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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

SEANAD ÉIREANN

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

SEANAD ÉIREANN

Déardaoin, 14 Iúil 2022

Thursday, 14 July 2022

Chuaigh an Cathaoirleach i gceannas ar 9.30 a.m.

Machnamh agus Paidir.
Reflection and Prayer.

Gnó an tSeanaid - Business of Seanad

An Cathaoirleach: Before I read out some messages from the Dáil, I am sure colleagues will join me in welcoming the French ambassador to Ireland, H.E Mr. Vincent Guérend, to Seanad Éireann and wishing him a very happy Bastille Day. The storming of the Bastille marked the beginning of a revolution that created a republic under the guiding principles of liberté, égalité and fraternité. It is well known that many young Irish men and women were inspired by the values of the French republic to pursue their own quest for freedom and independence.

Ireland's national flag was directly inspired by the French tricolour. Thomas Francis Meagher received a gift of the Tricolour - a flag of green, white and orange - from the French when he visited Paris in 1848. Next year will be the 175th anniversary of the first flying of an Irish flag on 7 March 1848 at 33 The Mall, Waterford. When he spoke of its meaning, Thomas Francis Meagher said, "The white in the centre signifies a lasting truce between orange and green and I trust that beneath its folds the hands of Irish Protestants and Irish Catholics may be clasped in generous and heroic brotherhood."

France supported Ireland's quest for independence. In 1798, the first Irish Republic was proclaimed by Wolfe Tone and supported by General Humbert. Next year will be the 225th anniversary of the famous "Year of the French", when General Humbert led an expedition to County Mayo. The anniversary will provide an opportunity to reflect on the deep and lasting relationships between Ireland and France and the impact that France's ideas of independence had on our two democracies.

Ireland and the world were transformed by the events in France 233 years ago. We owe our French friends and colleagues an enormous debt of gratitude for blazing a trail of freedom not just for Ireland but for millions around the world. On the national day of France, our nearest EU neighbour, H.E Mr. Guérend and his wife are most welcome to Seanad Éireann and I wish them a very happy Bastille Day. I know the ambassador is busy and will host a reception this evening.

Teachtaireachtaí ón Dáil - Messages from Dáil

An Cathaoirleach: Dáil Éireann has passed the Planning and Development, Maritime and Valuation (Amendment) Bill 2022 on 13 July 2022, having been changed from the Planning and Development (Amendment) (No. 2) Bill 2022, considered, by virtue of Article 20.2.2° of the Constitution, as a Bill initiated in Dáil Éireann to which the agreement of Seanad Éireann is desired.

Dáil Éireann has passed the Payment of Wages (Amendment) (Tips and Gratuities) Bill 2022 on 13 July 2022 without amendment.

Animal Welfare: Motion

Senator Pauline O'Reilly: I move:

"That Seanad Éireann:

recalls that:

- Ireland has signed and ratified the European Convention for the Protection of Animals kept for Farming Purposes ('the Convention');

- the European Union has been promoting animal welfare for over forty years, gradually improving the welfare standards in respect of animals kept for farming purposes;

- the Government has reaffirmed its commitment to promoting the welfare of all animals in the Animal Welfare Strategy for Ireland 2021-2025 ('the Strategy');

agrees:

- that animals are entitled to the widely acknowledged following 'five freedoms', which are reflected in the Convention:

i) freedom from hunger and thirst;

ii) freedom from discomfort;

iii) freedom from pain, injury and disease;

iv) freedom to express normal behaviour; and

v) freedom from fear and distress;

acknowledges:

- the positive contribution to date on the part of this Government in devising and

publishing the Strategy; in creating a stand-alone Animal Welfare Division within the Department of Agriculture, Food and the Marine; and in providing for a doubling of funding for animal welfare organisations;

supports:

- the recognition by all European Union Member States in Article 13 of the Treaty on the Functioning of the European Union, together with the acknowledgement in the Strategy that animals are sentient beings who can perceive their environment and experience sensations such as pain and suffering or pleasure and comfort;

- the commitment by all European Union Member States in Article 13 of the Treaty on the Functioning of the European Union to pay full regard to the welfare requirements of animals;

- the commitment by the European Commission in its Farm to Fork Strategy to revise the European Union's animal welfare legislation by the end of 2023, in order to align it with the latest available scientific evidence, broaden its scope, facilitate greater enforcement, and ultimately ensure a higher level of animal welfare;

- the commitments made in respect of animal welfare in the Programme for Government: 'Our Shared Future';

calls on the Government and the Minister for Agriculture, Food and the Marine to:

- continue to work with the European Commission and with Ireland's fellow European Union Member States to uphold the Convention and Article 13 of the Treaty on the Functioning of the European Union; and to expedite the revision of the European Union's animal welfare legislation;

- legislate for a minimum requirement that all shipments carrying live animal exports to third countries carry a veterinarian on board, and to take immediate steps to vigorously pursue value-enhancing market avenues as an alternative to live exports;

- commence all sections of the Animal Health and Welfare and Forestry (Miscellaneous Provisions) Act 2022, such that the prohibition on fur farming as provided for under that Act takes effect;

- consider section 12(9) of the Horse and Greyhound Racing Act, 2001 (as amended), and adopt a position as to whether the strategic plan submitted to the Minister for Agriculture, Food and the Marine by Bord na gCon in accordance with that Act is deficient and/or whether reasonable progress on the implementation of that plan has been made, such that instalments otherwise payable to Bord na gCon should be withheld;

- take immediate steps to uphold the provisions of Council Directive 2008/120/EC laying down minimum standards for the protection of pigs, in particular those provisions relating to the practices of tail-docking and reduction of corner teeth;

- review the sentencing regime under the Animal Health and Welfare Act 2013 as a matter of priority;

- regulate the breeding, ownership, sale, or supply of exotic pet species;

- allocate increased resources to the enforcement of the Animal Health and Welfare (Sale or Supply of Pet Animals) Regulations 2019;

- engage constructively with Seanad Éireann in considering the provisions of the Animal Health and Welfare (Dogs) Bill 2022."

I welcome the French ambassador and his wife to the Seanad for Bastille Day. I look forward to joining them for celebrations in their residency later and I thank them for joining us.

It is my great pleasure to table a motion on animal welfare. Unfortunately, animal welfare does not get the time it deserves in the Houses and the Green Party wants to make sure that we address a couple of urgent issues before the summer recess. I am delighted that the motion is being seconded by my Fianna Fáil colleague, Senator Murphy.

I will lay out precisely what the motion is about as there is quite a lot in it. The Green Party went into the programme for Government negotiations with a lot of requests regarding animal welfare. While we achieved a great deal, it is fair to say that we wish we had gotten other measures over the line. Regardless of whichever party we had gone into programme for Government negotiations with, it was going to be a challenge having read all the manifestos of the individual parties.

I am delighted that the Green Party has a Minister of State in the Department of Agriculture, Food and the Marine. The Minister of State, Senator Hackett, will speak later and I know she will push for everything she can for animal welfare. There was a doubling of funding for the organisations involved in the area. I speak to representatives of these organisations all the time, as does the Minister of State, and we try to bring to the table issues concerning them whenever we can. This motion addresses a significant number of those concerns in four key areas, namely, live exports, greyhound racing funding, exotic pets and the welfare of dogs. I expect Senator Boylan will speak on the last of those. The motion expresses support for her Bill and we would love to see it progressed. We will do what we can to make it happen.

I have spoken many times in this House about live exports. It is not an issue on which we have had agreement from most parties. It is Green Party policy to ban all live exports outside of the EU on the grounds that animals are sentient beings. They are put on ships, sometimes for days and even for up to two weeks, particularly when there are storms, as I have outlined previously in the House. Trips within the EU are very short but there are still problems in this regard. A Green Party researcher told me yesterday that when she went on holiday with her children, there were four container loads of animals on the ship. Most people do not realise there are no vets on those ships and no requirement to have a vet on board. In the case of very young, unweaned calves, they may be on a ship for nearly two weeks when going to Libya, for example, with no access to any kind of medical care whatsoever. Many die on board and those who survive go to systems of slaughter that would not be considered humane by people in this country. They are slaughtered in locations with different kinds of legislative environments from ours. We cannot control that.

This is primarily the reason the Green Party does not want to see these animals going on long journeys. If we ensured, at the very least, they had enough water, food and access to even the minimal standards of medical care, we could stand over the practice. It is just not possible to stand over it at the moment when there is no legal requirement to have a vet on board. Dur-

ing the Covid crisis, many of the export companies said they could not do that because we were in the middle of the pandemic. We are not in the middle of a pandemic now and perhaps those companies should not have been exporting animals during a pandemic in the first place. Part of the motion calls for a requirement to have vets on board every ship on which live animals are being transported. I know there is no legislative basis for this but I ask that the Minister, Deputy McConalogue, bring forward such legislation. I believe everybody in this Chamber would support it. They might not support a ban on live exports but I know they would support care for animals. It is something with which Irish people concern themselves.

I will outline some of the figures relating to live exports. In 2020, nearly 492,000 pigs and a total of 265,000 cattle were exported from this country. In 2022 to date, halfway through the year, 206,000 cattle have been exported. We are on our way to a bumper year for live exports. It is incumbent on the export companies, this House and the Dáil to put the legislation in place to ensure this vast number of animals are cared for properly during their journey overseas. The majority of exported animals are pigs, to which there is specific reference in the motion. In the case of cattle, most of the exported animals are very young, unweaned calves. I have spent a lot of time on farms. Anybody who has heard the crying of a baby calf when it is being taken from its mother knows it is very distressing. The animal welfare group within the Green Party, which is incredibly active, does substantial work and engages regularly with the Minister, reports that the crying of calves being transported can be heard from the dock. It is incredibly distressing.

Many people say the greyhound racing industry in this country is on its knees. It is on its knees because people no longer want to attend the events. As far as I am aware, none of the staff at the Galway track works full-time. One or two of them may be full-time but, in general, there is a really small job opportunity within the industry. The claim is often made in this Chamber that the industry bring jobs to rural Ireland. It really does not, other than a few part-time jobs. We have record employment numbers in this country. This is not the time to be saying we should put the jobs of some 30 people who could avail of another job opportunity ahead of the welfare of these animals. There have been numerous exposés regarding the treatment of greyhounds in this country. As we have pointed out repeatedly, approximately 6,000 dogs have gone missing in Ireland. They are born, found not to be suitable for racing and then they just go missing. Apart from that, approximately 6,000 dogs are exported from Ireland, predominantly to the UK.

The cost of rearing those animals is taken up by the State, at nearly €5,000 per dog. The breeders, when they sell the animals, pocket the profit, which is approximately €1,000 per animal. Farmers throughout the country would love to have the cost of rearing their animals covered by the State and to be able to pocket the money for selling them overseas. This cannot continue. All of that funding is coming from the State. The way our legislation is set up is such that every time we increase funding to horse racing, which does need to be done, we also increase funding to the greyhound industry. It is an 80:20 split. In the middle of the pandemic, we had to support the dogs and horses who were, in effect, in the care of the State, given we are supporting the industries financially. We had to increase the amount of money going to them, with the same 80:20 split reflected in the budget. That was really upsetting for me as a Green Party member. It was upsetting to have it laid out in front of us that this is how funding is being distributed.

One positive development was the introduction in 2016 of a requirement that both industries prepare a strategic plan and make reasonable efforts to implement it. The Minister has powers to withhold moneys if the plans are considered deficient or if reasonable progress on

their implementation has not been made. Some of our members and others involved in animal welfare legislation have brought to light that the industries are not sticking to the plans. There are legislative grounds to withhold moneys in those circumstances. We are calling for an examination of the plans and whether the industries are sticking to them. It is not for me to say whether they are, but there is a reasonable amount of evidence at this stage that they are not. We ask that, following the strategic plan examination, the Minister would then make a decision as to whether it is appropriate to give over that money.

We in the Green Party would love to see an end to any public finance being given to the greyhound industry, especially given the evidence to which I referred. I do not think any other party in this House agrees entirely with leaving aside all funding, but we must deal with the reality of where we are politically. This is a very good step and an important part of the motion. Many people have said we need to take on a racing-centric breeding model. It is hard for me to argue on that point when I do not support greyhound racing in the first place. However, if we actually took on that kind of model, we would put the welfare of these animals first.

This motion calls on the Minister to regulate the breeding, ownership, sale and supply of exotic pets. It is taken directly from the programme for Government. We do not know how many, where or what species of exotic pets are in Ireland. Northern Ireland has legislation in this area and it would be welcome if there was consistency across the island. We tend to say that we would love to see some of our legislation regarding the environment adopted in the North of Ireland, particularly after Brexit where we have real concerns. In this particular instance, however, we would love to see what they have in the North of Ireland adopted here. It just shows that the public want this and are really crying out for support for animals in Ireland. Therefore, not having any of this data or information about these exotic pets means there are animal welfare issues. Wild animals are often caged and kept in unknown conditions, and when exotic animals escape, there is a public health issue.

Crucially, when it comes to biodiversity, the first motion we ever brought to the Seanad when we had four Green Party Senators elected was with regard to biodiversity. So much debate is lacking that real proper discussion about biodiversity. We have seen that these exotic species wreak havoc on our local natural environments. They are very hard to deal with from a public purse point of view but also when it comes to really restoring biodiversity and our native species.

Many Senators will remember my outbursts here a few months ago with regard to fur farming and the Animal Health and Welfare and Forestry (Miscellaneous Provisions) Bill, which was aimed at ending mink farming on this island. I was frustrated at the lack of progress of that Bill. It was adjourned many times but I was delighted to see it pass. Indeed, the Minister of State had her own really important work in relation to small-scale forestry on farmlands across the country. Upon looking into it, however, and I believe the Minister of State is aware of it and this is crucially important for us, that legislation has not been commenced. It passed through both Houses but it has not been commenced. That is why it was critical to have this done before the recess. We need to have it commenced. I do not care what is going on in the background, really. There are three farmers who invested heavily in it but they have known for two decades that this industry does not have a future. That Bill, which is now the Act to which we all agreed, needs to be commenced in order that we can get on with the business of compensating those farmers and the small number of workers and, critically, ending fur farming, which has been shown not to be humane in any way, shape or form and not to be in the public interest. It has been banned in other parts of the world. Ireland is lagging behind. I thought the job was done.

We got the Act done but now it is time to commence that Act. I will end there. I have taken a considerable amount of time because I feel very passionately about this issue. I look forward to hearing from my Government colleague who will be seconding this motion today. I know he supports animal welfare.

Senator Eugene Murphy: I second the motion. I welcome the Minister of State. I thank my colleagues for being here. If Senator Boyhan listens to me, he might hear what I have to say rather than commenting before I say it.

Senator Victor Boyhan: I am not commenting on anything the Senator is saying.

Senator Eugene Murphy: I know Senator Boyhan has a big interest in agriculture as well. Fianna Fáil has decided to support this motion. I must make clear at the start, however, that coming from an agricultural background and knowing the significance of agriculture and our export market, I cannot support any call to ban live exports. I will say that I understand where Senator Pauline O'Reilly is coming from, certainly with regard to more veterinary care and having a veterinarian on board these ships. I am all for that type of thing. We have seen some incidents of things that were really upsetting, particularly young calves being sent abroad and suffering on board. I think every Member of this House would agree. Again, coming from a rural area and from a small farming background, nothing hurts the farming community as much as to see those images on television.

With regard to the farming community, again, we talked about the small and medium farmers. They really get upset and annoyed by this because they really love and look after their animals. Whether children are from an urban or a rural background, when they see a young lamb, calf, pup or whatever it is, they have huge respect and empathy. We all have to have a level of responsibility.

The motion calls on the Government to work on several areas of animal welfare including commencing the ban on fur farming legislation as outlined in the Animal Health and Welfare and Forestry (Miscellaneous Provisions) Act 2022, regulating for exotic pet species, increasing funding for the enforcement of animal welfare regulations and reviewing the sentencing regime under the Animal Health and Welfare Act 2013.

I think we all agree that we need to move on fur farming. We need to move on that legislation and I know the Minister of State is committed to working on that. The issue of compensation may be worked out or is nearly at an end and once we have that done, we should move very quickly with that legislation. We do not want fur farming; that is the reality.

Irish people have a very strong sense of empathy and responsibility towards animals. Our priorities in government must reflect this. We are part of a three-party coalition with a programme for Government. I respect and work with that programme for Government. Animal welfare is a high priority for the Government and considerable resources and funding are provided to organisations involved in rescuing and rehoming animals. It should be recalled that in December 2021, the Government through the Minister, Deputy McConalogue, and others in the Department, including the Minister of State, provided record funding of €3.7 million to 98 animal welfare bodies throughout the country. In my own area of Roscommon–Galway, people rescue and look after different types of animals and make sure they are okay. They are delighted this has begun to happen in society. People who voluntarily look after animals get very distressed when they see them being neglected or maybe dying from lack of food. We have a

responsibility in that regard and we must do it. Therefore, that funding is very important and I am very happy to say there will be increased funding in that area in the new budget.

Work is under way to establish regulations for the ownership, sale and supply of exotic pets. I agree with Senator Pauline O'Reilly that we need to regulate that area without delay. People get quite worried when the authorities find that ten, 12, 14 or 20 exotic pets have been brought into the country illegally. There are welfare issues and health issues. This must be regulated as a priority matter.

Animal welfare is a high priority for the Minister, who has made concrete proposals in regard to areas raised in today's Private Members' business. The Minister created the Department's first stand-alone animal welfare division, for example, and launched Ireland's first dedicated animal welfare strategy, Working Together for Animal Welfare: Ireland's Animal Welfare Strategy 2021-2025. A new advisory council on companion animal welfare, comprising a group of independent experts who will advise the Minister on important issues such as the responsibility of pet ownership and certain breeds, has also been created. The Minister reformed the farm animal welfare advisory council and with his Government colleagues recently launched the farm and animal welfare network, which focuses on practical individual support for people and their animals at local level. Later this year, the largest ever allocation of grants will be allocated by the Minister and his colleagues in the Department to animal welfare organisations, enabling them to engage not only in helping animals in need today but also in education programmes that will prevent welfare problems arising tomorrow.

The Department of Agriculture, Food and the Marine is working with other Government Departments to put in place regulations for the ownership, sale and supply of exotic pets. The Minister is working on legislation aimed at further clamping down on those who dock or crop dogs' ears, which is another terrible practice. The Minister has reiterated his continued commitment to upholding high standards of animal welfare in the transport of live animals. I spoke at the start about the economic importance of that sector to our country. The production of food has now become so important again with the war in Ukraine. However, I fully endorse anything we can do to ensure that all animals that are being exported are properly looked after and, certainly, that they have veterinary support on board; that is important.

10 o'clock

Those are my few comments. Animal welfare matters to a lot of people, whether they are urban or rural, and to a lot of farmers. I certainly think there is a lot of good in the motion and that is why we will support it, as part of the Government. I know the Senator understands that because of my background, I would not like to see a ban on live exports, but I respect her view. In regard to greyhounds, there are some very good people who look after dogs very well, take them out and exercise them, but there have been people who have sullied that business very badly. We must ensure that the proper thing is done and that animals are properly looked after. As I said, I second the motion.

Senator Victor Boyhan: I welcome the Minister of State to the House and thank the Green Party for putting animal welfare on the agenda. At the outset, I want to say I am the son of a cattle dealer and I have brothers who are involved in trading cattle. I know the potential and the importance of exporting cattle, as the Minister of State does, with her responsibility in this area. Let us be clear about the difference in the contribution from the leader in this House of the Green Party, which she has read into the record. I will tease out some of it, although I can-

not tease out all. That is not reflected in the motion, which makes a simple nine calls on the Government. The first call is to legislate for a minimum requirement. Let us be clear if we are sending a message out to the Green Party animal welfare group. I know many of them, and they are colleagues of mine and friends of mine. We may have different opinions but not too many. Let us be clear that today's motion put down by the Green Party states that we should legislate for a minimum requirement in all shipments carrying live animal exports to third countries. It is not calling on this House or the Government to ban live exports of cattle outside the European Union. That is a very important point. I recognise that those in the Green Party are pragmatists and, as Senator Pauline O'Reilly said, they have to work within the confines of coalition Government. That is a very important point. The Senator is not calling today, in this motion, which she had the option to do, for the banning of live exports outside the European Union.

We need to look at other issues. Of course, I would have concerns about live exports of cattle anywhere - within the Union or outside the Union - but we have to be pragmatic. We live in an economy with jobs. One Member spoke of calves bawling. I am long enough around to have heard of mothers bawling when their sons and daughters had to emigrate for jobs. I just want to set the context. There were many heartbreaks on the harbour walls of our nation, which is important in the context of this debate.

I am in favour of veterinary technicians. I am not sure if we can afford highly-paid professional vets but qualified veterinary technicians are an option, and that is important.

We need to look at the lairage scheme, in particular in Wexford. We need to see how cattle are coming in and out of the various ports within the European Union and where they are resting up. We need to talk about their age as they are not all young. There are many cattle that go outside the European Union to be finished and it is not correct to say they are all going to be slaughtered, which is simply not being done. That is also an important point.

It is only fair that we acknowledge that the programme for Government committed to double funding being allocated to animal welfare organisations over two years, based on the 2020 budget allocation of approximately €2.4 million. Savings in the Department of Agriculture, Food and the Marine were looked at and, eventually, that went up to €3.2 million, and 110 organisations received funding in 2020. I have the list with me here and, indeed, I circulated it across the country at the time and I checked with the committee yesterday to see that it is there. I firmly believe it would not have happened as much were the Green Party not there, and it is important to acknowledge that and to be fair to the Minister of State.

I want to single out the Minister, Deputy McConalogue, who has done an excellent job. He is the one who engages with us on the committee. He has come to the committee. He is a strong advocate, like the Minister of State. The Minister, Deputy McConalogue, has come to the fore in terms of working on animal welfare. It is he who comes to the committee and answers most of the questions on it, and his Ministers of State are clearly committed to it.

(Interruptions).

Senator Victor Boyhan: I am sorry. It is he who comes to the committee and engages with us, and I am on the committee. That is what I want to say. I want to acknowledge that because it is an important point.

I also want to acknowledge the public representatives who are animal welfare advocates. I particularly want to single out Councillor Tania Doyle from Fingal, Councillor Deirdre Heney,

Councillor James Charity, Deputy Holly Cairns, Deputy Gino Kenny and Senator Lynn Boylan, who are very strong advocates across the different party political groups in advocating strongly for animal welfare. They have given this a lot of focus and attention. I took the time to look at the parliamentary questions and the Commencement matters and I see they have a commitment.

The point I am making is I support the concept of having this debate. We need to look at how we can mainstream certain areas. The Minister of State will be familiar with the document, Working together for Animal Welfare: Ireland's Animal Welfare Strategy 2021-2025. In that, one of the key issues is mainstreaming animal welfare across all Teagasc training, which is an area we need to address. They are all commitments from the Government and I accept them. To be clear, we have to be balanced in our approach. I support animal welfare but we are in an economy.

Senator Pauline O'Reilly raised the issue of mink. I am somewhat surprised that this was not done because I had thought it was all rolled out, but the Minister of State is in government and that is an issue for the Government. The Government has a programme. I presume it delivers on the programme and I assume Government Members monitor the programme and look at that. It is a surprise. I will make contact after we meet here with those groups that are engaged with us and with the Minister. I ask the Minister of State, Senator Hackett, to shed some light on what steps she or people within her Department took to pursue it. Is there an issue or a difficulty with implementing Government policy and, ultimately, an Act passed by the Houses of the Oireachtas?

Senator Tim Lombard: It is great to be here on this last day of the Seanad. This is a very important motion which gives us the opportunity to debate where we are in the agricultural sector with regard to animal health, in particular the issues pertaining to the motion.

If we look at what the farming community has done in recent decades, there has been dramatic and huge change in practices and in education. There is a great need for that education to continue. I have often spoken about issues like the age profile of our farming communities as they are of a certain demographic, and how we engage them is very important. One of the key issues in terms of how we engage them is through discussion groups, which have proven to be very successful in trying to get the information out there. Discussion groups are basically groups of farmers who meet once a month on a farm to go over practices. It is training on a farm on a continuous basis, which is a very important part of how we can get that education into the system.

In the debate this morning, we have used figures about live exports. I believe we need to bring clarity to those figures and the Minister of State might clarify this point. A figure of 400,000 pigs was mentioned in the Chamber this morning in regard to exports. The Minister of State might clarify that the information on the Department website is that over 375,000 of those went to Northern Ireland for slaughter and did not leave the island. Even though they are down as exports, they did not go near any ship. The Minister of State needs to clarify that to make sure the wrong message does not go out from her Department. On the issue of unweaned live calves being moved, the Minister of State might elaborate on the 13-hour limit regarding feeding and how that is tied in. That is a very important statistic and, again, that piece of information is on the Department's website. Those issues need to be clarified because the public might get the idea that unweaned calves are spending weeks on a boat, not 13 hours, which is a significant figure. They also might get the idea that hundreds of thousands of pigs are being sent abroad, when they are not even leaving the island. What is for export and what is moving

off the island needs to be clarified in this debate.

We also need to clarify the work of the committee, of which I am Vice Chairman, in particular the amount of work it has done on the greyhound industry. We have had some very tough meetings with the industry in the last few years and there have been changes. In the Minister of State's response, she might acknowledge the tracing issue that has emerged, how that has been enacted by the greyhound industry and how the traceability issue has been brought forward, somewhat following the agricultural bovine system of tracing every animal.

Other Members will know more about the exotic animals issue than I do. There is a significant deficit in that regard, and those Members with greater knowledge will probably speak on that. However, there is a need for work to be done on that issue.

Other Senators also have greater knowledge of issues relating to dogs than I do. There is significant work to be done there.

The hearings we have had at the Joint Committee on Agriculture, Food and the Marine in the past six or eight months have been a learning experience for me. Politics aside, there is great knowledge in this Chamber. We need to bring forward real recommendations and legislation on these issues. Getting the right information, as per the Department and its website, out of this debate is important. I look forward to the Minister of State's response in that regard. She might clarify the figures that were mentioned in order to make sure the House is not misled.

Senator Lynn Boylan: I hope the Cathaoirleach will give me a bit of latitude, because there is a lot I want to say.

An Cathaoirleach: The Senator may take two minutes of Senator Lombard's time.

Senator Lynn Boylan: I welcome the motion and thank Senator Pauline O'Reilly for tabling it. Animal welfare is a really important issue. It does not receive the attention it deserves. Part of the reason for that is that the issue, particularly canine welfare, falls across a number of Departments. I was very pleased that the agriculture committee, in fairness to it, agreed to my proposal for post-enactment scrutiny of the animal welfare legislation. We had very lengthy hearings on issues of dog and horse welfare. I hope that work will continue, with the support of other members of the committee, to look at the issues of exotic species and so on. I acknowledge the increase in funding for animal welfare organisations, but the critical thing is that we have to stop the flow of issues. We have too many animal welfare organisations, and that is because there is a need for them. Dogs Trust stated that there was an increase of 73% in surrenders this year. When I visited the new county dog pound in Dublin, I was told that 30% of surrenders were as a result of landlords not accepting pets. The housing crisis is therefore having an impact even on animal welfare because people have no option but to give up their pets in order to get rental accommodation. That means that children miss out on the really important experience of having pets as they grow up.

I will focus on issues relating to dogs. While there is a lot in the motion, there is also a great deal more that could have gone into it. Maybe we could work together to progress some of the issues I want to see progressed. The legislation on microchipping was very welcome but has not been fully enforced. We need a central database. All the data required to be provided in the legislation have to be provided. We know that Fido runs a very good database and requires that all information on the animal, including breed and age, is put into the database. There are, however, other databases that do not collect that information, and they should do so. As for

the online sale and supply of pets, it is no good telling people to shop around when they do not have all the information. We need a pre-verification system, which would be very cheap. Fido and Dogs.ie use such a system. That needs to be mandatory. We also need local authorities to publish the dog-breeding establishment lists in a standard format, with the number of breeding bitches and the number of inspections carried out provided in order that people can look up a dog-breeding licence number and decide whether or not to buy a dog from somewhere that keeps hundreds of breeding bitches. We need the dog-breeding establishment, DBE, guidelines to be not only reformed and strengthened but also put on a legislative footing. We also need a national inspectorate because the standard of local authority inspections of puppy farms is just all over the place. We had officials from the Department of Rural and Community Development before the agriculture committee recently. My jaw was on the floor listening to them. The Department does not have a grasp on the issue of dog breeding at all. Surgical artificial insemination is happening. It is a barbaric practice. It was originally just in the greyhound industry; it has now made its way into the area of companion pets as well. Canine fertility clinics are popping up all over the country. There is no legislation to address them. People are setting up canine fertility clinics and carrying out surgical artificial inseminations and caesarean sections with no veterinary training whatsoever. As for cropped ears, again, we need changes to the legislation, including a phased ban on the ownership of dogs with cropped ears because that results in lifelong issues for the animal.

The cost of veterinary care will become an increasing issue. The Irish Blue Cross does fantastic work on that, and I know that the Dublin Society for Prevention of Cruelty to Animals also has a low-cost veterinary care van that goes around, but people are having to hand over their dogs because they cannot afford the veterinary care. We have to look at how we can support people to be able to keep their pets. Some of that is linked to the fact that there are designer breeds that come with multiple health issues. I thank Senator Pauline O'Reilly for referring to the Bill the Seanad passed to close the loophole in that regard and to align the Control of Dogs Act with the Animal Health and Welfare Act in order that when puppies are seized at ports or in illegal dog breeding establishments, or under the really horrific conditions we see regularly in the newspapers, those animals can be rehomed within five days rather than having to be kept where they are for the duration of a court process.

Another issue is that we need the Garda to have an animal welfare unit, which is not standard practice. Animal welfare organisations go to Templemore voluntarily and train gardaí as to what their obligations are in enforcing the law in this area, but that needs to be standardised and we need animal welfare units. What we hear is that in certain Garda stations there is a particular garda who is interested in the issue, but that is not across the board, which would make a huge difference.

The breeding of horses is a problem. Proper grazing facilities for urban horses are needed, as is a strengthening of the equine passport system.

I welcome the call to deal with exotic pets. In May of this year, however, at a European Agriculture and Fisheries Council meeting, 19 EU member states voiced enthusiastic support for an EU-wide positive list system but those representing Ireland did not open their mouths. The Minister for Agriculture, Food and the Marine, Deputy McConalogue, was before this House. Prior to his attendance at the meeting in question, I asked him and his Department about their position on the matter. They did not have one. It turns out, that they did not voice any support for that positive list system. That is deeply disappointing. I hope the Minister of State takes my message in this regard back to her Government colleagues, because we need legislation on

exotic pets.

I will use my last few minutes - I promise - to speak about greyhounds.

Senator Victor Boyhan: The Senator is doing well.

Senator Lynn Boylan: I do not like greyhound racing. I have been very honest about that with the Joint Committee on Agriculture, Food and the Marine and with the greyhound industry when its representatives have come before the committee. Nonetheless - and this is a little like what Senator Pauline O'Reilly said about live exports - we can certainly tighten up the regulation. We need vets at every trial, regardless of whether it is an unofficial or official trial. That has to be standard. It is the law in Britain; it should be the minimum here. I was really disappointed that the Minister, when I put this to him at a meeting of the joint committee, basically stated that it is like the difference between playing for your county and playing for your parish in that you will have better facilities and physio when you play for your county. I am sorry, but greyhounds do not have a choice in racing. The bare minimum they should have is vets any time they run on a course. Another issue is that surgical artificial insemination is rampant in the greyhound industry. Again, it is banned in Britain. I call on the Veterinary Council of Ireland to call for a ban on that. Then there is the overbreeding of greyhounds. We need a cap on the number of greyhounds bred - that is the reality - because they are being overbred and going missing in their thousands, and those that do not make the cut in Ireland are then sold below cost and sent to Britain, with us, the taxpayer, funding all that.

I call on the Minister of State to consider the position in respect of rodenticide and metaldehyde. I had the Minister of State, Deputy Noonan, before this House on this issue and he has been really supportive. We need a ban on metaldehyde for domestic use. One should not be able to buy slug pullets in discount stores. Whatever about agriculture and working with farmers to phase out the use of metaldehyde, nobody should be able to walk into a shop and buy slug pellets because they have a devastating impact not only on pets but also on wildlife. Then there is rodenticide and the impact it is having on raptors. It should not be available to the general public.

Senator Annie Hoey: The Cathaoirleach might consider giving me the same latitude he gave Senator Boylan.

An Cathaoirleach: The Senator is more than welcome to it. This is the last sitting day before the summer recess.

Senator Annie Hoey: Yahoo.

