



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**SEANAD ÉIREANN**

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

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# SEANAD ÉIREANN

*Déardaoin, 6 Deireadh Fómhair 2022*

*Thursday, 6 October 2022*

Chuaigh an Cathaoirleach i gceannas ar 10.30 a.m.

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*Machnamh agus Paidir.  
Reflection and Prayer.*

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## **Gnó an tSeanaid - Business of Seanad**

**An Cathaoirleach:** I have received notice from the following Senators that they propose to raise the following matters:

Senator Lynn Boylan - The need for the Minister for Finance to introduce a levy on private jet departures.

Senator John Cummins - The need for the Minister for Housing, Local Government and Heritage to make a statement on the expansion of the Croí Cónaithe towns and villages scheme to include rural one-off derelict properties and other vacant properties.

Senator Jerry Buttimer - The need for the Minister for Children, Equality, Disability, Integration and Youth to make a statement on the timeline for the re-opening of the early childhood care and education, ECCE, class in Morning Star National School, Ballyphehane, Cork.

Senator Malcolm Byrne - The need for the Minister for Further and Higher Education, Research, Innovation and Science to make a statement on Ireland's potential membership of the European Council for Nuclear Research, CERN.

Senator Micheál Carrigy - The need for the Minister for Health to make a statement on the provision of two palliative care beds at St. Joseph's Care Centre, Longford.

Senator Tim Lombard - The need for the Minister for Health to make a statement on the current level of podiatry care for older people in west Cork.

Senator Seán Kyne - The need for the Minister for Education to make a statement on the staff replacement process within the educational and training boards, ETBs.

Senator Maria Byrne - The need for the Minister for Social Protection to make a statement on the proposed new means test for the fuel allowance for the over-70s.

Senator Paul Gavan - The need for the Minister for Housing, Local Government and Heri-

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tage to make a statement on the application from Limerick City and County Council for a dedicated affordable homes team.

Senator Mary Seery Kearney - The need for the Minister for Education to make a statement on the Drinkaware education programme.

Senator Martin Conway - The need for the Minister for Health to make a statement on his plans to deliver a package of appropriate health care supports and compensation package to Thalidomide survivors.

Of the matters suitable for discussion, I have selected Senators Lynn Boylan, John Cummins and Jerry Buttimer. Senator Malcolm Byrne has withdrawn his Commencement matter which I had originally selected. The other Senators may give notice on another day of the matters that they wish to raise.

## Nithe i dtosach suíonna - Commencement Matters

### Aviation Industry

**An Cathaoirleach:** I welcome and thank Minister of State, Deputy Sean Fleming, for coming into the House.

**Senator Lynn Boylan:** Cuirim fáilte roimh an Aire Stáit go dtí an Teach. We know that aviation's climate impact is disproportionate and it continues to grow quickly. Emissions from private jets are growing even faster than the rest of the aviation industry with a 31% increase in CO2 emissions between 2005 and 2019. In just one hour, a single private jet can emit 2 tonnes of CO2 whereas the average Irish person emits 12.3 tonnes of CO2 over the course of an entire year and that is high by EU standards.

We know from the Oxfam carbon inequality report that flights are a major contributor to the carbon footprints the rich and famous. Footprints from aviation alone were found to be in excess of 1,000 tonnes per year for some celebrities. This summer the twitter account @CelebJets was used to highlight the outrageous carry-on of celebrities like Taylor Swift, Drake and Kylie Jenner and their absurdly short journeys by private jets from as little as ten minutes. People were rightly outraged because it points to the deep hypocrisy that currently exists around climate action where wealthy people seem to be exempt from any sort of change.

Sinn Féin believes that not all emissions are created equal. Climate justice scholars have long distinguished between luxury emissions and subsistence emissions. The latter arise from people meeting their basic needs in the absence of alternatives, while the former are produced by wealthy people who demonstrate just how wealthy they are. For too long, climate action has been about punishing ordinary working-class people and heaping guilt on them for living in a society that has locked them into a carbon-centric lifestyle and makes it very difficult and expensive for them to change. At the same time the wealthy seem to be exempt and continue to live carbon-intensive lifestyles.

Sinn Féin believes luxury emissions need to be pursued, not only because it is the right thing to do to tackle climate change, but because it demonstrates to wider society that we are seri-

ous about a just transition. It would also help to bring people along in the enormous challenge for society of tackling climate change. Sinn Féin proposes a tax of €3,000 on the departure of private jets from this State should be introduced. Canada has recently imposed a luxury tax on the sale and importation of high-value cars, planes and boats, while Switzerland has proposed taxing private-jet flights. According to data collected by the NGO, Transport & Environment, 5,998 private jets departed from the State in 2019 and in its paper, *Private Jets: Can the Super-Rich Supercharge Zero Emission Aviation?*, Transport & Environment proposed a €3,000 levy on private jet departures to account for the environmental damage that they cause.

These are genuine behavioural taxes because, as we all know, feasible more environmentally friendly alternatives are available to individuals to choose instead. The same cannot be said for the general carbon tax which does not distinguish the luxury from the necessary, nor consider the alternatives. Such a tax shows there is an alternative to generating the revenues needed to fund the wider fight against the climate crisis but I urge the Minister for Finance, Deputy Donohoe, to consider a tax on luxury emissions. This is just one example of them, namely, to try to get a handle on the completely unjustified depletion of the world's scarce remaining carbon budget by those who have very, very deep pockets and who are well able to fund the decarbonisation process.

**Minister of State at the Department of Finance (Deputy Sean Fleming):** I thank the Senator for raising this matter in the House today. First, I wish to apologise to Senator Boylan and to the House for the non-availability of the Minister for Finance, Deputy Donohoe, or myself yesterday, or of a Minister of State to speak on our behalf. I appreciate the forbearance of Senator Boylan in agreeing to speak on the Commencement matter today. I thank her for that.

At the outset it should be noted that neither the Minister for Finance, Deputy Donohoe, nor the Minister for Transport, Deputy Eamon Ryan, have given consideration of a levy on private jet departures to date. However, it is noted that Switzerland is well-advanced with such a proposal, although it is understood that it has not been commenced yet and neither has the levy rate been determined. The Swiss proposal would apply to private non-commercial flights departing from an airport situated in Switzerland and provides for a list of exemptions, including emergency medical service flights, military flights, flights operated under a public service obligation, etc. It is understood that France is giving consideration to the introduction of such a levy as well as in an effort to make transport greener and fairer.

In this regard, it should be noted that the issue may be raised by the French minister for transport at the upcoming informal Transport Council that will take place in Prague in the coming days, 20 to 21 October.

Before consideration could be given to any proposal of this type, we would need to gather information about the accurate number of private jets departing from Irish airports and I note the figures Senator Boylan mentioned. We need this on a yearly basis to establish the feasibility of such a measure. Private flights is a broad term without a specific definition, which can capture many different types of flights such as privately owned jet aircraft, to which the Senator refers, business aviation, fractional ownership by multiple owners, to name a few. At present the Department of Transport does not hold complete data on the number of private flights that pass through our airports as non-commercial operations are not required to apply for a flight authorisation prior to landing in an Irish airport.

I would like to touch on the taxation of fuel used for aviation, which is the responsibility

of the Minister for Finance, Deputy Donohoe. Ireland's excise duty treatment of fuel used for air navigation is governed by European Union law as set out in directive 2003/96/EC on the taxation of energy products and electricity, commonly known as the energy tax directive, ETD. The ETD was transposed into national law in the Finance Act 1999. Under the ETD member states are obliged to exempt from excise duty certain mineralised fuels used for commercial aviation purposes. In aviation fuels, the scope of the ETD exemption covers jet fuel, described as heavy oil, which is the most commonly used fuel type in air navigation. The exemption must encompass all jet fuel used for intra-community and international air transport purposes. A member state may, however, waive this exemption for intra-community flights but only where it has entered into a bilateral agreement with another member state to tax the fuel. Ireland has no such agreement at present and, therefore, the exemption from taxation is applied to all jet fuel used for commercial intra-community flights. The ETD provides that member states may opt to fully or partially exempt from taxation jet fuel used for commercial, domestic or air navigation. Currently, Ireland's mineral oil tax law provides that a fuel relief to apply to jet fuel used for all commercial air navigation, including domestic intra-community and international.

With regard to aviation fuel for commercial international transport, the scope for a member state to take a unilateral approach on taxation on aviation fuel is limited not only by the ETD but by international law and a range of bilateral and multilateral agreements that operate under the 1944 Convention on International Civil Aviation, also known as the Chicago Convention.

**An Leas-Chathaoirleach:** I thank the Minister of State. I call on Senator Boylan to respond.

**Senator Lynn Boylan:** I thank the Leas-Chathaoirleach. I also thank the Minister of State, Deputy Fleming, for the apology, which I accept completely. I am glad he was able to take the matter today. I see a glimmer of hope in the response he gave. It is interesting that again France seems to be leading the way in innovative approaches to climate action. I had a Commencement matter last week looking at the ban on fossil fuel adverts which again France is leading the way on. I would like to know the Government's position ahead of that Transport Council meeting because we know that is what is critical. It is all well and good for France to bring the proposal to the Council meeting but will Ireland back it up and support it? I would be interested to hear, the Minister of State, Deputy Fleming's view on that.

According to the Minister of State, Deputy Fleming's response, it is interesting to note the State is not collecting the necessary data in order to do that tax. This is another example of why Ireland needs to get its head around collecting data on wealth. Apparently, we do not have the data from the Government when it comes to a wealth tax and we are being told we do not have it when it comes to private jets. Of course the Sinn Féin proposal would allow for exemptions for emergency medical service and military flights.

**An Leas-Chathaoirleach:** I thank Senator Boylan. The Minister of State, Deputy Fleming, will have the final word.

**Deputy Sean Fleming:** Under the current legislative framework there is effectively no scope for Ireland to unilaterally tax commercial aviation fuel used by private jets. I have given the Senator the background and once there is agreement with another countries, it could be done. Senator Boylan mentioned that France is considering the introduction of this as well as a debate at the Transport Council in Prague on 20 to 21 October. We have not seen any specific details but closer to the time, the Minister for Transport, Deputy Eamon Ryan, will certainly

respond to that, if that is on the agenda that particular day.

The House may be aware, however, that a proposal to revise the energy tax directive is currently being negotiated at EU level and Ireland is actively engaged in these discussions. One area under consideration during these negotiations is the taxation of fuel used in commercial aviation which would, by definition, include private jets. There is still a long way to go with this proposal. However, as one of its essential purposes is to support faster uptake of cleaner fuel by taxing fuels on the basis of energy content, the environmental performance, rather than by volume, it is likely that aviation fuels, including those used by private jets, will fall within the scope of those discussions.

**An Leas-Chathaoirleach:** I thank the Minister of State and Senator Boylan.

### **Vacant Properties**

**Senator John Cummins:** I thank the Leas-Chathaoirleach. I also thank the Minister of State, Deputy Fleming, for coming to the House this morning to take this Commencement matter. I am sure he will agree with me that tackling vacancy and dereliction across our cities, towns, villages and rural countryside is something of great importance. It is a passion of mine. I have worked constructively since my election to this House and my appointment to the Joint Oireachtas Committee on Housing, Local Government and Heritage to engage with Department officials and the Minister for Housing, Local Government and Heritage, Deputy O'Brien, and the Minister of State, Deputy Peter Burke, on a number of proposals, some of which have been acted on and some of which are still under consideration. I hop that by tabling this Commencement matter this morning, we can move the dial on one particular scheme which has the potential to do a whole lot more.

In my county of Waterford, we have had tremendous success with schemes such as the repair and lease scheme, the buy and renew scheme and, to a lesser extent, the Living City initiative, which has been extended in budget 2023 to the end of 2027 and which is a welcome move. The benefits of bringing vacant and derelict buildings back into productive use are huge. It cleans up streetscapes, provides much-needed homes and is environmentally sound because it results in less carbon as it reuses what is already there.

The Croí Cónaithe towns and villages fund has been very well received across the country. I understand that local authorities have had very strong interest from prospective property owners looking to bring vacant and derelict properties back into productive use. With success of television programmes, such as “Room to Improve”, “The Great House Revival” and “Cheap Irish Homes”, we have seen what is possible when we think outside the box in delivering our dream home.

The obvious difficulty with vacant and derelict properties is that one does not know what is going to be there when one opens the property up. That is why this scheme, which provides a grant support of up to €50,000, is so welcome. The fact that it can be combined with measures such as Sustainable Energy Authority of Ireland, SEAI, grants gives people the potential to have a significant portion of the costs of renovation covered through grant aid, which is very important for young individuals and couples in particular who are trying to get their foot on the ladder. Not everybody wants to own or can afford to own a brand-new home in a city or a town. The target under the scheme of 2,000 properties by the end of 2025 is not ambitious



enough. We should be aiming to deliver a multiple of that but we will not do that if we do not expand the scheme to rural one-off houses and to cities and suburbs. I hope the Minister of State will be able to give a positive response as to the direction of travel in this space. The benefit of supporting rural one-off vacant and derelict properties is huge. It benefits rural communities, brings people back into the areas and supports the services, clubs and schools in those areas. The ideology within the Department that we should not support the renovation of rural one-off houses, in particular, needs to be consigned to the dustbin, to be quite frank. We need to be more ambitious with this scheme. It is an excellent scheme that is there to support first-time buyers in owning their own houses but we need to expand it to our cities and suburbs and to rural one-off houses.

**An Leas-Chathaoirleach:** Thank you Senator Cummins. I call on the Minister of State at the Department of Finance, Deputy Fleming, to respond.

**Deputy Sean Fleming:** I thank Senator Cummins for raising this important issue and allowing me the opportunity to provide an update on this matter. Pathway 4 of Housing for All sets out a blueprint to address vacancy and make efficient use of our existing housing stock. Many areas of cities, towns and villages of all sizes face the blight of vacant properties, which, if brought back into use, could add real vibrancy to, and provide new accommodation in, those areas. The Croí Cónaithe towns fund is a key initiative that underpins the policy objectives set out in pathway 4 of Housing for All. Schemes under this fund, which are delivered by local authorities, will provide new choices for people to live in towns and villages in Ireland through the provision of a grant to support the refurbishment of vacant properties and by providing serviced sites in towns and villages to people in order to build their own homes.

On 14 July this year, the vacant property refurbishment grant, funded by the Croí Cónaithe towns fund, was launched. The scheme will be of benefit to those who wish to turn a formerly vacant house or building into their principal private residence. It is important to note it is not for rental purposes; you must live in the house. The grant of up to €30,000 is available for the refurbishment of vacant properties for occupation as a principal private residence, including the conversion of a property which was not previously used as residential. An additional maximum top-up grant of €20,000 is available where the property is confirmed to be derelict, bringing the total grant available for a derelict property up to a maximum of €50,000. On that, if the house is on the council's derelict register, that is sufficient. If it is not on the register, the applicant can get a commercial consultant to provide a report stating it is derelict and the local vacant homes officer will then come out and inspect it. Once that is agreed, it can fall under the scheme. It does not have to already be on the derelict register.

On 21 September, the ready-to-build scheme, also funded by Croí Cónaithe towns fund, was launched. Under the scheme, local authorities will make serviced sites in towns and villages available to potential individual purchasers to build their own homes. These sites will be available at a discount on the market value of the site for the building of the property for occupation as the principal private residence of the purchaser. When the fund was launched, a commitment was made to ongoing review of the scheme. Feedback on the vacant property refurbishment scheme to date has been overwhelmingly positive, with 169 applications submitted up to the start of September.

Given that the key objective of pathway 4 of Housing for All is to ensure that houses we already have are being fully utilised, a decision has been made to extend the eligibility of the vacant property refurbishment grant to vacant properties in both our cities and rural areas. This

is a significant development. I want to take the opportunity to confirm this. The Minister announced it at the National Ploughing Championships recently. Both schemes under the Croí Cónaithe towns fund will continue to be only for those who intend to occupy the property as their principal private residence. Officials in the Department of Housing, Local Government and Heritage will work with the vacant homes officer in each of the local authorities in the coming weeks to update details of this grant, with a view to expanding the scheme. We hope to have that major expansion available in November of this year.

**An Leas-Chathaoirleach:** I thank the Minister of State. I call Senator Cummins.

**Senator John Cummins:** I thank the Minister of State for his very positive response to this Commencement matter. I stand corrected but my understanding from what the Minister previously said in relation to this was that it would be expanded to cities. However, it was not actually stated that it would be expanded to rural one-off houses. The fact the Minister of State is confirming that this morning is hugely welcome. It will be welcomed by local authorities right across the country and by young individuals and couples who are seeking to get their foot on the property ladder.

The Minister of State also referenced the flexibility in the top-up amount of €20,000. That is really positive as well, because there was a misconception at the start that it had to be on the derelict sites register. The fact that you can get a structural engineer to state that significant structural works need to be carried out to access the additional top-up is hugely welcome.

I really want to thank the Minister of State for the positive response. The fact that it will be open to all derelict and vacant properties across the State will enable us to expand on that 2,000 target up to 2025.

**An Leas-Chathaoirleach:** I thank Senator Cummins. I call on the Minister of State for a final word on the matter.

**Deputy Sean Fleming:** I want to join the Senator in welcoming this good news. When I was asked to stand in for the Minister for Housing, Local Government and Heritage this morning, I spoke at length with officials to confirm the details. Like everybody in rural areas, as soon as the scheme came out and was extended to villages of 400 or 500 people, we were immediately asked about the derelict houses in rural areas. This announcement by the Minister that it will be extended to rural areas is fantastic. They are now working with the vacant homes officers. Some 25 of the 31 local authorities have full-time vacant homes officers in place; the others need to get one in place urgently. I would advise people to work with the vacant homes officer in the local authority to progress this scheme. Discussions are ongoing. It will be November before the final details are available.

**An Leas-Chathaoirleach:** I thank the Minister of State and Senator Cummins.

While we await the Minister for Senator Buttimer's Commencement matter, I would like to welcome the young people and their teachers in the Gallery. It is wonderful to have them here. They are witnessing the part of the day, known as Commencement Matters, where Senators raise particular issues with Ministers and get responses. They are in the Houses of democracy and I hope some day one of them will be here representing their community.



**An Leas-Chathaoirleach:** I welcome the Minister for Children, Equality, Disability, Integration and Youth.

**Senator Jerry Buttimer:** I would like to welcome the students. The Minister for Children, Equality, Disability, Integration and Youth who is present is responsible for many aspects of their lives.

The issue I am raising is to do with young children, specifically, the pre-school in the Morning Star National School, Ballyphenane, County Cork, and the fact the pre-school has not be reopened. I thank the Minister for being here. It is a testament to the importance of this issue that he is here. I accept it is not the Minister's direct responsibility, but Tusla's, as I will explain later. That the Minister is here is a credit to him and underscores the importance he attaches to the matter. I thank him for that most sincerely.

I have been contacted by the parents of 15 young boys and girls, aged between three and four, who are waiting to attend pre-school. As the Minister will know well, early childhood development is very important. This pre-school has been doing huge work in the area for young children. I have spoken to the parents and to Mary, the manager of the pre-school. To say they are frustrated is an understatement. A small cohort is affected. As I said, it is 15 students. However, it is 15 young children who, in some cases, have developmental needs in terms of early development that needs to be progressed. The issue has been ongoing with Tusla since April of this year. As the Minister knows, Tusla is required to make the decision.

What has made the whole matter frustrating and disconcerting is that the pre-school in the exact same room was open until mid-April of this year. Due to a change of management and a change in use of a room in another school, the existing pre-school in Morning Star National School had to change its *modus operandi*. Mary, the manager, used to be based in Glasheen, but that had to close as the room was required. The opportunity arose for this pre-school to continue in Morning Star National School.

*11 o'clock*

The person in charge is of high calibre, great competency and much experience. Many of the parents just cannot comprehend the frustration being experienced now with what seems to be bureaucracy by Tusla at one level. I know the Minister is aware of the situation. I will describe the situation encountered by a parent whom I will not name. This person said they were concerned for their child's well-being and his mental health and understands, as a primary schoolteacher, the importance of school for his development. The communication continued by saying this person's son also has a speech and language delay, that he had made great progress since he had started preschool last year and that it is vital he returns to the school as soon as possible so he does not regress. This is the core of this issue. It is about progression and not regression.

I have spoken to many parents who have come to talk to me about this issue, and I thank them. It is hard to come by places in preschools. There had been an issue in this case with fire safety, health and safety risk assessment and planning permission. All those requirements have now been fulfilled and complied with by the management. Therefore, I hope we can see progress. Tusla is well aware of this matter and the issues with the building and the fire safety certificate. I believe there is an exemption from planning permission, an engineer visited the building to undertake a risk assessment, the fire brigade found adequate fire certification and

fire exits are *in situ*.

This is a one-room classroom. There has been no change of use and it has a planning permission exemption from the city council. I have spoken to people in City Hall about this issue. The start date has been pushed back. We are in the first week of October and there is an urgent need to expedite this matter. I again thank the Minister for being here and I appreciate his genuine interest. I am speaking on behalf of the parents and the young boys and girls they are advocating for. I am also advocating for them in this important matter. I hope we can see this situation resolved for the sake of the young people themselves.

**Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O’Gorman):** I welcome our guests in the Public Gallery as well and I hope they find their trip to the Oireachtas very interesting. I thank Senator Buttimer for raising this important issue, for advocating on behalf of the parents of the children attending the Morning Star preschool, and for emphasising the importance of this early education for those children as well as the support it provides for their parents.

Tusla is an independent statutory regulator for the sector. It is wholly responsible for the registration of all early learning and care and school-age childcare services. Approximately 4,000 early learning and care services and 2,200 school-age childcare services are registered with and inspected by Tusla. While my Department is responsible for the legislation governing the sector and we do work closely with Tusla, obviously the implementation of the regulations is solely a matter for Tusla. I am also restricted from intervening in specific cases.

It is a legal requirement under the Child Care Act 1991 regulations for those proposing to open an early years service to submit an application for registration with Tusla at least three months before it is proposed to commence operations. This is to allow sufficient time for the processing and approval of such applications, in line with the relevant statutory requirements. It is the responsibility of the providers of early years services to ensure they have all the documentation required in place, including fire certificates and planning compliance documents. Providers should also ensure they are ready for Tusla’s fit-for-purpose inspection, if required. Registration of early years services can be granted only where Tusla is satisfied that the premises, operation and location of the services pose no unmanaged risk to children. We can all understand why those regulations need to be adhered to.

Tusla cannot process applications that do not contain all the required documents, but it does inform providers who submit incomplete applications of any missing documents. The service then has an extra ten days to submit any outstanding documents. If it is not possible to provide the documentation sought in that timeframe, the application is closed. Open applications that are not being updated by providers are a drain on the resources of the early years inspectorate registration team, and this is made clear to all services seeking to apply for registration with Tusla. Therefore, although the onus does rest with prospective service providers to ensure their applications for registration are fully completed on submission, the inspectorate does work closely with applicants to help new services to open as soon as possible and to allow existing services to grow their capacity. The requirements and associated timelines for the processing of new registrations to ensure opening by September 2022 have been clearly communicated to the sector. In the interests of having a fair and transparent policy, therefore, Tusla will only review applications in the order they are received. This is in line with the organisation’s registration policy.

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My understanding of this case from Tusla is that some documentation was missing when the original application was submitted in August. Some of those documents remain outstanding. A revised application for registration was received on 30 September, however, and that is now being progressed based on Tusla's registration process. Therefore, it is important to say the application is now in train. It is hoped all relevant documents will now have been submitted. I suggest, though, that the management of the preschool double-check with the Tusla inspectorate and the city and county childcare committee in Cork that all those documents have been received to ensure there is no delay in this application being addressed and that it can be processed. It is to be hoped we will soon be able to see this facility for young people in the area reopened for them to resume their ECCE programme.

**Senator Jerry Buttimer:** I thank the Minister for being here and for his response. I accept there was an ongoing issue with some of the documentation. My understanding, however, is that all this has now been rectified. Issues were addressed in respect of fire safety and planning and all the requisite documents were submitted. From talking to the people involved, I believe all these aspects were addressed. I welcome the Minister's reply. Notwithstanding that, however, I ask if the application could be backdated to when it was originally submitted rather than having the clock starting at the end of September. This would help to expedite the situation.

As the Minister said, though, it is important there is engagement with Tusla. I appreciate this. There is a great need for this to happen. I will talk again to the people involved to ensure all the relevant documentation has been submitted and that there is clarity in this regard. The important point here is that I hope Tusla will expedite this matter. I say this because I think it is a bit unfair to the 15 students and their families that we have a situation where there is now a lacuna in the provision of these education services, when the documentation clearly illustrates there are no health and safety issues and no planning permission is required. I again thank the Minister wholeheartedly for his reply.

