do to fill those gaps in service and provision of care to women in Ireland.

Senator Mary Seery Kearney: I draw the Leader's attention to the fact that today is the 36th anniversary of the explosion at Chernobyl. It was the darkest day in the history of humanity because of its everlasting consequences. In 2016, Ms Adi Roche was invited to speak before the UN General Assembly on the fact that we need a day of remembrance, that Chernobyl is something which can never be consigned to history and that it is very important we remember the ongoing suffering from generation to generation. I had the honour of chairing the press conference held by Adi Roche this morning to mark the 36th anniversary. Ms Raisa Miknovitch Carolan spoke during it. She is now a fine young woman with a master's degree in criminology, but she spoke of her experience in an orphanage with the disabilities that flowed from being a child living with the consequences of Chernobyl. She spoke very nobly about how she has overcome that. She was one of the Chernobyl children who visited Ireland and was eventually adopted by her Irish family. She gave strong testimony of her current support of children with disabilities in Ukraine, of their experiences in Ukraine and of supporting them in coming to Ireland. As the Leader knows, I have been involved with organisations in Ireland in supporting them to bring children with disabilities here.

This morning, Adi Roche spoke with the passion with which she inspires me about up-to-date reports from the Chernobyl exclusion zone and the additional harm done there by the Russian takeover of the plant. They have now left but while there, they set fires, dug up areas and exposed the area again to radiation. Five coachloads of Russian soldiers were taken away very ill as a consequence of radiation poisoning. The people in the community are again being harmed. This morning's press conference highlighted the ongoing threat from the Russians around Chernobyl who are weaponising it against the global community. There are also 15 other nuclear facilities in Ukraine and the potential threat of them to be used as a weapon of war. The call this morning was for the UN to come out and state that these are no-war zones and that they cannot possibly become a threat and be weaponised in the manner implicit in some of the statements from the Russian leadership. I wanted to put this on the record here and to recognise that we will never forget the people of Chernobyl and the generations that continue to be impacted by it.

Senator Gerard P. Craughwell: I find myself wanting to agree with most of what Senator Chambers just said. We need a debate here on childcare. There is not a family, particularly in cities, which is not finding it extremely difficult. I compliment her on the conference on women's health. Maybe some of my younger male colleagues might do something similar for men. I am a bit over the hill myself. The bit about Mayo I can just about stomach but we will get over that.

We are coming to a time when the Minister for Public Expenditure and Reform, Deputy Michael McGrath, will have to deal with public service pay. My former colleagues in the Defence Forces in PDFORRA and the Representative Association of Commissioned Officers, RACO, have both balloted their members and both want to be allowed to affiliate with the Irish Congress of Trade Unions. It is imperative that the Minister for Defence engages with both

26 April 2022

organisations immediately. Let us put this thing to bed for once and for all. It has been going on for far too long.

There are a couple of issues that need to be addressed urgently in respect of refugees arriving from Ukraine. The initial support for refugees coming from Ukraine is beginning to find cracks coming into the system. While the Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien, is doing a tremendous job and all the other Cabinet members are rolling in behind that to get the job done, there is resentment building up in respect of two areas on which I am being contacted. One concerns those coming from other countries where there is war such as Afghanistan, Yemen and Syria, who are not being treated in the same way. It has been suggested to me that there is a form of racism now finding its way into our system. This is something of which we must be very careful. The other is the young people in Ireland who cannot get into housing. They are now beginning to ask why this can happen for those people but not for themselves? We need much more explanation and people need to be made aware of what exactly is going on. Sympathy wanes very quickly in this world. We all know that. I have been on the border there and my colleague, Senator Dooley, has been there. By God, if you have been out there the sympathy would not wane but that is not the point.

Today, I also heard that we are bringing military barracks back into service. I do not know how many of them we have left. I think we flogged off most of them and the ones that we did not flog off we let go to rack and ruin. Mullingar is a prime example of a place that is available and should be used. I do not know what the situation is in Castlebar barracks. I do not know if it is gone but it was in poor repair anyway. I believe the barracks in Longford belonged to Longford County Council. We need to explain to people and we need to prepare any barracks we have around the country. Sadly, there is a lesson we can never forget, which is that we need to rethink the selling off of assets that we may need in the future.

Senator Vincent P. Martin: On behalf of the Green Party-Comhaontas Glas, I note we would like to associate ourselves closely with the thoughtful remarks of condolence to the family and friends of the late Michael O'Kennedy, SC. He had a decorated career in politics and wore it so lightly. I had the privilege of sitting close to him in the Law Library, which was in and of itself a collegiate hotbed. The late Brian Lenihan sat close by, as did Henry Abbott, Willie Penrose and others. He was such a reserved gentleman and a committed European.

I remember once we had a VIP visitor in Coláiste na Rinne i gcontae Phort Láirge. I assume the best china was put out for Michael O'Kennedy, whose son was in the Gaeltacht. He was so accessible to young children. It was at a time when we only had a few channels on television and it was a real red-letter day to have of senior politician visit the college.

I would also like to make a suggestion, if it is appropriate, although maybe it is for another day. We can table a separate motion. Another former Member of the Seanad has passed from this mortal coil and that is the late Jimmy Leonard. Although he had short service in the Seanad, he was a former county councillor and Deputy. The late Jimmy Leonard was a man of deep principle and conviction, and I know that is probably a phrase that has become so well-worn that it loses its effect. We do not see as many conviction politicians as perhaps we did in yesteryear.

I think history will be very kind to him on his stance in leadership battles within his party, which were democratic and fair, and on the Anglo-Irish Agreement, when there was resistance from within his party when it was in opposition. I would like to sympathise with that family.

Indeed, his daughter, Ann Leonard, went on to become a Member of this House. His stay in this House was short-lived. Members may recall it was at the time of the election of two people who supported the hunger strikes. I refer to the tragic loss of Kieran Doherty in Cavan-Monaghan and Paddy Agnew, which may have cost Charles Haughey a term in government. Jimmy Leonard was resilient, however. He got back up on the horse and won the next time. From my recollection, Fine Gael had the privilege to appoint the Ceann Comhairle, which reduced that constituency from five to four seats. This would make it much more difficult for Fianna Fáil to hold on but it won three out of four. That was due in no small measure to Jimmy Leonard, although he could not withstand pressure from the republican movement when a hunger striker was elected. He became unstuck on that occasion. He was resilient and an utter gentleman to his fingertips, like Michael O’Kennedy, SC. I would like to convey our sympathies to the families of both of those wonderful people.

Senator Mark Wall: I join with my colleague, Senator Craughwell, in the call for the Minister for Defence to come before us once again and to allow both PDFORRA and the Representative Association of Commissioned Officers, RACO, to affiliate with the Irish Congress of Trade Unions, ICTU. It is a call a number of us have made in this House. I raised it with the Minister recently when he was in here. As the Leader will know, he is due to come back and speak to us on the Commission on the Defence Forces and hopefully that can happen very quickly.

It was very heartening to see 85% of RACO members recently vote to allow the affiliation of that particular organisation with ICTU and, obviously, to join with PDFORRA. I would ask the Minister to consider that. With pay talks in the air at the moment, it is very important that both PDFORRA and RACO take their rightful place at ICTU and at the negotiation table.

I also want to raise with the Leader the recently announced regional aid maps. The press release from the Department states:

Regional Aid is a form of state aid funded by the Irish exchequer that can be given to enterprises to encourage investment and job creation in economically relatively disadvantaged areas. The Regional Aid Map identifies the areas within Ireland where Regional Aid is allowed under EU rules, as set out in the Commission’s Regional Aid Guidelines.

[...]

On foot of these guidelines, in recognition of the strength and improvement in Ireland’s economy since 2014, the European Commission reduced the overall size of the population area of Ireland that could be covered by ... [the] Regional Aid [maps]. This was part of a European wide review. Originally the maximum allowable coverage for Ireland was proposed [according to the statement] to be 25.64%, but following intensive negotiations with the Commission, it ... [was raised to] 35.9%.

Importantly, the reason I am raising this today is that the press release states: “While there is a reduction in overall coverage, some or all of each county included in the previous map is included in the new map approved today by the Commission.”

The Athy municipal district, MD, which is the area in which I live, had been part of the map from 2014 to 2022. However, in the recently-announced map, the Athy municipal district has been removed and no other part of County Kildare has been included. The Athy MD was included for very specific reasons in the previous map and, unfortunately, to the greatest extent,

26 April 2022

many of those reasons have not changed in recent years. Enterprise has not been located in the Athy municipal district to provide much-needed employment, so the municipal district's removal is worrying, to say the least. We have seen progress on the new road in Athy and a number of other tourism-related projects, making Athy an attractive place to move to and raise a family. What we need now is enterprise to provide employment. The Athy municipal district, including the towns of Athy and Castledermot and the wonderful villages of Nurney, Ballitore, Calverstown, Narraghmore and Kilberry, needs an additional stimulus to attract enterprise and employment, and its removal from the regional aid maps needs to be explained by the Minister, who might come before the House. I have written to him today seeking an explanation as to why the Athy municipal district has been removed from the regional aid maps.

Senator Timmy Dooley: While many homeowners and electricity consumers will receive the €200 discount as compensation towards the spiralling cost of energy over the coming days, a number of others, unfortunately, will not. In certain multiple-apartment blocks, there is a single meter point reference number, MPRN, and the residents in the various apartments are facilitated through a pay-as-you-go system. Unfortunately, however, the electricity suppliers are providing the €200 rebate to only one MPRN in each block. We need to look into that and perhaps it could be taken up with the Department of the Environment, Climate and Communications. I am aware of at least one apartment block in County Clare, comprising nine apartments, whose residents prepay for their electricity per unit on one meter. Because the complex is served by only one meter, the refund of €200 will be returned for the entire block, which is expected to be split between the nine apartments. That is not fair, given each individual unit will have its own costs, and it needs to be addressed at the earliest opportunity.

Senator Jerry Buttimer: I thank the Cathaoirleach for raising the sad passing of Michael O'Kennedy and sympathise with his wife, Breda, and family. I got to know the late former Minister in his retirement. He was a gentleman and was always encouraging to me despite any political differences we might have had. I also wish to be associated with the remarks regarding Jimmy Leonard and extend my sympathies to his family.

Will the Leader invite the Minister for Foreign Affairs to come before the House? This week, a district court in St. Petersburg disbanded and banned the largest LGBTQ+ organisation in Russia. This, again, shows the ongoing disregard the Russian authorities have for human rights and minorities, not least the LGBTQ+ community. I ask for a debate to take place on the issue as a matter of urgency. It is an issue born of ideology and nothing else, and we need to call it out. Anybody who supports this type of regime or activity needs to question himself or herself. I hope the Minister will come before the House as a matter of urgency.

Second, I call for a debate with the Minister for Further and Higher Education, Research, Innovation and Science, Deputy Harris, on technological university reform. He has been proactive in the area of the apprenticeship and skills shortages and in addressing and tackling that issue, and I commend him on that. It is in line with both his wider ethos and that of his Department regarding better access and a clearer pathway to higher education.

Finally, I propose we invite in the Ministers for Enterprise, Trade and Employment and Social Protection. Anecdotally, I have heard that Ukrainian people who, having come to this country, are offered work and want to take up full-time work have been told they can work no more than 20 hours or they will lose all their social welfare benefits. At a time when employers are calling out for people to work and when there are staff shortages in many areas, can we have a debate on this issue and more? To be fair, the people in question wanted to work for the full

40-plus hours and we need a debate on work as a matter of priority in this House.

4 o'clock

Senator Sharon Keogan: On two occasions in the past two months, the Minister for Health, Deputy Stephen Donnelly, has taken it upon himself to voice Ireland's support for the international pandemic treaty put forward by the World Health Organization, WHO. This is a legally and politically binding convention that would dictate signatories' response to future pandemics. While we are all eager for the lessons learned over the past two years to be consolidated and critically examined, it does not behove the Minister to speak for the people of Ireland in this manner. This would amount to a piecemeal signing away of sovereignty.

Senator Jerry Buttimer: On a point of order-----

An Cathaoirleach: Senator-----

Senator Jerry Buttimer: I do not want to have a row on the Order of Business today but I would just make this point to Senator Keogan. The Minister for Health is not signing away sovereignty. He is not doing any of that, as the Cathaoirleach knows. This is important. Words matter.

An Cathaoirleach: I know. The Senator-----

Senator Jerry Buttimer: I am sorry but I want to make this point, with respect. I am good man for the heckling and I am a good man for raising the political gallop, but our words in this Chamber, and in these Houses of the Oireachtas, matter. The Cathaoirleach, as the presiding officer, has a duty not just to us, as Members, but to the people watching with regard to the false information being given by certain Members. I am making this point deliberately about false information. The Minister for Health is not signing away our sovereignty. He is not.

Senator Sharon Keogan: Could I just-----

An Cathaoirleach: To be fair to everybody, this is a debating Chamber. People are entitled to their points of view. They know the Standing Orders. If someone is in breach of the Standing Orders, I will deal with them. We can interpret the Standing Orders. I would like people to be fair-----

Senator Jerry Buttimer: I am being respectful.

An Cathaoirleach: I am not the judge of what people say here.

Senator Jerry Buttimer: May I pose a question? Does the Cathaoirleach actually believe the Minister for Health is signing away our sovereignty? The Cathaoirleach knows that he is not.

An Cathaoirleach: My role here-----

Senator Jerry Buttimer: We should not allow these untruths to be perpetrated in this Chamber. That is the point I am making.

An Cathaoirleach: My point is, and I think Members would all agree, that this is a debating Chamber. Nobody agrees on-----

26 April 2022

Senator Jerry Buttimer: It is a debating Chamber based upon fact. I could make the point that that Cathaoirleach's tie is green when it is not.

Senator Sharon Keogan: May I finish?

Senator Jerry Buttimer: As a matter of fairness-----

An Cathaoirleach: Senator Buttimer-----

Senator Jerry Buttimer: We need to call out untruths.

An Cathaoirleach: -----has have made his point. Senators are entitled to respond in the time available to them. However, Senators are also entitled to their opinions and points of view.

Senator Jerry Buttimer: Yes, but they are not entitled to say the Minister for Health is signing away our sovereignty when the Cathaoirleach knows-----

An Cathaoirleach: That is an opinion.

Senator Jerry Buttimer: The Cathaoirleach is an avid institutionalist. He knows the Minister is not doing that.

An Cathaoirleach: People have expressed opinions like that in relation to countless-----

Senator Jerry Buttimer: But the Cathaoirleach knows he is not.

An Cathaoirleach: People have made statements and have given their opinions in this Chamber. They are entitled to do so under Standing Orders and they have done so in relation to successive referendums, debates and all sorts of legislation. They are entitled to do that. That is what this democracy is about. I ask Senator Keogan to continue with her contribution.

Senator Sharon Keogan: I thank the Cathaoirleach. I appreciate it. The Irish citizen has no say in the governance of the WHO and so any handing over of power and responsibility to this body by our own directly-elected representatives must be thoroughly scrutinised. The treaty is built on the premise that while the technical expertise on how to govern and end a pandemic exists, the political will to do so is missing. Once again an incorrect assertion is being made that the science is settled and that it must be enforced absolutely. This would leave no room for tailor-made pandemic responses suited to individual countries in light of the myriad factors that affect such strategies, namely, population spread, density and age, public health infrastructure, transport systems and topography.

While the full details of the convention will not be finalised until 2023, there is already cause for concern. One such area of concern is that of finance, because an increase in compulsory funding of the WHO by member states would naturally follow in order to allow for the administration of the scheme. Financing resources could be used to encourage compliance with a pandemic treaty. An unknown amount of taxpayers' money could be funnelled into a pooled insurance mechanism, only for Ireland to be cut off from access to such funds if it does not follow the WHO's plan to the letter, making future governments of Ireland and future generations of Irish people further beholden to unelected bureaucrats. Any such sacrifice of sovereignty must be in accordance with the wishes of the people. It is inappropriate for any senior Government official, or any official, to throw his or her weight behind it before a full referendum of the Irish people is held. These shifts of confidence further and further away from the voter contribute to

the ever-increasing democratic decay of our society and must be questioned.

I thank the Cathaoirleach for his patience.

Senator Catherine Ardagh: I join in the comments about Michael O’Kennedy and Jimmy Leonard. Michael O’Kennedy had an unbelievable career, one that many of us would be envious of achieving. My thoughts and prayers are with his wife, Breda, and the rest of his family.

I wish to discuss the serious concerns raised in an article by Ms Elaine Loughlin in the *Irish Examiner* yesterday. It set out the challenges that the Minister of State with responsibility for disability, Deputy Rabbitte, was facing in trying to meet nine disability service managers around the country, with the HSE refusing to facilitate the meetings. There should be no reason for the HSE not to want to engage fully with the Minister of State to ensure she is aware of the serious challenges facing many families of people with disabilities. She came to Crumlin last week and listened for hours to parents and grandparents about the pain and hardship with which their families were struggling. They are not getting therapies or services. We listened to some parents of children now in their 30s and 40s who have never received any intervention from the HSE. Other parents looked on, thinking that that would be them in 30 years’ time. Their children might be two years of age now and need occupational therapy and speech and language therapy, but they might be in the exact same position as those other parents in 30 years’ time, with their children having no services. Some of the parents said that they were 70, their child was 35 and they were his best friends. He had no friends and never received services. They were still waiting for occupational therapy, speech and language therapy and physiotherapy.

That is what the Minister of State listened to. She understands the families’ plight, but for some reason, the HSE is working against her. The refusal by the HSE to attend the meetings with the Minister of State is another blow to families. They cannot understand why the HSE is not attending the meetings when the Minister of State is. This comes at the same time as the High Court has struck down the assessment of needs, AON, process over its incompatibility with the Disability Act. Now, the HSE has to deal with 10,000 AONs properly. This is just taking away more therapy hours from children. I want to know why the HSE is not working with the Minister of State. Please, something needs to be done to help these families. The Minister of State is doing her best but she seems to be up against it.

The comments on childcare by Fianna Fáil’s leader in the Seanad were important. As all of us have stated, this House needs to be pushing for public childcare because it is not working in the private system. In this context, we must not forget children with disabilities. There are no proper early intervention programmes for preschool children with disabilities. This matter needs to be pushed with the same gravity as we are pushing for childcare for children who do not have disabilities.

We are seeking an update on the summer provision programme. The Department of Education has not given us any information. We are in May now and the programme is meant to run in July, yet we have no update for parents on what will happen. Parents and children are in limbo.

Senator Maria Byrne: Today, the National Transport Authority, NTA, launched a report on transport infrastructure in Limerick and Shannon. The report is going out to public consultation. The northern distributor road is a key road, linking Moyross to the University of Limerick and on to the main Dublin road. This road has been debated high up and low down for three

26 April 2022

years, but it has suddenly disappeared from the report. I understand that this has happened at the intervention of the Minister. That is not acceptable. This issue was highlighted by many people during today's public consultation meeting. The people of Limerick want the northern distributor road included. I would like the support of the Leader in that regard. The links with Shannon have also been highlighted in the report. I congratulate Shannon Airport for being one of 200 airports to reduce their emissions and for being recognised Europe-wide. Although there has been the debacle of the four-hour waiting time in Dublin Airport, there are no queues in Shannon Airport. It is time we used our regional airports. Shannon Airport has a new baggage scanner. It is not even necessary to take one's laptop out of one's bag in Shannon Airport. Somebody on the radio recently said it was a dream to go through that airport. It is time we encouraged people to disperse and to use our regional airports because as a Government we have invested in regional airports and I thank the Government for these investments. It is time that we, the public, used our regional airports and did not concentrate all our eggs in one basket.

Senator Annie Hoey: I stand here as a member of the LGBTQIA community to express my condolences and sadness at the murders of Aidan Moffitt and Michael Snee that happened during the Easter recess. I am thinking of all of us in our own community and the community of Sligo as we process these senseless acts of violence. These increased acts of violence against LGBTQIA people have not happened in a vacuum. Homophobia, transphobia and biphobia are scourges. Some things the Government can do now to improve LGBTQIA people's lives are to ban conversion therapy, fund trans healthcare, establish legal recognition for non-binary people, support LGBTQIA NGOs and initiate inclusive sex education in schools. While the call for hate crime laws is coming from a well-meaning place, I do not believe these laws will necessarily stop attacks. We need to tackle homophobia at source and create a society where there is no room for hatred.