Senator Lynn Boylan: We will just keep going.

Senator Annie Hoey: I thank the Green Party. I commend my colleagues on bringing this issue to the Chamber during their Private Members' time. I feel very strongly about and wish to speak to a number of issues raised in the motion, as I have done in my past two years in the Chamber, including the treatment of animals in the racing sector, the need to better fund our animal welfare organisations and the care and standards in need of improvement in our agrifood sector.

While the motion is comprehensive, I did notice a gap in one area of animal welfare matters in Ireland. The motion does not mention the seven zoos and wildlife parks we have, which

are responsible for the care and preservation of rare and endangered animals. We assume they are a guaranteed safe space for animals. However, it has been my great misfortune over recent months to learn this is not so and it is not always a guarantee.

The motion states that animals are entitled to the widely acknowledged five freedoms reflected in the convention. These are freedom from hunger and thirst, freedom from discomfort, freedom from pain, injury, and disease, freedom to express normal behaviour and freedom from fear and distress. I will outline some of the concerning breaches of these freedoms.

A number of months ago, I began a series of meetings with former and current staff members in Dublin Zoo. Through this engagement I have been made aware of a number of breaches of these freedoms for animals in Dublin Zoo, the most detailed accounts of which have recently been issued to me by a whistleblower via a protected disclosure. Regarding the animal welfare and management failings at Dublin Zoo, I have been told by the whistleblower there have been serious welfare issues, near misses and safety and management concerns. The whistleblower states that having exhausted all options in Dublin Zoo's grievance procedures, which failed to act on their concerns, they feel they have no option but to expose their experiences and what they have witnessed at Dublin Zoo.

In the motion before us there is reference to an animal's right to freedom from pain, injury and disease. I want to speak about a zebra named Kildare who did not have this freedom. She died after complications during a tooth extraction procedure on 2 December 2020. She was darted twice and suffered from capture myopathy. She was kept alive even though staff requested the animal be euthanised. The tooth was extracted and the animal was severely paralysed when she came around from the aesthetic. The animal was left to recover overnight. Having experienced no change, the animal was going to be hung overnight in a harness even though she was severely paralysed. One staff member pleaded at the end of the second day to end the animal's suffering. Management and the veterinary team were planning to leave her hanging in a harness overnight despite being severely paralysed. Staff were extremely distraught after witnessing the zebra's treatment and felt like they could not raise concerns for fear of reprisals. Kildare was featured on the television series "The Zoo" on 26 June 2022.

I also want to speak about Maeve, a giraffe who died last month. Staff were informed at a meeting by a team leader in March that Maeve was on watch. This means she was on a quality-of-life assessment. Maeve was not observed consistently or assessed to determine her quality of life. No quality-of-life assessment was filled out between March and her death on 28 June 2022. Staff had to watch her lay and slowly die while kicking out to trying gain her footing. This should have never happened to Maeve or her keepers. After her death and post mortem, staff were called to a meeting and offered counselling. They were then told to delete any videos of Maeve and how she died. This is another attempt by Dublin Zoo to intimidate and conceal wrongdoing and animal welfare problems. Before Maeve's death, I saw photos of her gaunt frame with her bones sticking out. She was very clearly an unwell animal.

I also want to speak about Harry, a silverback gorilla. We all know about Harry as he was one of the most famous attractions in the zoo throughout my childhood and into recent times. Harry was a silverback male gorilla who died on 29 May 2016. Keepers consistently raised concerns leading up to his death. There were daily reports that his behaviour was abnormal and that he was losing weight and condition. Keepers repeated asked for a vet to examine him. Eventually a vet was called. He died shortly afterwards. This had an adverse effect on the rest of the troop. This was one of the hardest stories for me to hear from the many staff I spoke to as

the pain in their voices over how Harry was treated in the run-up to his death was unbearable. I have sanitised the details as I do not think I can read all of them. I saw the photos of Harry at the end and he suffered greatly.

I have seen footage and photographs of the animals I have mentioned and the visible, unnecessary suffering they were left to endure is unfathomable. Tá mo chroí briste. This is not what care and compassion for animals is supposed to look like. This is not the standard of care that we, as members of the public and Parliament, have come to expect from Dublin Zoo, a much-trusted and beloved public institution.

The pain of sick and dying animals is not the only animal welfare issue detailed to me in the protected disclosure, or by the former and current staff I have spoken to. There is a major breach of guidelines with regard to missing animals. In the motion before us there is reference to an animal's right to freedom from fear and distress. In November 2019, two crested macaques went missing and were presumed dead. In February or March this year, a white collared mangabey went missing, also presumed dead. Despite staff raising the issue that they had not being found, management have not looked thoroughly for these animals or raised the public's awareness in the event that a member of public were to encounter them. Staff raised their concerns about the two missing macaques saying there were 24 and now there were only 22 in the group. The team leader quoted the curator as stating there were always 22, insisting the keepers could not count to 24.

On 21 May, a citron-crested cockatoo escaped from its aviary. This is a critically endangered species and since its escape there have been no efforts to locate the animal or raise awareness among members of the public in the hope that if they were to see such a bird, it could be returned to the zoo. The zoo has failed to follow any protocol to retrieve the animals, or to inform or warn the public in the hope of retrieving the animals or to prevent anyone sustaining an injury from one of the missing animals.

What I have raised today is only a snapshot of the stories that have been shared with me about failings in animal welfare in Dublin Zoo. I have pages and pages of testimony from current and former staff. I was on the phone until very late last night hearing more stories. I do not have time to go through them all. These events are not from the far past. They happened quite recently, as I have outlined. I thank all those who have taken the time to speak with me and inform me of these issues over recent months. I particularly commend the whistleblower who had the bravery to come forward with a protected disclosure to me, trusting me to help shine a light on this most serious of animal welfare issues in Dublin Zoo. These are people who care deeply for the animals and who have put themselves in the firing line in work to raise their concerns. It is a pity their voices, the only ones the animals in their care have, have fallen on deaf ears.

It is only appropriate to reference the words of the whistleblower as I finish. The whistleblower has exhausted all their options to date and cannot in any good conscience wait until their serious misgivings result in the death of a colleague or, as is already happening, the unnecessary deaths and mishandling of endangered animal species in Dublin Zoo.

I thank the Green Party for tabling the motion. I hope I have shone a light on something that is extraordinarily serious. I will engage with the relevant Minister, Department and committees in the coming days on this issue on behalf of the whistleblower. I wanted to raise the issue in the Seanad first.

An Cathaoirleach: The issues outlined by the Senator are very serious. I hope the appropriate authorities, from the Department of Agriculture, Food and Marine all the way to An Garda Síochána, take on board what she has said. Privilege in the House is there to make sure the Senator and others are free to raise issues of great concern to the public and that the press is free to report what she has outlined. I hope that change will come as a result.

Senator Aisling Dolan: I acknowledge Senator Hoey's very heartfelt contribution. I look forward to getting an update on it from the relevant agencies.

I thank the Minister of State, Senator Hackett, for being with us today to speak on the motion. Working together for Animal Welfare - Ireland's Animal Welfare Strategy 2021-2025 is welcome. It is great to see all stakeholders coming together on how we look after animals in Ireland. I come from a farming family where sick calves and lambs were usually in the kitchen. My mother was a nurse. I must admit that looking after the calves and cattle we had came first. Many farmers look after their cattle. There is a cost involved in bringing out a vet but farming families do so because they want to ensure their cattle are looked after. For many families there is pride in making sure their animals are looked after well.

This week funding for agricultural shows was announced. These shows have best in show competitions for various animals. There is a lot of pride in rural communities and many towns and villages in bringing the best in quality. As Senator Lombard stated, there is so much happening now with regard to farming practices, training, discussion groups and how best to manage. We have spoken about the five freedoms for animals. Many supports have been put in place. There is much more education and training, particularly in our colleges. Mountbellew Agricultural College is now part of the Atlantic Technology University. This education and training is crucial.

A lot of assistance is needed. When we have had fodder shortages farmers throughout the country have come to each other's aid to make sure areas impacted by a loss of fodder and feed are supported. The fodder scheme is crucial. It looks to potential shortages we might see later in the year because of the impact of the war in Ukraine. It is incredible that global situations have such an impact when it comes to us trying to plan for the time ahead, both as a Government and through the Department of Agriculture, Food and the Marine. Senator Lombard is just asking for clarity on some of the figures that have been given. I hope the Minister of State will be able to shed some light on this.

It is important to acknowledge that Ireland is at the forefront in agriculture. Particularly in the west of Ireland, we have grass-fed beef farming. These are animals that are outdoors. Slatted sheds are used. An attempt is being made to protect the environment but also to ensure animals have safe spaces. It is crucial we support the welfare of animals. I am speaking specifically from a farming perspective. Farming, however, is also a livelihood and about supporting our communities in rural areas. That cannot happen without people having a livelihood or, in other words, income that comes from a farm. To support our farmers in that regard means supporting the idea of marketing animals and of being able to sell where there is a demand. There is a demand in countries for quality animals. Ireland stands tall in respect of the quality of its animals, especially its cattle and beef product.

Welfare restrictions have now been put in place concerning live exports. Care must be taken and veterinary inspections are undertaken of nearly 90% of the animals that are exported at ports and at marts throughout the country. Marts are working together with officials from the

Department of Agriculture, Food and the Marine to ensure best practice is being undertaken in all areas. We must ensure live exports are protected and that they are undertaken to the highest level of quality possible. We are seeking to support farming families in this motion. It must be understood that livelihoods are at stake here. Those livelihoods are involved with keeping communities in our villages and towns alive. We are working together, and with our farming families, to see how that can be done best.

I turn now to the local authorities and county councils and their role in animal welfare, whether with dog wardens or looking after horses. We have the horse fair in Ballinasloe. A great deal is done in this regard by animal welfare associations seeking to ensure best practice and that we are looking after our horses. It is also crucial that local authorities are given the support to ensure they have those animal welfare positions in place, be it the dog wardens or the people looking after wild horses. As has been mentioned, does there need to be more clarity regarding the delineation between the work of the local authorities and the Garda in this context? Is extra funding required to allow the local authorities to undertake their role in this regard?

The challenge we have in rural areas is that sometimes dogs are allowed to roam. Pet owners must be responsible. Built-up estates can be right beside fields. Pet owners must ensure they are responsible for their animals, especially dogs, and ensure there is microchipping. People must be aware of this responsibility. It is not enough just to have a pet. Animal ownership brings a great deal of responsibility with it.

Senator Gerard P. Craughwell: I thank Senator O'Reilly for tabling this motion. I am devastated by what I just heard about Dublin Zoo. The minute the Minister of State leaves here, she must contact people to get them out to the zoo to see exactly what is going on. If even only a tiny portion of what she has been told is true, it is outrageous. When I think about how I and other people bring their grandchildren to the zoo and presume these animals are looked after better than any animals in the world, I am totally devastated.

My main point is about canine welfare. I have kept dogs all my life. I kept cocker spaniels for years, then I moved on to Labradors and now finally to beagles. I moved away from cocker spaniels because of a condition known as cocker rage. It apparently arises from inbreeding. When people go to purchase a dog, most want to buy a dog and not rescue a dog, so they usually find a little cardboard box in the corner with the puppies in it. Everything looks hunky-dory. Years later, though, it is found out that the breeder in question was breeding maybe 100 bitches and the little cardboard box was there purely for the benefit of visitors and nothing else.

My first beagle died recently. My wife made the decision that we were never going to have a dog again, that we were finished with that and we were never going through that again. My grandkids said "No", and that if they got a dog, then Nana would take it. Then the hunt started for a beagle. I invite people to look at *dogs.ie*. A bulldog is available there today for €2,000 and a Pomeranian for €1,650. Beagles are available for €1,000. German Shepherds can be had for anything from €600 to €2,000, depending on where one goes to purchase the animal.

For starters, I bet a pound that nobody is paying any tax on this. I also guarantee that many of these animals are living in the most horrendous conditions. My son related the story to me about the hunt for the beagle. Several phone calls ended with the person on the other end of the line saying, "It is not my dog; I am selling it for a friend", "The bitch is away being shown now, so it is not possible to see the animal", or "No, the male is not about". The worst response we had concerned eight puppies for sale down in the west for approximately €1,600 each. They

were the most beautiful looking dogs. There was no problem in the world at all in that regard. The only snag was the bitch and the father were not available and could not be seen because they were living with this guy's partner who was suffering from Covid-19. If we take the total accruing from selling eight puppies at €1,650 each, that is a massive amount of money.

To a certain degree, the Irish Kennel Club, IKC, has a role to play here. Many of the breeders I have met over the years are people who show dogs at IKC events. A very good friend of mine in the North of Ireland who has champion dogs is horrified by the number of dogs coming from the Republic, going through the North and on to the UK, in the boots of cars and in all sorts of transportation. My colleague, Senator Boylan, has a point in this regard. Breeders need to be registered. This trade must be formalised as a business. If people want to breed dogs, then they should have to establish that they are breeders with their local authority and register as such. If people are selling animals, they should be required to have this information on their website. They should need to have a registered number as a breeder to allow people like me, who want to buy a particular breed, to check out their bona fides. The trouble my family had in trying to get the latest dog we have - the beagle currently destroying my house, but that is another day's work - and trying to establish the bona fides of the breeder was almost insurmountable, although, ultimately, we did find one. We are talking about a multimillion euro industry here in the trade in dogs.

To make a brief point about horses, by the end of the Celtic Tiger period, many people had bought horses they were convinced were going to turn into Arkle or Red Rum. Happy days, they thought. Suddenly, however, they were not able to feed those horses because they did not have the money. I am aware of one stable where people came and took their horses out. The owner of the stable asked the trainer where the horse was going, and the response was it was being taken down to a friend on a farm. What was actually happening, however, was the person was driving over to the west with a horsebox, opening it somewhere in Connemara, letting the horse out and then driving away. A county councillor in Ballina, whose name I cannot remember off the top of my head, used to drive around the country rescuing horses. He kept horses at his place in Ballina. He used his payment from the council to feed the horses. He was an amazing man. These were horses that had been sold for thousands of euro and they had been just dumped on the side of the road. This is a massive problem.

I am still in shock about Dublin Zoo. I really am. I just cannot get over what we have heard about that institution today. I thank Senator O'Reilly for bringing this motion. This matter needs to be highlighted. We must stop what is going on. If it is happening with dogs, then what must the market be like for exotic animals? I thank the Minister of State for being here.

Minister of State at the Department of Agriculture, Food and the Marine (Senator Pippa Hackett): I thank my fellow Green Party Senators for tabling this motion. It is timely. I thank all Members who have spoken passionately about this issue. It is important to keep it high on the agenda.

I am pleased to welcome this motion on behalf of the Government, and I am particularly pleased that my Cabinet colleagues decided this week to support it, signalling the Government's commitment to high standards of animal welfare in Ireland.

Animal welfare does not fall under my remit. I am here to represent the Minister, Deputy McConalogue, who is in the Dáil taking parliamentary questions. I am not sure whether Senator Boyhan is aware of that. I am not sure about the meaning of his reference to the Minister

being the one to attend the committee meetings. I have not been asked to and have not declined. If I were asked, I would be more than happy to attend.

The way we treat our animals reflects on us all, not only as a society but also as a nation. I welcome what seems to be the proactive approach of the agriculture committee. I thank Senator Boylan for highlighting that. I hope it continues because the committee is a channel through which we can hear different perspectives. It helps in terms of policy and Government decisions.

We have had no small reason for pause in recent days to step back and reflect on the many achievements of the Government over the past two years, and I am pleased with the progress my Department has made in this most vital area of policy since the Government took office. That has been recognised in the motion.

Senator Dolan highlighted the issue that animal welfare is spread across several Departments and that clarity is sometimes needed as to which Department, body or individual is responsible, be it a local authority or veterinary officers across the country. Even the public needs to have clarity, and politicians do too. I thank the Senator for highlighting that.

We have made significant progress on the delivery of programme for Government commitments on animal welfare. As the Members will recall, the Oireachtas legislated earlier this year to provide for a ban on fur farming. That is referred to in the motion. The reference to the commencement of the Act is certainly one we will be examining. I have been advised that negotiations with the affected farmers and their representatives are ongoing. While the exact date from which fur farming will be permanently shut down has not been finalised, I am advised by my officials that this matter will be resolved in the coming weeks, such that a ban can come into effect. I hope we will have more news on that in the next couple of weeks.

Senator Murphy highlighted that my Department has established a stand-alone animal welfare division for the first time. In 2021, we published Ireland's first dedicated animal welfare strategy, Working Together for Animal Welfare 2021–2025. That is significant because until now animal welfare and health were always bunched together. It was about the health of the animal rather than the welfare. We are clear now and everyone knows and recognises that animals are sentient and feel pain, distress and happiness. Therefore, this is a really positive move that we have made. A new advisory council on companion animal welfare is up and running and will provide valuable advice on relevant policy issues.

Later this year, the largest ever allocation of grants for animal welfare organisations will be announced. This is essential to support these organisations in their vital work. Unfortunately, the organisations are still necessary. We support them as much as we can. There was an important programme for Government commitment to double the funding. We will achieve that by the end of the year.

These are all real achievements that this Government has brought about. While it is important to reiterate our achievements in government here this morning, much like in the Lower House earlier this week, we also need to recognise the vital work that remains to be done by the Government and the further progress it is committed to achieving over the coming years.

We were all shocked and stunned by Senator Hoey's account of what is happening in Dublin Zoo. I will certainly relay that to my Department and engage with the Minister of State, Deputy Noonan, who I understand has responsibility for zoos in the sense in question. It is shocking stuff and we will certainly follow up on it. The motion calls for regulations to be put in place for

the ownership, sale and supply of exotic pets. Officials from my Department have held inter-departmental meetings with colleagues from the National Parks and Wildlife Service, NPWS, to discuss and make progress on action on this issue. I assure the House that my officials will continue to make progress on this issue with colleagues in the NPWS.

Senator Boylan mentioned activity at EU level. My notes state Ireland indicated support in principle for a submission to the European Commission in respect of a potential legislative framework about positive listing. I hope there is a little more progress in this regard. My Department is looking forward to examining the details of this idea along with our fellow member states as soon as those details are circulated.

The motion refers to the strategic plan of Rásaíocht Con Éireann, RCE. I am advised that RCE recognises that its current strategic plan, for the years 2018 to 2022, needs to be updated and that it has engaged with KPMG to make progress on the update. Officials from my Department met representatives of KPMG to have an input into the stakeholder consultation phase of the plan. They will continue to engage actively on that review.

With respect to the pig welfare directive, which is also referred to in the motion, my Department has implemented several specific actions over the past two years to progress its full implementation. Since 2020, the Department has been running a programme of pig welfare inspections aimed at identifying the risk factors for tail biting, giving pig farmers the opportunity to address them, and then monitoring progress towards rearing pigs with intact tails. This programme is an important step towards compliance with the EU legislation on tail docking. To date, 138 commercial pig farms have been inspected and are engaging with the programme. This number is likely to increase in the coming months as active participation in the programme is one of the eligibility criteria for farmers availing of the pig exceptional payment scheme 2, recently announced.

In addition, the Department has collaborated with Animal Health Ireland and Teagasc to deliver a free tail-biting risk-assessment tool for pig farmers. This is important as it enables farmers to work with their own veterinary practitioners to deal with the risk factors for tail biting on their farms. Since September 2021, the Bord Bia quality assurance scheme for pig producers requires farmers to complete this risk assessment, which has significantly increased engagement and uptake.

In April 2022, my Department launched a new targeted agricultural modernisation scheme for pig farmers. The scheme offers farmers 40% co-funding up to the maximum investment ceiling of €200,000 towards new infrastructure for pig housing. The specifications of this scheme are specifically designed to deal with the main risk factors for tail biting, and my officials are confident that future housing constructed in line with this specification will enable pigs to be reared in Ireland without any need for tail docking.

I reiterate my Department's continued commitment to upholding high standards of animal welfare in the transport of live animals. Senators Lombard and Dolan have asked for clarity on the figures. I do not have them with me but whatever is on the Department's website will be clear. I take the point that the movement of animals from the Republic to Northern Ireland is categorised as an export, so it is important to break down the figures. Unweaned calves tend to be exported within the EU. It is older animals that might go beyond the EU. To be fair to the Green Party, which put the motion together, the motion does refer to exports outside the EU and the requirement to have a veterinarian on board a vessel. That is a programme for Government

commitment. It has not quite been achieved yet. There have been one or two veterinarians on consignments but not the number there should have been. It is a matter that my fellow Senators speak passionately about. I reassure the House of the Department's commitment to introduce legislation to provide a legal basis requiring exporters shipping livestock on dedicated livestock vessels to third countries outside Europe to place a veterinarian on board. My officials are currently working on a legislative proposal to this effect. Another issue which has come up of late but is not directly related to the motion concerns shipments in summer months in extreme temperatures. That has been highlighted. I assure the House it is a priority of my Department that any legislative proposals will provide a legal basis not only for a veterinary presence on board but also maybe for the prevention of shipments of live animals through areas during periods of high temperatures. It is extremely distressing for those animals and is something we have addressed in the past. We need to keep looking at that.

Senator Craughwell spoke in great detail and knowledgeably about dogs. It is something that crops up and Senator Boylan also talks about dog welfare. The Dog Breeding Establishments Act is there to regulate the operation of such establishments but there are concerns over how it is enforced and what is coming out of it. We meed to keep that in mind. Breeding issues are a concern for many with dogs, whether it is inbreeding or breeding for desired traits and then undesirable traits or traits damaging to the welfare of those animals emerge. We see the issue with pugs, for example. There is a huge emphasis on that. It is important to keep those issues to the top of the agenda.

It is not always about buying dogs. There are plenty of dogs to be adopted and rehomed from the many hard-working animal welfare organisations around the country. I am glad to say my house is filled with dogs and cats from goodness knows where, but they are great. Everyone says you will not change the world by adopting a dog or cat but you change the world for that dog or cat so I highly recommend it.

I thank my fellow Senators for their contributions and their support for the motion. It is good to have that strong message coming from the Seanad on this. As I have said and we have heard, animals are sentient beings who can perceive their environment and experience sensations such as pain, suffering, pleasure and comfort. As Ireland's animal welfare strategy recognises:

> human health and animal health are interdependent and bound to the health of the ecosystems in which they exist. Our animals' health, the environments they inhabit, how they adapt to those environments, and the degree of social interaction they experience, have profound effects on their welfare; and more broadly, also impact on society beyond the animals themselves.

I am delighted, therefore, to say on behalf of my Cabinet colleagues that the Government supports this motion.

Senator Eugene Murphy: To clarify and back up what the Minister of State has said, the Minister, Deputy McConalogue, has said fur farming will be closed down. Negotiations are ongoing with the fur farmers and the date will be announced pretty shortly.

Senator Pauline O'Reilly: I appreciate the comments from Senator Murphy. I will go back over and comment on the various points raised by Senators. I am sure the Minister, Deputy McConalogue, recognises it is important for the Green Party members to use every means we can to make sure the issue of fur farming is progressed because it was critical to us

entering this Government. The Minister said he was not going to enter negotiations on the floor of the Seanad because he wanted the Bill to pass. That means the Bill needs to be commenced. Otherwise, it is pointless passing a Bill and us putting extreme pressure on our Government colleagues to get it passed. It was not an easy time. To find it is not commenced is quite difficult for us. I am delighted to know the Minister will do this within the next couple of weeks. I will be looking at this throughout the summer to make sure it happens.

An awful lot of work is happening on animal welfare behind the scenes. The Minister of State laid all of that out. A number of points have been brought up in the House today and I am delighted to have tabled this motion in order to facilitate Senators in doing that. It is critical, first, in relation to dogs. As I said to Senator Boylan, we were delighted to put in this part from her Bill into our motion. She has asked to work together and I am more than happy to do so on issues in relation to dog welfare, in particular. Senator Craughwell spoke passionately about this issue and has, as the Minister of State said, much experience in this. It brings to light something many people do not realise, namely, that it is really hard to enforce some of the elements legislated for. That means we need more legislation and enforcement in this area. I am happy to progress that.

On Senator Boyhan's comments that vets might be too expensive for the State to put on board all ships, I am sorry but it is the job of the exporter to pay for that. It you cannot afford it, do not export. I put in the issue around exotic pets because it is an important one for biodiversity but let us make clear that every animal is equal, including unweaned calves going to Europe, which is where they predominantly go. Why are we sending unweaned calves to Europe? We in the Green Party do not believe they should be sent anywhere. Why do they not stay at home and we progress other avenues for these animals? At the very least, they could be weaned before being sent anywhere. That point is important to stress. I am not trying to pick on Senator Boyhan but he said "we have to be balanced" because "we are in an economy". There is very little money coming to any farmer in this State from any type of export, wherever it is. Animal welfare organisations, particularly Ethical Farming Ireland, will say live export is not holding the farming industry together. We can never put money before the welfare of animals. That is why the motion specifically mentions this. We have to put welfare first. We have to have vets on board every ship, no matter what it costs.

I appreciate the comments by Senators Murphy, Lombard and Dolan that we need to support farmers. Everything we have done is about supporting farmers. That is why we specifically excluded that element. It is Green Party policy that we end live exports but it is not just about pragmatism. Most people across this Chamber, be they Opposition or Government, do not support ending live exports. We have to do what we can where we can for the welfare of these animals.

I thank Senator Hoey for raising the issue around Dublin Zoo. It is a grave concern that any animals are treated in this way, be they domestic, for export, for farming or exotic animals. A proper investigation is required.

I am glad that these issues have been supported by the Government and that we can continue to support all these organisations which do immense work. Many of the issues raised today concern dogs and that is a testament to what Irish people feel about animals. They are the animals most people in the country know best and they are shocked when they hear of mistreatment. MADRA is a fantastic organisation in Galway and an awful lot of people in Galway go there when they want to get a dog and rehome them, as the Minister of State said. It is a wonderful

experience for children to be in contact with animals. We often say that you cannot foster a love of nature and the environment unless you are surrounded by it, know it and feel it in daily life. That is the same for animals. Let us make sure we are doing it properly. Nobody needs to go to a website to buy a dog from a breeder when they do not know what the background is. Many animals are crying out for love and I implore people to go first to organisations like MADRA if that is what they are looking for for their children.

11 o'clock

Acting Chairperson (Senator Aisling Dolan): I thank the proposer of the motion for those comments. Perhaps some of the marts and farmers might disagree about some of the income coming from live exports.

Senator Pauline O'Reilly: With all due respect, the Acting Chairperson is meant to be neutral. I disagree on that point.

Acting Chairperson (Senator Aisling Dolan): I very much agree with the Senator's points on MADRA, which is fantastic. In the *Galway Advertiser* we always see the little stories about pets. I thank all Senators, particularly Senator Hoey, for their contributions.

Question put and agreed to.

Cuireadh an Seanad ar fionraí ar 11.01 a.m. agus cuireadh tús leis arís ar 11.33 a.m.

Sitting suspended at 11.01 a.m. and resumed at 11.33 a.m.

Air Navigation and Transport Bill 2020: Committee Stage (Resumed)

NEW SECTIONS

Debate resumed on amendment No. 3:

"Amendment of Act of 1993 - Crew Peer Support Programmes

59. The Act of 1993 is amended by the insertion of the following section after section 14:

"Crew Peer Support Programme

14C. (1) The Irish Aviation Authority shall periodically review the crew peer support programmes provided by the holders of air carrier licences or otherwise made available by them to crew pursuant to the requirements of CAT.GEN.MPA. 215 to Annex IV (Part – CAT) of Regulation (EU) No. 965/2012.

(2) A comprehensive review of each such support programme shall be conducted by the Irish Aviation Authority at least every three years and no more frequently than at one-year intervals, in respect of which it shall consider the following:

(a) the nature of the programme having regard to the size and diversity

of the air carrier in question;

(b) the ability of the programme to provide access to the requisite

range of expert supports;

(c) the accessibility of such a programme including encouragement as to its use and the freedom of crew to access an alternative crew peer support programme to meet their personal needs;

(d) the adequacy of confidentiality arrangements;

(e) the involvement of crew representatives and recognised stakeholder groups in establishing and supporting the programme;

(f) the selection and training of peers, and their independence from any conflicting management or supervisory functions within the Air Operator's Certificate holder or otherwise;

(g) the provision of adequate resources to the programme;

(h) the provision of mental health professionals to support peers when required by programme users; and

(i) the accessibility of programmes services and support by online and other electronic means.

(3) In conducting these comprehensive reviews, the Irish Aviation Authority shall seek feedback from users of the programme to the maximum extent feasible, consistent with maintaining strict confidentiality concerning the identity of crew and their personal circumstances.

(4) In the event of any deficiency in a crew peer support programme being found during a comprehensive review, the Irish Aviation Authority may direct changes to any such programme, which shall be binding. That shall be without prejudice to the ability to the Irish Aviation Authority's power to direct changes in respect of deficiencies other than those identified during a periodic comprehensive review.

(5) The Irish Aviation Authority shall convene the Crew Peer Support National Forum which shall include representatives of:

(a) the air carriers that it regulates and any persons engaged in the provision of support services to them or on their behalf;

(b) pilot associations and other recognised stakeholder groups and any persons from those associations engaged in the provision of support services to them or on their behalf; and

(c) the Medical Assessor.

(6) The Minister for Transport shall appoint a chairman of the Crew Support National Forum.

(7) The Crew Peer Support National Forum, which shall receive secretariat services from the Irish Aviation Authority, has the following functions:

(a) the sharing of best practice on crew peer support programmes;

(b) encouraging the implementation of cooperation and joint resource sharing between different crew peer support programmes;

(c) the development of a common (anonymised) data base to identify

trends and to monitor the effectiveness of crew peer support programmes;

(d) approve and monitor the content and delivery of Peer Support training programmes;

(e) making recommendations to the Irish Aviation Authority as to the requirements of crew peer support programmes, and

(f) creating or encouraging the provision of a national crew peer support programme under a separate structure, whether through cooperation between programmes, or by other means, and to be accessible—

(i) by all crew irrespective of their employer,

(ii) by crew not willing to use the programme made available by their employer for personal confidentiality or other reasons, and

(iii) to crew who are out of work.”.”.

- (Senator Regina Doherty)

An Leas-Chathaoirleach: I welcome the Minister of State, Deputy Naughton, who is an alumnus of this House. We are resuming on amendment No. 3. Hopefully we will make some progress on this beautiful sunny morning. The Leader of the House was in possession. Does she wish to continue?

Senator Regina Doherty: The reason we adjourned the debate on this Bill a number of weeks ago was to allow clarification of a point of order that was raised. I believe the Minister of State sought legal advice, as did Members. Can we have a conversation about the legal advice before we dispose of amendment No. 3?

An Leas-Chathaoirleach: My understanding is that the legal advice is from the Attorney General and that all is in order to continue.

Senator Regina Doherty: Would it be possible for the Minister of State to say that on the record? I would then like the opportunity, on behalf of the Members who sought their own legal advice, to put that legal advice on the record.

An Leas-Chathaoirleach: With respect, the Attorney General’s advice, as it is the national law, will trump the Senators’ legal advice.

Senator Regina Doherty: Those are the exact words the Minister of State said to me last week. To be very fair, the record of this House is very important to all the people here.

An Leas-Chathaoirleach: Absolutely. I call the Minister of State.

Minister of State at the Department of Transport (Deputy Hildegarde Naughton): I have consulted the Attorney General on the issues raised by Senators. He is satisfied that no conflict of interest or breach of trust arises.

An Leas-Chathaoirleach: Does Senator Doherty wish to continue?

Senator Regina Doherty: I thank the Chair. When we adjourned a number of weeks ago, the Minister of State and the Members of the House said that they intended to seek legal advice. I would like to put our legal advice on the record so that we can then proceed, if that is okay. It reads:

1. These advices are furnished in urgent circumstances described below ....

2. Counsel is instructed with the following facts.

3. Querist is a branch of Fórsa trade union representing Airline Pilots ... [We all know them as Irish Air Line Pilots Association, IALPA]

4. The Bill provides for the formation of a company to be known as the Irish Air Navigation Service and for the transfer of certain commercial functions from the Irish Aviation Authority to the new company, and for the transfer of regulatory functions of the Commission for Aviation Regulation to the Irish Aviation Authority and the dissolution of the Commission for Aviation Regulation. The Bill also provides for amendments to the Irish Aviation Authority Act 1993. These include measures under Council Regulation 2018/1139 (on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency) known as the EASA Basic Regulation.

5. Counsel is instructed that certain provisions of the Bill (including those which implement the EASA Basic Regulation) arise out of report into an air traffic accident involving the search and rescue service of the Irish Coast Guard, the Air Accident Investigation Unit R116 Report, published in or about November 2021. In that context, counsel is instructed that the report records the admitted lack of technical expertise within the Department of Transport.