**Deputy Roderic O'Gorman:** As Senator Buttimer said, it would appear we now have a full application containing all relevant documentation. This is important and will allow for the application to be processed. Tusla is aware of the need to work expeditiously to ensure applications are processed, and the agency understands children will not be able to access education until this is done. Tusla's early years inspectorate is all about providing for the best form of education.

Additionally, that we are also now beyond the late summer period when the inspectorate was dealing with a great many registrations will mean it will now have the scope to focus on this application and to get it done. It is, however, important there is engagement in this regard and that it is clarified that all documents have been provided. Once that is the case, this application can be processed as expeditiously as possible.

*Cuireadh an Seanad ar fionraí ar 11.08 a.m. agus cuireadh tús leis arís ar 12 noon.*

*Sitting suspended at 11.08 a.m. and resumed at 12 noon.*

### **An tOrd Gnó - Order of Business**

**Senator Seán Kyne:** The Order of Business is No. 1, Road Traffic and Roads Bill 2021 – Second Stage, to be taken at 1.30 p.m. and to adjourn at 3 p.m., if not previously concluded,

with the time allocated to the Minister's opening speech not to exceed ten minutes, group spokespersons not to exceed eight minutes and all other Senators not to exceed five minutes, with the Minister to be given no less than ten minutes to reply to the debate; and No. 2, Assisted Decision-Making (Capacity) (Amendment) Bill 2022 – Committee Stage (resumed), to be taken at 3 p.m.

**Senator Lisa Chambers:** Yesterday, at the Wild Atlantic Words festival hosted in Castlebar, I met a remarkable young woman who I went to school with, Geraldine Lavelle. Geraldine sustained a very serious injury in an accident a number of years ago and is now paralysed from the neck down. She was an active fitness person and she cycled and went to the gym regularly. She was a fantastic athlete as well as being a scientist and an exceptional young woman. She remains all of those things and has fought her way back from what was a devastating injury. Yesterday, she published her book entitled *Weathering the Storm*. I have not yet had the pleasure of reading it. It is on my list to read very shortly and I encourage others to purchase it as well. If ever there was a story of getting through adversity, barriers and everything that could be thrown at someone, this is it. She lost so much on that particular day and has come back to show that anything is possible if one puts one's mind to it. I was in college with her sister while Geraldine was the year below me and I know the family very well. She is an inspirational young woman and has come through so much. Yesterday, she was rightly acknowledged for her fantastic new book *Weathering the Storm*. Geraldine is a regular columnist with *The Western People* and teaches in the Atlantic Technological University Sligo. She is, as I said, a scientist as well.

I congratulate Geraldine on her fantastic success - no doubt the first of many. She has dedicated much of her time since her injury to helping other people who have acquired a similar injury or paralyses. She has dedicated her time to helping others to come through the most difficult and devastating thing that can happen to anyone. I wish her well and congratulate her on the publication of her book.

A separate matter is the issue around school transport, concessionary and eligible tickets and all that comes with that. Every year, every single public representative is contacted - particularly in rural areas - by people who do not qualify for the bus because they are not going to the closest school and whatever. We make it really difficult for people. In this time of trying to get people out of their cars and onto public transport, we need to move to a system where there is no such thing as eligible or concessionary tickets. Any student that wants to take a bus should be given the option to do so. It is simply not safe in many parts of the country to cycle or walk to school, even if one lives quite close, because the cycling and walking infrastructure is not there yet. Some day it will be.

I request a debate at the earliest opportunity with the Minister for Education, Deputy Foley, to have a discussion about the future of school transport and how we might move away from concessionary and eligible tickets and move to a system where any student who wants a school bus, can get one. In my own county of Mayo, we have had particular difficulties as did every other part of the country. Straide in Mayo was a good example, among others, where people who had a concessionary ticket for many years did not get one this time but are now on a list to do so. I commend and thank the Minister, Deputy Foley, for securing the extra funds in budget 2023, to bring on stream additional capacity of more buses and more drivers. I also welcome the decision made by the Minister, Deputy Foley, and the Cabinet to prioritise those students who previously had a concessionary ticket and always availed of the bus service, and to deal with them first. That was the right decision to make. I would welcome such a debate.

**Senator Jerry Buttimer:** I welcome our Acting Leader to the House. Yesterday, the Independent Broadcasters of Ireland held a briefing in Buswells Hotel for Members of the Oireachtas around the Online Safety and Media Regulation Bill and the medium-term Future of Media Commission report. I think we all recognise that local radio plays a huge and important role in urban and rural communities across Ireland. I commend all those involved in local radio and ask that we as a House have a debate with the Minister on the future of local radio. We have had the Bill which is going through the Houses of the Oireachtas but yesterday's briefing spoke about a number of very important issues around the broadcasting levy and the implementation of the Future of Media Commission report recommendations on the funding of local radio. We gave huge acknowledgement to local newspapers with the reduction of VAT so surely it is time, in the context of the broadcasting levy, to look at how we support local radio. As a Government, we gave money in the budget to RTÉ and TG4 all of which we support, but there is a need to have a look at how we can support independent local radio.

My second request is that the Minister of State at the Department of Education with responsibility for special education and inclusion, Deputy Madigan, would come to the House to have a debate on special schools. Special schools, to my understanding, are not sanctioned for the post of home school liaison officers. We must give consideration to expanding this position to special schools, which require home school liaison officers far more than any other school community. It is important. If we look at why, and who attends our special schools, then the whole issue of home school community is one that we can debate. Those attending do not have a community of their own. They come from a myriad of communities. Again, it is about the scaffolding of support we put around the school, the child and the families of those with special needs. These pupils deserve the same support as those in a regular school. I hope the Minister of State will come to the House as a matter of urgency for this very important debate.

**Senator Gerard P. Craughwell:** I want to thank the Estonian ambassador, H.E. Kairi Künka, who set up a visit for me two weeks ago to a number of interesting cybersecurity places in Tallinn for the Louth Meath Education and Training Board to go out and see how a cybersecurity centre of excellence actually operates. With that in mind, I want to thank the NATO centre which brought us in and showed us its system. CR14 brought us in and showed us its system. I also thank CybExer and the Tallinn University of Technology. What we saw was out of this world and only showed me that we are light years behind a tiny little country such as Estonia. Sadly, because of other commitments I was not around to engage with the Minister, Deputy Coveney, on defence issues. I agree with my colleague Deputy Berry that we are a defenceless nation. We have so much data coming through our economic zone in the Atlantic and who is responsible for it? It is the Garda. The Garda does not go to sea. We do not have a Naval Service that is capable of monitoring what is going on. We do not have an Air Corps that is capable of monitoring what is going on. We are, for all intents and purposes, the talk of Europe with our failure to defend not only ourselves but the assets of the European Union that come through our economic zone.

We also have a situation where soldiers are walking out. My colleague, Senator Buttimer, is aware that an entire class of Naval Service apprentices has been bought out and they have gone to work for a private company. This could not happen if we were paying people correctly. A simple thing that could have been sorted out months, if not years, ago is the working time directive. People are sitting on their hands doing absolutely nothing about it and we are slowly watching our entire force implode. It has to stop.

We have to start taking a serious approach to our defence. What will happen is the foreign



direct investment we are so proud of, and rightly so, will walk out of this country when there is a serious attack one day. If any one of them is hit and it is found to be our problem, they will walk out of this country and it will devastate places such as my home county. I know how hard the acting leader works in Galway visiting places and making sure resources are made available. We have to step up to the plate on defence. The Garda cannot protect cables under the sea. We speak about the data being in the cloud. The cloud is actually under the sea and that is the truth of the matter. Unless we wake up and start taking care of the assets that are keeping this country front and centre we will lose all of this.

**Senator Paul Gavan:** This morning I met a wide-ranging group of community employment supervisors who, because of their plight, had taken the time to come here to meet Sinn Féin. I know the acting leader is very familiar with this because, unfortunately, Fine Gael and Fianna Fáil Governments have refused to give any pay increase to these workers for 14 years.

**Senator Gerard P. Craughwell:** No pensions.

**Senator Paul Gavan:** They have no pensions. The starting rates of pay for an assistant community employment supervisor is €11.01. It will actually be less than the minimum wage come the beginning of next year. What is most regrettable is that government after government has taken the line handed to it by the Civil Service and repeated it parrot like, that the State is not the employer and that it is up to the employers to give the community employment supervisors a pay rise. At the same time, if employers dared to give community employment supervisors a pay rise they would be penalised financially.

**Senator Gerard P. Craughwell:** Who pays the money?

**Senator Paul Gavan:** Last week we had the budget. I think the Government told us it spent approximately €11 billion. Fair play. The issue with the community employment supervisors would take a fraction of a fraction of that money to resolve. Once again Government Deputies and, unfortunately, Senators decided they would not do this. This is a political choice. This is the point I made to community employment supervisors this morning. A political choice is being consistently made by Fianna Fáil and Fine Gael to deny these people a pay rise. Then we think about the work they do. These people are the glue that holds our communities together. They began to list all of the work they do and they could have spoke for the rest of the meeting. They provide meals on wheels services. These are the workers who were at the front-line during Covid. They tripled their output during Covid to ensure people got decent hot meals. Fianna Fáil and Fine Gael were very happy to applaud them but not to give them a pay rise. That would be going too far. After 14 years of denial they have been left on poverty pay with no prospect of change.

Let us be clear. This is an eminently solvable issue. What it is lacking is the political will from the Government to finally tackle it. What is lacking is recognition of the crucial work these people do not only with meals on wheels but with the Irish Wheelchair Association, in community childcare where they play a massive role, with Enable Ireland, with Cheshire Ireland homes, in recycling, in housing associations and in hospices and hospitals. This is only the tip of the iceberg in terms of the work they do. I want the acting leader to acknowledge that this and previous governments have made the wrong political choices with regard to community employment supervisors. I ask for an urgent debate on the matter. I want to hear what people have to say on this topic so we can pressurise the Government to do the right thing. Frankly there is no excuse for 14 years of denying pay rises to some of the most important workers in



our communities.

**Senator Jerry Buttimer:** Did Senator Gavan acknowledge that the pensions issue has been resolved?

**Senator Paul Gavan:** It was not.

**Senator Jerry Buttimer:** It was.

**Senator Paul Gavan:** Talk to the community employment supervisors. It was a gratuity. It was pointless.

**Senator Jerry Buttimer:** Wrong again. The Senator is misleading the House.

**Senator Paul Gavan:** They have no pension.

**An Cathaoirleach:** Senator Sherlock without interruption.

**Senator Marie Sherlock:** The first thing to say is that it is disgraceful that it has been 14 years since community employment supervisors and all those working in section 56 and section 39 organisations have had a proper pay increase. It behoves the Government to act urgently to address this long-running sore for those who are providing vital services in our communities. We all speak at length about how important these services are but these people do not feel respected or appreciated because of the many years since they last saw a pay increase. I support Senator Gavan's comments in this regard.

I welcome the comments made last Saturday by the Minister, Deputy O'Brien, on reviewing and dramatically reforming the build-to-rent planning conditions that exist in this country. This is a long overdue announcement. It is something for which we have been calling for a long period of time. While it may not have huge relevance outside the main urban centres, here in Dublin it is massive. The only show in town with regard to building anything at present, particularly in the centre of Dublin, is building to rent. This excludes anybody who wants to buy a home from ever being able to do so. We have 5,000 build-to-rent units under construction, approved or going through the planning system at this point in time in the small area comprising Dublin 1, Dublin 7 and Dublin 3.

My main call this morning is to ask that the Minister come to the House sooner rather than later to set out to us very clearly what he intends to do to bring to an end build-to-rent and to set out the timing. In September 2020 a report landed on the Minister's desk on bringing to an end the co-living model that was introduced in 2018 under the former Minister, Eoghan Murphy. It took the Minister until days before Christmas to eventually sign the order. This gave well over three or four months of a long lead-in time for anybody to rush in a planning application. In the area I live in, planning applications for co-living that were rushed in during that period have yet to be built. We cannot have a situation where we have a long lead-in time on making an announcement to reform build-to-rent and then leaving it for many months before it is put into action. I want the Minister to come to the House.

**Senator Paul Daly:** This morning I want to discuss again the latest narrative on potential energy shortages. The Minister with responsibility for energy needs to come to the House for a debate on the issue. I would like to see the debate focused on the role of the energy companies in this potential and threatened crisis. I can give a number of examples. I have been contacted by somebody who installed solar panels and is prepared to supply energy to the grid. To get

this energy accepted and paid for is an unbelievable task. The power generation company in question has no interest. It is putting up hurdle after hurdle. It has changed the format of one form, which has already been submitted and now a new form has to go in.

I have another example of a factory that put a great many panels on its roof and would be in a position to supply an enormous amount of power back into the grid. That industry closes down at 1 o'clock on Fridays. One of the directors noticed on his phone, which shows the graph of how much power is being generated, that the line dropped to a straight line across the bottom at 1.30 p.m. on the first Friday the panels were *in situ*. When he went to research what was going on, he realised that, unbeknownst to himself, since this was the first time he had ever done anything like this, he had signed a contract containing something called a kill switch. Therefore, when his machines stopped running and drawing energy, the power company cut off the power. The power that was then being generated was being dumped.

Do the energy companies want this energy? We hear about potential shortages and then we hear stories like those. Why is there even such a thing as a kill switch in such contracts, irrespective of whether or not the person reads the small print, if we are potentially faced with an energy shortage? The latest narrative is that smart meters would solve all this, that we should all have solar panels and that anyone with a smart meter would be able to put power back into the grid. Now the narrative on the smart meter is that it will be used only to measure peak-time electricity and that there will be peak-time charges. Now people are refusing to take smart meters. The narrative is totally wrong. The Minister needs to come in and discuss this, but he also needs to sit down with the energy companies because they do not seem to want the power that, according to the story they keep peddling, they do not have.

**Senator Maria Byrne:** I rise today to raise a number of issues. First, I congratulate the artist Mr. Roger McCarthy, a Limerick-born Cappamore artist, on his contribution to the Limerick Art Society on its 80th anniversary. He was awarded a silver medal recently at the society's 80th birthday celebrations for his contribution not only to life in Limerick but also to the greater mid-west and to Ireland. He had a number of students. I myself was honoured to be one of his students over many years. He has given his love for arts and culture to many of them. I congratulate him on the receipt of his medal last week.

The second matter I wish to raise is the good news Ryanair announced at Shannon Airport today. It is good news for the mid-west region. The airline announced two direct routes from March 2023, one to Newcastle-upon-Tyne and one to Béziers, France. I compliment all at Shannon Airport on the Trojan work they are doing in developing flights from Shannon. I remind people that Shannon is a fantastic experience and that passengers can go through security and come out the other side in less than 20 minutes. There are great facilities between parking and everything else on site.

Lastly, I know that Senator Kyne is representing the Leader today. Something I had asked the Leader to follow up on related to the Revenue Commissioners. Only today I again received an email from a fellow constituent in his 70s who cannot get through to the Revenue Commissioners. It is a disgrace that a public organisation or a public service is not open to the public. The Revenue Commissioners have opened up for appointments in both Dublin and Cork. That should be spread out to the rest of Revenue offices. It is not good enough that people who want an appointment have to travel to Dublin or Cork.

**Senator Sharon Keogan:** This year, Ireland's population will increase by about 90,000

people, the fourth highest annual increase since the Famine. Some 27,700 of that figure will be due to natural change. More than 61,000 of the figure is net migration. This figure, massively inflated from our yearly average, is obviously due to the intake of Ukrainians fleeing the war. According to figures released by the Government this week, 79% of these people have notified the Government that they will require accommodation. It is right and honourable that we as a country should help those in need and do all within our power to assist those we can. It is also the case that attempting to do that which is outside our power ends up serving no one and it is past time we acknowledged the inconvenient truth, rather than accusing anyone voicing it of not caring about Ukrainian people. These people need long-term homes, secure jobs, education for their children and grassroots ties with their local communities. There is a limit to how many people we can provide that for, and that limit has already been passed. There are 10,800 people in emergency accommodation, 60,000 households on local authority housing waiting lists and tens of thousands of young people frozen out of the housing market. I am not sure what jigsaw the Cabinet is looking at but unlimited inward migration does not appear to fit into the picture the rest of us are looking at. Today's edition of *The Irish Times* contains a very worrying article. It relates to thousands of asylum seekers arriving into Dublin Airport with no travel documents. Between January and July this year, 2,915 people travelled into Dublin Airport and did not produce travel documents to border management officials, meaning they were refused leave to land. Of those, 2,232, or 77%, then claimed asylum.

Lastly, many of us have huge concerns about the Department of Defence's misnamed Building the Ecosystem event happening today in the Aviva Stadium, which is actually a military event with international representatives from the arms industry. The event subheading, "Identifying connections for collaboration in security, defence and dual-use technologies", does not serve to ease the concerns of many people in this country who sense that our military neutrality is being gradually eroded. Just whom is Ireland to collaborate on its security with, and to what end? I caution anyone with ambitions for Ireland to be a key player in the military field that our size and our power makes us more likely to be a pawn than any other piece. Ireland's neutrality has served us well, and I, alongside many in this country, do not want to see it undermined in service of special interests half a world away.

**Senator Garret Ahearn:** There has been a big increase in antisocial behaviour in Clonmel and the surrounding areas in recent weeks. This has been brewing for a number of years. Gardaí are doing their best but their resources are limited. We have now got to the stage where a young farmer was beaten so badly this week that he almost died. There is a fear within the community, across Clerihan, Lisronagh and Powerstown, about this and about the inaction there. Members of the Garda are under pressure themselves but there is a real fear within the community now. We try to promote stronger, safer communities and this is a prime example of good rural people who need to be protected and safe in their community.

A big meeting is to be held tonight at Moyle Rovers GAA club, in Moanroe, that everyone is asked to attend. I have been working with Councillors John FitzGerald and Michael Murphy and we have been talking to a great many of the concerned residents of the villages and the surrounding area. Members of the Garda, public representatives and members of the public will be there. I suggest that, following that meeting, along with me and Councillors Michael Murphy and John FitzGerald, the Minister might meet a delegation of the group that will be there tonight. There is real concern. This is a beautiful area just outside Clonmel. The residents should not have to be in fear of their lives because of the actions of a minority group of people. Everyone in the area knows who is involved in these acts of terrorising and assaulting people. We

really need the opportunity to meet with the Minister, Deputy McEntee. I ask Senator Kyne, in his capacity as acting Leader today, to support me in arranging a meeting with the Minister and a select delegation of the group that will be at the meeting tonight, along with Councillors Michael Murphy and John Fitzgerald.

**Senator Paddy Burke:** I ask that the acting Leader invite into the House the European Commissioner with responsibility for regulation of the medtech area. Most Members of the House had a meeting yesterday with the Irish Medtech Association and IBEC regarding the approval of medical devices in Europe. There is a huge backlog in respect of the approval of all these medical devices. It will have a major effect on the European population because EU regulation systems put patient access to medtech at risk. These devices are not being approved, and others are being approved at a very slow pace. A lot of start-up companies are now looking to the USA where FDA approval is much quicker. This will have a significant effect on Ireland. In Mayo, we have Baxter, Allergan, Hollister and Meissner, to name just a few. In the Cathaoirleach's area of Galway, there are a huge number of medical device companies. This is putting jobs in Ireland, the people who need to use the medical devices and hospitals at risk. I ask that we consider inviting the Commissioner with responsibility for this area to the House so that we can determine where the backlog or hold-ups are regarding the approval rates which are one in four. It will take up to 2024 before the backlog is approved.

**Senator Lynn Boylan:** I want to raise two issues today. I wish to flag with the Acting Leader the possibility that we could have statements on a committee report on dog welfare. People will know that I regularly raise issues around dog welfare in the House. The Joint Committee on Agriculture, Food and the Marine will produce a report next week which has nine powerful recommendations. I would welcome a debate on the report in the House.

I also wish to raise the fact that this Saturday is migratory bird day. The theme for this year is light pollution, something that is very close to my heart because we are seeing a proliferation of LED billboards around Dublin city. One in Rathmines made the airwaves recently because of how bright it is. These billboards have an impact on migrating birds. Ireland lies on the east Atlantic flyway for migrating birds. Natural darkness has a conservation value to them in the same way as clean water, air and soil. This year's migratory birds day is to raise awareness of light pollution and its negative impact on those birds. We know it is increasing, with the number of artificially lit outdoor areas rising by 2.2% per year from 2012 to 2016.

There are solutions to reducing light pollution, which include ensuring that environmental impact assessments are conducted for projects that can result in light pollution. Some cities have taken the step of banning LED billboards and are looking at the type of public lighting they have. We need to update outdoor lights to ensure they are fully shielded so that the light shines down rather than up towards the sky. We need to invest in lights that are on a timer and motion detector to reduce their overuse, as well as minimising blue light emissions by switching to warm coloured light bulbs. These are measures that I hope we will take on board in this country, given Ireland's importance as part of the pathway for migratory birds. We are in the middle of a biodiversity crisis. We have a citizens' assembly on it and we need to do everything we can to protect nature.

**Senator Mary Seery Kearney:** I would like to ask for a debate with the Minister for Education regarding the Access programmes rolled out in our schools, and the suitability and vetting of the programmes and the persons running, facilitating and funding them. Schools throughout the country are currently availing of a programme run by Drinkaware. While it

has good and useful material on its website, it is a charity funded by the drinks industry. It is going into schools and putting out a programme that is about education on alcohol and alcohol reduction. However, there is no transparency as to the content of that programme. The fact it is going into schools has in the past 24 hours been condemned by the Taoiseach and the HSE, as well as organisations such as the Irish Community Action on Alcohol Network, ICAAN, which is funded by the HSE. ICAAN is headed up by Paula Leonard and provides great supports to drugs and alcohol task forces around the country, and would be well placed to run programmes in schools. There seems to be automatic access. The detail of the programme which has been rolled out has been sought on several occasions and is not being provided. There needs to be transparency about the programmes that are run and the suitability of the organisations which run them and have access to young people.

I am involved with the Dublin 12 drugs and alcohol task force which, along with Canal Communities, put out a video earlier this year and did a research project on the availability of alcohol in various areas. The availability of alcohol has increased by over 100% or 200%. For people who are recovering, a simple walk between where they go to for support and their home may involve passing several outlets selling alcohol. The proliferation in the sale of alcohol is enormous.

It is not appropriate that Drinkaware runs programmes in school without transparency. We had an issue with inappropriate autism sentiments in schoolbooks last year and the books were withdrawn. There does not seem to be any regulation in the Department of Education as to what and who has access to our schools. I would like a debate on that.

**Senator Martin Conway:** I would like to raise the issue of the victims of thalidomide, the effect it has had on their lives and the fact that they have never received an apology or compensation from the State. This is one of the scandals that will eventually be dealt with, but the sad reality is that the community which has been affected is getting smaller and smaller all the time.

These are people who were born to women who took the drug during pregnancy. There are two tragedies. The first is the women who took the drug and the guilt they felt and still feel as a result of what happened to their children. The second tragedy is the thousands of lives that have been destroyed throughout the world and the people left with no compensation, apology or recognition. I call on the Acting Leader to organise a debate in the House with the Minister for Health, Deputy Stephen Donnelly, so that, for once and for all, a pathway can be put in place for a State apology, compensation and access to proper medical supports such as medical cards and other supports which these people need.

These people are getting older. Some have died and many others are very unwell. We have a moral responsibility to deal with this issue. I commend the Scottish Administration which has addressed the issue. Let us be a leader and let Ireland be the next country to apologise and put the necessary supports in place.

**Senator Paul Gavan:** Well said.

**Senator Tim Lombard:** It is five weeks since we discussed children returning to school and the lack of school transportation. The matter has not yet been solved and is a major issue for many people throughout rural Ireland. In my part of the world, children in Rossmore, Newcestown, Dunderrow, Nohoval and Ballinhassig have all contacted us in the past week seeking clarification on the Minister's announcement last week regarding putting money aside



to put in place a scheme that ensures children can get to school. There is a complete vacuum of information.

It is coming up to the mid-term break at this stage. Families are struggling trying to get kids to school. Children need access to education. A lady emailed my office yesterday to tell us she was unable to take her child to school because her husband was working abroad and she was not in a position to travel. That child did not go to school yesterday because of the lack of a school bus ticket. The child has been on the school bus for the past three years.

There are issues with three cohorts of children. The first comprises those who applied in February, but then received a subsequent email because the scheme had changed and, as a result, they did not get onto the list. The second are first years, who are considered to be in a different bracket because they were not previously on a bus. The third cohort comprises late applicants. This is all about trying to get kids to school in an appropriate and safe manner.

