DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

SELECT COMMITTEE ON JUSTICE AND EQUALITY

Dé Céadaoin, 7 Nollaig 2016

Wednesday, 7 December 2016

The Select Committee met at 9 a.m.

MEMBERS PRESENT:

Deputy Colm Brophy,	Deputy Frances Fitzgerald (Tánaiste and Minister for Justice and Equality),
Deputy Jack Chambers,	Deputy Jim O'Callaghan,
Deputy Clare Daly,	Deputy Mick Wallace.
Deputy Alan Farrell,	

In attendance: Deputies Ruth Coppinger and Jonathan O'Brien.

DEPUTY CAOIMHGHÍN Ó CAOLÁIN IN THE CHAIR.

The select committee met in private session until 9.15 a.m.

Criminal Law (Sexual Offences) Bill 2015: Committee Stage

Chairman: As we now have a quorum, the committee is in public session, and as we are in public session, all mobile phones should be switched off as they cause interference, even if on silent mode, with the recording equipment in the committee rooms. This meeting has been convened to consider Committee Stage of the Criminal Law (Sexual Offences) Bill 2015. I welcome the Tánaiste and Minister for Justice and Equality and her officials to the meeting.

Section 1 agreed to.

SECTION 2

Chairman: Amendments Nos. 1 and 88 to 90, inclusive, are related and may be discussed together.

Deputy Ruth Coppinger: I move amendment No. 1:

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

" "consent" in reference to sexual activity, means voluntary agreement to engage in the sexual activity in question, unless otherwise stated in this Act. Allowing sexual activity does not amount to consent in some circumstances—

(a) a person does not consent to sexual activity just because he or she does not protest and/or offer physical resistance to the activity,

(b) a person does not consent to sexual activity if he or she allows the activity because of—

(i) force applied to him/her and/or to some other person(s),

(ii) the threat (express or implied) of force being applied to him/her and/or some other person(s), or

(iii) the fear of the application of force to him or her or some other person(s), and

(c) in any of the cases in paragraph (a) above, it is immaterial whether it is the accused who applies force and/or threats of force against the complainant and/or other(s), or not,

(d) a person does not consent to sexual activity if the activity occurs while he/she is asleep or otherwise unconscious,

(e) a person does not consent to sexual activity if the activity occurs while he/she is so affected by alcohol and/or some other drugs(s) that he/she cannot consent or refuse to consent to the activity, whether or not that person took alcohol and/or some other drugs voluntarily,

(f) a person does not consent to sexual activity if the activity occurs while he/she

is so affected by a physical condition or impairment of such a nature and degree that he/she cannot consent or refuse to consent to the activity,

(g) a person does not consent to sexual activity with another person if he/she allows the sexual activity because he/she is mistaken about the identity of that person,

(h) a person does not consent to sexual activity if he or she allows the activity because he or she is mistaken about its nature and quality,

(i) a person does not consent to sexual activity if that consent is expressed by the words and/or conduct of someone other than themselves,

(j) a person does not consent to sexual activity if he/she expresses by word and/or conduct, a lack of agreement to engage in that activity,

(k) a person does not consent to sexual activity if, having first consented to sexual activity, he/she expresses by words or conduct a lack of agreement to continue to engage in that activity,

(l) this section does not limit the circumstances in which a person does not consent to sexual activity.".

The amendment relates to the definition of consent, the provision of which in the Bill many organisations dealing with victims of violence and sexual violence in particular have campaigned for and asked the Government to include. The definition speaks very clearly and simply for itself. This is a huge issue in society. Increasingly we see in rape cases the use by the alleged perpetrator of the defence that the victim did not object for any number of reasons, whether because the victim may not have been in a position to object or may have been inebriated. I hope the Minister will accept the amendment because, again, it has been asked for and campaigned for by the relevant organisations, and the sexual offences Bill is the appropriate legislation for its inclusion.

Chairman: Do any other members wish to speak to amendment No. 1 before I invite the Minister to reply?

Deputy Clare Daly: Deputy O'Callaghan's amendments are grouped with this one.

Chairman: I beg your pardon. Members may also speak to amendments Nos. 88 to 90, inclusive. I have invited members to do so if they so wish. The amendments are grouped.

Deputy Jim O'Callaghan: I would like to hear the Minister's response first.

Tánaiste and Minister for Justice and Equality. (Deputy Frances Fitzgerald): I thank all the Deputies who proposed these amendments. It is an issue I have been considering and about which I have been concerned. I have heard the voices of people who believe such a provision should be in the Bill. I agree in principle with what Deputies Coppinger and O'Callaghan and others suggest, that is, that we should provide in statute for a definition of consent and clarify in a non-exhaustive list the circumstances under which consent to a sexual act cannot be or is not obtained. It is a complex issue, and I think people recognise that. There are strong arguments to rely on precedent in considering what to include in the Bill. Some of the original advice I received was that the precedents were strong in this regard and would suffice rather than a definition. There are issues with the definition and quite how it is done which must be very carefully considered. We want to make sure that there are no unintended consequences

and that we improve the situation and help the victim rather than make matters more complicated. Having said that, it is absolutely my intention to table an amendment to this effect on Report Stage. That will largely reflect what is contained in amendments Nos. 88 and 89. I have gone to external legal experts on this to get further advice and I am also engaged in further consultation with the relevant stakeholders. Once that is complete, I will introduce a definition of "consent" along the lines set out in this group of amendments as well as setting out the list of circumstances, which, if proven, would vitiate consent. These will include, but not be limited to, the use or threat of force, unlawful detention, unconsciousness, including being asleep, intoxication, mistake and deceit. It will be a non-exhaustive list because that is also important. It will be necessary in the definition to set out clearly the sexual acts to which it will apply. These will be offences under the Criminal Law (Rape) Acts of 1981 and 1990, which are rape, aggravated sexual assault and sexual assault. It may be that the amendment should be inserted in those Acts using this legislation rather than as a stand-alone provision in this legislation. I ask Deputies, on the understanding that we are doing detailed work to arrive at the best definition and to consider all the unintended consequences, to wait until Report Stage before taking a decision on how they will handle this, at which point I will table an amendment.

Deputy Jim O'Callaghan: I welcome the fact that the Minister intends to bring forward a definition of "consent" on Report Stage. I appreciate that this issue is complex and complicated. Like Deputy Coppinger, I have tried to define "consent" and it is difficult. It is important that we acknowledge that a great deal of sexual activity in Ireland is accompanied by alcohol consumption and we have to be careful about how we draft a definition in order that we do not end up unintentionally criminalising many young people and others in respect of that. We should await the Minister's proposed amendment on Report Stage because it is such a difficult and complicated area. We can consider it then and there is no downside to us awaiting that.

Deputy Clare Daly: Fair play to the Minister if she can come up with an amendment that adequately deals with all the complex issues by this day next week.

Deputy Frances Fitzgerald: I will do my best.

Deputy Clare Daly: It is a big task, given it is an incredibly complex area. There is a view that in legislation, in some ways, less is more and, for example, defining the sexual activity as being voluntary or a free choice is probably a better way rather than prescribing a list of activities because if there are ten activities, is the eleventh less important in circumstances that had not been envisaged? There are nuances and we cannot be black and white about this definition. I do not accept the amendments in their current form. I would like a reference to the voluntary nature of this activity and I am not sure a list will work. Perhaps its inclusion was a mistake, but we enjoyed subparagraph (h) where somebody does not consent to sexual activity because he or she was mistaken as to its quality. There are many people who would probably have cause to think that they were involved in non-consensual behaviour. There may be unintended consequences of our efforts. I am happy to wait for the Minister's amendment but I would be a little reticent about a prescriptive list.

Deputy Jack Chambers: There was broad consensus on Second Stage that a definition should be inserted but, as has been mentioned, we have to be careful about how prescriptive we are and how we properly codify this. We have to work with the Minister to ensure this is done properly and carefully and that we do not jump to an amendment that would have unintended consequences. I welcome the fact that the Minister will table an amendment on Report Stage that will reflect the comments of members.

Deputy Mick Wallace: I am looking forward to going to An Garda Síochána to complain about the quality of sex I had the night before.

Deputy Frances Fitzgerald: It is an Opposition amendment.

Deputy Jim O'Callaghan: Perhaps the Deputy should go to the ombudsman.

Deputy Mick Wallace: That is a fair point.

Deputy Ruth Coppinger: Members can joke about the wording but somebody who begins a sexual act and does not realise what it entails could then withdraw his or her consent. That is the point of subparagraph (h). I am willing to wait to see what the Minister produces as long as we have an opportunity to then amend it. These definitions have been suggested by people who deal with rape victims; they were not drafted off the top of my head. While we can have something loose, "voluntary" can also be misinterpreted. Where victims and women, in particular, are concerned, there is a great deal of victim blaming rather than examination of the issues. I do not favour something as loose as that. Unfortunately, this needs to be clearly defined and I will wait to see what the Minister produces.

Chairman: I would like to advise members of their options. Once a matter is raised by way of amendment or orally, they have the opportunity to table an appropriate amendment on Report Stage. I will have to ask Deputy Coppinger if she pressing the amendment and if she withdraws it, it will have no bearing on her ability to re-table for Report Stage. If she were to press it, I would have to seek initially a voice vote. If the Minister opposed, it is the responsibility of the Chair to find in favour of the MInister's position whereupon another member can seek a full vote because the Deputy is not a member of the committee.

Deputy Ruth Coppinger: The Minister said she will table an amendment and, therefore, I am willing to have a look at that.

Deputy Frances Fitzgerald: It is correct to include a definition. That is the approach that has been taken in most common law countries. Deputy Daly raised the point about the definition not being too restrictive. The intention is to have a list but also to include a subsection with a non-exhaustive list under which other factors could be considered. That is the direction we want to move in on this. If Deputies would like to engage with my officials before we finalise this, that can be arranged. We are happy to facilitate that if they are interested in having that discussion. I will table an amendment on Report Stage.

Chairman: I thank the Minister for extending her open door to members in that regard.

Amendment, by leave, withdrawn.

Section 2 agreed to.

Sections 3 to 9, inclusive, agreed to.

SECTION 10

Deputy Frances Fitzgerald: I move amendment No. 2:

In page 9, lines 17 and 18, to delete all words from and including "Section" in line 17 down to and including line 18 and substitute the following:

"Section 3 of the Act of 1998 is amended--

(a) by the repeal of subsections (2A) and (2B), and

(b) in subsection (5), by the substitution of the following definition for the definition of "sexual exploitation":".

We are deleting the section from the 1998 Act because what we are including in the Bill is stronger. This is straightforward.

Amendment agreed to.

Section 10, as amended, agreed to.

SECTION 11

Deputy Frances Fitzgerald: I move amendment No. 3:

In page 10, line 19, to delete "14 years" and substitute "14 years or both".

This amendment corrects the text to allow for both a fine and a period of imprisonment to be imposed.

Amendment agreed to.

Section 11, as amended, agreed to.

Sections 12 to 14, inclusive, agreed to.

SECTION 15

Chairman: Amendment No. 4 is in the names of two Members who are not members of the committee and neither of whom is showing. However, this amendment forms part of a grouping with amendments Nos. 6 to 10, inclusive, 91, 92 and 104, which are related. They will be discussed together. The Deputies tabling amendment No. 6 are not present, so we will move on to discuss amendment No. 7 in the name of Deputy Jonathan O'Brien as the first amendment in the grouping where the member is present.

Amendment No. 4 not moved.

Question proposed: "That section 15 stand part of the Bill."

Deputy Jonathan O'Brien: Amendment No. 7 relates to terminology and replaces all references to a "protected person" with the term "relevant person" to bring the section into line with other Acts. For example, the Assisted Decision-Making (Capacity) Act 2015 does not use the term "protected person", but "relevant person". Acceptance of this amendment would mean the deletion of-----

Chairman: Section 21.

Deputy Jonathan O'Brien: Yes, section 21 of the Bill.

Chairman: Does any other Deputy wish to speak to any of the grouped amendments?

Deputy Clare Daly: I believe that one of ours is in this group. We are just getting our heads around this. Our amendment touches on the same point. The amendments are interrelated.

The term "protected person" was a substantial topic of conversation in the community of people working with persons with disabilities. Were we not to change the term, we would cre-

ate a new category of person where there does not need to be one. It is not a neutral term and further stigmatises people with a disabilities. When we consider such issues, we should be cognisant of the fact that existing laws on sexual abuse, attack, rape and so on apply to everyone. This section is creating a new category in respect of people with intellectual disabilities that is not fully reflective of the UN Convention on the Rights of Persons with Disabilities. We need to eliminate discrimination in that regard, but if we keep the term, we will not do that.

Our amendment tries to limit the clause to only what is needed to provide protection against exploitation and abuse without unduly interfering with a person's right to have a relationship of his or her choice. This is a human rights approach, which would be better. It covers all citizens, including those with intellectual disabilities, who have the right to make choices just as everyone else does. It is about trying to get a balance. It is in that context that we are opposing the current section 20 and trying to replace it with our wording so as to address abuses of authority and exploitation.

Chairman: Do other Deputies wish to contribute? If not, I received a communication this morning. Deputies Daly and Wallace might wish to note that Deputy Catherine Martin has written to the Chair and the committee requesting that her name be removed from amendment No. 8 and in opposition to sections 20 and 25. I understand that the Deputies were involved in that grouping. We note Deputy Martin's request.

Deputy Frances Fitzgerald: Deputy Daly's amendment, among others, raises a point about language. Lest there be any doubt, our approach uses the language contained in the UN Convention on the Rights of Persons with Disabilities. The convention reads: "States Parties shall take all appropriate legislative, administrative, social, educational and other measures to protect persons with disabilities," etc. That is the language used throughout the convention.

I will address each amendment in detail. Amendment No. 6 largely replicates the existing provision contained in section 21, although it differs in two respects. It substitutes the term "relevant person" for "protected person", which is also the wording used in some of the other amendments. I will clarify why "protected person" is being used in section 21. The group of persons whom this section is designed to protect are those who, by reason of a disability as described in subsection (7), lack the capacity to understand the nature or reasonably foreseeable consequences of the sexual act in question, cannot evaluate relevant information or cannot communicate his or her consent. As a consequence, the person lacks capacity to consent to the act. It is this lack of capacity and not the fact of the disability that gives the person in question the status of a protected person.

Amendment No. 10, which I will table, will introduce a further offence that refers to a "relevant person". "Protected person" should be retained in section 21 in order to avoid conflating the two provisions. This gets technical, but I will go through the amendments to explain the approach we will take. The second difference between what is proposed in amendment No. 6 and the provision in section 21 is that amendment No. 6 would remove section 21(3). The offence under section 21 arises where the defendant knew or was reckless, and people will understand what we mean by this, as to whether the person was a protected person. Subsection (3), which would be removed by the amendment, is a safeguard which provides that, in proceedings for an offence under the section, it shall be presumed the defendant knew or was reckless that the person was protected under the section. The defendant can rebut the presumption by raising a reasonable doubt as to his or her knowledge or recklessness, but the closer the relationship between the two parties, the more difficult it will be to rebut the presumption. This is an important safeguard in the protection of persons who lack the capacity to consent.

Amendment No. 7 is similar to amendment No. 6 and the existing section 21 of the Bill. It removes reference to disability in section 21. The effect of the amendment would be that the offence would apply to all persons. It overlaps with aspects of the amendments we discussed earlier relating to consent. It would arguably cover unconsciousness or intoxication as well as incapacity by reason of a particular disability. I am concerned a provision referring to a lack of capacity without clarifying what may give rise to that lack of capacity could be very broad and might lead us into the area of legal challenge. I ask Deputy O'Brien to consider this aspect. The UN Convention on the Rights of Persons with Disabilities imposes an obligation to put in place effective legislation to ensure instances of exploitation and abuse against persons with disabilities can be identified and prosecuted. It would be preferable to make this clear. What Deputy O'Brien has put in the amendment is perhaps overtly broad.

Amendment No. 8 from Deputy Daly seeks to replace section 5 of the Criminal Law (Sexual Offences) Act 1993, which is the existing provision on the protection of impaired persons, which Part 3 will replace and repeal. Amendment No. 8 would do so by seeking to replace section 21 of the Bill. Amendment No. 104 replicates amendment No. 8, but rather than replace section 21 it would insert a new offence in the Bill in a new section 51. In both amendments, an offence would occur where a person in a position of dependence and trust takes advantage of his or her position and induces or seduces a person to have sexual intercourse with him or her or commit any other sexual offence involving the person. The proposals do not deal with situations outside the category of an offence arising from abuse by a person in a position of dependence and trust. A person vulnerable to exploitation but who is being exploited by a neighbour should be afforded the protection of the provision. To narrow it down in this way would withdraw potential protection from exploitation by other people. The provision is quite wide and does not include any restrictions on a person who may fall within the category of a victim of this offence.