6. The Bill is a Government Bill which was initiated in Dáil Éireann on 4 December 2020. The second stage ... was completed on 4 February 2021. The third stage... was initiated on 4 February 2021 and completed on 17 June 2021. It is to be noted that at this stage the Bill was considered by a Dáil Committee, i.e. the Select Committee on Transport and Communications, the members of whom are all Members of Dáil Éireann. The fourth stage... was completed on 7 July 2021. The fifth stage [was taken on that same day] ... as follows: "Bill received for final consideration and passed".

7. The Bill was deemed to have passed the Seanad first stage and the second stage ... on 28 September 2021. The Bill was then sent to the third, or committee, stage which was commenced on 5 October 2021. The Seanad committee stage is still under way.

8. Counsel is instructed that, to date, neither House has obtained independent technical advice on the Bill.

9. Counsel has been supplied with a letter dated 28 June 2022 from Querist to the Minister for Transport. The letter raises the lack of technical expertise within the Department of Transport and raises the concern that in preparing the Bill the Department of Transport relied upon the technical expertise of the Irish Aviation Authority notwithstanding the fact that the Bill is intended to regulate the Authority.

10. On 29 June 2022 the Minister for Transport attended before the Seanad when this

issue was debated. I have had the opportunity to read the transcript. It is my understanding from the transcript that there is no member of staff within the Department with such technical expertise but that the Department commissions such advice from time to time. It appears that the Department did not commission such advice in the preparation of this Bill but that it relied upon the technical expertise of the Irish Aviation Authority in the preparation of this Bill notwithstanding the fact that the Bill is intended to regulate the Authority.

11. Counsel is asked to advise on whether any legal concerns arise in this regard and, if so, what steps may be taken in this regard.

The legal concerns that have arisen as stated by counsel are as follows:

12. Council Regulation 2018/1139 (on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency) known as the EASA Basic Regulation includes the following provisions which are relevant for current purposes.

13. Article 2.6 allows a member state to 'opt in' to certain provisions of the Regulation to certain activities and the personnel and organisations involved in those activities.

14. Crucially for current purposes, Article 4 provides that certain principles shall be observed by the Commission, the Agency and Member States when taking measures under the Regulation, including (a) reflect the state of the art and best practices in the field of aviation, and take into account worldwide aviation experience and scientific and technical progress in the respective fields; [and] (b) build on the best available evidence and analysis.

15. Article 7 requires each Member State, in consultation with relevant stakeholders, to establish and maintain a State safety programme for the management of civil aviation safety in relation to the aviation activities under its responsibility ...

16. Article 8 requires the State Safety Programme to include or be accompanied by a State Plan for Aviation Safety in which, based on the assessment of relevant safety information, each Member State, in consultation with relevant stakeholders, shall identify in that plan the main safety risks affecting its national civil aviation safety system and shall set out the necessary actions to mitigate those risks.

17. Section 67 of the Bill, as amended in the Select Committee on Transport and Communication of Dail Eireann, provides for the insertion of the following provision in the Irish Aviation Authority Act 1992:

> "32A. (1) The company shall, not later than 30 April in each year commencing from 2022, prepare and submit to the Minister a statement relating to its performance in regulating aviation safety (in this section called an 'aviation safety performance statement').
>
> (2) An aviation safety performance statement shall be in 2 parts as follows:
>
> (a) details, including the aims and objectives, of regulatory activity planned for the current year (in this subsection called a 'regulatory performance plan');
>
> (b) a review of the company's regulatory performance during the preceding year having regard to the regulatory performance plan for that year and any other relevant matters.

(3) The review of the company's regulatory performance required by subsection (2)(b) shall include details of the activities carried out during the relevant year and the outcome and follow up from external oversight in relation to—

(a) the European Aviation Safety Programme referred to in Article 5 of the EASA Basic Regulation,

(b) the safety programme established and maintained by the State pursuant to Article 7 of the EASA Basic Regulation,

(c) the State Plan for Aviation Safety prepared pursuant to Article 8 of the EASA Basic Regulation,

(d) the annual review of aviation safety performance in the State prepared by the company, and

(e) the Universal Safety Oversight Audit Programme of the International Civil Aviation Organization.

(4) An aviation safety performance statement shall be in the form, and relate to the matters, that the Minister directs.

(5) The Minister shall, within one month after receiving an aviation safety performance statement, lay it before each House of the Oireachtas.

(6) In this section, 'EASA Basic Regulation' means Regulation (EU) 2018/1139 of the European Parliament and of the Council of 4 July 20181 on common rules in the field of civil aviation and establishing a European Union Aviation Safety Agency, and amending Regulations (EC) No 2111/2005, (EC) No 1008/2008, (EU) No 996/2010, (EU) No 376/2014 and Directives 2014/30/EU and 2014/53/EU of the European Parliament and of the Council, and repealing Regulations (EC) No 552/2004 and (EC) No 216/2008 of the European Parliament and of the Council and Council Regulation (EEC) No 3922/91.".

18. Section 76 of the Bill provides for the insertion of the following section into the 1993 Act:

"69A. (1)The Minister may make regulations for the purpose of exercising the opt-in provisions of Article 2.6 of the EASA Basic Regulation to give effect to certain provisions of the EASA Basic Regulation relating to the regulation of aviation activities by aircraft (including related engines, propellers, parts, non-installed equipment and equipment to control aircraft remotely) while carrying out search and rescue, firefighting, coastguard or similar activities or services under the control and responsibility of the State, undertaken in the public interest by or on behalf of the Irish Coast Guard and the personnel and organisations involved in the activities and services performed by those aircraft.

(2) Without prejudice to the generality of subsection (1), regulations under this section may—

(a) make provision in relation to all or any aspect of (including any combination of) the matters set out in sections I, II, III and VII of Chapter III of the EASA

Basic Regulation as may be specified in the regulations,

(b) apply either generally or to such class of persons or activities or services as may be specified in the regulations,

and

(c) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary for the purposes of the regulations (including provisions repealing, amending or applying, with or without modification, other law, exclusive of this Act, the European Communities Act 1972 and the European Communities Act 2007).

(3) When making regulations under subsection (1), the Minister shall have regard to the following:

(a) the aim to strengthen the national aviation safety regulatory framework for aviation activities of the Irish Coast Guard and aligning it with European aviation safety regulations;

(b) the need to provide for greater specificity in relation to the regulatory framework of the oversight of aviation activities by and for the Irish Coast Guard;

(c) the need to secure the operation and safety of the aircraft, and persons and property contained therein, operated by or on behalf of the Irish Coast Guard and mitigate the risks pertaining to safety;

(d) the need to allow for immediate reaction to accidents and serious incidents and balance the safety requirements with search and rescue objectives;

(e) the interests and views of the civil aviation sector and the general public;

(f) the interest of international cooperation within the European aviation industry and the promotion of European aviation safety standards;

(g) the need to promote effectiveness in regulatory, certification and oversight processes.

(4) The Minister shall consult with the Irish Coast Guard and the company before he or she makes regulations under this section.

(5) A word or expression which is used in this section and which is also used in the EASA Basic Regulation has, unless the context otherwise requires, the same meaning in this section as it has in the EASA Basic Regulation.

(6) In this section 'EASA Basic Regulation' has the meaning assigned to it by section 32A(6).

19. The Standing Orders of Seanad Éireann include the following provisions which are relevant in the circumstances now arising:

"70. (1) The Seanad may appoint a Select Committee to consider any Bill or matter and to report its opinion for the information and assistance of the Seanad and, in the case

of a Bill, whether or not it has amended the Bill. Such motion shall specifically state the orders of reference of the Committee, define the powers devolved upon it, fix the number of members to serve on it, state the quorum thereof, and may appoint a date upon which the Committee shall report back to the Seanad."

"72. Unless the Seanad shall otherwise order, a Committee appointed pursuant to these Standing Orders shall have the following powers: . . .

(10) power to—

(a) engage the services of persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters; and

(b) undertake travel;

Provided that the powers under this paragraph are subject to such recommendations as may be made by the Working Group of Committee Chairpersons under Standing Order 107(4)(*a*)."

20. It is to be noted that Standing Orders 94 and 96 of the Standing Orders of Dail Eireann confer the same powers upon Dail Eireann.

21. The Irish Aviation Authority Act 1992 as amended establishes the Irish Aviation Authority. It is to be noted that it provides, at section 14, that the objects of the authority shall include,

"(i) to advise, on its own initiative or at the request of the Minister, the Government, the Minister or another Minister of the Government or any other person in relation to any matter to which a function of the company relates."

22. It appears from the above, under Article 4 of the EASA Basic Regulation, in taking measures under the regulation, Member States are obliged to *inter alia* reflect the state of the art and best practices in the field of aviation, take into account worldwide aviation experience and scientific and technical progress in the respective fields; and build on the best available evidence and analysis.

23. It is [our legal counsel's] view that sections 67 and 76 of the Bill, if passed into law, will amount to a measure taken under EASA Basic Regulation. It is [our counsel's] view that in passing these sections into law, given the obligation imposed on Member States by Article 4 of the regulation, that it is appropriate that Seanad Éireann should consider whether these provisions reflect the state of the art and best practices in the field of aviation [as set down under EASA regulation 4] and take into account worldwide aviation experience and scientific and technical progress in the respective fields; and build on the best available evidence and analysis.

24. In this regard, the exclusive reliance by the Department of Transport upon the technical expertise supplied by the Irish Aviation Authority and without recourse to its own or independent expertise may well give rise to legitimate concerns that the measures do not satisfy the requirements of Article 4 of the Regulation quoted above.

25. While the Standing Orders of both Houses contemplate that technical advice may be commissioned, neither House has to date [taken] such advice in respect of the Bill.

26. In these circumstances, it seems to me [our legal counsel] that it is appropriate for the Seanad to enquire whether, insofar as the Bill amounts to a measure under the EASA Basic Regulation, it satisfies Article 4 of the EASA Basic Regulation. If, having so inquired, the Seanad is of the view that it may not satisfy that Article, it seems to me [our legal counsel] to be open to the Seanad to invoke its powers under the Standing Orders quoted above to commission independent technical advice in order to so satisfy itself or, indeed, cure any deficiency which may become apparent.

Nothing further occurs at this time.

An Leas-Chathaoirleach: I thank Senator Doherty. Are there any other comments on amendment No. 3? Senator Craughwell will not repeat the same legal advice. The Senator may comment.

Senator Gerard P. Craughwell: I do many things but to repeat the same advice would be futile. The advice is very clear. One of the problems we have in dealing with this issue is that nobody in this room is an expert. The only expertise that has been involved in the drafting of this Bill is from the very people the Bill is designed to regulate. Four people lost their lives because of poor regulation, lack of oversight and reckless behaviour. That is the only way it can be described. In light of the legal advice we have received, neither House, at this stage, has had the technical expertise to inform it as to the right way to go with this Bill. I should invoke Standing Order 70, today, to seek a select committee of this House to be established to bring in the expertise to explain to us. We are, after all, none of us aviators. None of us is an expert in this area. The Minister of State is not an expert in this area. It is unfair to see this continually drag on the way it has. The way to resolve this problem is to bring in independent experts. We have all been approached by members of the Irish Air Line Pilots Association, IALPA, which is not independent in this case. When I say independent, I mean independent international experts who will explain to us that this meets the requirements of International Air Transport Association, IATA. If that is the case, let us rock on with the Bill. However, right now, I wish to have it on the record that I am deeply uncomfortable with this Bill. I have made that point since it first came before the House.

An Leas-Chathaoirleach: I appreciate that the Senator has made his point. We will have to move on.

Senator Maria Byrne: I am a little bit confused. What is the recommendation from the Attorney General? Was there a conflict of interest? Will the Minister of State clarify that for the information of the House?

An Leas-Chathaoirleach: The Minister of State had begun to clarify that.

Senator Regina Doherty: For the purpose of clarity, we should reflect on what the Minister of State said here on 29 June. I will not read out what she said, but I think we are all aware that she read out exactly how she has conducted the application of the drafting of the Bill. On that day, the Minister of State admitted that external advice was only obtained to insert the regulatory functions that the Minister of State was bringing to this Bill and that she relied solely on the Irish Aviation Authority, IAA, with regard to inserting new regulatory functions around peer support, the licenceholders' forum and the licenceholders' charter. I cannot, for the life of me, understand why taking external advice on one set of regulations makes it different from relying on internal expert advice for another regulation. The only conclusion that I come to is that the

Minister of State took external advice on her own new regulations, because she knew she had to work under Article 4 of the European Aviation Safety Agency, EASA, regulation, but saw the Opposition amendments, which there were at the beginning of this Bill and which we have been debating since last July, as something that she was never going to entertain and, therefore, on which she did not need to obtain external advice.

An Leas-Chathaoirleach: I ask that we let the Minister of State respond.

Senator Regina Doherty: I am not finished. The legal advice that IALPA has obtained for the Seanad Members clearly states that Article 4 provides for certain principles to be observed by member states and their agencies. I do not see how we have upheld that article to that end. I disagree with my colleague, Senator Craughwell, about invoking Standing Order 70. That is probably premature. What I have done, however, off my own back and, I hope, with the co-operation of colleagues here is that I have written to Commissioner Adina Vlean, who is the Commissioner for Transport in the EU, to seek her views as to whether we are living up to the standards that are expected in Article 4 of the European Commission regulations. I do not suppose that we will get a response for a few days, at very best, and given that we have an awful lot to debate, I do not intend to hold up the Committee Stage any longer, other than to say the following.

Both inside and outside of this House, I have been accused, in taking the actions that I have during the course of the debate on this Bill, of vote seeking because I am in a new constituency. Every pilot in the country apparently lives in Swords and Skerries. For the record, the licence-holders in my family live in County Wicklow and County Meath. My only interest in this Bill is in trying to make flying safer for the people who operate aircraft, the licenceholders in this country, the pilots and all of the people who make sure that our aircraft are safe. I want to make sure our aircraft are safe for the people like me, you, and everybody else in this room, who just use planes to go on our holidays, meet our family or for work.

I do not think I need to remind people that in the early hours of 14 March 2017, Coastguard Rescue 116 crashed into the sea in County Mayo. All of the four crew members on board that night passed away; Ms Dara Fitzpatrick, Mr. Mark Duffy, Mr. Paul Ormsby and Mr. Ciarán Smith, whose family live up the road from where I live. I cannot even begin to imagine the hurt and the grief that Mr. Smith's family have been feeling and suffering for the past five years and will feel for the rest of their lives. The centre of their gravity was taken away from them that night. Parents lost a son; a wife lost her husband and best friend and those children lost their family. While the accident absolutely did not happen on the watch of this Government or Minister of State, the recommendations arising from that accident and the responses to those recommendations are on their watch.

Recommendation 2021029 basically said that the Department of Transport needed to review its in-house expertise to ensure it had the technical necessary capabilities to intelligently oversee all activities relating to search and rescue. On 1 February this year, the Minister replied to say that the Department would review the availability of in-house expertise to ensure that it retained necessary technical capabilities to intelligently oversee. The comment of the air accident investigation unit, AAIU, to that was that it noted the Minister's response and it noted that the recommendation was still in the process of implementation, five years after four people lost their lives. That recommendation is still in the process of being implemented.

Recommendation 2021031 stated "the Minister for the Transport should ensure that the De-

partment has ... [specific] specialist aviation expertise", to ensure it can "discharge [its] effective oversight ... [with a] full range of IAA activities". The response from the Minister was that he wished to say that the recommendation was accepted and that the Department had contracted aviation expertise available to it. I will not even go through the rest of it.

This is still in progress. We still do not have aviation expertise in the Department. What we have is periodical availability to the Minister. The AAIU notes the Minister's response and it notes that the recommendation is still in the process of being implemented. Five years later and four lives lost, we are still processing the recommendations of a damning report into the loss of life of people who work on behalf of this State.

An Leas-Chathaoirleach: I thank Senator Doherty.

Senator Regina Doherty: I am not finished. We had an accident a number of years ago, Germanwings Flight 9525, which gave rise to the conversation and the EASA regulations that we now enjoy throughout the European Union. It was an Airbus A320 that crashed into the Alps in Nice. The 144 people on that plane all lost their lives that night. Six crew members were on that plane and they are all dead. The crash was deliberately caused by the co-pilot, who had been previously treated for suicidal tendencies and declared unfit for work by his doctor. He kept this information from his employer, because he was afraid, and, instead, he reported for duty. Shortly after reaching the cruise altitude, when the captain was out of the cockpit, he locked the door and initiated a controlled descent that continued until the aircraft collided with the mountain. I cannot even begin to imagine the effect on the families of those crew members and all of the people who lost their lives. That was a tragedy of enormous proportions, which happened because he did not trust his employers enough to tell them of his condition and ask for help.

Something very similar has been expressed in Ireland about the lack of trust in the peer support programmes that are currently being operated. The uniformity of and trust in peer support programmes are absolutely fundamental and essential to ensuring that not one of our pilots ever feels that they cannot ask for help. We have heard from Irish pilots at the Oireachtas Joint Committee on Transport and Communications that much-needed trust does not exist in today's peer support programmes. That is why it is essential that we put peer support on a legislative footing.

12 o'clock

That is what we are resisting here. We are resisting amendments that try to make aviation safer for the licence holders and all the passengers who put their lives in the hands of pilots every day.

An Leas-Chathaoirleach: I wanted to be fair to the Leader of the House. We took the legal advice and her commentary on board and-----

Senator Regina Doherty: Amendment No. 3 is on peer support.

An Leas-Chathaoirleach: I have two comments to make. No one would impugn her personal integrity, which is above reproach, regarding the comments made. I appreciate that she will not hold up Committee Stage, but I would appreciate if she could let the Minister of State respond.

Senator Regina Doherty: I will finish on this point. We are debating amendment No. 3 and peer support, which is exactly what I am speaking about, is fundamental to it. The Leas-Chathaoirleach will be aware, by virtue of Standing Orders, that Senators are entitled to give any respective views we have on amendments and that is what we are doing.

I am sure that the Bill will pass because I do not think there is anyone in the House who has a problem with its contents. Most of us have a problem with what is not in the Bill. When it passes, I want to be able to honestly say that I tried to do everything within my power to make this sector of society safer. God forbid, if we ever have another accident - and I hope it never happens - like the R116 or Germanwings accidents, I want to be able to put my head on my pillow at night knowing that I tried desperately to get amendments put into the Bill that would make safety regulations more secure and in line with best European and international practice. That is probably why we are having this conversation so fervently to get peer support put on a statutory footing.

I am not sure what the Leas-Chathaoirleach meant about holding my integrity in the highest esteem-----

An Leas-Chathaoirleach: It was just that you made the comment that people were impugning your integrity.

Senator Regina Doherty: -----but I wish to put on the record of the House that my attempts to do this are far more important than titles or job allowances that I might get for any job that I perform in the House. What we do with regard to the Bill is a matter of life and death, and that is why it is so serious. That is why the people who are watching us and who we represent know that we are trying to serve their best interests to make the regulations safe so that they and, ultimately, all of us will be safer.

Deputy Hildegarde Naughton: I reiterate the advice from the Attorney General in that he is satisfied there is no conflict of interest or a breach of trust in the engagement on this. I will further clarify the consultation process of the Bill if it would help Senators. I am conscious of time and that we will not get through discussing the issues or the amendments. Senators know that I have moved significantly on putting forward Government amendments. I am eager to discuss them here because it will make for a better Bill and I would like the opportunity to do that.

Section 14 of the Irish Aviation Authority Act 1993 requires the IAA "to advise, on its own initiative or at the request of the Minister, the Government, the Minister or another Minister of the Government or any other person in relation to any matter to which a function of the [IAA] relates". The authority, as I stated in the House on the previous occasion, has extensive and highly regarded technical experts. It operates as part of the executive framework, both with an obligation to decide on matters within its remit and on an independent basis. A different approach is appropriate where it is necessary to have expertise to assess the conduct of the functions by the IAA or in relation to the possible assignment to it of new functions. The Department has availed of such expertise on a number of occasions over recent years. The Bill was developed by the Department of Transport with expert input from the IAA and the Commission for Aviation Regulation, CAR. Additional expertise was contracted to advise on provisions in respect of search and rescue. The Bill was drafted by the Office of the Parliamentary Counsel.

I wish to highlight the level of engagement and consultation that took place with stakeholders in the development of the Bill. Prior to its publication, the Department engaged with the

IAA, the Commission for Aviation Regulation, CAR, the Competition and Consumer Protection Commission, DAA, Cork Airport, Aer Lingus, Ryanair, Airports Council International, Chambers Ireland, Irish Congress of Trade Unions, ICTU, Fórsa, the Irish Air Line Pilots Association, IALPA, An Taisce, and Dublin City University. In addition, the Bill was subject to pre-legislative scrutiny by the Joint Committee on Transport, Tourism and Sport in July 2019. Since the publication of the Bill, I have met with IALPA four times and with Senators on three occasions, and a working group was established to progress the development of the Bill chaired by the Department and involving the Department, the IAA and CAR. On the airport charges regulation aspect of the Bill, the Department engaged with ICTU and DAA and held a workshop on the policy aspects involving DAA, Aer Lingus, Ryanair, and CAR. Prior to the Bill's publication, the Department engaged with a number of parties on the text of the Bill, including Fórsa and IALPA, in addition to corresponding with other organisations, as previously listed, on airport charges.

Other examples of engagement with State agencies in the development of legislation,would be helpful for Senators to hear. In drafting the Central Bank (individual accountability framework) Bill 2021, the Department engaged extensively with the Central Bank to inform the policy positions adopted to address the principles as approved by the Government. Further extensive engagement was undertaken with the Office of the Attorney General to achieve the objective of ensuring that the Central Bank has the powers it needs to regulate effectively while safeguarding the constitutional rights of all those concerned.

Speaking on the Land and Conveyancing Law Reform (Amendment) Bill in the Seanad on 9 November 2021, the Minister of State at the Department of Justice, Deputy James Browne, said:

> The Bill sets out a number of new rules for the law on acquiring and validating prescriptive easements and *profits à prendre*. This follows extensive engagement with stakeholders, including the Law Society, the Bar Council, the Property Registration Authority and the Law Reform Commission.

During the debate in the Dáil on the Private Security Services (Amendment) Act on 6 May, the Minister of State said:

> ... the then Minister for Justice and Equality, Deputy Charlie Flanagan, made a commitment to the Dáil in September 2018 that the law governing the area of persons involved in the execution of court orders that are not licensable by the Private Security Authority would be examined. The Minister established an interdepartmental working group chaired by the Department of Justice, comprising officials from the Courts Service, An Garda Síochána, the County Registrars Association, Revenue Commissioners, Department of Housing, Local Government and Heritage and the Private Security Authority itself.

It is common practice to consult groups directly affected by legislation. The real answer to Senators' questions today is in the response from the Attorney General around the drafting of the Bill. I ask if we could move forward to discuss the amendments and work through the issues Senators have.

An Leas-Chathaoirleach: We will do that but Senator Craughwell has a comment to make.

Senator Gerard P. Craughwell: I have a few points to make. The Attorney General is one distinguished lawyer. The advice that was read into the record was prepared by another

distinguished lawyer. I do not believe any lawyer is more qualified than another, lest a court adjudges the positions of both parties and makes a decision. The Attorney General's advice holds no more water for me than the advice that was read into the record by my colleague, the Leader of the House.

The Leader of the House wrote to the European Commission about the Bill. While she disagrees with me in trying to invoke Standing Order 70, if we proceed with the Bill today and if the advice that comes back from Europe is contrary to the opinion of the Attorney General, where will we be then? We cannot go back.

An Leas-Chathaoirleach: To be helpful, the Senator would have to go to the Committee of Parliamentary Privileges and Oversight. We are on Committee Stage by order of the House. Any processes involving Article 7 are under the committee and outside the remit of the House.

Senator Jerry Buttimer: On a point of order, will the Leas-Chathaoirleach explain that because I do not understand? What is the import of Senator Craughwell's suggestion?

An Leas-Chathaoirleach: If Senator Craughwell wants to invoke Standing Order 70, he would have to go to the Committee of Parliamentary Privileges and Oversight and follow a process there. We are now on Committee Stage by order of the House.

Senator Jerry Buttimer: In other words, we can proceed today.

An Leas-Chathaoirleach: We must proceed from where we are.

Senator Gerard P. Craughwell: We must proceed or suspend again, and I do not particularly want to do that.

An Leas-Chathaoirleach: We are not suspending. I am following the order of the House. Anyway, make your comment. We want to be fair.

Senator Gerard P. Craughwell: Before I make my comments, the Minister of State has referred to the people who were consulted on Bills relating to all sorts of areas that have passed through the Houses of the Oireachtas. That is good, and I do not have a problem with that. However, I have a problem if we go to an agency and ask it to write the legislation to regulate itself. She spoke about search and rescue, SAR, particularly and the expertise that is available to the Department on SAR. I assume we are talking about the same company. Aerossurance is the only adviser she has on SAR. If it is, that is a one-man operation for a massive contract and a massive series of issues that have to be overseen. I note that the Department recently tendered for an expert for the next SAR contract, and that is due in at the end of this month.

My amendments speak to the importance of consulting with all relevant stakeholders. It is clear that the Department has not done this in preparing the Bill. Certain provisions of the Bill along with sections of the legislation which implement the EASA basic regulations are based on the air accident investigation unit R116 report, which drew attention to the lack of technical expertise. It is ironic that legislation which is partially based on a report that drew attention to the lack of technical expertise has not been appropriately reviewed by people with technical expertise.

The Bill has been passed by the Dáil. It was initiated on 4 December 2020. It was considered by the Select Committee on Transport and Communications, and it is currently before the Seanad on Committee Stage. Not once have the Houses of the Oireachtas obtained indepen-

dent technical advice on this Bill. As parliamentarians, we must acknowledge that there are certain types of legislation where expertise is needed. Regarding Irish neutrality, there was talk of a citizens' assembly in which a group of civilians would be presiding over whether Ireland should be neutral, militarily non-aligned or aligned with a bloc such NATO. It is reckless to pass legislation on important matters such as this without consulting experts. On 29 June 2022, the Minister of State attended the Seanad. It was her understanding that there is no member of staff within the Department with such technical expertise. The Department will often commission advice about a Bill but on this occasion it did not do so. Instead it relied on the technical expertise of the Irish Aviation Authority in the preparation of the Bill, notwithstanding the fact that the Bill is intended to regulate that authority. What could possibly go wrong there?

The Minister of State must consult with all relevant stakeholders to ensure the proper implementation of the EASA regulation. She said she engaged with IALPA and the IAA, and she has engaged with us on a number of occasions. In fairness to her, she has engaged but she has not listened, or at least the officials who are advising her have not listened.

Senator Jerry Buttimer: That is not fair.

Senator Gerard P. Craughwell: We are where we are a year later, and we are getting nowhere.

An Leas-Chathaoirleach: You have had great latitude, Senator. Can you wrap up and then the question will be put?

Senator Gerard P. Craughwell: We are on Committee Stage and I am entitled to make my points.

An Leas-Chathaoirleach: I know that but we are wandering away from the amendment.

Senator Gerard P. Craughwell: I am entitled to make the points I want to make today.

An Leas-Chathaoirleach: Then make the comment.

Senator Gerard P. Craughwell: If we are going to proceed with the Bill today, which I believe is ill-advised, I am going to make my points.

Article 2.6 of the EASA basic regulation allows the Minister to opt in to certain provisions, activities and organisations. This is relevant, but with regard to sections 67 and 76, we have to give consideration to whether they reflect state-of-the-art and best practices in the field of aviation. This is what I mean when I speak about a select committee of the Seanad having experts available to it.

An Leas-Chathaoirleach: That is for a different forum.

Senator Gerard P. Craughwell: I am not an expert in the area, but I am being asked to put my name to this Bill by virtue of the fact that I have been involved in discussion on it. This will be the Minister of State, Deputy Naughton's, Bill when it goes onto the Statute Book properly and the bottom line is that none of us is expert enough to make judgments on some of the provisions in the Bill.

Section 67 makes reference to the Minister. It refers to conducting a regulatory review along with the universal safety oversight audit programme of the International Civil Aviation

Organization, ICAO. The Bill does not explicitly state what type of expertise the people conducting this review will be required to have. Other amendments I have tabled today provide for the appointment of a chief executive, who I believe could address this issue. Does section 67 reflect the best practices in aviation? I do not believe it does and we need to be incorporating all the relevant stakeholders to ensure that it does.

How might this Bill not be the best implementation of the EASA regulation? There are problems with section 76. Apart from the section 67, section 76 invests too much power in the Minister. I believe this would be contrary to Article 8 of the EASA regulation. Under this section the Minister has responsibility for strengthening the national aviation safety regulatory framework for the Irish Coast Guard.

An Leas-Chathaoirleach: We will be coming to that section later.

Senator Gerard P. Craughwell: I know. I am just trying to bring it all together. These are the only areas that cause me difficulty. If we can iron those out, we can move on with the Bill.

One of the biggest issues with the Bill is a lack of accountability for the chief executive. Legislation such as this is too important to allow for incompetence.

The introduction of the pilot supports programme is a welcome development. Members of the Opposition have been happy to support this part of the Bill. However, a lot more must be considered.

Exclusively relying on the technical expertise from the Irish Aviation Authority is likely to bring up compliance with regard to the EASA regulation. There must be an independent review by internationally renowned experts who are independent of the IAA. The Seanad should inquire whether the Bill amounts to a measure under the EASA basic regulation. In the context of our role as Senators, we can request that technical advice be sought under Standing Orders. I am returning to that issue again. I believe we should not proceed without expert advice.

I have some concluding remarks, but the Leas-Chathaoirleach is so anxious for me to sit down that I will do so and draw my breath for a few minutes.

An Leas-Chathaoirleach: Thank you, Senator. I appreciate your co-operation. Are you pressing the amendment, Senator Doherty?

Senator Regina Doherty: I have not finished speaking to the amendment. A lot of what we have spoken about this morning is about technical advice. It is not about peer support.

An Leas-Chathaoirleach: You can have a further distinct comment and then tell us if you are pressing it.

Senator Regina Doherty: I have many distinct comments-----

An Leas-Chathaoirleach: New comments on the specific amendment.

Senator Regina Doherty: -----but the first question I have for the Minister of State is on the basis of the statement she just made with regard to taking a different approach than relying on internal advice when we are looking at new functions for the IAA or, indeed, introducing new regulations for the IAA. The three amendments most of us are seeking to insert in the legislation relate to new regulations pertaining to peer support programmes, the licenceholders' forum

and the licenceholders' charter. Will the Minister of State explain why a different approach was used for the drafting and insertion of amendments for new regulations for search and rescue? We relied solely on internal advice and did not take the different approach that the Minister of State spoke about with regard to the new regulations on peer support, licenceholders' forum and licenceholders' charter.

Deputy Hildegarde Naughton: I will speak to the amendments, which I have not done yet. That will clarify matters. The requirement in Irish law for peer crew support derives from EU regulation 2018/1042. The regulation was developed in consultation with all stakeholders, including pilot representative bodies across Europe. The final regulation represents a consensual balance of the views of all stakeholders. The regulation came into effect in February last year and the European Union Aviation Safety Agency is required to review its effectiveness after this year.

Under the regulation, each airline must enable, facilitate and ensure access to a proactive and non-punitive peer support programmes that will assist and support flight crew in recognising, coping with and overcoming any problem which may negatively affect their ability to safely exercise the privileges of their licences. It is up to each airline how it implements this requirement; whether it does so by itself with another airline or whether it does so with other parties, such as trade unions. The key point is that the obligation rests on the airline to ensure its flight crew has access to a crew peer support programme that is in accordance with the regulation. The IAA is the competent authority in Ireland in respect of the regulation. All Irish airlines have a peer support programme in place and the IAA has audited all peer support programmes as per the EASA requirements. Both Aer Lingus and Ryanair established peer support mechanisms years in advance of the legal requirement, indicating a voluntary commitment on the part of airlines to the principle and practice of crew peer support.