We have changed the rules and taken school bus passes from children who had them. Families are struggling. We need a solution. If nothing will be done, we need to tell the parents. If there is a policy change that needs to be enacted, let us enact it but we need to have a timeline. We have no timeline and because of that, kids all over the country are waiting at a crossroads for a bus that will never turn up.

**Senator Seán Kyne:** I thank the Senators for their contributions. We started and finished with Senators Chambers and Lombard, respectively, regarding school transport issues. Both request a debate with the Minister, Deputy Foley, on this. We welcome the €13 million additional funding in the budget for school transport. I agree that there are many children and parents not knowing where they stand. Senator Chambers talked about getting rid of the whole issue of concessionary tickets and eligibility and ensuring that there is a bus place for all school-going children who want one. Senator Lombard talked about people who are still none the wiser five weeks after the announcement that something will be done. I am dealing with those cases myself, so I certainly call on the Minister, Deputy Foley, to come in before us to discuss this at the earliest opportunity. Senator Chambers also talked about her friend and neighbour, Geraldine Lavelle, and wished her well on her new book, titled, *Weathering the Storm*. I will look out for that as well in bookshops.

Senator Buttimer spoke about independent broadcasters, the broadcasting levy and the future of radio. I will request that we have a debate on this issue. All of us, particularly rural Senators, would know the importance of local radio stations. At times of Covid, local radio was important for everything, whether it be Sunday Mass, the death notices, sports results or coverage of local sporting games. Local radio is hugely important across the regions. The levy they pay is a regulatory levy. There is some concern that if you scrap it entirely it will not be fair to other bodies, whether it be teachers or others, who also pay regulatory levies and there is a principle there. It is certainly a burden on local radio. If it can be reduced, at the very least, that would be welcome. Senator Buttimer also called for a debate on disability matters and I will request that from the Minister of State, Deputy Madigan.

Senator Craughwell raised cybersecurity and defence. Unfortunately, he could not make the debate during the week on the Defence Forces because he was abroad. The Minister, Deputy Coveney, was here and gave a good outline of the present status of the action plan, the commission report and what Cabinet has agreed. I note that in the past 24 hours, at the PDFORRA conference, he announced measures to increase the pay rates for private three-star naval seamen in



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the first three years of service, starting at €34,798 in year one, €36,128 in year two and €37,253 in year three of service. He also referenced the recently agreed extension to the Building Momentum pay agreement which, if ratified, would further improve members' pay and allowances to the order of 6.5% over 2022 and 2023. In recognition of a particular concern raised at the conference, that Defence Forces personal daily ration allowance should be raised to reflect present-day inflation prices, the Minister, Deputy Coveney, announced an increase in the daily ration rate of 52%. All of that is welcome. Senator Craughwell raised a number of other issues. As I said, the action plan on the report that has been commissioned will see priority in relation to radar and increases in personnel within the Naval Service and our forces. I certainly welcome that. On cybersecurity, obviously, the Minister is aware of the matter. Reference was made to the underground cables. It is hugely important that we are able to defend them. If he has any particular issues in mind, the Senator might be able to raise these in a Commencement debate.

Senator Gavan talked about community employment, CE, supervisors having had no pay increase for 14 years. In February, the Government welcomed the decision of the CE supervisors and assistant supervisors on voting in favour of ending the long-running dispute regarding pensions. They will receive an *ex-gratia* payment at an overall cost of €24 million. I know there is still an issue with the rural social scheme, RSS, and Tús, but I will contact the Minister, Deputy Humphreys, for a debate on the area. Obviously, no more than the section 39 organisations that I raised here myself recently, not having a pay increase for 14 years for any sector, particularly very important community sectors and all those involved in disability services, such as Ability West, is not good enough. I will request debate on that.

Senator Sherlock requested that the Minister for Housing, Local Government and Heritage, Deputy Darragh O'Brien, come into the Chamber to discuss issues regarding build-to-rent planning and reforms in that. I will certainly request an overall debate in housing. We have not had the Minister in for a while to discuss housing and Housing for All.

Senator Daly spoke about energy issues, which are absolutely crucial and vital. The EirGrid report stated there is a shortfall of supply over demand for the next decade. The statement published described the situation as stark and serious. EirGrid's chief executive talked about a tight winter ahead and could not guarantee that there would be no blackouts. There are a number of issues, including the performance of existing power plants as poor. Some 590 MW have been taken out of the system. Some 630 MW of power, which was contracted to come from new plants, has failed to materialise, as developers have pulled out. There have been technical and planning difficulties causing delays. Senator Daly also talked about something I had not heard of, the "kill switch". The Senator can table a Commencement matter on that. However, I will request the Minister to come in to discuss issues related to that. That makes no sense. There may be technical reasons involved relating to storage, but I do not know what they would be. If power has been generated and not collected and stored in the grid, that makes no sense.

Senator Maria Byrne congratulated Mr. Roger McCarthy on his service to the Limerick Art Society. She also welcomed the two new direct Ryanair routes from Shannon to Newcastle and Beziers. I agree that Shannon is an excellent airport. It has a quick throughput, whether it be for pre-clearance to the United States or for general security. It is very handy. Together with Ireland West Airport, it is certainly my first port of call, if possible, for a break away. They provide an excellent service. The Senator also asked that we contact Revenue regarding the opening of public offices. There are some things that are still delaying a resumption on normality post-Covid. People being able to meet with Revenue officials to discuss their issues in public

should be provided in all offices, particularly outside of Dublin and Cork.

Senator Keogan talked about the intake of Ukrainians, long-term homes and limits to how many people we can accommodate. I am proud of the response of the Irish people in government on a humanitarian issue where people had to flee their homes. We have all seen the television footage of what is going on in Ukraine and the atrocities that have been committed in Bucha and other areas. I am proud that the European Union and Ireland have stood up and welcomed people. People have welcomed others into their own homes and offered accommodation. I do not think we are taking away from Irish people, as the Senator put it. There is a housing situation and I accept that but it is not caused by Ukrainians. They have been welcomed into people's homes. They have been provided with accommodation in hotels and other buildings. We need long-term solutions and the Government is looking at modular homes. However, I agree that we need to also provide, as far as I am concerned, modular homes to deal with the housing situation across the board. We do not need to have a "them versus us" fight. Many good people have come to this country. In addition, we have shortages of people. We are crying out for nurses, home care assistants and staff for nursing homes up and down the country. We need people, thankfully, because we have full employment.

Senator Ahearn talked about the big increase in antisocial behaviour in Clonmel and said the people involved are known. That is good in one way, but it is about trying to ensure they are apprehended. There is a meeting tonight on that. I certainly will convey his request to the Minister for Justice, Deputy McEntee, to meet with a delegation from the public meeting to discuss issues of antisocial behaviour. Obviously, allocations of Garda within the country is a matter for the Garda Commissioner. In the recent budget, we increased the funding for new Garda as well, which is important, by more than 800, excluding retirement. There will be a net increase in the number of gardaí allocated and deployed across the country.

Senator Burke talked about the Irish medtech meeting yesterday, which I also attended, and called for a meeting with the European Commissioner to discuss the issue. I will certainly ask that the issue be raised with the Commissioner although it might be more appropriately discussed at the Joint Committee on Health or the Joint Committee on Enterprise, Trade and Employment. Certainly, I would be concerned that jobs are being put at risk. There is a new European directive on licensing. All existing products have to go through a new approval process so there is a backlog and I agree that it has to be resolved. The deadline is March 2024 but there is a backlog. Innovative medtech companies are concerned about the impact here.

Senator Boylan talked about the fact that the Oireachtas Joint Committee on Agriculture, Food and the Marine will be producing a report on dog welfare and I look forward to that. Perhaps we will get an opportunity to discuss it at a later date. She also talked about the impact of light pollution on migratory birds. This is an interesting issue and one that could be debated in the Seanad or at the relevant Oireachtas committee in the context of our heritage and additional resources for the National Parks and Wildlife Service, NPWS.

Senator Seery Kearney called for a debate with the Minister for Education on the vetting of programmes rolled out in schools. She referenced Drinkaware, a charity funded by the drinks industry, and argued that there is no transparency regarding what it does. I will certainly request that debate. I agree with the Senator's point about the numerous outlets selling alcohol. A former Minister of State at the Department of Health, Marcella Corcoran Kennedy, put in place legislation regulating the visibility of alcohol products in off licences and supermarkets. It is now less visible than it was previously but it is still visible. There is no doubt that the ease

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of access to alcohol is of concern around the country. I will ask the Minister to look at this in the context of Drinkaware and other bodies that have access to schools and to the minds of our children.

Senator Conway raised the important issue of thalidomide. RTÉ aired a “Scannal” documentary on the issue during the week, which I have not seen yet but I will watch it on the RTÉ Player. There are a small number of survivors of thalidomide - approximately 40, I believe - and very few of their parents still survive. I can only imagine the guilt that parents felt, through no fault of their own. Thousands of lives have been impacted. I understand that there is a big possibility of a legal bill to defend cases. It would be a shame if we spent millions upon millions of euro to defend cases rather than using that money to provide some comfort to the affected families. Perhaps there could be stand-alone legislation to provide supports for people who suffered because of thalidomide. There were no medicine licensing boards at that time but nevertheless, people were impacted through no fault of their own and the State should acknowledge that and provide support to the survivors and those impacted.

Order of Business agreed to.

*Cuireadh an Seanad ar fionraí ar 12.54 p.m. agus cuireadh tús leis arís ar 1.30 p.m.*

*Sitting suspended at 12.54 p.m. and resumed at 1.30 p.m.*

### **Road Traffic and Roads Bill 2021: Second Stage**

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

**Minister for Transport (Deputy Eamon Ryan):** I am honoured to bring the Bill before the Seanad. It is a substantial Bill that addresses a wide range of necessary areas of legislation and meets a number of commitments in the programme for Government. The Bill will contribute a great deal to improvements on our roads and, above all, to greater safety for all road users.

In the programme for Government, we committed to legislating for e-scooters and e-bikes. We also committed to addressing the menace of the anti-social use of scramblers and other vehicles. The Bill will address all of these issues. It does a great deal more as well. Among the major issues addressed are necessary legislation to underpin delivery of the BusConnects project and to enable the introduction by Transport Infrastructure Ireland, TII, of dynamic traffic management on the M50. It also has measures which address uninsured driving by significant and necessary amendments to existing legislation on the database of insurance policies. It updates the law in areas such as driving instruction, medical fitness to drive and the system of fixed-charge notices issued by traffic wardens.

I wish to acknowledge the role and contribution of the many people and organisations who have contributed to the development of the Bill. In particular, it benefited from the work of the Oireachtas joint committee through the pre-legislative scrutiny process, and from the debates in the Dáil. I note the very constructive advice received from the Data Protection Commissioner in our efforts to ensure that measures such as those on the motor insurance database comply with data protection requirements.

All road traffic law is ultimately intended to contribute to safety on our roads. We have made great progress on road safety in the past 25 years. In 1997, the last year before our first

national road safety strategy, 472 people died on Irish roads. In 2021, there were 137 deaths, the lowest on record. Inevitably, there have been ups and downs. Some years have seen increases on the preceding years and it is getting harder to reduce deaths further. Last December, we published our new road safety strategy, covering the years from 2021 to 2030. In line with the programme for Government, this strategy has a focus on vulnerable road users in particular, and is committed to Vision Zero, the EU target of zero deaths and serious injuries on European roads by 2050. The strategy aims to reduce deaths and serious injuries by 50% by the end of the decade.

I mentioned vulnerable road users. This applies particularly to people who are walking and cycling. We want to encourage active and healthy modes of travel, which are not only better for general health and well-being but are also more sustainable as we face the great challenge of climate change. If we are serious about encouraging active travel, we have to make sure that it is safe. There is no doubt that one of the biggest deterrents to people switching to active travel is concern about safety.

As regards the contents of the Bill, first, it seeks to deliver micromobility and legalise the system in respect of powered personal transporters. Road traffic legislation covers a multitude of issues and no Bill can address everything, but anyone who has examined this Bill will agree that it is ambitious and addresses a wide range of issues. Micromobility options such as e-scooters and e-bikes have an important role to play in a future sustainable transport mix. E-scooters have become very popular in recent years, both in Ireland and abroad. As a new mode of transport, they have inevitably raised legal questions. The questions revolve around, first, where they fit into current road traffic law and, second, how we want them to fit in in future. The answer to the first question is simple. Under current law, electric scooters meet the definition of “mechanically propelled vehicles”. This means they cannot be used in a public place without tax, insurance and an appropriate driving licence. Since it is not possible to tax e-scooters because they are not type-approved, and as there is no appropriate category of driving licence for them, e-scooters are currently illegal for use on the public road. We want to change that. We also want to take into account the possibility of other related forms of micromobility options appearing in the future. To do this, the Bill will establish a new vehicle category, called powered personal transporters, PPTs. This new category not only captures e-scooters but also allows for other new and innovative micromobility vehicles that may need regulation in years to come. To be clear, these provisions will not apply to mobility scooters and the existing legislative framework for those vehicles will not be affected.

The Road Traffic Acts provide definitions of various types of vehicles and provide powers to regulate their construction, equipment and use. As with other classes of vehicles, the creation of the new PPT class will allow for the regulation of their construction, equipment and use. Amendments to a number of provisions in existing road traffic legislation will clarify where those provisions do or do not apply to PPTs. Senators may wish to note that, in some important respects, PPTs will be treated similarly to bicycles. As with bicycles, registration, licensing, taxation and insurance will not be required. Once the Bill has been enacted, regulations governing technical standards and use of e-scooters will be made. The provisions in this Bill relating to e-scooters will be commenced in tandem with the completion of those regulations. This will ensure a full legislative framework governing e-scooters can be implemented from the day the regulations are signed into law. Until that time, use of e-scooters in public places will continue to be illegal.

The regulations will set out minimum vehicle standards for e-scooters to ensure they are

safe to use and environmentally friendly. When technical standards are introduced in EU member states, a minimum 12-week standstill period is triggered to allow the Commission and the other EU member states time to assess the national draft rules in light of EU competition rules. This process prevents regulatory barriers to the free movement of goods and information services in the Union. This necessary and binding delay allows Ireland to meet our EU obligations under the Single Market transparency directive but also means regulations cannot be introduced immediately after the passage of the Bill. My Department is committed to progressing the regulations to publication as quickly as possible. I am of course aware there is interest in the legislation around e-scooters. There have been many views expressed on such questions, such as where the use of e-scooters should be permitted, whether there should be an age limit, and whether the use of helmets and other personal protective equipment should be required. These are all matters that, in line with the way such matters are addressed for other vehicles, will be addressed in the regulations governing e-scooters and not in primary legislation in the Bill. I add that it is our intention that regulations will provide for e-scooters to be for use by one person only and they will not be permitted to transport goods. This is a matter of safety for people using them and for others in their vicinity. Other issues that have raised interest, such as regulation of e-scooter rental schemes, are not appropriate to road traffic and roads legislation. The Department of Transport has no function in regard to such commercial enterprises. Instead, the governance of any such schemes would be a matter for the local authorities in question.

In addition to addressing the regulation of e-scooters, the Bill will also provide much-needed legal clarity for the growing cohort of e-bike users in Ireland by defining the requirements for low-powered e-bikes and high-powered e-bikes. Low-powered e-bikes, also known as pedelecs, are assisted by pedalling and can reach speeds of up to 25 km/h. We will continue to treat this kind of e-bike in the same way as an ordinary pedal bicycle, and the rules of the road for bicycles will apply accordingly. This type of e-bike will not require registration, taxation, or licensing. High-powered e-bikes, which are those that can be used without pedalling or those that can reach speeds in excess of 25 km/h, will be treated in the same way as light mopeds and therefore will need to be registered, taxed and insured, and used only by an appropriately licensed driver. This is because these e-bikes are capable of speeds up to 100 km/h in some cases and present much greater danger to the user and to other vulnerable road users. This approach allows us to take advantage of the existing legislative framework for mopeds and motorbikes in the Road Traffic Acts and in other legislation in respect of registration, driver training and licensing and so avoids the need to establish new bodies to carry out these vital functions. It also aligns our national rules for e-bikes with the approach taken in other jurisdictions and with the type-approval framework established in Regulation (EU) No. 168/2013, which sets out the rules for two- and three-wheeled vehicles. As we already have a legislative framework in place for bicycles and for light mopeds, the provisions governing e-bikes will come into effect as soon as the Bill is signed into law and subsequent regulations will not be needed.

We also committed in our programme for Government to address the antisocial use of scramblers, quads and other similar vehicles. This is a longstanding problem that can range from a nuisance to a serious danger to health and to life. People who use these vehicles in shared public amenities can ruin the use of those amenities for the communities the amenities are meant to serve. We can all agree we want to put a stop to any such behaviour. Getting the legislation right has not been easy, and I acknowledge the personal input of the Attorney General in arriving at the measures we are proposing. What we will do operates on three levels. First, there will be a new power to specify in regulations that certain types of vehicles are banned from certain areas. This will allow the flexibility needed to deal with this problem on an evolving



basis. Second, there will be a new Garda power to seize and dispose of vehicles, whether at the scene of an offence or at the location where the vehicle is kept. This is important because it is often the case that gardaí cannot actually intercept a scrambler or quad where it is being mis-used without risking the safety of bystanders, or indeed of the rider. Third, we will be amending the offence of dangerous driving so it will apply in all locations and not just in a public place.

I do not have time to go through the entirety of the measures I have in my speech. Suffice it to say the legislation is important to give us the powers to give us BusConnects projects around the country. As I said at the outset, it allows us to introduce enhanced traffic management systems for our motorway operating services, especially variable speeds on the M50, and to put up displays in that regard. The Bill has significant provisions linking driver licence and vehicle ownership records that will again be of huge benefit in the efficient Garda use of our traffic management and regulation systems. It will deliver completion of a national motor insurance database that will be hugely significant in reducing the cost of insurance, getting greater certainty and ensuring we operate within the general data protection regulation. This is significant legislation and I commend it to the House.

**Senator Róisín Garvey:** This is a great day for road traffic in Ireland. This is badly needed legislation, especially given the increased use of e-scooters, e-bikes, etc. I congratulate the Minister and his team on the work to date.

There are a few different points I wish to raise around the Bill itself. Section 56 of Part 15 relates to zero emission vehicles Ireland, ZEVI. I looked up the website and it looks good and is impressive, but all the information there is about e-cars. I spent more than 14 years on the modal shift and working with schoolchildren in rural and urban areas throughout Clare, Galway and Limerick. To think we are going to focus on e-cars replacing petrol and diesel ones deeply upsets me. We must give space back to people. It does not matter what a car runs on. It is not the Green wish. We are being accused of trying to get everybody into e-cars, but that was never our wish. The figure of 1 million e-cars was thrown out there way before we got into Government and it is really important to look at what it means to have an electric vehicle and what ZEVI's role might be.

I live in the middle of nowhere in rural Ireland but I do not think e-cars are the only solution we have, even in rural areas. In urban areas especially it is madness because the more urban the area, the more you are fighting for space. It therefore makes much more sense to think about other things like e-cargo bikes for deliveries. Outside my office I see DPD has copped on to that. It has given up on driving trucks around to deliver and is using e-cargo bikes. This is a game-changer. That is great in Dublin but in Ennis I still see trucks driving through the small narrow streets. We have those sorts of streets in most towns and villages and so we need to look at the whole e-cargo bike option. I see it in some places in Dublin, perhaps in better-off areas and really built-up ones, but we need to look at how we see EVs as part of the solution. It is not just about cars. If we have staff in - and with everything else, this I presume, will be increased - it is important to ensure that any work, staff resources and financial supports applied to electric cars are also applied even more so to work on e-bikes, e-cargo bikes and adapted cycles. The information on the grants we currently give for e-bikes is not even given on the bike to work scheme. It is very important that people who are working are included if we are to take this seriously.

If one looks at engine-idling, for instance, outside of schools; that would be solved by having EVs but it does not solve all of the other issues. There is still a danger with cars no matter



what they run on. There is the pollution from tyres and the lack of space for children to be able to walk beside their friends because the cars, even if they are electric, still park on footpaths all the time. There is such a significant issue there around road traffic and no matter what size car a person has, or what the car runs on, one also has the issue around speed. We very much need to look at that issue. Many people ring me all the time saying that they need a speed limit in their housing estate. When I go to the engineer and say that that makes sense as there are 50 children living there, the engineer says they cannot act because legislation would be needed around it. If a car is travelling at 60 km/h and hits somebody, nine out of ten people will die. If a car is travelling at 50 km/h, half of them will die. That is the current speed limit that we have in our towns, villages and housing estates. This is just insane but if we had a 30 km/h speed limit, then one out of ten people will die. That is not to mention all of the terrible and severe injuries that also come with these accidents.

As somebody who lives in the middle of nowhere, we have many rural roads which I believe would be safe enough to use an e-bike on. For older people, this might also be a choice. In other countries we see that there are incentives to swap one's car and switch to an e-bike, as well as incentives to buy an e-bike in the first place. This has a very significant part to play in transport and the transformation we need will not be just in respect of e-cars but it will also be e-bikes.

We see very significant issues of air pollution from the tyres themselves. There is also, of course, the affordability issue, as not everybody can afford an e-car. I want to dispel that myth that the Green Party members are all upper-middle-class and that we will all buy e-cars. None of us has ever said that. That is just a nice populist thing that has been thrown out there. We believe and know, however, as does our transport spokesperson, Deputy Leddin and the Minister himself, that it is not all about cars, whatever they are being run on, even if they are run on hemp oil.

We want to get people moving. We have very significant health issues and we are moving like the 51st state of America in respect of our obesity levels. One quarter of our nine-year-old children are overweight. This is because of cars which is the number one cause; I am sorry but that is just a fact.

We need to take this seriously; there is almost this cars versus bikes thing, but it is not about that, it is about people. It is about people moving and the space we share, whether that is a truck, a cyclist, or an old person with a disability aid; we have to learn how to move around together. Speed is one of the biggest things we can address to make it safer. Then it is about having respect for the space we have given over to cyclists, bikes and walkers, and not to be parking on their spaces, as I regularly come across that. We have new laws and fines but we do not have enforcement.

One other issue I wish to mention relates to a great company in Shannon, which the Minister and I visited, that is making autonomous vehicles. We are looking to allow the company to test drive them, which is necessary, and these will bring some benefits with them. If they are going to be test driven on public roads, it is important that we insist and ensure that there is a human in the car because this is only at test stage. Testing means we are unsure as to whether it will definitely work. The bottom line is that there must be a human in the car because if anything goes wrong, which it could do because this is at test stage, we need a person to be able to grab the wheel, press the brake, or whatever is involved.

I have been going around the country doing guerrilla road signs with parents all over Munster with a #30 km/h, love-30 campaign. This should not be an outside-of-the-system kind of campaign any more. Many parents have made signs asking people to slow down as their children want to walk to school. We have to put children, people with disabilities and older people at the centre of this whole debate as to how we move around. I know that the Minister understands this but we have to get this message through to the National Transport Authority, NTA, to Transport Infrastructure Ireland, TII, and to the National Roads Authority, NRA. There are many groups but we have to get them all together to agree that it is time to stop putting car as king and to put people first, because we are doing a disservice to our children, to our older people and to our people with disabilities.

I thank the Minister for his work today and I look forward to a day when I can get on my e-bike, travel down my country road, put my bike on the bus, get the bus to the train, and get the train to Dublin. At the moment I am forced to drive to the train because we do not have that connectivity there. That is what the reality of rural dwellers is now. Buses connect but it is not just about buses. Both pedestrians and cyclists must be connected with the bus and with the train and this is a very good first step in getting there because I believe that e-bikes and e-scooters have a very significant part to play. It is good, then, that we have some rules and regulations around them now. Gabhaim míle buíochas.

**Senator Victor Boyhan:** I welcome the Minister and thank him for coming to the House to set out this important Bill of his. I am generally supportive of the content of the Bill. We will need to tease out one or two issues and I will flag them to the Minister rather than tease them out now. This can be done later on in the process.

I also want to thank the Oireachtas Library and Research Service which has done quite an extensive review of and commentary on the Minister's Bill, which is very helpful. I would urge everyone who has not had a chance yet to have a look at it. One of the great things about the Oireachtas Library and Research Service is that it gives us independent analysis and pulls the bits together, but it also gives a commentary on the legislation. Some of the comments are particularly interesting and the Minister's own Department might take the time to have a look at this material, if it has not already had that opportunity.

I will focus on three issues. First, I welcome the idea, where we know and the Minister has stated this before, that the road traffic offences account for most criminal cases now in the District Court and that they are clogging them up. That is crazy. We have a situation in the Dún Laoghaire-Rathdown area, which I am familiar with and is where I live, that in the Dún Laoghaire District Court, the judge has to make time for these. The court is now bringing in all of the parking attendants and they are sworn in together. A certain judge is of particular interest there because she first asks people that if they accept that they have responsibility for this offence they can pay their additional fine because she does not want to put these defendants into the box, does not want to cross-examine, does not want them to be wasting her time or for her to be wasting their time. That is pragmatism and it does not happen in all District Court locations. We are seeing courts being clogged up, particularly around the country.