The second issue I raise is the return to fully in-person learning in our further and higher education institutions. Higher education institutions are sending out their schedules for the 2022-23 academic year at the moment. It is noticeable to see a plan to return to the ableist attendance policies over ensuring full accessibility. Nobody is claiming that recorded lecturers are replacing the quality of in-person teaching. Rather, recorded lectures and other such things are a tool in the education institutions' arsenal for improving accessibility. Recording attendance at lectures for all lectures is just a lazy way of ticking boxes for key performance indicators, KPIs, and is not a metric that accounts for any quality in learning. By returning to fully in-person learning with no options for access outside of just literally showing up, institutions are ignoring the voices of disabled students, students with long-term or chronic illnesses, parents, carers, students for whom English is not their first language and neurodivergent students in order to maintain the *status quo*, which is silly because we know we can do better. We just do not want to. It has been so disappointing over the past few days to see that some institutions have not learned anything from the Covid-19 pandemic and we are now seeing a move back to the ableism of attendance policies.

We have a Minister dedicated to further and higher education and yet we see this ableism continue under his watch. Removing accessibility options for students is ableist and is not good enough.

Senator Pat Casey: We have all been out in our communities in hubs that have been provided for our Ukrainian refugees and we have seen the incredible volunteerism in the country. Part of that is the great role the community employment, CE, schemes are beginning to play to provide services in community settings. Community employment scheme and volunteering

cannot be sustained at the levels we are asking in the medium and long terms. I have been told by a number of CE managers - the Leader will know this from her previous brief - that there is a huge skills shortage, never mind looking for somebody to go on a CE scheme, which it is even harder. The issue the CE scheme managers raised with me is that the Ukrainian refugee has to be in the country for a year before he or she can qualify for a CE scheme. The people and the families I have met want to be part of the solution and to solve the problems they are facing, and they are willing to partake in community employment schemes that are providing these services.

We are looking at more community settings in which to place refugees which will place further demand on communities to provide these services. From her previous role, the Leader will understand this. I also raised it with the Taoiseach last Thursday and he said he would raise it. However, I have been asked me to raise it in the House today with the Leader because she would have a full understanding. They just want to be part of the solution. Why are we asking them to wait a year to go onto a community employment scheme?

Senator John McGahon: A debate that has taken place in other parliaments around the world, most notably in the United Kingdom in the Scottish Parliament and in the French Parliament, is the concept of and debates around long Covid. That is what I would like to ask for today. At some stage in the next couple of months it would be very useful to have the Minister for Health in here for a debate on long Covid. It is a totally new entity that we do and do not know much about. I would like to hear what the Government has to say using the best knowledge, the best science and best data that is available to the top health professionals in this country on what type of a strategy it should implement and what our views around long Covid are. It is difficult to define it and I am not asking for that. However, I would like to know what we are putting in place to deal with cases of long Covid. I know we can all come in here and give anecdotal evidence and different bits and pieces, but I would love to know the actual data in the HSE and our hospital systems in terms of long Covid, as well as what plans and what we are trying to put in place as a Government and as a country to deal with long Covid as it continues on. That would just be a very useful debate to have.

We have had so many good debates over the past two years about the whole aspect of Covid, and this is the next stage of the pandemic and of the world that we find ourselves in. We are very much back to normal as a country, and that is great. This is what living what Covid is and it is exactly what it should be. However, I would love to have a greater insight and a greater debate as to what long Covid looks like and what the Government and HSE view long Covid as. If we could schedule that at some time in the near future, it would be a useful debate for all of us.

Senator Victor Boyhan: I would like to ask, and I know others have, for a debate on the Ukrainian refugee crisis. I use the term “refugee crisis” rather than “migrants”. There is a very clear difference between a refugee and a migrant. That is clearly understood by many in terms of international best practice and the work of the Organization for Security and Co-operation in Europe and other organisations that work in this area.

We had a briefing today at the Oireachtas Joint Committee on Housing, Local Government and Heritage by the Minister’s officials who set out very clearly his desire to do something. I think everyone across these Houses is fully committed to it. The Minister’s officials emphasised the importance that any response regarding the refugee crisis was over and above the expectations in terms of Rebuilding Ireland, which is important. It is also important that we state that many people coming from Ukraine will wish to stay here, which is great. Not all, but many

26 April 2022

of them will want to stay in our communities. Therefore, it is important that we start integration and communications policies. We need to address their critical and acute needs. These people have suffered terrible trauma. We recognise their desire to continue to learn their native language. We should put in place the supports around their education, psychological welfare and health welfare. There are many facets to this very difficult and complex issue.

I fully welcome the idea that they are coming here. I support the Taoiseach and the Government in their unequivocal support for bringing people here. As the Taoiseach said, their home is our home. I actually believe that, and there are great opportunities. In any crisis, and I do not like using the word in this particular situation, but there are always opportunities. There are new people, new ideas, new ways of doing business, different cultures and different traditions. Let us welcome them.

However, we need to put in place policies. I caution one thing. Let us be very careful about how we protect young people and families that are vulnerable. We should have learned that many years ago. This will happen if we do not carefully monitor and support them and recognise that vulnerable people get taken advantage of. We, as policymakers, must put in place the necessary policies to protect these vulnerable people. Again, let us welcome them with open arms and support them.

Senator Erin McGreehan: I want to stand to support my colleague, the Minister of State, Deputy Rabbitte, in her Department. We have to be very clear. It is a very sad state of affairs when a Minister of State requests a meeting with employees under her remit and that access is denied. We need to be very serious about these things. The independent republic of the HSE will have to come into the reality of our democracy and should be answerable to the Minister and accountable to all of us as politicians and citizens of the country. On a positive note, I wish to highlight an incredible event that happened last Sunday at my local athletic club, Glenmore Athletic Club, and congratulate those involved. The club organised an event in conjunction with the Louth-Meath branch of Down Syndrome Ireland. We had a “come try” athletics day and children from all around the country attended the club in the Cooley Peninsula. They used our track to try out athletics and many volunteers were involved. The children in our club attended. One member of our club with Down’s syndrome, Mr. David O’Hare, has represented Ireland on an international level. We are proud of him. We wanted to open up our club to everybody and to become more inclusive. The children involved tried the long jump, sprints and javelin. It was a powerful and empowering day. My children got a lot out of it. They told me that the other children were very supportive of one another while still being competitive. I highlight that as an initiative other athletics clubs can copy. The event benefited everybody in our community.

I request that the Leader arranges for the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media to attend the House, engage in a debate and talk about how we are going to make all our sports mainstream and inclusive. Just because people have disabilities does not mean they should not take part in the same competitions, clubs and everything else as other people, whether they are our neighbours, friends or cousins. I welcome that initiative from Glenmore Athletic Club.

Senator Barry Ward: In the centre of Dún Laoghaire, there is a beautiful old fire station that operated for many years as an enterprise centre. In recent years, a decision was made for that building to become the new site of the Educate Together school that is due to be based in Dún Laoghaire. Since that decision was made a number of years ago, nothing has happened.

I understand the building is now in the ownership of the Department of Education but nothing has happened to progress the siting of the school at that location to the enormous frustration of the people involved in the school community and the people who live in the area and are looking at this de facto derelict building. I gather the roof is full of pigeons. It is not doing the building any good as time goes on. It is enormously frustrating when these decisions are made, flagged and progressed up to a point but no further action appears to take place. The council cannot help with the issue because it no longer owns the building and the Department seems either unwilling or unable to act and progress the project. This is repeated in many other places. We should be examining these issues in the Chamber and making sure that when such commitments are made, there is a way in which we can ensure action is taken and communities are not left standing around and waiting for what they know is going to happen to actually happen. That drives people insane and it is easy to understand why.

Senator Malcolm Byrne: We were fortunate to welcome the Ukrainian ambassador, H.E. Ms Larysa Gerasko, to Gorey yesterday. It was an emotional day during which she met local families who have been supported by schools in the community and by voluntary activity. There is a drop-in centre at Gorey Youth Needs Group where people come to provide information. Active groups have sprung up around the county, including in Riverchapel and Kilmuckridge, where Councillor Mary Farrell is actively involved. Support groups have also sprung up in Rosslare and in communities around the country. While others have spoken about this issue, we must acknowledge all the voluntary groups who are opening their doors and hearts to try to provide support. Many of the Ukrainian families arriving here have questions they need answered and it is important that we put structures in place to do that. One of those questions is around Ukrainian teachers and whether their teaching qualifications will be recognised. We have shortages in particular subject areas and the matter needs to be addressed quickly with the Teaching Council. I ask the Leader to raise that matter with the Minister for Education.

I join with Senator Hoey. Since the Seanad last sat, we have seen the terrible killings of Aidan Moffitt and Michael Snee. We also saw the attack on Evan Somers in Dublin city centre. All of the signs point to the fact that the only reason these people were attacked was because they were gay men. There is much to celebrate in this country, we have come a long way and it is a much more open and tolerant country than it was in the past. However, this shows that we still have a long way to go. Words count and language matters and the words and language we use in these Houses, whether somebody is part of a minority or is a refugee, is something that counts. I am conscious of Senator Buttimer's remarks and it would be appropriate that coming up to the anniversary of the marriage equality referendum we would consider having a debate on the rights of LGBT+ people in this country. We should celebrate how far we have come and discuss how far we need to go.

Senator Garret Ahearn: A number of months ago we had the great announcement of sports capital grants for about 1,900 successful applicants across the country and some €140 million was invested into sports clubs, which has been hugely welcomed by those clubs. It is the largest sports capital investment that has been given to clubs since the measure was reintroduced by a Fine Gael Government a number of years ago.

An appeals process is taking place and €6 million in funding has been put aside for same. A GAA club in Tipperary, Clerihan GAA, was unsuccessful on the first round. It has made some changes to its application and has put in an appeal. Paddy Flannery, John O'Rourke and the committee have put an awful lot of work into this application because they spent an awful lot of money to do some work in the hope that, like the 1,900 clubs that were successful, they would

be successful too.

One of the requests is to find out when a decision will be made and if that club would be successful. My colleague, Councillor John Fitzgerald, has worked with the club on this issue for the last number of weeks to try to make it successful. He has written to the Minister to stress the importance of this town and village, which is a satellite village of Clonmel that has increased in size in recent years because of high employment across Clonmel. The club needs to benefit on the back of that too and I ask the Leader to support Councillor Fitzgerald and me on this application and on any other applications that are put in. When so many clubs are successful more clubs want that funding as well. This is an important application for that area.

Senator Aisling Dolan: I acknowledge that the Minister for Justice, Deputy McEntee, visited Roscommon last week, which was phenomenal. She was there to pay tribute to the Horses for Hope equine centre, which is the first of its kind in Europe and has been opened at Castlerea Prison. It offers people the opportunity to work with animals. We saw many of the prisoners there go on a course over a number of months and they come out with qualifications and have the opportunity to work in these roles once they leave Castlerea. It is wonderful and it has been well funded. It is innovative and empathetic in an area where that would not normally be seen.

The Minister also paid a visit to Donamon Fáilte Centre, which is taking in people from Ukraine. We had young mums with small babies who had travelled thousands of miles to reach a sanctuary in the middle of Roscommon. As has been mentioned, I will be speaking on the supports that will be coming with the Minister for Further and Higher Education, Research, Innovation and Science, Deputy Harris, in terms of a one-stop shop that will be in the National University of Ireland, Maynooth. That will support third level students who are arriving here from Ukraine to continue their studies so they are not left behind in achieving their goals and potential, which is crucial. They have received a welcome and the people we met said they will never forget what Ireland has done for them. I sometimes think we are fortunate and lucky to have people who are coming to Ireland to show us what they can give us. We had young doctors, paediatricians and software engineers in Donamon, all young people who are waiting to contribute to our communities. There were also so many who are looking forward to being able to return home at some point in the future.

Senator Regina Doherty: A number of different topics were raised. I want to acknowledge Senator Dolan's mention of the official launch by the Minister for Justice of Horses for Hope in Roscommon last week. It is part of a wider initiative and conversation we need to have in how we rehabilitate people who are unfortunate enough to find themselves in prison, which Senator Ruane often talks about here. As part of a wider conversation, we need to discuss how we rehabilitate people who are unfortunate enough to find themselves in prison because there is somewhat of a view that they should nearly be put into a black hole and left there as punishment. The whole purpose of the judicial system is to rehabilitate people and make them function in order that they can return to society and behave in a manner that is fruitful for themselves.

A lovely man called Mr. Paddy Richardson runs an organisation called the Irish Association for Social Inclusion Opportunities, IASIO. To my mind, the organisation does not get a fraction of the money that it should get from both the Department of Justice and the Department of Social Protection. IASIO takes people who have come out of prison and make sure that they do not repeat the cycles of the past because, unfortunately, 70% of the people who leave prison find themselves back inside within 12 months. Therefore, we should do anything that we can to prevent that situation. The Horses for Hope programme is a shining example of thinking

outside of the box and what we should do to help ex-prisoners.

In response to Senator Ahearn, although I am not in a position to support the appeal application, I will find out from the Minister when it is expected that the appeal will be adjudicated upon in order that the people who are waiting to get their hands on the €6 million, as the other 1,000-plus clubs did, will have a timeline.

Senator Malcolm Byrne talked about the visit yesterday by the Ukrainian ambassador to Ireland to Gorey, as did Senator Dolan. We are absolutely steeped in Ireland that we have such a large heart for people who are in crisis and need our help. The Irish Red Cross has managed to raise €30 million due to the generosity of Irish people. That is pure cash and does not include all of the reception centres and the giving that people have done locally, which we are all well aware of and been to see them. Long may that generosity continue because this particular refugee crisis, as Senator Boyhan mentioned, will not be over in a short time and I think that it will be with us for much longer.

There are some idiosyncrasies in the system that people now appreciate. Last week, the Minister was kind enough to sort out the driving licence issue. However, in terms of access to community employment schemes and access to social welfare while working, the reason we have speedily taken in refugees and have treated them as though they equate to European citizens is because we relied on the legislation that was enabled in every single European Union member state. Those conditions are the same for every Irish person as they are for every European person who comes here. To make special conditions would require every European state to do the same thing. It is certainly not something that is beyond us, particularly if our new Irish citizens, albeit that they hope to only be here temporarily, can work if they so wish. I will convey messages to the Minister today and I reassure Senator Boyhan that I will organise a debate in the next couple of weeks.

Senators Hoey and Malcolm Byrne referred to the week of the tragic murders of Aidan Moffitt and Michael Snee, as well as the assaults on Evan Somers and another young gentleman, whose name is not in the public domain, from Sligo. I thought that there would have been a much bigger outcry than there was. I came into town on the Friday evening to attend the vigil outside those premises and it was one of the most moving, poignant and sad events that I have ever attended. The choir that evening sang so beautifully and the event was striking. I remembered that people on that day asked why our reaction was not the same as when young Ashling Murphy was horribly murdered in January. I believe it is because every single person in Ireland could either relate to her or knew that she could be your sister, daughter, mother or friend. I do not think that people feel or think the same way about the LGBT community as we did about Ashling, which I think is wrong. Every single one of us could have a brother, sister, friend or relative in exactly the same way but I do not think that we think about it in the same way. I believe that we think about the LGBT community as being something separate and distinctly different as opposed to being part of all of us and it is part of all of us. On the night of the last vigil, I was minded that everybody should be an LGBT ally and be proud to say it and talk about it all of the time, as opposed to just when we see tragedies, disenfranchisement or discrimination. I now realise that something as shocking as happened that week happens week in and week out, but we just do not get told about it and the victims of random discrimination, right up to horrific violence, just suck it up and accept that it is part of what their life is like and that is not acceptable by any one of us or any member of society. We need to start a national campaign of being LGBT allies to make sure that everybody recognises that they are all of us and we are all of them and that we are one community. I pay tribute to the people who organ-

26 April 2022

ised the beautiful vigils all over Ireland that evening, which were poignant.

Senator Ward spoke about progress. I am not sure what to say to him other than maybe we will organise a meeting for his committee with the forward planning team to try to find out its status. The frustration that he described exists in every county. They do not have the reputation of being as progressive as we would like them to be. I can certainly organise a meeting and try to get people sitting around the same table so at least they can get an update.

Senator McGreehan spoke with such passion. She must really have had a good day, as did everybody else who joined Glenmore Athletic Club that day. She made a valid point that we need to have more inclusivity in sport and I will try to arrange a debate with the Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media.

Senator Boyhan asked for a debate on Ukrainian refugees on an ongoing basis. We have one with the Minister for Further and Higher Education, Research, Innovation and Science and I will try to tackle all aspects of what is required for the integration of the people who will be with us for weeks and months, or maybe as the Senator suggested, we might be lucky enough that some of them might stay. A welcome development this week was the establishment of a Cabinet subcommittee to make sure that we have co-ordination across all of our services to look after new people and new residents.

Senator McGahon is looking for a debate on long Covid and our strategy and plans. I can certainly organise that.

Senator Casey talked about the idiosyncrasies with community employment. As he probably knows, people on community employment schemes cannot go from the live register immediately to community employment because we want to try to get them back to work before we put them into retraining. We will raise it with the Minister and I will come back to the Senator about it.

Senator Maria Byrne talked about utilising our regional airports. In recent weeks, we have all witnessed the horrific stories of people having to wait for hours in Dublin Airport. I was in and out of Dublin Airport on Monday and Friday in the week before last. It did a super job, so it is a case of horses for courses. We certainly should use our regional airports, and not only Shannon, but also Cork and the other regional airports.

Senator Ardagh spoke about the Minister of State, Deputy Rabbitte, as did another Senator. Bravo to Deputy Rabbitte. She is getting close to the rub of the issue, which is why she is being pushed back against. Senator Ardagh knows her much better than I do but if I know anything about her, it is that she will not be stopped. A democratically elected Minister of State is being held back by an arrogant cabal of people who do nothing but breach the rights of children and adults who have disabilities and need access to services. What they would be far more mindful in doing would be having a quarterly audit of all the provisions of speech, language, physiotherapy, psychology and occupational therapy services in order that we could see the massive deficits in respect of all the people who do not get what they are supposed to be getting. That is one thing that we do not have at the moment. While we have anecdotal and emotive evidence when we have meetings or large-scale organised events to get parents around the table to support one another, we do not have a list of the people who are waiting or how long they are waiting for. It is not good enough. Bravo to the Minister of State, Deputy Rabbitte. We should make sure she continues to get our support to push back. Being barred from meeting people

who are at the coalface is just beyond belief.

Senator Keogan shared her opinions on the World Health Organization convention on dealing with future pandemics. I contend that there is much more debate to be had before the final details are ratified. The Senator is right that we should have input into it and that it should not be decided for us by other people.

Senator Buttimer sought a debate on LGBTQ rights and I will certainly look at that. He also referred to the debate that we need with the Minister, Deputy Harris, on developing our technological universities. I will organise that as soon as I can.

Senator Dooley raised the single meter point reference number, where there would be multiple family homes or dwellings in a single block. I will raise that with the Minister.

Senators Wall and Craughwell raised the public service pay agreements and the wish of PDFORRA and RACO to affiliate with the Irish Congress of Trade Unions before any negotiations start.

Senator Seery Kearney talked about how we would require a day of remembrance on the 36th anniversary of the Chernobyl disaster.

Senator Chambers opened proceedings by asking for a debate on the cost of childcare, which I will certainly organise. She welcomed the Brexit adjustment funds that were announced this week for our marine, ports and harbour development. She talked about the annual Mayo Day, which is next week and which I am sure Senators will all support, both online and in person. Most importantly, I pay tribute to the Senator for the amount of work she and her team have put into the women's health conference she has organised for next Thursday. Many of us do a lot of work that does not get noticed. Senator Chambers's work has, thankfully, been noticed in recent weeks, maybe for the wrong reasons but there is no such thing as bad publicity. I wish her every success on Thursday and congratulate her on doing something that all political parties probably should have done long before now, but it takes a woman to highlight these issues. Well done.

Order of Business agreed to.

Death of Former Member: Motion

Senator Regina Doherty: I move

That Seanad Éireann –

- expresses its deep sadness on the death of former Senator, Michael O'Kennedy;
- conveys its sincere condolences to his wife Breda and family; and
- expresses its gratitude for his notable contribution, as a member of Seanad Éireann, to Irish public life and for his dedicated service to the people of Ireland.

Question put and agreed to.

26 April 2022

An Cathaoirleach: I ask Members to be upstanding for one minute's silence.

Members rose.

Data Protection Act 2018 (Section 60(6)) (Office of the Ombudsman) Regulations 2022: Motion

Senator Regina Doherty: I move:

That Seanad Éireann approves the following Regulations in draft:

Data Protection Act 2018 (Section 60(6)) (Office of the Ombudsman) Regulations 2022,

a copy of which was laid in draft form before Seanad Éireann on 11th March, 2022."

Question put and agreed to.

Cuireadh an Seanad ar fionraí ar 4.32 p.m. agus cuireadh tús leis arís ar 4.51 p.m.

Sitting suspended at 4.32 p.m. and resumed at 4.51 p.m.

Online Safety and Media Regulation Bill 2022: Committee Stage

Section 1 agreed to.

SECTION 2

Acting Chairperson (Senator John McGahon): Amendments Nos. 1 and 6 are related and may be discussed together by agreement.