With regard to the defence of consent in subsection (2) of the amendment, consent must be granted freely and in the absence of duress or coercion. There is concern as to whether this defence could be successfully relied on in a situation where a person in a position of dependence and trust and taking advantage of this position effectively grooms a victim for the purpose of having sexual relations. Depending on the form of act or activity involved, it may not amount to duress or coercion. The Law Reform Commission, in its report on sexual offences and capacity to consent, frames an offence on the basis of capacity to consent. The proposals in section 21 also adopt the approach of capacity to consent. We consider that section 21, together with amendment No. 10, will provide the necessary protection to those who are vulnerable to abuse or exploitation. I am concerned if we accept the approach set out in amendments Nos. 8 or 104 we would fail to fulfil the obligations under the UN convention, which I previously mentioned.

To fully ensure the necessary protection from exploitation by persons with responsibility for the welfare, care or supervision of certain persons with a disability, amendment No. 10 will introduce a provision to create an offence of engaging in a sexual act with a relevant person. For this purpose, a relevant person is a person who has a disability which is of such a nature or degree as to severely restrict the ability of the person to guard against serious exploitation. It is a functional test but not related to capacity to consent at a particular time or a particular act. The aim of the offence is to ensure those persons with responsibility for the care and well-being of another do not take advantage of that person's ability to protect himself or herself from serious exploitation. The intention is to avoid a breach of trust by those responsible for another person's care or welfare. The relationship between a person in a position of authority and a person under his or her care may be such as to be open to exploitation. This provision does not

undermine the capacity of a person who may be defined as a relevant person from consenting to a sexual act but it simply puts responsibility on those in authority to maintain an appropriate relationship. It deals with some of the issues that have been raised.

Deputy Jonathan O'Brien: We support amendment No. 10. It refers to a relevant person, which some of our amendments try to do, and does not use the term "protected person". Will the Minister reiterate why she feels there is a need to have both definitions in the legislation? I know she stated it is to bring it in line with UN regulations, but in other legislation enacted by the Oireachtas we do not refer to protected persons. We have always taken a disability neutral approach to legislation, particularly in the assisted decision making Act. We only use the term "relevant person". Will the Minister clarify why we need both definitions?

Deputy Frances Fitzgerald: The use of the term "protected person" in section 21 is to distinguish the fact that the protected person in this instance does not have the capacity to consent by reason of disability. We need to distinguish the two. This is the reason.

Deputy Clare Daly: We have a number of amendments in the grouping, some of which try to do the same thing, and I am a little bit lost. It is very confusing. I do not get the point made by the Minister. There are good points in amendment No. 10. Does it remove all references to "protected persons", which would be helpful? We must get a balance. The Minister said a position of dependence and trust would exclude a neighbour, but it would not exclude a neighbour in my read of it because it specifically states it is not limited to a list of people in a category. I know some of the disability groups have found problematic the idea of a person in authority for the time being. The question was asked as to what this means. An emotional relationship gives authority to somebody. It does not necessarily end when a contract of employment ends. What does "for the time being" mean? Somebody in a position of employment has a certain hold or connection over a person. Deputy O'Brien believes amendment No. 9 would cover this point, but it is problematic with regard to the Minister's amendment No. 10.

I suppose I am not helping things, but it is very confusing. There is a point about language with regard to respecting people with disabilities not just in terms of terminology, but actually regarding people having the right to have sex and to engage in a physical relationship with someone if they want to. Obviously there are issues sometimes around capacity but if one looks at the definition here of "someone with an illness that is of a nature or degree as to severely restrict the ability of a person to guard themselves against exploitation", this is an arguable point with any citizen who is vulnerable. It is about getting a balance and I am not sure we have it in any of these amendments and whether we should be drafting something that encompasses all of them on the next Stage. I do not know.

Chairman: Deputy Daly highlighted the points that need further clarity and it is very helpful.

Deputy Jonathan O'Brien: The Minister has not made any comment on amendment No. 9.

Chairman: The Minister must make a note of that.

Deputy Jonathan O'Brien: Amendment No. 9 is my own amendment in the group of amendments and the Minister has not commented on the issue in that regard. The amendment presumes that a relevant person has capacity unless the contrary is shown under the provisions of this Act.

Deputy Frances Fitzgerald: I shall address amendment No. 9. It adds a new subsection to section 21, which I assume is an alternative to amendment No. 7, also proposed by Deputy O'Brien. The amendment includes a declaration that a relevant person has capacity unless the contrary is shown. I fully appreciate what the Deputy is trying to achieve here and I received legal advice on the need for such a provision as there is similar declaration in the Law Reform Commission, LRC, proposals. The LRC proposals state that a person's lack of capacity may arise from a disability and therefore, the statement that a disability of itself does not give rise to a lack of capacity is required. It is complicated and it is not that we have not considered it or looked at it carefully but the two categories are necessary because the protected person is defined here as one who lacks capacity and that is why we need to have the protected person definition included here and dealt with. The relevant person is the person who is under supervision of care of the person in authority, and this distinction is to avoid exploitation by that person in authority. I am advised that both categories are necessary. It is to have the full protection for people in both sets of circumstances that we have dealt with it in the Bill in this way. It is definitely in line with the UN convention. We have considered the points being made by the Deputies and I have gone through each of them. Amendment No. 10 is helpful. It is to make sure that a person has the necessary protection and the amendment covers the engagement, by the person in authority, in a sexual act with the relevant person. The person in that circumstance has the capacity but he or she is open to exploitation because of the dependent relationship. One can imagine situations where that might occur; there is capacity but there is dependency. This would protect and differentiate between the protected person who lacks capacity and the protected person who has capacity, and it is in order to protect both categories that we have the different definitions in the Bill.

Chairman: As a point of clarification amendment No. 9 would be an addendum to the impact of amendment No. 7. It is a further point to be added on and amendment No. 7 would replace section 21 in the Bill, which would be a further elucidation on all of that.

Deputy Clare Daly: I am still uncomfortable on this point. If the Minister is saying that a protected person is somebody who lacks capacity, there is a whole range of circumstances where a person might lack capacity and not just because of a disability. They may be absolutely off their face drunk or on drugs, or they might be unconscious. There may be other situations where they do not have capacity. In this legislation we are creating a special person who lacks capacity i.e. a person with disabilities. I do not believe that is the direction in which the disability community wants to go. Absolutely there is an argument for a protection because of a dependency and circumstances, but not to single these people out as being different and apart. I am not going to labour this point forever but I would remain very uncomfortable with that. The term "relevant person" would cover it, the relevant person being somebody who is in a dependency situation, which makes that person then different from the person who is drunk or temporarily lacking capacity.

Deputy Frances Fitzgerald: I accept the Deputy's point about normalisation and the approach should reflect that as much as possible. The Deputy referred to consent for other people and that will be dealt with in the definition of consent that I will bring in. Everybody who has looked at this, from the UN to the Law Reform Commission has said that there are particular protections that are necessary if a person has a disability and that is what we are attempting to achieve. It is not an attempt to stigmatise or to suggest that people are different. It recognises that there may be capacity issues and that we need to deal with those, both where there is a lack of ability to give consent and where the person, who we define as a relevant person, is in a very dependent situation and who could therefore be at risk of lack of ability. That is the intention

and why it is done like this. In section 21 there is a greater burden on the defendant around their knowing of capacity issues. It is to deal with those situations. It is necessary in the legislation and it is protective of people with disability without wanting to separate out unnecessarily, which is the Deputy's concern.

Deputy Jonathan O'Brien: If we agree to the Minister's proposals, does this have an impact on other Acts currently legislated? For example, with regard to the whole issue of disability I know that previous legislation that dealt with capacity and people with disabilities did not require the person to have had a diagnosis or a disability to have their capacity assessed. In fact, it took the very functional approach to decision making rather than a status based approach. This means that if one is assessing the capacity of a person with a disability other legislation did not look at the diagnosis or the label in order to assess capacity; it was a functional approach rather than a diagnosis. How does this legislation fit in with other legislation considering that we have taken that approach in the past for people with a disability? It was not based on a diagnosis, it was based on their ability to make decisions.

Deputy Frances Fitzgerald: I am advised that these are particular criminal law provisions necessary to deal with the points that I have outlined. There are also a further 22 provisions in relation to prosecutions to say that no proceedings for an offence under this part shall be brought except by or with the consent of the Director of Public Prosecutions. This is a sort of protection to the Deputy's point. There is the issue of how the lack of capacity of the protected person be proven in court. It would be proven the same way it is now, so that is not changed. Evidence of the person's capacity could be shown through the victim's own testimony, the testimony of close family or others who know them - as has been the case - or by expert witnesses with knowledge of the particular disability or illness and the impact of such on the individual's capacity at the time the act took place. It is not seeking to change any of that. I am advised that it is very relevant in the context of criminal law provisions rather than the broader points made by the Deputy about other legislation. It does not apply.

Chairman: I believe we have covered this compendium of amendments quite well. We will not be making decisions on each of the associated amendments until we reach the particular sections.

Question put and agreed to.

Sections 16 to 19, inclusive, agreed to.

NEW SECTION

Chairman: Amendment No. 5 is a stand-alone amendment. Acceptance of this amendment involves the deletion of section 20 of the Bill so a new section will be inserted.

Deputy Frances Fitzgerald: I move amendment No. 5:

5. In page 16, between lines 25 and 26, to insert the following:

"**Definitions**

20. In this Part—

"sexual act" means—

(a) an act consisting of—

(i) sexual intercourse, or

(ii) buggery,

(b) an act described in section 3(1) or 4(1) of the Act of 1990, or

(c) an act which if done without consent would constitute a sexual assault;

"sexual intercourse" shall be construed in accordance with section 1(2) of the Act of 1981.".

This amendment amends section 20 of the Bill which provides a definition of sexual act. The meaning of sexual intercourse has been added to the existing definition in the Bill and replicates the definition of sexual act under the Criminal Law (Sexual Offences Act 2006).

Chairman: If no one else wants to speak I put the amendment, that the new section be there inserted. Is that agreed?

Deputy Clare Daly: I do not see any change in the Act.

Deputy Jim O'Callaghan: It includes the definition of sexual intercourse.

Chairman: It is amendment No. 5 on page 2.

Deputy Clare Daly: I have my two lists; they look like they are the same.

Deputy Jim O'Callaghan: It is at the very end.

Chairman: We have to deal with the section which we will come to in a moment and the Deputy will have the opportunity to address it then.

Deputy Jonathan O'Brien: The Minister's amendment appears to confine sexual intercourse to penetrative sex but in the original Bill there was a much broader definition. What is the rationale behind that?

Deputy Frances Fitzgerald: It is simply that this is the appropriate definition of sexual acts and is in accordance with section 1(2) of the 1981 Act. It is being added to the existing definition in the Bill and it is in accordance with how it is defined in the 2006 Act.

Deputy Clare Daly: We had proposed removing it because we are giving a special definition for protected persons. It was a question of singling out a special type because we are dealing with a group of protected persons. This definition already exists in our other legislation dealing with sex. I do not see why we would single this out. I think that was why we opposed it.

Chairman: I am only putting the amendment now. I will then seek the committee's agreement to the section. My understanding is that the Deputies are opposing the section. I will invite them to speak at that point on that matter.

Deputy Clare Daly: Now?

Chairman: No, I want to get the amendment out of the way first. There had been an earlier indication of assent I will put it again for clarification, that amendment No. 5 in the Minister's name be agreed to.

Amendment agreed to.

Chairman: There are no other amendments in section 20. I have now to put that section 20-----

Deputy Frances Fitzgerald: Perhaps Deputy Daly intended to oppose the next section. She has opposed the definition which is straightforward. It is just putting in what is in place in other Acts.

Deputy Clare Daly: The Minister might be right.

Question proposed: "That section 20 be deleted."

Chairman: The proposition in this amendment is that section 20 be deleted from the Bill. The proposition I am putting is that section 20 be deleted. Is that agreed?

Deputy Frances Fitzgerald: No because it is only the definition, which is in line with all other legislation. Why would I oppose a straightforward definition? It is not possible to prosecute under section 21 if section 20 is deleted.

Chairman: The briefing note is misleading. I absolutely accept what the Minister says but if the Minister were to examine it she would see that what I have read into the record is exactly the briefing the Chairman has received. It is wrong and I am making that clear. Am I correct in saying that section 20, as amended, remains part of the Bill?

Deputy Frances Fitzgerald: Yes. It does, as amended it remains part of the Bill because it is a definition and we have to keep the definition in the Bill in order to prosecute under the next section.

Chairman: We now have a new section 20. It has already been decided by the passing of the amendment that we are deleting the original section 20.

Deputy Frances Fitzgerald: This was left out. It was a mistake. It was not copied when the Bill was presented.

Chairman: I am going to interpret this myself. I ask members for their attention. There is confusion here and some day they will be in a position like this and will have to take the guidance but I am not happy with it. We have agreed amendment No. 5, the effect of that is that the new section replaces the former section 20. We have already agreed that so that change has taken place in my view. The proposition at this point, having changed the content of section 20 by the agreement to accept amendment No. 5, is that we are now looking at a new section 20 that reflects the content of amendment No. 5. I am asking that the new section 20 stand part of the Bill.

Deputy Jonathan O'Brien: If that happens the amendments tabled by Deputies Wallace and Daly automatically fall so if they wish to oppose section 20 is it correct to say they would have to oppose the Minister's amendment?

Chairman: That is their call. Their opposition to section 20 I presume reflected what section 20 previously stated. We have just amended that by the passage of amendment No. 5. I invite Deputies Daly and Wallace to make a contribution if they wish at this stage.

Deputy Clare Daly: The amendment we have just made is a relatively minor amendment. Our two amendments were linked. We wanted to oppose this section because it relates to sexual acts with protected persons. To us the terminology creates another category of person where

there does not need to be one in the context of sexual acts. There are already laws against sexual acts, abuse, rape and so on in order to prosecute somebody but this creates a new category.

Chairman: There are no other amendments to section 20. There is just the Minister's amendment, which we have accepted and with which I need to be able to proceed. Any other amendments in the group will be dealt with when their respective sections are reached.

Deputy Clare Daly: I wish to state my opposition to the amendment, though I do not want to call a vote.

Chairman: The opposition of Deputies Clare Daly and Mick Wallace is noted. Deputy Catherine Martin has asked for her name to be deleted from the list of those opposing.

Deputy Jonathan O'Brien: We may look at it again on Report Stage.

Question put and agreed to.

Amendment No. 6 not moved.

NEW SECTIONS

Deputy Jonathan O'Brien: I move amendment No. 7:

In page 17, before line 1, to insert the following:

"Sexual act with relevant person

21 (1) A person who engages in a sexual act with a relevant person knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.

(2) A person who invites, induces, counsels or incites a relevant person to engage in a sexual act knowing that that person is a relevant person or being reckless as to whether that person is a relevant person shall be guilty of an offence.

(3) In proceedings for an offence under this section, it shall be presumed, unless the contrary is shown, that the defendant knew or was reckless as to whether the person against whom the offence is alleged to have been committed was a relevant person.

(4) A person guilty of an offence under *subsection (1)* where the sexual act consisted of sexual intercourse, buggery or an act described in section 3(1) or 4(1) of the Act of 1990 shall be liable on conviction on indictment to imprisonment for life or a lesser term of imprisonment.

(5) A person guilty of an offence under *subsection (1)* where the sexual act consisted of an act which if done without consent would constitute a sexual assault shall be liable on conviction on indictment to imprisonment for a term not exceeding 14 years.

(6) A person guilty of an offence under *subsection (2)* shall be liable, on conviction on indictment, to imprisonment for a term not exceeding 10 years.

(7) For the purposes of this section, a person lacks the capacity to consent to a sexual act if he or she is not able to understand, at the time that the sexual act occurred, the nature and consequences of the sexual act and the available choices at that time.".".

I will withdraw this on the basis that I may return with an amendment on Report Stage.

Amendment, by leave, withdrawn.

Deputy Clare Daly: I move amendment No. 8:

In page 17, before line 1, to insert the following:

"Abuse of a Position of Dependence and Trust

21. The Criminal Law (Sexual Offences) Act 1993 is amended by substituting the following for section 5:

"Offence of abuse of position of dependence and trust

5. (1) Any person who being in a position of dependence and trust—

(a) takes advantage of his or her position, or

(b) aids, abets, counsels or procures another person to take advantage of his or her position,

and—

(i) induces or seduces a person to have sexual intercourse with him or her, or

(ii) commits any other sexual offence involving a person, shall be guilty of an offence of abuse of position of trust and shall be liable upon conviction on indictment to imprisonment for a term of not less than ten years.

(2) Where a person charged with an offence under this section can establish that, in respect of the sexual act which had been engaged in, no offence would have

been committed had the consent of the victim been granted prior to the act, it shall in those circumstances be a defense for a person who is charged with an offence under this section to prove that—

(a) the victim consented to the sexual act which had been engaged in, and

(b) that such consent was granted freely and in the absence of duress or coercion.

(3) In this section—

'position of dependence and trust' includes, but is not limited to, a person who—

(a) provides care,

(b) is responsible for welfare,

(c) occupies a position of authority,

(d) provides education, or

(e) provides support services including therapy or counselling, to the victim;

'sexual offence' includes—

(a) a sexual offence within the meaning of section 3 of the Sex Offenders Act 2001,

(b) an offence under section 2, 3 or 4 of the Criminal Law (Rape) (Amendment) Act 1990,

(c) an offence under section 6 or 7 of the Criminal Law (Sexual Offences) Act 1993,

(d) an offence under section 4 or 5 of the Criminal Law (Human Trafficking) Act 2008, or

(e) any other offence of a sexual nature contained in any other enactment and which has been so prescribed in regulations made by

the Minister for Justice and Equality under this section.".".