The Minister's proposal under this Bill is to have three opportunities to pay a fixed charge notice, if I am correct. One is that it is paid within 28-days of the issue of the notice. With the second, one pays the charge plus an additional 50% within a further 28-days. Third, one pays the charge plus a further 100% when issued with a summons to court. This should then result in fewer cases being prosecuted in the court as the road traffic offences account for most offences.

That is progressive, pragmatic and makes complete sense.

Another issue I raised before is the issue of disabled parking bays. I believe I have been told before that this can be done in primary legislation. We need to send a very clear message, however, because all over Dublin city and county, and I am sure all over the country, we have people who are parking in these designated disability bays. Indeed An Garda Síochána did a major sting in Dublin about two years ago which was featured in a special RTÉ programme of investigation. We heard that there were very well-to-do people driving in and using disability badges who were not at all disabled. An Garda put a considerable amount of resources into this and identified a number of these bays in this sting. It approached the people at the end of the week, and said that it had noted that the person's car was parked there at a particular place.

If we are committed to people with disabilities, and I know that the Minister is, and if we have clearly designated these spaces as disability parking bays, I would go as far as to say that there should be penalty points for offenders in such instances. I know that we have had a discussion on this in the past, and that the Minister or his officials are somewhat reluctant to consider this, but we need to send a very strong message out. We talk about disabilities, being advocates for people with disabilities, and we talk about supporting and providing different modes of transport for different sets of circumstances. We need to look at how we can ensure that these places are kept for the many people who have these designated cars and are genuinely disabled. We must then have a major penalty for people who abuse disability bays because these bays are very important.

Perhaps this can be done in the regulations, but I would like to see a stronger message than that and I would ask the Minister to look at that.

I am somewhat concerned and am interested in these powered personal transporters, PPTs, that the Minister talked about and the PPT class. It might be helpful that a briefing note might be provided to us on the PPT class. I do not know much about it but I know of it. There is not a day passes but people stop me to ask what these crazy people are doing driving up and down in our cycleways, on our footpaths, in our parks, and everywhere.

*2 o'clock*

The thing has gone crazy. We have to be always mindful of public safety in the public realm and on our transport corridors. I have got off buses in quality bus corridors and have been banged into by these guys who hop up from the roads to the footpaths and through parks. It is simply not good enough. I would like to hear from the Minister or tease it out with him at some stage. The Road Safety Authority, RSA, has a huge remit. This is about public health and safety, not about loonies spinning around the place going up and down and around and not necessarily going anywhere. I see them in public car parks racing around the place. In the case of anyone on the road with some sort of vehicle that has an engine or is propelled in some way, there must be a licensing system. It is not a free-for-all and citizens have responsibilities. More importantly, and I say this respectfully, as someone responsible for transport, the Minister needs to send out a message that we are not going to permit anybody with a motorised two-wheeler, three-wheeler, four-wheeler or whatever it is, out and about with no insurance. Who is paying? It is public liability and local authorities are being stung all the time with claims. Irish mutual bodies are picking up the tab on insurance. Who is paying? Who is responsible for the insurance for the next guy who bangs into the side of someone's car in one of these vehicles or e-scooters? What engagement has the Minister had with An Garda Síochána and its traffic divi-

sion, the Road Safety Authority and other bodies? I seek his assurance in this regard because I will not be in a position to support this particular aspect of the Bill if the Minister or anyone else is suggesting these people can go along our roads without insurance. While I am open to correction from the Minister, no way should we tolerate it. I accept it is a form of transport. I respect that and the point the Minister has made about it being a way of getting from A to B. It is a relatively cheap one, once you buy your wheels or your vehicle but we must face up to the fact that there are public liability and insurance issues.

Those are the three issues. Can the Minister provide more detail about the PPT and the class he envisages? Can he share with Members his consultation with the RSA regarding this particular matter? Will he tell us what engagement he or his Department has had with An Garda Síochána? It would be helpful.

Finally, there has to be a severe penalty for people who abuse our designated disability bays and deny people with disabilities the opportunity to park in a safe and designated space that has been provided.

**Senator Gerry Horkan:** I thank the Minister for his comprehensive outline of the Bill. As a member of the transport committee, I have seen quite a bit of activity on this issue. A number of the potential scooter operators have made presentations to the transport committee and have outlined their views as to where it goes next. Scooters have been used in many cities, in some cases in a better way than others. It has not always worked well but equally, it has and they have learned a lot from their mistakes. I welcome this particular Bill. As outlined by the Minister, some of the measures were contained in the programme for Government. There was strong emphasis in Fianna Fáil from people like Deputies Lahart and McAuliffe and others on scrambler bikes and the damage they can do, both in the public realm and in parks and to individuals, where very serious accidents and fatalities have happened as a result of the misuse of scramblers, maybe not even to those using the bikes themselves but to people who have been injured by others who were using them. I welcome that very much.

As I was cycling in today, the speed limit notification sign noted in red that the car in front of me was doing 52 km/h and as I was cycling past, I was doing 29 km/h. I did not realise I was doing 29 km/h but the e-bikes will be limited to 25 km/h. I do not know what will happen as ordinary cyclists are all okay to travel at 29 km/h but the e-bikes will be limited to 25 km/h. I am not sure whether 25 km/h is the right maximum limit for an e-bike. I certainly share the thoughts of Senator Garvey who was with us earlier, in respect of a modal shift. I hope scooters are a modal shift from cars as opposed to a modal shift from walking on footpaths. Every car off the road is a benefit to everybody. It is of benefit to the person who is doing more active travel and to the other cars because there are fewer cars on the road to congest and clog up the space for those who are still willing and wanting to drive or in some cases need to drive because they no longer have the mobility to engage active travel.

I have known Senator Boyhan for almost 20 years and I know he is not being-----

**Senator Victor Boyhan:** Thirty, I think.

**Senator Gerry Horkan:** I do not know about that. I probably know of Senator Boyhan 30 years-----

**Senator Victor Boyhan:** Is there a difference?

**Senator Gerry Horkan:** There is definitely a difference between knowing of the Senator and knowing him.

*(Interruptions).*

**Senator Gerry Horkan:** Indeed.

It is fair to say there is a bit of scaremongering going on with scooters generally. I do not mean Senator Boyhan as such but many people are saying it. We have had this about cycle lanes before. You would think we were getting the Tour de France arriving into a housing estate when there is talk of a cycle lane being put somewhere. We all need to realise that they are going to be a part of the mix. E-scooters are actually illegal, as the Minister outlined, and yet we have people using them all the time. I do not see people being pulled up for it. I saw two of them on the way in today. I was keeping an eye out for them because I knew I would be talking on this and they are out there. The people using them need to realise that we must make sure they are limited in terms of their speed and this geofencing thing that ensures they can only work in cycle lanes or on roads or they cannot work on footpaths. I am not averse to them in parts of parks, no more than I am averse to bicycles or e-bikes being in parts of parks. Some of our parks are gigantic. Obviously people have to have due care for other road users, particularly pedestrians but it would be harsh to say that a scooter has to be on the road when there is a lovely park they could be going through instead. There is a balance. It is an evolving technology and area and none of us is all that familiar with them. I tried them out in a confined space with Zipp Mobility in University College Dublin when they offered us the opportunity. Senator Buttimer tried them down in the Cork with another operator. I think I am happier on a bike actually. Bikes give me a feeling of being more solid, if you like, and having a better sense of balance but that does not mean I would not occasionally want to use an e-scooter. I was in Brussels back in March and I saw some e-scooters on the ground that were broken and damaged. I would not like that to be the case. Whichever operators we bring in need to be well managed, well supervised and well regulated and that is what their intention would be as well.

The Title of this legislation is the Road Traffic and Roads Bill 2021. It has already been renamed at one stage. We are nearly at the end of 2022. It is possible it will be 2023 before we get it through. Then, as the Minister alluded to, that is only the start of the journey in terms of these licensed operators because there must be by-laws and local authorities and that will take time. When does the Minister think we might see licensed operators? I know that is a matter for the local authorities but does the Minister think it will be in 2024 or 2025? There is a role for them and if they take people out of public transport that sometimes has capacity issues, or people out of cars, that is all a positive. I was at the launch of Zero Emission Vehicles Ireland, ZEVI, which the Minister launched at the Aviva Stadium back in July. Electric vehicles will do an enormous amount, particularly for air quality in cities. Maybe as a cyclist one appreciates it a bit more but I do not think we appreciate just how much pollution and how much heat, particularly in the summer time, come out of cars. EVs will be very beneficial for that but were everybody in a diesel or petrol car to move to an electric car, it would not solve congestion. It would improve air quality and reduce our fossil fuel consumption and dependence on fossil fuels but what of the modal shift? As somebody who did not cycle for 20 years and then started cycling again over ten years ago at this stage, the more people we can get to try a bike and feel that it is okay, the better.



I am going to mention a bugbear of mine. At the moment, leaves are the issue but I refer to the amount of broken glass that is lying around the place. It only takes a very small bit of glass to get a puncture. I get a text from my bike repair people every time and I can see that I have had one per month from December to about May. I lost a tyre about a month ago and again, it was all due to glass and punctures. The more wands we have, the harder it is for the road sweepers, though there are mini sweepers that do it. We need to make sure that the public realm for cycling is suitable for people who are less comfortable cycling, as they start on their cycling journey, possibly after 30 years not doing it. The Minister knows this better than me. You get comfortable with it and you move faster. I could not get to Leinster House in anything like the time I do on a bike, in any other way, whether it is on public transport or in a car. Possibly I could get here more quickly in the middle of the night in a car or with zero traffic and getting all the lights. Cycling in urban built-up areas is absolutely the fastest way and you can get from door to door, as opposed to driveway to car park, which is a good distance from where you are trying to get to. The modal shift is very important. This is important legislation. It relates to BusConnects, uninsured drivers, and the management of the M50. Senator Buttimer and I visited the M50 Dublin tunnel operation in terms of cameras for TII. All of this is positive.

I welcome the Bill, but we should do everything we can to facilitate a modal shift. Getting people out of cars and ideally onto personalised public transport is great, in particular bikes and e-bikes, if they are able for it. I have not got an e-bike yet; I feel it is cheating. I am sure a time will come when e-bikes are what I will use. Every person who is not using a car is improving the situation for those who are still using a car. Motorists, of which I am one, do not appreciate that and they say, "Look at that bike", when, in fact, that bike is reducing the congestion on roads. I thank the Minister for being in the Chamber. I ask that he comes back to us on the timeline for licensed operators in the cities and towns.

**Senator Jerry Buttimer:** I welcome the Minister to the House and commend him on his stewardship of the Bill thus far, for his engagement and the quality of that engagement. I know Senator Horkan referred to the 2021 Bill, but the fact that the Minister brought amendments in the Lower House underscores the importance of this Bill.

We are committed to this legislation. My friend and colleague, Senator Boyhan, raised issues we should tease out further. He spoke about public liability and insurance, which we should look at and discuss again. This is much anticipated legislation. I am a member of the Joint Committee on Transport and Communications, as is Senator Horkan. We went through pre-legislative scrutiny of the Bill and had extensive engagement. It is not just about the regulation of e-scooters, quads and scramblers. As the Minister said earlier, it is about ensuring we bring improvements on our roads whether it is for motorists, cyclists, or pedestrians. We are competing for space on public roads. There must be a respectful conversation between everyone who uses public roads and footpaths. It is a shared space. Senator Horkan and I as motorists and the Minister, as a cyclist, or whoever, do not have the monopoly. I worry about road rage and the competitiveness I see on our roads in many parts of the country. We must support the RSA and the new road strategy. We cannot compromise on safety on our roads. At the joint policing committee meeting in Cork last Friday, the issue of scramblers was raised. I welcome the fact that we will target the antisocial use of scramblers. As we all know, it is not just about a certain part of the country; it is happening in many parts.

The Minister is a champion of BusConnects. I am now worried about BusConnects in Cork, which I regret because it is an ambitious and good initiative we should get behind. If we are to support that modal shift, and Senator Horkan will confirm this, I have asked the NTA to con-



tinue to engage after the conclusion of the public consultation. There are a number of bottlenecks in Cork. There was a conversation on local radio recently about the cherry blossoms in Ballyphehane being taken away. The residents of South Douglas Road, Ballincollig, Curraheen Road, Maglin and Douglas are concerned. These are examples of where there is concern, which I hope will not derail BusConnects, and that we can find solutions to, because we are all in need of that modal shift.

The Minister is dead right about the infrastructure for the charging of electric cars. We must make it easier for people to charge their cars. By way of a personal example, my husband and I bought an electric car during the October bank holiday weekend of 2021. We took possession of the car last Thursday, which was 11 months later. My concern is not just about the availability or lack thereof. It is about making it easier for people, in terms of public charging points, to make the modal shift from diesel or petrol car to an electric car. That is something we need to support.

On BusConnects and in the context of public safety and road safety, a number of people have expressed concerns to me about safety announcements on the Luas, the DART or buses. In some cases, drivers have moved off while passengers are not seated and elderly passengers have fallen and been hurt. I am concerned that this would not be allowed to continue. While this is not provided for in the Bill, we should consider a dedicated transport policing security authority. It is probably within the remit of the Minister for Justice but I hope we can look at that further.

The dynamic traffic management of the M50 is a measure we all welcome. Will the Minister engage with TII in the context of the works that are under way at the Dunkettle interchange? As one heads eastbound towards Glanmire, Little Island or the Dublin Road, there are extraordinary delays. I am not in favour of compromising road safety, but it beggars belief that at peak times, when there are inordinate delays, a speed-camera van is positioned at the mouth of the tunnel but there is no monitoring or regulation of traffic. The city manager said to me last Friday in City Hall that if there was a larger modal shift to public transport, we would not have such delays. She is right, but there needs to be engagement with TII and An Garda Síochána about the flow and management of traffic on the N40 in Cork. It may not be possible but I would love if the traffic-management approach to the M50 would be put in place for the Cork-Dublin motorway or the N40 in Cork. It would help the situation and, as the Minister said, it is part of the management of traffic flow that we need to do.

I commend Deputy Alan Farrell and former Deputy, Noel Rock, on their work on the Bill, as well as Deputy John Lahart. It is important legislation. It is about modernising legislation in respect of driving instruction, insurance and fixed-charge notices.

When Senator Conway comes back to the Chamber, I am sure he will-----

**Senator Gerry Horkan:** He is behind the Senator.

**Senator Jerry Buttimer:** I apologise. He deserves credit for the role he has played with the National Council for the Blind of Ireland in educating us and for showing us how we should actively listen to the concerns of visually impaired members of the public who use our footpaths. Despite what Senator Horkan said about scaremongering, some people are genuinely concerned about e-scooters on paths.

I thank the Minister for his work and engagement. I wish him well and I look forward to

Committee and Report Stages to further discuss the Bill. It is good legislation that is long overdue. The Minister deserves credit for listening to and engaging with us.

**Senator Lynn Boylan:** Tá áthas orm go bhfuil an deis agam labhairt sa díospóireacht seo. It is always good when we are all in agreement in the Chamber on what needs to be done and in welcoming legislation that will hopefully get us there. I welcome the measure that scramblers will be dealt with. Deputies Seán Crowe and Dessie Ellis were the first to table Private Members' Bills on that issue a number of years ago.

We all agree there needs to be a modal shift and every car we can take off the road is to the benefit of everyone. We have to make it the case that no one is forced to have a car. The current situation in Ireland is that there is forced car ownership; people have no other choice, particularly households in rural areas with two-car ownership that might be able to reduce to one car. It is important that we put in place anything that helps people who want to give up their car.

Much of the focus of the Bill is on personal powered transporters, including electric scooters and bikes. I do not see electric bikes as cheating, although the Senator is the second man I have heard say that in recent weeks. I say that because I am somebody who has recently got an electric bike. I am not a cyclist or a very confident cyclist, and I live 12 km out. Cycling is not something I would normally do for exercise and I much prefer to run. However, I did try cycling on the regular bike and it is just that little bit too far as it is uphill. Having the electric bike now, I am using it far more, first, coming into work every day because even if I am late leaving, I am getting home that bit quicker but, equally, I am able to use it for doing those other trips. We are all trying to get people out of their cars to do those short trips, such as going to do the weekly shop, where they normally would have needed a car. Again, with cycling, the weight was a bit too much, but with the electric bike, it is possible to do that. Electric bikes have opened cycling to a whole range of people, and I include myself in that, because it is much more accessible. Again, they are gentler on the body and people who are older and who might not physically be able to cycle a manual bike are able to cycle electric bikes.

With regard to e-scooters and the scaremongering about people whizzing past on them, e-scooters are again very good for people who have mobility issues. We have heard concerns about the exercise benefits and that if we encourage cyclists or people who walk to shift to electric bikes or electric scooters, they are not going to be cycling or walking as much. That is a bit of a red herring. As I said, anything we can do to get people active and out of their cars is a good thing.

Under the current law, there appears to be some confusion about the classification of e-bikes and e-scooters as mechanically propelled vehicles, which would make the riders liable for insurance, tax and a licence. However, contrary to what we heard earlier from Senator Boyhan, it is a good thing that e-bikes and e-scooters will be exempt from those obligations. There are other concerns about the dockless e-scooter sharing apps. I spent a lot of time in Brussels and I can testify to the negative consequences they can have for pedestrians on footpaths. As I said, I like to go running but that city is littered with scooters from multiple companies. I know it is worse for certain people and that the National Council for the Blind of Ireland, NCBI, and the Irish Guide Dogs for the Blind issued a paper outlining their concerns in that area. They identified the parking of e-scooters as an issue that will be a huge challenge. We have to get that parking methodology right. Different European countries have approached it differently and the Brussels model is definitely not the one to go for. They cannot be allowed to become trip hazards and obstacles for those with disabilities. Navigating the city is challenging enough for

visually impaired people without us throwing scooters all over the city, so we must introduce them very carefully.

Local authorities will have to introduce those schemes cautiously. The issue of parking has come up. We need to be much more proactive on illegal parking on footpaths. Clampers are to the ready when people do not pay their car parking fee. I would like to see much more proactivity around people who park on footpaths or in disabled parking spaces, rather than just the ones who are not paying their fees.

Another issue that has come up in the public discourse and has been referenced here is the use of geo-fencing. It is possible with current technology to create a zone around high pedestrian areas like schools and hospitals that automatically forces e-scooters to slow down. This is a good idea but it begs the question of why we are stopping at e-scooters. Should we not be looking for geo-fencing on our roads for all road traffic? Speeding is so common that it seems natural for people to be driving at 55 km/h in a 50 km/h zone or 130 km/h in a 120 km/h zone. There are all sorts of schemes that go into controlling speed, like speed vans and average speed cameras. Why do we not put in the same limiters on cars that are used on electric scooters?

The Bill also deals with road signs. I want to speak specifically on the bilingual nature of many road signs and the prominence given to the English language. There is a spectacular opportunity if we make a tiny change in design to put the Irish and English languages on an equal platform and, by doing so, we would raise awareness of the Irish language. Sinn Féin will table an amendment on Committee Stage that will reflect this on new road signs.

Another point is one that affects people who live on boundaries or on commuter roads. Senator Horkan spoke about glass on the roads. There is also an issue around the maintenance of footpaths, as well as overgrowth and bushes hanging over footpaths. Generally, we find this is on roads that are more the responsibility of the NTA than local authorities. An example is the Long Mile Road, which is very poorly maintained. The New Nangor Road and the Fonthill Road are other examples. These are roads that cross over different constituencies, but each local authority does not want to take responsibility and the NTA is not taking responsibility for them either. They are a hazard for people who are visually impaired in terms of getting hit in the face with branches, but it is also the case that the vehicle cannot fit on cycle lanes and footpaths.

This is a wide-ranging Bill with many aspects. I look forward to digging into the detail on Committee Stage and Report Stage. I welcome the Bill. It is great that it is going to help us have that modal shift that is so essential to tackling climate change.

**Senator Martin Conway:** I welcome the Minister, Deputy Eamon Ryan. A number of the issues have been outlined, specifically the issue of people with disability using our footpaths. As has been said, there are enough obstacles on footpaths. I was abroad over the summer and found it horrific to see scooters literally abandoned in the middle of the footpath. There has to be some way of forcing them off footpaths. Technology will have to be used to make that happen. Last summer I was standing at a set of traffic lights at Grand Canal Dock and I got the fright of my life when a scooter whizzed past. It was not really anything to do with having vision impairment, even though I do. I would imagine it can be daunting for any old person or anyone else who is standing at a set of traffic lights which are about to change, when the next thing, out of nowhere, a scooter just whizzes past them. I do not know if there is anything that can be done about that but I welcome the fact we are legislating.

It is good to see people using scooters and not using cars. I very much welcome the announcement in the budget of reduced fees for young people using public transport. However, there is an anomaly that the Minister may not be aware of. As the Leap card cannot be used on private transport, young people aged 17 and 18 cannot benefit from the reduced fee. I hope the Minister will look at that as a matter of urgency. I have had a number of people in touch with my office. One young man is paying €7 a day to go to college in Limerick using a private bus. I know that is an unintended consequence but it is a consequence nonetheless, and it needs to be rectified. I am not sure the Minister was aware of it but he is now, and I hope he is able to do something about it.

With regard to disability in general and the use of public transport, the NCBI is developing a centre at the IFSC called the Wayfinding Centre. I extend an invitation to the Minister to visit the centre. It will have real-life trams and trains, an aeroplane and other transport units, and it will train people who are blind and visually impaired to use them in an efficient and safe way. It is one of the first of its kind in Europe. The NTA, through the Department, is making a substantial amount of money available for it. As Minister for Transport, I ask Deputy Eamon Ryan to come down and see it at first hand because I believe he will be quite impressed with what it is trying to achieve.

With regard to transport in general, as the Minister knows, many young people now have to live at home because of the housing situation. I know of a young person who is in college in Cork and who wishes to commute from Ennis, but the earliest time this person can be in Cork by train is 9.45 a.m. Similarly, for young people living in Portlaoise, Thurles or close to Limerick Junction who wish to commute to Cork maybe three or four days a week, either for college or work, the earliest time they can be in Cork is 9.45 a.m., which is way too late. There should be an early morning train going from Dublin to Cork that can serve all the stations and facilitate people being in Cork for 8 a.m., 8.30 a.m. or 9 a.m. It is not realistic going forward that the first train into the second city in the country in the morning arrives at 9.45. It is not where we should be. Knowing how committed the Minister is to the train network in this country, I am sure it is something he might raise directly with the CEO of Irish Rail. I have done it and the transport committee has done so as well, yet nothing has happened. It cannot be just down to the annual timetable review. Irish Rail responded and put trains on when Garth Brooks played in Dublin. If we could have trains leaving Dublin at midnight to facilitate the concert, there is no reason in the wide earthly world Irish Rail could not review the situation and orientate its services accordingly to support people's needs. I call on the Minister to instruct Irish Rail to run an early morning service from Dublin to Cork in the next month or two. It should at least be trialled to see if there is a demand for it, which I believe there is. I have been contacted by several people on this matter and I have been campaigning along with colleagues such as Senator Buttimer, who is from Cork, on the transport committee, and others. I know people living in Ennis who would like to get the train to work in Cork three days a week. They are working from home remotely for two days and they would like to be able to get the train the other three days, but it is not possible. Because of that, they are using their cars because they know they are not going to be in work on time if they use the train.

I very much welcome the legislation, which updates road traffic legislation. It reflects the modern day equipment that is used on the road. We must think outside the box. One matter on which I would like to hear the Minister's thoughts is driverless cars. Does he believe that they will happen in the immediate future or is it something that is a long way down the road? I would love a situation where I would have a driverless car that would bring me from County

Clare to Dublin. It would revolutionise accessibility for people who are unable to drive through no fault of their own.

**Senator Pauline O'Reilly:** I am delighted with the opportunity to speak on this important issue. My colleagues in the Dáil introduced amendments and I am hopeful that the Minister will accept amendments in the Seanad as well on some of the issues raised. As he outlined, this is important legislation that goes much further than ever before, but there is always room for improvement.

I will speak first about BusConnects, which I know the Minister is very passionate about. We have an exciting opportunity in Galway to have BusConnects and to have a cross-city link. It is appropriate for these kinds of projects, in particular for public transport and active transport, that we allow An Bord Pleanála greater ability to get them through more quickly. While the plan in Galway is a good one and we are behind it, the Green Party in Galway will make a submission on it because we think the cycling part could happen at the same time, which it needs to. I urge people to have their say on that as well in Galway.