Senator Niall Ó Donnghaile: I move amendment No. 1:

In page 8, line 14, to delete "Commission" and substitute "Coimisiún".

I would like to see the legislation amended to delete the word "Commission" and substitute that of "Coimisiún" in its place. This would require amending the Bill in 529 instances so, for today's purposes, we have included a simple amendment to section 2 definitions.

The role of the proposed Coimisiún na Meán in the governance and regulation of media cannot be underestimated in terms of its importance for the future of the Irish language. Sinn Féin believes this ought to be reflected in the Bill through a reinforced Gaelic identity for the body. While it is welcome that the State body is given an Irish language name in legislation as "Coimisiún na Meán", it is subsequently referred to exclusively throughout the Bill as the Commission, whose members are only to be known as commissioners. In popular discourse and debate,

the agency is already being referred to as the media commission before it is even established. We know from an tÚdarás um Ard-Oideachas, which refers to itself almost exclusively in all branding as the Higher Education Authority and the HEA, despite having only an Irish name in law, that State agencies will revert to self-anglicising if provided with any opportunity to do so and this further detaches the organisation from its responsibilities to the Irish language.

The recently passed Official Languages (Amendment) Act 2021 sets out in section 9D that the names of new State agencies should be in Irish only and branding should put Irish to the fore. It is, therefore, perplexing and disappointing that perhaps the first new State agency created by the same Department that gave us the official languages Act chooses to emphasise English language titles and descriptions since its enactment. Consistency would require the coimisiún to be called just that throughout and that its membership would be referred to as coimisinéirí. By reinforcing the Gaelic identity of the body in this way, not only are we adhering to the commitments of a State whose first official language is Irish, and increasing the visibility and helping to normalise Irish in public life, both of which are positives in and of themselves, we are also reinforcing the fact that at its core this commission will ultimately be responsible for monitoring, adherence and implementing language conditions on broadcasters and service providers, in addition to answering complaints and demands from the Irish-speaking community.

Minister for Tourism, Culture, Arts, Gaeltacht, Sport and Media (Deputy Catherine Martin): I thank the Senators for tabling the amendments. In respect of amendment No. 1, section 9D(1) of the Official Languages Act 2003 as amended provides that the name of a statutory body established on and from the commencement of section 4 of the Official Languages (Amendment) Act 2021 shall be in the Irish language. In advance of the commencement in section 4 of the 2021 Act, I decided that what was previously to be known as the media commission should be known as Coimisiún na Meán. This is given effect in section 6(1) of the Broadcasting Act 2009 as amended by section 7 of this Bill and reflects Government policy regarding the title of new statutory bodies. That section of the Act also provides that throughout the Act coimisiún na meán is referred to as “the Commission”. This is an interpretative provision rather than a substantive one. However, I absolutely understand the intention behind amendment No. 1, namely, to delete all references to “Commission” and substitute the term “Coimisiún”. Given the amendment as drafted may not give effect to that intention, I do not intend to accept the amendment. However, I am willing to consider the intention further in the context of Report Stage.

Similarly, amendment No. 6 would delete the term “Commissioner”, as the Senator said, and replace it with the term “Coimisinéir” in section 2 of the Broadcasting Act 2009 as amended by section 3 of this Bill. Again, I understand the intention of the amendment is to require a commissioner to be known as a coimisinéir but am not sure the amendment as drafted would achieve that intention and, therefore, will not accept the amendment. I am willing to consider the intention further in the context of Report Stage. The issue is fundamentally a technical drafting issue and I am willing to bring it back on Report Stage.

Senator Niall Ó Donnghaile: Based on what the Minister has said I am happy to withdraw the amendment while reserving the right to resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator John McGahon): Amendments Nos. 2, 100, 101 and 106 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 2:

In page 8, between lines 24 and 25, to insert the following:

“ “political purposes” means any of the following purposes, namely—

(a) to promote or oppose, directly or indirectly, the interests of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament, or

(b) to present, directly or indirectly, the policies or a particular policy of a political party, a political group, a member of either House of the Oireachtas, a representative in the European Parliament, or

(c) to present, directly or indirectly, the comments of a political party, a political group, a member of either House of the Oireachtas or a representative in the European Parliament with regard to the policy or policies of another political party, political group, a member of either House of the Oireachtas, representative in the European Parliament or candidate at an election or referendum or otherwise, or

(d) to promote or oppose, directly or indirectly, the interests of a third party in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome at a Dáil, Seanad, European or local election, or referendum, such campaign relating to an election for which the polling day has been set by Government or a referendum for which the Referendum Commission has been established, or

(e) to promote or oppose, directly or indirectly, the election of a candidate at a Dáil, Seanad or European election or to solicit votes for or against a candidate or to present the policies or a particular policy of a candidate or the views of a candidate on any matter connected with the election or the comments of a candidate with regard to the policy or policies of a political party or a political group or of another candidate at the election, or

(f) otherwise to influence the outcome of the election or a referendum;”.

I ask Members to have some patience with me as we only got the groupings as we walked in the door, which means I am trying to reshuffle lots of amendments into order to be able to group them. That is obviously not ideal but I understand the pressure the Seanad Office was under to be able to come back to us with those groupings.

I thank the Minister’s officials for meeting us last week to discuss a number of these amendments. We have an issue with the Bill being taken before the Digital Services Act, DSA, even if we know there is compatibility between the two but also the fact the expert group has not come back on the complaints mechanism. As such, there are many reasons we should have stalled this Bill but all we can do at this stage is try to amend it.

The amendment proposes to add in a definition of “political “purposes within the legislation. Under section 9, the principal Act is being amended. Section 46M(2)(a) provides that a broadcaster or relevant media service shall not broadcast an advertisement that “is directed towards a political end ...”. First, I am curious about the term “political end”. I am not sure I have seen it in legislation before, nor is its meaning defined in the definitions section. I ask that the

Minister speak to that specifically. What constitutes a “political end” is unclear as no definition is provided. The term is very vague and risks preventing a broadcaster or digital service provider from sharing information through advertisements in the public interest. If we think about issues like climate change, sexual consent and LGBT matters, there are loads of different things that could be construed as a “political end” yet there is no definition of what that is. While existing legislation curtails political advertising, the provision in this Bill could be misinterpreted to such an extent that important political issues such as the ones I have outlined are conflated with the content of political advertisements. This amendment provides a definition of “political purposes” and complements a separate, later amendment, namely No. 101, that seeks to replace the term “political end” with “political purposes”.

The Bill provides that a broadcaster or relevant media service shall not broadcast an advertisement which: “is directed towards a political end ...”. What constitutes a “political end” is unclear as no definition is provided, as I said. It is vague and risks preventing a broadcaster or digital service provider from sharing information through advertisements. This amendment is closely related to the first amendment and seeks to clarify what is meant by “political end” and insert a useful definition of what “political purposes” are so we are clear about what that means in the context of advertising and broadcasting.

Senator Malcolm Byrne: We have tabled amendment No. 100 on a related issue. It would remove the ban on political advertising on certain forms of media. We have the odd situation at the moment where if I wish to place a political advertisement, I can take one out in a newspaper, in the cinema and on any social media website, including that of my local radio station, but I cannot place one on television or on independent or commercial radio.

5 o'clock

This kind of ban was fine in the past when, effectively, television and radio were incredibly powerful whereas as we now know, much of the emphasis has shifted to social media. The idea that we are limiting where political advertising, either by political parties or others, can take place in certain areas while allowing it in others seems completely ridiculous.

What we would prefer to see happen is the removal of the proposed ban on advertising on radio and television. Instead, the commission would regulate it and the same rules would apply across all media. Essentially, what we would like to see is a levelling of the playing field so that if somebody wants to place a political advert on his or her local radio station, the same rules would apply as if he or she wanted to put it on Facebook, Twitter or whatever. The reason for the prohibition in the past made a lot of sense but in today’s world it is actually discriminatory against the more traditional broadcast media. It would, therefore, make more sense to remove those sections from the legislation and instead allow for the development of a code by the commission.

Senator Shane Cassells: I will join colleagues in speaking to amendment No. 100, in which we are calling for the deletion of that section on the prohibition of political advertisement. I thank the Minister and all her officials for their engagements on the Bill up to today because it is one of the most important pieces of legislation. That should be said at the outset in terms of the Minister bringing forward this legislation in the first place.

Senator Malcolm Byrne is right; during the course of the committee hearings we have held over the past year, many of the traditional media bodies came before us, for example, terres-

trial television, independent local radio and print media. Different rules govern these different media entities in our country, however. All are under pressure. We are, of course, awaiting the publication of the report of the Future of Media Commission. The commercial viability of our media, which will ensure its independence, is also under threat, in particular - and I do not think this can be overstated enough - in RTÉ and Virgin Media Ireland. We have seen the migration of commercial revenue to other platforms. It is not a fair and level playing field if publications such as my own local newspapers can take advertising from me but that cannot happen on my local radio station. Independent local radio stations met with us today and pointed that out to make sure there would be a regulated market.

I do not think anyone here is advocating for the introduction of an American-style attack advertisement platform where, for example, Deputy Madigan might go on RTÉ and say: “Catherine Martin hates puppies - Vote Josepha Madigan. This ad has been paid for by Neale Richmond.” I do not think we are saying that but I do think we are advocating for the opportunity for political parties to actually get their messages across. If we ourselves value democracy, we should be able to actually avail of the biggest platforms available to us. The removal of that section is, therefore, very well-merited.

Senator Marie Sherlock: I am very much taken by the arguments put forward by the Senators proposing this amendment. I have one difficulty, however, which relates to lifting the ban on advertising relating to an industrial dispute. The unforeseen consequence of that is effectively to allow a situation whereby if there is a particularly bitter industrial dispute, an employer can take out advertising to influence the outcome of that dispute and build public support one way or the other. We have laws in this country that try to ensure that an industrial dispute is between an employer and the workers in question. Of course, if other workers come into an industrial dispute, there are very serious consequences for them.

We need to look at the checks and balances here for trade unions and employers in the context of an industrial dispute and the consequence of lifting this ban on advertising relating to an industrial dispute. For that reason, therefore, we would have to oppose the amendment, notwithstanding that I understand there are very good reasons relating to the rest of it. However, because industrial disputes are contained within this section, the Labour Party will have to oppose the amendment.

Senator Alice-Mary Higgins: First, on the general points, the Minister will see there are really strong feelings across this House with regard to this Bill. It is a little bit unfortunate that it is coming slightly prematurely when we had the digital services directive pretty much agreed yesterday. We know there are major areas of policy on which the expert group has not come back and, of course, it is a concern that many of the recommendations of the committee do not seem to be really reflected in the legislation. Again, I know that Senators from all parties played a very active role in the committee and will be keen to see the progress. The fundamental message here is that the Seanad wants to see this Bill improved before it continues on its journey. Even if they might not always align, there are strong ideas across the Seanad as to how it could be improved.

There has been discussion in terms of political parties and political advertisements and such. I take that on board but I would have that concern in terms of inequality. If there were regulations, for example, they really would need to address the issues. We do not want situations whereby, for example, there is a huge amount of online money in an electoral context. That was a huge issue in previous elections and referendums where that question arose. In fact, we

will come later to some of the discussions on advertising in particular. There were questions around the constraints we have and that political donations, for example, need to be reflected in terms of advertising, including the restrictions on overseas payment for advertising. It would be appropriate that there be some level of equity, limitation and cap in terms of what can be spent on advertising during elections. We are all grateful in Ireland that we do not have that kind of money-takes-all approach we see in some countries in terms of elections, which effectively prohibits a huge number of people from participating.

I would be very concerned in respect of the question on industrial disputes, as was mentioned by Senator Sherlock, not least because one of the areas in which we have a huge push for unionisation at the moment relates to online media services themselves. We might look to Amazon workers who are trying to mobilise, for example. We do not want to have a situation whereby advertising from a very powerful company could be used in an industrial dispute. We saw with some of the gig economy workers organising in the US, certainly, that there were very vigorous campaigns against the workers in that context. That is just to mention those caveats.

The crucial point on why we brought forward these amendments is the political purpose and end point. We were promised by another Minister that the unforeseen, possibly, and certainly regrettable consequences of how political purposes were described very widely in other legislation were going to be addressed. In fact, we were promised that the Electoral Reform Bill would address it. It has, therefore, been acknowledged as being a problem. We brought forward legislation on that definition and we were asked to leave our legislation aside because the Government was planning to address it. Yet, we have brand new legislation that is seeking to replicate the exact same problem, that is, this very wide prohibition in terms of political purposes. The thing we have basically been told will be removed and dealt with is now popping up in another context. That is a concern.

To give a small example from my own record, I worked for Trócaire when an advertisement that said someone who is born a girl may face inequality was found to be too political and banned from the radio under the old rules. Trócaire was told that there were political purposes to the advertisement because it was highlighting an issue of policy. No one would dispute the statement of fact that women face gender inequality in society, but that advertisement was deemed too political to be on radio. That is what happens when this clause is used in respect of other media. That is how dangerous it is, which is why inserting it again and reinforcing it without any nuance, consideration or detail is a recipe for the same problem, only worse. At least when these things happen in radio and other media, there is a commons, but if it is also happening in the online space, tracking egregious examples of advertisements getting blocked or particular Internet service providers declining to host an advertisement becomes much more difficult.

Senator Micheál Carrigy: I welcome the Minister. I support the amendment proposed by my colleagues, Senators Cassells and Malcolm Byrne. It is disappointing that we have not seen the Future of Media Commission's report yet. This negatively affects us in considering and tabling amendments. The report should be out in the public domain.

I have no issue with any political advertising as long as there is a level playing field. That is what the commission will be there to monitor.

Senator Malcolm Byrne: I understand the concerns that Senators Sherlock and Higgins have expressed. At the outset, I should have thanked the Minister and her officials. A great deal

of work has gone into this Bill and we are grateful for all their assistance.

In this amendment, we are talking about a level playing field. The reality at the moment is that Amazon has no problem with taking out adverts on all social media channels if it wants to. The trade unions can equally do so, including in newspapers. This amendment is about a level playing field, in that the same rules would apply to broadcast media. As Senator Cassells outlined, it is not a question of moving to a US-type situation – the sector certainly needs to be regulated and codified – but of having a level playing field. Traditional broadcast media are losing out at the moment. Trócaire, a trade union or a political party cannot take out an advert on a local radio station or with a national broadcaster, but such entities can spend as much as they want on social media advertising. The proposal in the amendment is to remove that restriction. A code certainly has to be put in place to set out what kinds of information and advertisements can be broadcast, but the proposal is more about levelling the playing field than about trying to restrict any sort of political voice.

Deputy Catherine Martin: I will make a general point first. I empathise with Senator Ruane on the groupings, which I also received quite late this afternoon. That is because of the interest in this groundbreaking legislation and how there are more than 200 amendments. If it is of any help, I will say that I was under the same stress as the Senator this afternoon when preparing for this debate because I was also waiting for the groupings. We were in it together.

I will first speak to the Bill in general terms. The main aim of the legislation is to jump-start the modernisation of Ireland's approach to the regulation of content in traditional editorial media as well as in the landscape of newer online services fuelled by user-generated content. This is driven by the changes in the way we consume media and the growth of the online world.

In terms of online safety, the Bill will ensure that we are all exposed to far less harmful online content and will require by law that online services respond to and robustly deal with complaints. While the Bill does not, and cannot, address every issue of concern arising from the online world, it creates a robust and adaptable framework for accountability that can be amended and expanded over time. This framework will be enforced by coimisiún na meán, which will include the online safety commissioner and have one of the most modern and robust suites of regulatory power in Irish law. It will be the starting point for the regulation of harmful online content. The establishment of coimisiún na meán is the most vital part of the Bill.

Regarding broadcasters and streaming services, the Bill is fundamentally about modernising the regulatory environment and enabling an coimisiún to deal with the continuing changes in how we engage with and support our media. It has critical EU law dimensions, as it transposes the revised audiovisual and media services directive, AVMSD, which strongly informs an coimisiún's underpinnings. As Senators will be aware, given the complexity of this legislation, we have missed the deadline's transposition deadline. That is one of the reasons I am keen to see this Bill progress through the Houses to enactment as soon as possible.

Reference was made to the EU's Digital Services Act. That Act and this Bill are complementary. One of the Bill's key drivers is the implementation of the revised AVMSD into law. That implementation in respect of online services, specifically video sharing platforms, is provided for under the Bill's regulatory framework on online safety. In this regard, the directive is explicitly recognised by the Digital Services Act as a distinct and complementary law to the proposed regulation. Regarding the regulation of other online services, the Bill provides for a regulatory framework for online safety that is designed to be adaptable and responsive to

changes in Irish and EU law.

Political agreement on the Digital Services Act was reached on 22 April. While the final text of the agreed legislation is not yet available, it is clear that legislation in addition to the Bill before us will be necessary to ensure appropriate alignment of our regulatory systems – coimisiún na meán and other regulators – with the proposed regulation. Ireland and other member states will have 15 months from when the regulation comes into effect – that will likely happen this summer – to ensure that its measures are provided for and supported by Irish law where necessary. In this regard, the Government has decided that coimisiún na meán, which is to be established by this Bill, will act as the primary regulator and digital services co-ordinator under the Digital Services Act. The Government made this decision in light of the clear synergies between the objectives and approaches of coimisiún na meán and the Act, including taking a systemic approach to dealing with online safety and platform regulation and similar resourcing needs and expertise in implementation and enforcement.

It is important to note that the Digital Services Act is not sector-specific legislation, but a horizontal instrument that aims to set baseline regulatory standards across a wide range of issues, including legal liability, consumer protection in legal products, copyright, certain law enforcement matters etc. As such, it will overlap with a number of laws and activities of a number of regulatory bodies. These matters will need to be teased out during the implementation period. A programme of work in this regard already is under way between my officials and the officials of the Department of Enterprise, Trade and Employment.

Regarding the amendments, I thank the Senators for addressing the Bill's provisions on the prohibition of broadcasting or making available on the catalogues of video-on-demand services advertising that is directed towards a political end, has any relation to an industrial dispute or addresses the merits or otherwise of adhering to any religious faith or belief or of becoming a member of any religion or religious organisation. These provisions have been carried over from existing provisions set out in sections 41(3) and 41(4) of the Broadcasting Act 2009, which in turn carried over similar provisions from the Radio and Television Act 1988. This Bill extends those provisions to video-on-demand services.

I thank Senators Ruane and Higgins for tabling amendments Nos. 2, 101 and 106. These amendments propose to replace the term “political end” with “political purposes” and set out a definition of “political purposes”. I recognise the work that Senator Ruane has done on this matter, including by introducing the Electoral (Civil Society Freedom) (Amendment) Bill 2019. The effect of amendments Nos. 2, 101 and 106 would be to prohibit the broadcasting or making available of an advertisement towards political purposes rather than the current wording of an advertisement “towards a political end”.

The phrase “political end” was queried. That term, “an advertisement towards a political end”, has been defined in the 1998 High Court judgment, *Colgan v. Independent Radio and Television Commission*. This case involved an appeal against the decision of the Independent Radio and Television Commission, IRTC, to prohibit broadcasters from broadcasting an anti-abortion advertisement prepared by the organisation Youth Defence. The definition used in *Colgan v. IRTC* is currently used by the Broadcasting Authority of Ireland. I note that the definition of “political purposes” stems from the centre's proposal to amend section 22(2)(a) of the Electoral Act 1997.

Given that the Electoral Reform Bill 2022, which will regulate online political advertise-

26 April 2022

ments during electoral periods, uses the term “political purposes” to define such advertisements, I will need to consult with my colleagues and the Minister of State with responsibility for heritage and electoral reform. This substantive impact of the proposed impacts in opening up political advertisement on broadcasting or video on-demand services would need to be carefully considered, particularly as regard to any unintended effects it may have in terms of potentially allowing extremists to advertise.

On amendments Nos. 2, 101 and 106, I would like to have the opportunity to consider them further and consult with my colleague, the Minister of State with responsibility for heritage and electoral reform, with a view to discussing the matter again on Report Stage, so the Senators may wish to raise the amendments then.

Amendment No. 100, as proposed by Senators Malcolm Byrne and Cassells, would have the effect of deleting section 46(2) of the Broadcasting Act, as amended by the Bill, which would appear to have the effect of allowing all political advertising or religious advertisements to be broadcast or shown on a video on-demand service. I would have concerns that this may have the inadvertent effect of allowing political parties to advertise outside of election periods on television and certain video on-demand services. As we have seen in other jurisdictions, allowing political parties to advertise freely can actually have the effect of handing the airwaves over to the political parties that have the most resources. At its most dangerous, this would have the potential to undermine the democratic process.