Amendment No. 3 and Senator Doherty's amendment d*4*a propose additional national requirements over and above the EU regulation. The amendments propose that the IAA will be required to review airlines' peer support programmes every three years and to convene a national forum, the functions of which would include creating or encouraging the provision of a national crew peer support programme. In response, Government amendment c*4*a is proposed, which will require the IAA to undertake a review of the effectiveness of crew peer support programmes, and in so doing take account of many of the criteria as originally proposed by Senators, including addressing matters such as the promotion of use of a programme and trust in it; independence of peers from management or supervisory functions; and selection of training of peers. The Government amendment does not provide for a national forum as IALPA has requested. Following extensive engagement with IALPA, it is not yet clear how the objective of such a forum - the creation or encouragement of the provision of a national programme which would be accessible by aircrew from any airline - would be operationalised, funded or structured. It is also not clear what parties would be involved or the extent to which such a concept would be supported by airlines. The proposed aviation stakeholders' forum is a mechanism by which any safety relevant issues can be brought forward for attention and teased out in a consultative and collaborative manner, including issues relating to crew peer support programmes. If the aviation stakeholders' forum brings forward proposals to establish a crew peer support national forum, I have committed to legislate for that.

On the proposal for rolling three-year reviews, I would make the following points. Crew peer support programmes, while important, are only one element of the vast body of systems, rules and procedures designed to ensure safety in aviation. Hard-coding the IAA's efforts and

conducting reviews every three years is potentially disproportionate and may unnecessarily divert the IAA's resources. If there is a review and if there is a need for a review subsequent to the IAA's initial review 12 months after the commencement of this Bill, then this can be pressed with the IAA at the aviation stakeholders' forum.

On the position that a pilot should be able to seek assistance from a peer not working in the same organisation, the EASA regulation places the responsibility on airlines to ensure they have effective crew peer support arrangements in place. A critical element in the process is for the airline to be guided by a peer on when a pilot needs to be rostered off and supported. The airline has to be satisfied that the guidance is coming from a source that it is satisfied with and has confidence in. What is being envisaged in this amendment is a different model to what pertains now. It is unclear how it would be operationalised and what the consequences would be from a legal liability perspective. The proposal requires careful consideration, input from the first IAA review and discussion at the aviation stakeholders' forum and as such, I cannot accept amendments Nos. 3 or d*4*a.

An Leas-Chathaoirleach: The Minister of State has specifically responded to the amendment.

Senator Regina Doherty: Can the Minister of State respond to the question I asked before she made her intervention?

Deputy Hildegarde Naughton: What was the specific question?

Senator Regina Doherty: Why was a different approach taken with some sets of new regulations for the IAA versus other regulations for the IAA?

Deputy Hildegarde Naughton: On the specific crew peer support amendment before us today, there is no conflict within my Department on seeking the input of the IAA. Given the undoubted and extensive aviation safety expertise of the IAA and its remit to promote aviation safety, it would have been remiss of my Department not to have sought the IAA's input.

On search and rescue, as I have stated the Department engaged with Aerossurance on that.

Senator Jerry Buttimer: I want to make one comment to the Minister of State on the review mechanism. We often get amendments in the House from Senators Higgins or Ruane on a six-month review or to have a report back after six months. Is that being ruled out completely? I will speak on peer support only and I will not come back in again. The issue of health and well-being is important and despite what Senator Craughwell is saying, the Minister of State has moved gargantuanly from the beginning to now. Senator Doherty has highlighted the issue of several incidents. There is a real need for a better model for flight crew and for pilots in particular.

As part of our research for this Bill we found that flight crews and pilots do not like to talk about mental health issues, sexuality and personal issues and that is for a number of reasons. These reasons include status, job and licence. It is important that we promote the issue of health and well-being and that we offer that support. In fairness to the Minister of State she is doing that. The peer programme must include the ability to inform and educate flight crews and pilots in the area of mental health and well-being. If we do nothing else in this Bill we should insert that and make it part of what we are about. From talking to pilots and from doing research I have seen that pilots are slow to talk. Being able to talk helps to resolve issues and this must

be enabled to take place in a confidential and trusted environment. That is coming to me from pilots and flight crews. I know the Minister of State is moving but it is important that we see that we are doing that.

An Leas-Chathaoirleach: We still have Report Stage to come for both the Minister of State and colleagues.

Deputy Hildegarde Naughton: We all have the same aim; to have the best peer support programme. The issue is around a national peer support programme and I am saying clearly that I am open to that. However, we need to think through how it will operate, how it will be structured and how it will be funded. I cannot put something into primary legislation without that being defined. It needs to be defined through the key stakeholders. I am opening the facility for that to be done through the stakeholders' forum, where the airlines, in consultation with one another, can clearly lay out how this would operate and how it would be funded. The airlines themselves have to have confidence in this and it is not for me as Minister of State to put something into primary legislation when it has not been worked out. I have given a clear commitment that if the stakeholders' forum comes back proposing a design for how a national peer support programme would work, I will legislate for that. That is fair and I have moved significantly on this. We all want the best peer support programme. I refer to the issues that Senator Buttimer highlighted around having confidence in it. That is exactly what I want as well but I want it to be thought through. I want it to be a good structure that works and that has the buy-in of airlines, all the stakeholders and, obviously, pilots. All aircrew would be involved in this.

Senator Marie Sherlock: We have spent many hours discussing this Bill, and rightly so given the importance of getting this legislation right. It is important to acknowledge that progress has been made with the Minister of State since amendments were originally tabled.

I will make two points. First, the gap between the Minister of State's amendment and what man of us are looking for with regard to peer support is not great. Second, while I accept what the Minister of State said about delegating the operation of what we are asking for to the forum, anyone who has been around a while knows that if we do not hardwire into the legislation the precise detail of how the peer support should operate, it will not happen. There is a fundamental imbalance here. There are all sorts of issues with the imbalance between employers and employees. We then have the regulator in the room and then the types of workers we are talking about and all that goes with that in terms of them coming forward with various issues.

It is not overly onerous to provide for a review to be conducted every three years. Senator Buttimer referred to a period of six months. This is not a six-monthly or annual review but a review every three years.

On the independent selection and training of peers, ultimately this comes back to trust. There have been what we would describe as breaches of trust in the past in terms of the regulation and operation of the sector. These have been detailed with regard to some of the previous incidents, including loss of life. There needs to be trust in the set-up and construction of peer support programmes and that they will be independently appointed.

On access to peer support outside one's organisation, this sector is made up of a small number of very large employers. It is the opposite of a sector with a large number of small employers. It may be difficult for licenceholders to seek peer support within their organisation and they will, by necessity, want to go outside their organisation. That should be facilitated.

If any review of peer support is to be effective, it needs to be clearly stipulated in the legislation what the role of the Irish Aviation Authority is in that regard. The amendments provide that the Irish Aviation Authority would direct changes to the peer support programme within various airlines. To say that this should be worked out within the licenceholders' forum is not good enough.

Senators Craughwell and Doherty have gone into much greater detail than I have but, having listened to all the debates and engaged on Second Stage, I believe there has been progress. There are, however, a small number of very important matters outstanding and the possibility of achieving agreement on them is not insurmountable. We have the basis of good legislation before us if only we could get agreement on what I consider to be a small number of fundamental matters. It would not be overly onerous on the new aviation authority to undertake what has been asked for. I appeal to the Minister of State in that regard.

An Leas-Chathaoirleach: Before the proposer of the amendment responds, I welcome to the Gallery two members of the staff of Westminster, our sister Parliament. It is good to have them here. They are getting an interesting perspective on parliamentary democracy today.

Senator Regina Doherty: "Interesting" is a positive word.

I am sorry to be pernickety. I certainly was not questioning the Minister of State's ability to contact the Irish Aviation Authority and to ask its advice. What I am asking is why the Minister of State took a different approach with regard to one set of new regulations she is introducing for the IAA around search and rescue but did not seem to deem it necessary to get expert advice on the other set of new regulations that we are proposing be introduced for the IAA. I do not have a problem with the Minister of State speaking to them in any way, shape or form. What I am asking is why the Minister of State only spoke to them in respect of our set of new regulations that were to be introduced when she saw fit to, in the Minister of State's words, use a "different approach" by getting external aviation expertise with regard to the new regulations she is introducing for the IAA in this Bill.

For the record, in case anybody thinks that I do not support the Minister of State, I very much welcome her statement that she supports a national peer support programme. However, having been stalled to some degree on Committee Stage for over a year now, we have had a year to consider what we could do with peer support in the same reflective way the Minister of State has spent the past year reflecting on the-----

An Leas-Chathaoirleach: I am delighted to be chairing the movement.

Senator Regina Doherty: -----licenceholders' charter and licenceholders' forum. We have amendments from the Minister of State that somewhat water down the licenceholders' forum to a stakeholders' forum. I must be honest in expressing some grave concerns with regard to importing the important structure and action of establishing a national peer support programme to a committee meeting that nobody will be compelled to attend. We have been told we could not possibly have three-year reviews of the current peer support programmes that are operated disparately and differently by the airlines operating in Ireland because we might overwhelm the IAA's resources. However, one of the requirements of the IAA, under the EASA regulations that were specifically set down for peer support, as negotiated in 2018, was to regulate and review the peer support programmes.

We are asking for reviews to be done every three years as opposed to the Minister of State's

position that these should be done as and when the IAA sees fit because we have a resource problem and we might overwhelm the authority. If there is a resource problem, we need to give the IAA more resources. It is responsible for regulating the safety of our airline industry. Nothing could be more important.

The reason I sincerely believe we should not delay establishing a national peer support programme any longer is not because I want it but because our pilots told us, on the record in the Oireachtas committee, that they are afraid to come forward about having made a mistake or experiencing issues in their own lives, whether it be a mental health issue or substance abuse, for fear of being punished by their own airline. That is on the record. I am not sure what we are waiting on before we introduce regulations in law to make sure the IAA, as we were told during meetings during the year, does not lose the flexibility it believes it would lose if we put them in legislation.

Officials from IALPA told the Joint Committee on Transport and Communications that people in their organisation had suffered from stress and mental health problems and some of their employers see these issues as burdens and as getting in the way of their commercial interests.

The purpose of this Bill is to split the Irish Aviation Authority into two so that we will have a safety regulatory authority that is not reliant on funding from commercial airlines. Right now, we are fighting against a tide of giving more powers to the IAA to ensure that airlines operate under the guise of best international and European practice in regard to safety and regulatory frameworks. Our excuse for not doing it now and leaving it to another day is that we do not have enough teased-out data or conversations. We have had a whole year for conversation. We have put down comprehensive amendments showing exactly how we expect the State to fund, finance, regulate and operate a national peer support programme. The aviation organisation that represents our licenceholders - the men and women who put on their uniforms and get up into the cockpits to fly us places - is begging for a national peer support programme to be put in place because it cares so much about its members. We should care as much as it does about those members. More importantly, we should care about every single person who sits on an aeroplane equally as much as IALPA cares about the licenceholders it represents in this country.

There is absolutely no uniformity across the peer supports that are operated, and the IAA knows it. The authority has conducted its reviews in the years since 2018 and it certainly knows there is no uniformity across the peer support programmes that are operated by some of the largest employers in this country. Yet, it does not want its hands tied. It wants to retain the flexibility of not having legislation in place to govern safety and regulation, particularly in an area in which it is failing in its remit and duties. Mr. Alan Brereton of IALPA told the transport committee that there is an average of one pilot suicide every 18 months in Ireland. That is an absolutely stark figure when we consider how few pilots there are in this country. In a seven-year period, six pilots in Ireland took their own lives. I am not saying that a peer support programme run consistently and uniformly would have saved every one of those lives but it certainly would have gone a hell of a long way to ensuring people had supports when they put their hands up and said they needed help.

We are dithering around here. A forum will be established after this legislation is passed that absolutely nobody will be compelled to attend. A charter will be drafted at some future point setting out rules with which nobody will be compelled to comply. I really do not understand it. The amendments are welcome because they put something in the legislation that was not there when it was brought forward a year ago, but the language in them is so loose and watery as to

be absolutely ineffective. We are standing here under the pretence of doing something when, in fact, we are not really doing anything at all. We certainly are not making aviation safer.

Our pilots have expressly laid out their fears. We spent the past year being subject to what I can only call lobbying - it would not be accurate to call it gentle persuasion - by the regulator to persuade us it does not need the legislative amendments we are proposing in this Bill. That makes me really worried. The regulator says it does not need legislation to govern the peer support programmes that are regulated by the EU but it certainly is not providing that regulation itself in any way, shape or form that is acceptable to the licenceholders. It may be acceptable to the airline operators, which might be why this Bill is being brought forward in the first instance. We have a regulatory authority that is reliant on the commercial funds from airline operators to survive and have the resources to do what it is supposed to be doing. Surely to God in a Bill that is splitting the commercial aspect of looking after and regulating airlines in the context of safety elements, it is absolutely fundamental that the safety regulatory authority would have the tools, power and laws to ensure our airlines operate EU and International Aviation Safety Assessment, IASA, regulations with uniformity and in the best interests of crew and passengers. I really do not know why a regulatory authority would say to Members of Seanad Éireann that it needs flexibility. I just do not get it. The flexibility it has displayed in the past number of years certainly does not give me any confidence whatsoever.

The reality is that we have airline pilots sitting in front of Oireachtas committees telling us they are afraid because of the environment and the employment conditions in which they work and because of the fast and loose way the IAA chooses to impose the EU regulations. There are people in the industry who are not willing to bring forward their concerns, daily issues, stresses or whatever it happens to be that impinges on their ability to perform their duties. They are not willing to come forward, share that information and get help. I do not know why a regulator would want to allow different interpretations of peer support requirements as directed by the EU. I would love if the Minister of State could explain to me, above all, why we are going to continue with an operation that has not served Irish aviation and Irish licenceholders well at all since 2018. We are talking about people's lives being at stake, not just through accidents but arising from their having difficulties in their own lives and not being able to get support. I would love to know why we are putting off dealing with this issue to some future date and some future meeting at which not everybody will be around the table and at which some charter will be drawn up with which nobody will ever be compelled to comply. It is absolutely bizarre, to say the least.

There is an old saying that there is never the right time to do the right thing. The right time is now, not at some point in the future. The right time for us to do the right thing is now.

An Leas-Chathaoirleach: The Senator has made her point very clearly. I call Senator Craughwell.

Senator Gerard P. Craughwell: It is rather odd than in the context of SAR, an expert was brought in, if one can call a non-pilot, one-man operation an expert, to advise on this Bill. I am on record in this House, at committee and in correspondence with the Department of Transport as to the reservations I have over a one-man band providing any advice to the Department. The letter I got in response from the Department sought to assure me this one-man band was providing advice to organisations all over the place. It shocks me that this operation has a balance sheet without creditors or debtors at any stage in the three years prior to getting the contract. Indeed, the tender the Department recently put out for somebody to assist with the procurement

of the next SAR contract sets the turnover of the organisation so low that anybody could apply. I have a difficulty with that.

As Senator Sherlock said, there is very little dividing us at this point in time. We can have confidence in a peer support group made up of the pilots themselves. Senators Doherty, Sherlock and Buttimer are correct in what they said. Pilots are a very unusual breed. They are very protective of their licences. They communicate among themselves but are slow to communicate in a forum in which other people are involved. All of us in this room will probably get on an aeroplane in the next month or two. When the two men walk into the front of that aircraft and close the door-----

Senator Regina Doherty: Or women.

Senator Gerard P. Craughwell: When those two men or women get into the front of the aircraft and close the cockpit door, none of us will ever know what goes on in there until the aeroplane lands. Often, when one is flying somewhere, one sees a member of the cabin crew replacing a pilot while the latter pops out to the toilet or whatever, but we do not otherwise know what goes on. Like my colleagues, I want to know when I get on an aircraft that if the pilot had a problem that day, he or she did not have to bring that problem into the cockpit. Every one of us leaves our house every day with a plethora of different types of baggage we carry with us for the day. Some days that baggage is good and other days it is bad. On some days, we are carrying problems we cannot resolve. None of us is carrying those problems with us at 35,000 ft above the ground.

There is very little dividing us at this stage. Pilots are saying that if they get this amendment, they will be willing and able to participate in every way. I do not accept that the provisions are too onerous on the IAA. Members of the authority were able to find enough time to meet all of us to try to convince us this was the way to go. The IAA was found to be culpable in the case of Rescue 116 insofar as it was lacking in oversight. The Department was found to be an unintelligent consumer of aviation, without expertise in the area. Senator Doherty made an important point in this regard. We are five years out and the Department still does not have an aviation expert on its staff. The Irish Coast Guard still does not have an aviation expert on its staff. What is going on? I fully appreciate the Minister of State engaging with the Irish Aviation Authority, IAA, on everything and I respect its right to contact the Minister of State on any matter on which it feels fit to advise her or on which to comment. I have no difficulty whatsoever with the IAA doing that. I do have difficulty with it being the main influencer in this Bill. I have difficulty with the Minister of State not accepting that this would be reviewed at least once every three years. It is not an onerous task. It will not consume the IAA totally. If somebody needs to be employed to carry out that work over a three-year period then employ that person. God knows the Minister of State read out a list of experts the last day she was in the Chamber. There are enough of them out there.

This Bill needs to pass and this issue and the pilot's form have been holding us up. That is what is holding us up. Let us be honest about it; if the Minister of State had difficulties in her Department, she would feel comfortable talking to another Minister. She would not come in here and talk to us about it. We would not sit down in the dining room and have a chat about the difficulty of dealing with people or whatever. The Minister of State deals at her peer level and is happy to do that. That is all we are looking for here. If we can move to that stage, we can probably move on with this Bill. Failing that, I am really concerned that advice will come back from Europe that we have gone the wrong direction and if it does, then where are we? I

am still of the view that we should not proceed with this today but there we go.

An Leas-Chathaoirleach: I thank the Senator for co-operating. We will take a comment from Senator Buttimer then we will really have to put the question shortly.

Senator Jerry Buttimer: I want to support the Minister because in fairness, in his letter to us in June, Mr. Jim Gavin of the IAA, made it very clear that "the IAA will conduct continuing oversight of the implementation of the regulation in accordance with the EU regulations." The letter went on to state that: "The proposed amendment mandates the IAA to conduct a review, not later than 12 months after the commencement of the Bill, on the effectiveness of the peer support programmes introduced by Irish airlines." Mr. Gavin is very clear in the letter that his advice is that there would be peer support.

I refer Members to the lived experience and well-being research in Trinity College Dublin, TCD, which specifically investigates and does research on the aviation sector. It highlights the importance of the impact of stress and mental health on performance and flight safety. The Minister of State is right. We are all of the view that we are on the same page. In the context of the three crews, I know the accepted number of crews according to the European Aviation Safety Agency, EASA, varies from five to three. Why can we not go to one? I am just curious to hear that again.

An Leas-Chathaoirleach: We really have discussed this to the nth degree now. When the Minister responds I will ask Senator Doherty how stands the amendment because every conceivable point has been made. I have read the amendment, every aspect of which has been put forward a couple of times by a couple of speakers.

Senator Gerard P. Craughwell: On a point of information-----

An Leas-Chathaoirleach: Senator Craughwell has done it properly; I am not impugning him.

Senator Gerard P. Craughwell: On a point of information, it is not the Chair who decides when the question is put. It is the Members who decide.

An Leas-Chathaoirleach: Okay. It is in the good interests of the management of the House; we are all on the same team in that regard.

Senator Gerard P. Craughwell: I do not dispute that.

Deputy Hildegarde Naughton: With regard to existing peer support, we have the same law as the rest of Europe and that is enforced by the IAA. Senator Doherty's initial question was around the engagement of the IAA. The crew peer support programme is already covered by the European Aviation Safety Agency, EASA, regulations. As I stated earlier, there is no conflict in engaging with the IAA on this. With regard to Senator Sherlock's call for the national peer support programme to be put into legislation-----

Senator Marie Sherlock: No, I understand it will be in legislation; it is the detail within the peer supports as set out in the amendments here. The gap is small.

Deputy Hildegarde Naughton: That is precisely the issue when I engage with the Irish Air Line Pilots' Association, IALPA, and ask how it will be funded, how it will work and how it will be structured. Those answers are not there, which is fine, but this must be done through the

aviation stakeholders' forum. We are talking about trust and confidence in what is potentially a really important national peer support programme. That is where we need that collaboration to be able to put forward a proposal for which I said I am willing to legislate. It needs to be done through that stakeholders' forum, however. It needs to have the trust and confidence of airline pilots and all those key stakeholders who will be using this potential national peer support programme.

With regard to the review, the Government amendment requires the IAA to review the peer support programme within 12 months. That review in itself will feed into the work of the stakeholders' forum when it is formulating what could potentially be a national peer support programme. We want the best policy and legislation that has the confidence of all stakeholders with regard to protecting those who need that peer support. Again, my door is open with regard to crew peer support. I want exactly what all Senators want, which is to ensure people have confidence in it and that it is workable and that we know how it is structured, how it will operate, how it is funded and all of these issues. That is a commitment I have given here repeatedly. It needs to be worked out through the stakeholders forum, however. I would be really obliged if Senator Doherty would press the amendment.

An Leas-Chathaoirleach: Did Senator Craughwell have a question?

Senator Gerard P. Craughwell: I accept the Minister of State's bona fides on this-----

Senator Jerry Buttimer: The Senator should stand up.

Senator Gerard P. Craughwell: -----but the stakeholders' forum will include people other than pilots. We are arguing that pilots need to have their own forum.

An Leas-Chathaoirleach: Okay, that has been made very clear. I thank Senator Craughwell.

Senator Regina Doherty: I know I am being pernickety and I apologise for being so. I am not suggesting there is a conflict with regard to the Minister of State approaching the IAA for advice. What I am asking about is based on her opening statement today whereby on occasions when the Minister of State introduces new pieces of legislation, she takes a different approach. What is the difference in the approach between the new regulations the Minister of State is introducing on search and rescue, SAR, on which she determined and deemed it necessary to get external expert advice, versus the new regulations we are proposing to introduce here on peer support and the licenceholders' forum and licenceholders' charter on which she did not take external advice? I am curious as to the reasons behind the different approach for SAR and not needing expert advice. I will give the Chair a comment on my amendment then if that is okay.

An Leas-Chathaoirleach: I ask the Minister of State to answer that in one line and we will try to put the question.

Deputy Hildegarde Naughton: The Department consulted the IAA and I listed out its huge expertise with regard to this area. The Department also consulted IALPA and the list of other stakeholders I listed out previously. In fact, I listened to IALPA's views and those of Senators in that regard, so much so that there is huge movement in respect of the amendments I am trying to progress today.

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

Senator Regina Doherty: The Minister of State said we have the same laws in Ireland as we do across the EU. I wish to put on the record that the inconsistency of the import of those laws is the reason we are all standing here having this conversation today. There is no uniformity of the import of the regulations of EASA. There is certainly no uniformity in the regulation of the IAA.

I very much welcome the Minister of State's commitment today to establishing a national peer support programme, however, and her commitment this morning that her door is always open. On that basis, I will withdraw my amendment specifically to work during the summer months to put forward one that gives the Minister of State the information that she said she does not have today regarding financing arrangements and how a national peer support programme would work.

An Leas-Chathaoirleach: We will have opportunities to discuss it again on Report Stage.

Amendment, by leave, withdrawn.

Section 59 agreed to.

SECTION 60

An Leas-Chathaoirleach: Amendments Nos. 3*a*, 3*d* and 5*a* are related and may be discussed together by agreement. Is that agreed? Agreed.

Government amendment No. 3*a*:

In page 41, to delete lines 26 to 28 and substitute the following:

"(ii) in paragraph (a), by the substitution of "7, 8 or 9" for "9",

(iii) in paragraph (c)(i), by the substitution of "not more than 5 years" for "4 years", and

(iv) by the deletion of paragraph (f),".

Deputy Hildegarde Naughton: Amendments Nos. 3*a*, 3*d* and 5*a* have been developed following consultation with the office of the Comptroller and Auditor General and my officials.

1 o'clock

The general policy intent is that, post vesting, the IAA will be audited by the Comptroller and Auditor General and AirNav Ireland will be audited by a commercial statutory auditor.

Amendment No. 3*a* to section 60 amends section 17 of the Irish Aviation Authority Act 1993 by deleting subsection (2)(*f*), which provides for the appointment of a commercial statutory auditor to the IAA.

Amendment No. 3*d* introduces a new section amending section 30 of the 1993 Act, which covers the accounts and audits of the IAA. The amendment specifies that the financial statements of the IAA will be audited by the Comptroller and Auditor General. This amendment also removes the references to balance sheets, profit and loss accounts and cash flow statements in section 30 to reflect the changes in the naming of financial statements arising from financial reporting standards.

Sections 3 and 4 provide that, in limited circumstances, a subsidiary of the IAA can be

audited by a commercial statutory audit firm rather than the Comptroller and Auditor General, subject to the approval of the Minister for Transport and the Minister for Public Expenditure and Reform following consultation with the Comptroller and Auditor General. For clarity, the IAA will not, post vesting day, have any subsidiary. However, it will retain the power to establish such subsidiaries, subject to ministerial approval.

Amendment No. 5*a* amends section 113 to reduce from 12 months to three the time in which the IAA must submit the final accounts of the Commission for Aviation Regulation to the Comptroller and Auditor General after the dissolution of the commission.

I intend to table an amendment on Report Stage to amend section 29 in respect of the accounts and audit of AirNav Ireland to reflect the changes to the naming of financial statements arising from financial reporting standards.

Senator Jerry Buttimer: There is concern among air traffic controllers about the vesting date. We have seen the intervention of Mr. Kieran Mulvey, complete engagement with the mediation process and so on. Has that process concluded or how stands it? The vesting date is an important issue for staff members. They are of the view that having a vesting date without a resolution of the issues is putting the cart before the horse.

An Leas-Chathaoirleach: I thank the Senator. That was succinctly put. If the Minister of State responds to the question, we might be able to move on.

Deputy Hildegarde Naughton: The Bill protects the workers' rights and there will be no changes to those rights. Management and unions are working through the issues currently. There will be no change to the workers' status.

Amendment agreed to.

Section 60, as amended, agreed to.

Sections 61 to 64, inclusive, agreed to.

SECTION 65

Government amendment No. 3*b*:

In page 43, to delete lines 30 and 31 and substitute the following:

"(3) When preparing the statement of strategy, the company shall consult with stakeholders and may consult with any other persons it considers appropriate.".

An Leas-Chathaoirleach: This amendment is also in the names of Senators Craughwell, Boylan, Gavan, Ó Donnghaile and Warfield.

Deputy Hildegarde Naughton: I agree with the point raised by the Senators about the importance of stakeholder consultations and have proposed an identical Government amendment, which replaces "may consult with any persons" on the preparation of the statement of strategy with "shall consult with any persons". It is important to acknowledge that the IAA already recognises the importance and value of stakeholder engagement. The aviation regulator chief executive designate invited observations on the preparation of a draft statement of strategy for the new IAA regulator for the 2022-24 period by 19 October of last year. The stakeholder consultation was published on the IAA's website and through its social media channels, meaning

that it was open to all interested parties to make submissions. The IAA was pleased to receive detailed comments from a broad cross-section of Irish civil aviation, including air operations, air navigation services, airports and general aviation as well as comments from the IATA and IALPA. Following a review of the comments received, a revised IAA statement of strategy is being drafted in preparation for the establishment of the new IAA.

An Leas-Chathaoirleach: I thank the Minister of State. This is a good example of collaboration.

Senator Regina Doherty: I welcome the Minister of State's acceptance of the amendment from my colleagues. I will make two points. First, the words "shall" and "may" are consistently used in legislation. They are a watered down version of telling someone or an organisation that it "has to" do something, which is a much stronger term than "will". I am not just saying this because it relates to a number of my later amendments. If we tell someone that he or she "shall" or "may" do something but he or she does not do it, there is no compelling response in the legislation to make him or her do it. "Shall" is a wishy-washy word.

I welcome this amendment. It is important that, when compiling the strategy, the IAA involve all stakeholders. We have had a number of engagements with the IAA down the years at which certain airlines have been absent and, therefore, they could not feed into the IAA's strategy. I am pleased that we are going to consult all stakeholders rather than just a few.

Amendment agreed to.

An Leas-Chathaoirleach: Amendments Nos. 3*c*, 3*g* and 3*h* are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Gerard P. Craughwell: I move amendment No. 3*c*:

In page 44, line 1, after "Minister" to insert "and the Houses of the Oireachtas".

We are adding a provision so that the planned submission to the Minister will also be submitted to the Houses. In this way, Oireachtas committees and so on can become involved in the plan. I will not delay any further on this other than to ask the Minister of State to consider adding the words "and the Houses of the Oireachtas".

Deputy Hildegarde Naughton: The business plan of any organisation is an internally focused executive document. In effect, it is an operational plan for a given period. It may contain commercially and operationally sensitive information. As such, it would not be appropriate to place it in the public domain. The IAA will be subject to a range of accountability mechanisms provided for in the Bill and existing legislation. Such mechanisms include the laying of the statement of strategy and the annual report and financial statements before the Houses of the Oireachtas and the requirement under section 77 of the Bill that the chief executive or a relevant officer shall account for the performance of the company's functions to a committee of one or both Houses. As such, I cannot accept amendment No. 3*c*.

Section 67 provides that the IAA will submit to the Minister an annual report on its performance in regulating aviation safety. It sets out that the report will include planned activity for the coming year and a review of the past year's activity. This section requires that the Minister must, within one month of receiving an aviation safety performance statement from the IAA, lay it before each House of the Oireachtas. Amendments Nos. 3*g* and 3*h* effectively require

that the report be submitted to the Minister and the Houses simultaneously. Given the requirement for the Minister to lay the report before the Houses within one month of receipt, these amendments result in an unnecessary bypassing of the normal process of a Minister seeking briefings and clarifications from the State body for which he or she holds policy and corporate governance responsibility before the report enters the public domain. As such, I cannot accept amendments Nos. 3*g* and 3*h*.

Senator Gerard P. Craughwell: The issue of commercially sensitive details being contained in reports is being used constantly at Oireachtas committees and in the Houses. "Commercial sensitivity" is about other commercial entities. This is a problem for the Houses of the Oireachtas and the committees in the Oireachtas as much as for the Minister. We should be able to have access to information. Far too often, commercial sensitivity or commercial issues are cited to us when denied access to information. It is clear in European regulations that the function of the Houses of the Oireachtas is oversight. It is up to the Houses of the Oireachtas to have oversight. A recent communication from the Department cites Article 18 of European Directive No. 24/2014. The Department said it is unable to hand over certain information or appear before an Oireachtas committee because of commercial sensitivity. If the author of that letter had continued to read on as far as Article 83 of the same directive, he or she would have seen that they are obliged to be overseen by the Parliament. That includes parliamentary committees and special committees put together for oversight purposes. Far too often, the function of either House of the Oireachtas or the committees within the Oireachtas is diluted through this excuse of commercial sensitivity.

I have no difficulty with what the Minister of State said about section 67 and the Minister getting the report first. However, the Department is responsible for this. There are reports into maritime issues that we are still waiting to have released almost a year later, if I am not mistaken, or maybe longer than a year. Even though the legislation states the report has to be released within a month, there is a likelihood that at some stage in the future a Minister will say he or she is unable to publish it for commercial reasons or whatever other reason. This is why we are trying to hardwire into the legislation that it has to come before the Houses of the Oireachtas. I accept the Minister of State's bona fides. I accept that she would want to publish something within a month, as the Bill states, but her officials may tell her she cannot. Where do we stand then? After all, we are supposed to be overseeing the Departments, not the other way around. The Minister of State's colleague in Fine Gael, Deputy Michael Ring, made a strong speech about the need for Oireachtas Members to be able to oversee things. That is something we need to dig our heels in on and make sure we are treated with the respect those who elect us require of us.

Senator Regina Doherty: The purpose of this Bill is to separate the current formation of the IAA into two structures, whereby there will be a separate commercial aspect of the authority and the regulatory side of it, which will be independent of commercial revenue and hence influence of airlines. What commercially sensitive information could the new safety regulatory authority have in any report that would not be deemed appropriate to put before the Houses of the Oireachtas? Whatever about the commercial sensitivities of taking in finances from airlines through air traffic control and so on, the safety functions of the new agency we are establishing in this legislation should be subject to transparency and oversight of both the Oireachtas committee system and Seanad and Dáil Éireann. I cannot for the life of me think what could be commercially sensitive in a report from the statutory regulatory body we are establishing as the new IAA.

Deputy Hildegarde Naughton: It is hardwired into this legislation that the Minister must lay the section 67 report before the Houses of the Oireachtas within one month.

On what could be in the business plan, the IAA will be subject to a range of accountability mechanisms provided for in the Bill. A business plan is a document that defines in detail a company's objectives and how it plans to achieve its goals. It lays out a written roadmap for a company from financial and operational standpoints. As such, a business plan can contain information on financial positions and intended expenditure, operational readiness and business risk and response to same. Should the business plans be in the public domain, there is a risk that the contents of the plan will alert regulated entities to specific work the regulator will carry out in that period. For example, if the business plan included information on procurement expenditure for certain projects, this could alert the industry to a body of work the regulator intends to carry out, giving advance notice to those regulated entities. While it is correct that the public will be aware at a strategic level of the work that will be carried out through the publication of the statement of strategy, publication of internally-focused business plans carries risks that could ultimately fetter the work of the regulator.