Amendment put and declared lost.

SECTION 21

Chairman: The next amendment is in the name of Deputy Jonathan O'Brien. While Deputy O'Brien may table amendments, he is not in a position to call a vote.

Deputy Clare Daly: I would like a vote on the amendment.

Chairman: Then I will move the amendment. I move amendment No. 9:

In page 17, between lines 28 and 29, to insert the following:

"(8) It shall be presumed that a relevant person has capacity in respect of the matter concerned unless the contrary is shown in accordance with the provisions of this Act.".

Amendment put.

The Committee divided: Tá;, 3; Níl, 5.	
Tá;	Níl;
Daly, Clare.	Brophy, Colm.
Ó Caoláin, Caoimhghín.	Chambers, Jack.
Wallace, Mick.	Farrell, Alan.
	Fitzgerald, Frances.
	O'Callaghan, Jim.

Amendment declared lost.

Section 21 agreed to.

SECTION 22

Deputy Frances Fitzgerald: I move amendment No. 10:

In page 17, between lines 28 and 29, to insert the following:

"Offence against relevant person by person in authority

22. (1) A person in authority who engages in a sexual act with a relevant person shall be guilty of an offence.

(2) A person in authority who invites, induces, counsels or incites a relevant person to engage in a sexual act shall be guilty of an offence.

(3) It shall be a defence to proceedings for an offence under this section for the defendant to prove that he or she was reasonably mistaken that, at the time of the alleged commission of the offence, the person against whom the offence is alleged to have been committed was not a relevant person.

(4) It shall not be a defence to proceedings for an offence under this section for the defendant to prove that the person against whom the offence is alleged to have been committed consented to the sexual act of which the offence consisted.

(5) The standard of proof required to prove that the defendant was reasonably mistaken that the person against whom the offence is alleged to have been committed was not a relevant person shall be that applicable to civil proceedings.

(6) A person guilty of an offence under *subsection (1)* where the sexual act consisted of sexual intercourse, buggery or an act described in section 3(1) or 4(1) of the Act of 1990 shall be liable on conviction on indictment to imprisonment for a term not exceeding 10 years.

(7) A person guilty of an offence under *subsection (1)* where the sexual act consisted of an act which if done without consent would constitute a sexual assault, or an offence under *subsection (2)* shall be liable on conviction on indictment to imprisonment for a term not exceeding 5 years.

(8) In this section—

"person in authority", in relation to a relevant person against whom an offence is alleged to have been committed, means any person who as part of a contract of service or a contract for services is, for the time being, responsible for the education, supervision, training, treatment, care or welfare of the relevant person;

"relevant person" means a person who has—

(a) a mental or intellectual disability, or

(b) a mental illness,

which is of such a nature or degree as to severely restrict the ability of the person to guard himself or herself against serious exploitation.".

I have already spoken to this amendment.

Amendment agreed to.

Section 22, as amended, agreed to.

Section 23 agreed to.

SECTION 24

Chairman: Amendments Nos. 11 and 13 are related and may be discussed together. The Deputy who tabled amendment No. 11 is not present. I call Deputy Ruth Coppinger to discuss amendment No. 13.

Deputy Ruth Coppinger: My amendment reads as follows:

In page 18, to delete lines 27 to 30 and subtitute the following:

"(d) in section 9, by the substitution of the following subparagraphs for subparagraphs (i) and (ii):

"(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or,

(ii) on conviction on indictment to a fine not exceeding €1,000,000 or to imprisonment for a term not exceeding 10 years or to both,".".

This amendment relates to the fine proposed in the Bill for those who organise prostitution. I am not referring to sex workers but to those who organise it. Section 9 of the 1993 Act reads:

A person who for gain--

(*a*) controls or directs the activities of a prostitute in respect of prostitution,

(*b*) organises prostitution by controlling or directing the activities of more than one prostitute for that purpose, or

(*c*) compels or coerces a person to be a prostitute...

As such, I am talking about pimps and traffickers. The current very small fine referred to in the Act is £1,000. It is a class D fine. I suggest it is these people who should be pursued, not individual women or vulnerable persons engaged in sex work. It should not be those who are compelled to work or who work in the sex industry but those who profiteer, coerce and direct trafficking. It is bizarre that the Tánaiste proposes to maintain a definition of "loitering" in the Bill, which just means the harassment of sex workers, while keeping the fines very low for those at the top. Therefore, we should remove the other things on which others and I have amendments and which simply penalise those engaged in sex work. It is a paltry fine. We propose that it be raised in order that a convicted person would lose the profits they had gained from compelling people to engage in or organising prostitution. It is about going after the people at the top rather than those on the ground.

Deputy Jim O'Callaghan: To clarify the law as it stands, if a person is convicted on indictment for organising prostitution, does he or she face a term of imprisonment not exceeding five years and a fine of up to £10,000, the sum in punts?

Deputy Frances Fitzgerald: Yes; the Deputy is right. It is a term of imprisonment of five years, but the fine has actually been increased to €22,000 on conviction on indictment.

On amendment No. 13, I appreciate that Deputy Ruth Coppinger is seeking to introduce a tougher penalty for the offence of organising prostitution. I agree with her, but a specific fine of €1,000,000 would be out of step with the more recent approach to penalties for indictable

offences. The correct approach would be to simply state a fine, without specifying a maximum. That is the usual approach adopted in legislation of this type. However, I agree in principle with the introduction of tougher penalties for the organisers of prostitution and will certainly bring forward an amendment to that effect on Report Stage. The Deputy might consider whether she is satisfied with the amendment I will propose. However, I note that it would be out of line with the approach adopted in legislation to specify a maximum amount. I will bring forward an amendment which the Deputy can consider.

Deputy Ruth Coppinger: There was a case in Galway a month or so ago in which a number of women were fined heavily in court because they had been found guilty of being sex workers. However, the people at the top are being fined relatively paltry sums. The women concerned should not have been fined. The Tánaiste says she will bring forward an amendment, but how severe will it be? It is the case that it is only a five year term of imprisonment. Some of the sentences that can be handed down for other offences include life imprisonment. Does the Tánaiste have an idea of what she will propose in her amendment?

Deputy Frances Fitzgerald: It will be an unlimited fine, rather than providing for a particular amount. That is the way one draws up legislation generally, rather than setting a maximum fine, as the Deputy proposes to do in her amendment with a maximum fine of €1,000,000. I will look at the term of imprisonment and the five year tariff.

Deputy Clare Daly: In some ways the discussion is akin to those on tackling the drugs problem. Mandatory sentencing was provided for and the view was that we were going to get the big boys with that legislation, while those at the bottom, the partial victims or users, would escape. However, that did not turn out to be the case. It is the low-lying fruit and the ordinary people at the bottom in any illegal industry who are caught. That is the problem with an approach that involves criminalisation. Our experience in the courts shows how cases have been brought forward. There was a case in County Donegal earlier in the week involving a number of Romanians, none of whom had been trafficked, but they were the ones who had been targeted, with their money. In that scenario who would be liable under this provision? Would it be the brother of one of the women whom the court said had not coerced any of the women but who was helping them and, perhaps, organising protection or whatever else? The problem in bringing forward legislation such as this is the same as the one we encountered with sentences for drugs offences. We might say we do not want ordinary, independent sex workers or those who organise together to be caught up in this, but on the basis of our legislative proposals, they will be. The person who rents the apartment or provides security could suddenly be the one deemed to be organising prostitution. We need to be very careful because of other provisions dealing with brothel-keeping and so on. We should be clear that there is a great deal of legislation dealing with trafficking as a separate issue.

Deputy Frances Fitzgerald: These are cases involving organised criminal gangs that are operating internationally. It is an area the Garda investigates. The evidence in seeking a prosecution is difficult to produce, but using the Criminal Assets Bureau is an approach that can be taken in gathering evidence. I agree with the Deputy that we need to target those who organise and are behind either prostitution or trafficking. We have strong legislation to deal with it. I met the Council of Europe yesterday on the issue of trafficking in Ireland, our approach to which it is examining. I intend to make the penalties stronger in so far as I can without specifying a particular sum, in the way Deputy Ruth Coppinger has. I take the points being made and will examine the matter to determine what are the strongest provisions we can include in the legislation to have the sanctions about which Deputy Ruth Coppinger is talking targeted at the

appropriate people. I agree with the points made.

Deputy Ruth Coppinger: The reason I include a specific sum and term of imprisonment is they are included in the existing 1993 Act. It is a proposal to amend that Act to make it much more severe. It defines the organising of prostitution. It is very clear that it refers to a person who controls or directs, organises, compels or coerces. There are later amendments that I and others have. I support the idea that two women who might be working together and protecting each other should not be fined and should not face any criminal sanction but those at the top should be got.

I accept what the Tánaiste is saying about waiting to see, as long as I still have an ability to resubmit.

Chairman: The Deputy most certainly has. Listening to the exchange, the Tánaiste quite rightly talked strong. That is the critical message here. It is the message of Deputy Coppinger's amendment. A strong-----

Deputy Frances Fitzgerald: As strong as we can. It is the approach since the 1993 Act, which is legislation the Deputy seeks to amend. I would make the point that subsequent legislation does not put in the amount.

Deputy Clare Daly: This is a section on the purchase of sexual services and it is being inserted in this context. CAB and criminal activity is already defined. For instance, kidnapping people, trafficking people and holding people for any purposes against their will are already heinous crimes in legislation and CAB and those organisations can address them. It is important to make that point. I happen to share a view that confusing people consenting to purchase sex with some of those issues can divert resources from tackling some of the major offenders in that regard as well, but we will see what comes back.

Deputy Jonathan O'Brien: I also have an amendment, which is grouped. I am wondering if the Tánaiste-----

Chairman: There are no other amendments grouped with amendments Nos. 11 and 13.

Deputy Jonathan O'Brien: I am sorry, the Chairman is correct.

Chairman: Deputy O'Brien should come in at the appropriate time. With no other members showing, amendment No. 11 cannot proceed and is not moved. The members tabling are not present.

Amendment No. 11 not moved.

Deputy Jonathan O'Brien: I move amendment No. 12:

> In page 18, to delete lines 22 to 26.

I will await the Tánaiste's response.

Deputy Frances Fitzgerald: The effect of this amendment is to delete paragraph (c) of section 24 of the Bill which contains an amendment to section 8 of the Criminal Law (Sexual Offences) Act 1993. Section 8 of the 1993 Act addresses persons who loiter in a public place in order to solicit or approach another person for the purpose of prostitution. It includes a provision which permits a member of An Garda Síochána to request the person to leave the public place and failure to do so would be an offence. Subsection (2) sets out the penalty.

The provision in paragraph (c) of section 24 which this amendment proposes to delete increases the penalty in section 8(2) of the 1993 Act to one of a class D fine or imprisonment for up to six months or both. The offence is intended to target the public nuisance that may be associated with loitering. However, it only arises where a person fails to follow a direction of An Garda Síochána to leave the area.

It is also important to note that section 8 only applies to those who loiter for the purpose of soliciting another person for the purpose of obtaining that person's services as a prostitute where a person ultimately is seeking to purchase sexual services. The proposed penalty in paragraph (c) is in line with public order offences under the Criminal Justice (Public Order) Act 1994 and paragraph (c) should be retained.

Deputy Jonathan O'Brien: It is quite ironic when one considers that we are putting in class E fines for individuals who pay, give, offer or promise to pay or give a person money or any other form of remuneration or consideration for the purpose of engaging in sexual activity. We will be penalising women sex workers more severely than somebody who pays. My party's position is not to criminalise women who are engaged in sex work and that is why we propose to delete the section. It is quite interesting.

Deputy Frances Fitzgerald: That is not a correct interpretation of what we are doing here. When we decriminalise persons from the provisions of the 1993 Act, this paragraph will only apply to buyers. It will not apply to the women.

I stated it is also important to note that section 8 only applies to those who loiter for the purpose of soliciting another person for the purpose of obtaining that person's services. It is not the women; it is the purchaser. It is the other section.

Deputy Jonathan O'Brien: I stand corrected.

Amendment, by leave, withdrawn.

Chairman: Amendment No. 13 in the name of Deputy Coppinger. There is absolute certainty that Deputy Coppinger is in a position to table again for Report Stage.

Deputy Ruth Coppinger: I move amendment No. 13:

> In page 18, to delete lines 27 to 30 and subtitute the following:
>
> "(d) in section 9, by the substitution of the following subparagraphs for subparagraphs (i) and (ii):
>
> "(i) on summary conviction to a class A fine or imprisonment for a term not exceeding 12 months or both, or,
>
> (ii) on conviction on indictment to a fine not exceeding €1,000,000 or to imprisonment for a term not exceeding 10 years or to both,".".

That is fine.

Amendment, by leave, withdrawn.

Chairman: Amendments Nos. 14 to 17, inclusive, are related and may be discussed together. Those who tabled amendment No. 14 are not present. Amendment No. 15 is in the names of Deputies Jonathan O'Brien, Clare Daly, Wallace and Catherine Martin. For the purposes of

clarification, Deputy Catherine Martin was specific regarding those amendments from which she wished to have her name removed and this is not one of them.

Amendment No. 14 not moved.

Deputy Jonathan O'Brien: I move amendment No. 15:

In page 19, between lines 1 and 2, to insert the following:

"(g) in section 11—

(a) by designating the existing section as subsection (1), and

(b) by inserting the following subsection—

"(2) No person shall be prosecuted for an offence under this section where—

(a) the premises is used by that person to provide his or her own sexual services, and

(b) section 10(1) does not apply to that person."."

It is my understanding that the Bill creates a new offence to which my party is opposed. It will create a harsher penalty for sex workers who are offering their services. As I said, my party is opposing the section in relation to it.

Deputy Clare Daly: This is an aspect of the legislation which has not been incorporated by the Tánaiste. It is to decriminalise sex workers who use their own premises or rented accommodation for the purpose of sex work currently.

(Interruptions).

Deputy Clare Daly: I cannot turn it off.

Chairman: Not everybody is listening to the Chair's appeal.

Deputy Clare Daly: It is a phone. I do not know how to turn that phone off.

Chairman: It is appropriate that it was an own goal.

Deputy Clare Daly: It is one of my special phones. I have more than one. I am sorry I do not know how to turn that one off.

Deputy Mick Wallace: It is the non-Garda phone.

Deputy Clare Daly: Apologies, Chair. It is a badly-behaved phone. I cannot work it.

As I say, currently this is classified as brothel-keeping. They can be penalised or a landlord can be penalised and the courts regularly hear cases where people are in that situation, having their hard-earned money taken from them, going before a court etc.

The reason we think this is incredibly important is that it is a vital safety measure for those who are currently engaged in sex work. It is much safer for sex workers to work in a familiar environment, such as their own home where they are in more control of the situation. It is also preferable if they themselves can organise their own type of security, through a friend who perhaps would vet clients or be near by, or a couple of people working together, a co-worker

etc. This is a position which is supported by the World Health Organization, which calls for the decriminalisation of brothels.

At present, a brothel is defined as two or more persons sharing a premises. There is an urgent requirement to deal with this issue. If we do not address it and decriminalise this, in effect, we are forcing sex workers to work alone without support, being in much greater danger and exposed more to violence. That would be a backward step, particularly if the Bill criminalising the purchase of sex were to be passed. That makes it even more dangerous in this regard. Because of that measure, it is particularly pertinent to move these people forward now. An analysis of convictions for brothel-keeping shows that 91% of the people convicted were sex workers. Therefore, this issue must be addressed urgently from a safety point of view.

Deputy Mick Wallace: We understand the legislation is, supposedly, intended to empower sex workers, but their position will be empowered far less by it. A recent report by Amnesty International examines the issue in Norway. It is entitled, Norway: The human cost of 'crushing' the market: Criminalization of sex work in Norway. It explores the effect of similar legislation introduced in Norway in 2009. One of the results of that legislation is that sex workers now feel persecuted rather than protected by the police, limiting their right to equal access to justice. The report finds, "As is the case in many countries, sex workers are at a high risk of violence and abuse in Norway". However, rather than being a group with which the police prioritise building relationships to reduce their vulnerability and the risk to them, the report states many sex workers risk eviction, deportation, police surveillance and loss of livelihood if they report any incident of violence to the police. According to Amnesty International, no other group in society receives this much police attention and must live with it. Even though the workers concerned are not doing anything illegal, this attention is unwarranted, even by the offence with which their clients are charged, let alone by the fact that sex workers are not breaking the law. If the police wish to catch the purchasers of sex, it is not feasible for it to watch everybody in the community whom it might suspect would like to purchase sex. It will watch the sex workers; therefore, it will be more difficult for them to work in their premises where they feel more safe. Before people who wish to purchase sex will be prepared to part with their money, they will insist on the sex worker going to their place which will not nearly be as safe and where the threat of violence and the likelihood that they will be treated badly will be far greater. It just does not stack up.