I wish to deal with CPO in particular, which is what the legislation provides for in respect of BusConnects. It is very interesting that no sooner is the ink dried on a decision from An Bord Pleanála than the council is out CPOing anything it can when it is a road, but we never see that when it comes to a greenway or any form of public or active transport. If we can shift that focus, we could get into gear much faster. The Galway ring road project has gone for appeal and yet the land is being CPOed. That is a real concern for me, yet we have been waiting for the Connemara greenway and there is never any talk of CPOs for that.

Regarding cargo bikes and e-bikes in particular, when I had one child I used to cycle with my child on the back but when I had two children, I found the cargo bike too heavy for my small stature to push up a steep hill. It is very important for women and families in particular - Senator Boylan has raised this as well - to get to the next stage in life and when a person has children, e-bikes are very important, in particular electric cargo bikes. I would love to see the Minister bring back something on that to support people with the cost of e-cargo bikes and e-bikes in general.

I also wish to raise an issue I raise all of the time at meetings of the joint policing committee in Galway, which is motorists driving through red traffic lights. I asked for this to be added to the report of the joint policing committee so that there would be a record of how many times cars drove through lights. This year so far, there have been 52 incidents and there were 52 last year. As I understand it, the Garda need to see it happen. For that reason, it is very important that we are creative about reporting. I know a pilot project was run previously. The Bill goes some way towards allowing self-reporting. We must also assure people about GDPR, as we did for the circular economy Bill, that data will only be used for the purposes required if there is video evidence. The recorded number of 52 incidents is not representative of the number of people who break traffic lights. I would nearly see that number in one day. It is a big concern for many of my constituents who get in touch with me.

We have had some discussion on electric vehicles at the climate committee. I am a little concerned about ZEVI, which some of my colleagues raised previously with the Minister. We need to see that we are moving in the right direction. Modal shift is the right direction. I will read what was said in yesterday's OECD review that we called for under the climate action plan. The report stated that current mobility patterns in Ireland showing high and growing car use are



incompatible with the country's ambitious greenhouse gas emissions target. An increase in car use is not the right direction, regardless of the type of car it is. I am very supportive of electric vehicles because they have a place, but we also cannot use the arms of the State purely for electric vehicles. That is why I believe other types of transport, apart from cars, must be brought in to ZEVI. I can see my time is up. I will speak further on Committee Stage.

**Senator Aisling Dolan:** I thank the Minister for being with us here today. We have spoken numerous times about many projects, in particular around Galway. I was involved in the local campaign for the Galway to Dublin cycleway. It is fantastic that the bridge in Athlone is now getting built. It is an amazing project. It is three pieces of infrastructure, and they were brought over further down the Shannon and the bridge is being set up now. In Athlone, people are walking, bringing prams and out on their bikes. I am amazed at how many pedestrians are using the cycleway. It just shows the importance of infrastructure. We do not even have a park in Ballinasloe. There are no safe places to go where people are off-road and away from cars. That is an amazing project and the timelines around it are important. Could the Minister comment on TII's focus on the timelines for the delivery of the project. The project team in Ballinasloe hopes to see construction commence in 2025 or 2026. Please God it will get through An Bord Pleanála.

It is wonderful to see the Bill. The Minister has put a lot into it. The Bill tackles many different areas relating to roads, in particular concerning e-scooters and e-bikes. It is great to have the legislation in place to regulate the issue given the challenge presented by e-scooters in city centres. I do not have one myself, but it is great to see e-bikes becoming so popular and that we will be able to use them on cycleways and greenways.

I do not know the Minister's future plans for active travel, but I am interested to hear about local authorities being able to invest in more regional cycleways and greenways to connect into the major ones. The Galway to Athlone cycleway will be major and world-class infrastructure but I am interested to hear how local authorities will perhaps be able to link in with more regional cycleways, perhaps not of the same standard, in four to five years. The antisocial use of scramblers is an issue in parts of Limerick city and in many city centres. It is great that the Garda will have the powers to seize these vehicles.

Other Senators raised points about TII and road safety. Parts of the Bill will give additional powers to the Garda in respect of penalty points. I refer to local authorities' investment in road safety in rural areas. Drivers will often speed through junctions of major roads and minor roads. The local authorities are challenged in getting the right resources. They are looking at engaging with consultants around safety on these roads but consultant costs alone are massive. We fought to get funding to introduce road safety measures at a junction in our area. It was not possible to get consultants to look at a long-term and better solution because the consultant costs were in excess of the amount allocated for the road safety measure. Can anything be done in that regard? If local authorities need to engage with consultants on road safety in rural or other areas, can we factor in that cost when providing funding for dangerous road sections where there have been accidents?

The Minister referred to the variable nature of speed limits, particularly in the context of the M50. I am looking at variable speed limits outside towns and villages, for example, where there are football, GAA and rugby clubs. In our town, for example, the rugby club is outside the town. I am trying to get a footpath to connect the town and the rugby club so that people can get to training. The club is about 2 km or 3 km outside the town but the challenge is that

the 50 km/h speed zone is before this. The local authority will not consider providing a foot-path where the 50 km/h speed zone is within the speed limit. Can anything be done to provide for variable speed limits near clubs attended by children and families? This would encourage cycling and walking.

I have campaigned on other challenging areas in respect of the Connecting Ireland project. We have done an awful lot on school transport, which is a big issue for me. We have also looked at this within Fine Gael. My colleague, Senator Pauline O'Reilly, raised the issue of bus and public transport capacity and asked about other options, but the only option available in many areas is to use buses. Buses use roads and until there is another option - we do not have train tracks - we will need access to good roads in these areas. Is there an update on options for buses as part of the Connecting Ireland programme? We did a big campaign on this last December. We are still waiting to hear the outcome from those reports.

On Bus Éireann capacity, seemingly Galway is a big issue according to Bus Éireann under the school transport section. I know this comes under the Department of Education, and I am the spokesperson on education, but is there anything we can look at here? It seems the Minister has a budget she can allocate towards school transport. Bus Éireann is saying there is a capacity issue. Is that an issue with buses? I am not familiar with the challenges involved but can anything be done regarding that? This would encourage people in rural areas to use public transport.

I have different views on the Galway ring road because I have lived and worked in Galway. We must encourage public access to buses. To do that requires more than putting in a bus stop without a shelter or cover, as is the case in many areas in County Galway. People are left waiting for an hour because the bus is stuck in traffic and there is no chance of having a better road to get people from A to B.

**Senator Micheál Carrigy:** The Minister is very welcome to the House. I have a few points that it would be remiss of me not to mention. We spoke about the N4 upgrade last year and I will highlight it again. We got additional funding to bring the project to a certain stage but more funding is required in 2023 to bring it to the stage where it has full planning permission. This is the only region in the country that is not fully connected by a dual carriageway.

There has been massive investment in cycling. I was involved in the development of the Royal Canal greenway in 2012 or 2013 when our county tourism committee, in conjunction with Longford County Council, started the project to link Longford town with Cloondara at the end of the Royal Canal. In conjunction with other local authorities, we worked on a route towards Maynooth, which is now open. Hopefully within the next 12 to 18 months, the route will link all the way into Spencer Dock in Dublin. If we are looking at investment to extend greenways, we need to look at linking the Royal Canal with the greenway in Westport. That is an opportunity across the Shannon. North of Lanesborough, where the power station is, there is a Bord na Móna bridge that could be used to cross the Shannon into Slieve Bawn and connect with Achill Island. It would be a fantastic asset to be able to go from Spencer Dock, in Dublin, to Achill Island on the west coast.

Are local authorities doing enough in the area of electric vehicles? Are there sufficient EV charging points in all counties? I do not believe there are. People may be put off purchasing an electric car because there are not sufficient charging points around the country.

I have a particular issue with PPTs. We have seen the danger with people using e-scooters on roads, particularly in Dublin city when travelling to the south side. The Bill states that an e-scooter user must be aged over 16 years of age. Unless I have missed something, the Bill does not require people to wear a helmet while using an e-scooter. Will the Minister clarify this? I have seen children of 11 and 12 years of age going to school on e-scooters. There could be two or three of them travelling on one of them. They are a danger to themselves and to motorists. I welcome the fact that users will have to be over 16 years. Will the Minister clarify whether they will have to wear a helmet?

**Minister for Transport (Deputy Eamon Ryan):** I thank Senators for their contributions and support for the Bill. I hope to briefly address some of the issues raised and we can return to them on Committee Stage and Report Stage.

To respond to Senator Boyhan, it is currently possible to pay a fixed-charge notice issued by An Garda Síochána in advance in the way the Senator set out. The Bill expands this to notices issued by traffic wardens. It will hopefully expand the mechanism whereby people do not have to go to court or spend a length of time in court.

The Senator also raised a concern about disabled parking bays. I agree that the regulation of those bays needs to be addressed. The Bill addresses fraudulent application for disabled parking permits. It is an extensive Bill. I only read out some of the key, pertinent points in my opening speech.

Since the introduction of penalty points, it has been a principle that they are used only for driving offences, with the sole exception being dangerous parking because such an offence affects moving traffic. We can certainly look at enhancing penalties for misuse of disabled parking spaces.

On insurance for e-scooters, EU law sets out the requirement for mandatory insurance for vehicles above certain power specifications. The Bill defines what PPTs are and as they are below these power specifications, they will not require insurance, which high-powered scooters will require. Vehicles that count as PPTs will be under the internationally agreed framework, which makes sense.

I think Senator Buttimer asked about a timeline regarding e-scooters. We will need three months after the passing of the Bill to ensure, in accordance with European guidelines, that the provisions are compliant with the EU Single Market and so on. I regret that this is a 2021 Bill and we are now in 2022. It should be enacted. I hope it will get through the Seanad this year and that it will be signed into law next year.

**Senator Jerry Buttimer:** I think it will be. The Minister is safe enough with us.

**Deputy Eamon Ryan:** I do not see any reason to delay it.

**Senator Gerry Horkan:** I made that point.

**Deputy Eamon Ryan:** I apologise. It was Senator Horkan who raised that point.

On e-scooter rental and parking, we have seen e-scooter schemes across the world that created a nuisance effect with scooters littered everywhere. Much of this is a matter for regulation and we will take the Senators' comments on board when looking at that. We want e-scooter sharing schemes. They bring real benefits but we should learn the lessons from elsewhere.

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I will not assign each response to a Senator. The question of autonomous vehicles was raised. This legislation allows for the testing of autonomous vehicles on public roads. As for my own view on how quickly that will come in, I do not see it as a completely futuristic world in which the car whizzes along without any attention from the driver. It is, however, appropriate that we are testing. Senator Garvey mentioned a testing site in Shannon, which is a very good example of where we can do this. This legislation will provide for that.

I cannot remember which Senator asked about the young adult card. Was it Senator Conway?

**Senator Martin Conway:** It was.

**Deputy Eamon Ryan:** I can give the good news that the 50% reduction for those under the age of 24 was extended to commercial bus operators on 4 September. I am glad to say that we have further extended it to those aged 16, 17 and 18 who had missed out. Therefore, the rules are changing and people to whom it did not apply will be able to benefit from lower fares.

**Senator Martin Conway:** On what date?

**Deputy Eamon Ryan:** In the coming weeks. It is a question of weeks rather than months. It is my understanding that it takes a certain number of weeks to change the software. I think it should be in fairly quickly.

**Senator Martin Conway:** Okay. I thank the Minister.

**Deputy Eamon Ryan:** It was changed two or three weeks ago so hopefully we should be there.

Amendments were made in the Dáil with regard to variable speed limits. The speed limit is based on default limits for different classes of roads, with local authorities allowed to set special speed limits on specific roads in their areas. The published Bill proposes allowing TII to set special speed limits in order to provide for variable speed limits. However, this mechanism requires a by-law each time a limit is set, which would not be practical in the context of the need for rapid responses to changing transport circumstances. Senators Garvey and Dolan made a good case in this regard. Senator Dolan mentioned Ballinasloe Rugby Club, which is based outside the town. We do not have the right connection to it in terms of a safe footpath or a safe cycle path. In those circumstances, it is absolutely right and appropriate for us to start looking at changing the speed limits to fit the circumstances. First and foremost, we need to look at the purpose of the road. Is it designed to get traffic through Ballinasloe with the least inconvenience possible, or is it there to serve the people of Ballinasloe? I believe it is the latter. Young children should be able to get to a sports club without having to be driven there. This frees up parents, it is better for the children and it addresses the issue Senator Garvey rightly raised around obesity.

The Irish-language issue was among several issues raised by Senator Boylan. We have looked at this in quite some detail. The current design system is based on safety. That must be our first priority. It is very interesting. Extensive analysis has been done in accordance with setting the traffic signs manual. We display Irish text in sentence case format which inclines slightly to the right. English text is displayed in Roman capital letters. This is primarily a safety issue. It conveys to drivers as clearly as possible that two distinct languages are contained on the sign. I am told by the engineers that there must be an obvious distinction in text in order not

to compromise road safety. This is imperative not only for Irish drivers but also for the tourists on our roads. There is a clear definition between the two. That is why sentence case lettering, which is where the first letter is capitalised at an angle of 15°, is used for the Irish text while upper-case lettering is used for the English text. The scientific analysis that has been done suggests that this very much improves the comprehension and the clear differentiation. According to the advice from the expert at the Department, the used of reclined italics and generally lower case script emphasises and best represents the Gaelic script. There are various reasons behind it. I understand fully that no one wants to show any prominence to the first language over the second or *vice versa*. I have explained why those rules are there.

In conclusion, without having addressed every aspect, I intend to introduce a number of amendments on Committee Stage. This is such an extensive Bill, and the timeline has been so long in terms of introducing it, that we have seen the case and need for what are often relatively minor amendments. First, we will seek amendments in provisions regarding motor tax, particularly in respect of the taxation of State-owned vehicles. Second, we will seek further changes regarding TII's CCTV provisions. The Roads Act 1993 will be amended to clarify the definition of cycleways in that regard. Amendments to section 19 of the Road Traffic Act will address concerns that have arisen with regard to maintenance and traffic finance to make sure TII has the powers it needs. Third, we will seek to introduce amendments to allow for the legislative underpinning of driver and vehicle records held by the Minister for Transport to make sure we are compliant with GDPR. It will move the legislative underpinning of these records to the Road Traffic Acts and provide the necessary legislation to comply with current data legislation requirements regarding the showing of data. Fourth, I will seek an amendment on the issuing of fixed charge notices by the Revenue Commissioners to allow them to issue such notices in respect of a small number of specific offences within their remit relating to licence plates. Finally, there will be further technical amendments on the motor insurance database and other matters, including a number of technical amendments relating to the motor third party liability database, correcting a number of errors in the present text identified by the Bills Office and revising the numbering of the new section 23B that is being inserted into the Road Traffic Act 1961 due to the passage this summer of the Civil Law (Miscellaneous Provisions) Act 2022. The legislation will also introduce a new section 23B so the numbering of the sections will be correct.

I have not by any means addressed all of the questions raised by the Senators but we can come back to the points of concern.

**Senator Martin Conway:** What about the early-morning train to Cork?

**Deputy Eamon Ryan:** It is a very valid point. I wondered about this as the Senator was speaking because when I was in Ennis a few weeks ago, I had to decide how to get home. I went with the green bus rather than the train in the end. The question I wanted to ask of the Senator was whether one can get from Ennis to Cork by bus at an earlier time.

**Senator Martin Conway:** Not really. It would be difficult. The green bus between Dublin and Ennis is a great service. Mr. John O'Sullivan deserves great praise for what he has achieved with that. There is no green bus service from Ennis to Cork, however. The issue I raised affects people in places like Thurles and Portlaoise as well because many people are working in the Civil Service in Cork and so on. The option should be there. It should have been there years ago, to be honest with the Minister.

**Deputy Eamon Ryan:** I accept the Senator's point. That makes real sense, particularly



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these days when many people may be remote working, and travelling two and three days per week rather than going in every day. I will raise that issue with Irish Rail

**Senator Jerry Buttimer:** Or even a Monday to Friday train.

**Deputy Eamon Ryan:** The Cork people are chipping in and adding to the case. We will look at that.

**Senator Jerry Buttimer:** It makes no sense not to have it.

**Deputy Eamon Ryan:** I agree.

**Senator Jerry Buttimer:** In fairness, the Minister does.

Question put and agreed to.

**An Cathaoirleach:** When is it proposed to take Committee Stage?

**Senator Jerry Buttimer:** Next Tuesday.

**An Cathaoirleach:** Is that agreed? Agreed.

Committee Stage ordered for Tuesday, 11 October 2022.

*Cuireadh an Seanad ar fionraí ar 2.58 p.m. agus cuireadh tús leis arís ar 3.02 p.m.*

*Sitting suspended at 2.58 p.m. and resumed at 3.02 p.m.*

### **Assisted Decision-Making (Capacity) (Amendment) Bill 2022: Committee Stage (Resumed)**

#### SECTION 73

Question again proposed: “That section 73, as amended, stand part of the Bill.”

**Acting Chairperson (Senator Gerry Horkan):** When the debate adjourned, on 28 September, we were discussing the question “That section 73, as amended, stand part of the Bill”. Senator Mullen had concluded his contribution, to which the Minister may now wish to respond.

**Minister for Children, Equality, Disability, Integration and Youth (Deputy Roderic O’Gorman):** I note Senator Mullen’s opposition to the section and the detailed remarks he made at our previous session. The provision under consideration came about as a result of careful deliberation on the constitutional, legal and clinical considerations arising from the recommendation of the post-legislative scrutiny report on the removal of section 85(6) from the 2015 Act to ensure that pregnant women who have an advance healthcare directive are treated equally to other directive-makers, particularly with regard to their rights to autonomy and bodily integrity. At the time of drafting the 2015 Act, and in to take account of the constitutional position in respect of the unborn under Article 40.3.3°, section 85(6) was drafted so as to limit the rights of directive-makers who were pregnant at the time they lost their capacity by balancing those rights with the then-existing rights of the unborn under the Constitution. Given the changed legal position arising from the removal of Article 40.3.3° from the Constitution, it is now possible to treat pregnant women the same as all other patients when determining the

validity and applicability of their advance healthcare directives, AHDs, through the removal of section 85(6) from the 2015 Act. This approach both recognises the autonomy of directive-makers who are pregnant and ensures protection of their recognised right to refuse treatment. If the provisions are deleted, the effect will thus be that pregnant women will be treated the same as any other patient. If their AHDs specifically provide for pregnancy, their wishes will be followed. If they do not, any ambiguity in respect of their wishes will be determined in accordance with section 85(5) of the 2015 Act. At the same time, in circumstances in which there are doubts as regards the applicability or validity of an AHD, it would also be possible to obtain a court determination on the validity or applicability of the AHD pursuant to the general process set out in section 89. These provisions provide safeguards where questions arise as to the will and preference of a pregnant woman who has made an AHD and whether such an instrument should apply in the particular circumstances arising.

With regard to the interaction between the 2015 Act and the Health (Regulation of Termination of Pregnancy) Act 2018, in circumstances in which a healthcare professional withdraws life-sustaining treatment from a patient on the basis of a valid and applicable AHD that then leads to the demise of a foetus, that would constitute neither a termination of pregnancy within the meaning of the 2018 Act or the offence of termination of pregnancy outside the circumstances permitted under that Act. This arises from the previous case law on the withdrawal of medical treatment, which makes clear that such acts are not legally regarded as positive acts committed with the intention of ending the life of a patient as well as the case law recognising patient autonomy and the right of a competent adult with capacity to refuse medical treatment, even where that will involve a risk to his or her life or the health of a foetus.

**Senator Rónán Mullen:** I thank the Minister for his response. I have not had sight of it. I would like to consider it carefully. It seems to me, however, that he is basing this entirely on a certain view of the demands of equality and autonomy and a certain interpretation of what they mean in this particular circumstance. What he is saying, basically, is that he wants a pregnant woman to be in exactly the same position as any other decision-maker - in other words, people who are not pregnant. The point I made to him on the previous occasion, however, was that it was not necessarily because of the provisions of the eighth amendment that one would have a precautionary provision that, if an AHD were silent as to what was to be done about the refusal of care in an AHD in the event of pregnancy, there would be a presumption in favour of continuing treatment where not to do so would have a deleterious effect on the unborn. I am not saying the Minister is proposing something that is unconstitutional but I would be very interested to hear what his view of the Constitution now is. Does he accept, first of all, that the Oireachtas is free to make whatever provisions it wishes in respect of abortion and treatments that might have an effect protective of the unborn or the opposite? It seems to me that one can assess what he is doing here only in the context of the possible outcomes of the change he is making.

I mentioned the previous day that, to some degree, we all try to avoid the detail of specific cases out of a need for sensitivity when we discuss these kinds of provisions, but there is, of course, another sense in which we can judge these kinds of provisions only in the light of what might actually happen in real-life situations. Has the Minister given consideration to what might happen in real-life situations? The position at the moment, no doubt inspired by the eighth amendment's provisions but not, as I said, required solely by those provisions but by considerations of public policy, is that if an AHD were silent about what was to happen in the event that the person making the directive was pregnant, there would be a presumption. It seems that is good public policy because it seeks to protect life if possible. The Minister is

taking that away. What he is leaving us is a situation in which somebody might or might not make an application to the court about an AHD. The Minister is leaving open the possibility for healthcare-givers to continue to give life-sustaining treatment while the court makes a determination on the issue of the AHD. However, we could be talking about a relatively late-term unborn child, if I am not mistaken. The Minister is reducing the potential protection of a child who might otherwise live. He is doing so in the name of a certain idea of pure equality, but he is not reflecting on the real-life circumstances and what might actually happen. Currently, under the 2015 legislation, the presumption would be in favour of giving life-sustaining treatment in order to secure the safety and well-being of a child *in utero*. Now, the Minister is proposing to take this away. He is proposing to leave it to the possibility that “an interested person” will make an application to court. What if there is a dispute between different interested persons about what is to happen in that situation, about what is to happen to that child? Second, the Minister is leaving it open to the decision of the court and we do not know which judge might be making that decision or what attitude he or she might have. All sorts of issues and doubts come into play about what might actually happen. There are children who might have been saved under the 2015 legislation who will otherwise die, potentially, as a result of the change the Minister is making because he is leaving it open to the question of whether an application is made to the court and to the vagaries of what that court might decide.

I am not suggesting that the Minister will be breaking any law or that if he provides in the way he is doing, there will be some kind of offence that is caught under some other criminal legislation. I am not suggesting that at all but I am asking for consistency with the existing legislation on abortion, which clearly identifies a public policy desirable, which is that unborn children after 12 weeks would not have their lives terminated and that it would be a criminal offence to have their lives terminated except in certain defined circumstances, which the Minister knows. These circumstances are proposed to be limited and concern, for example, treatment necessary to save the life or health of a mother or situations where the baby is not deemed to be likely to survive beyond a certain period. Those are the limited circumstances where abortion is permitted after 12 weeks. Clearly, the law continues to envisage protection for the unborn child. In fact, some would say it envisages substantial protection for the unborn child after 12 weeks. Now the Minister, without any detailed consideration or public discussion, is proposing in separate legislation to bring about a situation where there is less protection, potentially, for certain children after 12 weeks in the womb compared with what is there under the 2015 legislation.

What would be so wrong with continuing to have a presumption in favour of continuing life-saving treatment if there is a pregnancy and where the advance healthcare directive is silent on the question of pregnancy? What would be so wrong with that? The nature of a presumption, of course, is that it may be rebutted. It is not absolute protection and it is not an absolute guarantee that the child’s life will be preserved but it is anomalous to have substantial protection for children after 12 weeks in the womb under the abortion legislation and at the same time, to remove protection in the way the Minister is doing, so substantially, so that the question of sustaining a child’s life in the womb after 12 weeks might depend on whether an application is made to the court and whether the court so decides. Under the current situation, there is a presumption in favour of preserving the child’s life. What is it about abortion that motivates politicians, governments and establishment officials to think so little about the possibility of saving a child’s life that they would remove even the presumption that life-sustaining treatment would be continued until such time as it is possible to sustain the child’s life?

**Deputy Roderic O’Gorman:** What we are seeking to do with this provision is to reflect the situation where a pregnant woman will not be denied the benefit of her advance healthcare directive solely on the basis of her pregnancy. That is what the current provision allows for and following the repeal of the eighth amendment, that is a position we are moving away from. With the greatest of respect to Senator Mullen, the core of his concern is more of a reflection of the current law in the country on abortion rather than on the current law as it applies to Assisted Decision-Making (Capacity) Act. It is important to remember that an AHD does not provide an entitlement to a treatment that is not otherwise available. It is an expression of the individual’s will and preference. The Senator spoke about situations of real life and in real life, a pregnant directive maker is treated the same as any other person. Persons who have capacity can refuse treatment, notwithstanding their pregnancy. That can happen at the moment if they have capacity. In a situation where they do not have capacity, the content of their AHD will be followed.