An Leas-Chathaoirleach: The Senator may make a final comment before I put the question.

Senator Gerard P. Craughwell: It might not be the final one but it is a comment. I do not understand why alerting the organisations that in the business plan the regulator is about to do A, B or C or purchase A, B and C to carry out its function is an issue. Surely there is nothing wrong with people knowing they are going to be inspected. Surely there is nothing wrong with the regulator pre-advising people. It does not stop the regulator from carrying out snap inspections if that is what it wants to do. Why would we be unwilling or afraid to inform or advise those who are to be overseen by the IAA that it is moving in a particular direction? I do not see how that is a bad idea. If it was the commercial side, that would be a different issue but this is not the commercial side; this is the regulatory side. I just do not see a problem with knowing in advance. To take an example from my previous career, schools are notified in advance that a whole-school inspection is happening so they can prepare for it and make sure all the i's are dotted and t's are crossed. By introducing that system we have improved schools all over the country. What would be wrong with people knowing they were about to be inspected by the IAA or that the authority was bringing in expertise or specific equipment or whatever? I cannot accept that at all.

An Leas-Chathaoirleach: It does not seem we are going to get agreement on this.

Amendment put:

The Committee divided: Tá, 9; Níl, 21.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Boylan, Lynn.	Blaney, Niall.
Craughwell, Gerard P.	Buttimer, Jerry.
Gavan, Paul.	Byrne, Maria.
Keogan, Sharon.	Carrigy, Micheál.
Ó Donnghaile, Niall.	Cummins, John.
Sherlock, Marie.	Currie, Emer.

Wall, Mark.	Doherty, Regina.
Warfield, Fintan.	Dolan, Aisling.
	Dooley, Timmy.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Hackett, Pippa.
	Kyne, Seán.
	Lombard, Tim.
	McGreehan, Erin.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Wilson, Diarmuid.

Tellers: Tá, Senators Gerard P. Craughwell and Lynn Boylan; Níl, Senators Seán Kyne and Robbie Gallagher.

Amendment declared lost.

Progress reported; Committee to sit again.

Child Care (Amendment) Bill 2022: Second Stage

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

Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O'Gorman): The purpose of this Bill is to reform the existing guardian *ad litem* system which is unregulated and *ad hoc*. Currently guardians *ad litem*, or GALs, may be appointed by the court for children who are the subject of proceedings under the Child Care Act 1991.

The existing legislation is silent on a number of key issues. For example, the status, role and functions of GALs are not defined. The qualifications and experience necessary to act as a GAL are not set out. There is also no requirement on a court to appoint a GAL. This *ad hoc* system has led to some inconsistencies in practice and has meant that not all children receive the same service. The Bill is intended to address these issues and its main features are as follows.

A new section is being inserted into the Child Care Act to provide that in any proceedings under that Act, the court must regard the best interests of the child as the paramount consideration. Furthermore, where a child is capable of forming his or her own views in any proceed-

ings under the principal Act, the court must determine how to facilitate the child in expressing those views. The court would be required to give due weight to any views the child wishes to express, having regard to the child's age and maturity.

The Bill also proposes to insert a new Part into the Child Care Act, specifically relating to guardians *ad litem*. The functions of the GAL will be to ascertain the views of the child, where the child is capable of forming his or her own views. Having considered those views, the GAL will then be required to make recommendations to the court on what is in the best interests of the child. This requirement also applies in circumstances where a child is not capable of forming or expressing views, or where the child is unwilling to express those views. GALs may also be required to perform such additional functions as may be directed by the court. The proposed new section 35E(11) explicitly confirms the discretion of the court to allow a GAL to exercise certain party-type rights where appropriate in the child's best interests.

The new Part provides that the High Court must appoint a GAL for all children in special care proceedings and creates a presumption in favour of the appointment in proceedings before the District Court. This approach is one which is supported by many stakeholders, including the special rapporteur on child protection. GALs who have been appointed in special care proceedings will automatically be entitled to legal advice and legal representation. GALs who have been appointed to child care proceedings in the District Court will have legal advice available to them on request and may be provided with legal representation. The new national GAL service will be run from an executive office within my Department. The Bill sets out all the necessary powers, including regulation-making powers, necessary to establish this office.

In terms of next steps, once the legislation is enacted there will be a significant body of work to establish the executive office. This includes the recruitment and training of personnel, the development of practice manuals and decisions regarding its physical location. My officials have commenced preparatory work in this regard.

In conclusion, the purpose of reform in this area is to regulate and expand the provision of GAL services in a consistent manner across the country. The provisions of this Bill are intended to enhance the rights of children and the capacity of the courts to make the right decisions in helping children and their families. I take this opportunity to commend the good work that many GALs have done and continue to do for children in this country. I am grateful for their continued input into creating a better service. I thank them and all the stakeholders who have contributed to the development of this Bill. I am pleased to have had the opportunity to outline the provisions of this Bill and I look forward to hearing Senators' views. I commend the Bill to the House.

Acting Chairperson (Senator Gerry Horkan): The Minister is very welcome to the House once again.

Senator Erin McGreehan: The Minister is welcome to the House. I will not speak for too long but I really welcome the Bill. It is important we work to enact this Bill to address the significant inadequacies outlined by the Minister. Fantastic effort is made by so many of our GALs around the country in looking after children who need that care. It is important to empower both the child and the guardian *ad litem* to ensure an enhanced decision-making capacity in the court and that the child's views are always front and centre in making the best recommendations for those children. There are amendments to the Bill but time is of the essence. I will listen to the Committee Stage proceedings.

Senator Mary Seery Kearney: I very much welcome the legislation. I will give the Minister the opportunity to address some of the matters raised in pre-legislative scrutiny. Overwhelmingly we welcomed the legislation and the reform and putting in place of supports for the guardians *ad litem*. Observations that arose out of submissions, such as the Barnardos submission to the pre-legislative scrutiny in the children's committee, indicated that many proceedings involve everything to do with a child's life. If the process is before the District Court, a child is not automatically entitled to having a GAL in place. I assume the Minister has addressed that. It is about ensuring the child has their voice heard, which is at the core of all of this.

There are other matters. In some of those instances, a child is not a party to the proceedings. Does the GAL have the right to cross-examine on behalf of the child and to ask questions and raise issues? Does the GAL have a right to legal advice in the circumstances? It is about ensuring all of that is in place and that the structures are focused on what is in the best interests of every child when they are so powerless in many proceedings, in particular family court proceedings. These are important aspects, although they may be the subject of guidelines as opposed to specifically and expressly putting them in legislation.

Another feature that came up and was very well heard was this idea that, at times, a GAL with specific expertise may be needed. Therefore, from a judicial decision-making position, can particular individuals with that expertise be appointed, which would be very important? Again, that may be the subject of guidelines as opposed to express provisions within the legislation. I very much commend the legislation and thank the Minister for his work.

Senator Fintan Warfield: I welcome the Minister and I welcome the Bill. When it is anything to do with vulnerable children, it is important that we have it 100% above board. That is why we welcome that regulation is coming into this area. It is good legislation and we welcome it. We have a couple of amendments that we will get through in no time. The work that people do in this area is an incredibly important service. This Bill came before the Dáil in the previous term and it is good to see the Minister is progressing it and has made it a key part of his work. We welcome that.

Senator Lynn Ruane: I welcome the Minister. I welcome the legislation and the support and consistency it provides for children and families in regard to GALs. I want to put on the record my eagerness to see the results of the full review of the Child Care Act as a whole. There are some parts of it that I would be eager to see advanced in respect of independent advocacy, beyond what is accounted for within this legislation, in regard to special care proceedings or involuntary admissions under the Mental Health Act. Overall, as we know, it is welcome legislation but it definitely is just one part of that jigsaw puzzle that needs to work in tandem with a wider review of the Child Care Act and also the development of the family courts. The legislation makes positive reference to children's voices, children's rights and children's best interests, which is very welcome.

As an add-on to what Senator Seery Kearney said regarding the expertise of GALs, we should also be making a great effort to look at the diversity that exists with regard to GALs' cultural background and experiences so we can begin to have some of these professions and positions reflect some of the experiences and understanding of the young people who will require them. There should be that real emphasis on diversity. We know it needs to exist more within social work and it would also be great to see much greater diversity efforts in regard to GALs. I look forward to the review and I welcome the legislation.

Acting Chairperson (Senator Gerry Horkan): It is rare that the Minister will get such support and unanimity of opinion. I call on him to respond.

Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O'Gorman): I will respond briefly. I am conscious that we have some amendments to dispose of, and I would like to have the opportunity for them to be discussed. This legislation is very important.

The GALs provide an important service, but the big problem with them right now is the inconsistency in their appointment. I have seen the figures, and I am sure they were shown during the pre-legislative scrutiny phase as well. There is a geographical lottery in terms of whether someone can get a GAL appointed to them. That is untenable in the context of the important service GALs provide in childcare proceedings. There was debate on this matter in the past. This legislation came through in the previous Oireachtas but was not passed. I am very hopeful we will get it passed today, which will be an important step forward. One of the topics of debate related to whether there should be mandatory appointment of GALs. What we have done in the Bill is provide a strong presumption in favour of appointment, but this can be overturned by a written explanation by a judge as to why a GAL is not being appointed in a particular situation. The special rapporteur noted that there are some children who are 17 and do not need somebody to interpret for them, and who are very capable of sitting with a judge or writing to a judge and indicating their views. It is only right to recognise the agency of young people. The judge has to put in writing that he or she has confidence that the child can convey their views and how those views will be conveyed to the court.

In special care proceedings, appointment of a GAL is mandatory. As a result, that has been set out separately. GALs can receive legal advice and they will be enabled to do so by the executive office that we are setting up under this legislation, a special executive office that will streamline but support the appointment of GALs in all parts of the country.

I saw the piece on specific expertise and a named GAL being appointed. We decided not to include a legislative provision on that. We can look at it in terms of the guidelines on that point but it may not be possible to appoint X, and for the legislation to allow that could be problematic.

Like Senator Ruane, I am eager for that review to be completed. I understand that I should be able to bring the general scheme – the initial proposals - to Cabinet before the end of this year in order that it can go to pre-legislative scrutiny. I will engage with the team and see if we can propel that because it is very important. Again, it is a good piece of law but 1991 is a long time ago. We need to be able to make some changes to it. We will legislate for it next year and I will look to expedite that process. However, I do not expect it to be done this year as it is a comprehensive piece, so I want to be realistic.

I thank Senators for their support so far. I look forward to tackling some of the issues in the amendments.

Question put and agreed to.

Acting Chairperson (Senator Gerry Horkan): When is it proposed to take the next Stage?

Senator Mary Seery Kearney: Now.

Acting Chairperson (Senator Gerry Horkan): Is that agreed? Agreed.

Child Care (Amendment) Bill 2022: Committee and Remaining Stages

Sections 1 to 6, inclusive, agreed to.

SECTION 7

Acting Chairperson (Senator Gerry Horkan): Amendments Nos. 1 and 2 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Fintan Warfield: I move amendment No. 1:

In page 9, between lines 19 and 20, to insert the following:

"(c) to represent the child's interests in the proceedings to which the guardian *ad litem* has been appointed.".

This amendment was previously passed in 2019. We believe it should go back in because it is explicit in the context of the role of the guardian *ad litem*, GAL. I would welcome the Minister's response.

Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O'Gorman): We are not going to be in a position to accept the two amendments being put forward. With regard to amendment No. 1, our position is that the use of the word "represent", which the Senator seeks to insert through the first amendment, could be interpreted to mean active representation by a GAL. This would conflict with the policy position that a guardian *ad litem* is not a party to the proceedings. The functions of the GAL, as set out in the Bill, are to ascertain the views of the child and to make recommendations to the court regarding what is in the child's best interests. A requirement on the guardian to represent the child's interests in the proceedings could go far beyond that function and could be interpreted as meaning active representation. The powers of a GAL under this Bill do not align with such a function. Under the existing legislative provisions, GALs are not a party to proceedings and they do not have status of a party. At the court's discretion, they have sometimes been permitted to exercise party-type rights. The Bill does not propose to alter this position.

Concerns were expressed during the 2019 Committee Stage debate on this Bill regarding the status of GALs in proceedings. On foot of those concerns, I instructed my officials to revisit this issue and to explore the issue of party-type rights for a GAL with the Attorney General. As a result, section 35E(11) has been inserted into this iteration of the Bill.

This new subsection provides that the court may, where it is satisfied, having regard to the nature of the case, that it is necessary and in the best interests of the child and in the interests of justice to do so, order that the GAL shall have such party rights as it may specify. The court may specify whether the exercise of these rights is for the entirety of the proceedings or in respect of particular issues in the proceedings. It is a new section and a new power being given to the courts to recognise that there may be circumstances where party-type rights would be granted to the GAL, but it would not take place as a matter of course.

I am satisfied that the Bill, as drafted, gives GALs wide-ranging powers to exercise their functions, while also providing flexibility for the court to grant them additional party-type rights as required. For these reasons, I am not in a position to accept the amendment.

Amendment No. 2 proposes to delete the existing subsection (8) of section 35E and to substitute text to provide that the GAL may inform the court in relation to any matter concerning the welfare of the child. The text that is proposed to be deleted provides that the court, or any party to the proceedings, may call a GAL appointed for a child as a witness. The purpose of the provision proposed to be deleted is to allow a GAL to be sworn in. If this provision is deleted, it could potentially disadvantage a parent who wants to call a GAL as a witness.

I am aware that there are concerns that the status of the GAL is being somehow diminished by the provisions of this Bill. I would like to clarify that the purpose of the existing wording is not to limit the role of the GAL to that of a witness. There is no intention that this would be the case. This reference to a GAL being called as a witness does not exist in isolation and must be read in conjunction with the whole of the Bill. When the provisions of the Bill are considered in the round, it is clear that the status of the GAL goes far beyond that of a witness. For example, under section 35F a GAL may apply to the court to procure a report on any question affecting the welfare of the child where there is no existing report, or where there is a report but the information contained within that report is out of date. The GAL may also make an application to the court in relation to the provision of information from any person or in relation to any other matter that relates to the functions of the guardian *ad litem*. GALs may also continue to make section 47 applications. This section, which is already in the Child Care Act, allows them to make an application on any question affecting the welfare of a child in the care of Tusla. A GAL could not fulfil his or her statutory duties as set out in this Bill if his or her role were that of a witness. I hope that allays some concerns that were spoken about previously.

The amendment proposes to substitute the existing text with a provision that will permit the GAL to inform the court of any matter concerning the welfare of the child. I agree it is important that a GAL should have the ability to inform the court of any concerns regarding the welfare of the child to whom he or she has been appointed.

The existing section 35E of the Bill sets out the functions of the guardian *ad litem*, and section 35(2)(c) provides a GAL appointed for a child shall "inform the court of any additional matters, relevant to the best interests of the child, coming to his or her knowledge as a result of the performance by the GAL of his or her functions." Therefore, the Bill already confers guardians *ad litem* with the ability to inform the court of any welfare concerns that may arise in respect of the child. The Bill actually goes further than the amendment proposes as it places a statutory obligation on the GAL to inform the court of any issue affecting the best interests of the child. The current text of the Bill states "shall", which is mandating, whereas the amendment proposes the addition of a "may" clause. I am sorry Senator Higgins is not here to see me accepting a "shall" in this situation.

Acting Chairperson (Senator Gerry Horkan): There is always once.

Senator Mary Seery Kearney: We can send her the clip.

Acting Chairperson (Senator Gerry Horkan): She might rush up now. Be careful.

Senator Lynn Ruane: It is an important distinction.

Deputy Roderic O'Gorman: It is.

Acting Chairperson (Senator Gerry Horkan): Be careful what you wish for. She might walk in the door any second.

Deputy Roderic O'Gorman: It is important in this situation too.

I am satisfied that the statutory functions of the GAL, as set out in the Bill, make clear that his or her role is to assist the court and to be a resource to it. I am unable to accept this amendment because it would have a detrimental effect on parents who want to call a GAL as a witness and on the basis that the substituted text is already provided for – to a stronger degree, I would argue – and therefore unnecessary.

Amendment, by leave, withdrawn.

Senator Fintan Warfield: I move amendment No. 2:

In page 10, to delete lines 21 and 22 and substitute the following:

"(8) The court may hear from the guardian *ad litem* in respect of any welfare matter concerning the child.".

Amendment, by leave, withdrawn.

Section 7 agreed to.

Sections 8 to 13, inclusive, agreed to.

Title agreed to.

Bill reported without amendment.

Acting Chairperson (Senator Gerry Horkan): When is it proposed to take the next Stage?

Senator Mary Seery Kearney: Now.

Acting Chairperson (Senator Gerry Horkan): Is that agreed? Agreed.

Bill received for final consideration.

Acting Chairperson (Senator Gerry Horkan): When is it proposed to take the next Stage?

Senator Mary Seery Kearney: Now.

Acting Chairperson (Senator Gerry Horkan): Is that agreed? Agreed.

Question, "That the Bill do now pass", put and declared carried.

Cuireadh an Seanad ar fionraí ar 1.57 p.m. agus cuireadh tús leis arís ar 2.07 p.m.

Sitting suspended at 1.57 p.m. and resumed at 2.07 p.m.

2 o'clock

SECTION 19

Debate resumed on amendment No. 47:

In page 25, line 23, to delete "78 weeks" and substitute "130 weeks".

-(Senator Paul Gavan)

Amendment put:

The Committee divided: Tá, 11; Níl, 27.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Boylan, Lynn.	Ardagh, Catherine.
Flynn, Eileen.	Blaney, Niall.
Gavan, Paul.	Burke, Paddy.
Hoey, Annie.	Buttimer, Jerry.
Keogan, Sharon.	Byrne, Maria.
Ó Donnghaile, Niall.	Carrigy, Micheál.
Ruane, Lynn.	Cassells, Shane.
Sherlock, Marie.	Chambers, Lisa.
Wall, Mark.	Conway, Martin.
Warfield, Fintan.	Crowe, Ollie.
	Cummins, John.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Hackett, Pippa.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Paul Gavan and Lynn Boylan; Níl, Senators Seán Kyne and Mary

Fitzpatrick.

Amendment declared lost.

Amendment No. 48 not moved.

Senator Eileen Flynn: I move amendment No. 49:

In page 26, line 26, to delete "24 weeks" and substitute "52 weeks".

Amendment put and declared lost.

Section 19 agreed to.

SECTION 20

Senator Eileen Flynn: I move amendment No. 50:

In page 27, between lines 10 and 11, to insert the following:

"(13) The Minister shall consult with affected homeowners' representative groups, including nominated competent building professionals (as defined in *Part 2* of this Act) and/or academic professionals with expertise in the fields of geology and materials science (of the homeowners' choice) in making regulations under *subsection (12)*.".

Amendment put and declared lost.

Section 20 agreed to.

SECTION 21

An Cathaoirleach: Amendment No. 51 is out of order.

Amendment No. 51 not moved.

Section 21 agreed to.

SECTION 22

An Cathaoirleach: Amendment No. 53 is a logical alternative to amendment No. 52. Amendments Nos. 52 and 53 are related and may be discussed together by agreement. Is that agreed? Agreed.

Senator Lynn Boylan: I move amendment No. 52:

In page 29, between lines 24 and 25, to insert the following:

"(9) Within seven weeks of the passing of this Act the Minister shall lay before both houses of the Oireachtas a report on the implications of this section on relevant owners whose initial grant was for demolition and rebuilding of a relevant dwelling and whether, by way of amending legislation, an ancillary grant option should be made available

where further damage has been discovered, for example in the foundations or infill aggregate of the relevant dwelling.".

This amendment calls on the Minister to "lay before both houses of the Oireachtas a report on the implications of this section ... where an initial grant was for demolition and rebuilding of a relevant dwelling and whether, by way of amending legislation, an ancillary grant option should be made available where further damage has been discovered, for example in the foundations or infill aggregate of the relevant dwelling". This relates to what was discussed yesterday, which is the issue around the foundations being included in the scheme. If somebody receives a grant for demolition and rebuilding his or her home and if he or she is not going to be covered for the foundations, it is a pretty big omission. We are only calling on the Minister to issue a report on the implications of that section.

Senator Marie Sherlock: I am speaking to amendment No. 53. This is a very straightforward amendment. The lesson from the mica experience over recent years has been that it is only with the passing of time that people realise there is even greater damage than what was previously thought to be the full extent of it, with damage even into the foundations. The treatment of the foundations within this Bill has been a source of distress to many. We are looking for a report on the implications of this section because, as Senator Boylan has said, there could well be situations where the main structures of houses were deemed to be okay only for it to be discovered upon further investigation that the foundations or, indeed, infill aggregate also need to be remediated. We do not see this as being a radical amendment in any way but rather ensuring as much of the damage that is experienced by households is covered under this scheme. We therefore ask the Minister of State to consider this amendment.

Senator Paul Gavan: This goes to the heart of an issue we need to clear up today, if we can. Yesterday, the Minister of State's colleague, the Minister, Deputy O'Brien, and, indeed, members of the Government parties repeatedly said this was a 100% redress scheme, and it is not. That is a misleading statement.

Senator Niall Blaney: That is not true.

Senator Paul Gavan: Senator Blaney will get his chance to speak and, believe me, people in Donegal will be watching this afternoon. I am going to point to the example given at the Committee on Housing, Local Government, and Heritage, so it is on the public record, where Martina Hegarty, in a 90 sq. m house under this scheme is entitled to a grant of €161,000. The cheapest quote that she can get to rebuild the house is €200,000. This is all on the public record and Senator Cummins would have attended this meeting as well. I have a simple question for the Minister of State. How is that 100% redress?

Senator Sharon Keogan: I understand the merits of this amendment, but I believe the Minister said yesterday that where there was a shortfall, people, particularly the elderly and people with disabilities, can apply for the Sustainable Energy Authority of Ireland, SEAI, grants and for the housing adaptation grant, and that is up to €30,000. The mobility grants are available up to €8,000. There are different schemes the Minister specified people could access if there was a shortfall, and that is for that cohort I am referring to here, namely, the elderly and people with disabilities. I am sure the Minister of State will clarify here that the shortfall could be made up by those grants and that people could access them from these schemes.

Senator Lynn Boylan: I thank Senator Keogan for outlining why it is not actually a 100%

scheme, because she has just said "if there is a shortfall". We know there is a shortfall. The woman attended the committee and outlined her case. There is a shortfall in her case of almost €40,000. As anybody who has tried to deal with the SEAI will know, the backlog is enormous. It is difficult to get a house assessed and then you have to apply for an adaptation grant. These homeowners just want to have their homes rebuilt. They did nothing wrong and they should not be sent to different agencies to try to get the funding. If this were 100% redress, they would not have to do that.

Repeatedly over the course of this debate, there have been accusations of misrepresentation and spinning from the other side of the House. I do not mind Senator Blaney saying it about me, as the Minister did yesterday. That is fine. It is politics and we can have the debate. Nevertheless, the families and homeowners who are watching the debate sought advice and drafted these amendments. Is the Government suggesting they are misrepresenting what is in the Bill? Would its members go into one of those houses tomorrow and tell the owners they are misrepresenting, spinning or casting doubt? These are their amendments. I do not mind the Government telling me I am misrepresenting. That is fine.

Senator Niall Blaney: I reiterate what I said earlier. Sinn Féin has done an awful lot of spinning over the course of this debate. There has been no end to it these past few weeks. It is interesting that a review of this legislation was announced in June 2021. The party's spokesperson on housing was asked, like all of us in these Houses, to make a contribution to help fix the scheme. We knew there were issues with it and everybody pitched in, except Senator Boylan and her party and party spokesperson, who promised on national media that he would contribute. He has contributed nothing for the people of Donegal, so the Senator should not come in here, with two weeks to go, and preach about how her party has all the answers. It has contributed nothing in two years and now it knows everything.

Turning to the amendment and the issue of prices in Donegal, there is a difference of €100,000 on individual houses. There are, and will be, issues with that. I have no doubt the Senator has examples of that, but I can give examples on the other side. Let us have a balanced approach here and be honest.

Senator Sharon Keogan: I would ask both sides to please stop playing politics with people's lives and homes. We are here as legislators to do what is right by the people. These are their amendments and I will support all those that have been proposed by the people. While it is cumbersome to apply for these additional grants, we have to ensure they know they are available and that there is opportunity for people to get them. We need to let them know the information is there and that they can go to any county councillor or Citizens Information office to get that information, help and support with those grants. This issue is too important for the people and the houses in which they live. It is heartbreaking to watch the families and what they have gone through, and to see the children crying, the homes and the elderly who have been affected. We have seen the tenacity and stamina of this grassroots campaign, which has been fought from the ground up. We have to be proud of those people. We are debating the Bill because of those people who have kept going to make it what it is. We want to get this right for the people. I ask Senators to please stop playing politics, do what is right for the people and let them know where they can get help if they need it.

Senator Niall Ó Donnghaile: We have been asked what our contribution to the debate is, and it has been in tabling these amendments in the names of the families in Donegal and the other affected areas. None of the Sinn Féin Seanadóirí is from Donegal, yet I believe we are

reflecting the will of the people there by tabling these amendments, and I cannot understand why anyone would oppose them. I will have to check the record, but I think there may have been another admission in Senator Blaney's contribution indicating this is not a 100% redress scheme. Senator Keogan has thrown quite a bit of plámás at the families and asked us not to play politics, but this is political. The decision not to make this scheme 100% redress is political. We are political people and we come in here to engage in politics. I am unashamed that my party colleagues, Senators Boylan and Gavan, have been in here trying to make politics work for these families. I do not want to be branded as playing politics to try to diminish what we are trying to do by throwing that cliché at us. The Government and its Senators have taken a political decision. While Senator Keogan is correct that there are other schemes, she admits, understandably, that they are cumbersome. They are, but it is even more cumbersome when people's houses are crumbling down around them. I am not trying to get into a ding-dong with her, but it is important to put that on record.

Senator Niall Blaney: Senators are constantly referring to the foundations being an issue, yet nobody has come forward with a foundation that we can contribute to NSAI to be part of the scientific work that is ongoing. We are all talking about the bother with foundations, but nobody has yet produced a foundation anywhere where this problem does not exist. If Sinn Féin has knowledge of foundations, it would be helpful to all the people in Donegal and the other counties if the party gave that information to the NSAI. That is the proper approach to take to this. It would be helping all the Sinn Féin-voting homeowners and ones who vote for my party as well, and it would contribute greatly to the scheme.

Senator John Cummins: I echo what Senator Blaney said. The issue of foundations has been widely discussed in committee and in both the Dáil and Seanad. To be fair to the Minister and the Minister of State, they have indicated that where evidence is identified through the NSAI, they will include that in the costings to be provided. The Government cannot be any clearer on that issue. A genuine question I have for the Sinn Féin representatives in the Chamber relates to what figure per square foot they would consider necessary for 100% redress. They come in here and shout about how it is not enough, but will they state what figure they would deem sufficient? Yesterday, when we discussed this matter, I pointed out that Sinn Féin's budget proposals stated the party could build 20,000 social and affordable homes at €123 per sq ft, whereas this scheme provides for €165 per sq ft. I would like the Sinn Féin Senators to outline to everyone watching the debate what figure they would deem necessary to have what they consider to be 100% redress. The SCSI, whose representatives appeared before our committee, carried out extensive work on this issue - I thank it for its volunteer work on this - and came up with a figure independent of the Government, but I would like to what figure the Senators have in their minds.

An Cathaoirleach: I call the Minister of State to respond.

Senator John Cummins: I note there was no reply from the Sinn Féin Senators.

Senator Niall Ó Donnghaile: That is not how this works.

Senator Lynn Boylan: I can respond-----

An Cathaoirleach: I have asked the Minister of State to respond. Other Senators can come back in afterwards.

Minister of State at the Department of Housing, Local Government and Heritage

(Deputy Peter Burke): I thank the Cathaoirleach, and the Senators for their contributions. I will specifically address amendments Nos. 52 and 53. They provide for the Minister to submit a report within seven weeks of the passing of the Bill to both Houses, confirming whether grants for three ancillary items, namely, accommodation, storage and immediate repair works, can be made available to a homeowner who has approval for, and has completed, a full demolition and rebuild but where further damage to the home, such as to its foundations, occurs. The Minister has previously advised, and been very clear, that if NSAI, having completed its review, determines there is an issue with foundations, the scheme will be modified to provide for this.

The amendments appear to mistake section 22 grants for accommodation, storage and immediate repairs with the second grant option under section 25 and, therefore, we will not accept the amendments.

Senator John Cummins: I note there has been no response from the Sinn Féin representatives and the record will show that.

Amendment put:

The Committee divided: Tá, 11; Níl, 24.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Boylan, Lynn.	Ardagh, Catherine.
Flynn, Eileen.	Blaney, Niall.
Gavan, Paul.	Burke, Paddy.
Hoey, Annie.	Buttimer, Jerry.
Keogan, Sharon.	Byrne, Maria.
Mullen, Rónán.	Carrigy, Micheál.
Ó Donnghaile, Niall.	Cassells, Shane.
Ruane, Lynn.	Chambers, Lisa.
Sherlock, Marie.	Crowe, Ollie.
Wall, Mark.	Cummins, John.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGreehan, Erin.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.

Tellers: Tá, Senators Paul Gavan and Lynn Boylan; Níl, Senators Seán Kyne and Robbie Gallagher.

Amendment declared lost.

Senator Marie Sherlock: I move amendment No. 53:

In page 29, between lines 24 and 25, to insert the following:

"(9) Within seven weeks of the passing of this Act the Minister shall lay before both houses of the Oireachtas a report on the implications of this section on relevant owners whose initial grant was for demolition and rebuilding of a relevant dwelling and whether an ancillary grant option should be made available where further damage has been discovered, for example in the foundations or infill aggregate of the relevant dwelling.".

Amendment put and declared lost.

Section 22 agreed to.

An Cathaoirleach: Amendment No. 54 is out of order.

Amendment No. 54 not moved.

Sections 23 and 24 agreed to.

SECTION 25

An Cathaoirleach: Amendments Nos. 55 and 56 are out of order.

Amendments Nos. 55 and 56 not moved.

Question proposed: "That section 25 stand part of the Bill."

Senator Eileen Flynn: Many of our amendments, which would have made a great difference to people's lives, have been ruled out of order due to costs. It is difficult because the Government has not supported us on any of our amendments that would impose a cost. I support colleagues in saying that this scheme does not provide 100% redress. I will sit down, having said that on this section. I tabled many amendments that would have involved a cost to the State. However, those amendments would have made a great difference to the Bill. I need that to be on the record.

Question put and agreed to.

NEW SECTION

Senator Eileen Flynn: I move amendment No. 57:

In page 33, between lines 6 and 7, to insert the following:

"Double Recovery

26. The Minister may, by way of regulations, ensure that the Minister can only subrogate claims from a relevant owner in excess of the full cost of a like for like replacement or remediation of a relevant dwelling. These regulations should allow for the relevant owner to recoup the shortfall between the grant and the full cost of replacement or remediation of the relevant dwelling while preventing the owner from double recovery of such costs.".

Senator Lynn Boylan: This amendment relates to double recovery and relates to people who are taking a case against the supplier of the defective blocks that is currently under way. Section 29 will prohibit people from taking cases in the future. The amendment addresses people who will benefit if they successfully take a case against a supplier and they have already received a grant. Nobody is arguing that anybody should have double recovery or make a profit from taking a case, because the grants involve public money after all. If people have a successful case, the Minister should only get the excess above 100%. If it costs €169,000 to rebuild a 90 sq. m home, a person will get a grant of €100,000 under this scheme and then have to take a loan to make up the difference. If a person wins €100,000, then under the current scheme, the Minister will get the whole €100,000 back and the person will still be in debt, having borrowed money to rebuild his or her home. We believe that if people borrow money and then receive an award in court, it should cover their debt and the remainder should go back to the State to pay off the grant. Nobody is making a profit. This is not double recovery, but it ensures that homeowners are not left out of pocket.

Senator Paul Gavan: I support Senator Boylan. I welcome that Senators Cummins and Blaney have acknowledged that this is not a 100% redress scheme.

Senator John Cummins: I have not. Do not misquote me.

An Cathaoirleach: Allow Senator Gavan to speak, without interruption.

Senator Paul Gavan: Senator Cummins acknowledged this.

Senator John Cummins: I did not.

Senator Paul Gavan: In which case-----

(Interruptions).