Chairman: We are discussing amendments Nos. 14 to 17, inclusive, together.

Deputy Ruth Coppinger: Our amendment has been designed to deal with the situation where there might be two or more sex workers working together for protection but not necessarily with a pimp. I am not in favour of brothels operating without any action being taken. We saw what happened in the case of Rachel Moran who was in a brothel in Dublin at 15 years of age. Effectively, she was a child. However, the amendment could be used as a defence where one or two women prostitutes or sex workers were operating by themselves. The Minister has to accept that it would be safer than in other situations.

Deputy Frances Fitzgerald: Amendments Nos. 14 to 17, inclusive, seek to create an exemption from the offence of brothel-keeping under the Criminal Law (Sexual Offences) Act 1993. They would, in effect, decriminalise brothel-keeping. I would have serious concern about this. The reality is that very often trafficked women are in brothels. Under the Criminal Law (Sexual Offences) Act 1993, a person who does any of the following is guilty of an offence:

"(a) keeps or manages or acts or assists in the management of a brothel;

(b) being the tenant, lessee, occupier or person in charge of a premises, knowingly permits such premises or any part thereof to be used as a brothel or for the purposes of habitual prostitution, or

(c) being the lessor or landlord of any premises or the agent of such lessor or landlord...

The Act is intended to target those who allow a premises to be used as a brothel or who manage a brothel. It is also the case that for a premises to constitute a brothel, there must be more than one person engaging in prostitution. If the intention is to allow women and-or men to work together but independently, as with a number of the amendments brought forward to the 1993 Act, the risk of exploitation is very high. The effect of the amendments, in reality, would be to decriminalise brothels in certain circumstances. I am concerned that decriminalisation of brothel-keeping would create a legal loophole that would be ripe for exploitation by the organised crime gangs involved in the trafficking and exploitation of women involved in prostitution. Women would come under pressure to claim that they were working independently when that was not the case and the Garda would be limited in the actions it could take to close brothels and disrupt the activities of pimps and criminal gangs. There is evidence from New Zealand that some women have been so used by pimps to establish businesses that appear legitimate but from which the organised gangs of the pimps profit. Creating exemptions from existing criminal law is a clear signal to those who seek to exploit such exemptions and the opportunity it presents. I do not wish to accept that scenario. If there were to be amendments to the offences under the 1993 Act, very wide consultation would be required with law enforcement agencies and so forth.

I wish to make a number of broader points. A study by the European Commission, probably its most recent, entitled, Study on the Gender Dimension of Trafficking in Human Beings, published this year, concludes that evidence of the harmful effects of the sex purchasing law in Sweden, the approach we are taking in the Bill, is very low. The study makes the point that it is clear that prostitution, legal or not, is an underground activity and carries risks for all involved. The new offence we are creating in the legislation is about targeting the demand which feeds both the trafficking and the exploitation of persons for the purposes of prostitution. It is expected that, in time, this will reduce the number of young women and men involved in prostitution, which will result in an overall reduction in the levels of harm. That is a valid aim.

In 2009 the Norwegian Government criminalised the purchase of sex. It carried out an evaluation of the law and the findings of that study did not report any evidence of more violence against prostitutes after the ban on buying sex had entered into force. An important point is that young men in Norway have changed their attitudes towards the purchase of sex in this way. Interviews with police forces indicate that the law has had a normative effect on people's behaviour. Obviously, there are issues relating to accurate data, but despite the lack of accurate data for the size of the market for prostitution either before or after 2010, estimates of the current market show a decline in the demand for prostitution after the introduction of the law.

On the amendments, many people who are taking this route suggest New Zealand is the model we should follow. That country had an amendment similar to the ones being proposed today. There has been huge concern in New Zealand that the model it adopted, similar to the one proposed in the amendments, has potentially been open to abuse by those intent on profiting from the prostitution of others. The danger lies in having unregulated brothels, without proper measures being in place to identify or tackle the human rights abuses that can take place in the sex industry. In New Zealand researchers have noted that even when genuinely indepen-

dent women involved in prostitution have sought to avail of this type of model, it has not been entirely effective. The women concerned have not been in a position to have a premises, for example, and even if they wanted to do so, they could not afford to set up their own businesses. There is the problem of criminal gangs abusing them and that is precisely what has happened.

There is much evidence to show that decriminalising brothels in this way, which is what these amendments would do, is not the way forward.

Deputy Mick Wallace: I do not know if the Minister read the legal opinion of Michael Lynn SC on the matter. He argued that this legislation will violate the human rights of sex workers. According to him:

> Human rights are universal and sex workers are entitled to have their human rights equally with others. The fact they engage in work that many people do not approve of does not mean their rights are negated and in order to protect the rights of sex workers, decriminalisation is the best approach.

A big problem for us in trying to ascertain the best way to move forward is that we have not listened to sex workers. The former Minister, Alan Shatter, won his case because Sean Guerin did not give him a voice. He was wrong not to listen to him and hear what he had to say. Likewise, the Government should listen to, and at least entertain, the opinions of sex workers. They are at the coal face and it beggars belief that we have not listened to what they have to say. I assure the Minister that if she were to listen to them, they would be open about telling her that they would like to be able to work with other females for protection because that is a safer environment. Working with another woman or two rather than alone has to be safer and they argue that they should be allowed to work in small groups. It is not outrageous to argue that by criminalising the purchase of sex, more sex workers will be driven into the hands of pimps. They will be less safe and they will feel less secure. They will need security and he is called a pimp. We are going in the wrong direction.

Deputy Jonathan O'Brien: I have listened to carefully to the Minister's comments. She will find no opposition to any legislation she brings forward to eradicate trafficking and to protect women and men who are being trafficked and exploited, but there are sex workers who will continue to be involved in the industry and by not allowing them to work in pairs or groups, the Minister is endangering their safety. She has a responsibility to all individuals. If these amendments are not acceptable, what measures will she take on Report Stage to address the issue of sex workers and their safety?

Deputy Clare Daly: A number of issues have been touched on and the Minister gave examples from other jurisdictions. The lack of evidence in respect of these matters has been commented on in all jurisdictions. Claims about alleged successes or magic wand solutions in Sweden and Norway have not stood up to scrutiny and there are serious concerns about the lack of evidence initially being to the detriment of being able to analyse progress. If the research is not done at the beginning, no one can say how successful anything is. Other changes happened in Sweden and while street prostitution changed, there was nothing to indicate that it had not been diverted into other areas such as the Internet. The best Sweden could claim was that prostitution had not increased.

Deputy Wallace referred to Norway and the thorough research undertaken there by Amnesty International. One of their pilot studies highlighted serious harassment of sex workers in their place of work, which was largely their homes or their premises. The amendment is trying to decriminalise the activity where one or more women work together and the Minister said they

might be unable to afford a premises but, in many instances, they are using their homes. By criminalising the activity, we face the prospect of forcing these people into homelessness. A landlord could evict them and that is dangerous and harmful in the current climate here. It has been deemed to be harmful by many organisations, including the Global Alliance Against Traffic in Women, Anti-Slavery International, the International Labour Organization and the World Health Organization.

The House of Commons produced its half yearly review earlier this week, which was an impressive document. The recommendation in this area is that at the earliest opportunity the Home Office should amend existing legislation in order that soliciting would no longer be an offence and brothel keeping provisions would allow sex workers to share premises without losing the ability to prosecute those who control or exploit sex workers. That is the nuance or the fine line we are trying to address. When a capable, rational adult women is engaged in a practice with another capable adult woman or man for the provision of sexual services and they give evidence that they are not being coerced by anybody, that has to have a certain status. Deputy Wallace is correct that we have not listened to the people who are engaged in this activity. In the context of introducing legislation to criminalise the purchase of sex, if we do not make this provision, then we will make prostitution even more dangerous than it is now.

Deputy Coppinger's points are not appropriate with regard to this important issue. Sex with a 14 year old or 15 year old child is absolutely unlawful in any circumstance under existing legislation. Saying she agreed to it or she was working in the industry is no defence whatsoever. The Deputy is conflating issues that are not related. Amendment No. 16 enables the prosecution of sex workers but allows them to use this as a defence and is not adequate. This is about harm reduction. I acknowledge the Minister has said her goal in this area is to reduce harm. Concentrating on demand will not tackle many of the issues around sex work, including the gender dimension, class, race and so on. By tackling demand, the Minister is not addressing those inequalities and is ignoring the experiences of sex workers who have not been consulted on this. All the evidence points to the wrong people being caught up in this and that is what this is about. More than 90% of these cases prosecuted in Ireland are taken against sex workers. They are not taken against pimps, organised crime lords and so on. It is one or two people working together, many of whom are not Irish. Some came to Ireland to engage in sex work but more did not. We are not helping them by failing to address this issue.

The House of Commons report places huge emphasis on research and evidence and that is sorely lacking in policy making in this jurisdiction. We need to conduct better research. Many good examples and experience show this protection needs to be in place.

Deputy Ruth Coppinger: One of the problems I have with the Minister's comments is that currently many sex workers are pressured if they are arrested to say they are working on their own. Nobody else is involved, an issue the Minister said would arise if this provision was introduced.

I am not a member of the committee and, therefore, I do not know which groups of sex workers were invited in, but I hope there was engagement. There are different views among sex workers. Some sex workers who may have a choice in the matter have a certain viewpoint but they would be a minority view, in my opinion. Other people involved in sex work, the majority of whom are women, are there because they are poor, because of their race and background or, in many cases, due to having an addiction.

The point I made about brothels is that there are 15-year old children in brothels. I did not

mean that this was the only issue that existed. The Minister should consider the amendment. Our amendment seeks to ensure that one woman does not profit from the proceeds generated by or the work of another women and, therefore, it should be accepted.

Deputy Frances Fitzgerald: We have looked at the submissions submitted by a broad range of groups.

To answer the point made by Deputy Coppinger, I understand the previous committee has compiled a comprehensive report and the current Chair was a member of the committee.

Chairman: No.

Deputy Frances Fitzgerald: Was the Chairman not a member of the committee?

Chairman: No. For clarification, Deputy Farrell was on it.

Deputy Frances Fitzgerald: Sorry, the Chairman was not a member. The committee received over 800 submissions. I am sorry for thinking that the Chairman was a member of the committee.

Chairman: Not at all.

Deputy Frances Fitzgerald: There were 30 oral submissions as well. All of the different arguments were put forward to the committee. The committee made clear recommendations. We have based the legislation on the key points that were made by the committee.

I met the association of sex workers. I listened to its members, talked to them and heard their point of view. I also met sex workers who, as Deputy Coppinger has said, completely and totally support the legislation. They told me that they have experienced extraordinary exploitation in Ireland and would have welcomed a route out of prostitution at a much earlier stage. The Deputy rightly made the point that many of the women who are in prostitution are there because of addiction and poverty. The vast majority of sex workers in Ireland at present are organised by criminal gangs. That is the reality of the industry. Let us be clear about that on this committee.

I want to address the points made about the human rights of sex workers but I shall first make a point about the industry as a whole. Regardless of whether one takes the approach of this legislation, for those who are involved in the industry - because of its very nature, the core assumptions around it and the core ways women are treated in it - there is a huge amount of violence. In fact, evidence shows that whether one takes the approach I recommend here, or the opposite, there is not much difference in the levels of violence people experience. In New Zealand, where there has been decriminalisation, it appears that adverse incidents, including violence, continue to be experienced by those in the sex industry. There is conflicting evidence on whether violence is reported more often since decriminalisation but there has been and continues to be a marked reluctance among sex workers to follow through on complaints. That is the reality of the industry the Deputy is talking about. I absolutely accept the point, and I discussed this matter yesterday with the Council of Europe, that one needs to do whatever one can, in terms of services, to provide exit routes for women who have been caught up in the industry unwillingly.

Deputy Wallace raised a point about human rights. He asked whether the criminalisation of the purchase of sex violates the human rights of sex workers. That is effectively what the

Deputy said. I do not believe that it does. I understand the concerns that have been raised about the potential impact of criminalisation on the purchase of sex on the safety and health of sex workers. The measures that I have proposed target demand for sexual services and thereby aim to reduce the overall number of persons involved in prostitution. This approach has been brought in by quite a number of countries recently and in Northern Ireland just some time ago.

The seller of sexual services is not criminalised in recognition of the fact that the seller, as I have said, is often a vulnerable person. There is evidence that the numbers involved in prostitution is far lower in Sweden compared with nearby countries with full decriminalisation. The Netherlands is estimated to have around nine times the rate of prostitution as Sweden and Germany is estimated to have around 30 to 40 times the rate. There is no conclusive evidence that the Swedish approach has an adverse effect on the safety and health of sex workers.

I should note the Department and I are supporting organisations such as Ruhama that work with women. Ireland offers free confidential health care services. There is no reason to believe that the extent to which these services are currently accessed by those providing sexual services would be reduced by this proposal. Support services are provided to sex workers who wish to exit prostitution or to people currently involved in the industry by organisations such as Ruhama. Many years ago I was one of the first people to support funding for Ruhama because of its important outreach work.

I am happy to put into the Bill provision for a review of the legislation. I envisage a short period before reporting back on how it was working and what were the figures. There is a need to offer additional supports to women and men who wish to exit prostitution. I will not go into the details of the funding but an increased amount of funding has been given to the organisations that work in this area like Ruhama and the south inner city local drugs task force. The committee should note there was a 10% increase in funding in 2016 and I will outline more facts for members. Ruhama's annual report of 2015 showed that 301 women were given support and assistance and 228 women were given care and case management. It is important to note that out of the 228 women, as many as 94 women were identified as victims of sex trafficking by Ruhama. Trying to bring people to justice in terms of trafficking, as we have already discussed, is extremely difficult. Ruhama also supported women through a programme of street outreach. As many as 103 women accessed services for the first time in 2015 and 27 of them were suspected victims of sex trafficking. Sex trafficking is very real in Ireland right across the country. It is interesting to note that out of the 228 women that Ruhama helped, 37 were from different countries. Many women have been brought into the country and in the vast majority of cases criminal gangs have trafficked them here for prostitution. That is the backdrop to the legislation.

The amendments proposed do not address the situation where a person is forced to engage in sexual acts for his or her own profit. I must say the person is being exploited and used as a front for somebody else. Therefore, I cannot accept the amendments.

Deputy Mick Wallace: Trafficking is a separate area. We are adamant there should be greater enforcement to prevent trafficking. We are discussing a separate area today. This legislation will not address the problems of trafficking. We need stronger enforcement of existing laws to ensure trafficking is diminished. We are arguing about what is happening here and there and obviously do not agree. There have been many interpretations of what happens elsewhere.

The Northern Ireland Minister of Justice commissioned independent research from Queen's University that dismissed the Swedish model and found agreement among sex workers and the

PSNI that criminalising the purchase of sex would drive prostitution underground, endanger the lives and health of sex workers, including a significant male transgender minority, increase the involvement of organised crime, increase the social stigma of sex workers and divert police resources away from sex-trafficking investigations. Did the Tánaiste or her Department consider commissioning independent research in the Republic of Ireland at any stage? Surely it would have been interesting to see what could have been learned from it? The argument cannot be made that we would not learn anything from it. We have been speaking with many of the sex workers and we are getting a very different view to what the Tánaiste is presenting in respect of what is happening. They are adamant that this will make their work less secure.

There are plenty of people involved with prostitution who would prefer to make a living from doing something else. There are some who are happy to make a living at it but some would like to get out. How much direct help are we giving them? The Tánaiste has argued they are being helped by the money being given to Ruhama but I suggest that we give money to the people involved, many of whom are single parents. They need direct help and perhaps we should think about how best to help them with funding of one kind or another, particularly if they would like to get out of the industry and make a living somewhere else. I do not know of any direct help that they are getting but it should certainly be considered. Unfortunately, the authorities in Northern Ireland did not accept the recommendations of their own independent commission investigation, going against the Minister for Justice there, who was opposed to criminalising the purchase of sex. The Police Service of Northern Ireland, PSNI, was against it as well but, sadly, the Northern Ireland Executive decided to go against advice and went down a different route.

Deputy Clare Daly: The Tánaiste is right and there is no doubt that sex work is incredibly dangerous and violent. The purpose of this amendment is to make it less so, to be honest. It deals with a deficit that currently exists. There is the very valid objective of trying to catch those who exploit people through prostitution by running brothels etc. The law, as it stands, has an unforeseen or unintended consequence because the people who pick up the pieces and are being penalised are the very victims that we say we are trying to protect. We are trying to address that deficit in these amendments. It would help to go after the big boys. Currently, the policing resources, etc., are diverted into areas dealing with issues where two people are working together who may not be doing any harm or annoying anybody. Rather than the Garda having to deal with that under brothel-keeping, it would be simple for people to say they are working together. This is particularly pertinent against the backdrop of criminalising the purchase of sex.

The Tánaiste has indicated that there is no evidence that women have been harmed in Sweden or Norway by this measure. Equally, there has been no indication that it has worked. These are complex issues and there are good arguments to say that because of the lack of data or research done at the start, any comparisons being made now are fundamentally flawed. In Norway there is a sizable body of academics that disputes the claims of that country's Government and there is a very valid argument put forward that demand has not been reduced but rather that it has been displaced and put somewhere a little more hidden and, sadly, much more dangerous.