Senator Mullen spoke about the consequence of non-treatment, where a medical practice followed on from an AHD is a termination but it is important to point out that the law does not recognise that as a termination. The interaction between the 2015 Act and the 2018 Act does not recognise those situations where treatment has been withdrawn legally as falling within the definition of termination. It is also important to remember that we do have section 89 here as well. We have a provision that addresses a situation like the one about which the Senator is concerned, where an AHD is vague, and it makes provision for continued treatment. It specifically references a woman who is pregnant in terms of that continued treatment as well. There is protection for continued treatment while questions on the validity of the directive are determined by the court. The legislation does make provision for situations where there may be ambiguity. It provides for the potential continuity of treatment in those situations while the legal issue is addressed.

**Senator Rónán Mullen:** The Minister misunderstands the basis for my argument. I am not saying that what he is bringing about would be considered under the law as a termination of pregnancy and I am not arguing, at this point, against the provisions of our abortion law generally. I am drawing the Minister’s attention to what our abortion law currently provides and arguing that what he is proposing to do does not follow the logic of it. He talks about equality but there is no equality between the woman who has a child that has gone beyond 12 weeks in the womb and the woman who is not pregnant in terms of their desire not to be pregnant. The law continues to insist on the protection of life in a considerable set of circumstances at a certain point. Therefore, it is wrong to just look at it through the cold lens of what strict equality means in every situation because there is not a strict equality in terms of the abortion law itself. A person does not have an absolute right to be as unpregnant as a person who is not pregnant once the baby has gone beyond 12 weeks in the womb. There is considerable legal protection. What I am saying is that there is clearly a public policy preference around the preservation of life. Arguably, it is rooted somewhere in the Constitution, although there are some who argue that the Constitution is completely silent on any rights for the unborn. If one thinks about it, the Constitution can do three things. It can permit something, ban something or mandate something. The Constitution as I understand it is in a neutral space because it leaves to the Legislature the determination of matters in relation to abortion. We are not talking about abortion here. We are talking about situations where an advance healthcare directive mandates the refusal of treatment. Of specific concern to me is where it provides for mandating a refusal of treatment but is silent on what is to happen in the case that the directive-maker is pregnant. I am saying to the Minister that the public policy vision behind the existing abortion law even is such that there is a good involved in protecting human life once it gets to a certain stage in the womb. Surely

it follows that the presumption, where it is silent, should be in favour of protecting the unborn child's life in the womb. That is the point I am making.

The Minister makes the point that a person who is *compos mentis* may refuse treatment, even if that treatment or the refusal of same has a deleterious effect on the unborn. However, that is a different situation because the person is not silent; the person is in a position at that point to give the direction whereas the person is not if not *compos mentis*. That is the point and they are silent, at least in one part of the section the Minister is removing. There is a substantial difference between a situation where a person who is *compos mentis* refuses treatment. People in that situation know they are pregnant and they refuse treatment and the law will respect that refusal; I get that. There is an argument to be made about whether that is disproportionate having regard to the possibility that there might be a late-term or well-established pregnancy and that the child might lose his or her life as a result but I get the fact that the law permits a *compos mentis* person to refuse treatment. However, where they have not specified what is to happen in the event of pregnancy then it seems to me that it is more in keeping with what the law currently provides around termination of pregnancy, which is that one protects life to a very considerable degree after 12 weeks, to continue to have a presumption in favour of protecting that life. That is not asking a lot for an unborn child who might survive.

What the Minister is proposing to do is take away that presumption and leave unborn children in a situation where they are at the mercy of an application being made concerning the advance healthcare directive, which is threatening them. That is also subject to getting the right decision around the preservation of their life - because that is what it will amount to - from the court. It seems to me that is simply not decent. It is not decent to take away a presumption in favour of protecting a life and it is not decent to do so purely in the name of some kind of doctrinal version of equality that is divorced from real life human situations.

Let us say, for example, that one has a dispute among family members on what is to happen where a person has made an advance healthcare directive, silent on what is to happen if that person is pregnant. Let us say that dispute causes a delay in the bringing of an application to the court, and as I said the court might not make a decision in favour of preserving the life. Let us look at it in another way; why would one put the father of a child through the grief and stress of having to make an application to the court, simply because the presumption in favour of preserving the child's life has been removed? The Government is putting its vision, doctrine and dogma of equality ahead of the real life grief and trauma that the father of a child might be experiencing because it is forcing such people to have to make an application to the court and to hope the court makes a decision to administer treatment so as to avoid a deleterious effect on the unborn child in question. That lacks decency and humanity and I ask the Minister to think about this again. This has not been thought through properly and it is not decent.

**Deputy Roderic O'Gorman:** What the Senator has said about the protections that apply after 12 weeks is important. The consequence of the withdrawal of treatment on the basis of an advance healthcare directive does not constitute a termination under our law. Whether that happens before or after the 12-week period is not a termination as our law recognises and it is important that this is clearly stated.

**Senator Rónán Mullen:** That is agreed.

**Deputy Roderic O'Gorman:** On the presumption of care for pregnant women and the foetus, we could not proceed as the Senator is suggesting, that is, that we would legislate that a



presumption would be made on a pregnant woman who has made an advance healthcare directive but one which does not specifically address pregnancy and that certain things would apply to her. We could not do so as that would be the creation of a new legal standard and it would be one specifying the treatment to be provided to a pregnant woman that would not apply to any other woman who had not made an advance healthcare directive.

The Senator is looking to create a specific treatment of pregnant women under his proposal and it hives pregnant women off in a way we are trying to move away from in the context of this legislation. Pregnant women have the right to set out what treatment they wish to receive within an advance healthcare directive. Where there is vagueness or ambiguity there is a process set out under section 89 of the legislation to address that. That recognises situations of ambiguity, it provides a mechanism to address them and it makes it clear that the level of care can be provided while that ambiguity is being addressed through a court process.

**Senator Rónán Mullen:** The Minister is forgetting something. I am not proposing to create anything; I am trying to keep what is already there. The Minister is the one who is proposing to step down a protection established in the law, which is a modest enough one, that is, the simple idea that the presumption is in favour of preserving life. That is all. Instead the Minister is potentially leaving a family with a situation where, in already stressful circumstances, they have to make an application to the court to dispute or ask that in the absence of clear provisions in an advance healthcare directive about what is to happen in the case of a pregnancy, treatment would be given, despite a general refusal in the advance healthcare directive, so as to protect the unborn child. The Minister is potentially putting the burden on some family member to have to go to the court in order to vindicate and protect the life of the late-term and unborn child.

I do not know what to believe about what the Government thinks about abortion because things seems to have become so ideological that nothing that could remotely redound to the benefit of the unborn child is to be allowed to be stated in law anymore. The Minister keeps forgetting that I am not talking about this being a termination of pregnancy and that I am not confusing this with the law around abortion. I am trying to draw the Minister's attention to the standards and public policy vision that underlie the law on abortion and I am asking him to draw the conclusion of that about how we should then treat advance healthcare directives. Our law on abortion states that life has value and it is saying an unborn child has a right under law to be protected from the termination of pregnancy to a considerable degree after 12 weeks in the womb. If that is so then surely it follows that in something not connected with termination of pregnancy but something closely related that will potentially involve the termination of a life, there would at least be the presumption that one would give life-sustaining treatment so as to protect the unborn where the advance healthcare directive is silent.

There is another aspect to it that previously required that where the advance healthcare directive said even if there is pregnancy we want to refuse treatment and the current provision is that one goes to the High Court and the Government is proposing to get rid of that as well. Let us focus on the first one. There is still the possibility of an application to the High Court but there is a provision being removed that provides that where an advance healthcare directive provides that even if pregnant treatment should be refused. In those circumstances, the 2015 law provides that such a matter would be determined by the High Court and the Minister is also proposing to remove that. I am not specifically addressing myself to that because it is clearly more clear-cut that people have said they want to refuse treatment. That is closer to the *compos mentis* situation the Minister described earlier. However, where an advance healthcare directive is silent on what is to happen in the case of pregnancy it seems to me the presumption that

life would be preserved should not be removed. This is not a point that is particularly on the ideological end of the spectrum for me to be making. I am sure there are a lot of people who would be proudly pro-choice in their own self-understanding and self-expression who would say that it should at least be the presumption that you would protect life. Because the Minister has an ideological fixation about a kind of equality, however, he is willing to disregard the spirit of what exists in the abortion legislation, which is that life beyond a certain point should be protected where possible. Not only that but he is potentially forcing a family into the situation where they have to rely on some other section and go to the court for a determination about the AHD. That is cruel. Furthermore, he is exposing the unborn child in that situation, potentially a late-term unborn child, to the risk that there will be some kind of a dispute that the application might not be made to the court, or if the application is made to the court that there will be some kind of a dispute and the court washes its hands of it. All of this I find to be quite callous and cruel. I ask that the Minister, at the very least will say he will go back and think about this before Report Stage. That is not a lot to ask.

**Senator Regina Doherty:** I will ask a question because I have been fascinated while listening. I can see the points that both the Minister and the Senator are making. The Minister has stated that before 12 weeks it is not considered an abortion but thereafter, there is a presumption that the life of the child will be preserved. There is a whole legal quagmire there that may exist. The Minister stated some minutes ago that we did not want to have pregnant women off to be distinctly different to other women making their advance healthcare directives but being a pregnant woman is distinctly different to being a woman who is not pregnant because there is not just one life, there are two. Why, rather than leaving the presumption of the preservation of the life out there, do we not ask women making their healthcare directives to put in a scenario providing what should happen in the case of them being pregnant, as opposed to allowing it to be left open to legal argument or ambiguity? I do not think there is any woman that would feel different about that. We will be asking people to say what they will do in the case of a heart attack and so on. As being a pregnant woman is distinctly different to being a woman, why do we not simply ask them to make provisions for that case scenario, should it happen?

**Acting Chairperson (Senator Gerry Horkan):** The Senator pointed out to the Minister that he might reflect on it before Report Stage.

**Senator Erin McGreehan:** We have to listen to Senator Mullen's points. I get what he is saying 100% and I agree with him. Senator Doherty's suggestion is good. It is for everyone to start thinking about if we are making those advance healthcare directives and that is a choice that we would have to stipulate and discuss. As Senator Mullen stated, there cannot be differentiation if there is not a directive there. We have in our law that the life of a child, of a baby, after 12 weeks is different to the life of a baby prior to that. We have that in law and it is for valid reasons. We must look at that and I would appreciate it were the Department to go back and discuss that before we return on Report Stage, in order that all of this ambiguity is picked up because this is a very important issue.

**Senator Mary Seery Kearney:** We are talking about a very specific situation where the advance healthcare directive is silent. One would imagine that the law as it stands at the moment should be the presumption. I think that is what Senator Mullen is arguing. I have to say that I have sympathy with his position and it is a really valid argument, rather than us putting the burden in the opposite direction. By reversing that the onus is on a family to make an application to comply with where the law currently stands, when the woman in question does not have capacity, is running contrary to the *status quo* in the country and what people voted on when

they voted in the referendum. To reverse that onus and place it on a family to have to make an application not to terminate or not to have a consequence of termination, I note we have clear situations, where medical intervention is required, that it is not considered termination. The Senator, to be fair, is not disputing that. We seem to be going a step further than is necessary. In family law, we have situations where solicitors, before they issue proceedings for divorce or judicial separation, have a statutory obligation to confirm that mediation, counselling and everything like that has been tried. It would not be without precedent to put in an obligation in the creation of an advance healthcare directive to do exactly what Senator Doherty has suggested and to put in an obligation that a woman is obliged to have a paragraph about this and that anyone who is signing off on a healthcare directive has a duty to make a statutory declaration that the matter was addressed.

**Deputy Roderic O’Gorman:** For the avoidance of any doubt, where an advance healthcare directive is silent, the existing law and clinical practice apply. In this case, if the advance healthcare directive is silent about a consequence of treatment during pregnancy, the existing clinical practice applies and so the pregnant woman is treated equally to any other pregnant woman in that situation. There is no rebuttable presumption created against that. Where it is silent on the consequence of the woman being pregnant while getting treatment, the usual clinical procedures that doctors, nurses and clinical staff can undertake apply.

**Senator Rónán Mullen:** Let us try to make clear what is being said here. Is the Minister saying that because the 2015 legislation has not been commenced? The 2015 legislation provides that there is a presumption in favour of continuing treatment where not to do so - let me make sure that I am not confusing the House and myself. What is being deleted, among other things, is the following provision in section 85(6)(a) of the Assisted Decision-Making (Capacity) Act 2015:

Where a directive-maker lacks capacity and is pregnant, but her advance healthcare directive does not specifically state whether or not she intended a specific refusal of treatment set out in the directive to apply if she were pregnant, and it is considered by the healthcare professional concerned that complying with the refusal of treatment would have a deleterious effect on the unborn, there shall be a presumption that treatment shall be provided or continued.

That is what the 2015 legislation says. Is the Minister saying that because that has not been commenced, therefore what he is referring to is some *status quo ante* when he tells us that existing clinical practice will continue? The point I made to him a few moments ago was that I am not the one proposing a change here; it is the Minister. The Minister is the one proposing to take that out of the 2015 legislation. It is there. I did not dream it up. I am asking the Minister why he would take it away when by doing so he is, as I said, exposing families to the cruel situation potentially, in a given set of circumstances, that they must make an application to the court to secure the continuation of treatment so as to avoid damage to the unborn and so as to preserve the life of the unborn and, as I said, potentially the situation where you could have some kind of a dispute and a life is lost where, if this were the legislation there would at least be the presumption in favour of continuing treatment. It seems to me that the Minister has introduced a measure of confusion here by telling us that things are going to continue as they currently are. I do not know if he is saying “as they currently are” because this has not been implemented. There is a reason the Minister is proposing, in a section in the legislation being debated today, to delete something. He is proposing to delete what I have just read out. What I am saying to the Minister is that what I just read out is reasonable, is more decent and more in keeping with the

existing provisions of the very different abortion legislation. I accept we are not talking about a termination of pregnancy in terms of the law on termination of pregnancy but we are talking about what the public policy attitude to a child after 12 weeks is supposed to be.

Despite the change in our law, it is still meant to be substantially protective. That is certainly what we were told a few years ago. There may be all sorts of issues and debates that we could have about that, but it is supposed to be substantially protective. The Minister is proposing to get rid of a section that at least gives the presumption that treatment would be continued where an AHD specifying the refusal of treatment is silent about what is going to happen during pregnancy.

I am happy to withdraw my opposition today. I am not proposing an amendment, but I am opposing a section that I have a problem with. I am not going to put anything to a vote; it would not make much difference if I did. However, it is not a lot to ask that the Minister would take away the concern that has been expressed on different sides of this House today, at least about that section. I can well imagine that Members will have different views about the next section, which specifies that even if one is pregnant, there is to be a refusal of treatment. The Minister is proposing to get rid of the provision that an application shall be made to the High Court. He appears to be confused about that. What he is proposing to do in that case is to get rid of the requirement of an application to the High Court in a case where an AHD says that even if someone is pregnant, treatment should be refused. What he is leaving, and what is not disputed, is the possibility of an interested person making an application to the High Court about this, and the law will allow that a healthcare professional may continue to give care until that issue is determined but that is a massive step down in the potential protection of the unborn and it is potentially a lot of stress and cruelty towards a family or to family members who are already suffering. This is quite apart from the justice issues around how the unborn child in that potentially late-term pregnancy situation is to be cared for.

**Senator Regina Doherty:** The Minister is saying the AHD is silent and the current law after 12 weeks would allow he interventions to protect the life of the child distinctly, differently and separately to the life of the mother. What has legally changed since we felt the need and the Attorney General in 2015 would have felt the requirement to put in the exact clause that we are now taking out, which specifically gives the protection to the baby as distinctly different to the mam? If the AHD is silent and the Minister is saying that the current law stands, then what is different today from when we felt the need to have to put in these specific words in 2015 to make sure that the healthcare professionals knew?

**Deputy Roderic O’Gorman:** As the Senator knows, I was not here at the time of the 2015 legislation but it is my understanding from talking to officials that this provision was seen as a necessity that stemmed from the then constitutional situation. What we are doing now is ensuring that the specific restrictions on the applicability of an AHD to a pregnant person, which is understood as being necessitated by the previous constitutional position and as such put into the 2015 Act, is no longer required within the revised legislation.

To speak to the Senator’s more general point, I recall the fact that an AHD allows a person to set out their treatment in specific circumstances. If the directive is silent on the issue with regard to the interaction of a pregnancy with a particular treatment, it does not apply in that situation and the regular treatments that medical practitioners can undertake will occur. I do not think that the-----

**Senator Rónán Mullen:** Would the Minister mind repeating that last point?

**Deputy Roderic O’Gorman:** Pardon?

**Senator Rónán Mullen:** Would he mind repeating? Just wind it back, if he does not mind, because we all agree that this is important. I just did not quite grasp it.

**Deputy Roderic O’Gorman:** That is okay. If the advanced healthcare directive is silent on the issue with regard to the interaction of pregnancy with the particular treatment, the existing legal and medical processes apply.

**Senator Rónán Mullen:** What does that mean?

**Deputy Roderic O’Gorman:** It means that the doctors and the medical team in that situation would undertake what they would normally undertake. They are not bound by any requirements of the AHD. They can treat just as they would treat in any other situation according to their judgment of the situation.

**Senator Rónán Mullen:** So he Minister is leaving it up to the judgment now, which in circumstances-----

**Acting Chairperson (Senator Gerry Horkan):** Senator.

**Senator Rónán Mullen:** I am sorry. I will wait until I get called on to speak. I apologise. I did not mean to. If I may-----

**Acting Chairperson (Senator Gerry Horkan):** The Senator may. I am just conscious that we have spent 45 minutes on this. I know that it is an important topic, but we have at least 36 more amendments to deal with, as well as another section that is being opposed. The Senator was hoping that the Minister might reflect on this before Report Stage, and he is not going to put the question to a vote. I think we have deliberated well. By all means, the Senator may address his point to the Minister, but I am not sure that we are not going around in circles a little bit at this stage.

**Senator Rónán Mullen:** I think there is an element of confusion in what the Minister is saying. I can understand him when he says that when the eighth amendment was in place it was seen to be required that there would be this clear statement but what he is ignoring is just because it is maybe not as required now at the constitutional level, that does not mean that it is not desirable. As I said, the existing legislation on abortion clearly points to a certain attitude to the unborn after 12 weeks. That is the first thing. Human decency points to a certain attitude that is more easily shared across society towards later-term pregnancy. We all know where I stand on the protection but that is not the subject of today’s discussion.

I have pointed to the potentially very unhappy effects on a family. I will grant the Minister that the eighth amendment may have necessitated something, but just because that constitutional necessity is no longer there, that does not mean that this is not desirable. It is still desirable, having regard to what the law in other areas provides around the unborn post 12 weeks. It is still desirable because of practice.

The Minister is asking us instead to somehow believe that where the presumption in favour of preserving the life is taken away - and he is physically taking it out of the 2015 legislation - he is trying to just wave it all away and saying, “Oh, do not worry, in clinical practice they will do



what they always do and what they currently do". I do not know what that means. All I know is that the Minister is taking something fairly innocuous and desirable out of the law, which is just that there is a presumption in favour of saving a life. That is not a lot to ask. He is saying, "Oh do not worry". I think he trying to tell us that in these situations doctors will still disregard the AHD and will preserve the life of the child, even if there is a general refusal of treatment. I do not know whether that is true. He is telling me that it is true. I do not know whether it is true. He is saying that it is up to the decision of the healthcare professional, but I would rather have it in law that there should be a presumption in favour of giving that treatment. I have no idea what those kinds of general, wave-it-away with references to clinical practice mean. I do not know what the Medical Council guidelines are on this subject; I do not know what they will be in five years. All I know is that we are here to try to shape and adjust the law for the common good. I think that is what the Minister should apply his mind to as well. All that I am asking is - and I think there is some support for me in this House - that he will take away our points on this topic and that he will undertake to reflect on it again before Report Stage.

**Acting Chairperson (Senator Gerry Horkan):** I thank Senator Mullen. I will bring in Senator Doherty and the Minister might address that point that he is in a position to reflect on it and then, we might be able to move on.

**Senator Regina Doherty:** The Minister is saying the reason that it is not required is that we now have primary legislation that determines how healthcare services will treat babies older than 12 weeks and, therefore, it is implied by other legislation that a baby that has been in gestation for longer than 12 weeks will be protected regardless of whether it is silent in the AHD or of specific requests by the mother in the AHD. If that is true, then what is the harm in putting it into this legislation that the AHD does not stand if the woman has been pregnant for longer than 12 weeks? It is only reconfirming what is in the current legislation, if that is what the Minister is saying. I do not see what the harm is in then putting it into this legislation.

**Senator Mary Seery Kearney:** I have a concern with it being left up to a healthcare professional without a direction or an inclusion if we were to end up with a situation such as what happened with Savita Halappanavar, where it is down to the doctors at the time to make decisions because the law is ambiguous. We cannot have any ambiguity. We need a definite position.

**Deputy Roderic O’Gorman:** The current section 85(6) creates a specific standard that applies solely to pregnant directive-makers. The purpose of the removal of the subsection is to ensure that the current clinical practice applies to pregnant women. It is not being put forward as any sort of weakening of the protections towards a foetus but it allows for clinical policy, which is always more responsive to legislation, to be implemented by clinicians at a particular time. That is the direction we should be allowing. We should be allowing clinical policy to be implemented.

**Acting Chairperson (Senator Gerry Horkan):** On the specific point as to whether the Minister is in a position to reflect, between now and Report Stage, on the points Senator Mullen was making.

**Deputy Roderic O’Gorman:** In terms of the position that Senator Mullen has taken and the concerns that have been raised by other Members, I will reflect on that and come back. We can discuss it further on Report Stage.

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

**Senator Mary Seery Kearney:** Not to be picky but I wish to pick up on the reference to pregnant directive-makers. A person might not fall under the definition under section 82 of the primary legislation regarding AHDs. One makes an AHD when one has capacity to envisage a situation where one may not have capacity. The person may be pregnant at the time the directive comes into being but not at the time it is being created, so we need to be careful that we are not calling the person “pregnant” and for that to become an issue of interpretation as to whether a person was pregnant and envisaged pregnancy. Hence, we come back to the suggestion made by the Leader to provide for a statutory requirement for women creating an AHD to consider what should happen in the event of pregnancy. If that were in place, there would be no ambiguity in respect of what would happen in that situation. It seems to be a cleaner way forward to ensure there is that statutory imperative in place.

**Senator Regina Doherty:** The reason Members have had such disastrous examples to reference is that doctors, hospitals and clinicians have been allowed to follow clinical policy and the ambiguity of different interpretations of that policy has resulted in women and babies suffering. I do not see the problem with inserting specific wording in an AHD to the effect that if the person concerned is pregnant at the time of a heart attack or whatever else is being determined or listed, then the current law of the land would apply to the clinicians intervening to save the life of the baby if the pregnancy is longer than 12 weeks. The exact same would be true in the case of a woman putting in a line that if she has a heart attack while pregnant, regardless of the age or gestation of the baby, she does not want intervention to happen. That would be illegal and not allowed to stand. The doctors would have to intervene. Given that we know that clinical policy and other legislation requires intervention, I do not see the difference in respect of us being clear in the directives, particularly for women, should they ever become pregnant, that the advance care wishes would be subject to the current legislation. I do not see the problem with being specific.

**Senator Rónán Mullen:** Not only that, I fear that despite what the Minister has said about going away and thinking about it, it is clear from the last thing he said that he intends that, in future, there will not be a presumption in favour of protecting the life of the unborn. Am I correct in thinking that current clinical practice is guided by the 2015 legislation? Has that section of the 2015 legislation that is being amended been commenced?

**Deputy Roderic O’Gorman:** The 2015 legislation has not been commenced. That is one of the central reasons for bringing forward this legislation because we do not-----

**Senator Rónán Mullen:** Basically, the section the Minister is proposing to remove, which is the protection that was inspired by the eighth amendment, as he put it, never came into force. Is that correct?

**Deputy Roderic O’Gorman:** The Senator asked me to reflect-----

**Acting Chairperson (Senator Gerry Horkan):** I am trying to facilitate the debate but it is not a to-and-fro discussion. The Senator should put his questions and I will then let the Minister respond.