On lifting the ban on industrial disputes, the employer may have a higher level of resources to influence public opinion. Therefore, I would be inclined to agree with Senator Sherlock on the risks that she outlined. The amendment as proposed would remove the prohibition of broadcasting political advertisements, but not put the rules in place. Therefore, it would not be a level playing pitch. There would be rules for online advertising under the Electoral Reform Bill in the election period, but not for broadcasting. I would be afraid we are actually moving beyond the core function of the commission. Therefore, I cannot accept amendment No. 100.

Senator Alice-Mary Higgins: I have two really quick points. The Minister mentioned the online safety commissioner but, of course, there is not an online safety commissioner in the Bill as it stands. Again, that is the headline. That is what everybody goes out with. That is why we are being told we need to pass it. However, it is not there. I just need to be very clear. There should be, and will have to be, an online safety commissioner in the Bill before it leaves the Seanad, given that is what we have been advertising and what is being discussed. This is what the public is waiting for in the Bill.

The Minister mentioned that there will be new legislation coming on the digital services directive. We are all looking forward to engaging on that. I think she will get constructive engagement from everybody on it. However, she acknowledged there will need to be legislation on that and it will impact on a number of regulatory authorities. I would suggest in that context, if the priority is to ensure that we deliver our obligations under the audiovisual, AV, directive, then we should not include elements that do not probably belong under it, particularly regarding cloud storage and interpersonal communication, which are areas that definitely need to be regulated. Indeed, the digital services directive will be one of the key tools to regulate them. However, it would seem that if the focus is complying with our AV directive obligations, why are we adding in elements that the Minister has already said we will have to come and regulate for anyone and do brand new laws on? Within those brand new laws, we will be setting out the roles of different regulators in relation to them. There is nothing in the Bill that will preclude

those areas coming in, but at the moment those two areas are implied to be included under all of the provisions and functions of the Bill. They are there with one caveat that says they do not apply in a certain context with regard to how there is a limit in terms of offences. However, that caveat almost implies that they are subject to everything else, by the very nature of it being there. It just seems that if we are trying to streamline what needs to go through, there might be somewhat of a premature aspect of a directive that just passed yesterday and the areas that it is covering not being properly reflected here.

This is a sign of the concern to simply say that we took this language from the previous Act. Again, it is not reflecting the evolution that we have to have. There is an evolution in technologies, but there is also an evolution in terms of legislation. We now have a wide variety of circumstances in which NGOs, civil society and others have effectively been hamstrung from communicating with the public. Bear in mind, they often do not have the editorial ownership of media, which others may have. We should be learning from that. We should not be putting a measure that has been problematic in the past and just directly transposing it here. I would urge the Minister, who indicated her willingness to talk to the Minister of State, Deputy Noonan, regarding “political purposes”, to do so. Let us have this legislation up to date in that respect as well.

Senator Malcolm Byrne: I appreciate the Minister’s sentiment around amendment No. 100. However, as Senator Higgins pointed out, the Minister said that the language is simply based on the 1997 Act, and the media landscape and environment has changed enormously. I appreciate some of the Minister’s concerns that perhaps an extremist group could then be allowed, if our amendment was accepted, for instance to take out an advertisement on local radio. However, an extremist group under free speech may be allowed to take advertisements out on Elon Musk’s Twitter and express its point of view. I appreciate her point, but I would agree with Senator Higgins in that there has to be discussion around the Electoral Commission legislation. Whatever rules we have with regard to political advertising must be platform neutral so that the same rules will apply to somebody who is looking to advertise in an online environment as on local radio, television and print media. It has to be a level playing field. I accept the Minister’s point with regard to amendment No. 100. However, it is on the basis that if it is to be covered as part of the Electoral Commission legislation, we ensure that it is a level playing field across platforms.

Acting Chairperson (Senator John McGahon): Perfect.

Senator Shane Cassells: I would not accept the Minister’s choice of words in saying that it would be “dangerous” outside of the electoral cycle. I do not accept that. We need to be encouraging more political discourse and this is a way of doing so. Throughout this whole debate that we have had on this key point, the point that Senator Malcolm Byrne and I have been advocating for has perhaps been slightly lost in terms of the rules that exist for other media platforms, many of which are already in trouble anyway as entities and may not even be here in ten years’ time. That is the key component.

On the points made by Senator Sherlock, which I respect, on industrial disputes, print media was kingpin in media terms 15 or 20 years ago. It was used quite extensively by very prominent companies in this country in the midst of very creative advertising companies. It did not skew anything. I am a committed trade unionist and am still a trade union member. The point was ensuring that we have a level playing field, no matter what media platform. Therefore, we either accept that we actually have differences between the existing scenario or we are just turn-

ing a blind eye to it. The amendment that we have put down is trying to address that.

Acting Chairperson (Senator John McGahon): Anybody else? No. Does the Minister have any further comments or is she happy enough? Perfect.

I apologise, I did not see Senator Higgins. I call Senator Higgins.

Senator Alice-Mary Higgins: I have a one-liner comment because, in fact, we did not actually speak to it yet, but we will come to it in a minute. In terms of the differences in advertising, one of the concerns is some of the things that are pushed out are included in this, even when looking at what has and has not been covered. The religious issue is included in this section, the way we discussed it in terms of religious belief and so forth. However, we have not discussed other things that are very damaging and that are, again, interspace, and have an actual effect that is measurable in terms of, for example, advertisements on conversion therapy. We had amendment No. 106 and we did not speak to it at the time, but we will be bringing it back on Report Stage in terms of, for example, the advertisement of conversion therapy. We will come into that anyway when we talk to some of the questions around advertisements, and it may come under the definition of “harmful content” within advertising or commercial communications. We will come to that in a minute. I wanted to signal that we have an amendment on that, which we will bring forward on Report Stage.

Senator Marie Sherlock: Senator Cassells makes an important point and we have repeatedly heard about the level playing field. Do we want to level down or level up? Is it right that the print media is able to carry advertisements by powerful interests? It should not be able to do so. I respect Senator Cassells’ arguments but I profoundly disagree. This amendment is here for a good reason. If the Senator was to come with a different amendment we might have a different discussion.

Senator Shane Cassells: That SIPTU-----

Senator Marie Sherlock: No but the point is-----

Senator Shane Cassells: I am being nice.

Senator Marie Sherlock: -----let us not undermine the few existing protections for workers in the context of industrial disputes.

Senator Shane Cassells: I do not want to be at odds with Senator Sherlock because we are not at odds in any sense but let us be fair in the debate on levelling down or levelling up. Trade unions are adept at using the media to put their point across as well. I am not saying their point is wrong; I am playing devil’s advocate as the Senator has talked about business interests. I have seen unions take out full-page advertisements as well to put forward their point of view so that can also be argued. We should be balanced and both sides do it. To go back to the Senator’s point on levelling up or levelling down, it is the platforms that are at issue, not the substance of the points being discussed.

Deputy Catherine Martin: The Online Safety and Media Regulation Bill 2022 establishes the regulator, which the Government has decided will also enforce the DSA. I am advised that it is important to have that regulator in place at an early stage and that is why we are doing that now. The Bill also creates a regulatory framework for online safety, which is designed to be future-proofed and adaptable to EU law. This framework will help the implementation of the

DSA, not hinder it.

Senator Higgins mentioned the online safety commissioner. There are later amendments that will provide an opportunity to discuss that point. I wish to tell Senators Higgins and Ruane that I have given serious consideration to amendments Nos. 101 and 106 and to returning to them on Report Stage in consultation with the Minister of State, Deputy Noonan. On amendment No. 100, I have concerns about the risks that there would be unintentional consequences to deleting section 46M(2) of the Broadcasting Act 2009, as amended, and so I cannot accept it.

Senator Lynn Ruane: Considering that the Minister is willing to engage on the topic and to do some work to look at my amendments Nos. 2, 101 and 106, I am happy to withdraw amendment No. 2 with the right to resubmit.

Amendment, by leave, withdrawn.

Section 2 agreed to.

SECTION 3

Acting Chairperson (Senator John McGahon): Amendments Nos. 3, 99, 119, 121, 122 and 172 are related and may be discussed together.

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

In page 9, to delete line 2 and substitute “ ‘commercial communication’ shall be interpreted as including advertisement;”.

This is a concerning factor and leaving aside what areas we believe should be regulated the question is advertisement itself being regulated. Section 2 is clearly about advertisements yet the other sections we will move on to include sections on advertising and later we will go on to sections on matters like the media service codes. A concern I have is that it may be possible on the current reading of the Bill that advertisement is not being covered by the media service codes and is only being covered by the narrow and specific provisions in section 46M. The reason I have for that concern relates to the definitions in page 9, including: “ ‘advertisement’ includes a commercial communication;”. I know commercial communications need to be referenced in the Bill because they are referenced in the AV directive but commercial communications as set out in this definition are a subsection of advertisement. They relate to matters like product placement and the sponsorship of a segment within a programme.

I am concerned about the section on media service codes and many of the NGOs have concerns which we have heard about. All of the codes the commission may develop only apply to commercial communications. The danger would be that we will only have codes on a small subsection of advertising with most advertising being free to do whatever it likes. For example, there could be ads for conversion therapy as I said. There could also ads on trans-fats, acids, salts or sugars because section 46N(5) on the media service codes states that it: “may prohibit the inclusion in programmes of commercial communications relating to foods or beverages”. We will come to the question of whether it should be “shall” or “may” later and that is a different debate.

The key point at the moment is that the commission is not being empowered to regulate advertising, only particular sponsorship of particular sections. We know that advertising is one of the massive concerns. In between the programmes and in the case of online and targeted

advertisement - and we will come to questions of harmful conduct later - there is a question in terms of the content of advertising and there are also real questions on how advertising is targeted and directed. Who receives what ad and is it somebody who will be particularly vulnerable and who has been profiled as being vulnerable to that advertising? We will have discussions down the line on the many amendments from Senators on this Bill around advertising but I am concerned that the way the Bill is worded takes all that off the table. That is why I have tabled a few amendments to this section and these are my attempts to address that. I suggest “‘commercial communication’ shall be interpreted as including advertisement;” or I am open to the Minister’s definition that “advertisement shall be treated in the same manner as commercial communications for the purposes of this Act”. That is another way it could be approached. We do not want a definition that basically takes advertising off the table and creates a free-for-all where whoever has money can say whatever they like about anything, be it harmful content or anything else.

Amendment No. 99 mentions “The inclusion of advertisements under subsection (1)”. This is an attempt to build a bridge from the advertising section, 46M, to the media service code section, 46N. I suggest: “The inclusion of advertisements under subsection (1) shall be subject to such restrictions and regulations as may be set out in the relevant media service code.” I am trying to include the right to have media service code regulation in the section on advertising. That can also be done the other way but that was an attempt to make it clear that advertising comes under the code because we have largely voluntary codes on advertising. We are putting these restrictive measures in place in certain areas where there is no “may” and it is all very “shall” in terms of the political purpose and religious uses but we are not even leaving the scope for “may regulate” in other areas of advertising that are of significant concern. I could list them all but we are going from breast milk substitute advertising to gambling, cryptocurrency advertising and conversion therapy, which I mentioned before. There is a long litany of groups that are concerned about the impacts harmful advertising can have so it would be a disservice to them if this Bill fell short. I hope that can be addressed in a simple way by the definition or maybe it requires insertions into section 46M or section 46N. I have a number of other similar amendments where commercial communications are referenced and where I reference “advertising or” or “advertisements and”. I seek to ensure that in multiple points in the Bill where commercial communications are being referenced, that advertising would come under that same remit.

Senator Lynn Ruane: There is not a huge amount for me to add in relation to my amendment No. 172. The amendment is pretty much in line with a number of Senator Higgins’s amendments, which seek to clear up any vagueness around the definitions of advertising and commercial communications within the Bill. It specifies that the term “advertising” would include commercial communications, that is, that commercial communications would be a subset of advertising. It is unclear in the Bill whether some types of advertising are excluded when commercial communications are referenced. I will keep my contribution short because I believe that Senator Higgins covered a large part of that.

Senator Micheál Carrigy: I am quite supportive of amendment No. 172. It looks after, in particular, the instances that involve children. I look to the recommendations of the Oireachtas joint committee that we made. Recommendation No. 24 proposed an actual ban on advertising, at the very minimum for junk food, alcohol, high-fat foods and gambling. It is important that this commitment is there within the Bill. It is not there at present. I support amendment No. 172.

Deputy Catherine Martin: I welcome the amendments brought by Senators Higgins and

Ruane. The Senators have identified a potential ambiguity in the text of the Bill. Amendment No. 3 proposes to delete an existing definition and to insert a new definition stating that commercial communications shall be interpreted as including advertisements. Amendments Nos. 99, 119, 121, 122 and 172 seek to ensure that media service rules, media service codes and online safety codes address both advertisements and commercial communications.

Section 2 of the Broadcasting Act 2009, as amended by section 3 of the Bill, already incorporates a definition of commercial communication. I can confirm that the term “commercial communication” used within the Bill is intended to be an encompassing one, including advertising, sponsorship, teleshopping and product placement.

I do understand that the intention of the Senators’ amendments is to ensure that the media service codes, the media service rules and the online safety codes address all commercial communications, including advertisements. That is also the intention of the Bill as initiated. I understand the concerns of Senators that this is not immediately clear in the draft of the Bill is initiated. I will not accept the amendments today but I will ask my officials to examine Bill, in consultation with the Office of the Parliamentary Counsel, with a view to returning to consider this on Report Stage.

I again thank the Senators for their amendments. They have shown the value of parliamentary scrutiny and the importance of our legislative process.

Senator Alice-Mary Higgins: I thank the Minister. I ask that we might have an opportunity to engage between Committee Stage and Report Stage because I want to know what is going to come in that regard. Let us have a conversation rather than just picking it up on Report Stage. I believe we could probably have some useful conversation in between. In that context I will not press amendment No. 3 at this point. I will withdraw the amendment but I reserve the right to reintroduced that amendment at a later point.

Amendment, by leave, withdrawn.

Amendments Nos. 4 and 5 not moved.

Senator Lynn Ruane: Can we speak to the section rather than the amendments that have been ruled out of order?

Acting Chairperson (Senator John McGahon): Yes, we can do that now, if that suits.

Senator Lynn Ruane: There are a few parts of section 3 that we will look to come back to with regard to amendments. A number of our amendments were ruled out of order and perhaps the uncoupling of some amendments from others may change that. I will put some of our concerns on the record with regard to section 3.

There needs to be a definition of “algorithm”. Going back to the Minister’s initial comments, the Minister spoke about a jumping-off point in the modernisation and regulation of online safety, yet we have a Bill without any definition of “algorithm”. It is perhaps one of the most harmful aspects, in many ways, of the online worlds, and one that we struggle sometimes to comprehend and understand. The Bill actually uses the term “automated means”, which is effectively an algorithm. It does not define, however, what “automated means” actually is. The purpose of my speaking to that section is to hopefully introduce a definition, or for the Minister to consider looking at the Bill to introduce a definition of “algorithm” into this section. It is no

longer enough for us to be vague about the automated processes. This Bill is the place to look at that and the place to govern that. It often manipulates our online lives and it is strange to me that several sections of the Bill use the term “automated means” without a definition, and that no definition exists here for that or for “algorithm”. They are closely related, to the best of my understanding, and we should flesh this out within the section.

Also in the context of “automated means”, I refer to looking at the use of “recommender system” or other automated systems in this section. Basically, this function would potentially be for us to discuss, between now and Report Stage, whether we can introduce an opt-out for recommender systems. I do not mean recommender systems as a whole but ones that use a person’s profile and micro-target users to actually recommend things to them, which can then increase the level of online safety, and especially in the areas we have spoken about today, whether that is eating disorders, conversion therapy and such things. This is so that there would be no actual micro-profiling of people and making recommendations to them. I believe that if we were to look at this in section 3, it would really enhance the Bill. It seems to be missing from that section. Obviously, it could belong elsewhere but on my reading I would hope to table an amendment there on Report Stage.

Between now and the next Stage, I believe that we should also look at the provision in section 3 on online harmful conduct. Basically this would be a technical amendment that would refer potentially to section 139B, where we could insert another amendment to ensure the definition of harmful online conduct is introduced to reflect the definition section, alongside the definition of harmful online content.

Finally, on section 3, again perhaps we could look at the recommender system. The recommender system basically means a fully or partially automated system used by an online platform to suggest in its online interface specific information to recipients of the service, including as a result of research initiated by the recipient, or otherwise determining the relative order or provenance of information displayed. It is important to put this on the record because when we attempted to put some of this into the Bill, the amendments were ruled out of order. They were seen as providing a cost. I would argue back on some of those because they are basic definitions of things that are already alluded to somewhat in the legislation. There may be room, were the Minister to see some merit in introducing such provisions, whereby the Minister herself could introduce some of these amendments. I am happy to meet the Minister or her departmental officials to send on the efforts that we had made to enhance the Bill in section 3. Perhaps this is something that the Minister and her Department would consider introducing on Report Stage.

Acting Chairperson (Senator Gerry Horkan): I thank Senator Ruane. I note Senator Higgins wishes to come back in. Does any other Senator wish to come back in also on section 3? No.

Senator Alice-Mary Higgins: This is a key concern. While it is not the Minister’s concern, I will certainly be raising it with the Committee on Parliamentary Privileges and Oversight and others. It is pretty wild that amendments calling for definitions were ruled as a cost to the State. It is the case that the insertion of three definitions, including in one case a definition of something that is already referred to in the Bill, were ruled as being out of order due to being a cost to the State. I am extremely concerned, on a fundamental point of democracy, about what seems to be a creeping dynamic in respect of what gets ruled out of order and what does not. This is not acceptable. If it is the case whereby we are not allowed to introduce a term, to suggest language, or to define a term, then this is pretty unacceptable. It is a very serious concern

and I want to signal on the record of this House, while not directly to the Minister, that if those measures are used to curtail proper parliamentary scrutiny and the improvement of legislation, then the balance between the Executive and the Legislature and between Parliament and the Government is being damaged. That is a concern. One of the things that we talk about when we are discussing this Bill, and we all speak about it, is democracy and the importance of those measures. It is a significant concern.

More specifically on the points, I urge the Minister to engage with us. Pending a proper argument about this within our own mechanisms, if necessary through our Standing Orders, in the course of this Bill it is likely that these amendments and definitions will need to come from the Minister. In that context I urge her to engage with them because what we are putting in here and what Senator Ruane, who took the lead on these, has been doing is giving the tools to the Bill and to the media commission that it needs to do its work properly. It is constructive. “Algorithm” is a definition which is there but really importantly, “automated means” - if automated means is referenced we are not talking wind up and clockwork - we need to be clear on what is included in that.

In that context, amendment No. 5 in particular is extremely constructive in that it talks about algorithms, recommender systems and other automated systems. It is important in regard to the recommender systems, some of the examples have been given but we know that when we talk about the dangers, the kinds of online harm that we talk about and that people speak about at the committees and that have been in the media, one of the things that is talked about is a person went in and watched a video of a dance-off and then four videos later found himself or herself watching a video of some far-right rally. That is because the recommender system is in play. That is where the issue around harmful online conduct arises.

We are actually not being prescriptive in terms of everything that we might like in regard to these things. What we are trying to ensure is that the commission is empowered to address harmful online conduct. When it refers to “automated means”, and it is implied, the commission has to consider these factors when determining its penalties because one of the factors in the Bill that needs to be discussed in regard to penalties is, how likely was it for someone to have seen it and what the scale of distribution of this piece of harmful content has been. However, we are not empowering it on the front end to actually set guidance about what one should or should not be doing in terms of amplifying messages that may be harmful or amplifying content. We are giving it a defence in that respect at the end but we are not actually giving positive direction or empowering the commission to give positive direction on what is harmful online conduct. We may not come to those amendments but when we come to some of those we will in those sections be discussing where we think that should be inserted in effect and some of what it might include. What is really important is that the Minister comes back with definitions, certainly in regard to “automated means” and I would strongly advocate in regard to harmful online conduct as well.

It was actually here and quite some time ago, it was either 2017 or 2018 that the high-level expert group on disinformation, the EU’s entire expert group that it brought into play, sat in this Chamber. It came and was hosted by Ireland to have this high-level discussion on harmful content and online damage. Some of this is part of the discussion that leads to the audiovisual media services directive and the European Commission’s Digital Services Act. The expert group spoke very specifically about algorithms on that day in this Chamber. It spoke about algorithms, automated recommendations, routes to radicalisation on the one side, which is something the Minister has expressed concern about, and on the other side the targeting of vulnerable

26 April 2022

individuals. For example, on the political side it was about targeting vulnerable individuals based on data about a person's political views which is a special category of personal, sensitive data, but many of the big platforms and advertisers called it "observed data". Because a person has looked at this one video, platforms now consider they can move him or her along towards these other routes. That is a dynamic that rewards heat rather than light. I hope the Minister will engage with us and will bring forward definitions.