If the Tánaiste is going to push through the criminalisation of the purchase of sex, which she has the numbers to do, as an absolute minimum this protection must be put in place. Against the backdrop of criminalising that activity, it will be much more dangerous for sex workers. The power will transfer to the buyer. There will be less time to negotiate, perform checks, use condoms, etc., because of the fear of being caught. Deputy Wallace made the point earlier that the

buyer will be found through the seller, so people will be harassed in that way. We must reduce that pressure, which will inevitably come about. The Minister mentioned Ruhama but there are significant numbers of organisations and people at the coalface who would take a very different view, including social workers, HIV and AIDS activists and so on, and who would point to the evidence in countries like Sweden where people got less protection and help. The people there did not access the outreach programmes and there was a "moralistic" intervention put in place, with individuals being encouraged to leave the industry. I am all in favour of people getting help to get out if that is their wish. However, I do not favour people passing judgments on the way others live their lives and using that to coerce them or prevent them from accessing help. This has occurred with those trying to access condoms and outreach support against the backdrop of criminalisation and is not the way forward.

The only academic study carried out on this island that interviewed sex workers in a comprehensive way was done by Queen's University in Belfast. The information from that was incredibly enlightening with regard to people involved with prostitution. As in much of Europe, many of the people engaged with sex work were not born in this country. Many would say they came to the country voluntarily to sell sex, although the study indicated that some were encouraged to come here but did not get the money they were told they would get. That is a different issue from trafficking. Trafficking has no place in this discussion. There is, rightly, strong legislation to deal with rape, kidnapping, sex with minors, holding somebody against his or her will, trafficking and other issues. The Garda has indicated that using its resources for tracking down people who have agreed between them to have sex in exchange for monetary benefit or whatever is a diversion from targeting some of the key offenders. This is a protective measure that is necessary against the backdrop of what is being proposed elsewhere in the Bill.

Chairman: We have given substantial time to this group of amendments and they have been very well addressed. I hope that, on conclusion of the Tánaiste's response, we will be able to proceed to make decisions on each of the four amendments.

Deputy Frances Fitzgerald: There is not much evidence of women travelling here independently and the vast majority of the available evidence supports the fact that the process of women being brought into this country and moved from town to town comes from organised criminal gangs. That is the evidence we have about prostitution in Ireland. Many of the women from international locations are not coming here of their own accord, generally speaking. It is part of organised activity.

There are also public policy issues that we must consider, including cultural and attitudinal changes to prostitution. I have already quoted the research from Norway indicating how attitudes have changed and how alterations to legislation have made Norway a less attractive country for prostitution-based trafficking. I accept the points made by Deputies about the differences in trafficking and prostitution, and as Deputy Clare Daly states, some women may be involved independently. There are attitudinal and cultural linkages nonetheless, as well as public policy points to be made on the broader approach.

A recent European Commission report, from which I have already quoted, concluded that the purchase of sexual services approach is extremely helpful in combatting trafficking. It is very important to consider that and it confirms previous conclusions by the European Parliament and Council of Europe. Deputies have quoted the survey from Northern Ireland but politicians there knew about that survey and took the decision to go along the route I am recommending in the legislation. That was an online survey. I take its reliability for what it is, but I make the point that it was an online survey and one has to be aware of that.

To return to the amendments, my own belief is that women would still come under pressure to claim they were working independently when that was not the case and that gardaí would be limited in the actions they could take to close brothels and disrupt the activities of criminal gangs. I repeat the point that I have made: creating exemptions in the way the Deputy is proposing from existing criminal law would be a clear signal to those who would seek to exploit such exemptions and the opportunity it would present. I do not believe that is a scenario that we should accept.

In terms of reviewing the legislation, I could table an amendment to examine the consequences of this. The Deputy asked about research. Let us remember that there were, as I have said, 800 submissions to the justice committee. There was a huge amount of work done by members of all parties. There was cross-party agreement on the recommendations on the way forward for prostitution. That was a committee of this House with cross-party representation that received almost 30 oral submissions and 800 submissions in total. It produced a carefully-drafted report with a unanimous recommendation from all parties that we should move in this direction.

I absolutely take the point about support services and exit strategies for people who would want to leave the industry. There is a strong lobby by the Sex Workers Alliance Ireland. I know that Deputies have been very heavily lobbied. Perhaps some of the other people who are exploited by this situation do not have such a strong voice. We need to listen and be concerned about other voices that are perhaps somewhat more silent than the lobbying that has been conducted by one particular perspective on this debate. I have no wish to make the situation more dangerous; of course I have not. The evidence from other countries points to the dangers of this industry in the first place and the risks that it poses to all of those involved in it, apart from the criminal gangs that exploit it.

Chairman: Unless there is something new for consideration, I propose to proceed to address the amendments in this grouping, of which there are four. Amendment No. 14 has not been moved and has fallen. Is amendment No. 15, in the names of Deputies O'Brien, Daly, Wallace and Martin, being pressed?

Deputy Clare Daly: Yes.

Amendment put.

The Committee divided: Tá;, 3; Níl, 5.	
Tá;	Níl;
Daly, Clare.	Brophy, Colm.
Ó Caoláin, Caoimhghín.	Chambers, Jack.
Wallace, Mick.	Farrell, Alan.
	Fitzgerald, Frances.
	O'Callaghan, Jim.

Amendment declared lost.

Deputy Ruth Coppinger: I move amendment No. 16:

In page 19, between lines 1 and 2, to insert the following:

"(g) in section 11—

(i) by designating the existing section as subsection (1), and

(ii) by inserting the following subsection—

"(2) It shall be a defence to proceedings for an offence under this section that—

(a) the brothel is used by that person to provide his or her own sexual services, and

(b) section 10(1) does not apply to that person.".".

Chairman: This is a new situation presenting and the Deputy must excuse the fact that the Chair has not gone through this before. Unfortunately, Deputy Coppinger is not in a position to actually call a vote. It is one of the rules of the committee system, and not of this Chair, which I wish to emphasise to her. In the absence of a nominated member or one presenting to move Deputy Coppinger's amendment, I will not be able to take it.

I beg the Deputy's pardon. I can, in fact, put it to a voice vote. I will accommodate that. Is the Deputy happy to proceed that way?

Deputy Ruth Coppinger: Yes.

Chairman: The clarification is that I will not able to then put it to a division.

Amendment put and declared lost.

Chairman: None of the proponents of amendment No. 17 is present.

Amendment No. 17 not moved.

Question put: "That section 24 stand part of the Bill."

Question put.

The Committee divided: Tá;, 6; Níl, 2.	
Tá;	Níl;
Brophy, Colm.	Daly, Clare.
Chambers, Jack.	Wallace, Mick.
Farrell, Alan.	
Fitzgerald, Frances.	
O'Callaghan, Jim.	
Ó Caoláin, Caoimhghín.	

Question declared carried.

SECTION 25

Question proposed: "That section 25 be deleted."

Deputy Clare Daly: The deletion of this section is widely supported by a range of individuals and parties for reasons that have already been set out. If we do not delete it, a sex worker could be tried for loitering in a public place. This new offence could be used to target sex workers. We are seeking to ensure this measure is not included in the Criminal Justice (Public Order) Act 1994, as proposed in section 25 of this Bill.

Deputy Ruth Coppinger: I suggest that this section represents the continuation of a pattern of direct harassment of individual sex workers who are deemed to be "acting in a manner which consists of loitering in a public place". There is widespread agreement that this section should be deleted because it is not beneficial to anybody. If we are serious about the so-called Swedish model, which I do not think is what we are providing for in this Bill in any case, it is wrong for us to maintain the harassment and prosecution of individual women. I understood that the Minister was considering the removal of this section. Perhaps she can clarify the matter.

Deputy Frances Fitzgerald: I realise that Deputies have concerns regarding this section. I had a very detailed discussion with representatives of An Garda Síochána on it. Having asked them for further advice in this respect, and in light of the concerns that have been expressed by Deputies, I am happy to agree to the deletion of this section. I do not have any objections to the section being opposed.

Chairman: Go raibh maith agat. My reading of the situation is that there is unanimity about the deletion of this section with the acceptance of the Minister.

Question put and agreed to.

Section 26 agreed to.

SECTION 27

Chairman: Amendments Nos. 18 and 21 are being taken together. As the Deputies proposing those amendments are not present, however, they cannot be moved.

Amendment No. 18 not moved.

Chairman: Amendment No. 19 is in the names of Deputies Róisín Shortall and Catherine Murphy, who are not here to move it. The amendment requires the Minister to "commission an independent review of this Part 4", which relates to the purchase of sexual services and to "make a report" to the House on its effectiveness under various headings. As the commissioning of an independent review would result in potential cost implications, this amendment could impose a charge on the Exchequer and must therefore be ruled out of order in accordance with Standing Order 179(3).

Deputy Jonathan O'Brien: I think the Minister has said previously that she would be willing to look at the possibility of reviewing the legislation.

Deputy Frances Fitzgerald: Yes.

Deputy Jonathan O'Brien: Will she confirm that she is willing to bring forward an amendment to that effect?

Deputy Frances Fitzgerald: Yes, I will bring forward an amendment providing for the legislation to be reviewed within a shortish timeframe of two or three years.

Deputy Mick Wallace: Rather than reviewing the legislation "within a shortish timeframe of two or three years", would the Minister not consider reviewing it after a year has passed?

Deputy Frances Fitzgerald: I think such a timeframe would be too short. We need to leave an appropriate time go by. The normal review period for legislation is longer. I recognise that there are very different views in this regard. I think it would be helpful to review the legislation. I will consider the precise timeframe. I do not intend to suggest a five-year timeframe. I will propose a shorter review.

Chairman: Maybe the Minister will take on board the wishes of Deputies.

Deputy Frances Fitzgerald: Yes.

Deputy Clare Daly: I am curious to know whether the Minister intends to take on board some of the points made in our collective amendment, which specifies that data should be collected and that a time period of not more than two years would be appropriate. Indeed, we propose that a review should take place every two years thereafter. It is absolutely vital for an ongoing review mechanism to be built into this legislation, particularly in light of its potential impact on behaviour changes. Is the Minister looking at that type of thing or at something bland? I do not mean that in a derogatory way. I think a more specified type of review would be necessary.

Chairman: Before I bring in Deputies O'Callaghan and Coppinger, I remind the committee that amendment No. 19 is not validly before us. We need to move on to amendment No. 20, which is eligible to be considered by the committee. Therefore, I ask Deputies to keep their contributions crisp.

Deputy Jim O'Callaghan: I think there should be a review. I agree that we do not just want a mechanical review after five years. I suggest there should be a review in two years. Everyone is interested to see how this well-intentioned legislation will develop. People on either side of the debate seem to think it will have diametrically opposite achievements. We will see what happens. I think the Minister should adopt the proposal for a review.

Deputy Ruth Coppinger: I was asked to move amendment No. 21 on behalf of the AAA-PBP group.

Chairman: I went through these procedures yesterday in preparation for today's meeting. If the Deputy seeks to move the amendment, it will be ruled out of order because she is not a member of the AAA-PBP group.

Deputy Ruth Coppinger: I am a member of AAA-PBP.

Chairman: I beg the Deputy's pardon. We will allow the Deputy to move the amendment when we reach it.

Deputy Ruth Coppinger: Deputy Bríd Smith asked me to move it on her behalf because she was unable to make today's meeting.

Chairman: Let me just conclude this business.

Deputy Ruth Coppinger: Will I move the amendment?

Chairman: I will ask the Deputy to do so in a moment. I ask the Minister to respond to

what Deputies Clare Daly and O'Callaghan said about the timeframe for the proposed review of this legislation.

Deputy Frances Fitzgerald: I will take the views of the committee fully into account. If I can design the review in a more useful way so that it can examine precisely the impact of the legislation, I will do that. I will accept the two-year timeframe that has been recommended. In Northern Ireland, legislation is reviewed after three years. Dáil Standing Orders provide that the impact of legislation has to be looked at and reported on to the Dáil after a year. That mechanism is in place.

Chairman: I thank the Tánaiste for her positive reflection on the wishes of members. I apologise to Deputy Coppinger for misreading the situation.

Deputy Ruth Coppinger: It is fine.

Chairman: All of the groupings have been circulated. Deputy Coppinger will be entitled to speak to amendment No. 21. It is grouped with amendment No. 18. The latter cannot be moved but the grouping stands. I invite the Deputy to speak to amendment No. 21.

Deputy Ruth Coppinger: It has been generally agreed that if the criminalisation of the purchase of sex is adopted, there should be a review to see how it impacts. That point has been made already.

Chairman: Is the Deputy withdrawing the amendment? It can come back again but we have already noted the position of the Tánaiste? Is that okay?

Deputy Ruth Coppinger: Yes.

Chairman: Amendment No. 21, like amendments Nos. 19 and 20, is out of order. The amendment requires that the Minister shall commission an independent review of Part 4 in respect of the purchase of sexual services and make a report to the Houses on its effectiveness under various headings. Commissioning an independent review would result in a potential cost implication which could involve a charge on the Exchequer. The amendment could, therefore, impose a charge on the Exchequer and must be ruled out of order in accordance with Standing Order 109(3). We understand that we have moved beyond that.

Amendments Nos. 19 to 21, inclusive, not moved.

Chairman: Amendments Nos. 22 and 23 are related and grouped together.

Deputy Ruth Coppinger: I move amendment No. 22:

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

"**Review of supports and exit services for sex workers in prostitution**

27. The Minister for Justice and Equality is to report on the education, language, training, financial, housing, healthcare, social welfare and rehabilitation services that should be provided by the State to support sex workers and assist them in overcoming the barriers and forms of exploitation that prevent them from exiting prostitution, within six months of the enactment of this Bill. The needs of migrants, in particular the need to regularise their immigration status in order to afford them full employment rights and full access to legal employment and social welfare services, must be central to this

review.”.

We have put forward these amendments for a reason. These are vital amendments because the Tánaiste is introducing serious legislation to criminalise the purchase of sex, which is a controversial measure. Certainly, the situation will not improve for those involved in sex work unless this legislation is accompanied by measures to assist sex workers in getting out of prostitution. Earlier, the Tánaiste referred to the Swedish model. This is not the Swedish model; it is nothing near it. If people are to be assisted in getting out of sex work and prostitution, then all these things are necessary. The areas covered in the proposed report include education, language training, financial assistance, housing, health care, social welfare, rehabilitation services and addiction treatment. Obviously, this affects migrants. A considerable number of sex workers are migrants. They are unable to get out unless they have regular employment status and are free to look for other work. The Bill makes a mockery of introducing the criminalisation of the purchase of sex unless the Government accompanies it by serious social measures to enable people to get out of prostitution and sex work.

Amendment No. 23 is somewhat different. Amendment No. 23 is designed to allow sex workers to report traffickers or organisers of prostitution - in other words, people who coerce them into sex work. It calls on the Minister for Justice and Equality to make available additional procedures and supports to protect people who report major traffickers and organisers of prostitution and to assist them to regularise their status in the country if they do so. We could envisage scenarios whereby women would be driven underground unless these measures are put in place. The criminalising of the purchase of sex could make things more dangerous unless these people are assisted to get out of prostitution. The major defect in the Bill is the lack of social measures to help to reduce the numbers involved in prostitution and sex work.

Deputy Frances Fitzgerald: I understand where Deputy Coppinger is coming from in respect of the range of needs. However, I suggest that the extensive reporting provisions are not suitable to be put into legislation in this manner. For example, amendment No. 22 would require the Minister to report on a remarkably wide range of areas, including education, language training, financial, housing, health care, social welfare and rehabilitation services that should be provided by the State to support and assist sex workers to exit prostitution. I have already made the point that I believe these services need to be in place and that we must develop ways of achieving precisely that. The anti-human trafficking unit in the Department undertakes extensive work with the Garda and NGOs. We have taken this approach to support people in this situation. There is no doubt we have more to do. However, there are many elements to what we are doing and we are on the right track in terms of supporting people and offering the supports that are needed.

These amendments refer to the needs of migrants in respect of regularising their immigration status. We need practices and procedures for women who have been trafficked such that they are dealt with appropriately once they are identified. Often, they come within the immigration area and seek regularisation. A particular approach is taken with regard to women who have been identified. Usually, this applies to women although we are seeing men being exploited and trafficked for economic reasons as well. Particular procedures and practices are in place to give the best supports to people who find themselves in these situations. In particular, they are identified within the immigration process. Many of these issues are outside the scope of the Bill. In some ways, they are for consideration across all Departments of the Government.

Amendment No. 23 provides that an extensive report would be required to be made in respect of the protection and assistance of sex workers who report trafficking, organisers of prostitution

and so on. Numerous departmental issues arise in terms of interpretation and implementation. It would be difficult to accept the amendment. Many of the areas subject to report are outside the scope of the legislation and are cross-departmental in nature. However, there may be other ways to address this issue. This is something the justice committee might decide to examine. For example, a report could be commissioned on these issues. Further work could be done in consultation with the appropriate stakeholders and with relevant support. Certainly, that is something I would call on my Department to support. I have no difficulty with that. However, given the extraordinarily broad nature and scope of these amendments I cannot accept them.