**Senator Rónán Mullen:** I am asking this because the Minister stated that he wants clinical practice to be able to evolve. He is proposing the removal of a presumption in favour of continuing the giving of care to protect the unborn in situations where a directive is silent as to

what is to happen during pregnancy. He said that he wants to get rid of this and wants to allow clinical practice to evolve. The only interpretation that a reasonable person can take from that is that he wants it to be open to practitioners not to continue with life-sustaining treatment to avoid a deleterious effect on the unborn. That is why he is getting rid of this. I do not see how he can say there will be the protection or preservation of the life of the unborn in defiance of an AHD refusal of treatment when one has to go to court to make an application. In the absence of an application being made to the court, the default position will be just to carry through the directive. That is what the Minister said. He wanted strict equality between pregnant and non-pregnant persons. The logic of that is there will not be a presumption in favour of protecting the child in that situation because the presumption is that one must act as though the pregnancy was not there and, therefore, one refuses the treatment and the child dies in that situation. That is the logic. He appeared to give the House the impression that continuing treatment tending towards the protection of the unborn child in that situation will continue. I do not understand how he can say that in the light of what he is proposing to remove from the 2015 legislation and the clear requirement for an application to the court to do anything other than what the AHD provides in the case of a refusal of care.

**Deputy Roderic O’Gorman:** The Senator asked me to reflect on the position and I agreed to do so. He then stated that even though I had agreed to do so, he thinks I have come to a conclusion anyway. If he wishes to take that position, that is fine.

**Senator Rónán Mullen:** The last thing the Minister stated in his reply worried me.

**Deputy Roderic O’Gorman:** Throughout this legislation, I have engaged extensively on issues that have been raised. This legislation did not get to this House until now because we were reflecting on other issues and brought forward improvements. With the greatest of respect, I think I have a track record of listening and engaging where that is possible.

**Senator Rónán Mullen:** Is é tástáil na putóige a hithe.

Question put and agreed to.

#### NEW SECTION

Government amendment No. 45:

In page 61, between lines 7 and 8, to insert the following:

#### “Amendment of section 88 of Principal Act

74. Section 88(4) of the Principal Act is amended by the substitution of the following for paragraph (b):

“(b) The Director—

(i) shall review any complaint referred to in paragraph (a) and shall, if satisfied that the complaint has substance, conduct an investigation into the matter, or

(ii) may, notwithstanding that no complaint has been received, on his or her own initiative conduct an investigation in relation to the way in which a designated healthcare representative is exercising his or her relevant pow-

ers.”.”

**Deputy Roderic O’Gorman:** The amendment relates to further improvements with regard to complaints throughout the Act. The particular amendment relates to complaints in respect of AHDs under Part 8 and will ensure the director of the decision support service will be able to conduct an investigation on his or her own initiative regarding a designated healthcare representative. This was always the policy intention and this provision makes clear that position, thus improving the harmony of investigative powers throughout the Act.

Amendment agreed to.

#### SECTION 74

**Senator Fintan Warfield:** I move amendment No. 46:

In page 61, lines 9 and 10, to delete all words from and including “Section” in line 9 down to and including line 10 and substitute “Section 89 of the Principal Act is amended by the deletion of subsection (3)(b)(ii).”.

The Bill retains discrimination against pregnant people who should have their AHD. The Minister committed to resolving this issue during pre-legislative scrutiny and the passage of the Bill through the Dáil but the amendment made continues to treat a person’s AHD differently once the person becomes pregnant. Pregnancy should not impact on an AHD and it should be within the decision-making powers of the directive maker to stipulate if something is not to apply in the event of pregnancy. Women and people who can get pregnant deserve the security of knowing that the directive will not protect them less if they become pregnant, and that their will and preferences will be respected in all circumstances.

**Deputy Roderic O’Gorman:** As the Senator suggests, the amendment proposes to amend the Act of 2015 by removing section 89(3)(b)(ii).

*4 o’clock*

While I understand the intent of the amendment is to give further effect to the changed constitutional provision and the deletion of section 85(6), which we discussed previously, the amendment is not necessarily following the said proposed deletion. That is an important difference between section 89 and section 85 of the 2015 Act. As distinct from section 85, which concerns the scope of AHDs in the context of pregnancy, section 89 concerns the role of courts in clarifying, where necessary, the validity of an AHD. It is designed to address a scenario where the will and preference of a directive-maker may not be clear in the AHD in question or another scenario where a legal mechanism is required to determine the validity of an AHD. The purpose of changing the term “the unborn” to “her pregnancy” in the amendment Bill is to avoid signalling the language of the previous constitutional position in the Bill’s text. This does not grant any power to alter or set aside an AHD where a clear expression of will and preference is contained in creating the instrument. However, it allows a very necessary interim period where treatment can be provided pending the court’s clarification of any issue regarding the validity or ambiguity of an AHD.

Section 89(2) relates to the role of the High Court, which will be the level required in the court system to receive an application involving considerations related to life-sustaining treat-

ment regarding the applicability or validity of an AHD.

Section 89(3)(b)(ii), as it will be amended, provides that in circumstances where there has been an application under section 89(2) of the 2015 Act and the directive-maker is pregnant, there can be life-sustaining treatment for the mother and treatment to prevent a deleterious effect on her pregnancy. This change of language was chosen so as to avoid a reference to the previous constitutional position. As it will be amended, the section does not prioritise either the rights of the mother or the unborn. It is value-neutral and simply provides that treatment may be provided pending the decision of the High Court on an application to determine the validity of an AHD.

The earlier deletion of section 85(6) ensures that where a pregnant woman has made a valid and clear AHD that covers treatment during pregnancy, that AHD is valid and binding in the manner that all other AHDs are. As such, we would argue that there is no need for the amendment as proposed.

**Senator Fintan Warfield:** I will withdraw the amendment, but reserve the right to resubmit.

Amendment, by leave, withdrawn.

Question proposed: “That section 74 stand part of the Bill.”

**Senator Rónán Mullen:** I would like to speak, but thought not at the same length, if I may.

**An Cathaoirleach:** Yes.

**Senator Rónán Mullen:** I will not speak at the same length as previously because, to some degree, the Minister has answered the question I wanted to ask. On at least two occasions, interestingly, he referred to the provisions that allow for the possibility of giving life-sustaining treatment pending a court determination in relation to an AHD. He envisages that such a determination or court issue will arise where there is a clear statement in the AHD, which kind of throws us back to the previous debate somewhat. As I have said, that is interesting and we will touch on what the Minister will reflect on between now and Report Stage.

It is clearly the intent of the Government to make sure that where life-sustaining treatment is specified, and where there is a clear refusal even in the event of pregnancy, there will not be any second-guessing that. I have concerns about that, although I accept that this concern will not be as broadly held in this House. I feel very strongly that in a situation where a life could be retrieved from a very unhappy situation, surely the family should have some ability to raise that issue. Certainly, with the terms in which the Minister spoke of the court decisions to be made - I do not want to put words in his mouth - he suggested that it is a matter of a technical kind of decision-making by the courts, rather than any second-guessing of the substantial refusal of treatment.

Be that as it may, the Minister is changing the term “the unborn” to “her pregnancy”. He gave us the reason for that, which is to get away from the language of the eighth amendment. Is there any substantial difference? Does the Minister see avoiding a deleterious effect on “her pregnancy” as being in any way different in practice from avoiding a deleterious effect on “the unborn”? Does he see those phrases as completely comprehending the same thing? That is a question I am putting to the Minister.



Just because the phrase “the unborn” is no longer in the Constitution, why does it have to be the case that the phrase cannot exist in legislation in all of these situations? It seems that what is going on is to reduce the concept of the unborn to some kind of property right or bodily appendage. That is the only inference I can draw from why one would go to the trouble of excising the words “the unborn” and replacing them with “her pregnancy”. I asked the Minister whether it will make any substantial difference to what will happen. If it will not, I need do no more than express my personal regret that there is this kind of underlying attitude that nothing that is suggestive of external rights or external dignity to be enjoyed by the child is to be allowed in the terms of our legislation. I regret that. Again, I reiterate the point that it is out of keeping with the spirit even of the termination of pregnancy legislation, which as I have already said at great length, does accord, indirectly at least, through the continuing application of the criminal law to most situations post 12 weeks, some appreciation of the dignity and the demand for care and respect of what the Minister now calls “her pregnancy”, but which to people remains “the unborn”, “the child in the womb” and so on and so forth.

I regret this default to changing language. Perhaps the Minister will tell me that the wording is more precise or removes some mischief, or that some good will be achieved if we change the legislation. However, that is not what he has said. He has said he wants to get away from the language of the eighth amendment. The language of the eighth amendment left very clearly open to the Oireachtas the ability to protect the unborn, which it continues to have through the legislation of 2018. I listened carefully to the Minister’s views. However, I regret this reflex dismissal of references to “the unborn” and I reflect this kind of apparent allergy to any kind of wording that would tend to vindicate the rights or dignity of the unborn in any situation.

**Senator Mary Seery Kearney:** On this occasion, the term “the unborn” is so unbelievably loaded that I support the amendment. My one question is whether there is a conflict in using the word “her” in the term “her pregnancy”. Is there a conflict with other gender recognition legislation?

**Senator Rónán Mullen:** I did not see that one coming.

**Deputy Roderic O’Gorman:** The Senator is opposing section 74 of the Bill, which relates to the validity of an AHD and the role of the court in this regard. Section 89(2) concerns an application to the High Court for a determination regarding the applicability or validity of an AHD, which itself concerns life-sustaining treatment or the actions of a designated healthcare representative in respect of that directive. Section 89(3) of the 2015 Act is connected to section 89(2) and provides a basis for a healthcare professional to provide treatment to the directive-maker during the time the High Court is considering the directive and outside the context of the directive under consideration. Under section 89(3)(b)(ii) of the 2015 Act, such treatment can be extended to the unborn. The amendment to section 89(3)(b)(ii) of the 2015 Act, as set out in section 74 of this amendment Bill, will change the wording of section 89(3)(b)(ii) so it now uses the term “pregnancy”. To address Senator Mullen’s question, this change to the terminology in the Act is to better reflect the changed legal landscape. The term “unborn” was used in the 2015 Act to take account of the legal position arising from Article 40.3.3° of the Constitution. Following the removal of Article 40.3.3° through the 36th amendment, the term is no longer relevant to the functioning of the Act.

At the same time, recognising the matters to be considered by the High Court under section 89(2) of the 2015 Act will still be relevant. After the removal of section 85(6) of the 2015 Act, it is apparent that section 89(3)(b)(ii) will still be important to ensure healthcare professionals

can perform any acts they reasonably believe are necessary to avoid a deleterious effect on the pregnancy of the directive-maker while the courts make a determination in this regard. This may be particularly important in the context of clarifying and vindicating the will and preference of the directive-maker. This provision of the 2022 Bill thus both recognises the unique situation that may arise where a directive-maker who has lost capacity is pregnant, while at the same time underlining that the focus is on the will and preference of the directive-maker.

**Senator Regina Doherty:** What is the Minister’s purpose in changing the language from previously specifying that healthcare professionals would intervene to protect or save the life of the unborn, to moving towards changing the language so that healthcare providers would intervene to protect the pregnancy? Are we trying to determine that the word “pregnancy” actually relates to the life of the baby in the womb of the women? A pregnancy is an event, and a long period of growing and lots of other warm, fuzzy stuff women talk about, but it is distinctly different to the life of the baby in the womb. A pregnancy is a term of nine months, or however many weeks it takes for a baby to grow from something as tiny as the head of a pin to what comes out when one’s labour has finished. It is distinctly different to the unborn, which goes through completely different phases during that pregnancy. I am not sure if that is what we are saying, when we take out the word “unborn”. I completely hear what people are saying about it being a loaded term but it is still a baby. It is not a pregnancy, which is an event that happens over many months. It is not a baby. Is that what we are saying by changing the terminology?

**Senator Rónán Mullen:** I will follow on from that. Is it now the case that in all our future legislation there will never be anything but references to “the pregnancy”, when what is meant is the child *in utero* or, in Latin, the foetus, which I think means “little one”, that clearly identifies the human entity as the child *in utero*? Is there any openness to something more precise, following on from what Senator Doherty said, such as using the words “foetus” or “the child *in utero*”? Is the Minister in a position to tell us today whether there is any other legislation that mentions what the Constitution used to refer to as “the unborn” in terms other than “the pregnancy” or “her pregnancy”? I will leave that as a question.

I will ask another question. By the way, I marked my opposition to these sections because I am unhappy with certain aspects of them, though not all. I am clearly not opposing the section in general. I could just as easily have spoken to the section without saying I am opposing it but I will oppose it on Report Stage for sure, if there is no change on the other provision we discussed earlier. As I said, I am uncomfortable about the language used. I will ask one other substantive question. Again, as I said, it is so difficult to talk about these issues when there is a myriad of different healthcare situations that can arise, but there is no provision in this section allowing a healthcare professional to give treatment to avoid a deleterious effect on the unborn or on the pregnancy while a court decision is being made around considerations of non-life sustaining treatment. In other words, these are the provisions of section 89(1) that include considerations of an advance healthcare directive that do not relate to life-sustaining treatment but, presumably, to some other kind of treatment.

Could it ever happen that there would be some kind of treatment that would not necessarily be life sustaining for the mother the denial or refusal of which might be damaging to the unborn? Perhaps the answer is never but was any consideration given to that? I am not a medical person. It is clear that the only leeway given to a healthcare professional to continue to give treatment for the sake of the child while a determination is being made by the court only applies to cases where there is a discussion about life-sustaining treatment. I presume that is because there are no circumstances that would involve a directive-maker refusing in advance non-life

sustaining treatment and which refusal could potentially harm the child *in utero*. Does the Minister have an answer to that question? It is noteworthy that the only leeway given is to the healthcare professional in circumstances where the issue before the court involves the refusal of life-sustaining treatment.

**Deputy Roderic O’Gorman:** Like the Senator, I am not a medical person so I am afraid I am not in a position to give a detailed answer on that particular point.

On Senator Doherty’s point, and bearing in mind the agreement on the removal of the term “unborn”, when the provision is read in its entirety, it includes a situation where the directive-maker is a pregnant woman and there is a deleterious effect on her pregnancy. We are trying to achieve a situation, where a court case is ongoing regarding ambiguity around the advance healthcare directive, that ensures that protection and relevant treatment are provided during that period. The language substituted, namely, the effect on “her pregnancy”, is an adequate replacement in encapsulating those nine months the Senator talked about and the range of circumstances medical professionals need to provide for to make sure adequate treatment is provided. It is an adequate wording and in our view, from a legal perspective, it is an adequate expression to use. Perhaps the Senator disagrees and has alternatives that could be used, but the existing wording captures both the relevant time period and the extent of the needs of the woman in question and, as such, that is why we chose it.

**Senator Rónán Mullen:** Were the Minister kind enough to come back on Report Stage with specific answers to the questions I asked, I would be very grateful. The question I asked a moment ago might reveal my huge medical ignorance, as I said, but neither of us are medical people and it is very relevant. If it were the case, for example, that there were certain kinds of non-life sustaining treatment the refusal of which could actually endanger the unborn, it might bear on our thinking about the absence of a protection for the healthcare giver in that situation. I assume it is nonsensical to think there would be but I would be grateful for clarification on that before we all vote on this on a later Stage.

In the same way, the Minister said the role of the court would be to resolve an ambiguity. Is it only where there is ambiguity in the advance healthcare directive that the courts would have a role? It is not necessarily ambiguous, on one reading, that an advance healthcare directive is silent on what is to happen in the case of pregnancy. It is silent and it speaks from its silence. A view could be taken that that is not ambiguous but in fact means no care and care is being refused, full stop. Is the courts’ role only for the resolution of ambiguities? Is it clear from the legislation, or is there any scope, for the court to have any jurisdiction to overturn the clearly expressed provisions of an advance healthcare directive?

**Deputy Roderic O’Gorman:** The relevant provisions of section 89(2) set out the situations in which the High Court may make a declaration. The High Court may make a declaration as to whether an advance healthcare directive is valid, an advance healthcare directive is applicable or a designated healthcare representative is acting in accordance with the relevant powers. Those are the provisions set out by the legislation in respect of the range of declarations the High Court can make.

**Senator Regina Doherty:** I do not think I am going to change the Minister’s mind. I understand the Minister is saying that changing the language means there will be interventions which will protect the woman’s pregnancy or the person’s pregnancy. By association, we are supposed to assume or come to the conclusion that this means we would be intervening to pro-

protect the life of the baby. Have we become so politically sensitive, if that is the right way to put it, that we do not talk about babies in the womb any more? It is bizarre. The healthcare directive, whether silent or not silent, should be all about protecting life. When a person is pregnant, there are two lives involved. We do not need to shy away from mentioning the fact, or being specific about the fact, that there are two lives involved. It is not just the pregnancy we are protecting. The baby is a part of the pregnancy as well as the mother we should be protecting. I do not know why we are so afraid to talk about that in language and legislation any more. It is mad.

**Senator Mary Seery Kearney:** I will come back to Senator Doherty's view on pregnancy and reiterate the legal definition of a pregnancy, which is that it encompasses the period of time from implantation until delivery. The Bill states: "A woman shall be assumed to be pregnant if she exhibits any of the pertinent presumptive signs of pregnancy, such as misses menses, until the results of her pregnancy test are negative or until delivery." A foetus means "the product of conception from implantation until delivery". I support the proposal to change the word "pregnancy" to "foetus" as being more relevant, correct and legally correct.

**Senator Regina Doherty:** It should say both. The words "pregnancy" and "foetus" should be included.

**Senator Rónán Mullen:** Are you saying you would prefer the word "foetus" to "pregnancy"?

**Senator Mary Seery Kearney:** That is right.

**An Cathaoirleach:** Please speak through the Chair.

**Senator Mary Seery Kearney:** I apologise. In answer to the Senator, I am saying that.

**Senator Rónán Mullen:** The Minister has the apparatus of State behind him. Would he mind addressing the issues I have raised today on Report Stage? Will he address the specific questions I have asked, including the one about non-life-sustaining treatment?

**Deputy Roderic O'Gorman:** I will do my best to address those points for the Senator.

**Senator Rónán Mullen:** I am withdrawing my opposition. I am happy to wait until Report Stage.

Question put and agreed to.

Sections 75 to 77, inclusive, agreed to.

## SECTION 78

**An Cathaoirleach:** Amendments Nos. 47 to 50, inclusive, are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 47:

In page 65, to delete lines 1 to 3 and substitute the following:

"(c) in subsection (4), by the substitution of "complaints, or of investigations on his or her own initiative," for "complaints",".

**Deputy Roderic O’Gorman:** Amendment No. 47 proposes to amend section 96 of the 2015 Act, making a minor amendment to the director’s investigative powers to facilitate broader improvements to complaint mechanisms throughout the Act. Both this amendment and other amendments in this group seek to allow the director greater control over how to resolve investigations undertaken on his or her own initiative. These include extending powers to reviews of complaints. It will still be necessary for the director’s procedures to be published to allow for transparency. However, this amendment facilitates other improvements to complaints provisions in the Bill.

Amendment agreed to.

Government amendment No. 48:

In page 65, line 14, to delete “subsection” where it firstly occurs and substitute “subsections”.

Amendment agreed to.

Government amendment No. 49:

In page 65, line 22, to delete “Reform.” and substitute “Reform.”.

Amendment agreed to.

Government amendment No. 50:

In page 65, between lines 22 and 23, to insert the following:

“(9) In this section, ‘investigation’ includes a review referred to in sections 15(1A), 30(1A), 47(1A), 76(2A) and 88(4)(b)(i).”.

Amendment agreed to.

Section 78, as amended, agreed to.

## SECTION 79

**An Cathaoirleach:** Amendments Nos. 51 and 53 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 51:

In page 66, line 14, to delete “to the” and substitute “to the relevant person concerned and the”.

**Deputy Roderic O’Gorman:** These amendments provide for minor technical amendments to ensure that the relevant person is a notice party where a temporary prohibition order has been issued by the court.

Amendment agreed to.

**An Cathaoirleach:** Amendment No. 52 has been ruled out of order. It would require the provision of legal advice and legal aid to the relevant person when an application is made for a temporary prohibition order. The provision of legal advice and legal aid would then implicate



a cost on the Exchequer.

Amendment No. 52 not moved.

Government amendment No. 53:

In page 66, line 20, to delete “subsection (2) on the” and substitute “subsection (2) on the relevant person concerned, the”.

Amendment agreed to.

**An Cathaoirleach:** Amendment No. 54 has been ruled out of order as it includes a potential charge on the Revenue.

Amendment No. 54 not moved.

Section 79, as amended, agreed to.

Sections 80 to 85, inclusive, agreed to.

## SECTION 86

Government amendment No. 55:

In page 70, between lines 30 and 31, to insert the following:

“(b) in subsection (3)—

(i) in paragraph (f), by the substitution of “professionals;” for “professionals.”, and

(ii) by the insertion of the following paragraph after paragraph (f):

“(g) persons who have a disability within the meaning of section 2(1) of the Disability Act 2005, their representative organisations, or any other persons with expertise in matters pertaining to disability.”.

**Deputy Roderic O’Gorman:** This amendment will allow for disabled persons and their representative organisations to be consulted by the director when codes of practice are being developed. Consultation was a strong theme during pre-legislative scrutiny and was also raised during the Dáil debates on this Bill. I am, therefore, pleased to propose an amendment which recognises the importance of the inclusion of disabled persons in the development of the relevant code of practice.

**Senator Mary Seery Kearney:** I welcome this good amendment. However, the period of time for public consultation on the codes of practice has been disputed by a number of the representative organisations. They have said it was too short and occurred over Christmas, a time when they could not produce the information required. Consultation must be in a form that allows people to receive, digest and comment on the information. I am delighted with these specific inclusions and will, of course, fully support the amendment. However, I think we need to be more sensitive so that next time around, we do not run the consultation over a Christmas period or at a time when people are on holidays. We must ensure that assistance and valuable input from those who are most affected are not in any way diluted or diminished.

**Deputy Roderic O’Gorman:** I take the Senator’s point.

Amendment agreed to.

Section 86, as amended, agreed to.

NEW SECTION

**An Cathaoirleach:** Amendments Nos. 56 and 57 are related and may be discussed together, by agreement. Is that agreed? Agreed.

Government amendment No. 56:

In page 70, after line 37, to insert the following:

**“Amendment of section 107 of Principal Act**

**87. Section 107 of the Principal Act is amended by the insertion of the following subsection after subsection (3):**

“(3A) A person detained pursuant to a direction made under subsection (3) for a period exceeding 3 months (in this subsection referred to as a ‘renewal period’) or his or her committee or legal representative, may, after a period of 3 months has expired from the date the direction was made but before the expiry of the renewal period, make an application to have the person’s detention reviewed by the wardship court under subsection (3) and no more than one such application may be made in each renewal period.”.”.

**Deputy Roderic O’Gorman:** Amendment No. 56 amends section 107 of the 2015 Act. Amendment No. 57 amends section 108 of the 2015 Act. These amendments seek to ensure that appropriate detention review periods are in place for persons whose continued detention may be necessary for treatment and where it is ordered by the wardship of the High Court. This increased frequency of review proceedings will further protect the rights of relevant persons and bring provisions in line with those of the Mental Health Act 2001. It is essential that persons who require ongoing treatment are afforded the same rights and safeguards as others.

Amendment agreed to.

Section 87 agreed to.

NEW SECTION

Government amendment No. 57:

In page 70, after line 37, to insert the following:

**“Amendment of section 108 of Principal Act**

**88. Section 108 of the Principal Act is amended by the insertion of the following subsection after subsection (3):**

“(3A) A person detained pursuant to a direction made under subsection (3) for a period exceeding 3 months (in this subsection referred to as a ‘renewal period’) or his or her committee or legal representative, may, after a period of 3 months has

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expired from the date the direction was made but before the expiry of the renewal period, make an application to have the person’s detention reviewed by the wardship court under subsection (3) and no more than one such application may be made in each renewal period.”.”.

Amendment agreed to.

Section 88 agreed to.

#### NEW SECTION

Government amendment No. 58:

In page 70, after line 37, to insert the following:

#### **“Amendment of section 136 of Principal Act**

**89.** Section 136 of the Principal Act is amended—

(a) by the substitution of “Act of 2001, unless the patient is a person detained under the Act of 2001 on the grounds that he or she is suffering from a mental disorder within the meaning of section 3(1)(b) of that Act” for “Act of 2001”, and

(b) by the insertion of the following subsection after subsection (1):

“(1A) Subject to subsection (1)—

(a) a reference in section 56, 57, 59 or 60 of the Act of 2001 to a ‘patient’ in the context of the patient giving his or her consent shall include a decision-making representative appointed in respect of the patient and in respect of a matter to which the relevant consent relates, and

(b) a patient shall not be regarded as incapable or unable to give consent for the purposes of section 57, 59 or 60, as the case may be, of the Act of 2001 where a decision-making representative is appointed in respect of the patient and in respect of a matter to which the relevant consent relates.”.”.

Amendment agreed to.