Acting Chairperson (Senator Gerry Horkan): I must point out that the note for the information of the Chair to rule amendments Nos. 4, 5, 7, 8, 113, 181, 182 and 187 out of order is that they would require the commission to regulate the use of algorithms, microtargeting and recommender systems. These additional responsibilities would potentially involve a significantly increased expenditure on the part of the media commission and they must be ruled out of order in accordance with Standing Order 41. It is not the definition, it is how they process-----

Senator Alice-Mary Higgins: With that consequence again. That is a very slippery slope in that context.

Acting Chairperson (Senator Gerry Horkan): I am just pointing out that that is the information for the Chair, just for the benefit of those watching here and online.

Senator Alice-Mary Higgins: It has been the practice that the functions can be addressed. There is no additional resource requirement or suggestion in our pieces. We will come back to this discussion but this is a really dangerous direction.

Senator Malcolm Byrne: I have to support Senator Higgins on that because this is a particularly important area in terms of the regulation of algorithms. This is a debate about whether it is specifically in the legislation or not. I do not accept the argument that it can be ruled out on an additional cost basis. This is about a regulator which is going to be set up to do a particular job. This is just a question around one of its functions. I would support the challenge to that interpretation-----

Acting Chairperson (Senator Gerry Horkan): Standing Order 41 has been argued about by people including me over time when I am not sitting in the Chair so it is a regular. The Government can bring forward items that impose a charge on the Revenue but other Members cannot. That is the argument in Standing Order 41. That of course can be dealt with-----

Senator Malcolm Byrne: I appreciate that but I would support-----

Acting Chairperson (Senator Gerry Horkan): It is for the benefit of the people. It is not my interpretation, it is the interpretation of the Bills Office and the Cathaoirleach as such.

Senator Alice-Mary Higgins: That needs to be reviewed.

Senator Niall Ó Donnghaile: I do not want to take us away from the amendments we are looking at today. On Senator Higgins's initial point around certain amendments being ruled out of order, I do not know whether we will get to them today but my own amendments Nos. 86 and 89-----

Acting Chairperson (Senator Gerry Horkan): We will not get to amendments Nos. 86 or 89.

Senator Niall Ó Donnghaile: I would not have thought so and that is why, with the indul-

gence of the Acting Chairperson, I take my opportunity very quickly now to make the point.

Acting Chairperson (Senator Gerry Horkan): Make it quickly.

Senator Niall Ó Donnghaile: Amendments Nos. 86 and 89 refer to ensuring that certain broadcasts will be made available to viewers throughout the entirety of the-----

Acting Chairperson (Senator Gerry Horkan): It is not in the section.

Senator Niall Ó Donnghaile: I appreciate that but I want to make that point. The rationale, much as others have argued, including the Acting Chairperson, that ensuring that sporting bodies that operate on an all-Ireland basis would then sell their broadcasting rights in order that they could be viewed on an all-Ireland basis, in particular those that are in receipt of State and Government support in line with Article 2 of the Constitution making those broadcasts available to viewers throughout the island would somehow place a charge on the Revenue is something I do not understand.

Acting Chairperson (Senator Gerry Horkan): I am sure it is a very good point but it is not relevant to the section.

Senator Niall Ó Donnghaile: I hope that when we get to that it will be explained fully.

Acting Chairperson (Senator Gerry Horkan): I have no doubt.

Senator Niall Ó Donnghaile: I appreciate that.

Acting Chairperson (Senator Gerry Horkan): There are 228 amendments-----

Senator Niall Ó Donnghaile: I have said it now so it is on the record.

Acting Chairperson (Senator Gerry Horkan): In fairness we will deal with them in the order that they have been arranged. There is nobody else indicating that they want to speak on section 3. Does the Minister wish to respond to the debate on section 3?

Deputy Catherine Martin: Just to say-----

Acting Chairperson (Senator Gerry Horkan): Before we do section 3 will the Minister respond to amendment No. 6 because it has already been discussed with amendment No. 1 in the names of Senators Warfield, Ó Donnghaile, Gavan and Boylan? Does Senator Ó Donnghaile want to move amendment No. 6?

Senator Niall Ó Donnghaile: I move amendment No. 6:

In page 10, line 6, to delete “Commissioner” and substitute “Coimisinéir”.

I will withdraw the amendment and reserve the right to move it again.

Deputy Catherine Martin: As the Senators have recognised I do not make the decision in regard to what is ruled out of order. I am happy for my officials to engage with Members between now and the next Stage of the Bill. I will also say that the Bill was written in a tech-neutral fashion, that was the advice we were given from the Office of Parliamentary Counsel in regard to helping to future-proof the Bill.

Amendment, by leave, withdrawn.

26 April 2022

Acting Chairperson (Senator Gerry Horkan): I thank the Minister. Amendments Nos. 7 and 8 in the names of Senators Ruane and Higgins have been ruled out of order as they pose a potential charge on the Revenue.

Amendments Nos. 7 and 8 not moved.

Section 3, as amended, agreed to.

Sections 4 to 6, inclusive, agreed to.

SECTION 7

Senator Niall Ó Donnghaile: I move amendment No. 9.

In page 18, line 34, to delete “efficiently.” and substitute the following: “efficiently, including the power to compel any technology company to produce and provide any specific related data or reports which it requests within a reasonable time frame not exceeding one calendar month in order to conduct its functions.”.

The amendment gives the power as the Minister will know to compel a technology company to produce as well as provide any specific related data or reports which it requests within a reasonable timeframe not exceeding one calendar month in order to conduct its functions. We all know too well the importance of lifting the bonnet and looking under the hood of social media companies and big tech and this is one small step towards getting that data.

6 o'clock

This is one small step towards getting those data.

Deputy Catherine Martin: I thank the Senators for their amendments. Amendment No. 9 is intended to provide the power to an coimisiún to compel any technology company to produce data or reports when questioned. I note this amendment is drafted quite broadly without specifying any framework by which an coimisiún would compel technology companies to produce such reports. I believe the power to compel the provision of information from regulated entities is adequately assigned to an coimisiún through the Bill as published. An coimisiún has the power to compel information from video-on-demand services. Part 3A of the Broadcasting Act 2009, as inserted by section 8 of the Bill, provides for the establishment of a register of video-on-demand services established in the State, which is a requirement of the revised audiovisual media service directive. Section 46D of the Broadcasting Act 2009, as inserted by section 8 of the Bill, provides that an coimisiún may request further information from a media service provider where the provider notifies an coimisiún that it should be entered onto the register or where the provider is required to change its details on the register.

Under section 46F of the Broadcasting Act 2009, as inserted by section 8 of the Bill, if the media service provider does not provide the information requested, an coimisiún may direct the media service provider to comply with the request. If the media service provider fails to comply with a direction, it shall be deemed guilty of an offence under the Broadcasting Act.

An coimisiún has the power to require information from a relevant online service. Under the Bill, a relevant online service may be any information society service, which covers a vast array of technology companies, from Internet service providers to social media services. The regulatory structure for online safety in the Bill operates by providing an coimisiún the power

to designate relevant online services and subject them to online safety codes.

To facilitate an coimisiún making the decision to designate an online service, section 139F of the Broadcasting Act, as inserted by section 44 of the Bill, provides an coimisiún with the power to require the provider of a relevant online service to provide an coimisiún with any information necessary to designate the provider for regulation. Where a provider fails to comply with such a requirement to provide information, it shall be deemed guilty of an offence under the Broadcasting Act.

When a relevant online service is designated for regulation, it is known as a designated online service under the Bill. Section 139O of the Broadcasting Act 2009, inserted by section 44 of this Bill, allows the commission to require a provider of a designated online service to provide the commission with information relating to the provider's compliance with an online safety code. Under this section, the commission may require the information to be provided within seven days, rather than one calendar month, as the amendment suggests. Moreover, this section provides that it is an offence if the provider fails without reasonable excuse to comply or provides false information knowing that it is false or being reckless as to whether it is false.

Section 139O provides that the commission may exercise this power following notification by a member of the super complaints scheme provided by section 139U of the Broadcasting Act 2009, as inserted by section 44 of the Bill. Accordingly, the provisions sought by this amendment are already covered in the Bill.

Senator Niall Ó Donnghaile: I thank the Minister for her comprehensive response on amendment No. 9. I note she has made a number of important points. I ask for permission to withdraw the amendment and reserve the right to resubmit on Report Stage. I have heard what the Minister has advised.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 10 to 12, inclusive, are related. Amendment No. 11 is a physical alternative to amendment No. 10. Amendments Nos. 10 to 12, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

Senator Shane Cassells: I move amendment No. 10:

In page 18, lines 39 and 40, to delete all words from and including “and” in line 39 down to and including line 40 and substitute the following:

“including the rights to privacy and reputation, are protected.”

This is a straightforward amendment that I hope the Minister can accept. It is intended to strengthen the language used. It is also balancing what is set out in subsections (2)(a) and (2)(b), where subsection (2)(a) speaks to “the democratic values enshrined in the Constitution, especially those relating to rightful liberty of expression, are upheld” and subsection (2)(b) requires that “the interests of the public, and in particular the interests of children, are protected”. Amendment No. 10 seeks to delete paragraph (b) and specifically inserts that “the rights to privacy and reputation, are protected”. That is an important distinction.

This time last year, the social media giants of Twitter and Facebook appeared before the committee and discussions were terse. I remember that day well. It was not all apple pie and welcoming what the committee members were saying. Such was the tense nature of the

26 April 2022

exchanges that on the following Saturday, the respected journalist Martina Devlin of the *Irish Independent* penned a piece on those exchanges. She referred to her own scenario and talked about attacks on her and occasions when she was named in “exceptionally derogatory terms which left me feeling soiled”. There is an important balancing act involved. While acknowledging the democratic value of rightful liberty of expression, we must also ensure the protection of the equal right to privacy and reputation.

Amendment No. 12 concerns the protection of the interests and safety of children, which should inform all policies and practices of the commission. Those concerns should be stated separately in the Bill, apart from the other pieces we are seeking to include dealing with the rights to privacy. It is important to make that distinction. Senator Carrigy referred to the fact that Professor Conor O’Mahony, special rapporteur on child protection to the Government, appeared before the committee and spoke specifically about these issues. As much as possible, the language used must be strong enough to reflect that. The proposals in amendments Nos. 10 and 12 are attempts to make sure that what was discussed at committee is reflected in the Bill.

Senator Malcolm Byrne: These amendments are important because they relate to the power and function of the commission. We are going to be setting up this new regulator and must consider the guiding principles under which the new regulator will operate. Our big debate is around how we ensure freedom of expression while at the same time protecting the rights of individuals. With the purchase of Twitter by Elon Musk, those issues and the debate about the balancing of those rights has never been more important. We are seeking through these amendments to specifically strengthen the balancing of those rights so that when the commission is considering all of its policies and practices, it is guided by those two elements. How do we get the balance right between freedom of expression, which is very important, and protecting an individual’s rights? We believe these amendments are strengthening the legislation. We want specific reference to the safety of children and its inclusion at the core of the commission. We are looking to include a specific section around the interests and safety of children that would inform all policy and practices of the commission. This is core. It is about the guiding principles of the commission. We are thinking of two, three and five years’ time. When the commission is making a decision, we must consider what its key functions will be. What are the key public policy considerations we must bear in mind in that regard? For those reasons, we believe these amendments strengthen the Bill and we hope the Minister will accept them.

Senator Alice-Mary Higgins: As I understand it, amendments Nos. 10 and 12 split the section. I wanted to be clear about that. My amendment No. 11 seeks to ensure the interests of children are “protected and promoted”. This is trying to be in tune with the clear spirit of the audiovisual directive. That directive is not only intended to protect against harm, it is meant to promote inclusion and participation. I have often argued with American parliamentarians about these matters. Freedom of expression is also the freedom of participation. It is about being able to participate and making sure there are spaces for people to participate.

There is a very strongly established EU principle of *exception culturelle*, which is the idea that cultural activity cannot be solely commercial, that there is a right to participation in cultural and public life and that measures should be taken to ensure a diversity of persons can do that. This is the positive goal relating to the audiovisual directive. I want to make sure we do not lose sight of that because we often focus on the negative. It is very important that in the functions of the commission, when its members consider the interests of the public, they talk about those interests being protected and promoted. The amendment outlines that idea. It is also in tune with some later amendments we will come to, for example, those relating to public duty

and equality in human rights. It is not simply a protective duty but a duty of active promotion. It is the idea that the commission should produce measures. Again, this comes to some of the later things we will consider in the Bill, such as the idea of special programmes around education, inclusion and so forth, in addition to promoting, for example, European works and access to online spaces for community groups. All of that is a positive duty. I want to make sure that is in there.

I will note a matter that does not relate to my amendment. An interesting point was raised by Senator Ó Donnghaile regarding who is served by an all-Ireland body. In the context of those positive duties around access to relevant media and so forth, there may be a case for trying to make our goals of active promotion of access to media very clear. I want to reserve the right, if it proves necessary, which I do not believe it will, to consider if it might be worth examining whether any nuance might be needed in the section relating to the jurisdiction of the State. There are quite a few exceptions in the context of what comes under the jurisdiction of the State. It is important to be inclusive as much as we can and to make sure that we do not have a situation whereby some bodies seem not to be under the jurisdiction of any state. All these states are transposing the audiovisual directive and we want to make sure that online media providers are certainly captured clearly under that jurisdiction. Again, I do not believe that is a concern, but I want to flag that I might examine that section and come back to it on Report Stage, if I have concerns regarding potential loopholes. On this amendment, the wording should be to protect and promote.

Senator Micheál Carrigy: I fully support amendment No. 12. When we look at the Bill as it is, and the powers and functions of the commission, it states the commission “shall endeavour to ensure ... that the interests of the public, and in particular the interests of children, are protected”. This is an online safety Bill so it is important that we consider that word “safety”. It is about the interests and safety of children.

Deputy Catherine Martin: I thank the Senators for their amendments. Amendment No. 10 amends section 7(2) of the Broadcasting Act 2009, as amended by section 7 of this Bill, to insert specific reference to the role of an coimisiún in protecting rights to privacy and reputation. The purpose of section 7(2) is to set out the various matters an coimisiún shall seek to ensure in the performance of its functions. I have some concerns regarding a specific reference to the role of an coimisiún in upholding rights to privacy and reputation. These rights are protected through the Constitution in the form of the requirement of the State to protect the good name of every citizen in the form of judgments of our courts and the recognition that the right to privacy is inherent in the personal rights set out in the Constitution. These rights are also protected by the EU Charter of Fundamental Rights and the European Convention on Human Rights.

I am somewhat wary of inserting language in the Bill that would imply that any of the specific personal rights contained in the Constitution, the charter or the convention on human rights were pre-eminent in some way on other personal rights provisions. I also note that protection and vindication of the right to privacy and reputation are set out in other legislative instruments, specifically the Data Protection Act 2018 and the general data protection regulation in respect of privacy, and the Defamation Act 2009 regarding reputation. A reference to the rights to privacy and reputation may give rise to the expectation that vindicating or protecting these rights is a specific function of the commission and that these rights should have a greater importance than other rights, including others set out in the Constitution, charter and convention. While I will not accept amendment No. 10, I commit to reflecting further on its intent, with a view to considering it further in the context of Report Stage.

Amendment No. 11 proposes to amend section 7(2) of the Broadcasting Act 2009 as amended by section 7 of the Bill, to provide that the interests of the public and, in particular, children would be promoted as well as protected. The question is whether amendment No. 11 would substantially affect the manner in which an coimisiún performs its duties. I absolutely understand the intent of the Senator in seeking to expand the language. However, I am advised that the term “protection”, which is already provided for in the Bill in the context of the interests of the public and children, may also encompass the term “promotion” in this context. Again, I do not propose to accept the amendment today, but instead I commit to giving it further consideration in the context of Report Stage.

Amendment No. 12 would also amend subsection 2 to provide for a separate paragraph on the protection of the interests and safety of children. The protection of the rights and interests of children is an objective that all of us in these Houses share. It will be a key component of the work of an coimisiún, particularly in the context of making online safety codes to tackle the prevalence of harmful online content. The key consideration is also whether the amendment would substantially affect the manner in which an coimisiún performs its duties, in particular with regard to the protection of children. Amendment No. 12 is another proposal that I wish to have more time to examine further with a view to returning to the matter on Report Stage.

Senator Malcolm Byrne: I appreciate the point the Minister made regarding specific constitutional rights but the corollary is true in that, very specifically in this section, regard is had to the rightful liberty of expression, which is something we believe should be upheld. In the same way we talk about the importance of freedom of expression, that must be balanced by the right of an individual to his or her privacy and reputation. This is the big debate around and will be the challenging job for this commission in the exercise of its powers and functions. This section of the Bill specifically provides for the values enshrined in the Constitution, “especially those relating to rightful liberty of expression”. There is no problem with that but we are requesting there is also a balance between an individual’s right to privacy and the right to his or her reputation. When the commission is carrying out its powers and functions, it must have regard to both those rights.

Senators Carrigy and Cassells put it very well with regard to amendment No. 12. The Minister is correct that, at its very heart, we want to ensure the online safety of children. That is why this section very specifically deals with the powers and functions of the commission. What is it that will influence the commission’s thinking with regard to all of its policies and practices? What are its core guiding principles? That is why we suggest this amendment will strengthen those by providing a very specific section in that regard. We hope that in revising that section the Minister strikes a balance between what could be seen as competing rights and there is a very specific and clear reference to protecting and safeguarding children in all the commission’s policies and practices.

Senator Shane Cassells: To go back to amendment No. 10, it is important that the Minister spoke about reflecting on this. I ask that in doing so she also reflects on what was said before the Oireachtas committee last year by Mr. Ronan Costello, the senior public policy manager at Twitter, who defended the practice of anonymity. People can post what they like under made-up names. Mr. Costello insisted that how accounts behave and not their identities is what is important. That is misleading because if I attack the Minister under some made-up name in an offensive post, I have no fear of repercussions. Therefore, defending a person’s right to reputation is important but I appreciate what the Minister has said and ask her to reflect positively on that as well.

Acting Chairperson (Senator Gerry Horkan): No other Members are offering on amendments Nos. 10 to 12, inclusive, at this point. Does the Minister wish to come back in or has she said what she wishes to say?

Deputy Catherine Martin: I have agreed to reflect seriously and further on these three amendments.

Acting Chairperson (Senator Gerry Horkan): I take that on board. I will deal with these as they arose. Amendment No. 10 has been moved. What do Senators Malcolm Byrne and Cassells wish to do with it?

Senator Malcolm Byrne: We will withdraw the amendment while reserving the right to reintroduce.

Amendment, by leave, withdrawn.

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

In page 18, line 40, after “protected” to insert “and promoted”.

With the leave of the House, I will withdraw the amendment while reserving the right to reintroduce it on Report Stage.

Amendment, by leave, withdrawn.

Senator Malcolm Byrne: I move amendment No. 12:

In page 18, after line 40, to insert the following:

“(ba) in particular, that the interests and safety of children are protected, and this inform all its policies and practices.”.

Amendment, by leave, withdrawn.

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

In page 19, line 2, after “open” to insert “, inclusive”.

The Minister was saying things can be interpreted in certain ways but with many of the suggestions she is getting around the functions it is important, and all of us have run up against very narrow interpretations of a function. I urge that in general, where it does no harm, to make it clear that there is a function. Again, it does not create obligations but gives that capacity to a commission. Indeed, we may have some members of a commission who favour a very narrow interpretation that might be doing the minimum and we want to empower those who seek to deliver the potential of a commission in that way. In that regard, I always will err on the side that if we hope something might well emerge from interpretation, then why not just put it in. It is a general point.

This amendment is simply saying open, inclusive and pluralistic. That is slightly different because of that same principle of the *exception culturelle* and the strong principles of cultural diversity and participation in Europe, which mean it is not simply a matter that you get a product designed for you. You want to make the case people can be involved in the creation of

26 April 2022

broadcasting services and audiovisual on-demand media and that they are part of it. Again, it is the same when we talk about the UN Convention on the Rights of Persons with Disabilities, UNCRPD. We are not talking simply about services for people with disabilities but about people with disabilities in terms of their participation. While “pluralistic” is fine, it is not the same as “inclusive”. Pluralistic might mean there is a diversity of actors but they may all be commercial actors, state actors and so forth. Inclusive is a little different because it creates again that positive sense of saying the commission has a role in creating. As this is culture and media, the remit is not simply to regulate a business sector but to shape what the sphere of culture and participation looks like. One of the aspects of that is that positive role around promoting inclusion. Again, simply saying “open, inclusive and pluralistic” gives space down the line, for example, around the commission’s role in areas like community radio and reflecting the web accessibility directive, so it is not simply that people have access to things but reflecting the UNCRPD in the sense of its clear articles on cultural participation.