Chairman: Does Deputy Coppinger wish to reply?

Deputy Ruth Coppinger: It is amazing for the Tánaiste to state that this is outside the scope of the Bill. The Bill deals with sex workers.

Deputy Frances Fitzgerald: It is a question of the way the amendments are drafted.

Deputy Ruth Coppinger: The amendments call for a report to be compiled in respect of these measures. I would find it difficult to support a Bill that criminalises the purchase of sex but does not accompany it with any of the other measures that are necessary to assist people to get out of sex work or situations where they are being coerced, forced or compelled and have little choice due to a range of factors. The amendment is broad-ranging because there is a broad range of reasons why women end up in sex work and prostitution.

What is being done here is really ham-fisted. Other countries have introduced the criminalisation of the purchase of sex but they have accompanied it with social measures. They are linked. By contrast, the Tánaiste is introducing the criminalisation of the purchase of sex but she is not accompanying it with any of those things. It strikes me that this country has a bad record of dealing with women, women in poverty and this issue in particular. It will amount to a continuation of that record if the Tánaiste does not include measures to assist people to exit prostitution.

Chairman: A final reply from the Tánaiste.

Deputy Frances Fitzgerald: I wish to make a point in terms of the way the amendment is drafted. Let us examine it more closely. In the drafting of the amendment the Deputy is referring to the needs of migrants. That is extraordinarily broad and this is not the legislation on which it should impact. I have given the example of women who are trafficked and outlined the particular approach that needs to be taken to them from the point of view of immigration history and how they should be supported. I have spoken quite a bit about exit supports; therefore, from that perspective I agree with the Deputy absolutely. However, I am making the point that it does not need to be included in this legislation and certainly not in the way he proposes. It is too broad and inappropriate for inclusion in this legislation. I do not mean that the issue is not an appropriate one with which to deal in the context of introducing legislation. I am absolutely clear that organisations working with women who find themselves in this situation need support. I have increased the funding for them in the past two years in recognition of the very issues the Deputy has outlined. I have also said I see no problem in doing further work on them. However, I do not believe the vehicle for this is the legislative mechanism suggested by him. The issue, of course, is very real and accompanies the legislation in terms of my practical approach to and funding for those who are supporting the women involved and understanding the issue further, bringing stakeholders together and producing a report on precisely how the supports could be developed. However, the precise drafting of the proposal is extraordinarily

broad and, as such, I cannot accept it.

Chairman: I may have to come back to the Tánaiste on this issue.

Deputy Clare Daly: I am surprised from a procedural point of view that the amendments were allowed while ours were not. I have no problem with the amendments and want to discuss them, but I note that technical point. It strikes me as strange in circumstances where the amendments are incredibly vague and aspirational without specific times or targets being set, whereas ours were not like that. Nevertheless, they were ruled out of order. I am happy to discuss the amendments because they highlight the one-sided nature of the debate on these issues and constitute an exposé of the Bill's shortcomings.

Much of the debate on the move to criminalise the purchase of sex has been moralistic and judgmental, with little attempt to understand from where prostitution comes. The idea is that all sex work is discriminatory against women, violent and harmful to society and that if we outlaw it, it will be reduced or go away and that everything will be great. In reality, it is a very complex field. There is no doubt that gender discrimination is a contributory factor, but social exclusion, poverty, racism and such issues are equally contributory factors. If we are serious about limiting the harm caused, improving the lot of sex workers and giving them an out, we have to address all the reasons they become involved in sex work. In concentrating too much on certain issues we are denying the narrative of thousands of sex workers worldwide who argue that they have made a choice. It might not be a great one and many of them see that it might not be the best one, but if they had other options, they would make another choice. However, concentrating on criminalisation will not help them.

If we are serious about tackling this issue, we will need to concentrate on migration issues, education, employment issues and all the rest, but they are matters of social and political policy and, sadly, the direction of the Government is away from this. Many of the organisations at the coalface which deal with these groups, including HIV Ireland and Migrant Rights Centre Ireland, are fully opposed to the criminalisation of the purchase of sex. The Minister said she had been lobbied strongly by the Sex Workers Alliance, but that is like lobbying David and Goliath. Sex workers have had to fight to organise themselves to have their voices heard against the monolithic viewpoint that the criminalisation of the purchase of sex will cure all ills. Many views have changed since the legislation was originally mooted and many of the organisations which had initially signed up to Turn off the Red Light have actually changed their views and pulled their support from the criminalisation of the purchase of sex in the light of evidence. Criminalisation will not address any of the reasons that cause people to engage in prostitution. All of the other factors whereby people are compelled or trafficked into it are illegal. There is no forum, but it exposes the fact that the game in town was not really about this. It will not help people to exit prostitution either.

Chairman: Before I invite the Tánaiste to come back in, I note, as Deputy Clare Daly knows, that the admissibility of amendments is not determined in committee, nor are we consulted in the matter. I fully understand her disappointment in that regard.

Deputy Frances Fitzgerald: I do not believe the debate is one-sided. I agree absolutely that we must look at the broader issues. There is no doubt about this. However, the issue is what can we realistically include in legislation as opposed to what is part of broader social policy issues that need to be addressed. I do not accept Deputy Clare Daly's characterisation of the Government as being uninterested in social issues. In fact, it is very difficult to invest in infrastructure if one does not have an economy that will support it. We have to address the fac-

tors that impact on prostitution and part of addressing the pull factor is looking at criminalising the demand which would undermine the market for prostitution. I have not heard her talking about it, but the Deputy needs to examine the market and demand for prostitution. I will not reopen the debate, but there is a great deal of evidence I can cite and which the committee examined in a very comprehensive way which suggests this is a positive way forward. I accept that it is a complex issue and that there are different arguments, but in terms of what we have seen in other countries and the increasing number of countries that have moved in this direction, there are guidelines in place for how we should approach the issue which is complex and in respect of which there are many factors. Of course, the question as to why women end up in prostitution involves a great many factors. Most people who study the issue agree that they include poverty. Certainly, the evidence suggests that for many of the women about whom the Deputy was speaking who work on their own, there are serious issues of addiction for which they need help. It is to feed that habit that they engage in prostitution. I agree with the Deputy that helping them is about providing services for them to receive treatment for their drug addiction. I agree that we need to address all of the other factors that leave women susceptible to exploitation through prostitution, whether it be addiction, lack of employment or another reason. Support services need to be targeted and we have to prioritise the provision of supports. I agree with Deputy Ruth Coppinger that this goes hand in hand with the legislation, but I cannot accept the amendments.

Chairman: Deputy Mick Wallace is indicating. I ask that Deputies be brief at this point because the matter has been fairly well addressed.

Deputy Mick Wallace: As always.

Chairman: I know that the Deputy does.

Deputy Mick Wallace: The Tánaiste says this is the best way forward and, obviously, we think otherwise. Other countries are realising criminalisation of a lot of things does not work. The so-called "war on drugs" has been an abysmal failure. The points raised in the amendments address the core of the problems better. Rather than hitting people with sledges or putting them in prison, it would be far more fruitful in time to examine from where the problem is coming and deal with the social issues behind it. In her defence the Minister said she did not have an economy to do everything that could have been done during the past six years, but we will not get into that debate today. When austerity measures were used to help to deal with the banking collapse - it cost the State a fortune - choices were made. It was not the case that there were no choices.

Chairman: I do not propose to reopen the discussion. We need to move to a decision on amendments Nos. 22 and 23.

Amendment put and declared lost.

Deputy Ruth Coppinger: I move amendment No. 23:

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

"Review of supports and exit services for sex workers that report traffickers or organisers of prostitution to the Gardaí and/or them in prosecutions

27. The Minister for Justice and Equality is to report on the additional procedures and supports that should be available for the protection and assistance of sex workers

who report traffickers, organisers of prostitution, and pimps and brothel-owners to the Gardaí, particularly in relation to Garda protection, regularisation of immigration status, financial compensation, access to employment, training and other exit services, within six months of the enactment of this Bill.".

As the Minister did not really refer to this amendment, let me make one point on it. It concerns helping women who have been arrested but who have clearly been trafficked, deceived or forced into sex work. Something must be introduced to at least give an incentive to the women concerned to try to target the traffickers. The Minister did not refer to this issue, although she did refer to education. We cannot deal with it using legal measures. We must change sexist attitudes and the idea that it is okay to purchase sex, an idea that is being promoted. I have later amendments that I can move on Report Stage on sexist attitudes in society and education in schools on these matters. We must assist those who have clearly been trafficked. This does not apply to all but some sex workers.

Deputy Frances Fitzgerald: I could not agree more with the Deputy on her points about general attitudes and what sustains the industry. She is right and it is good to hear it being said, given that it is the reality. There will be specific sections in new legislation to protect victims of trafficking when giving evidence. The Department of Justice and Equality has provided a guide to procedures for victims of human trafficking. There is a lot of contact with the section in my Department dealing with human trafficking and the Garda to ensure we provide the best protections for women found to be involved in prostitution but who are victims of human trafficking, which is the point the Deputy made. There is a very proactive approach to protecting them, in the first instance, and then supporting them. The new legislation will introduce new measures to support them when giving evidence which can be very dangerous for them.

Amendment put and declared lost.

Question proposed: "That section 27 stand part of the Bill."

Deputy Jim O'Callaghan: I may bring forward an amendment on Report Stage to section 27 that it apply to any male person, not just people over the age of 17 years. Also, the penalty being imposed is imprisonment for life, which is archaic. I will bring forward an amendment on Report Stage which perhaps the Minister might also consider.

Deputy Frances Fitzgerald: I will.

Chairman: The Deputy will have the opportunity to raise those matters on Report Stage.

Question put and agreed to.

SECTION 28

Question proposed: "That section 28 stand part of the Bill."

Deputy Jonathan O'Brien: The Minister may consider bringing forward something on Report Stage that would be gender neutral. I am opposing the section because it is not gender neutral and would like a new section to be brought forward on Report Stage. Obviously, I do not have the right to call a vote on the issue, but we should not support the section, although I would fully support on Report Stage a section that was gender neutral. I oppose the section in the hope the Minister would bring forward something more appropriate on Report Stage.

Deputy Jim O'Callaghan: I agree with the Deputy. It is instructive to note that the legis-

lation refers to the Punishment of Incest Act 1908 which provided for a maximum sentence of three to seven years, yet, 109 years later, we are inserting a penalty of imprisonment for life. There could be a situation where two people were involved in a sexual act and they were both committing different sexual and criminal offences. The section need to be re-examined and I will support Deputy Jonathan O'Brien if it is put to a vote.

Deputy Frances Fitzgerald: It is an interesting issue and I will examine it. This gender anomaly was upheld as recently as 2012 when the Supreme Court dismissed a challenge to section 5 of the Criminal Law (Sexual Offences) Act 2006 which provided that only a female child under the age of 17 years was not guilty of an offence. The Chief Justice noted previous case law which held that the Oireachtas was entitled, on public policy grounds, to protect under-age females from the risk of pregnancy as a female carried a greater burden from the act, emotionally, physically and psychologically, should she become pregnant. The issue was put before the Supreme Court and this was the view in 2012. We will re-examine both sections.

Chairman: The two members have made a very important case. Accepting the clarification provided for Deputy Ruth Coppinger on earlier amendments and all other members and accepting Deputy Jonathan O'Brien opposition to section 28, this is not the final passage of the Bill. It is indicative and informative for Report and Final Stages. The Tánaiste's response has been noted, if that is helpful.

Deputy Frances Fitzgerald: May I make a further point?

Chairman: Please.

Deputy Frances Fitzgerald: If the section is voted against, the original definition in the 1908 Act will remain on the Statute Book without amendment. The Deputies may want to consider that.

Deputy Jonathan O'Brien: The original 1908 definition.

Deputy Frances Fitzgerald: I am amending it under section 28 of the Bill. If the section is voted against, the original definition will remain.

Deputy Jonathan O'Brien: The original provision did not require life imprisonment either. It was for a term of not less than three years and not exceeding seven years, or to be imprisoned - and here one would easily know it was 1908 - with or without hard labour for any term not exceeding two years. There would still be a provision in legislation, but I would like to see the section deleted until Report Stage.

Deputy Frances Fitzgerald: The male offence would still be life. That is my point. We were equating the offences.

Chairman: Deputy O'Brien has heard the Tánaiste's response.

Deputy Jonathan O'Brien: When is Report Stage?

Deputy Clare Daly: Next week.

Deputy Frances Fitzgerald: I do not believe that we have set a date yet.

Chairman: I do not believe it is due to be taken next week.

Deputy Clare Daly: The Dáil Business Committee said that it will be taken next week.

Deputy Frances Fitzgerald: Did it? I did not hear that, but that is fine.

Deputy Clare Daly: It said that last week. I do not know whether it will happen, though. It seems hasty.

Deputy Frances Fitzgerald: We will have the amendments ready for next week if that is correct.

Deputy Clare Daly: It is scheduled for Wednesday, but there is a meeting tomorrow.

Chairman: In any event, I am trying to knit together the various messages. I am of one mind with colleagues who have spoken on the matters dealt with in sections 27 and 28. I concur that gender neutrality is the way to proceed. However, the Tánaiste has indicated that she will examine the issues. Am I correct in saying that she will consider them in the context of-----

Deputy Frances Fitzgerald: The comments.

Chairman: -----what might be addressed on Report Stage?

Deputy Frances Fitzgerald: Yes.

Chairman: I will put the question. Is it agreed that section 28 stand part of the Bill? The Deputies must tell me. I cannot make that determination on my own.

Deputy Jonathan O'Brien: I am willing to agree.

Chairman: The Deputy is willing to agree.

Deputy Jonathan O'Brien: Yes, provided that-----

Deputy Clare Daly: The Tánaiste addresses it.

Chairman: This matter can be revisited on Report Stage. The Tánaiste has accepted that. I thank Deputies for that assistance.

Question put and agreed to.

Section 29 agreed to.

SECTION 30

Deputy Jim O'Callaghan: I move amendment No. 24:

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

"(5) In criminal proceedings for a sexual offence, the court shall have regard to the following factors:

(a) the public interest in encouraging the reporting of sexual offences;

(b) the public interest in encouraging the obtaining of treatment by complainants of sexual offences; and

(c) the public interest in ensuring that adequate records are kept of counselling communications.".".

This amendment is designed is to ensure that, where there are prosecutions under the 1908 Act and there is a co-related prosecution of a sexual assault, the court would take into account certain factors, namely, the public interest in encouraging the reporting of sexual offences and obtaining treatment for complainants of sexual offences. I am slightly worried about this matter and I ask that the Tánaiste consider it. Perhaps the line "In criminal proceedings for a sexual offence" should refer to "an offence under the 1908 Act" because I am conscious that section 30 deals mainly with that Act. I am interested in hearing the Tánaiste's response.

Deputy Frances Fitzgerald: We had noticed the point raised by the Deputy about the amendment's formulation. In terms of the issues he is raising, he might consider the new section 19A(9) inserted by section 38, which refers to the public interest as a factor to be considered in determining the disclosure. However, I am happy to discuss the matter with him. Perhaps he will liaise with the officials so that we might know precisely what he intended.

Deputy Jim O'Callaghan: On that basis, I will withdraw the amendment.

Chairman: I thank the Tánaiste and Deputy O'Callaghan.

Amendment, by leave, withdrawn.

Section 30 agreed to.

Sections 31 to 34, inclusive, agreed to.

SECTION 35

Chairman: There are a number of amendments to this section. Amendments Nos. 25 to 31, inclusive, are being taken together. Amendments Nos. 30 and 31 are to section 36. Amendment No. 25 cannot be taken because none of the Deputies from the group that tabled it is present. The same applies to amendment No. 26. As such, the first amendment that we can address in the sequence is amendment No. 27.

Amendments Nos. 25 and 26 not moved.

Deputy Frances Fitzgerald: I move amendment No. 27:

In page 23, line 1, to delete "14 years" and substitute "18 years".

Amendments Nos. 27 and 28 are alternatives to amendments Nos. 26 and 29, which were proposed by Deputies Shortall and Catherine Murphy, and make the necessary provision. The first amendment extends the presumptive prohibition on a personal cross-examination by an accused of a witness up to the age of 14 years to all witnesses under 18 years of age, which is also in line with the provisions to be introduced by means of section 35 relating to evidence from behind a screen and the removal of wigs and gowns when a person under 18 years of age is giving evidence in court. This provision will apply to witnesses up to the age of 18 years who are giving evidence in proceedings covered by Part lll of the Criminal Evidence Act 1992, those being, proceedings relating to a sexual offence, an offence involving violence or the threat of violence to a person, an offence under the Child Trafficking and Pornography Act 1998 or a trafficking offence under the Criminal Law (Human Trafficking) Act 2008.