An Cathaoirleach: Everybody will have a chance to speak.

Senator Paul Gavan: I ask the Minister of State to please explain the example I gave relating to Martina Hegarty. It is on the record. She will receive €161,000 under this scheme. It will cost €200,000 to rebuild her house. There is a shortfall. Will the Minister of State please address that issue? It is not just for me. These amendments are the homeowners' amendments. They are watching this afternoon from Limerick, Clare, Mayo, Sligo and Donegal. The Minister of State and his team are saying that this is a 100% redress scheme. It is not. Please address the example and explain how that is a 100% redress scheme.

3 o'clock

I look forward to hearing the Minister of State's response, and I suspect that the people watching at home are particularly looking forward to his response. It would be outrageous, frankly, if he were to remain silent on the question.

Deputy Peter Burke: I thank the Senators for their contributions. I will now address amendment No. 57, tabled by Senators Flynn, Higgins, Ruane and Black. The amendment seeks to modify the refund of compensation provisions and substitute provision in respect of limited subrogation so as to allow the Minister to only subrogate claims in excess of the full cost of a like-for-like replacement or remediation while preventing owners from double recovery of costs. Subrogation is dealt with under section 29. The refund of compensation provisions in section 26 are standard provisions for an *ex gratia* scheme such as this, and prevent the risk of double compensation arising. They need to be retained. I do not accept the amendment.

Senator Paul Gavan: The Minister of State needs to address the question I asked.

Deputy Peter Burke: I addressed the amendment.

An Cathaoirleach: The Minister of State addresses the section.

Senator Paul Gavan: I respectfully asked the Minister of State a question.

An Cathaoirleach: Senator, we all know-----

Senator John Cummins: The Senator has been asked questions that he will not answer on the record.

An Cathaoirleach: Senators, please.

Senator Paul Gavan: I will happily deal with that. I ask the Cathaoirleach to give me a chance to respond.

An Cathaoirleach: No. We are discussing amendment No. 57. This is not a Second Stage debate. If the Senator wants to address the amendment, he should do so. If he is not addressing the amendment, I ask him to-----

Senator Paul Gavan: I will address the amendment. At the heart of this amendment is fairness. Right now, because this is not a 100% redress scheme, there is a shortfall. The point of this amendment is to ensure that if a legal case is taken, that shortfall can be made up. It is pure fairness. People watching this debate are waiting to see if the Government is going to listen, in any way, to their concerns. This is their amendment.

Senator John Cummins: Give us your figures.

Senator Paul Gavan: I will, absolutely. We asked for a review of the rates-----

Senator John Cummins: Give us your figures.

Senator Paul Gavan: -----and Senator Cummins and his colleagues voted against it. He has some bloody cheek to ask for figures when he voted down the amendment.

Senator John Cummins: Give us your figures.

Senator Paul Gavan: Why did you vote against the amendment?

An Cathaoirleach: Senators, please.

Senator John Cummins: What is your figure?

An Cathaoirleach: Senator Cummins, please.

Senator Paul Gavan: Why did you vote against the amendment? The Senator wants to play party politics-----

Senator John Cummins: What is your figure?

Senator Paul Gavan: -----with people's lives and homes.

Senator John Cummins: I do not want to play party politics.

Senator Paul Gavan: That is what you are doing.

Senator John Cummins: Come on now.

Senator Paul Gavan: That is what you are doing.

(Interruptions).

An Cathaoirleach: Senator Gavan-----

Senator Paul Gavan: Senator Cummins is a disgrace.

An Cathaoirleach: Everybody has an opportunity to speak in turn.

Senator Paul Gavan: I am asking the Minister of State to address the issue of fairness and acknowledge the fact-----

Senator Michael McDowell: He has addressed the issue.

Senator Paul Gavan: No, he has not. I asked him to acknowledge that there is a shortfall and to outline how it will be addressed in relation to this amendment. I look forward to hearing his response.

An Cathaoirleach: Does the Minister of State want to respond? No.

Senator Paul Gavan: There is no response. My God.

An Cathaoirleach: Is the amendment being pressed?

Senator Paul Gavan: Absolutely.

Amendment put:

The Seanad divided: Tá, 10; Níl, 28.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Boylan, Lynn.	Ardagh, Catherine.
Flynn, Eileen.	Blaney, Niall.
Gavan, Paul.	Burke, Paddy.
Hoey, Annie.	Buttimer, Jerry.
Keogan, Sharon.	Byrne, Maria.
Moynihan, Rebecca.	Carrigy, Micheál.

Ó Donnghaile, Niall.	Cassells, Shane.
Sherlock, Marie.	Chambers, Lisa.
Wall, Mark.	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	O'Loughlin, Fiona.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Eileen Flynn and Paul Gavan; Níl, Senators Seán Kyne and Robbie Gallagher.

Amendment declared lost.

3 o'clock

Section 26 agreed to.SECTION 27

Senator Marie Sherlock: I move amendment No. 58:

In page 34, to delete line 19.

Amendment put and declared lost.

Section 27 agreed to.

SECTION 28

An Cathaoirleach: Amendments Nos. 59 and 60 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Marie Sherlock: I move amendment No. 59:

In page 35, line 2, after "completed" to insert the following:

", save where with the prior written consent of the planning authority any deviation is considered in the opinion of the planning authority in the interests of the proper planning and sustainable development of the area".

Amendment put and declared lost.

Senator Marie Sherlock: I move amendment No. 60:

In page 35, line 6, after "dwelling" to insert the following:

", save where with the prior written consent of the planning authority is considered in the opinion of the planning authority in the interests of the proper planning and sustainable development of the area to vacate an applicable condition".

Amendment put and declared lost.

Section 28 agreed to.

SECTION 29

Question proposed: "That section 29 stand part of the Bill."

Senator Paul Gavan: Sinn Féin opposes this section on behalf of the homeowners who have asked us to block this section. It is for the simple reason that the section signs away people's rights to take legal action. As we have constantly tried to explain to the Minister of State, where there is a shortfall we feel that homeowners should have the right to at least recover that shortfall in any legal action rather than the Minister take the full reward back for the Government. We do not think that is fair. We think it is fair that where there is a shortfall, which we know will happen, that has been acknowledged, that the homeowners have a legal right to at least make up that difference. It is purely an issue of fairness. I remind the Minister of State that this is the last opportunity to make any meaningful amendments to the Bill to improve it. He will be aware that there is a whole host of legal actions either planned or under way. People need to know that they will not have to face this shortfall and not have the right to recover some of this money back legally. It is really important that the Minister of State addresses this. There are people watching in on this debate today who are facing a shortfall. They know that this is not 100% redress. They have spoken to the builders and they know that there is a gap there. I have given the example time and again. Why deny them the right to at least make up that shortfall? Surely there is that amount of fairness in the Minister of State to address this issue in a positive way.

Deputy Peter Burke: Section 29 provides for the subrogation of rights to the Minister for those applicants who have received a grant payment under the scheme. If a homeowner chooses to pursue a right of action in respect of the damage to their home then they are free to do so, however, the Bill must be framed so as to ensure that the grant does not operate as a form of double compensation. It is also important that section 29 is retained as it is the State stepping in on behalf of the taxpayer to ensure the litigation is appropriately managed for the benefit of the public, and this section provides for that. If the litigation is successful, then any damages awarded above the level of the grant would go to the homeowner.

All Members of the House have called for the State to take action against, and pursue, wrongdoers. To do so, it is necessary that causes of action that lie with homeowners are subrogated to the Minister. I assure Senators that the Minister, Deputy O'Brien, is taking this matter very seriously and intends to appoint an experienced senior counsel to provide advice on the options open in this regard. Therefore I do not accept this section being opposed.

Senator Paul Gavan: The example I gave the Minister of State earlier speaks directly to this amendment. It is a family home eligible for €160,000 under this scheme with a €200,000 rebuild cost. With respect to the section he is supporting, how is it fair to block that person from at least being able to recover that portion of the costs to ensure he or she is not actually out of pocket? Will the Minister of State address that question?

Senator John Cummins: On the section and the point Senator Gavan keeps referring to about the €200,000 property, I note we have not had a response from the Sinn Féin representatives on the figure they consider appropriate to provide for what they say is 100% redress. Perhaps they do not know. Perhaps they have not been authorised to give that figure to this House. If we do the maths on the example they are giving, it works out at €206 per square foot. The Sinn Féin representatives are saying €206 per square foot should be provided under this scheme, yet they and their party spokesperson, Deputy Ó Broin, can build 20,000 social and affordable homes for €123 per square foot. I hope Deputy Ó Broin is watching the television here and that he will be including those figures in his budget at the end of September because what that would actually show is that, based on Sinn Féin's previous pre-budget submission, it would have a €2 billion hole in its budget.

Senator Paul Gavan: He is not addressing the amendment, a Chathaoirligh.

Senator John Cummins: That is a factual position-----

Senator Lynn Boylan: On a point of order, a Chathaoirligh.

Senator John Cummins: -----if you do the maths-----

Senator Paul Gavan: You stopped me speaking when I was raising this.

Senator John Cummins: -----based on the figure. Just because the Senator shouts me down does not mean it is not valid.

An Cathaoirleach: Senator Cummins, on the amendment.

Senator John Cummins: It is, and anyone can do those maths for themselves and I invite them to do so.

Senator Micheál Carrigy: Well said.

Senator Aisling Dolan: Hear, hear.

An Cathaoirleach: On the section please, Senators. I call Senator Dooley.

Senator Timmy Dooley: I thank the Cathaoirleach. I welcome the opportunity to discuss this issue as per the way the amendment is phrased. There are plenty of homeowners in County Clare who are affected by this. They rightly have a level of upset about some of the quarries, and in the case of Clare it is CRH, quite frankly. It is probably the biggest quarry and biggest aggregate company in western Europe, with operations all over the world. It is a hugely profit-

able company and there is a necessity for a detailed investigation into how a publicly quoted company like that has operated. Homeowners have approached it. Builders have approached it on occasion. There has been an effort to hush-hush. In some cases the company has done some remediation work with no liability accepted. To me, that is serious.

In any engagement I have had with homeowners, they talk about the necessity or the desire to take on the quarries. I am conscious it is different in Donegal because some of them were smaller quarries. I have advised people, rightly or wrongly, to leave that to the State. The cost on any group of people to take on a company like CRH would be phenomenal. Standard practice for large corporations is to dig in, hire more lawyers than anyone else and fight in the courts. While we like to think our legal system is fair, and it is, it is not accessible for many people, especially when it comes to commercial litigation, which this would be. Therefore, while I am with Senator Gavan on the sentiment here and the desire to try to find a route to help those people, I have taken a different approach in my dealings with people and said whatever else they do, they should not get caught up in litigation because it will bring them into a vortex that only goes one way, and that is down. I have seen it happen over time with how large corporations do their business. That is what their lawyers will advise them, namely, tangle people up and tie them up for years in court.

People have already lost so much of their lives on this. While I fully understand the sentiment, I would like to think the State would put its full rigour, backing and all our legal expertise into taking a company like CRH to court for failure to deliver blocks of an appropriate standard. I would like to think we would, if necessary, carry out tribunals and commissions of investigation, which I think we have got better at. It would be recognition because through this scheme the State is putting a burden on every taxpayer in the State, and out of respect to other taxpayers, we need to ensure we are doing everything we can to hold those culpable, either directly or indirectly, for the failures here to account.

I get that there are smaller quarries that have gone out of business or will fold, but I regularly read with interest the financial statements of CRH and it pains me greatly. I am not directly affected by pyrite but many of my friends and constituents are. When large corporations continue to profit and effectively ignore the homeowners, it is tough. It is hard to watch. It is adding to the pain and suffering of people as they see top executives receiving lottery-style payouts annually while people are looking at the render falling off their walls, the cracking, windows falling out and trying to figure out how they are going to put a home together again. There is an injustice there. Separate to this entire scheme, I hope the State takes whatever action is possible and I would not skimp on it and would not be boxing around it. If there is a route to court, take it, and at least make them answer in public for their actions and inaction.

Senator Niall Ó Donnghaile: I do not think it is intentional or, indeed, that they have been authorised, but Government Senators keep letting the cat out of the bag, because surely by definition if this was a 100% redress scheme, homeowners would not have to take legal action.

Senator Timmy Dooley: Just for clarification, if the State is going to spend €4 billion of taxpayers' money on this redress - and I suspect by the time it is completed it will be multiples of that - there is an encumbrance on the State to take action against those who, either through wilful neglect or abject failure, have allowed that to happen on their watch. It is to recover what the State will spend on behalf of the other taxpayers.

By the way, the people whose homes will be rebuilt are taxpayers too. They would prefer

their tax euro to be going into public services to increase our capacity in the health service, put more gardaí on the street and more nurses in our wards than into rebuilding their homes, which though essential, should not have been necessary. It is right and fitting the State should pursue to the nth degree those who still have capital reserves and those companies that are very profitable. I hope we around here are alive to see that day come, even if they have to be taken through the courts to enlighten us as to what went on. Through the courts there must be discovery and all of that, which I hope will give us some insight into the way these people looked on those concerned here.

Senator Lynn Boylan: Meaning no disrespect to Senator Dooley, it is ironic to talk about the accessibility of the courts given what we are going to be discussing in the next session and what the Government is trying to do with judicial review and railroading through the barring of people from access to justice.

There are two parts to the issue around section 29. One is the idea of preventing people from taking cases in future if they have not already initiated legal action. Nobody is arguing. We understand that this is public money as a result of light-touch regulation by multiple Fianna Fáil and Fine Gael Governments, which is the reason that we are in this mess.

Regardless of whether one agrees that legal action is the best approach to take and the State should pursue the suppliers of defective blocks, if somebody has initiated legal proceedings now and is awarded money, then the State's taking all of that money back to cover the 100% grant whereby a person is left in debt again is not 100% redress. Nobody should profit or make double recovery but if people had to borrow money to do the works on their house and they get an award in the courts, then the money borrowed should be taken from the award and then let the State recoup the balance.

Senator Paul Gavan: As we approach the end of this Bill it is so important that the Minister of State addresses the issue at the heart of this matter and the reason my party opposes section 29. We oppose section 29 because where people experience a shortfall, they need some right of redress. The Minister of State knows that people are watching this debate in the desperate hope that he will not take away their rights but will decide to strike a fair balance for which we have asked. I must add it would be a disgrace for him to sit here in silence. The people who are watching have seen two things from the Fine Gael Party. They have seen silence from the Minister of State and the worst kind of party political barracking by his colleague, who did not address the amendment or the issue of fairness at all. What on earth are the people watching thinking about him and Fine Gael? I suggest he thinks about that.

Senator John Cummins: I am sure people will see the hole in Sinn Féin's budget.

Senator Paul Gavan: The Minister of State has said nothing.

Senator John Cummins: He answered the section.

Deputy Peter Burke: I was not called to come in.

Senator Paul Gavan: Will the Minister of State address the key issue of a shortfall? It has been acknowledged by Senators Dooley, Blaney and others that there will be shortfalls.

An Cathaoirleach: We are discussing the legal section.

Senator Paul Gavan: Will the Minister of State finally address the issue?

Senator Niall Blaney: The Senator is talking rubbish again.

Senator Paul Gavan: All right so Senator Blaney is saying there will be no shortfall.

Senator Niall Blaney: The Senator is talking rubbish.

Senator Paul Gavan: People have heard that and it is now on the record.

Senator John Cummins: It is ironic that Senator Gavan has referred to a shortfall when I have outlined the clear shortfall in the figures provided by Sinn Féin.

Senator Paul Gavan: Address the amendment.

Senator John Cummins: Anybody can do the maths.

Senator Paul Gavan: The Senator cannot address the amendment.

Senator John Cummins: Just because the Senator has shouted over me, I will reiterate that he does not want me stating that Sinn Féin proposes that we provide €123 per sq. ft. to build 20,000 social and affordable houses.

Senator Paul Gavan: I urge the Senator to think about who is watching today. Shameful.

Senator John Cummins: In the worked example mentioned, Sinn Féin wants €206 per sq. ft., which means there is a €2 billion shortfall in Deputy Ó Broin's own budget regarding capital for housing. If we accept the premise of what the Sinn Féin team has said here in the Senate, I look forward to €5.012 billion being provided in Sinn Féin's alternative budget at the end of September.

Senator Paul Gavan: This issue is about people's right to take legal action.

An Cathaoirleach: In the event of a gap.

Senator Paul Gavan: Yes.

An Cathaoirleach: That is why people have expressed-----

Senator Paul Gavan: That is what the issue is about and why people want the Minister of State to respond but we have not had one response.

Senator John Cummins: That is not how one should treat the Cathaoirleach.

An Cathaoirleach: Senator Gavan asked people to address the amendment. The amendment concerns legal action and that includes the shortfall. So I am allowing people to talk about the shortfall because there are reasons for a legal action and the shortfall is one of them.

Senator Paul Gavan: It is a pity that the Minister of State would not address the amendment.

An Cathaoirleach: The Minister of State has addressed the amendment but if he wishes to come back in then he can indicate to do so.

Deputy Peter Burke: I must first be called before I can respond. It is ironic that Senator Cummins has been accused of not addressing the amendment when he pointed out a flaw in the

presentation made by Senator Gavan yet Senator Gavan has not addressed the amendment and has gone totally away from it.

To specifically address the amendment, I was clear that if litigation was successful, any damages above the level of the grant would go to the homeowner. I was also clear that the Minister intends to shortly appoint a senior counsel in respect of this issue, which is significant. We know the scale of the scheme, how big, potentially, that it is going to get and the State must robustly try to get and hold wrongdoers to account.

Question put:

The Committee divided: Tá, 25; Níl, 12.	
Tá	Níl
Ahearn, Garret.	Boyhan, Victor.
Ardagh, Catherine.	Boylan, Lynn.
Blaney, Niall.	Craughwell, Gerard P.
Burke, Paddy.	Gavan, Paul.
Buttimer, Jerry.	Hoey, Annie.
Byrne, Maria.	Keogan, Sharon.
Carrigy, Micheál.	Moynihan, Rebecca.
Cassells, Shane.	Ó Donnghaile, Niall.
Chambers, Lisa.	Ruane, Lynn.
Conway, Martin.	Sherlock, Marie.
Crowe, Ollie.	Wall, Mark.
Cummins, John.	Warfield, Fintan.
Currie, Emer.	
Dolan, Aisling.	
Fitzpatrick, Mary.	
Gallagher, Robbie.	
Horkan, Gerry.	
Kyne, Seán.	
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Seán Kyne and Robbie Gallagher; Níl, Senators Paul Gavan and Lynn Boylan..

Question declared carried.

An Leas-Chathaoirleach: Before we continue, I wish to welcome Councillor Dalton O'Sullivan from Cork County Council to the Gallery. It is an honour to have him here.

Sections 30 to 35, inclusive, agreed to.

Question, "That section 36 stand part of the Bill," put and declared carried.

SECTION 37

An Leas-Chathaoirleach: Amendments Nos. 61 to 64, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Senator Rebecca Moynihan: I move amendment No. 61:

In page 41, line 13, after "appoint" to insert ", through the Public Appointments Service,".

Senator Lynn Boylan: The amendment is self-explanatory. It relates to the Public Appointments Service, PAS. In fairness to the Minister, Deputy Darragh O'Brien, I know he has used the PAS in making appointments and gave a commitment yesterday that it will be used in order that appeals will be completely independent. The issue, however, is that Ministers change. One cannot future-proof against ministerial changes. I speak from experience on this issue. When we were debating the climate Act, we argued about the PAS and were given a guarantee that it would be used but then, in effect, the Minister, Deputy Eamon Ryan, appointed two people whom he knew to the Climate Change Advisory Council. It is important that the PAS is used, especially given the experience homeowners have had to date with the State in the context of the first redress scheme and now this one. It would be a gesture that the appeals process will be independent.

Deputy Peter Burke: Amendments Nos. 61 to 64, inclusive, seek to call out explicitly in the Bill the role of the Public Appointments Service in recommending the appeal panel members for appointment, to specifically call out some of the experience and expertise required, such as human rights and equality training, for appointment to the appeals panel, to have the chairperson of the appeals panel recommended by the Public Appointments Service and to exclude local authority or departmental employees from the appeals panel. I confirm that engagement has already begun with the PAS on the recruitment process for the ten appeal panel members. It is important that the appeal panel is in place when, or at least shortly after, the enhanced scheme commences in order that it is available to scheme applicants. I am satisfied that the appeals panel provisions within the Bill will ensure that the appeals panel will be fully independent. I do not consider the amendments to be necessary.

Amendment put and declared lost.

Senator Rebecca Moynihan: I move amendment No. 62:

In page 41, to delete lines 16 to 18 and substitute the following:

"(2) The Minister shall have regard to a person's experience or expertise, including the requirement for human rights and equality training, in relation to the subject matter of decisions the subject of appeals under this Act or in relation to the hearing of appeals

generally in appointing him or her under *subsection (1)*.".

Amendment put and declared lost.

Senator Rebecca Moynihan: I move amendment No. 63:

In page 41, line 24, after "appoint" to insert ", through the Public Appointments Service,".

Amendment put and declared lost.

Senator Rebecca Moynihan: I move amendment No. 64:

In page 42, between lines 24 and 25, to insert the following:

"(m) is employed by a local authority or any government department.".

Amendment put and declared lost.

Section 37 agreed to.

Section 38 agreed to.

SECTION 39

An Leas-Chathaoirleach: Amendments Nos. 65 and 66 are related. Amendment No. 66 is a physical alternative to amendment No. 65. Amendments Nos. 65 and 66 may be discussed together, by agreement. Is that agreed? Agreed.

Senator Rebecca Moynihan: I move amendment No. 65:

In page 43, to delete lines 17 to 22 and substitute the following:

"(2) An appeal under *subsection (1)* may not be accompanied by documents other than documents which—

(a) were considered by the designated local authority or the Housing Agency,

(b) were submitted to the designated local authority or the Housing Agency and ought to have been considered by the designated local authority or the Housing Agency in accordance with this Act, in making the decision the subject of the appeal, or

(c) the Appeals Panel otherwise determines to be materially relevant to the appeal.".

This relates to appeals and documentation that may not have been relevant or have come to light at the early stage. The amendment provides that further documentation can be submitted on appeal stage. That may involve, for example, new scientific evidence or engineering techniques that come to light. Under the amendment, that documentation, if it is materially relevant to the appeal, could be submitted. It is a technical amendment to allow additional information to be submitted. Amendments Nos. 65 to 67, inclusive, are similar but worded slightly differently.

Senator Lynn Boylan: I will speak to the grouping. Amendment No. 66, in my name, is similar in effect to amendment No. 65. An appeals process is generally based on new information. The amendment would allow material relevant to the appeal, such as scientific or engineering evidence, to be submitted. It is interesting. In the social protection system, if a person wishes to appeal a decision, he or she is obliged to submit new information, yet, in the context of the Bill we are talking about massive amounts of money but a person seeking to appeal the process is prevented from bringing forward new material that is relevant to the appeal. I cannot understand why the Government would preclude a person from bringing forward new information. Yesterday, we heard all about science-based evidence. That is what we kept being told. In this case, however, people are being precluded from bringing forward science-based evidence that comes to light.

Senator Timmy Dooley: I, too, have concerns in respect of the section. In nearly any walk of life, if a person is to appeal a decision, that is usually done on the basis that an error was made in the decision or further clarification can be provided that will make it easier for a decision maker to understand what the issue was in the first instance or help the applicant to gain access to whatever scheme it may be. I would like to hear the clarification of the Minister of State. I am sure he is not designing a system to exclude people. That is what the Minister, Deputy Darragh O'Brien, said at the outset. There is concern among homeowners that if a determination is made, specifically on a visual inspection, and the homeowner loses his or her opportunity to enter the scheme, that person is effectively shut out. If it is only going to be a review or a paper-based exercise, that does not really amount to an appeal. I would have thought that if a person is coming forward with additional information, it should, at least, be permissible for that to be submitted. It might not change the outcome but, at least, the person would be given the best shot at getting into the scheme. I would like to hear the thoughts of the Minister of State on the matter. I am not accusing him of trying to exclude anyone.

Deputy Peter Burke: Amendments Nos. 65 and 66 seek to allow new documentation to be submitted as part of the appeal process and, therefore, add to what may be considered by an appeals board from the documentation available to the original decision maker. It is important to understand that the appeals process is not a new application process. It is an appeal to an independent body that is made available to the applicant where he or she believes that an error may have occurred in the original decision-making process. It is important, therefore, that the appeal board focus strongly on examining the documents that were available to, and informed the decision of, the original decision maker, rather than being weighed under by new documentation. That said, I draw the attention of Senators to section 39(6), which allows the appeal board to seek further information it considers necessary. I am satisfied that the appeals process set out in sections 37 to 40, inclusive, is fair and reasonable and will work and deliver for applicants.

Amendment put:

The Committee divided: Tá, 11; Níl, 25.	
Tá	Níl
Boyhan, Victor.	Ahearn, Garret.
Boylan, Lynn.	Ardagh, Catherine.
Craughwell, Gerard P.	Blaney, Niall.
Gavan, Paul.	Burke, Paddy.
Hoey, Annie.	Buttimer, Jerry.

Keogan, Sharon.	Byrne, Malcolm.
Moynihan, Rebecca.	Byrne, Maria.
Ó Donnghaile, Niall.	Carrigy, Micheál.
Sherlock, Marie.	Cassells, Shane.
Wall, Mark.	Chambers, Lisa.
Warfield, Fintan.	Conway, Martin.
	Crowe, Ollie.
	Cummins, John.
	Dolan, Aisling.
	Gallagher, Robbie.
	Horkan, Gerry.
	Kyne, Seán.
	Lombard, Tim.
	McGahon, John.
	McGreehan, Erin.
	O'Reilly, Joe.
	O'Reilly, Pauline.
	Seery Kearney, Mary.
	Ward, Barry.
	Wilson, Diarmuid.

Tellers: Tá, Senators Rebecca Moynihan and Lynn Boylan; Níl, Senators Seán Kyne and Robbie Gallagher.

Amendment declared lost.

Senator Lynn Boylan: I move amendment No. 66:

In page 43, line 22, after "appeal" to insert "except where any such documentation is materially relevant to the appeal".

Amendment, by leave, withdrawn.

An Cathaoirleach: Amendment No. 67 is out of order.

Amendment No. 67 not moved.

Section 39 agreed to.

Sections 40 to 50, inclusive, agreed to.

NEW SECTION

Senator Rebecca Moynihan: I move amendment No. 68:

In page 51, between lines 12 and 13, to insert the following:

"Review of operation of Act

51. (1) The Minister shall—

(a) not later than 1 year after the date of the opening of the scheme for applications under *section 13*, commence a review of the operation of this Act, and

(b) not later than 6 months after the expiration of that period, make a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review.

(2) Without prejudice to *subsection (1)*, the Minister shall commence a review of the operation of this Act within 3 months of the completion of any review of I.S. 465: 2018 by the National Standards Authority of Ireland and not later than 3 months after the completion of the review shall make a report to each House of the Oireachtas of his or her findings and conclusions resulting from that review.".

Amendment, by leave, withdrawn.

SECTION 51

Question proposed: "That section 51 stand part of the Bill."

Senator Micheál Carrigy: I compliment the Minister of State, Deputy Burke, and the Minister, Deputy O'Brien, on the significant work they have done in putting the scheme in place. A significant number of other facilities in the affected counties, such as community centres and sporting clubs, are not covered by the scheme. Could it be brought back to Cabinet that the Department with responsibility for sport or the Department of Education consider schemes to cover these facilities with a grant? This could be a special sports capital grant. This would be to make sure the facilities can be brought up to the standard they should be.

Senator Niall Blaney: I support Senator Carrigy on these other buildings outside the scheme. The focus may well move to them after today. It is imperative that the community buildings mentioned by the Senator get some form of resolution to the mica, pyrite or whatever other deleterious materials they are dealing with in their buildings. A formula needs to be found to deal with these buildings and other public buildings throughout the country.

Senator Rebecca Moynihan: On a point of order, we are meant to speak to amendments and not the section. The sections have already been gone though on other Stages. We have moved and withdrawn the amendment. People are not speaking to the amendment that we moved and withdrew.

An Cathaoirleach: We are discussing section 51. The amendment on the new section was withdrawn and we are now discussing section 51. Members can speak to the section.

Question put and agreed to.

Sections 52 to 59, inclusive, agreed to.

TITLE

An Cathaoirleach: Amendment No. 69 is out of order.

Amendment No. 69 not moved.

Title agreed to.

Bill reported without amendment.

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

Senator Robbie Gallagher: Now.

An Cathaoirleach: Is that agreed? Agreed.

Bill received for final consideration.

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

Senator Robbie Gallagher: Now.

An Cathaoirleach: Is that agreed? Agreed.

Question proposed: "That the Bill do now pass."

The Seanad divided by electronic means.

Senator Paul Gavan: Under Standing Order 62(3)(*b*), I request that the division be taken again other than by electronic means.

Question again put:

The Seanad divided: Tá, 30; Níl, 12.	
Tá	Níl
Ahearn, Garret.	Boyhan, Victor.
Ardagh, Catherine.	Boylan, Lynn.
Blaney, Niall.	Flynn, Eileen.
Burke, Paddy.	Gavan, Paul.
Buttimer, Jerry.	Higgins, Alice-Mary.
Byrne, Malcolm.	Hoey, Annie.
Byrne, Maria.	Keogan, Sharon.
Carrigy, Micheál.	Moynihan, Rebecca.
Cassells, Shane.	Ó Donnghaile, Niall.
Chambers, Lisa.	Sherlock, Marie.
Clifford-Lee, Lorraine.	Wall, Mark.
Conway, Martin.	Warfield, Fintan.
Craughwell, Gerard P.	
Crowe, Ollie.	
Cummins, John.	
Currie, Emer.	
Dolan, Aisling.	

Fitzpatrick, Mary.	
Gallagher, Robbie.	
Horkan, Gerry.	
Kyne, Seán.	
Lombard, Tim.	
McGahon, John.	
McGreehan, Erin.	
O'Loughlin, Fiona.	
O'Reilly, Joe.	
O'Reilly, Pauline.	
Seery Kearney, Mary.	
Ward, Barry.	
Wilson, Diarmuid.	

Tellers: Tá, Senators Seán Kyne and Robbie Gallagher; Níl, Senators Paul Gavan and Lynn Boylan.

Question declared carried.

Senator Niall Blaney: On a point of order, I wish to acknowledge the presence of the adviser to the Minister for Housing, Local Government and Heritage in the Public Gallery. I thank the adviser for the massive contribution that he has made to the Bill.

An Cathaoirleach: That is not a point of order.

Cuireadh an Seanad ar fionraí ar 4.43 p.m. agus cuireadh tús leis arís ar 4.53 p.m.

Sitting suspended at 4.43 p.m. and resumed at 4.53 p.m.

Planning and Development, Maritime and Valuation (Amendment) Bill 2022: [Seanad Bill amended by the Dáil] Report and Final Stages (Resumed)

An Cathaoirleach: This is a Seanad Bill, which has been amended by the Dáil. In accordance with Standing Order 148, it is deemed to have passed its First, Second and Third Stages in the Seanad and is placed on the Order Paper for Report Stage. On the question "That the Bill be received for final consideration", the Minister may explain the purpose of the amendments made by the Dáil. This is looked upon as the report of the Dáil amendments to the Seanad. For Senators' convenience, I have arranged for the printing and circulation of the amendments. The Minister will deal separately with the subject of each related group of amendments.

Senators have tabled several amendments which arise from the changes made to the Bill by

the Dáil. In view of the number of amendments and to avoid repetition of debate, I propose that the amendments made by the Dáil and related amendments tabled by Senators be debated together in related groups. Decisions on the amendments tabled by Senators will be taken when the discussion of all groups of amendments has concluded. I have also circulated the proposed groupings to the House. A Senator may only contribute once on each grouping. I remind Senators that the only matters that may be discussed are the subject matter of each group of amendments made by the Dáil and the amendments tabled that arise from the amendments made by the Dáil.

5 o'clock

Question proposed: "That the Bill be received for final consideration."

An Cathaoirleach: The amendments in group 1, amendments Nos. 1 to 5, inclusive, relate to short-term letting provisions in the Planning and Development Act 2000 and consequential amendments.

Minister of State at the Department of Housing, Local Government and Heritage (Deputy Peter Burke): The first Government amendment relates to short-term letting provisions in the planning Act. The Government recognises that a significant number of properties have been withdrawn from the long-term rental market in recent years and been diverted for use as short-term lets. It also recognises the associated negative impact this has had on the supply and availability of private residential rental accommodation, with knock-on implications for rental prices. Further amendments will be brought forward to address this issue. Supplementary to these new legislative provisions, we propose to issue guidelines to planning authorities updating the criteria to be taken into account in determining applications for change-of-use planning permission in respect of short-term let properties in rent pressure zones, having regard to the extraordinary pressures prevailing for properties in the private rental market.