Deputy Catherine Martin: I thank the Senator. I see the value of adding “inclusive” in there and ensuring broadcast and video-on-demand services are not only open and pluralistic but are open, inclusive and pluralistic. As the Minister with responsibility for culture as well as for media, I have always sought to open up participation in our cultural life to all our citizens in all their diversity. I am therefore happy to accept the amendment.

Amendment agreed to.

Acting Chairperson (Senator Gerry Horkan): Do not all sit back in shock that something has passed.

Amendments Nos. 14, 22, 23, 30 and 228, which is the last amendment, are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Niall Ó Donnghaile: I propose to move all the amendments.

Acting Chairperson (Senator Gerry Horkan): The Senator can only move amendment No. 14 at this point.

Senator Niall Ó Donnghaile: I move amendment No. 14:

In page 19, to delete line 5 and substitute the following:

“(i) the duty not only to satisfy existing demand but to stimulate increased demand for Irish language programming and content, in line with the national aim of restoring the Irish language as a spoken language nationwide,”.

Acting Chairperson (Senator Gerry Horkan): The Senator can speak to amendments Nos. 14, 22, 23, 30 and 228.

Senator Niall Ó Donnghaile: Grand. I will speak to them all. I thought I was making life a bit easier for the Acting Chairperson with my haste.

Acting Chairperson (Senator Gerry Horkan): He might have been, but he is not allowed.

Senator Niall Ó Donnghaile: Okay. Má tá cead agam, agus mura miste leis an Aire,

labhróidh mé ar na leasuithe go léir in áit iad a ghlacadh go haonarach. Tá súil agam gur féidir leis an Aire labhairt ar na leasuithe ina iomláine fosta agus í ag freagairt. Beginning with amendment No. 14, rather than vague mentions of the Irish language, the specific national aim of restoring the Irish language to use as a spoken language, which is already enshrined in other legislation such as the existing Higher Education Authority Act 1971, should be included as an aim to which State bodies relating to broadcasting and the regulation of the media must have regard. As the Bill is currently worded, instead of a core commitment to the use and promotion of Irish as the national language there is simply a broader duty to have regard to “languages and traditions” of the public. This puts the media’s responsibility to Irish on the same footing as any other language. This totally undermines the commitment that comes with its status as first official and national language as a core component of the common heritage of humanity that it is uniquely the duty of Ireland to preserve and promote and the role Irish media must play if the Irish language is to survive and thrive. Worse still, it may even make the coimisiún feel it is duty-bound not to promote Irish above any other languages, which would hamper efforts at language revival. The State must have regard for the diversity of cultural and linguistic traditions and identities across our island and it is right to celebrate them all but this should not negate the specific duty we have to the restoration of Irish as the common heritage of all peoples in Ireland and something that unites people across all traditions and identities. We had that greatly exemplified in the recent address to the House by Ms Linda Ervine. As such, we propose to specify the national aim while also maintaining a reference to the linguistic diversity of island’s traditions and identities.

On amendment No. 22, Sinn Féin welcomes the recognition in this section of the Bill of the need for an coimisiún na meán to tackle the dual emergencies of our linguistic crisis and our climate crisis and to support our cultural and national heritage. This ties in with what Michael Cronin has to say in his book *Irish and Ecology or An Ghaeilge agus an Éiceolaíocht* :

Is í croílár na faidhbe maidir leis an ngéarchéim éiceolaíochta ná go bhfuil muid tar éis dul ar strae, toisc go bhfuil muid dall ar an áit faoi leith le stair, le cumhacht filíochta agus tuisceana. Tugann muid neamhaird ar an dochar leanúnach atá á dhéanamh don áit ag gníomhaíochtaí áirithe daonna. Cuidíonn litríocht na Gaeilge linn chun teacht arís ar an eolas riachtanach seo. Muna bhfuilítear in ann an tírdhreach a léamh, cad a tharlaíonn? Easpa measa ar an áit, scrios éiceolaíochta, droch-phleanáil agus faillí i leith fhorbairt inbhuanaithe an oileáin.

If we are serious about recognising these implications and tackling them head-on then we need to ensure the goals and functions we set in law with this Bill are achievable and implemented beyond simply lip-service commitments. The provisions in law must be capable of being monitored and measured. This is why we are proposing to strengthen the wording from simply saying an coimisiún shall “promote and stimulate the development of” to affirming the coimisiún shall “ensure and increase the development and provision of ... programmes in the Irish language, and ... programmes relating to climate change and environmental sustainability”. This way, we can count the number of programmes relating to both, year on year, and see if an coimisiún is doing its job. Where there are gaps to filled, an coimisiún can revise its strategies to address any shortcomings.

This would also empower the Coimisinéir Teanga to investigate failures by the media commission to increase the development and provision of programming in the Irish language and thus allowing for true accountability. We know the Broadcasting Authority of Ireland, BAI, did not live up to its commitments to promote Irish as there were no repercussions and no impetus

to improve the situation or even monitor the statistics whereby Dr. John Walsh and Dr. Rosemary Day showed, in their 2018 report on the use of Irish on radio, that some stations, including one covering the largest Gaeltacht population in the country, aired not one hour of Irish for the entirety of 2017 despite the BAI being obliged under the Broadcasting Act to have regard to the role of Irish in the Gaeltacht when granting licences.

On amendment No. 22, Sinn Féin welcomes the recognition in this section of the Bill of the need for an *coimisiún na meán* to tackle the dual emergencies of our linguistic crisis and our climate crisis and support our cultural and national heritage. This ties in with what Michael Cronin has to say in his *Irish and Ecology, or An Ghaeilge agus an Éiceolaíocht*: “Is í chroí [7:57] ... an oilean. We need a sea change in how our broadcasting regulator approaches the Irish language and environmental issues. This amendment would see the vague commitment to promotion enhanced to a measurable commitment to increase the amount of programming in Irish and programming on climate issues.

Similarly to the previous amendment, amendment No. 23 seeks to draw a link between protecting our natural environment and promoting our cultural heritage by including the use of Irish alongside sustainability as goals to be achieved internally in the policies and practices of media service providers. Not only do we seek to include a commitment by an *coimisiún* to promote the internal use of Irish within media providers, which would go a long way towards normalising it within broadcasters and media to begin with and which could also filter into what is broadcast, but we also seek to replicate the goal of the previous amendment by turning what is a vague obligation to “promote and encourage environmental sustainability” into an obligation to “promote and encourage increased use of the Irish language and environmental sustainability”. In this way, we can monitor any such increase to see if the goal is being met, which can shape the *coimisiún*’s approach.

We all acknowledge that the use of both Irish and environmental sustainability in the context of policies and practices of media providers is not satisfactory, even if they often pay lip service to both. As a result, we should not settle for promoting and encouraging the *status quo*, which would sadly be the result of this Bill if enacted with its current wording. We should instead aim for a measurable increase. The *coimisiún*’s efforts to promote and increase the use of the Irish language internally within media providers could be examined by an *Coimisinéir Teanga*.

Amendment No. 30 refers to the strategic planning conducted by the commission and suggests that reporting on the progress of the commission’s policies should have specific regard to the role of the Irish language in media if we are serious about improving its position and ensuring that an *Coimisinéir Teanga* never again has to submit reports on the failure of State media corporations to uphold their legal obligations to the national language. As such, Sinn Féin would include the use of Irish as a fourth specific area in respect of which strategic reviews must be taken by the commission, alongside funding, technological and social change, and child protection in respect of broadcasting, audiovisual on-demand media and relevant online services.

Tá súil agam gurb é amendment No. 228 an ceann deireanach. Sinn Féin believes that, as the primary legislation on the regulation and governance of media in this State, the Online Safety and Media Regulation Bill 2022 should have increasing the visibility and use of Irish in media in public life and ensuring diverse content for Irish speakers as part of its core purpose. As such, we are proposing a number of amendments to strengthen the role of the Irish language in media through this Bill, including amendments with specific reference to the national aim

of restoring the use of Irish. This is particularly necessary given the clear failure of the existing provisions on the Irish language in media under the Broadcasting Act 2009. We can see from the reports by Dr. John Walsh and Dr. Rosemary Day that I cited earlier that radio stations pay no heed to the requirement to support the use of Irish, particularly in Gaeltacht areas. An Coimisinéir Teanga had to submit a report to the Houses of the Oireachtas, such was the abject failure of RTÉ to adhere to its obligations with regard to the national language. The existing law has failed. This is a unique opportunity to improve that law and to strengthen the role of Irish in media. This is the first time since an tUachtarán, Michael D. Higgins, was Minister that responsibility for both an Ghaeilge and media has come under the same Department. It would be a terrible shame if we failed to stand up for the Irish language in this legislation so we are offering amendments for the Minister to accept or, at the very least, support, including amendments with the aim of increasing the visibility and use of Irish in the Title to the Bill.

Senator Alice-Mary Higgins: I urge the Minister to take on board or consider these amendments. Amendment No. 14 may not need to delete line 5 but rather include the substitute text as an additional point. It is important to bear in mind the languages and traditions across the island in all of their diversity but there exists a special duty in respect of the Irish language and it is crucial that this be reflected in a body that will have responsibility for the platforms through which most people will be watching cultural products and for the media services codes and so forth that will emerge from this process. It is really important that be there.

I had some similar amendments on this issue in the section on the European works scheme because that scheme talked about programming that had the Irish language as its subject matter but did not talk about programming in the Irish language. Again, there exists a particular role in respect of the Irish language and, I would add, Irish Sign Language. I will indicate now that I may table amendments on Report Stage with regard to these languages. Irish Sign Language is recognised. Legislation that passed through this House, having been initiated by our Cathaoirleach, specifically called for the recognition of Irish Sign Language. This is not the same issue as addressed by some of the general measures in respect of disability and the UN Convention on the Rights of Persons with Disabilities. There is a specific duty with regard to the Irish language and Irish Sign Language. Both of those need to be reflected in the functions. I have proposed some amendments in which I suggest that this be reflected in the grants and programming but I concur with my colleague, who makes a good point in saying that it should be included in the top-level functions.

Deputy Catherine Martin: I thank the Senator for his amendments. Amendment No. 14 to the new section 7(2)(c) of the Broadcasting Act 2009 proposed in section 7 of the Bill deletes a reference to the languages and traditions of the people of the island and Ireland and replaces it with a reference to “the duty not only to satisfy existing demand but to stimulate increased demand for Irish language programming and content, in line with the national aim of restoring the Irish language as a spoken language nationwide”. I am not sure that was the intended effect of the amendment. It may have been intended to amend the new section 7(2)(d), which provides that an coimisiún shall, in performing its functions, endeavour to ensure that regulatory arrangements address various matters. I am not in favour of deleting the reference to the languages and traditions of the people of the island of Ireland. That is an important provision in the new section 7(2)(c) as it is important that the policies of an coimisiún in relation to broadcasting and video on-demand services bear in mind all of the diverse languages and traditions on our island. I cannot accept amendment No. 14.

Amendment No. 22 amends section 7(3)(d) of the Broadcasting Act 2009, as amended by

section 7 of the Bill. This section currently provides that an coimisiún shall:

promote and stimulate the development of—

- (i) programmes in the Irish language, and
- (ii) programmes relating to climate change and environmental sustainability

The amendment would change the words “promote and stimulate” to “ensure and increase the development and provision of” such programmes. I am strongly in favour of increasing the availability of Irish language programming. That is why I allocated additional funding to TG4. In budget 2021, I secured an additional €3.5 million and, in budget 2022, I secured an additional €4.2 million for TG4. As regards the role of an coimisiún, I am satisfied that the language of promoting and encouraging is sufficient to ensure the production of programming in the Irish language. I am worried that the replacing the term “promote and stimulate” with “ensure and increase” would imply that an coimisiún, as regulator, could impinge on the editorial independence of a broadcaster or video on-demand service in a manner not set out in the Broadcasting Act 2009. I do not propose to accept the amendment.

Amendment No. 23 amends section 7(3)(e) of the Broadcasting Act 2009, as amended by section 7 of the Bill, to require an coimisiún to promote and encourage increased use of the Irish language in the policies and practices of broadcasting, video on-demand and relevant online services. I am conscious that the amendment would apply not only to broadcasting and video on-demand services, but also to relevant online services. As set out in section 3(2) (t) of the Bill, a relevant online service may be any information society service. This covers a vast array of technology companies from Internet service providers to social media services. Relevant online services are effectively the pool of services that, following an appropriate risk analysis, an coimisiún may designate for regulation and the application of online safety codes. I am concerned about the impact of this amendment on services whose content is primarily user-generated and on relevant online services that may be less likely to be designated for regulation, such as Internet service providers. I do not think the impact of this amendment is clear, although I understand its intention. I do not propose to accept it today but I will ask my officials to reflect further on it.

Amendment No. 30 has the effect of providing that an coimisiún may undertake strategic reviews of the sectors it regulates in respect of broadcasting in the Irish language. I again propose not to accept the amendment today but to consider it in the context of Report Stage.

Amendment No. 228 proposes to amend the Title of the Bill to insert the words “to increase the visibility and use of Irish as a spoken language in media and public life and ensure a diversity of content for the Irish-speaking community;”. The amendment amends the Title, stating that an objective of the Bill is “to increase the visibility and use of Irish as a spoken language in media and public life and ensure a diversity of content for the Irish-speaking community;”. Any proposals to amend the Title of a Bill must be considered carefully. For that reason I do not propose to accept the amendment today but will return to it on Report Stage.

Senator Niall Ó Donnghaile: I thank the Minister for her answers and I do not totally rule out hope for Report Stage based on what she has said. We probably disagree on some of the technical aspects but that is fair enough. She has committed, particularly in terms of the amendment, and said that she supports an increase in visibility and bolstering the Irish language. Let us find a way to make that work, reach a compromise and try on Report Stage to ensure that is

properly reflected and represented in the legislation. I hear what the Minister said about amendments Nos. 23, 30 and 228. I will follow the guidance of the Chair on what to do.

Acting Chairperson (Senator Gerry Horkan): We will reach the amendments in due course and I thank the Senator.

Senator Niall Ó Donnghaile: I withdraw the amendment and reserve the right to resubmit.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Gerry Horkan): Amendment No. 15 is in the names of Senators Warfield, Ó Donnghaile, Gavan and Boylan. Amendments Nos. 15 to 19, inclusive, are related. Amendment No. 16 is a physical alternative to amendment No. 15. Amendments Nos. 15 to 19, inclusive, may be discussed together by agreement. Is that agreed? Agreed.

Senator Niall Ó Donnghaile: I move amendment No. 15:

In page 19, to delete lines 8 and 9 and substitute the following:

“(iii) their diversity of traditions and identities, including religious, ethical, cultural, linguistic and gender diversity, and”.

The amendment is very similar to amendment No. 14 and, therefore, I do not intend to speak on it at any great length.

On amendment No. 17, the Bill’s commitment to access for people with disabilities is commendable. Sinn Féin supports the provision entirely but would like to see it go further. True inclusivity requires that access is available not only to participate as a passive audience in terms of media content but that the experiences of people with disabilities are adequately, and appropriately, reflected in that content and that people with disabilities are on screen and are at the heart of producing what is on screen not just watching from home.

According to Census 2016, one in seven of the population has a disability, yet that is not reflected in what we see on television. A new coimisiún na meán should monitor that and put measures in place to ensure proper representation for people with disabilities. We still have a long way to go towards delivering on the recommendations of A Strategy for Equality 1996 within the Report of the Commission on the Status of People with Disabilities, which called for steps to be taken to end the isolation and stereotyping of people with disabilities in the media, including to “look at ways in which people with disabilities can be made more visible on television both as presenters and participants”. This Bill is a chance to put that aspiration into law and task coimisiún na meán with its delivery.

Acting Chairperson (Senator Gerry Horkan): Amendment No. 16 is in the names of Senators Byrne and Cassells.

Senator Malcolm Byrne: Amendment No. 16 does what it says on the tin and seeks to insert the term “socio-economic” as part of the categories.

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 18 and 19 are in the names of Senators Higgins and Ruane. They can speak to their own amendments and to the group of amendments.

Senator Lynn Ruane: I support Senator Byrne’s amendment and the insertion of the term

“socio-economic”.

Senator Alice-Mary Higgins: I will make two points about the previous discussion on the Irish language. The Minister’s main argument was on the inadvertent deletion of line 5. It is important to put in something on the Irish language and Irish Sign Language. I hope that is something that might come true.

This section deals with functions. There is a number of constructive amendments and I support some of them. Some of my amendments contradict them in terms of placing. There is an opportunity to take on board a number of constructive amendments that have been propose to the section. I support the inclusion of the term “socio-economic” as suggested by Senators Byrne and Cassells.

One of my amendments, No. 18, seeks to insert “and the right to and importance of cultural participation”, which relates to the point made about visible representation. This is the piece that concerns persons with disabilities. The UN Convention on the Rights of Persons with Disabilities is really clear. It is about cultural participation. It is not simply a matter that one can get or access a service; it is a matter of one being part of it. On page 19, line 11, there is reference to “accessibility to those services”. Perhaps that is out of date in the context of where we are now. We are past the discussion on access and the current discussion on disability concerns inclusion and full participation and, therefore, it would be appropriate if we were to strengthen that language. I have put forward one proposal, Senator Ó Donnghaile has put forward a really good proposal and the Minister has spoken on this area. I imagine that between everybody she will be able to find some way to include in a stronger way that sense of participation rather than simply a passive role as consumers of media.

Senators Ruane and I tabled amendment No. 19. It is important as it seeks to insert the following: “(ii) support equality, human rights and participation in cultural life,”. I may split that line into two amendments on Report Stage because they have slightly different remits. The term “participation in cultural life” reflects that AV principle of participation. The words “equality, human rights” reflect that public duty to have equality and human rights. Again, this body, like every public body, has an obligation to actively promote equality and human rights. That it is good practice that would be reflected in this section, which sets out the commission’s work.

In terms of the diversity of traditions and identities, it is good that the legislation shows all of the diversities, including gender diversity.

I support the amendments. I urge the Minister to take this legislation as an opportunity because Senators on all sides seek to make it be positive for citizens and persons in Ireland.

Senator Marie Sherlock: I support these amendments and what has been said. While language is important to ensure these references are hardwired in the legislation there is a real issue as to how the commission will actively promote same. I know that we are not talking about amendment No. 112 but it sets down a gender quota to ensure there is a fair gender balance in broadcasting both the spoken word and music. While we probably will not reach the amendment, it is important to note that the commission must actively embrace targets and quotas to ensure that these aspirations are made real and, therefore, I urge the Minister when she examines the rest of the amendments to consider amendment No. 112 as part of what we are talking about here.

Acting Chairperson (Senator Gerry Horkan): Probably not this afternoon or this eve-

ning.

Deputy Catherine Martin: I thank the Senators for their amendments. I wish to bring to their attention, in terms of issues that I raised about these amendments and the previous group, that section 460 refers to media service rules that enable the media commission to make rules regarding accessibility, including regarding sign language service provision. It also gives effect to the provision of the AV media services to increase accessibility to media services for persons with disabilities.

Amendment No. 15 would add linguistic diversity to other areas of the diversity of the people of the island of Ireland that is set out in the section. This is an important potential addition to the Bill as it recognises the role not only of Irish and English on the island but of all other languages that are spoken and written here, and which now form part of our cultural life. I have concerns about the second part of the amendment as it seeks to change the term to “their diversity of traditions and identities”. While I recognise the intent of the amendment, it may have the opposite effect to that intended by restricting the term “diversity” to that of “diversity of traditions and identities” rather than all of the other forms of diversity of the people of the island of Ireland. For that reason, I will not accept the amendment today, but I propose to return to it on Report Stage.

Amendment No. 16 seeks to amend section 7(2)(c)(iii) of the Broadcasting Act 2009, as inserted by section 7 of the Bill, by adding an additional form of diversity. In this case, it would add socioeconomic diversity to the forms of diversity. As the Senators will be aware, the programme for Government contains a commitment to examine the introduction of a new ground of discrimination based on socioeconomic disadvantaged status to the employment, equality and equal status legislation. My colleague, the Minister for Children, Equality, Disability, Integration and Youth, Deputy O’Gorman, launched a review of the Equality Acts on foot of this commitment. I propose not to accept the amendment today, but I believe it could be a valuable amendment to the Bill. To ensure consistency with the work of my colleague, the Minister for Children, Equality, Disability, Integration and Youth, I will ask my officials to engage with his officials with a view to allowing further examination on Report Stage.

Amendments Nos. 17 and 18 both amend section 7(2)(c)(iv) of the Broadcasting Act 2009, as inserted by section 7 of the Bill. Amendment No. 17 inserts a reference to the visible representative of people with disabilities in the broadcasting and on-demand services available in the State. Amendment No. 18 inserts a reference to the right to and importance of cultural participation of people with disabilities. Both amendments would form valuable additions to the Bill. I would like further time to consider the amendments. I propose not to accept them today, but to return to them on Report Stage.