Amendment No. 28 will provide a discretionary power to the court to prohibit the personal cross-examination by the accused of adult complainants unless it is in the interests of justice to do so. This section is limited to proceedings involving sexual offences and to complainants only. Such an amendment has been requested by those who represent victims of sexual of-

fences and has also been called for by Members across the House. As such, I am happy to table these amendments. They reflect the intention behind the amendments of Deputies Shortall and Catherine Murphy, which are not being taken.

Chairman: No Deputy whose name is appended to any of the amendments in this grouping is present. Does anyone wish to comment on the Tánaiste's amendments? No.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 28:

In page 23, to delete lines 6 to 11 and substitute the following:

"(2) Where--

(a) a person is accused of a sexual offence, and
(b) a person who has attained the age of 18 years (being a person in respect of whom a sexual offence is alleged to have been committed) is to give evidence,
the court may direct that the accused may not personally cross examine the witness unless the court is of the opinion that the interests of justice require the accused to conduct the cross-examination personally.".

Amendment agreed to.

Amendment No. 29 not moved.

Section 35, as amended, agreed to.

SECTION 36

Chairman Amendments Nos. 30 and 31 cannot be moved, as the Deputies who tabled them are not present.

Amendments Nos. 30 and 31 not moved.

Section 36 agreed to.

Section 37 agreed to.

SECTION 38

Chairman: This is a long and complex grouping of amendments. Amendments Nos. 32 to 36, inclusive, 41, 43, 45, 47 to 49, inclusive, 51, 52, 56, 65, 67 to 73, inclusive, 80 and 87 are being grouped. There were comments about the difficulty of following all of this and it is not getting any easier.

Deputy Jonathan O'Brien: Is there a reason we are not dealing with other amendments that relate to this section? I believe the next set, amendments Nos. 37 to 40, inclusive, also covers this section.

Chairman: The grouping list is not a compilation of the members or the Chair and we have no input into it. I can only accept that those whose responsibility it is have given consideration to all the matters involved. The grouping referred to by Deputy O'Brien is the next and it is even more extensive than the one we are about to address.

Deputy Frances Fitzgerald: I move amendment No. 32:

In page 24, line 36, to delete "relevant record" and substitute "counselling record".

It is more straightforward than it looks. These are amendments to section 38 of the Bill which introduces a new section 19A into the Criminal Evidence Act 1992, providing for the disclosure of third party records for the purpose of criminal proceedings involving sexual offences. There has been a lot of demand for these issues to be dealt with in legislation and a lot of relevant points were made by those involved in counselling, psychotherapy and so on. All the Government amendments, excluding amendment No. 34, substitute the term "counselling record" for "relevant record" in each place where it occurs in section 38. The amendments are included on the advice of the Attorney General on the basis that the use of the term "relevant record" to describe what, in fact, are counselling records causes confusion in the context of relevance. If the record is called a "relevant record" from the outset it is confusing for the court to be asked to determine the relevance of the record to an issue at trial for the purposes of deciding whether or not it should be disclosed.

Amendment No. 34 is a technical amendment. A sexual offence is currently defined in section 38(1) by reference to section 3 of the Sex Offenders Act. Section 3 includes all offences in the Schedule to the 2001 Act with a number of exceptions, some of which relate to the length of sentence imposed on the offender. These exemptions are not appropriate to the definition of sexual offence in the context of disclosure of records and the proposed amendment defines sexual offence in terms of the Schedule to the 2001 Act only, which is the appropriate way to do it.

May I speak to Deputy O'Callaghan's amendment?

Chairman: Yes.

Deputy Frances Fitzgerald: The purpose of the definition of a record in the new section 19A(1) is to describe what the record is in connection with the provision of counselling to a person in respect of whom a sexual offence is alleged to have been committed. The issue of the probative or evidential value of the record is a matter best determined by the court at the pre-trial hearing. The probative value of the record is a factor to be taken into account by the court in determining whether the record should be disclosed as set out in subsection (9)(b) of the section.

Deputy Jim O'Callaghan: I accept that and I will withdraw my amendment.

Amendment agreed to.

Amendment No. 33 not moved.

Deputy Frances Fitzgerald: I move amendment No. 34:

In page 25, line 4, to delete "shall be construed in accordance with section 3 of" and substitute "means an offence referred to in the Schedule to".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 35:

In page 25, line 7, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 36:

In page 25, line 10, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Chairman: The next grouping is amendments Nos. 37 to 40, inclusive, 42, 44, 46, 50, 53 to 55, inclusive, 57 to 64, inclusive, 66, 74 to 79, inclusive, and 81 to 86, inclusive.

Deputy Frances Fitzgerald: I move amendment No. 37:

In page 25, lines 16 and 17, to delete "or to the competence of the complainant or a witness to testify".

Amendment No. 37 removes the reference to the competence of the complainant or witness to testify from the new section 19A(3)(b) of the Criminal Evidence Act 1992 as inserted by section 38 of this Bill. Competence to testify in law is a matter for capacity and age and I agree with those who raised concerns regarding this aspect of subsection (3), and who felt that counselling records were not relevant to either capacity or age.

Amendment No. 38 deletes subsection (4) from the proposed section 19A. This is the list of assertions which may not be sufficient to establish that a record is relevant to an issue at trial. The aim of the provision is to prevent spurious or without-foundation disclosure applications being made. However, it became apparent from a number of submissions received by myself and my Department, from amendments proposed to this Bill and from discussions with interested groups that this provision was a cause of confusion. In particular, difficulties in the operability of the subsection were identified. I also got legal advice and that raised concerns that the wording of the subsection could cause difficulty. Advices also found that the provision would add little to the protection of the complainant and they recommend that the subsection should be removed. It is therefore proposed to delete subsection (4). I acknowledge that Deputies O'Callaghan and O'Brien have also proposed the deletion of subsection (4).

Amendment No. 40 is a consequential renumbering on foot of the deletion of subsection (4). Amendment No. 42 is to subsection (5). That subsection requires the accused to notify the complainant, and the person in possession and control of the records, of his or her intention to make an application for the disclosure of the record. The amendment adds the prosecutor to the persons who must be notified by the accused.

Amendments Nos. 44, 46, 50, 53, 55 and 57 are just renumbering amendments, following the changes and cross-references on foot of the deletion.

Amendment No. 58, proposed by Deputy Jim O'Callaghan, would amend section 19A(9) which sets out the factors to be taken into account by a court in determining whether the record should be disclosed. The amendment would require the court to take into consideration that not one or more of the factors asserted shall be sufficient to establish whether the contents of the record should be disclosed. These are not factors which are asserted as being definitive. They are rather factors for the court to take into account when determining the disclosure of the record. They are intended to balance the competing rights of the accused, the complainant and the public interest. They include factors relating to the expectation of privacy, including that of the complainant, and public interest concerns. Equally, one of the factors is the probative value of the record. The question is whether the Deputy would consider that a court which determines that a record has probative value should then not disclose the record. These are matters for the court and whether one or more factors should cause the court to decide on the disclosure or otherwise of a particular record is for the court to determine in the context of the hearing for

disclosure. I would be interested in the Deputy's views on that.

Deputy Jim O'Callaghan: I am persuaded by what the Minister says so I will withdraw amendment No. 58.

Deputy Jonathan O'Brien: I will be withdrawing my amendments too.

Chairman: We will come to each of them in turn. Has the Tánaiste concluded or does she wish to make a further comment?

Deputy Frances Fitzgerald: Amendment No. 60 adds to the list of factors that the court must take into account in determining disclosure by including the likelihood that disclosure or requiring disclosure of a record will cause harm to the complainant, including the extent and the nature of that harm. I think that will be welcomed. The amendment that is being proposed by Deputies Jim O'Callaghan and Jonathan O'Brien provides similarly. Amendment No. 59 is consequential to amendment No. 60. Amendment No. 62 substitutes subsection 10, now number 9, in the list of amendments. Some of the other amendments are consequential amendments to the changes that are being made. In particular, amendments Nos. 63, 64 and 66 are consequential amendments to the deletion of section 38(4) by amendment No. 38. Amendment No. 75 adds to the list of conditions which a court may include in an order made for disclosure under subsection 10. Currently subsection 12 prevents a record disclosed under the section from being used in other proceedings. The aim of the provision is to prevent an accused from using a record disclosed to him or her in any other proceedings. However, as currently drafted, it may have the unintended effect of preventing the complainant or a third party to whom the record relates from using the record, for example in a civil trial. It is proposed to address the risk by deleting subsection 12 and inserting a similar restriction into the conditions which a court may impose when ordering the disclosure of the records. This is the approach that has been taken by the Law Reform Commission in its proposals and it would allow the court to be more particular in specifying the limits on the further use of the record in question. I think it does address the various concerns of those who tabled these amendments.

I appreciate the point that Deputy O'Callaghan is seeking to address in amendment No. 76. I am aware that this is a point that had been raised in a number of submissions, however, any breach of a court's order would already be subject to rules of contempt and criminal offence is not required. On a technical point on Deputy O'Callaghan's amendment, while creating a criminal offence, it does not provide for a penalty for that offence.

Deputy Jonathan O'Brien's amendment No. 77 is in the wrong place in the Bill.

Deputy Jonathan O'Brien: It was drafted in a rush.

Deputy Frances Fitzgerald: That is okay. Amendments Nos. 79 and 81 to 85, inclusive, are consequential renumbering of sections.

I assume amendment No. 86 cannot be taken. Is that correct Chairman?

Chairman: Amendment No. 86 cannot be moved.

Deputy Frances Fitzgerald: I would like the committee to know that I am further considering an additional role for the prosecutor in the disclosure of relevant counselling records. It is provided for in circumstances where the prosecutor has in his or her possession or has knowledge of counselling records which he or she believes should be disclosed to avoid a real risk of

an unfair trial. Legal advice has recommended a mechanism to be put in place to ensure that the prosecutor may make an application for disclosure should the accused fail to do so. I will bring forward an amendment on that.

There are some other numbering amendments in subsection 13, which I will bring forward on Report Stage. It was unintentionally omitted from the amendments we are dealing with today.

Chairman: How stand the amendments in the names of Deputies O'Brien and O'Callaghan?

Deputy Jonathan O'Brien: I will withdraw my amendments in light of what the Minister has said.

Deputy Jim O'Callaghan: I will withdraw amendment No. 76 in light of what the Minister has said.

Chairman: As no other member wishes to comment, we will now proceed to progress through the amendments individually. Is amendment No. 37 in the Tánaiste's name agreed? Agreed.

Amendment agreed to.

Deputy Jonathan O'Brien: I move amendment No. 38:

In page 25, to delete lines 18 to 40, and in page 26, to delete lines 1 to 3.

Chairman: May I clarify a point with the Tánaiste? I had asked Deputy O'Brien the position on amendment No. 38, but I note the Tánaiste is also a co-proposer of the amendment together with Deputies O'Callaghan and O'Brien. Is it the intention the amendment stands?

Deputy Frances Fitzgerald: Yes.

Chairman: I incorrectly invited members to agree to withdraw the amendment. Let me put the amendment again.

Amendment agreed to.

Deputy Jonathan O'Brien: I move amendment No. 39:

In page 26, between lines 3 and 4 to insert the following:

"(l) records relating to therapy or counselling shall form no part, partial or otherwise, of any assessment regarding a relevant record likely to be relevant to an issue at trial or to the competence of a complainant or witness to testify.".

Amendment, by leave, withdrawn.

Deputy Frances Fitzgerald: I move amendment No. 40:

In page 26, line 4, to delete "(5) An" and substitute "(4) An".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 41:

In page 26, lines 6 and 7, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 42:

In page 26, line 7, to delete "the complainant" and substitute "the complainant, the prosecutor".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 43:

In page 26, line 8, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 44:

In page 26, line 10, to delete "(6) The" and substitute "(5) The".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 45:

In page 26, line 11, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 46:

In page 26, line 13, to delete "(7) The" and substitute "(6) The".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 47:

In page 26, line 14, to delete "relevant record" and substitute "counselling record".

Amendment agreed.

Deputy Frances Fitzgerald: I move amendment No. 48:

In page 26, line 15, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 49:

In page 26, line 16, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 50:

In page 26, line 17, to delete "(8) The" and substitute "(7) The".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 51:

In page 26, line 17, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 52:

In page 26, line 18, to delete "relevant records" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 53:

In page 26, line 20, to delete "subsection (7)" and substitute "subsection (6)".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 54:

In page 26, line 21, to delete "(9) In" and substitute "(8) In".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 55:

In page 26, line 21, to delete "subsection (7)" and substitute "subsection (6)".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 56:

In page 26, line 22, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 57:

In page 26, line 23, to delete "subsection (10)" and substitute "subsection (9)".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 58:

In page 26, line 24, after "account" to insert the following:

> ", while also taking into consideration that not one or more of the factors asserted shall be sufficient to establish whether the content ofthe relevant record should be disclosed".

Amendment, by leave, withdrawn.

Deputy Frances Fitzgerald: I move amendment No. 59:

In page 26, line 34, to delete "process." and substitute "process;".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 60:

In page 26, between lines 34 and 35, to insert the following:

"(h) the likelihood that disclosing, or requiring the disclosure of, the record will cause harm to the complainant including the nature and extent of that harm.".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 61:

In page 26, between lines 34 and 35, to insert the following:

"(h) the risk of harm to the person to whom the record relates.".

Amendment, by leave, withdrawn.

Deputy Frances Fitzgerald: I move amendment No. 62:

In page 26, to delete lines 35 to 39, and in page 27, to delete lines 1 to 4 and substitute the following:

"(9) (a) Subject to paragraph (b) and subsection (10), after the hearing referred to in subsection (6), the court may order disclosure of the content of the counselling record to the accused and the prosecutor where it is in the interests of justice to do so.

(b) The court shall order disclosure of the content of the counselling record to the accused where there would be a real risk of an unfair trial in the absence of such disclosure.".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 63

In page 27, line 5, to delete "(11)(a) Where" and substitute "(10)(a) Where".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 64:

In page 27, line 5, to delete "subsection (10)" and substitute "subsection (9)".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 65:

In page 27, line 7, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 66:

In page 27, line 11, to delete "subsection (10)" and substitute "subsection (9)".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 67:

In page 27, line 12, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 68:

In page 27, line 13, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 69:

In page 27, line 16, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 70:

In page 27, line 18, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 71:

In page 27, line 21, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 72:

In page 27, line 23, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 73:

In page 27, line 25, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 74:

In page 27, line 26, to delete "record." and substitute "record,".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 75:

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

"(viii) that the counselling record is used solely for the purposes of the trial.".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 76:

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

"(c) The breach of any condition on disclosure imposed by the court

shall be a criminal offence.".

Amendment, by leave, withdrawn.

Chairman: Amendment No. 77 is in the name of Deputy O'Brien. What is the status of the amendment?

Deputy Jonathan O'Brien: I move amendment No. 77.

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

"(c) Communicating his or her consent to that act (whether by talking, writing, using sign language, assistive technology, or any other means)."

It is a drafting error, so I will withdraw it and resubmit it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Frances Fitzgerald: I move amendment No. 78:

In page 27, to delete lines 27 and 28.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 79:

In page 27, line 29, to delete "(13) The" and substitute "(11) The".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 80:

In page 27, line 30, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 81:

In page 27, line 32, to delete "(14)(a) Subject" and substitute "(12)(a) Subject".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 82:

In page 27, line 38, to delete "(15) For" and substitute "(13) For".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 83:

In page 27, line 38, to delete "subsection (7)" and substitute "subsection (6)".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 84:

In page 28, line 1, to delete "(16) In" and substitute "(14) In".

Amendment agreed to.

Chairman: Amendment No. 85 is in the Minister's name. If amendment No. 85 is agreed, amendment No. 86 cannot be moved, however as the members tabling it are not present, amendment No. 86 cannot be moved..

Deputy Frances Fitzgerald: I move amendment No. 85:

In page 28, line 6, to delete "(17) This" and substitute "(15) This".

Amendment agreed to.

Amendment No. 86 not moved.

Deputy Frances Fitzgerald: I move amendment No. 87:

In page 28, line 7, to delete "relevant record" and substitute "counselling record".

Amendment agreed to.

Section 38, as amended, agreed to.

Section 39 agreed to.

NEW SECTIONS

Deputy Jim O'Callaghan: I move amendment No. 88:

In page 28, between lines 21 and 22, to insert the following:

"PART 7

CONSENT

"Choice of individual to consent

40. An individual consents if he or she agrees by choice and has the freedom and capacity to make that choice.".

In light of what we discussed earlier with regard to a definition of consent being included, I will withdraw this amendment.

Amendment, by leave, withdrawn.

Deputy Jim O'Callaghan: I move amendment No. 89:

In page 28, between lines 21 and 22, to insert the following:

"Non-consent to sexual activity

41. An individual is to be taken not to have consented to sexual activity where—

(a) the defendant intentionally deceived the complainant as to the nature or purpose of sexual activity,

(b) the defendant intentionally induced the complainant to consent to sexual ac-

tivity by impersonating a person known personally to the complainant,

(c)the complainant submits to sexual activity as a result of violence or threats of violence towards the complainant or towards a third party,

(d) the complainant was, and the defendant was not, unlawfully detained at the time of the relevant act,

(e) the complainant submits to sexual activity as a result of threats of serious harm or serious detriment of any type to the complainant or a third party,

(f) the complainant was asleep or otherwise unconscious at the time of the relevant act,

(g) the complainant was too affected by alcohol or drugs to freely agree to sexual activity,

(h) agreement is expressed by a third party not the complainant,

(i) the complainant having originally consented to engage in sexual activity expresses by words or conduct a lack of agreement to continue to engage in the activity,

(j) the complainant submits to sexual activity because of the abuse of a position of authority or trust.".