Amendment No. 59 not moved.

Sections 89 and 90 agreed to.

#### NEW SECTION

**Senator Fintan Warfield:** I move amendment No. 60:

In page 71, between lines 26 and 27, to insert the following:

#### **“Amendment of section 146 of Act of 2015**

**91.** Section 146 of the Act of 2015 is amended by the insertion of the following:

“(1) Such review will examine the operation, interpretation and accessibility of this Act and make recommendations for reform accordingly. Such review shall in-

clude consultation with, and the active involvement of, persons with disabilities through their representative organisations. Such review shall thereafter take place every 3 years.”.”.

Those who campaigned for this legislation specifically argued that a comprehensive review clause was necessary to ensure that the Act remained under ongoing review at regular intervals, given the pace of change in this area globally, as well as advances in practice on the ground. Therefore, we are recommending the addition of a further provision to ensure that the Act is reviewed thereafter every three years. On Committee Stage in the Dáil, the Minister stated that it would not be appropriate to have a rolling review of legislation and that after the initial reviews the stakeholders could decide whether the legislation required further review, amendment or overhaul. This approach, however, is inadequate as stakeholders would not have a legislative entitlement to demand a review. Given that this is an evolving area of law reform, reviews are essential.

**Deputy Roderic O’Gorman:** I understand that the intention of this proposed amendment is to broaden the review procedures. A review is already provided for in the legislation. The text being proposed by Senator Warfield would have the unintended consequences of restricting a review to only the matters stated. It is important to ensure that review provisions are broad enough to address whatever issues may arise in the context and operation of the Act. I think this proposed amendment would have a limiting role in respect of how the review would operate, so I am not in a position to accept it.

**An Cathaoirleach:** Is the amendment being pressed?

**Senator Fintan Warfield:** Yes. I am still a little confused about why this amendment is not being accepted.

Amendment put and declared lost.

## SECTION 91

**Senator Fintan Warfield:** I move amendment No. 61:

In page 72, to delete line 12 and substitute the following:

“(b) a person who, arising from his or her ill health, is resident in a hospital or other similar health care facility or is otherwise (with permissible and practicable decision-making supports and reasonable accommodation consistent with the right to a trial in due course of law) unable to perform the duties of a juror.”.”.

Section 91(b) would introduce a discriminatory prohibition on certain persons with psychosocial or intellectual disabilities serving on juries. This is inconsistent with the principles of the United Nations Convention on the Rights of Persons with Disabilities, UNCRPD, which prohibits discrimination based on impairment. Section 13(1) of the UNCRPD expressly requires states to ensure the provision of procedural accommodations to facilitate the role of people with disabilities as participants in legal proceedings. During pre-legislative scrutiny of this legislation, the Joint Committee on Children, Equality, Disability, Integration and Youth expressly recommended, “The Bill should adopt the UNCRPD understanding of disability, especially concerning eligibility for jury service”. This was recommendation No. 8. It also recommended

that the language used concerning eligibility for jury service should, “be inclusive of a broader range of disabled people and to avoid the use of impairment-based language...which is discriminatory and inconsistent with the 2015 Act”.

**Deputy Roderic O’Gorman:** This amendment proposes further amendments to the Juries Act 1976. The policy and legislative responsibility for that Act rests with the Minister for Justice and the relevant sections of the amendment Bill have been brought forward jointly by myself and the Minister for Justice. Section 91 of the Bill was introduced to remove the prohibition on persons serving on a jury who, in the problematic wording of the original section, and again I am using the original wording, has or had “a mental illness or mental disability” and are receiving medical treatment or are “resident in a hospital or other similar institution”.

The intention of the Bill is that capacity to sit on a jury would be assessed on a functional capacity basis. All persons should be eligible for jury service where the court is satisfied they have the capacity to fulfil the duties of a juror. This supports the use of a functional capacity test to allow the court to assess eligibility at the time of service. For that reason, I am not in a position to accept the amendment today.

I should add that my colleague, the Minister for Justice, intends to establish a working group to examine possible reforms to the Juries Act 1976 in the months to come. This review will be wide-ranging and I will ask the Minister to ensure it will review the whole area of capacity to act as a juror, considering the provisions of the Assisted Decision-Making (Capacity) Act 2015.

**Senator Fintan Warfield:** I welcome that this working group is going to be set up, but does the Minister accept that this is inconsistent with the principles of the UNCRPD regarding ensuring they are participants in legal proceedings?

**Deputy Roderic O’Gorman:** We have already brought forward amendments in the Dáil that will significantly address the problematic language that was used and problematic exclusions that were provided for under the 1976 Act. Through use of the functional capacity test and by supporting individuals to be able to meet the functional capacity test and be able to undertake jury duty, this legislation is a significant improvement. Notwithstanding that, however, we can continue to examine this aspect and we have the opportunity to do that now in the context of the work that the Minister, Deputy McEntee, is doing concerning the review of the Juries Act 1976.

Amendment put and declared lost.

Section 91 agreed to.

Section 92 agreed to.

#### NEW SECTION

Government amendment No. 62:

In page 72, between lines 14 and 15, to insert the following:

#### **“Provisions regarding Courts and Court Officers Act 1995**

**93.** (1) Subject to *subsection (2)*, paragraph 1 of the Second Schedule to the Courts



and Court Officers Act 1995 is amended by the deletion of subparagraphs (xxxvi) and (xxxix).

(2) *Subsection (1)* shall not have effect in relation to proceedings under section 21 of the Nursing Homes Support Scheme Act 2009 that are in being at the date of the coming into operation of this section.”.

**An Cathaoirleach:** Amendments Nos. 62, 75, 91 and 80 are related and may be discussed together by agreement. Is that agreed? Agreed.

**Deputy Roderic O’Gorman:** Amendment No. 62 makes consequential amendments to the Courts and Court Officers Act 1995. These amendments are required as the result of other amendments I am moving to the Nursing Homes Support Scheme Act 2009.

Amendment agreed to.

Section 93 agreed to.

#### NEW SECTION

Government amendment No. 63:

In page 72, between lines 14 and 15, to insert the following:

#### **“Provisions regarding Credit Union Act 1997**

**94.(1)** The Act of 1997 is amended—

(a) by the repeal of section 24, and

(b) in section 25, by the deletion of “or section 24”.

(2) The amendments effected by *subsection (1)* shall not apply where a statement has been furnished under section 24(2) of the Act of 1997 before the date of the coming into operation of this section but the payment concerned has not been made before that date.

(3) Where, before the date of the coming into operation of this section, ongoing payments are being made under section 24 of the Act of 1997 in respect of the same statement, the payments may, notwithstanding *subsection (1)*, continue to be made for a period of 6 months from that date.

(4) In this section, “Act of 1997” means the Credit Union Act 1997.”.

Amendment agreed to.

#### SECTION 94

Government amendment No. 64:

In page 72, lines 25 and 26, to delete “(other than a member of staff to whom section 27A applies)”.

Amendment agreed to.

Government amendment No. 65:

In page 72, line 26, to delete “after” and substitute “on or after”.

Amendment agreed to.

Government amendment No. 66:

In page 72, line 37, to delete “section” where it firstly occurs and substitute “sections”.

Amendment agreed to.

Government amendment No. 67:

In page 73, line 2, to delete “appointed day” and substitute the following:

“date of the coming into operation of *section 93(1)(c)* of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* (in this section referred to as the ‘commencement date’)”.

Amendment agreed to.

Government amendment No. 68:

In page 73, line 6, to delete “appointed day” and substitute “commencement date”.

Amendment agreed to.

Government amendment No. 69:

In page 73, lines 11 and 12, to delete “appointed day” and substitute “commencement date”.

Amendment agreed to.

Government amendment No. 70:

In page 73, line 16, to delete “day.” and substitute “date.”.

Amendment agreed to.

Government amendment No. 71:

In page 73, line 37, to delete “appointed day” and substitute “commencement date”.

Amendment agreed to.

Government amendment No. 72:

In page 74, line 5, to delete “appointed day” and substitute “commencement date”.

Amendment agreed to.

Government amendment No. 73:

In page 74, to delete lines 10 to 24 and substitute the following:

“(8) In this section, ‘recognised trade union or staff association’ means a trade union or staff association recognised by the Minister for the purposes of negotiations that are concerned with the remuneration or conditions of employment, or the working conditions of employees.”.

Amendment agreed to.

Government amendment No. 74:

In page 74, between lines 24 and 25, to insert the following:

**“Further provisions regarding superannuation liabilities of Authority**

**27B.** (1) A person who, immediately before the date of the coming into operation of *section 93(1)(c)* of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022* (in this section referred to as the ‘commencement date’), was a retired or deceased member of—

(a) the staff of the Authority,

(b) the staff of the Board, or

(c) the staff of another person, body or authority, and in relation to whom certain superannuation liabilities are, immediately before the commencement date, being paid by the Authority,

shall, on and from that date, be deemed to be a retired or deceased member of the Civil Service of the State for the purposes of this section.

(2) A person, other than a person to whom subsection (1) applies, who, immediately before the commencement date, was a former member of—

(a) the staff of the Authority,

(b) the staff of the Board, or

(c) the staff of another person, body or authority, and in relation to whom certain superannuation liabilities fall to be paid by the Authority,

shall, on and from that date, be deemed to be a former member of the Civil Service of the State for the purposes of this section.

(3) Subject to subsection (4), any superannuation benefits to which subsection (5) applies awarded to or in respect of a person referred to in subsection (1) or (2) on and after the commencement date, and the terms relating to those benefits, shall be no less favourable than those applicable to or in respect of the person immediately before the commencement date.

(4) Subsection (3) shall not apply in respect of an arrangement in relation to superannuation in respect of which the consent or approval of the Minister for Finance, the Minister for Public Expenditure and Reform or any other Minister of the Government was required by or under any enactment but not obtained.

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(5) The pension payments and other superannuation liabilities of the Authority in respect of the persons referred to in subsections (1) and (2) become on the commencement date the liabilities of the Minister for Public Expenditure and Reform.”.”.

Amendment agreed to.

Section 94, as amended, agreed to.

#### NEW SECTION

Government amendment No. 75:

In page 75, between lines 7 and 8, to insert the following:

#### **“Amendment of Nursing Homes Support Scheme Act 2009**

**95.** The Nursing Homes Support Scheme Act 2009 is amended—

(a) in section 21, by the insertion of the following subsection after subsection (43):

“(44) Section 46A shall apply to and in relation to care representatives and relevant persons referred to in this section as it applies to specified persons and ‘other persons’ referred to in that section.”,

(b) by the insertion of the following section after section 21:

#### **“Transitional provisions regarding care representatives**

**21A.** (1) On and after the date of the coming into operation of section 95 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022 (in this section referred to as the ‘relevant date’), a person may not apply to the court under section 21(4)(a) for an order appointing him or her to be a care representative.

(2) Where—

(a) a care representative was appointed in respect of a person before the relevant date, and

(b) on or after the relevant date a decision-making representative is appointed under the Assisted Decision-Making (Capacity) Act 2015 (in this section referred to as the ‘Act of 2015’) in respect of the person and in respect of a matter to which section 21 applies that is also specified in the order appointing the care representative,

then—

(i) the decision-making representative shall, as soon as may be after his or her appointment, give notice to the care representative and the Executive of his or her appointment and provide him, her or it, as the case may be, with a copy of the

decision-making representation order, and

(ii) for as long as the decision-making representation order is in force, and unless otherwise provided for in the decision-making representation order, the care representative shall not act as such, and the order appointing the care representative shall not apply, in respect of the matter.

(3) Where—

(a) a care representative was appointed in respect of a person before the relevant date, and

(b) on or after the relevant date the Director of the Decision Support Service has, under section 71C of the Act of 2015, accepted a notification in relation to an enduring power of attorney where the attorney is not prohibited or restricted by the terms of the power from performing any matter to which section 21 applies and which matter is also specified in the order appointing the care representative,

then—

(i) the attorney shall, as soon as may be after the acceptance by the Director of the notification, give notice to the care representative and the Executive of that acceptance and provide him, her or it, as the case may be, with a copy of the enduring power of attorney, and

(ii) for as long as the enduring power of attorney is in force, the care representative shall not act as such, and the order appointing the care representative shall not apply, in respect of the matter.”,

(c) by the insertion of the following section after section 46:

**“Principles with regard to specified persons**

**46A.** (1) Subsections (2) to (7) shall be taken into account by a specified person when acting as such.

(2) A specified person shall not act as such unless it is necessary to do so having regard to the individual circumstances of the person on whose behalf he or she is acting (in this section referred to as the ‘other person’).

(3) An action by a specified person in respect of the other person shall—

(a) be made in a manner that minimises—

(i) the restriction of the other person’s rights, and



(ii) the restriction of the other person's freedom of action,

(b) have due regard to the need to respect the right of the other person to dignity, bodily integrity, privacy, autonomy and control over his or her financial affairs and property,

(c) be proportionate to the significance and urgency of the matter the subject of the action, and

(d) be as limited in duration in so far as is practicable after taking into account the particular circumstances of the matter the subject of the action.

(4) A specified person, when acting as such, shall—

(a) permit, encourage and facilitate, in so far as is practicable, the other person on whose behalf he or she is acting to participate, or to improve his or her ability to participate, as fully as possible, in the action,

(b) give effect, in so far as is practicable, to the past and present will and preferences of the other person, in so far as that will and those preferences are reasonably ascertainable,

(c) take into account—

(i) the beliefs and values of the other person (in particular those expressed in writing), in so far as those beliefs and values are reasonably ascertainable, and

(ii) any other factors which that would be likely to consider if he or she were able to do so, in so far as those other factors are reasonably ascertainable,

(d) unless the specified person reasonably considers that it is not appropriate or practicable to do so, consider the views of any person named by the other person as a person to be consulted on the matter concerned or any similar matter,

(e) act at all times in good faith and for the benefit of the other person, and

(f) consider all other circumstances of which he or she is aware and which it would be reasonable to regard as relevant.

(5) The specified person, when acting as such, shall have regard to—

(a) the likelihood of the recovery of the other person's capacity in respect of the matter concerned, and

(b) the urgency of so acting prior to such recovery.

(6) The specified person, when acting as such—

(a) shall not attempt to obtain personal records relating to the other person or other information to which that person is entitled that is not reasonably required for so acting,

(b) shall not use such records or information for a purpose other than in relation to so acting, and

(c) shall take reasonable steps to ensure that such records or information—

(i) is kept secure from unauthorised access, use or disclosure, and

(ii) is safely disposed of when he or she believes it is no longer required.

(7) In this section, ‘specified person’ has the same meaning as it has in section 47.’,

and

(d) in section 47—

(i) by the substitution of the following subsection for subsection (1):

“(1) Subject to subsections (1A), (2) and (4), a specified person may act on behalf of another person in relation to the following matters under this Act:

(a) an application for a care needs assessment under section 7 and the giving of consent under section 7(13);

(b) a further application for a care needs assessment as referred to in section 8;

(c) an application under section 9 for State support;

(d) the giving of a notice to the Executive under section 24;

(e) a request under section 30 for a review;

(f) an appeal under section 32 against a decision of the Executive;

(g) the provision of any information that the Executive may request, and communication with the Executive, in relation to any of the matters referred to in paragraphs (a) to (f); where that other person lacks capacity in relation to one or more of the matters referred to in paragraphs (a) to (g).”,

(ii) by the insertion of the following subsection after subsec-

tion (1):

“(1A) A specified person shall not act on behalf of another person in relation to any matter referred to in subsection (1) where that other person—

(a) is a ward of court and has a committee duly authorised to act with regard to that matter,

(b) has appointed a person to be his or her attorney under an enduring power of attorney, and—

(i) the attorney is not prohibited or restricted by the terms of the power from performing that matter, and

(ii) either—

(I) the enduring power of attorney has been registered under the Powers of Attorney Act 1996 and the registration has not been cancelled, or

(II) the Director of the Decision Support Service has accepted a notification of the enduring power of attorney under section 71C of the Assisted Decision-Making (Capacity) Act 2015 (in this section referred to as the ‘Act of 2015’) and this acceptance is in force,

or

(c) the court has made a decision-making order under section 38(2) of the Act of 2015 which relates to that matter, or has made a decision-making representation order under that section conferring functions with regard to that matter on a decision-making representative.”,

(iii) in subsection (7)—

(I) by the deletion of paragraphs (a) and (b),

(II) in paragraph (e), by the substitution of “child” for “relative”, and

(III) by the deletion of paragraphs (f) and (g),

(iv) by the insertion of the following subsection after subsection (7):

“(7A) A person—

(a) who is acting as a specified person within the meaning of paragraphs (e) to (g) of subsection (7) immediately before the date of the coming into operation of *section 95 of the Assisted Decision-Making (Capacity) (Amendment) Act 2022*, and

(b) who, on or after that date, and but for this subsection, would no longer be able to act in light of the amend-

ments to those paragraphs made by the said *section 95* of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022*, may, notwithstanding the amendments effected to those paragraphs by the said *section 95* of the *Assisted Decision-Making (Capacity) (Amendment) Act 2022*, continue to act as a specified person unless and until the person on whose behalf the specified person is acting becomes a person to whom subsection (1A) applies.”, (v) in subsection (8)—

(I) by the substitution of “category of person who” for “categories of person who”,

(II) by the substitution of “paragraph (c)” for “paragraphs (a), (b) and (c)”, and

(III) by the substitution of “paragraph (c)” for “paragraphs (a) to (c)”, and

(vi) in subsection (9), by the deletion of paragraphs (aa) and (b).”.”.

Amendment agreed to.

#### SECTION 95

**An Cathaoirleach:** Amendments Nos. 76 to 78, inclusive, are related and may be discussed together by agreement. Is that agreed? Agreed.

**Senator Fintan Warfield:** I move amendment No. 76:

In page 75, line 18, to delete “2006;”, and substitute the following:

“2006;

(hb) in the performance of its functions as the independent monitoring mechanism under the Convention, to ensure extensive and meaningful engagement with all persons with disabilities in the State, in accordance with Articles 1, 4(3), and 33 of the Convention;”.”.

This amendment creates an obligation on the Irish Human Rights and Equality Commission, IHREC, to meaningfully engage with people with disabilities directly in order to obtain information and advice on how the rights of disabled people are being impacted by Ireland’s laws and policies, as required by the UN Convention on the Rights of Persons with Disabilities, CRPD. It will ensure the IHREC consults with a wide range of people with disabilities rather than just those who are members of the disability advisory committee, thereby ensuring a larger and more comprehensive range of views from people is included in its assessment of Ireland’s compliance with the requirements of the CRPD.

On amendment No. 78, the Minister did not accept this amendment on Committee Stage in the Dáil where he stated there was a need for consistency across legislation. The definition contained in the Disability Act 2005 is well known and well used. However, it is important to note that the 2005 Act was enacted before the drafting and adoption of the CRPD. For this reason, I encourage the Minister to reconsider his approach to the amendment.

On amendment No. 77, the Bill provides welcome clarity on the role of IHREC’s disability advisory committee but it would be more appropriate to increase the required proportion

of disabled people on the committee from half, as provided for in the Bill, to two thirds of its membership. This would still allow for members from other interested stakeholders and allies, including family members of disabled people, while ensuring that disabled people remain in the clear majority on the committee. The expertise of disabled people is the most relevant kind of expertise for the task of advising on the implementation of the CPRD.

**Deputy Roderic O’Gorman:** The language used in amendment No. 76 is very definitive. It requires a “meaningful engagement with all persons with disabilities in the State”. That is an incredibly broad and onerous obligation to put on IHREC in legislation. It is not generalised; it refers to all persons with disability in the State. IHREC could do a detailed consultation and miss out on engaging with one person. I am not being hyperbolic; this is a possibility based on the language used here. We are not in a position to accept language of such a broad nature.

On amendment No. 78, the definition in the Disability Act 2005 is broadly consistent with a social model conception of disability. It is important that the legal definitions within the Irish Human Rights and Equality Commission Act 2014 are consistent with other definitions contained within primary law. As Senators will be aware, there are important provisions on disability contained within the Equal Status Acts and the Equality Employment Acts and any definition needs to be aligned with them. The meaning that is assigned to “disability” within the 2005 Act is well established, widely known and widely used. While I accept the intention behind this amendment, the term provided in it is not suitable and will not align with other terms used throughout legislation. For this reason, I am not in a position to accept the amendment.

On amendment No. 77, if the Senator is prepared to withdraw this amendment, I will consider the issue of changing the membership requirement from 50% to two thirds. I want to look at the language around that but we can consider the matter.

**Senator Mary Seery Kearney:** I accept, with regard to amendment No. 76, that the wording is imperfect. To return to our discussion of last week, I have a slight concern that we will bring in legislation, the *raison d’être* of which is to ensure that people’s voices are heard, which, owing to the review of the Mental Health Act, is imperfect because it cannot include everything it would and should include. In that context, we relied on IHREC to merely make a submission, rather than having a proactive engagement with its representatives, in the creation of this legislation. We talked last week about whether there was actual engagement and I did not hear an affirmative answer to that question. From that perspective, given that the function of this entity is to ensure we comply with our international obligations, we should have proactive engagement with its representatives, rather than relying on it to send in a submission in the context of a public consultation or call for submissions. IHREC should have a more engaged role, almost a statutory one, and that is part of what is behind this amendment. I support the spirit of the amendment, although the wording is imperfect.

I acknowledge that the Minister is considering the change proposed in amendment No. 77. This is important. If we are going to live by the adage, “Nothing about us without us”, having a committee with a majority of people with a disability, rather than their allies, family members and otherwise, would truly live up to that obligation. It would be an excellent thing for us to do.

**Senator Fintan Warfield:** What Senator Seery Kearney has just said speaks to the need for a more diverse Seanad also. I have never tried to get around this place.

**An Cathaoirleach:** Is the amendment being pressed?



**Senator Fintan Warfield:** No. We are discussing people's rights. I am not saying that if we had a more diverse Seanad, a disabled person would be here to talk about this issue. No one would be obliged to do that. I do not talk about everything related to LGBT people. However, if we are to live by that adage, "Nothing about us without us", we need to take a serious look at diversity in this Chamber and among Senators.

**Deputy Roderic O'Gorman:** If I may briefly speak to the point, it is important to note that in this Bill we are legislating for IHREC to be the monitoring body of our nation's implementation of the convention. IHREC is central to how this legislation and, indeed, how the CRPD will be implemented in this country, as per section 95. Notwithstanding what has been raised regarding the consultation - and I accept the earlier point about it being held over Christmas - IHREC will be central to this and we are legislating to ensure that.

**Senator Fintan Warfield:** I will withdraw amendment No. 76.

Amendment, by leave, withdrawn.

**Senator Fintan Warfield:** I move amendment No. 77:

In page 75, line 31, to delete "at least half" and substitute "two-thirds".

Amendment, by leave, withdrawn.

**Senator Fintan Warfield:** I move amendment No. 78:

In page 75, lines 32 and 33, to delete all words from and including "have," in line 32 down to and including line 33 and substitute the following:

"be persons with disabilities within the meaning of Article 1, United Nations Convention on the Rights of Persons with Disabilities.""

Amendment, by leave, withdrawn.

Section 95 agreed to.

Section 96 agreed to.

#### TITLE

Government amendment No. 79:

In page 7, line 8, after "1992," to insert "the Courts and Court Officers Act 1995, the Credit Union Act 1997,".

Amendment agreed to.

Government amendment No. 80:

In page 7, line 9, after "2005," to insert "the Nursing Homes Support Scheme Act 2009,".

Amendment agreed to.

Title, as amended, agreed to.

6 October 2022

**An Cathaoirleach:** Pursuant to Standing Order 154, it is reported that the committee has amended the Title to the Bill.

Bill reported with amendments.

**An Cathaoirleach:** When is it proposed to take the next Stage?

**Senator Regina Doherty:** We are scheduled to complete this Bill next Wednesday. We have an hour and 15 minutes scheduled with a finish time and early signature order of 2 p.m. on Wednesday. Does the Minister propose to come back on sections 73 and 74 before or on Wednesday? How does he propose to address the concerns that were raised today before we resume on Wednesday?

**Deputy Roderic O’Gorman:** I will consult my team on the issues raised today. I may be in touch with the Leader’s office on the scheduling for next week.

**An Cathaoirleach:** Is that agreed? Agreed.

Report Stage ordered for Wednesday, 12 October 2022.

**An Cathaoirleach:** When is it proposed to sit again?

**Senator Regina Doherty:** Next Tuesday at 2.30 p.m.

Cuireadh an Seanad ar athló ar 4.52 p.m. go dtí 2.30 p.m., Dé Máirt, an 11 Deireadh Fómhair 2022.

The Seanad adjourned at 4.52 p.m. until 2.30 p.m. on Tuesday, 11 October 2022.