Amendment No. 19 requires that the commission shall endeavour to ensure the regulatory arrangements to support equality, human rights and participation in cultural life. I agree that these are important principles in guiding the work of the commission. I thank the Senators for their amendment. I will not make the amendment today, but I will take it away for further consideration and discussion on Report Stage.

Amendment, by leave, withdrawn.

Senator Malcolm Byrne: I move amendment No. 16:

In page 19, line 8, after “cultural,” to insert “socio-economic,”.

26 April 2022

The Minister has committed to look at this. It will give effect to the commitment in the programme for Government.

Amendment, by leave, withdrawn.

Senator Niall Ó Donnghaile: I move amendment No. 17:

In page 19, line 11, after “to” to insert “, and visible representation on,”.

Amendment, by leave, withdrawn.

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

In page 19, line 11, after “services” to insert “and the right to and importance of cultural participation”.

The equality and human rights component of the legislation is crucial. Even if the equality grounds evolve, it is important that they are named. I know the Minister has said she will engage further on Report Stage-----

Acting Chairperson (Senator Gerry Horkan): This has already been discussed. The Senator can only move it-----

Senator Alice-Mary Higgins: This is determining my decision.

Acting Chairperson (Senator Gerry Horkan): The Senator can speak to the section.

Senator Alice-Mary Higgins: It is important that we have discussion in between. I do not think we want to have to start from scratch on Report Stage. Let us make sure that we are not all producing five versions of the same amendment on Report Stage, but that we discuss this in between.

Deputy Catherine Martin: I have given that commitment.

Amendment, by leave, withdrawn.

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

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

“(ii) support equality, human rights and participation in cultural life,”.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 20 and 21 are related. Amendment No. 21 is a physical alternative to No. 20. Amendments Nos. 20 and 21 may be discussed together by agreement. Is that agreed? Agreed.

Senator Alice-Mary Higgins: I move amendment No. 20:

In page 19, line 16, to delete “and societal change” and substitute “and societal and en-

vironmental matters”.

I am trying to tackle two issues with this. I am open to working with the Minister and the Department on them. I am concerned about the potential inadvertent effect of mentioning technological and societal change. Many relevant technological and societal issues of concern already exist. If we are only giving the commission the remit for regulatory arrangements that take account of technological and societal change, there is a potential gap. I know that is pedantic, but it is a concern that I have and I always seek to ensure language is appropriate. I have suggested the inclusion of “societal and environmental matters”. If there is a particular reason for including “societal change”, I would be open to that and to have an additional point which relates to technological, societal and environmental matters. I am addressing two matters here.

It is important to take account of technological, societal and environmental matters because of the concerns about the environmental impact and measures in respect of broadcasting and online activity. We know information on that constantly emerges. The training of an algorithm to do something can have the same impact as five or six Boeing plane flights across the Atlantic. We are talking, therefore, about digital activities leaving a major environmental footprint. That is not to say that we should turn the computers off. It is increasingly clear, however, that we need nuance in the context of how we address this matter. It is not that beloved family photographs all have to go by the wayside. It is a question of whether Amazon Web Services, cryptocurrency mining or whatever else are the best use of our energy resources at this crucial time. We need to look at the building blocks. This does not tackle everything relating to data and the environment, but it addresses online media actors who are significant players in that area. There would potentially be scope in the regulatory remit to address the environmental impact.

Perhaps this can be dealt with elsewhere. Section 7(3)(e) states contains the phrase “promote and encourage environmental sustainability in the policies and practices of providers of broadcasting services”. That is one of the goals. Does the commission have the regulatory powers that it needs? Is this reference sufficient? Does it need to be copper-fastened in section 7(2)(d)? The Minister has spoken on these issues. If she keeps the term “societal change”, I would add that of “and environmental considerations”. I am trying to ensure that we are not behind the curve on this, because it will soon become pressing.

Deputy Catherine Martin: I thank the Senator for tabling amendments Nos. 20 and 21, which would have the effect of requiring the commission to endeavour to ensure that regulators take account of societal and environmental matters. Addressing climate change and environmental degradation is one of the greatest challenges of our time. It will impact not only the media sector, but our entire society. It is important for the commission to consider these matters. That is why section 7(4) of the Broadcasting Act 2009, as inserted by section 7 of the Bill, requires the commission to consider “policies of the Government and of the Minister for the Environment, Climate and Communications in respect of climate change and environmental sustainability.” Would amendments Nos. 20 and 21 have a similar effect to the existing provisions? I ask the Senator for more time to reflect on this. I will return to the matter on Report Stage.

Senator Alice-Mary Higgins: I am open to that. There is content relating to the promotion of messages about climate and the environment and there are the mechanics of how emissions are produced. Some measures and policies are less wasteful in comparison with others. A thousand choices are made about online service providers. Do they refresh every nanosecond or every millisecond? There are many choices about the training of algorithms and systems to

provide recommendations.

7 o'clock

There are many choices and options there. Again, we want to ensure that the commission is empowered, through its media service codes, to promote the best choices and options on that. I am happy to engage with the Minister. I am a little concerned that section 7 might adhere more towards the content side, whether harmful or positive, whereas it is more the practices and the service codes that I am keen to go after. However, I am happy to discuss in between.

Amendment, by leave, withdrawn.

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

In page 19, line 16, after “change” to insert “and environmental considerations”.

Amendment, by leave, withdrawn.

Senator Niall Ó Donnghaile: I move amendment No. 22:

In page 19, to delete line 27 and substitute the following:

“(d) ensure and increase the development and provision of—”.

Amendment, by leave, withdrawn.

Senator Niall Ó Donnghaile: I move amendment No. 23:

In page 19, line 31, after “encourage” to insert “increased use of the Irish language and”.

Amendment, by leave, withdrawn.

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 24 and 25 are related. Amendment No. 25 is a physical alternative to amendment No. 24. Amendments Nos. 24 and 25 may be discussed together, by agreement. Is that agreed? Agreed.

Senator Lynn Ruane: I move amendment No. 24:

In page 19, to delete lines 34 to 37 and substitute the following:

“(f) encourage research, promote, endorse, evaluate and approve educational initiatives and community awareness programmes and activities, including in the area of online safety, and co-operate for that purpose with educational bodies and community awareness programmes, and otherwise promote public awareness, knowledge and understanding, in relation to matters connected to its functions,”.

The purpose of this amendment is to expand existing functions in the Bill, which equips the media commission with an educational remit. The current provision is welcome. However, this relates to all the functions of the media commission, not just the online safety functions. The Bill in its current form does not give the commission the power to evaluate and regulate the wide-ranging educational programmes on online safety that go into schools and community

awareness programmes. The amendment seeks to provide the commission with the power to evaluate and regulate educational and community awareness online safety programmes. The Joint Committee on Tourism, Culture, Arts, Sport and Media recommended that a regulatory role in online safety education be explicitly included in the Bill. Similar recommendations were made by the joint committee on education last August. The amendment seeks to act on those recommendations and would equip the media commission with an evaluative and regulatory function as it relates to online safety education.

Senator Malcolm Byrne: I do not disagree with Senator Ruane. Our amendment No. 25, proposes simply adding the phrase “to digital and media literacy generally,” and is intended to capture the same thing particularly because the relevant paragraph specifies “in relation to matters connected with its functions”. We are trying to broaden it to cover areas of digital and media literacy more widely. There is a fear that this provision might be interpreted very narrowly around specific functions of the commission, whereas we see it as having a broader role. It would be sensible to consider a combination of the two proposed amendments. There is a very important regulatory role for the commission but another key element is for it to be engaged in digital media literacy in all its forms in promoting online safety. Therefore it is essential that the subsection about its purpose is as strong as possible.

Senator Alice-Mary Higgins: Both amendments are complementary. A really important point about amendment No. 24 is that it refers to community and community awareness programmes. At the moment it relates to educational initiatives and activities and educational bodies. Ireland has one of the lowest levels of digital literacy in the EU. That is shocking when we have these tech giants all around and we are early adopters in respect of lots of technology, so there is an assumption. However, EU studies have found that 40% or more people in Ireland lack basic digital skills. We have a massive digital divide around skills and empowerment. That is not about working in the sector but people being able to do basic things. Lots of people lose a huge amount of independence because they have to rely on others for their online engagement. That is why I am concerned at the way it is framed now. It is about education and people who are in the education system and the educational bodies. While we have silver surfers and people of every age who are incredibly skilled, a huge number of people in the community are not and also have literacy issues. There are things later about promoting literacy and media literacy but there is a danger that this box could be ticked by something for schools or university and that we would end up not delivering the really important area. There are other things here too like evaluation. We are valuing what is working and what is not. That is something that is in our amendment.

On the general data protection regulation, GDPR, something I have pushed for and continue to do so is the idea that a proportion of the fines from GDPR should be ring-fenced for digital empowerment because that would effectively support people in their data rights. It is about empowerment. Were I to add anything to our amendment it would be “empowerment” as well as “understanding”. It might seem as though it is very similar to what is there already but there is a really important nuance and difference. I hope that the Minister will take that on board.

Deputy Catherine Martin: I thank the Senators for their amendments. Section 7(3)(f) of the Broadcasting Act 2009, as inserted by section 7 of the Bill, is designed to ensure that the commission will play a strong role in encouraging research and in promoting or endorsing education initiatives, including by co-operation for that purpose with education bodies and in

26 April 2022

promoting public awareness, knowledge and understanding to matters connected to its functions. This section is designed to ensure that an coimisiún and specifically the online safety commissioner will have a role in carrying out education initiatives such as public information campaigns and will also work with existing education bodies such as the Department of Education, Webwise.ie and the National Council for Curriculum and Assessment. The commissioner will also be able to endorse third-party providers for online safety education materials which will help schools to source appropriate and robust online safety materials.

Amendment No. 24 seeks to amend section 7(3)(f) of the Broadcasting Act 2009, as inserted by section 7 of the Bill, to extend the requirement of an coimisiún to encourage, promote and endorse education initiatives to cover the evaluation and approval of education initiatives and community awareness programmes and activities. While I understand the intention of the amendment, I have concerns about providing for any role for an coimisiún to evaluate or approve education initiatives, as that would imply a role for it in accreditation. It is not intended that an coimisiún would act as a professional accreditation body for educators similar to the Teaching Council or the Medical Council. I fear it would be an over-step into an area already led by existing educational bodies.

In considering any amendments that might expand or be seen to expand the functions of an coimisiún, I am conscious of not unduly expanding its scope into other areas of policy or other bodies or regulators with the effect that its core functions might suffer. The core functions are to enforce the new regulatory framework for online safety and the updated frameworks for video on-demand services. In that regard, it will play a very strong role in supporting education initiatives. The Bill as published sets out a very significant expansion of the role of an coimisiún in education as against the role fulfilled by the BAI. Therefore I do not intend to accept the amendment.

I recognise the intention of amendment no. 25. I am of the view that the provisions of the Bill as initiated and as read at Second Stage already encompass the role envisaged by the amendment for the commission in respect of media literacy, I can see the merit in specifying the role. However, I do not think that it is appropriate to specify a role for digital literacy. That is primarily the responsibility of the Ministers for Education and Further and Higher Education, Research, Innovation and Science. They are advancing strategies such as that on the ten-year adult literacy for life and through the early years in school system. I am happy to arrange for my officials to engage with the Departments so while I reject the amendment, I welcome further discussion on Report Stage.

Senator Lynn Ruane: To pick up on some of that, I do not think everything in the world of online safety needs to be attached to any sort of accreditation. Again, that is placing it in a particular framework in terms of people accessing education and training and having awareness of online digital safety. That does not bring it right down to a community level where people are not engaging in gaining accreditation or undertaking a curriculum in this stuff. They might only be involved in a local centre, an old folks' home or any of these other places into which this actually needs to go. I suggest that we come back with an amendment on Report Stage that still focuses on how that reach goes into community awareness. It would potentially remove the phrase "evaluate and approve", but still have something in there that acknowledges that the online safety piece needs to go further than educational institutions right into community settings where education is received in some very different ways. If people are worried about it affecting the accreditation space, we are very willing to look at removing those words and focusing on an amendment that still includes the community element.

By way of example, say a person spends a long time in prison and is going to be rehabilitated into the world having been let out. If he or she has spent 20 years in prison, in Loughan House or any of the open centres, he or she will have had no access to any sort of digital literacy or online safety.

There is also OnlyFans. A whole area of harm reduction needs to happen in that space. Nobody is being taught about how to keep themselves safe online if that is the world they are going to enter. There are a number of other spaces that will just not be appropriate to educational settings. Something which focuses that community element but removes the term “evaluate” would potentially be positive.

Acting Chairperson (Senator Gerry Horkan): I thank Senator Ruane very much. How stands the amendment?

Senator Lynn Ruane: Does the Minister want to come back in briefly on that?

Deputy Catherine Martin: As I said, I understand the intention but my fear, particularly in the context of the phrase “evaluate and approve”, was that what is envisaged in the current wording would hugely expand the role of an coimisiún and take it away from its core functions. If the Senator is willing to withdraw the amendment, I am happy to see how she might rework the wording. As already stated, we will engage between with the officials between now and Report Stage. I am happy to arrange that.

Amendment, by leave, withdrawn.

Senator Malcolm Byrne: I move amendment No. 25:

In page 19, line 37, after “functions,” to insert “and to digital and media literacy generally,”.

Amendment, by leave, withdrawn.

Senator Micheál Carrigy: I move amendment No. 26:

In page 19, between lines 33 and 34, to insert the following:

“(fa) engage with the Federation of Irish Sport and its membership to promote online safety and compliance with this Act,”.

I want to point out that I asked the Bills Office to add Senator Cassells’ name to amendment No. 26 but, unfortunately, it has not made its way onto the Order Paper.

Acting Chairperson (Senator Gerry Horkan): It is on the record of the House now anyway.

Senator Micheál Carrigy: At a recent GAA congress, Uachtarán Chumann Lúthchleas Gael, Mr. Larry McCarthy, made comments about the amount of abuse directed at amateur referees, players, etc., within the association and the need for that to be tackled. My reason for putting forward this amendment is that we would engage with the Federation of Irish Sport. For clarity, the Federation of Irish Sport comprises 110 national governing bodies and sporting organisations across the country that have possibly more than 1 million members. By engaging

with all those sporting organisations and asking them to adapt their codes of conduct, which all those organisations have and which all their members sign up to, I think this will give strength to and compliance with online safety. It would mean that all those organisations would actually put supports in place for any of their members who suffer from online abuse. They would be able to tackle any abuse that does take place online because they have it as part of the codes of conduct within their sporting organisations. As I said, the national governing bodies go from the Aldi Community Games right to Weightlifting Ireland and comprise more than 1 million members. It is an easy way of getting all the sporting organisations that represent so many people on board to monitor online safety within their own membership. As I said, changing and adapting their own codes of conduct to comply with this Bill would mean that they would be able to impose sanctions on anyone who breaks the relevant code.

Senator Shane Cassells: I support Senator Carrigy's amendment. He and I, and, indeed, all members of the committee, have engaged extensively with many sporting organisations throughout the course of the deliberations. We have heard their experiences both positive and negative from the online sphere and they have made their contributions towards this Bill.

Senator Carrigy specifically mentioned Uachtarán Chumann Lúthchleas Gael, Mr. Larry McCarthy, who received much media attention for his address to the congress at the start of the year when he specifically called for us as legislators to look at the online abuse of players. He drew a distinction between professional and amateur sportspeople. He did so on the basis that the amateur sportsperson has to get up on a Monday morning and go to work and live a completely different life to the one he or she occupies in a professional sporting scenario. Mr. McCarthy called for specific protections for those not just in the GAA but in all amateur codes in the country. That is what sparked the debate. He just wanted a debate in the context of this piece of legislation and for it to be recognised. The all-encompassing way in which Senator Carrigy worded the amendment in terms of engagement with the Federation of Irish Sport is the proper and correct way to accomplish that. I support the amendment.

Senator Eugene Murphy: I support Senator Carrigy's amendment. I also support the comments of Senator Cassells, who touched on the point with regard to amateur sports. The level of abuse directed at the people to whom he referred is totally unacceptable. It is typically said to me that many professional sportspeople are well paid, but that is not the point. The point is that no abuse should be directed towards anybody online, regardless of whether they are professional or amateur.

Senator Micheál Carrigy: I thank my fellow Senators for the support. I compliment the GAA on tackling this matter head-on and on starting work in respect of it prior to this legislation being put in place.

Deputy Catherine Martin: I thank Senator Carrigy for tabling amendment No. 26. We are all aware that sportspeople are being targeted from the side of the pitch, on the athletic ground and in the stadium or arena. The problem has been particularly abhorrent in certain sports. I am acutely conscious that social media has made it much easier to target abuse at our sportspeople. That is why it would be important for Coimisiún na Meán to be established as soon as possible to allow it to begin to make binding online safety codes to tackle the prevalence of harmful online content such as cyberbullying on social media platforms. I am aware, however, that the issuance of the codes is only one part of the solution to the abuse of sportspeople.

As the Senator's amendment indicates, it will be vital that an coimisiún works with bodies

across different sectors such as sports, education and culture to promote online safety. It is because of the wide array of bodies with which an coimisiún will be required to work that I would be cautious about specifying any one particular body with which it must engage.

Section 7 of the Bill inserts section 32 into the Broadcast Act 2009, which provides that an coimisiún may enter into co-operation agreements with a body established in the State. This section will enable the commission to engage with bodies such as the Federation of Irish Sport and, indeed, a singular national governing body, NGV, such as the GAA, the FAI, the IRFU or the Camogie Association. It would also allow for engagement with Sport Ireland as the statutory body charged with developing sport in the country. I am aware that Sport Ireland is already carrying out work in this area and has produced a staying safe online resource. Ultimately, I am reluctant to specify a role for a specific body in the Bill. As a result, I cannot accept this amendment today. Rather, I would like to see an coimisiún in a position to exercise its capacity to co-operate with bodies across multiple sectors. I propose to reject this amendment for now but to return to the matter at Report Stage, if the Senator is agreeable, and we can liaise regarding an alternative and perhaps less specific form of wording.

Senator Micheál Carrigy: I will withdraw and reserve the right to reintroduce.

Amendment, by leave, withdrawn.

Senator Malcolm Byrne: I move amendment No. 27:

In page 20, between lines 12 and 13, to insert the following:

“(4A) In performing its functions the Commission shall prioritise child safety and shall have regard to policies of the Government and of the Minister for Children, Equality, Disability, Integration and Youth, and to public bodies whose activities are concerned with those matters.”.

Amendments Nos. 27 and 28 are quite similar. I will speak to-----

Acting Chairperson (Senator Gerry Horkan): They are not grouped.

Senator Malcolm Byrne: The purpose of amendment No. 27 is, again, simply to require the commission to prioritise child safety. It will ensure the policies of the commission are in line with the policies of the Government, and in particular the Minister for Children, Equality, Disability, Integration and Youth. It will simply strengthen a provision in the same way as the relevant provisions in the Act with regard to climate change. The work of the commission will be in line with the Government’s policy on climate change, which we strongly support, and this will mean similar provisions will apply with regard to policies on child safety. The amendment very much does what it says on the tin.

Deputy Catherine Martin: Section 7(2) of the Act, as amended by section 7 of the Bill, states the commission shall ensure the interests are protected, although I do understand the intention of the Senators’ amendment. While I will not accept it, I will ask my officials to consult officials in the Department of Children, Equality, Disability, Integration and Youth regarding the wording of the proposed amendment, with a view to returning to the matter on Report Stage.

Senator Malcolm Byrne: I stress the importance of this, which I am sure the Minister

realises. We will withdraw the amendment but reserve the right to reintroduce it.

Amendment, by leave, withdrawn.

Senator Shane Cassells: I move amendment No. 28:

In page 20, between lines 12 and 13, to insert the following:

“(4A) In performing its functions the Commission shall have regard to issues of addiction, in particular gambling, and shall have regard to policies of the Government and of the Minister for Justice, Equality and Law Reform, the Minister for Health, and to public bodies whose activities are concerned with those matters.”.

This amendment is in a similar vein. In the legislation, there is specific reference to certain policies of the Government, in particular regarding climate action and communications, and rightly so in respect of the former. The focus of this amendment is equally important. I feel strongly about this issue because it figured prominently during our earlier debates. I am conscious gambling legislation is being brought forward and please God, by the end of the year, a gambling commissioner will have been appointed. The amendment will ensure we have due regard for the work of the bodies in this State that are entrusted to deal with gambling.