Senator Lynn Boylan: Amendment No. 1 refers to the group 3 theme, which is about design flexibility. Group 1 refers to the Airbnb issue.

Deputy Peter Burke: That is what I have just spoken to.

Senator Lynn Boylan: I refer to our Seanad amendments.

Senator Alice-Mary Higgins: The Minister of State is speaking to the amendments made in the Dáil. Senator Boylan is referring to our proposed Seanad amendments. There are two sets of amendments being discussed.

Senator Lynn Boylan: Amendments Nos. 1 to 5, inclusive, in group 1 are Government amendments rather than our proposed Seanad amendments.

An Cathaoirleach: They are amendments made by the Dáil.

Senator Lynn Boylan: We welcome the measures relating to short-term lets.

An Cathaoirleach: Group 2 concerns ministerial directions regarding statutory plans and related provisions in the Planning and Development Act 2000. This is the subject matter of amendments Nos. 6 to 15, inclusive, and Seanad amendments Nos. 1 and 2.

Deputy Peter Burke: The second set of amendments relates to ministerial directions on

statutory plans as provided for in the planning Act. Since the April 2019 commencement and operation of the Office of the Planning Regulator on foot of implementation of the Planning and Development (Amendment) Act 2018, a number of technical matters have come to light regarding the legislative procedure relating to section 31 of the Planning and Development Act 2000, including, but not limited to: sections 31AM and 31AN, concerning development plans and variations; sections 31AO and 31AP, concerning local area plans; and the interrelationship of same. Minor and technical amendments are required to address cross-referencing, standardised wording, notifications and consistency in procedure for both the draft direction stage and the final direction state. These technical and procedural amendments, introduced by this Bill, will provide clarity and consistency of language and procedure for all stakeholders, including local authorities and the wider public.

An Cathaoirleach: Seanad Report Stage amendments Nos. 1 and 2 pertain to the group.

Senator Alice-Mary Higgins: Amendment No. 1 seeks the deletion of the new subsection (6) inserted via the Dáil amendments into section 32B of the principal Act. That subsection inserted by the Minister provides that a request from a large-scale residential development applicant may include a request that the meeting be treated as a meeting for the purposes of an application under a section 32I.

Amendment No. 2 seeks the deletion of the section inserting the new sections 32H and 32L into the principal Act. These new sections 32H to 32L to be inserted into the principal Act set out details regarding the pre-application process for persons seeking to submit a flexible application under section 34 of the principal Act. Section 32H, to be inserted by the Minister, would mean that a person who intends to apply for planning permission may request a meeting with the planning authority in whose area the proposed development would be situated, under section 34 of the principal Act, for the purposes of attaining an opinion on whether it is appropriate that a flexible application for permission be made. This section sets out the documentation required to be submitted in respect of such a meeting request, including information in respect of the details of the proposed development that are likely to be unconfirmed at the time of the planning application. The planning authority should hold a meeting within four weeks on receipt of the request. The meeting would be attended by planning authority officials and so forth with relevant knowledge and expertise. Again, that is what the Minister would insert. I will come back in a moment to my amendments Nos. 1 and 2, which would delete the measures inserted by the Minister.

Section 32I, as inserted by the Minister, indicates the planning authority must insert an opinion or notification within four weeks of the meeting taking place whether it is appropriate that the proposed application be made. That is in terms of a flexible development and I will come back to that again. An opinion would set out the details that need to be confirmed by the applicant at a later stage and circumstances that allow the planning authority to allow a flexible application.

I will not go into full detail but rather than just describing these amendments as technical, it would have been useful for the Minister of State to outline what the amendments do. They are doing quite a lot and it is not purely technical. In outlining my amendments of deletion, I am stating what would be deleted. That was not mentioned by the Minister of State.

An Cathaoirleach: The Senators may only speak once to a group.

Senator Alice-Mary Higgins: That is why I must speak to the full grouping now.

An Cathaoirleach: I am just letting the Senators know they are only allowed contribute once with each grouping.

Senator Alice-Mary Higgins: Yes. I was making the point that it would have been useful to have the Minister of State rather than me outlining what is happening with the sections to be inserted, and where our permission for them to be inserted has been requested. We would have been clear about what they were doing.

Senator Lynn Boylan: On a point of order, my understanding is that the grouping relating to our amendments Nos. 1 and 2 relates to design flexibility, which is group 3. Our amendments seem to have been put in for discussion under group 2.

An Cathaoirleach: The Senator is referring to Seanad Report Stage amendments Nos. 1 and 2.

Senator Lynn Boylan: Yes. Group 2 relates to ministerial directions regarding the statutory plan and related provisions. Our amendments seem to refer to group 3, relating to flexibility in planning applications.

Senator Alice-Mary Higgins: Yes. That is what I spoke to in outlining the amendments.

Senator Lynn Boylan: I do not mean to put words in the Senator's mouth. The issue is that we think the amendments should be included with group 3 rather than group 2.

Senator Alice-Mary Higgins: As I understand it, my amendments Nos. 1 and 2 seek the removal of measures to be inserted by the Minister in group 3. Is that correct? I am not using my speaking slot now but seeking clarification in respect of the grouping. It is the problem and may be why what the Minister of State outlined is disjointed compared with the grouped amendments. My amendments respond to the principle on flexibility. My amendments are responding to that principle on flexibility and I cannot not have my opportunity to speak to them. This is a dilemma. There may be issues with the groupings. I do not want to stop talking because then I will not be able to continue, but I would like if there could be an indication that there has been a mix-up. I will pause for a moment.

An Cathaoirleach: As this is a point of order, I will allow it. I will double-check regarding the groupings. We will allow flexibility on speaking on the groupings. The Senator is going to speak to amendments Nos. 1 and 2, as well as the third grouping of amendments.

Senator Alice-Mary Higgins: Should I be speaking to amendments Nos. 1 and 2 within the discussion on group 3? Is that the case? Will we agree that I can discuss them then?

An Cathaoirleach: We will allow it.

Senator Alice-Mary Higgins: Regarding the amendments in group 2, then, these relate to the provisions in the Planning and Development Acts and the idea of the ministerial directions regarding statutory plans. I will be brief. As part of a topic we will discuss in more detail later, namely, what has been an extraordinary, relentless and systematic removal and diminution of power at local level, one of the major starting points in that regard was when these ministerial directions were brought in by the former Minister, Eoghan Murphy. Those regulations concerned building density, about that aspect being trumped by interpretations that local authorities

had to have regard to. We then moved to the point where the new local statutory plans had to comply and show consistency with those ministerial directions.

I am not going to dwell on the local development plans at great length here. I will highlight the relationship between central government, the local development plans and local plan-making in general. The role of ministerial directions in respect of local planning and decision-making has been a concerning one because it has involved matters of extreme concern in respect of the balance of powers and judicial freedom. I will not speak at length to those aspects but I reiterate that these are 48 pages of amendments. These are extensive amendments. This House should be concerned about them because they also relate to the relationship between local authorities, local development plans and ministerial directions. These amendments should have been afforded proper scrutiny and they should have been part of pre-legislative scrutiny. I will leave my comments on these amendments there. I will speak to my Report Stage amendments Nos. 1 and 2 in the next grouping of amendments concerned with flexibility.

Senator Lynn Boylan: No disrespect to the Bills Office, because the people there are completely run off their feet, but the fact that nobody even spotted the problem with these amendments, and I am not referring to the Chair but to the Minister of State, shows us how shoddy this procedure has been. No disrespect is intended. The Minister of State is bringing in 48 pages of amendments with no oversight, no pre-legislative scrutiny and no time for us to even go through them and assess them. These are major changes. It must be recorded that what is going on today is a shameful act in respect of these changes. It is extremely bad practice. I echo the calls of An Taisce, the Irish Planning Institute, IPI, the environmental pillar, the journalist Mick Clifford and the environmental lawyer Fred Logue. We can discuss these amendments all we want today and try our best to get our heads around them but this procedure is absolutely shameful and shows complete disrespect to the House.

Senator Fintan Warfield: I might add it shows disrespect to the Dáil as well, because how many of them were discussed in that Chamber? Forty-eight amendments were put down on six areas, most of which were not discussed in the Dáil. There was also no outside scrutiny or advice in this regard. We are being asked therefore to consider amendments that the Dáil has not considered. It is a complete joke. I support what Senator Boylan said about the organisations in this context, such as An Taisce, the IPI and the environmental pillar, which is the umbrella organisation for all the NGOs concerned with this area. This is a bit of a joke at this stage.

Senator Sharon Keogan: I missed the earlier part of the debate, so forgive me, I do not know where I am coming in.

Senator Lynn Boylan: Nobody does.

An Cathaoirleach: We are on group 2.

Senator Sharon Keogan: The second grouping of amendments.

An Cathaoirleach: Yes.

Senator Alice-Mary Higgins: Seanad Report Stage amendments Nos. 1 and 2 have been moved into the next grouping.

Senator Sharon Keogan: Right. Okay. I have prepared something so I will continue. A headline I saw yesterday encapsulates the essence of this Bill and the amendments presented

to us today. It came from the satirical Waterford Whispers News website. The headline was, "Government Celebrate Winning Confidence Vote By Ramming Through Planning Laws Only Developers Want". The amendments before us undermine citizens' rights to access justice and are contrary to the letter and spirit of the Aarhus Convention. This Bill is opposed by several organisations, including the IPI, An Taisce, and the environmental pillar. They are all drawing attention to the fact that not enough time is being given to allow the amendments to be studied.

The passing of the Bill and its accompanying amendments seems premature. I question the need for this Bill at a time when the Attorney General and the planning advisory forum are studying the operation of the Planning and Development Acts. To highlight the insanity of the situation today, Members of the Oireachtas only received this slew of amendments, which are unrelated to the content of the original Bill, last Thursday. The public did not see these amendments until last Friday. Deputies and Senators were not briefed until after the deadline for input on Monday and there was less than three hours of parliamentary debate before Members were forced to vote.

These new provisions create wide-ranging and confusing changes that will lead to further litigation and delays to planning and development as a result. The Government is actively muddying the waters around these procedures. The amendments will result in greater cost and legal uncertainty around judicial reviews and will fall foul of EU law. It is not me just saying that. These are the words of An Taisce. Ms Phoebe Duvall, the planning and environmental policy officer with An Taisce stated:

> The proposed amendments are a stealth attack on public participation in the planning system - they are not 'administrative' or 'streamlining' changes as described by Government. These amendments will have far-reaching consequences.

In a letter addressed to the Minister for the Environment, Climate and Communications, Deputy Eamon Ryan, An Taisce condemned amendments Nos. 12, 13, 14, 41, 42 and 77. The solution proposed in the amendments is to allow an applicant to propose a range of options and, subsequently, notify the planning authority after planning permission has been granted. There is no requirement for the planning authority to have to agree to any section at the time of implementation. This raises serious concerns about environmental impact assessment, the habitats directive, public participation etc. There are simpler, legally compliant and more effective ways to address these challenges without creating further legal problems. An Taisce also condemned amendments Nos. 25 and 26, as well as the judicial review aspect. Amendment No. 26 proposes changes requiring that prospective litigants exhaust all possible administrative options to correct errors by planning authorities before applying for leave to take a judicial review. Equally, no clarity is provided on the cost implications, which would be challenged.

It is worth noting that this is incompatible with EU law. See, for example, the ruling in Case C-73/16, Puškár, paragraph 7. Ms Attracta Uí Bhroin, environmental law officer with the Irish Environmental Network, IEN, said the amendments were "throwing a minefield into the judicial review process". Last Thursday, Opposition Deputies and Senators received 48 pages of amendments that had been added to this legislation, which was originally 18 pages long. This left just three working days for an examination of this material before this legislation was voted on in the Dáil. Given the complexities of planning law and how complex the interaction between the courts and the judicial review process and planning is, it is reckless to be making these changes without proper time and scrutiny. We do not know, nor can we know, the full implications of what this legislation will entail. In all likelihood, the party line will be toed and

what little credibility the Government has left on this issue will be undermined. I am glad the Government has confidence in itself, because after witnessing the antics in the Chamber and in the Dáil, I certainly do not.

Deputy Peter Burke: I thank Senators for their contributions. In the first instance, I flagged the substantive changes in this Bill in the Seanad last April and our intention to bring forward these amendments. Second, we had a number of briefings on 25 May for Senators, and this week we had a second briefing for over an hour and a half, but the full allocated time was not taken up.

Senator Alice-Mary Higgins: The amendments were published last Friday.

An Cathaoirleach: The Minister of State, without interruption.

Deputy Peter Burke: Regarding those amendments, it is very interesting to hear Senators make a charge with regard to the Office of the Planning Regulator, an office that was established on foot of the Mahon tribunal on planning matters, conflicts of interest and lobbying. The amendments we are making are to ensure consistency and to put in better timelines to make it transparent for the public when a chief executive issues his or her report back to the Planning Regulator and for timelines for the Minister to act on recommendations made by the Office of the Planning Regulator. That will make it more consistent in terms of local area plans as well as ensuring transparency in the system. Those amendments I specifically referenced in the debate are technical in nature and I am confident they are for the better.

An Cathaoirleach: Group 3 is flexibility in planning applications in the Planning and Development Act 2000 and is the subject matter of amendments Nos. 16 to 18, inclusive, and Nos. 20 to 31, inclusive, and Seanad amendments and Seanad Report Stage amendments Nos. 3 to 5, inclusive, and Nos. 7 to 13, inclusive. I will also allow amendments Nos. 1 and 2 on this Stage.

Deputy Peter Burke: The third set of amendments relate to planning flexibility applications in the Planning and Development Act 2000. These amendments address the decision of Humphreys J. in the case Peter Sweetman *v*. An Bord Pleanála, Ireland and the Attorney General, and Bord na Móna regarding the design envelope approach for the submission of certain planning applications which require a degree of flexibility at the planning application stage as the final details of such developments may be unconfirmed at that stage. The High Court judgment disapplies also to flexibilities and replaces them with a very limited range of flexibilities which is insufficient for the operation of a modern and effective planning system. The amendments will introduce a pre-application procedure for planning applications seeking a level of flexibility with regard to details of the proposed development to be submitted as part of the application and are intended to legislate for an approach which facilitates flexibility while providing sufficient clarity to allow planning authorities to consider what level of information is appropriate on a case-by-case basis while also providing appropriate safeguards for environmental assessment. While it is intended the amendments will be of assistance to renewable energy applications, in particular, they are drafted to apply to planning applications generally. Any request for flexibility must be considered by the planning authority or, given the specific circumstance of the planning application, it is appropriate for the application to be made on a flexible basis.

Senator Alice-Mary Higgins: I will speak to my amendments Nos. 1 and 2. The Minister of State used the word "flexibility". His own speech gives an example of how ambiguous that

can be. He has described how he told us he was going to do something and that we should not be surprised by what is being done when it is being done very suddenly and quickly. However, he did not tell us what he was going to do, just that he would be making changes. I want to be clear for the record that all 48 pages of these amendments were published last Friday. It is an example of the flexibility we are now being asked to give to developers in the planning process. They will have a discussion about how they are going to mix things up a little. It is a flexible planning application for flexible planning permission and we will see how it turns out. They will explain further down the line why they decided to make the choices they made. In what we have seen in the legislative process and what is happening in the planning process, we are seeing a mirroring of a disregard for democracy and transparency.

I will come to each of my amendments, but they come to the same pieces, which are that the Government is consistently seeking to tweak and change the planning process so it gives favourability and flexibility to developers and protects them in every way. We already know about the financial de-risking for developers that is happening now. Here we have the planning process itself being made a little blurry and easier for the developers so they can apply for and have special meetings about these flexible planning permissions. Meanwhile, we are going to come to another section in which we are trying to tie the hands of the public behind their backs in their participation in the planning process. It appears to be a constant process of trying to put a finger on the balance of the scales of justice against the public and giving a little boost to those seeking development. Let us be clear on some of the amendments and on what it is proposed they can do. There is the large-scale residential developments theme, subsequent to the strategic housing developments where we were told that local authorities were the big problem and we needed to fast-track things. They failed to deliver proper housing and were acknowledged as a failure. When they were brought forward in 2017, we said they would not work because we said the wrong problems were being identified.

The developers can request meetings with the planners. What are referred to as design envelope changes in planning are being brought forward not just in areas where, for example, there is technology that is changing very substantially over a speedy period of time, and that case has been made previously such as in some of the debate that occurred on maritime area technologies and those changes, but the Bill is also bringing forward this flexibility in the planning application process to ordinary planning applications, large-scale residential developments, strategic infrastructure and marine development. It is bringing it into the entire planning process. There has been no adequate explanation of exactly why we need this flexibility in ordinary planning applications or planning applications for large-scale residential development.

Apart from the legal issues, the issues that have been identified in the Derryadd and Bord na Móna Powergen cases could have been addressed differently because those are issues that are specific where there are questions regarding technologies. There is a case that can be made there for doing something differently, but there are more effective ways to do it. Serious legal concerns have been raised on assessment and participation rights and on the EU and Aarhus obligations. The measures are regressive in terms of the participation rights in the planning system, which is a very serious matter because now the public are only getting to give their opinion when they do not know what they are giving their opinion on. They are giving their opinion on a flexible planning application, which may change and has a series of variables in place, so it is not clear what the public are commenting on. The changes will also have a profound effect on the planning system by compromising clarity on what is going to be developed and when, at a time when we need more clarity on the delivery of homes for people. There is a danger

they will incentivise developers to delay until they can maximise profits and reduce costs, while continuing to lobby for further changes in planning legislation and building regulations to their advantage.

Another set of measures we were told would somehow shift the logjam but, in fact, incentivised speculation was when we were told to lower standards in different areas, that we needed to be more flexible about the standards of apartments and so forth and that this would get things built. It meant many planning applications that secured planning permission did not get built. People saw they could speculate a little further, could possibly squeeze a few more concessions from the Government and, therefore, squeeze a little more from the value of their investment. The Minister of State indicated last night that his officials have been working on this for some time. If that is the case, why has there not been a briefing on it? Why have these proposals not been presented in detail? Why are we not seeing the case being made for this flexibility in ordinary planning permissions for large-scale residential development? I note the briefing provided to the Oireachtas joint committee is not the same as pre-legislative scrutiny of measures. That deals with amendments Nos. 1 and 2.

I will move to amendments Nos. 3 to 5, inclusive. Amendment No. 3 seeks the deletion of the section inserting sections 37CC and 37CE into the planning Act. These sections set out details regarding the pre-application process for persons who want to submit a flexible application. I could detail what the measures do in respect of a person who intends to apply for planning permission, but I will point to some of the wider issues. Section 37CC is around detailing the request for a meeting to get an opinion. I will note that the pre-meeting, where matters can be sorted out a little in advance, is again part of the head start we give to developers, while increasing the costs and narrowing the window for those who wish to object. I also note it mirrors one of the problems in the Bill as a whole because, to be clear, this was a bad Bill before the Government added 48 pages of amendments. That Bill had a provision for a special pre-meeting for those who have a development that does not have proper environmental scrutiny and so forth to see if they want to apply for substitute consent or not. It fits a dynamic of very cosy meetings in advance, which means the public are presented with a short window to engage and, once these measures go in, an unclear development planning application on which they will comment.

Amendment No. 11 outlines the details of the pre-application process. It seeks the deletion of section 37 of the Bill, which inserts new sections 182F to 182H into the principal Act. These new sections set out the details regarding the pre-application process for persons who want to have a flexible planning application. A person who intends to apply for approval under section 182B may also request a meeting - I will not go through section 182G again - in respect of the board issuing an opinion or notification as to whether "it is appropriate that the proposed application be made and decided before the prospective applicant has confirmed ... [certain] details".

Amendment No. 12 seeks the deletion of section 38 of the Bill, which amends section 246 of the principal Act, providing the Minister with the power to prescribe fees by way of regulations. Amendment No. 13 relates to section 39 of the Act, which is the Fifth Schedule to the Bill, and the conditions that require the developer to supply actual details prior to commencement. To be clear, the flexible planning application comes in when we say these are the areas where we are not sure exactly how we will do it yet. The board then states this is a set of conditions about how applicants might think about that, and applicants then notify the board about what they have actually decided in the end. It is a conversation that makes the participation of the public much more difficult.

Is amendment No. 6 in this group?

An Cathaoirleach: Seanad Report Stage amendment No. 6 is in the next group, which is group 4.

Senator Alice-Mary Higgins: I apologise. I will skip over that. Since we are only seeing these groups at short notice, we have to anticipate.

I will move to amendment No. 13. In effect, this set of amendments addresses the flexibility piece. The Minister of State talked about losing a case and, as there are now limitations on the flexibility we can have, we need to change the law again. It is part of a very worrying dynamic, namely, if we are found to be in breach of the law, then we change the law. That is what we see again and again. That is not an appropriate relationship. This is relevant to judicial reviews that An Bord Pleanála loses consistently because it is found not to have applied the process and the law properly. Rather than address that, we are trying to make judicial reviews more difficult. I will come to that in the next group of amendments.

Similarly, it has been found that the State has been excessive in its flexibility and needs to be more constrained in the flexibilities it affords, but the State's response is that it will change the rules again and will pass new laws to let it do whatever it would like to do. The case has not been made in respect of large-scale residential developments, issues relating to ordinary planning permission and maritime areas and infrastructure that there are better and more effective ways to address the issue at hand.

Senator Lynn Boylan: I will speak to amendments Nos. 1 and 2 in group 3. Amendment No. 1 is around the design envelope flexibility for large-scale residential developments. Senator Higgins has gone into incredible detail on what these two amendments are trying to do. Nobody is saying we do not need design flexibility, especially when it comes to large offshore wind projects, but we do not believe replacing the deeply flawed strategic housing development system with design flexibility for large-scale residential developments is the way to go. We have real issues with the public having no participation in the application of that flexibility, the decision-making or the implementation stage.

My understanding is the developer would simply have to notify the decision maker of the flexibility. The developer does not even have to outline the changes they are making. It beggars belief because this is being proposed at a time when it seems our planning process is probably at its weakest point when it comes to the level of public trust in the planning system, given what has come into the public arena in the past number of weeks. Instead of just addressing the issues we need to address in order to reform our planning system and screen out bad applications, we are now changing the law to allow large-scale residential developments to come in with design flexibility from which public participation will be, in effect, eliminated. The public will not have a say on the flexibility of the application, the decision or its implementation. There is no space for design flexibility in LSRDs.

Amendment No. 2 addresses the issue more generally around the design envelope procedure. As was said, we do not have a fundamental objection to allowing some flexibility, but we cannot eliminate public participation from that flexibility. We have a particular issue with this being in breach, especially as regards offshore wind, of the habitats directive, environmental impact assessments, water directives and the Aarhus Convention, and that it will, in effect, be *carte blanche* for private developers.

We again urge the Minister of State to withdraw these amendments, allow the proper pre-legislative scrutiny to take place, and allow the committee to tease out the details of this. As Senator Higgins also said, when the Minister of State came to the Chamber on 6 April to say he would be making changes - we will get to the judicial review - he made no reference to the detail of what those changes would be. I do not think anybody would expect him to flag that he was going to bring in changes and then to bring in 48 pages of proposed changes to what was originally an 18-page Bill.

I remind the House what happened in the Dáil last night. The debate reached amendment No. 13 of 82 amendments, meaning the others had no scrutiny. The only people who are in favour of some of these amendments are the Construction Federation of Ireland. Everybody else, such as the planning association and the environmental pillar, An Taisce, opposes these amendments. The Government got through only 13 of them and it has then come to this House today to present them. There are issues also with the groupings and the amendments not being produced until Friday evening. It is farcical, but we are here and will engage with the process. We urge the Minister of State to withdraw the amendments.

Deputy Peter Burke: Section 10 is a procedural amendment relating to the flexibility opinion process for applications under section 34 of the principal Act. Large-scale residential development, LRD, applications come under section 34 of the Planning and Development Act, and a pre-application procedure is in place in respect of LRD applications. The section provides that a prospective LRD applicant seeking a meeting regarding flexibility may request that the existing LRD pre-application meeting also be held for that purpose. The aim of the amendment is to introduce efficiency into the system in order that in cases where flexibility is sought in regard to an LRD application, two separate pre-application processes will not be required.

The section is part of a group of amendments that provide for the principle of flexibility with regard to planning applications to be inserted into the planning Act. The planning flexibility amendments are required to address a High Court decision from last summer that disapplied the concept of flexibility in planning applications. Prior to the judgment, a degree of flexibility in planning applications was accepted as a feature of the planning system and was successfully applied up to this time in respect of all types of development. These amendments provide for a process whereby a prospective applicant who wishes to avail of flexibility in his or her planning application may request a pre-application meeting with the planning authority for applications under section 34 of the planning Act or the board in regard to development of a strategic nature or in an outer-maritime area from the perspective of receiving an opinion on whether it is appropriate an application for permission be made on a flexible basis, that is, on the basis of specific options or parameters.

An opinion will be granted only where the flexibility sought is deemed appropriate by the planning authority. As part of the planning application, the applicant will have to submit sufficient information to allow the planning authority or the board to assess the impacts of any type of development that falls within the flexibility sought. Where options are proposed, the specifications of these options will be known to the applicant and will have to be submitted as part of the planning application. Where parameters are proposed, the applicant will have to detail the maximum and minimum points of the parameters and provide sufficient information to allow the impacts of any development that falls within those parameters to be assessed. The information provided will have to be sufficient to enable the planning authority or the board to consider the application and carry out any environmental assessments required.

The principle of flexibility is acceptable from an environmental impact assessment, EIA, perspective. In 2020, the European Commission published guidance on wind energy developments and EU nature legislation, illustrating how an options- or parameters-based approach can be used in assessing environmental effects where some details of an application are unconfirmed. Furthermore, the Commission's plan published in May 2022 recommends renewable energy developers be allowed to avail of the most innovative technology available at the time of construction, so we are ahead of the game with regard to implementing this recommendation. Where the planning authority or the board subsequently grants flexible planning permission, conditions will be attached to the grant of permission clearly setting out the permitted options or parameters for any unconfirmed details and requiring the applicant to confirm the details of the development prior to the commencement, or the part of the development to which the flexibility relates. The primary legislative amendments will be supported by supplementary regulations that will provide that newspaper notices, site notices and weekly lists for any flexible application will all need to indicate the application relates to a flexible application. This will ensure greater transparency and public awareness in respect of flexible applications. Moreover, to facilitate meaningful public participation, such an application will have to be accompanied by an overview or a statement of flexibilities that highlights which details are unconfirmed and specifies the information being submitted in regard to those details.

The marine amendments have been provided to ensure a consistency of approach between nearshore applications submitted under section 34 of the planning Act, which are covered by the amendments to the onshore section 34 planning application process, and outer-maritime area applications submitted under section 291. These amendments have been prepared on the advice of, and in conjunction with, the Office of the Attorney General to form part of the overall response to address issues raised by the High Court judgment. These procedures will make the planning system more effective and efficient and result in better quality applications while, in general terms, they will be particularly important to renewable energy projects and the roll-out of wind energy development, especially in the maritime area, in light of the maritime area consent, MAC, applications coming down the line. As such, it is critical we bring forward these amendments at this time.

In general, planning permission legislation tries to avoid setting different requirements for different types of development, such as wind energy development. It would not be possible to prepare a complete list of every scenario where flexibility may be appropriate, given this can be specific. Prescribed flexibility in respect of certain types of development would indirectly remove flexibility for all other types of development. The applicant must set out the nature of the overall proposed development and identify the specific details that will be unconfirmed and the circumstances as to why it would be appropriate to make an application without confirming those details. The procedures, therefore, allow the relevant planning authority or the board to consider what is appropriate in a given circumstance. We have to respect the work of the professional local authority, planners and the board when it comes to making the recommendation on planning applications, taking into account all relevant considerations.

The High Court judgment relating to the wording in the planning regulations applies to all planning applications and, therefore, our fix equally applies to all types of applications. I do not foresee the provision being used on a widespread basis. Although I have made the process as simple and efficient as possible, the additional time, cost and environmental considerations involved will mean the process is utilised by prospective applicants in limited circumstances. It is important, however, that the process be available for those limited circumstances, wherever

they may be. The proposals have come on foot of a High Court judgment. The Department received legal advice on the judgment and there is ongoing engagement with the Attorney General's office. The judgment did not rule out the possibility of a flexibility-type approach being used in the Irish planning context; it simply found the wording of the current regulations do not allow it. The purpose of the primary legislative amendments is to ensure a robust response to the judgment and to insert the principle of flexibility into primary legislation to underpin the supplementary regulations being developed.

A pre-application procedure, as proposed, is not incompatible with an EIA and the habitats directive. Furthermore, a planning application containing options or parameters is acceptable from an EIA perspective. In 2020, the European Commission published guidance on wind energy developments and EU nature legislation, illustrating how options or parameters can be used in assessing environmental effects where some details of the application are unconfirmed. These proposals relate to the pre-application stage, which is not part of the decision-making process, and no specific development proposal has been considered or consented to as part of the opinion process. Opinion does not confer any development rights and, therefore, the public participation requirements of the Aarhus Convention and the EIA directive do not apply to such procedures, given they are not part of the development-consenting authorisation process. The amendments provide that all pre-application records, including meeting requests and any supporting documentation, the record of the names of attendees at the meeting and the opinion, will be retained by the planning authority or the board and made available should any subsequent application be submitted.

To ensure greater transparency and public awareness in respect of flexible applications, the supplementary regulations will provide that newspaper notices, site notices and weekly lists for any flexible application will need to indicate the application relates to a flexible application. Further, to facilitate public consultation, the supplementary regulations will provide that a flexible application will be required to be accompanied by an overview or statement of flexibilities that highlights which details are unconfirmed and specifies the information being submitted in respect of those details.

An Leas-Chathaoirleach: We are now moving to group 4, which concerns judicial review provisions in the Planning and Development Act, the subject matter of amendment No. 19 and Seanad Report Stage amendment No. 6.

Deputy Peter Burke: The fourth set of Government amendments relates to judicial review provisions in the planning Act. New amendments will require the court to consider whether there is an adequate appeal or other available administrative remedy and, if so, it should not grant leave. This is not as absolute as the amendment that was originally proposed but it is compliant with EU law and creates a presumption, which the court is required to implement, that issues arising from determinations of planning authorities ought to be appealed to the board unless there are special circumstances. In effect, an appeal, rather than a judicial review challenge, should be the default position in the first instance.

The final amendment introduced is designed to assist developers in obtaining remittal and to address the judicial reluctance that has manifested itself recently to remit matters to planning authorities following a successful judicial review challenge. At present, some judges refer matters back to the planning authorities to make a new decision, while other judges are reluctant to do so. To address this, it is proposed to provide for an effective presumption that the matter can be remitted to the board at the commencement of the legal proceedings in order that the errors

can be corrected quickly, thereby avoiding delays associated with such proceedings.

Senator Lynn Boylan: The planning laws are under review, and we are due to see the result of that review by the end of the year. Judicial review legislation is due in the autumn, so I have to ask why we are trying, at breakneck speed, to introduce quite serious changes to the judicial review process that have a fundamental impact on people's right to access justice. We are not going to stop judicial reviews from happening if we cannot screen out the bad planning. As we know, the significant majority of judicial reviews are won. I believe the success rate is around 70%, so there is clearly an issue with the applications being submitted.

What the Government is trying to do is address three parts of the judicial review. The first aim is to allow An Bord Pleanála to amend its decision after a judicial review process has started. It can be as sloppy as it wants but it will be facilitated in cleaning up as it goes along. I draw attention again to the information now in the public domain regarding what has been happening with An Bord Pleanála. We are basically saying today to An Bord Pleanála that if it makes an error or mistake, it should not worry about it because it will be able to clean up as it goes along.

The second element is that the Government is now going to require applicants to ensure they have exhausted all administrative avenues before they can take a judicial review. I find that ironic because, under the Comprehensive Economic and Trade Agreement, CETA, provisions, which the Government is also trying to railroad through, big corporations do not have to exhaust all avenues in the domestic courts before taking legal challenges. The problem with judicial reviews and insisting people exhaust all legal avenues is that judicial reviews can be taken at any stage. It is at the discretion of the judge. Our independent Judiciary decides whether to grant leave to take a judicial review based on the information presented to it. It can also insist that people exhaust all other options. The proposed change is fundamental and interferes with the independence of the Judiciary.