Amendment, by leave, withdrawn.

Amendment No. 90 not moved.

SECTION 40

Deputy Frances Fitzgerald: I move amendment No. 91:

In page 28, line 36, to delete "*Act 2016*."." and substitute "*Act 2016*.".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 92:

In page 28, after line 36, to insert the following:

"19. *Section 21* of the *Criminal Law (Sexual Offences) Act 2016*.

20. *Section 22* of the *Criminal Law (Sexual Offences) Act 2016*."."

Amendment agreed to.

Section 40, as amended, agreed to.

SECTION 41

Chairman: Amendments Nos. 93 and 94 are related and may be discussed together.

Deputy Frances Fitzgerald: I move amendment No. 93:

In page 29, line 6, to delete "an offence" and substitute "that offence".

These are technical amendments. Section 41 provides that certain child sexual offences committed outside the State can be prosecuted within the State if committed by a person who is an Irish citizen or ordinarily resident in Ireland. The amendments clarify that no new offence is being created by the section. Instead the person will be considered to be guilty of the offence they would have committed if it were committed in Ireland. It is to clarify this and it is quite technical.

Chairman: Does this apply to amendments Nos. 93 and 94?

Deputy Frances Fitzgerald: Yes.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 94:

In page 29, line 18, to delete "*subsection (1)*," and substitute "*subsection*".

Amendment agreed to.

Section 41, as amended, agreed to.

Sections 42 to 47, inclusive, agreed to.

SECTION 48

Chairman: Amendments Nos. 95 to 98, inclusive, are related and may be discussed together.

Deputy Frances Fitzgerald: I move amendment No. 95:

In page 33, line 17, to delete "child).". and substitute "child);".

These are consequential to the introduction of offences. Amendments Nos. 95 and 96 amend the Bail Act 1997 to include the offences under sections 21 and 22 in the Schedule to that Act. Amendments Nos. 97 and 98 amend the Sex Offenders Act 2001 to include the offences in the Schedule to the Act.

Deputy Clare Daly: We will have to oppose these because they follow from the earlier discussion. I do not want to talk about them I just want to note this.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 96:

In page 33, between lines 17 and 18, to insert the following:

"(g) *section 21* (sexual act with protected person);

(h) *section 22* (offence against relevant person by person in authority).". ".

Amendment put and declared carried.

Section 48, as amended, agreed to.

SECTION 49

Deputy Frances Fitzgerald: I move amendment No. 97:

In page 34, line 2, to delete "child).". and substitute "child);".

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 98:

In page 34, between lines 2 and 3, to insert the following:

"(g) *section 21* (sexual act with protected person);

(h) *section 22* (offence against relevant person by person in authority).".".

Amendment put and declared carried.

Section 49, as amended, agreed to.

NEW SECTIONS

Deputy Frances Fitzgerald: I move amendment No. 99:

In page 34, between lines 2 and 3, to insert the following:

"Amendment of Criminal Procedure Act 2010

50. The Schedule to the Criminal Procedure Act 2010 is amended by the insertion of the following paragraph after paragraph 9:

"9A. An offence under section 2 of the Punishment of Incest Act 1908 (incest by females of or over seventeen).".".

We have had some discussion on this already. Section 28 of the Bill will amend section 2 of the Punishment of Incest Act 1908 by substituting the assisting offence of incest by females of or over 17. The main purpose of this section is to bring the penalty for incest by a female into line with the penalty for incest by males, which is up to life imprisonment. The offence of incest by a female carries a maximum penalty of seven years' imprisonment. Part 2 of the Criminal Procedure Act 2010 permits the Director of Public Prosecutions, in the event of an acquittal for a scheduled offence, to seek a retrial order where new and compelling evidence becomes available. In the main, the specified offences carry a mandatory or maximum sentence of life imprisonment. As an offence with a penalty of up to life imprisonment, the offence of incest by a male under section 1, as I noted, goes back to 1908 and is listed as the relevant offence for the purpose of part 2 of the 2010 Act. Given the penalty for the offence of incest by a female is brought into line with that committed by a male via the Bill under consideration, this amendment will include section 2 of the 1908 Act in the list of scheduled offences in the 2010 Act. We have already discussed it. I will look at the details of the provisions and come back on Report Stage. It is to include the section of the 1908 Act.

Chairman: Although we have already addressed this matter, it is neither an amendment to nor in substitution of wording presented in the original drafting of the Bill. It is a new section and therefore had to have stand-alone address. There is probably no need to comment further on this, as we have addressed it substantively.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 100:

In page 34, between lines 2 and 3, to insert the following:

"Amendment of Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012

51. The Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012 is amended—

(a) in Schedule 1—

(i) by the insertion of the following paragraph after paragraph 12:

"12A. An offence under section 3A of the Criminal Law (Sexual Offences) Act 2006 (offence by person in authority).",

(ii) by the substitution of the following paragraph for paragraph 13:

"13. An offence under any of the following provisions of the Child Trafficking and Pornography Act 1998—

(a) section 3 (child trafficking and taking, etc., child for sexual exploitation),

(b) section 4 (allowing child to be used for child pornography),

(c) section 4A (organising etc. child prostitution or production of child pornography),

(d) section 5A (participation of child in pornographic performance).",

and

(iii) by the insertion of the following paragraph after paragraph 20:

"21. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*—

(a) *section 3* (obtaining, providing etc. a child for purpose of sexual exploitation),

(b) *section 4* (invitation etc. to sexual touching),

(c) *section 5* (sexual activity in presence of child),

(d) *section 6* (causing child to watch sexual activity),

(e) *section 7* (meeting child for purpose of sexual exploitation),

(f) *section 8* (use of information and communication technology to facilitate sexual exploitation of child).",

and

(b) in Schedule 2, by the insertion of the following paragraph after paragraph 11:

"12. An offence under any of the following provisions of the *Criminal*

Law (Sexual Offences) Act 2016—

(a) *section 21* (sexual act with protected person),

(b) *section 22* (offence against relevant person by person in authority).”.”.

This amendment adds offences created under the Bill to the Schedule to the Criminal Justice (Withholding of Information on Offences against Children and Vulnerable Persons) Act 2012. Schedule 1 to that Act lists the offences against children regarding which it would be an offence under the Act to withhold information. The amendments to Schedule 1 propose adding a number of the new offences created under this Bill to this. Section 2 of the 2012 Act lists the offences against vulnerable persons regarding which it would be an offence under the Act to withhold information. The offence under section 21 of engaging in a sexual act with a protected person and the offence under section 22 with regard to persons in authority, which I will introduce by way of amendment, are to be added to that Schedule.

Chairman: Is the amendment agreed?

Deputy Clare Daly: It is not agreed. It has the same protected person problems.

Amendment put and declared carried.

Deputy Frances Fitzgerald: I move amendment No. 101:

In page 34, between lines 2 and 3, to insert the following:

“Amendment of Taxi Regulation Act 2013

52. The Taxi Regulation Act 2013 is amended—

(a) in section 30, by the substitution of the following definition for the definition of “sexual offence”:

“ ‘sexual offence’ means an offence referred to in paragraphs 5 to 11A of Part 1, or paragraphs 4 to 7A of Part 2 of the Schedule;”;

(b) in the Schedule—

(i) in Part 1, by the insertion of the following paragraph after paragraph 11:

“11A. An offence under *section 21* of the *Criminal Law (Sexual Offences) Act 2016*.”,

(ii) in Part 2—

(I) by the substitution of the following paragraph for paragraph 5:

“5. An offence under section 4, 4A, 5 or 5A of the Child Trafficking and Pornography Act 1998.”,

(II) by the substitution of the following paragraph for paragraph 7:

“7. An offence under section 3 or 3A of the Criminal Law (Sexual Offences) Act 2006.”,

and

(III) by the insertion of the following paragraph after paragraph 7:

"7A. An offence under *section 3*, *4*, *5*, *6*, *7* or *8* of the *Criminal Law (Sexual Offences) Act 2016*.".".

The amendment is consequential again in terms of creating the offences. This relates to the Schedule to the Taxi Regulation Act. I remind members that a conviction for an offence listed in Part 1 of the Schedule gives rise to mandatory life disqualification from holding a taxi licence. A conviction for an offence listed in Part 2 of the Schedule gives rise to mandatory disqualification for a specified period. The effect of the amendment is that a person convicted of an offence of engaging in a sexual act with a protected person, under section 21, will be disqualified for life from holding a taxi licence and that a person convicted of certain other offences created by the Bill will be disqualified for a certain period. It is to bring the legislation into line with the Bill.

Deputy Jonathan O'Brien: Could I confirm that this amendment, even though it does not refer to a protected person, goes back to the issue of protected persons?

Deputy Frances Fitzgerald: Yes, it does.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 102:

In page 34, between lines 2 and 3, to insert the following:

"Amendment of Children First Act 2015

53. The Children First Act 2015 is amended—

(a) in section 2, by the deletion of paragraphs (b) and (c) of the definition of "sexual abuse",

(b) in Schedule 3—

(i) by the insertion of the following paragraph after paragraph 9:

"9A. An offence under section 3A of the Criminal Law (Sexual Offences) Act 2006 (offence by person in authority).",

(ii) in paragraph 10, by the substitution of the following for subparagraph (b):

"(b) section 4 (allowing child to be used for child pornography);

(c) section 4A (organising etc. child prostitution or production of child pornography);

(d) section 5A (participation of child in pornographic performance).",

and

(iii) by the insertion of the following paragraph:

"14. An offence under any of the following provisions of the *Criminal Law*

(Sexual Offences) Act 2016:

(a) *section 4* (invitation etc. to sexual touching);

(b) *section 5* (sexual activity in presence of child);

(c) *section 6* (causing child to watch sexual activity);

(d) *section 8* (use of information and communication technology to facilitate sexual exploitation of child).".".

Again, this involves consequential changes to other Acts, consequent on the offences that have been created in the Bill. This makes various changes to the Children First Act on foot of the other provisions of the Bill. The Act imposes certain obligations on those working with children to protect them from harm, which includes sexual abuse. The intention of the amendments is to bring some of the child-related offences created by the Bill within the definition of sexual abuse and that is done by adding references to Schedule 3 of that Act. The first part of the amendment deletes paragraphs (b) and (c) from the definition of sexual abuse. The definition of sexual abuse of a child currently has three components, namely, an offence against the child, specified in Schedule 3; exposure of the child to pornography and; sexual activity in the presence of a child. Since the conduct targeted in paragraphs (b) and (c) is the subject of new offences in sections 5 and 6 of the Bill, there is no longer a need for the paragraphs.

Amendment agreed to.

Deputy Frances Fitzgerald: I move amendment No. 103:

In page 34, between lines 2 and 3, to insert the following:

"Amendment of Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016

54. Schedule 1 to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016 is amended—

(a) in Part 1, by the substitution of the following paragraph for paragraph 4:

"4. An offence referred to in—

(a) paragraph 8 of Part 2 (defilement of child under the age of 17 years), or

(b) paragraph 23, 24 or 25 of Part 2 in so far as it relates to an offence referred to in subparagraph (a),

committed prior to the commencement of *section 17* of the *Criminal Law (Sexual Offences) Act 2016* shall not be a sexual offence for the purposes of Part 2 of this Act if the person who is convicted of the offence was at the date of the commission of the offence, not more than 24 months older than the child with whom he or she engaged or attempted to engage in a sexual act within the meaning of section 1 of the Criminal Law (Sexual Offences) Act 2006.".

(b) in Part 2—

(i) in paragraph 17—

(I) by the insertion of the following subparagraph after subparagraph (b):

"(ba) section 4A (organising etc. child prostitution or production of child pornography);",

(II) by the insertion of the following subparagraph after subparagraph (c):

"(ca) section 5A (participation of child in pornographic performance);",

and

(ii) by the insertion of the following paragraph after paragraph 22:

"22A. An offence under any of the following provisions of the *Criminal Law (Sexual Offences) Act 2016*:

(a) *section 3* (obtaining, providing etc. a child for purpose of sexual exploitation),

(b) *section 4* (invitation etc. to sexual touching),

(c) *section 5* (sexual activity in presence of child),

(d) *section 6* (causing child to watch sexual activity),

(e) *section 7* (meeting child for purpose of sexual exploitation),

(f) *section 8* (use of information and communication technology to facilitate sexual exploitation of child),

(g) *section 21* (sexual act with protected person),

(h) *section 22* (offence against relevant person by person in authority).".".

Again, the amendment is consequential. It makes changes to the Criminal Justice (Spent Convictions and Certain Disclosures) Act 2016. The Act limits the effect of certain criminal convictions by allowing them to be effectively spent after a specified period. Some sexual offences listed in Part 2 of Schedule 1 are excluded from that Act, so that a conviction for one of those sexual offences will not be considered as spent for the purposes of that Act. Paragraph (b) of the amendment will add some of the offences being created by the Bill to Part 2 of Schedule 1 of that Act and Part 1 of that Act effectively lists the circumstances under which certain sexual offences may not constitute a sexual offence for the purposes of the Act.

Currently, that applies where there is a difference of less than two years between the victim and the perpetrator in respect of the offence of engaging in a sexual act with a child under 17. Section 17 amends that offence to add the defence of proximity of age. A defendant will be able to rely on that defence where he or she is less than two years older than the child, is not a person in authority and there is no aspect of exploitation or intimidation. For that reason it is considered appropriate that the offence under section 3 should not avail of an additional proximity of age exemption for the purpose of a spent conviction, but the exemption is to be retained for the purpose of an offence committed before the Bill is enacted. That is the purpose of paragraph (a).

Chairman: Is amendment No. 103 agreed?

Deputy Mick Wallace: No.

Amendment put and declared carried.

Section 49 agreed to.

NEW SECTIONS

Amendment No. 104 not moved.

Chairman: Amendment Nos. 105 and 106 are in the names of Deputy Coppinger and others. She was not able to remain but she has advised, and I confirm, that she has referred to the essence of the content of both of the amendments in earlier contributions, reserving the opportunity to bring the same matters forward on Report Stage. That is absolutely her right and entitlement.

Amendments Nos. 105 and 106 not moved.

Section 50 agreed to.

TITLE

Chairman: Amendments Nos. 107 and 108 are related and may be discussed together, by agreement.

Deputy Frances Fitzgerald: I move amendment No. 107:

In page 5, line 9, after "Act 1992;" to insert "to repeal certain provisions of the Criminal Law (Sexual Offences) Act 1993;".

These are just technical amendments to the Long Title of the Bill to reflect the provisions contained in Part 3, which will repeal and replace section 5 of the Criminal Law (Sexual Offences) Act 1993.

Deputy Jonathan O'Brien: I wish to note our opposition to the amendment because it contains the term "protected persons".

Amendment put and declared carried.

Deputy Frances Fitzgerald: I move amendment No. 108:

In page 5, line 11, after "offences" to insert "relating to sexual acts with protected persons and".

Amendment put and declared carried.

Question proposed: "That the Title be the Title to the Bill."

Deputy Clare Daly: It is on the protected person, again.

Chairman: You wish to record your opposition to it. That is fine.

Chairman: Before inviting the Minister to say a few concluding remarks, I thank all the committee members and commend them on their work and very focused consideration of all the elements of the Bill and the potential outworking of it. All the work and attention that was paid was markedly impressive. Each member has made an important contribution that does not end

here on Committee Stage. The Minister has taken on board the debate and, hopefully, it will be reflected in her approach on Report Stage.

I do not know all our guests in the Visitors Gallery. They are all very welcome, including those who have been here before. I commend all those who have been proactive in addressing the legislation going back over time. While I do not want to single out any one group, given that a number of groups have participated, I am mindful of some engagements I have had with people and I thank them for their work.

Deputy Frances Fitzgerald: I thank the Chairman for his chairing of the meeting. I am very pleased we have been able to work through so many of the issues. Much has been accepted without any contrary views and I will return with further amendments on Report Stage regarding a number of issues. I note the view a number of people have taken regarding the language we have used. We have spent months working on it and there is quite a bit of disagreement among disability groups on how to approach this. It is very difficult to draft and a huge amount of legal advice has been sought and it is being done with very careful consideration. I am sure Deputies appreciate this.

Chairman: I thank the Tánaiste and Minister for Justice and Equality and her officials. We are very thankful that she was able to stay for the full debate on the Bill.

Question put and agreed to.

Bill reported with amendments.

Message to Dáil

Chairman: In accordance with Standing Order 90, the following message will be sent to the Dáil:

The Select Committee on Justice and Equality has completed its consideration of the Criminal Law (Sexual Offences) Bill 2015 and has made amendments thereto.

The select committee adjourned at 1.05 p.m. until 9 a.m. on Thursday, 8 December 2016.