When we discussed the addiction levels online in the sphere of gambling, it was frightening beyond belief. We are talking about a multibillion euro industry in this country, which is prepared to ravage the health and mental well-being of young people, old people, male and female – it does not care. It is insidious. It uses technology to penetrate through to the very vulnerable and to the prominent people who are trying to expose it. I refer to people such as Paul Merson in England, who lost every penny he made as a professional sportsman. He has liaised with broadcasters to highlight the fact these guys can create case files on people. If they know someone has an addiction and is pumping enough money into gambling, they will create a case file to keep the person hooked. It is the most insidious industry in this country and we have pandered to it for too long. Its representatives used to walk around Leinster House like they owned the joint, bringing politicians away for freebies. It is a disgrace what gambling companies have done to people in this country, as anyone who has a family member or a friend who has been affected by gambling will know. It is glorified, and it will be glorified again this week in Punchestown as though it is part of our national psyche; it is not.

The amendment will put the issue of addiction, and in particular gambling addiction, on a par with the importance of Government policies on climate change and environmental sustainability. We want to see that reflected because it formed such an integral part of our discussions in committee. We are going to tackle this issue strongly. The companies know it is coming. It is making them very uncomfortable that the Minister of State at the Department of Justice, Deputy James Browne, is taking them on. I hope it is as uncomfortable for these guys as it is for a horse facing The Chair in the Grand National. In the interim, I want to see a response reflected in the Bill because the Internet is the mechanism by which the companies use the platforms. They do not care about the bookies anymore. That is irrelevant. The Internet is where they try to get people hooked, and I ask the Minister to reflect positively on the amendment.

Senator Marie Sherlock: It will be difficult to follow Senator Cassells’s passionate and eloquent contribution. I will support the amendment, but it is important to highlight that it is in some ways a timid amendment. We should not miss the opportunity to refer to gambling advertising but, in fact, we need to ban it. Our party had a Bill before this House a month ago

on the issue, which the Government parties supported, but we need to press on with it. While it is important to refer to gambling advertising in the important Bill before us, I urge the Government parties to press on with the banning of gambling advertising. We will not properly tackle the ravaging of vulnerable persons by gambling companies in this country unless there is an outright ban. I support what Senator Cassells said, therefore, but we need to go further with an outright ban.

Senator Lynn Ruane: I wish to add my voice to the amendment. In the context of our discussions on the use of recommender systems and so on, they very much tie in with the banning of gambling advertising and with ensuring the advertising is not as targeted as it tends to be, with the profiling and microtargeting people. The issues are related. I will support the amendment but we need to strengthen the provisions elsewhere to prevent the profiling of people.

Senator Eugene Murphy: I support the comments of Senators Cassells, Sherlock and Ruane. Despite all the protestations, advertising for gambling is getting worse. I watch TV and content online and it is getting worse by the week. It is appalling. As other Senators said, it leaves destruction all over the place. I fully agree we need to ban the advertising. It has gone beyond where it should be. There have always been gambling shops on high streets and I like the odd flutter myself, but online gambling is destructive and dangerous. Gambling, when it gets out of hand, is bad in any event, but online gambling has created significant problems in this country, as Senator Cassells said. Many families and young people are suffering, so we have to take strong action.

Senator Shane Cassells: I am conscious that legislation pertaining to gambling is due to come before us and, as that commissioner has not yet been established, I did not want to cross over between the two issues. I accept what Senator Sherlock said but I was cognisant of avoiding that. The intention of the amendment was to include a reference in order that, when that office has been established, the online safety commissioner will work in tandem with the other commissioner.

Deputy Catherine Martin: I agree with the Senators that addiction, and in particular gambling addiction, poses a major challenge to our society, not least when it involves young people and children. That is why the establishment of a gambling regulator, focused on public safety and well-being and with the power to regulate gambling advertising on websites and apps, was a commitment in the programme for Government. As Senators will be aware, my colleague, the Minister for Justice, published the general scheme of the gambling regulation Bill in October, which will establish a new gambling authority. The general scheme indicates the Bill will include a specific definition of “gambling”, an exclusionary register by which persons may voluntarily exclude themselves from accessing gambling activities and provisions that will allow the gambling authority to make codes regulating the advertising of gambling.

While I intend not to accept the amendment, I will ask my officials to consult officials in the Departments of Justice and Health with regard to its wording, with a view to returning to the matter on Report Stage.

Senator Shane Cassells: I acknowledge what the Minister said and, therefore, I will withdraw it and reserve the right to reintroduce it.

Amendment, by leave, withdrawn.

Senator Niall Ó Donnghaile: I move amendment No. 29:

26 April 2022

In page 20, after line 40, to insert the following:

“(iia) the protection of workers’ rights;”.

It is accepted within the Bill that the repeated viewing of harmful content carries a risk of harm or of being desensitised to harmful content.

This risk is particularly relevant when it concerns staff-----

Acting Chairperson (Senator Gerry Horkan): I must now ask the Senator to report progress. He can continue next time.

Senator Niall Ó Donnghaile: I will, or someone in my stead will.

Acting Chairperson (Senator Gerry Horkan): I thank the Minister for attending.

Progress reported; Committee to sit again.

Automated Data Exchange for Police Co-operation: Motion

Senator Barry Ward: 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:

Proposal for a Regulation of the European Parliament and of the Council on automated data exchange for police cooperation (‘Prüm II’), amending Council Decisions 2008/615/JHA and 2008/616/JHA and Regulations (EU) 2018/1726, 2019/817 and 2019/818 of the European Parliament and of the Council,

a copy of which was laid before Seanad Éireann on 1st February, 2022.”

Minister for Justice (Deputy Helen McEntee): This is a technical motion, so I thank the House for facilitating this debate so quickly. The Prüm decisions, which this proposal seeks to update and improve, represent a cornerstone of European law enforcement information exchange. The Prüm decisions enhance the crime-fighting capacity of our law enforcement agencies while respecting data rights by enabling member states on a hit or no hit basis to search automatically the law enforcement DNA, fingerprint and vehicle registration data of other member states with which they have established a Prüm connection. In our connected age, it is clear that police co-operation and effective law enforcement information exchange with our European partners are vital tools in our shared fight against crime.

Ireland put in hard work and spent valuable resources on establishing our compliance with the Prüm decisions, which were transposed into Irish law via the Criminal Justice (Forensic Evidence and DNA Database System) Act 2014 in respect of DNA and fingerprint co-operation

and the Vehicle Registration Data (Automated Searching and Exchange) Act 2018. If we were to choose not to opt into the new Prüm II proposal via either Article 3 or Article 4 of Protocol No. 21, we would not only miss out on the benefits of the new features contained in the proposal, but our existing co-operation under the present Prüm decisions would come to an abrupt end. This would clearly not be in the public interest and would undermine important measures to support public safety and security, weakening An Garda Síochána's capacity to respond to the increasingly dynamic criminal threats that we face.

The new features of the proposal offer tangible improvements that Ireland should embrace. The new technical solution - the central router - should greatly improve the breadth and efficiency of our Prüm co-operation. At present, connections are made on a member-state-to-member-state basis, resulting in duplication of effort and expense. The central router will act as a message broker and, once connection is established with it, each member state will be connected to all other member states that have connected. Importantly, though, the central router will hold no data and member states will retain ownership and control of their own data.

The proposal seeks to enhance co-operation by expanding the categories of data currently amenable to Prüm - DNA, fingerprints and vehicle registration data - to include facial images and police records. Regarding facial images, Ireland should support this extension. Identification of criminals is of vital importance to any successful criminal investigation and prosecution and there are occasions when the only lead captured in respect of a crime is an image of a suspect from a nearby security camera. An Garda Síochána has indicated that had a recent and awful high-profile murder been committed in a city rather than a relatively small town, it would almost certainly not have been able to identify the perpetrator through CCTV without the use of facial recognition.

The proposal seeks to expand Prüm co-operation to police records as part of the European Police Records Index System, EPRIS. This element of the proposal is optional for member states, so opting into the proposal does not bind us to engage in this form of co-operation. We should opt into the Prüm proposal so that this option of extending our co-operation to police records remains open to Ireland. Should we fail to opt in, we would not be able to decide in future that we would like to take advantage of this new means of police co-operation. It is also worth noting that, while the exchange of police records is possible, there is no efficient procedure to do so. The automation of the process of finding out whether relevant information exists in another member state would reduce the need for manual work and save resources. In case the automated search yields no results, competent law enforcement authorities would not have to process the request and retrieve the information, thereby saving time and resources and better respecting data protection rights. An Garda Síochána was part of the EPRIS pilot project and it is the success of that pilot project that has led to the inclusion of this new feature in the Prüm proposal.

The proposal will also bring Europol and the data that the European law enforcement agency holds within the ambit of Prüm information exchange. This will allow member states to perform automated searches on a hit or no hit basis on the third country data held by Europol. It will also allow Europol to check data sourced from third countries against the national databases of member states. Importantly, Europol's participation in Prüm will be in accordance with and subject to the data protection measures in the Europol regulation.

Fighting crime and effectively utilising the technology and data available to do so is in the public interest, but there is also a strong public interest in ensuring that data rights are upheld

26 April 2022

and data protection measures are sufficient. Importantly, under Prüm II, processing of data will be limited to the extent necessary to achieve its purpose, it only allows for comparison of data in case-by-case situations and there is no fully automated exchange. The searching is conducted in an automated manner but expert verification is required to confirm a match and before any personal datum can be exchanged. The exchange of facial images will not entail the possibility of live facial recognition screening of a large number of persons in public spaces and there is no envisaged use of artificial intelligence for the comparison of facial images.

The costs arising from our participation in this proposal are difficult to calculate, but the European Commission has produced estimates that appear reasonable. The costs must also be considered in light of the importance of fighting crime and ensuring safety and security. The Department of Justice, in conjunction with An Garda Síochána and Forensic Science Ireland, is separately beginning a project to address the required upgrades to Ireland's automated fingerprint identification system, AFIS. There is an opportunity to combine the needed upgrade work with the technical adaptations that arise from the Prüm II proposal.

Ireland benefits from the Prüm-based information exchange to date. Participation in these measures is a demonstration to our European partners that we intend to play our part responsibly in fighting crime and ensuring safety for Irish and other European citizens. It is not only our partners who will be interested in seeing whether Ireland continues to participate in these important police co-operation measures, because the criminal elements in our society and across Europe will be ready and willing to exploit any gap in co-operation should we allow it to emerge. The Government has no hesitation in commending the motion proposing that we opt in. The Office of the Attorney General has advised that opting in via Article 3 is in order and is, in fact, the prudent course of action. Ireland can support the measures contained within and should opt into the proposal. I commend the motion to the House.

Senator Barry Ward: I welcome the Minister to the House. Because this is the first opportunity have had to address the issue, I congratulate the Minister and the Department, as well as An Garda Síochána, in particular, for the work that has been done in Ireland and internationally in regard to the Kinahan gang. We have taken extraordinary steps forward. If ever there were a case for international co-operation, what has been done with the drug enforcement administration in the United States and the freezing of assets in the United Arab Emirates and elsewhere, is a demonstration of how that co-operation can work. I do not expect the Minister to comment on this, but it is tremendously important that we take steps to at least seek the extradition of certain persons from the UAE. I believe that is now possible. Notwithstanding the absence of an extradition treaty, I know that it has been achieved by the Italians in respect of Raffaele Imperiale, a drug trafficker. It is something we should definitely look at. I understand it would be done at the discretion of the Department. I do not expect the Minister to comment on circumstances that would happen as a result of a decision taken internally in the Department. I congratulate those involved in the work that has been done. We can see the fruits of that work. It ties in nicely with this issue because there is no doubt that those results have been achieved because of co-operation between police forces and agencies on an international basis.

The points the Minister made about the danger of a country such as Ireland stepping out of these agreements are very well received. I will talk about the protections in a moment. Although we sometimes fear exposing ourselves to that level of international co-operation and connectivity, it carries, almost uniquely, benefits for a country such as Ireland. It is tremendously important to look at the possibilities that may open up for a country such as Ireland, particularly in crime detection as well as enforcement and prosecution. The opportunities that

could be opened up are enormous. In that regard, it is important to note the safeguards the Minister mentioned in her contribution. When we think of this level of co-operation internationally and the danger of the breadth of information that may be available to another state, for example, it is an issue about which people may have concerns.

It is important to remind ourselves that we are dealing with the EU and the UK, and countries that have protocols in place to protect people's data. We will not go down the road of countries such as China, where large tranches of information are sifted by artificial intelligence, and other systems, and where facial recognition software is used to identify people in crowded places, etc. That is not, as I understand it, envisaged by this regulation. There are protections in place in order that data protection regulations still hold sway and people's individual data will be protected, which is tremendously important. What the Minister said about retaining control of our data is also tremendously important, while allowing other jurisdictions to potentially access aspects of that data to carry out crime detection activities, makes perfect sense.

We should not be afraid of co-operation on a policing level with other countries, particularly those in the EU, in regard to the kind of data we have discussed, such as fingerprints, palm prints, and car registrations. I note what the Minister said about the extension of that to police records. Again, this is something that happens, albeit on a slower and more systematic basis. Upon the introduction of a semi-automated system, it would not be the case that gardaí would be able to log in to a computer in Ireland and look through the records of the Polish or French police and *vice versa*. What we are talking about is a more efficient method of accessing data that should be available to everybody in the EU. There is a danger we have seen present in the US, where there are different states, counties and jurisdictions. The co-operation between them does not always work. We should have a seamless police environment within the EU so that we can effect the greatest possible policing at a European level, which would benefit us in Ireland as much as it would benefit other European states.

To those who have legitimate concerns about what this might mean, it is important to reassure them that safeguards are built into this provision that will protect them from the undue use and exploitation of their data. Equally, when we talk about exploitation, the great danger with not approving this motion is, as the Minister said, if there is a gap in those provisions, it will be exploited by criminal elements. It behoves Ireland to be as much a part of these measures as possible because they will benefit our policing, our detection, our prosecution. It would allow An Garda Síochána, as a police force, and the State to be more effective than if we were not part of it. I welcome and support the motion. I hope it will pass because I believe it will improve the policing environment in Ireland and across the European Union.

Senator Robbie Gallagher: The Minister is very welcome to the House. She outlined very clearly in her contribution the reasons we should support this proposal. On behalf of the Fianna Fáil grouping, I will certainly do so. Senator Ward mentioned a high-profile case that was in the media recently. If one were looking for an example of a high-profile case where co-operation among police forces throughout the world is vitally important, that is not a bad place to start.

The Minister mentioned, and it is hugely important, that where citizens' information is being shared with others, be it a police force or otherwise, the rights of those citizens would be protected. She outlined clearly in her contribution that this would be the case. The fight against crime is on a global pitch. There needs to be co-operation between police forces throughout the world within legitimate democracies, where information can be shared freely, and that we have

the confidence and security in the knowledge that the information will be treated in a sensitive manner.

I will not hold the debate up; I just have a couple of quick questions. Is there a timeframe within which this proposal will be reviewed? Does our closest neighbour, the UK, have a similar arrangement with the EU, which would include Ireland, or what is the position in that regard?

In summary, it is in the public interest to have as much co-operation as possible among police forces throughout the world, and this proposal is an extension of that. The motion is to be welcomed and I thank the Minister for bringing it before the House.

Senator Vincent P. Martin: I will not take the full five minutes because this topic has been well covered and succinctly opened by the Minister, whom I welcome to the Chamber, in her contribution. The advantages clearly outweigh the disadvantages. I understand there might be an immediate, instinctive reaction from some quarters who zealously protect data, but we have to assure them that the advantages outweigh the disadvantages. We must place the common good first. Balances and checks are contained in this motion and in the Attorney General's advice, to which the Minister referred.

We have long since taken our place as a nation among the nations of the world. This is just one further example of solidifying that position and that Ireland is not, and never will be, a safe haven for criminality. We live in a place called Europe. There is an environmental phrase, "Think locally, act globally". This is very apropos for tonight when we want to do all we can. The only way of defeating people is to act, preferably, yesterday. We are already too late. We are all the time playing catch-up. All we can do is our very best and that includes global co-operation like never before. It might include some slight discomfort for some who zealously protect and value their independence. Data protection and privacy is a fundamental right and it is enshrined in our Constitution, but this is not repugnant to our Constitution or the right to privacy because there is a greater challenge at stake here to protect us all, and that must come first in the hierarchy of rights. Therefore, I agree with previous speakers and I am pleased to say that the Green Party-Comhaontas Glas will also be fully supportive of this initiative.

Senator Niall Ó Donnghaile: Cuirim fáilte roimh an Aire. Mar an gcéanna le comhghleacaithe eile, beidh Sinn Féin ag tacú leis an rún atá os ár gcomhair anocht. The Prüm Convention and the Schengen Agreement are a series of measures that cover cross-border co-operation in the exchange of data regarding DNA, fingerprints and vehicle registration of concerned persons involved in criminal and terrorist activities. As we know from daily experience in this country, cross-border criminal networks are a real threat to the safety and well-being of large numbers of people. That threat now exists on a bigger scale across Europe. Other colleagues have referred to some of the more notorious criminal gangs that have emerged in this jurisdiction. They are alleged to have collaborated with gangs in Italy, the Balkans and the Netherlands, while their criminal activities are carried out here as well as in Britain, Spain and the United Arab Emirates.

The focus of the convention is the criminal organisations that cause so much misery to those they target and coerce. While we relentlessly pursue the criminals, we also have to be mindful that the laws being used do not inadvertently affect people's human and civil rights. That is why, when it comes to certain restrictive measures in the technological field such as databases tracking migrants, there needs to be strict oversight and scrutiny. The proposal correctly rules

out the use of artificial intelligence to scan the facial images of the general population but it may be used against known or suspected criminals. Human rights-based law is compatible with protecting the people the criminals are exploiting while firmly and effectively closing down the criminal organisations themselves.

It is ironic that the British Government was one of the largest users of certain shared crime databases administered within the EU when its Brexit policy has tied its hands by withdrawing from the European Union. Nonetheless, as the Minister knows, there needs to be effective co-operation between the EU and the British Government when it comes to agreeing an approach to tackling organised crime across the Union. This approach needs to be based on clear guidelines and accountability, not aspirational or persuasive appeals. That approach does not work. States have resources, both intellectual and practical, way beyond what most of the advanced criminal organisations have. Those resources need to be marshalled and used to suppress and render ineffective organised crime. This motion will assist in that objective and we support it.

Senator Mark Wall: I too welcome the Minister. The Labour Party will be supporting this motion. As other speakers have said, international co-operation is essential and it is particularly essential for us on this island. We need to know what is going on around us and ensure this is no haven for criminal activity. This is a very important motion in order to reflect that. It is important to say that we will retain control of our own data. That has been said by a number of speakers, including the Minister herself, and that fact is essential for some people who may have concerns around this motion. Senator Gallagher raised a question about our nearest neighbours. With Brexit and everything else going on, I would be very interested to hear a reply to Senator Gallagher's question about how the UK will sit with this and how we will share data with the UK now that it is no longer part of the EU. That is very important given its closeness and the fact that we have shared so many commonalities over the last period of time.

Acting Chairperson (Senator Annie Hoey): As no other Senators are indicating, I now invite the Minister to reply.

Minister for Justice (Deputy Helen McEntee): I will be brief. I thank the Senators for their support and co-operation in allowing this motion to pass as quickly as it has. The reason we are bringing it before the Houses today is that there is a strict timeframe and it was required to be done within the next few days. The next priority is to get the review up and running. As there is a database involved, there is a technical side to it and that will take some time to put in place, but once it is up and running and effective it will be constantly reviewed, as is the case with any legislation. All member states have agreed to have this supported by their parliaments as quickly as possible in order to opt in.

The UK has opted into the current Prüm system so I am assuming it will opt in to this one. I do not have an indication as to whether or not that will be the case but I can only assume it will continue in that regard. How that will work is not clear but through our engagement, whether in the Department of Justice or any of the other Departments, we have in many instances, although not all, found mechanisms to replicate the type of engagement that existed prior to Brexit. That might be through memorandums of understanding or other systems we have put in place with regard to data sharing and police co-operation. It is very important that this continue as we implement these measures. It is clear that opting in satisfies the public interest. It enhances our co-operation, as many colleagues have outlined, and it helps us fight crime and ensure security for our citizens. What is really clear is that, by opting out, not only would people lose out on these additional advancements and technology but it would stop our current co-operation. That

26 April 2022

would be detrimental and, as Senator Ward said, would send a very clear and unwelcome signal to criminals that we are not serious about making sure they are brought to justice. I again thank colleagues for their support for this motion.

Question put and agreed to.

Acting Chairperson (Senator Annie Hoey): When is it proposed to sit again?

Senator Barry Ward: Amárach ar 10.30 a.m.

Cuireadh an Seanad ar athló ar 7.57 p.m. go dtí 10.30 a.m., Dé Céadaoin, an 27 Aibreán 2022.

The Seanad adjourned at 7.57 p.m. until 10.30 a.m. on Wednesday, 27 April 2022.