There are areas in respect of which it is important to be able to initiate judicial reviews speedily. For example, if a special area of conservation were being damaged or decimated and an NGO tried to stop that environmental damage, would the Government seriously say the entire administrative process should have to be exhausted? Consider how long it would take before we could stop the damage being done. Consider also the case of a quarry carrying out its actions illegally and the related matter of substitute consent. Major issues arise in that the Government is blocking people from taking judicial reviews where doing so might be expedient in stopping a development causing damage.

The third change is quite sinister. It requires the High Court to send the case under review back to the planning authority when a decision has been made on the judicial review. Effectively, people will make an application for a judicial review and make their legal case, and then the Government will send back to An Bord Pleanála the legal case of the applicant trying to stop the development or to do the right thing by taking the judicial review, in order that An Bord Pleanála can just adapt and tweak it. As I have heard somebody explain it, it is changing the goalposts halfway through the match. That flies in the face of anything we could call proper access to justice.

I am aware the Minister of State withdrew one amendment in the Dáil regarding judicial review. I urge him to withdraw the proposal before us and wait until the review in September. That is when to introduce any changes he wants to make to the judicial review process. In September, the committee will be able to carry out full pre-legislative scrutiny and properly analyse

what exactly the Government is trying to do. This is desirable because these are huge changes proposed to the right of access to justice. I cannot understand how the Minister of State can sit there and justify making changes like these to try to stop people from accessing justice.

Senator Alice-Mary Higgins: The fact the Government has withdrawn, under extreme pressure, one of the problematic amendments is welcome, but it highlights again how incredibly ill-considered the changes are. In the tiny window the public has had to react to this, or since Friday, they have seen the issues with the changes. They regard the proposed changes as an attack on their participation and ability to effect change. One environmental NGO has described the changes as a black hole in respect of judicial reviews. There is a dysfunctional effect on the quality of decisions. This is at a time when public confidence in planning is at an all-time low. Curtailing the public's access to the courts is extraordinarily problematic.

I am going to go through a couple of the issues. The moving of the goalposts is one. That we all have to dig to find analogies for unfairness in different frames is part of it. One of the analogies I used earlier is very clear. I referred to the head start given with the pre-application discussions.

What we have here is the referee who makes the wrong call insisting that the matter go back to him or her. An Bord Pleanála has lost many judicial reviews because it has been found not to be applying our planning laws properly.

6 o'clock

A body which was initially conceived to ensure more rigorous planning and application of not just local but national, EU and international laws on planning has been seen to be a place where those laws get thrown to the side. I had a long list of quotes reflecting the language judges have used when describing An Bord Pleanála's decisions. I will not read out all of them. An Bord Pleanála is losing these decisions because a judicial review can be taken only if there seems to be a concern about the process. This is not a matter of whether someone liked a project or did not like it. People win judicial reviews only when the process itself was not properly applied. I have one quote, for example, from a judge highlighting how the board showed a laxity in scrutiny involving, in effect, the cutting and pasting of the developer's materials without adequate critical interrogation. There was cutting and pasting of what the developer had sent the board in the board's decisions. Then it was said, "If you get caught on that, you should be able to change it up." That was one of the proposals. There is almost a dynamic of developers seeing how much they can get away with and then, if they get caught, trying to make sure there is no comeuppance. In the context of judicial reviews, the kinds of judgments An Bord Pleanála is losing are those where it seems to be cutting and pasting what developers have sent it. That is one example. I have a litany of examples of the decisions made by the courts against An Bord Pleanála.

The response to the very poor record An Bord Pleanála has had and the incredible damage that has been done to public confidence in the planning system has been to double down again and again. As a whole, and leaving aside the bad amendments, the Bill had already provided that those who had not applied proper environmental standards and so forth, where consent had to be given retrospectively when proper planning standards were not met in the first place, would be allowed to fast-track additional applications and planning applications, not even on the original site but on an adjoining site. A developer with an illegal quarry can add in something else on the site next door that does not even have to connect or have anything to do with

the original site. That goes straight to An Bord Pleanála, bypassing the local authority stage. That was being brought in by the Government even as members of An Bord Pleanála, who were former officials in the Department, were having to step down in respect of the poor quality and moral ambiguity of the decisions that had been made.

That is the context, and in that context we now have decisions that An Bord Pleanála should be able to correct its homework after the fact. That was one proposal, which I think has been withdrawn. There is still provision in the Bill that, before winning a case, someone first has to exhaust administrative solutions. There is the helping hand of the pre-meetings for the developer and the helping hand with flexibility as to what is applied for. There is a lifting of that side of the scales of justice and the pushing down of the scales of justice when it comes to the public. I wish to mention groups such as the Dublin Democratic Planning Alliance, which have described how these measures relating to judicial review are contrary not just to the letter but to the spirit of the Aarhus Convention. That idea of public involvement in decision-making is at the core of democracy. Sometimes people are very disaffected. When I try to persuade them to engage with politics and to believe in democracy and policy, when I tell them they can have their say and be part of shaping their lives and their world, the line I use again and again is how policy and politics are the decisions we make as to how we live together. Some of the most important decisions we make as to how we live together are those that relate to what gets built and what happens in our towns, our cities and our communities and what happens to the rivers and the forests of the natural environment we share. That is all part of how we live together and part of democracy. The public are now having obstacles placed in their way. They must exhaust administrative solutions while a clock ticks on their ability to submit judicial reviews and while a bill runs up for those people, who do this not just for themselves but for future generations. All of these obstacles are put in their way while they have not just one but maybe both hands tied behind their backs. Meanwhile, we have the pre-meetings, the extra period, the boards and so on happening on the side of the developer. That is imbalance and injustice. They all fit together.

We talk about separation of powers. I have talked about planning as part of democracy and about having a properly independent Judiciary that makes its decisions as part of a democracy and a proper independent legal process. The Minister, however, is seeking to tell the courts they already have the power to remit a decision to An Bord Pleanála if they point to where they believe it went wrong. They may wish to send it back or to look at it from a certain point. They may point to what needs to be addressed. They already have that discretion, but the Minister is trying to take away their discretion and, effectively, oblige them in most circumstances to send the poor decision that was made back to An Bord Pleanála. More judicial reviews are being taken because worse planning decisions are being made, much like more forestry appeals were being taken because the Minister for Agriculture, Food and the Marine had to stand before the Dáil and admit we were called out by Europe for not applying environmental standards in our forestry licensing. The reason there are more judicial reviews is there are worse decisions being made in that the process has not been properly applied. Now we are punishing people for that and telling developers to do what they want, to push their applications in and, in some cases, go straight to An Bord Pleanála with them. Maybe people will be able to take a judicial review but we will make it harder for them, they will have to wait a while and we will make them show all their cards and explain all the problems to the board first. The Government tried to make it so that one could change what one wrote about facts and correct factual inaccuracies after the fact. The Government has not put that in the Bill because it is so blatantly illegal. What we now still have in the Bill, however, is a provision that even if someone wins a judicial review, if

the courts find in favour of the public, that will go straight back to An Bord Pleanála. There are so many ways for the public to lose now. Some of these developers had totally inappropriate relationships with An Bord Pleanála, it seems. Of course, we will have to see how the investigations unfold. That is the situation, though, and that is the imbalance that has been created.

I urge the Minister of State at this late stage to withdraw at least the amendments on judicial review. If the Government is going to trample over some parts of the planning process, it should at least ensure the independence of our courts is protected. Also, for the record, there was no indication of the Minister of State's intentions, in his speech in April, to change the judicial review processes. The idea the Government would come after one of the pillars of democracy, namely, the independence of the Judiciary, without pre-legislative scrutiny is completely unacceptable. The short debate yesterday and the short debate today are no substitute.

Senator Fintan Warfield: I will pick up on what Senator Higgins said. There was no indication of this in April. We call on the Minister of State to withdraw the amendments in respect of judicial reviews. An overall review of judicial reviews will happen in the autumn. The Minister of State withdrew one of the amendments in the Dáil related to judicial reviews. He needs to do so again here. I know the Government thinks it will speed up planning, but this will only make things worse and cause more delays, more confusion and more uncertainty. Why not put our efforts into establishing a stand-alone environmental court?

Deputy Peter Burke: The first proposed change relates to the insertion of a new provision in section 50A of the Act to provide that the court shall not grant leave to apply for a judicial review challenge unless it is satisfied that the applicant has exhausted any available appeal procedure or any other administrative remedy available to him or her in respect of the decision or act concerned. This amendment effectively means that the courts will be required to consider whether there is an adequate or other administrative remedy available to address the issue that is the subject of the challenge and, if so, should not grant leave. Therefore, this amendment will create a presumption that the issues arising from decisions of planning authorities ought to be appealed to the board in the first instance unless there are special circumstances. In effect, an appeal to the board rather than a judicial review challenge to the courts should be the default position in the first instance.

This proposed change is in line with EU law and international law under the Aarhus Convention on access to justice. In this regard, Article 11.2 of the EIA directive, which transposes the Aarhus Convention into EU law, provides that member states shall determine at what stage planning and other environmental decisions may be challenged. Article 11.4 of the directive further provides for the possibility of a preliminary review procedure before an administrative authority, which shall not affect the requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures where such a requirement exists under national law. This proposed change has been flagged with the European Commission, which has not raised any issue.

The second proposed change relates to the insertion of a new subsection (9A) in section 50A to provide that, if the court decides to quash a decision or other act further to a judicial review challenge, it can, on request by the planning applicant, remit the matter back to the planning authority concerned or the board for reconsideration to correct an identified error, which will enable restarting the case from the point of the process at which the error occurred, thereby avoiding the delays associated with such proceedings. One of the benefits of this proposed change is that it will enable the courts to remit the decision back to the planning authority

concerned or the board, whichever the case may be, for consideration without the planning applicant having to submit a new revised planning application and start the process again from the beginning, thereby assisting in streamlining the overall planning process in respect of the development concerned. This is already happening in practice in some judicial reviews before the courts. The amendment is essentially providing a statutory underpinning to the adoption of this approach.

These proposed changes are designed to improve the efficiency of the case management procedures by which judicial review cases are handled in the courts so that cases can be more speedily addressed and rectified, thereby potentially reducing the number of judicial review cases and the time taken up in the courts dealing with such cases. On Second Stage, I referred to the judicial review changes.

An Leas-Chathaoirleach: Our good colleague wishes to correct the record.

Senator Alice-Mary Higgins: I wish to clarify that it is the chairman of An Bord Pleanála who is a former official in the Department and it is the vice chair who has stepped down. The wider investigation continues.

An Leas-Chathaoirleach: The Senator would never consciously make an error of that kind.

Group 5 on the Maritime Area Planning Act 2021 is the subject matter of amendments Nos. 31 to 64, inclusive, and Seanad Report Stage amendments Nos. 14 to 21, inclusive.

Deputy Peter Burke: I just took a look there - I referred to exactly what we are doing now. I was reading from my Second Stage contribution on judicial reviews of the administrative process word for word. There is a great deal of misinformation going around in Senators' responses today.

The sixth set of Government amendments relates to technical amendments to the Maritime Area Planning Act 2021. These amendments were recommended and drafted by the Office of the Attorney General. Section 56 of the 2021 Act will be amended to allow for the appointment of a chief executive officer designated by the Minister ahead of the establishment of the Maritime Area Regulatory Authority, MARA. Others of the amendments provided are technical in nature to support the establishment of the new marine planning system.

Senator Alice-Mary Higgins: No matter how the Minister of State says it, the Government published the amendments on Friday, so this is the first time we are seeing these proposals in writing. Someone simply saying that he or she aspires to do something in the future is not the same as tabling something. That this is now a maritime Bill as well is just the latest example of that.

Amendments Nos. 14 to 21, inclusive, seek the deletion of the proposed new subsections to section 3 of the Maritime Area Planning Act 2021, or the MAP Act. These Government amendments purport to define more precisely the application of the MAP Act in respect of a public body. My proposed amendment will ensure that there is consistency between that Act and the Maritime Jurisdiction Act 2021. The Minister of State is introducing these changes. Under our amendment, and with the exception of the one subsection that is mentioned, the public body would not be able to perform in respect of any other matter one or more of its public functions by virtue of a matter relating to, whether in whole or in part, the continental shelf. By virtue

of this subsection, the public body might perform the public function relating to the matter as if the continental shelf, or the part thereof concerned, was a part of the State, where the public body might perform such a function. The other provisions of the Bill or any other enactment should be construed accordingly.

Our amendment would provide that the holder of a MAC in carrying out maritime uses authorised under this Bill would have to act in accordance with certain matters. My amendment would provide that the holder of a MAC should not accrue a financial benefit or any other benefit or interest from the development of seagrass or seagrass meadows in respect of an area that the holder holds and for which a MAC has been authorised under this Bill. Notwithstanding anything else in the Bill, such benefits and interests would remain the State's exclusively. In light of the sustainable development goal, SDG, on life below water and so on, it is important that we have a very thoughtful approach to the State's maritime resources. It is also important that we make it clear that a MAC should in no way concede financial or proprietary benefits or interests to other parties. The State must remain the exclusive holder of benefits and interests where consents have been given.

My amendment provides that, "For the purposes of this section, 'foreshore' means the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek, and bay of the sea or of any such river or estuary" seawards out to the outer limit of the continental shelf.

Amendment No. 15 seeks to amend subsection (5) of the proposed section 33A by changing the timeframe for which an application for leave to apply for judicial review under order 84 is made. Extending the period is important. It is becoming much more difficult to be clear about exactly what is being applied for and there are requirements relating to administrative engagement and so forth. Amendment No. 15 would extend the period for applying for a judicial review under order 84 from eight weeks to three months. This would be appropriate and would indicate some good faith and a desire to ensure that the public have a suitable window of time in which to exercise their rights under judicial review.

Amendment No. 16 seeks the deletion of section 33B(3)(b), which has to do with appealing the granting of leave under section 33A where the court is satisfied that "the decision or act concerned relates to a development identified in or under regulations". My amendment replaces the changes put forward by the Minister in section 33B with a provision that a court would not grant leave under section 33A unless it is satisfied that "where the decision or act concerned relates to a development which may have significant effects on the environment, the applicant is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection". There are certain areas where permissions may be allowed in the context of the goal of environmental protection and it is appropriate that a different standard would apply in that circumstance, but that should not be extended to all circumstances in the context of leave under section 33A.

Amendment No. 17 seeks the deletion of section 49. The Minister has described it as a technical amendment but it raises concerns.

Amendment No. 18 inserts a new section 8A into the proposed section 143 of the Maritime Area Planning Act to provide that, "[i]n circumstances where the MARA has determined that swifter action is needed to either avoid or limit environmental damage related to the matter

the subject of the enforcement notice", the timeframe may be reduced. This recognises that there are situations where environmental protection and urgent environmental action might be needed.

On the issue of the environment, we have heard about the windmills and that this is the big justification in that regard. I am worried, however, about these big changes being made. This is not strictly related to the amendments but it does relate to the environmental argument in respect of these changes to the planning process. Let us be clear that when the planning and judicial review processes are changed in the way that is happening in the legislation, as well as in respect of issues such as substitute consent and that general thrust of the legislation, there may be windmills out front but sitting right behind them are the big data centres, the big Glanbia proposals and all the others. When the rules and goalposts are changed, they are changed for everyone. If the desire was to specifically address areas of particular climate urgency, more specific and tailored legislation would have been brought forward. That is the case in the maritime area in terms of offshore energy, but also in terms of provisions relating to planning more widely. It is a fact that flexibility is also being given to hotels and everybody else, rather than solely to areas of technological complexity.

Amendment No. 19 seeks the deletion of the proposed section 166A(2) of the Maritime Area Planning Act. That section relates to the persons and organisations exempt from rights of action by an estate in respect of a maritime area. It extends the list of those who have that protection from rights of action.

Amendment No. 21 seeks the deletion of section 73 of this legislation. Section 73(a) inserts section 279A into the Planning and Development Act 2000 to make clear that MARA should be recognised as a prescribed body for maritime development applications. That is important. In effect, what are being referred to are design envelope changes in the planning Bill being brought across the board in all these different areas, including the maritime area. They are substantial changes with significant effects. We talk about the MAC and those maritime processes but one must bear in mind that we are in a dangerous time, environmentally. Marine development is also being affected by that flexibility. I have spoken on the issue of wind energy. Let us be clear and honest that members of Government parties, including the Commissioner, Mairead McGuinness, are in Europe arguing for gas to be defined in the taxonomy, absurdly, as green development. I have concerns in respect of the offshore space and the dangers of potential expansion. Provisions have been made but those that were made in the climate development Act were not narrow or constrained enough. They allow for situations relating to where, for example, exploration, or even discussions about exploration, had happened in the past. That is why I am concerned in respect of our maritime area. I wish that we had marine protected areas, MPAs, in place. It would be better if we had them. A significant number of changes are being made in the Bill but it seems there is a rush to do everything except for moving forward with MPAs.

That is important because it comes back to the core issue in respect of planning that feeds into judicial reviews. Some judicial reviews are taken for other reasons, such as people wanting to have a liveable city, town or society. They want cities, towns and communities in which they can live - where they have sunlight, with people of different ages, access to green spaces and all those important things that make life worth living. Other judicial reviews are taken on environmental grounds and in terms of that wider piece of trying to protect, mind and nourish the part of the planet that our country covers and, more widely, to which our continental shelf extends. That is incredibly important. It is a motivation for many of those involved. That is why, when I speak about marine protection, I am speaking about these environmental ideas.

I am conscious this is the final grouping so it will be my last chance to come in on the matter. We need to start doing things properly. When people and groups who want planning permissions for windmills and all the rest came before the Oireachtas Joint Committee on Environment and Climate Action, they said they did not need a truncated planning process, but more resources to be allocated by the State to do planning better. I do not wish to be inaccurate. I think that only two of the An Bord Pleanála inspectors have expertise in the environmental area and can address those issues. We need more officials and inspectors to be in a position to do so. We need massive resourcing of the National Parks and Wildlife Service. We need NGOs to be resourced so that we can have better EIAs earlier in the process and better planning decisions can be made from the beginning. If that is done, there will be no need for judicial reviews. It is at the beginning of the process that more investment is needed, rather than it being done in this way of limiting those who try to apply a safety net after all suitable other precautions have not been taken. It is not about cutting holes in the safety net.

Deputy Peter Burke: The Maritime Area Planning Bill was enacted on 23 December 2021 and established the legal framework for a new planning system for the maritime area. One of the main features of the Act is the creation of a new State consent, namely, the maritime area consent, as a first step in a new and streamlined planning process. The Minister approved and signed a commencement order on 10 March 2022 to commence certain required elements of the Act, namely, sections 72(4) and 72(6). Section 72(4) sets out the process for the application for, and grant or refusal of, MACs. The commencement of these sections enabled the opening of the MAC window for relevant projects in accordance with the transition protocol as set out in the Act. Under the transition protocol, the Minister for the Environment, Climate and Communications has responsibility for assessing and granting the MACs for the relevant projects, that is, the first batch of offshore wind energy projects eligible to apply. The Department of the Environment, Climate and Communications engaged the Chief State Solicitor's Office, CSSO, to advise on the drafting of the terms of reference for MACs. The CSSO engaged senior counsel who identified the need to redefine elements of the Act to further safeguard the interests of the State and to enable the practical implementation of the legislation in granting maritime area consents. On foot of these findings, the Attorney General has advised of a number of technical amendments required to facilitate the operation of the Act. The policies and principles of the Act remain unchanged.

The Government has proposed amendments on section 3 on the advice of the Attorney General. The amendment proposed by the Senator does not accord with the advice of the Attorney General. This amendment seeks to alter the application of the Maritime Area Planning Act to specifically promote the conservation of seagrass. This is a policy objective and would be more appropriately addressed as part of the maritime protected area or designated maritime area plan. The managed conservation of seagrass is something this Government feels very strongly about both in terms of its use as a natural carbon sink and its potential to be part of the coastal erosion solution. We are open to a development of a maritime area plan to facilitate further this goal. However, it is not appropriate to identify a single objective in the application of the entire Maritime Area Planning Act.

Amendment No. 15 seeks to increase the period when judicial review proceedings under Order 84 can be brought from eight weeks to three months. Applying such an amendment introduced an inconsistency in the planning legislation by creating a disparity of time periods between the Maritime Area Planning Act and the Planning and Development Act and as such would cause uncertainty among the public.

Furthermore, eight weeks is a timeframe that has been recommended by the Attorney General. Section 33A(6) provides that the High Court may extend the eight-week period within which an application for leave may be made if it is satisfied that there is a good and sufficient reason for doing so and the circumstances that result in the failure to make an application for leave within the period so provided were outside the control of the applicant for the extension.

On Opposition amendment No. 16, the Government amendment providing for the insertion of chapter 8A in Part 2 introduces specific judicial review provisions including that:

> The Court shall not grant section 33A leave unless it is satisfied that—
>
> (a) there are substantial grounds for contending that the decision or act concerned is invalid or ought to be quashed, and
>
> (b) (i) the applicant has a sufficient interest in the matter which is the subject of the application, or
>
> (ii) where the decision or act concerned relates to a development identified in or under regulations made under section 176 of the Act of 2000, for the time being in force, as being development which may have significant effects on the environment, the applicant [and so on].

The Senator's amendment seeks to remove the requirement that a development be identified under section 176 of the 2000 Act. Since section 176 of the Planning and Development Act relates to prescribed classes of development that may have significant effects on the environment and wider area that require assessment, the Senator's amendment is a significant change of policy of the section and I therefore oppose the amendment.

On amendment No. 17, the Department of the Environment, Climate and Communications engaged the Office of the Chief State Solicitor to advise on the drafting of terms and conditions for the maritime area consents. Legal counsel has been engaged and on foot of those findings, the Attorney General has advised on the technical amendments. This includes the technical amendment that was proposed by the Government to section 85 relating to the assignment of MACs. That amendment includes the regulation-making power for classes of MACs assignment, as well as for the procedures that will apply to an application by the proposed MAC assigner or the proposed MAC assignee. The Government amendment of section 85 will allow for scenarios such as the future transfer of transmission assets to EirGrid.

Amendment No. 18 seeks to remove procedural fairness from the issuing of special enforcement notices by MARA. I will therefore oppose the amendment.

On amendment No. 19, the Government amendment that inserted Chapter 8 was drafted on the advice of the Attorney General. I am satisfied that it was significantly complete. Furthermore, section 137(1) of the Maritime Area Planning Act provides that MARA may appoint persons to be authorised officers for the purposes of all or any of the provisions of the Act as it thinks appropriate. I will therefore oppose the amendment.

Amendments Nos. 20 and 21 seek to delete provisions for design flexibility in the outer maritime area which have been provided for in accordance with Government amendment No. 77 on Committee Stage. The amendment to provide for design flexibility for planning applications introduced a preplanning application procedure for planning applications seeking a level of

flexibility with regard to the details of the proposed development to be submitted as part of the application. The design envelope approach will be based on options or parameters, all of which will be thoroughly assessed as part of the planning application. The flexibility will be limited to that which is assessed as part of the application. The amendment is intended to legislate for an approach which facilitates flexibility and provides for significant clarity to allow An Bord Pleanála to consider what level of information is appropriate on a case-by-case basis, while also providing appropriate safeguards for environmental assessment. Such flexibility is particularly fundamental for renewable energy projects where the technology is continually improving and may not be finalised prior to the submission of the planning application. A number of members of the Committee on Housing, Local Government and Heritage wanted to design flexibility to be included in the Maritime Area Planning Act and raised this during the committee hearings on the Bill. At that time we were cognisant of the need to apply principles across both terrestrial and maritime to avoid confusion and we were not yet ready for those to be developed. Since then, we have taken the time to revisit the issue in a joined-up manner and are now moving to address it. I think this addresses the committee's opinion expressed during the hearings.

The achievement of our 2030 renewable energy targets is dependent on robust planning legislation that is transparent and affords adequate protection to the environment while facilitating necessary and appropriate development. Therefore I oppose both amendments.

Senator Lynn Boylan: I move amendment No. 1:

In page 11, to delete lines 31 to 37.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 2:

In page 11, to delete lines 38 to 40, to delete pages 12 to 14, and in page 15 to delete lines 1 to 23.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put:

The Seanad divided: Tá, 7; Níl, 18.	
Tá	Níl
Boylan, Lynn.	Blaney, Niall.
Gavan, Paul.	Burke, Paddy.
Higgins, Alice-Mary.	Buttimer, Jerry.
Keogan, Sharon.	Byrne, Maria.
Ó Donnghaile, Niall.	Carrigy, Micheál.
Sherlock, Marie.	Cassells, Shane.
Warfield, Fintan.	Conway, Martin.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.

	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Kyne, Seán.
	Lombard, Tim.
	Murphy, Eugene.
	O'Reilly, Joe.
	Seery Kearney, Mary.

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

Amendment declared lost.

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

In page 16, to delete lines 31 to 38, to delete pages 17 and 18, and in page 19 to delete lines 1 to 7.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 19, to delete lines 8 to 23.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 19, to delete lines 24 to 27.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 6:

In page 22, to delete lines 33 to 38 and in page 23, to delete lines 1 to 14.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put:

The Seanad divided: Tá, 7; Níl, 20.	
Tá	Níl
Boylan, Lynn.	Ahearn, Garret.
Gavan, Paul.	Blaney, Niall.
Higgins, Alice-Mary.	Burke, Paddy.
Keogan, Sharon.	Buttimer, Jerry.
Ó Donnghaile, Niall.	Byrne, Maria.
Sherlock, Marie.	Carrigy, Micheál.
Warfield, Fintan.	Cassells, Shane.
	Conway, Martin.
	Cummins, John.
	Currie, Emer.
	Doherty, Regina.
	Dolan, Aisling.
	Fitzpatrick, Mary.
	Gallagher, Robbie.
	Kyne, Seán.
	Lombard, Tim.
	McGreehan, Erin.
	Murphy, Eugene.
	O'Reilly, Joe.
	Seery Kearney, Mary.

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

Amendment declared lost.

7 o'clock

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

In page 23, to delete lines 21 to 26 and substitute the following:

"(a) in paragraph (f), by the deletion of "an application for leave to apply for substitute consent or".".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 23, to delete lines 27 to 29.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 29, to delete lines 27 to 36 and in page 30, to delete lines 1 to 11.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 30, to delete lines 12 to 31.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 11:

In page 30, to delete lines 32 to 39, to delete pages 31 and 32, and in page 33 to delete lines 1 to 5.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 12:

In page 33, to delete lines 6 to 10.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 13:

In page 33, to delete lines 11 to 25.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put and declared lost.

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

In page 35, to delete lines 20 to 39 and substitute the following:

"(2) Where, but for this subsection, a public body would not be able to perform, in relation to any matter whatsoever, one or more than one of its public functions by virtue of the matter relating, whether in whole or in part, to the continental shelf or any part thereof, then, by virtue of this subsection, the public body may perform the public function concerned in relation to that matter as if the continental shelf or the part thereof

concerned were a part of the State where the public body may perform such function, and the other provisions of this Act or of

any other enactment shall, with all necessary modifications, be construed accordingly. This subsection extends the provisions of the Maritime Jurisdiction Act 2021 and shall be construed as one with that Act and may be cited together as the Maritime Jurisdiction Acts 2021 to 2022.

(3) The Government, a public body, including the MARA, the Minister before and after establishment day, and any chief executive of the MARA including any chief executive designate of the MARA appointed prior to establishment day under subsection (9) of section 56 (inserted by *section 28* of the *Planning and Development, Maritime and Valuation (Amendment) Act 2022*), shall, in the performance, in relation to any matter whatsoever, of its functions under this Act or any enactment amended by this Act shall—

(a) comply with—

(i) the obligations placed on the State by the Convention,

(ii) the obligations in respect of the rights of the public or any class of the public over the foreshore in relation to navigation and fishing,

(b) have regard to and promote the conservation of seagrass and seagrass meadows for the sequestration of carbon and its ability to halt the spread of marine plastic and, where such conservation in not practically compatible with the marine usage concerned, the provision of compensatory measures promoting the growth of seagrass and seagrass meadows elsewhere.

(4) The holder of a MAC in carrying out maritime usage authorised under this Act, shall act in accordance with the matters set out in subsection (3)(a), and shall act in accordance with requirements indicated by any body in accordance with subsection (3)(b).

(5) The holder of a MAC shall not accrue any financial or other benefit or interest from the development of seagrass or seagrass meadows in respect of any area they hold for which a MAC has been authorised under this Act, and notwithstanding anything elsewhere in this Act, such benefits and interests remain the exclusive interest of the State.

(6) For the purposes of this section, 'foreshore' means the bed and shore, below the line of high water of ordinary or medium tides, of the sea and of every tidal river and tidal estuary and of every channel, creek, and bay of the sea or of any such river or estuary, and shall extend seaward to the 'outer limit of the continental shelf' as defined in Part 4 of the Maritime Jurisdiction Act 2021. This meaning is without prejudice to the general definition of 'foreshore' in section 2 of this Act.

(7) For the purposes of this section, 'public authority' shall not include Coillte or Bord na Móna.".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 36, line 30 to delete "eight weeks" and substitute "three months".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 38, to delete lines 8 to 18 and susbtitute the following:

"(ii) where the decision or act concerned relates to a development which may have significant effects on the environment, the applicant is a body or organisation (other than a State authority, a public authority or governmental body or agency) the aims or objectives of which relate to the promotion of environmental protection.".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 40, to delete lines 16 to 41 and in page 41, to delete lines 1 to 17.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 46, between lines 8 and 9 to insert the following:

"(8A) In circumstances where the MARA has determined that swifter action is needed to either avoid or limit environmental damage related to the matter the subject of the enforcement notice—

(a) the requirement of subsection (4) shall not apply, and

(b) the timeframes specified in subsection (8)(a) may be reduced and determined by the MARA.".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

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

In page 50, to delete lines 14 to 19:

"(a) the MARA,

(b) a member of staff of the MARA (including a person referred to in section 64(5)),

(c) an authorised officer,

(d) a member of the Garda Síochána,

(e) an authorized officer of the National Parks and Wildlife in performing its functions including relation to the conservation of seagrass or seagrass meadows or in respect of habitats or species or habitats for species protected under any national enactment or any obligation consequent on the State's membership of the European Union, or any International Treaty to which the State is party to,

(f) any officer authorised under any enactment of the State where the officer is pursuing the conservation or protection of the environment or any element thereof,

(g) the coastguard,

(h) the defence forces, or

(i) a member of a public body in the performance of that body's public functions, including public functions on the continental shelf referred to in section 3 of this Act (as amended by the *Planning and Development, Maritime and Valuation (Amendment) Act 2022*), or a person or body authorized to act on their behalf.".

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

Senator Lynn Boylan: I move amendment No. 20:

In page 51, to delete lines 4 to 40 and to delete pages 52 to 53.

Senator Alice-Mary Higgins: I second the amendment.

Amendment put and declared lost.

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

In page 51, to delete lines 14 to 40, to delete page 52 and in page 53 to delete lines 1 to 26.

Senator Lynn Boylan: I second the amendment.

Amendment put and declared lost.

Question put: "That the Bill be received for final consideration."

The Seanad divided: Tá, 20; Níl, 7.	
Tá	Níl
Ahearn, Garret.	Boylan, Lynn.
Blaney, Niall.	Gavan, Paul.
Burke, Paddy.	Higgins, Alice-Mary.
Buttimer, Jerry.	Keogan, Sharon.
Byrne, Maria.	Ó Donnghaile, Niall.
Carrigy, Micheál.	Sherlock, Marie.
Cassells, Shane.	Warfield, Fintan.
Conway, Martin.	

Cummins, John.	
Currie, Emer.	
Doherty, Regina.	
Dolan, Aisling.	
Fitzpatrick, Mary.	
Gallagher, Robbie.	
Kyne, Seán.	
Lombard, Tim.	
McGreehan, Erin.	
Murphy, Eugene.	
O'Reilly, Joe.	
Seery Kearney, Mary.	

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

Question declared carried.

Bill reported without amendment.

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

Senator Regina Doherty: Now.

An Cathaoirleach: Is that agreed? Agreed.

Question, "That the Bill do now pass", put and declared carried.

An Cathaoirleach: I thank all Members, staff in the Seanad Office, including Mr. Martin Groves and Ms Bridget Doody, for their assistance. I thank the ushers, in particular, and all those who work in the Bills Office who have been working late into the night and early into the morning to get all of this done.

Cuireadh an Seanad ar athló ar 7.22 p.m. go dtí 2.30 p.m., Dé Céadaoin, an 14 Meán Fómhair 2022.

The Seanad adjourned at 7.22 p.m. until 2.30 p.m. on Wednesday, 14 September 2022.