

# DÁIL ÉIREANN

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## AN ROGHCHOISTE UM DHLÍ AGUS CEART AGUS COMHIONANNAS

### SELECT COMMITTEE ON JUSTICE AND EQUALITY

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*Déardaoin, 15 Feabhra 2018*

*Thursday, 15 February 2018*

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Tháinig an Roghchoiste le chéile ag 2 p.m.

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The Select Committee met at 2 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Colm Brophy,	
Jack Chambers,	
Clare Daly,	
Peter Fitzpatrick,	
Charles Flanagan (Minister for Justice and Equality),	
Jim O'Callaghan,	
Mick Wallace.	

I láthair / In attendance: Deputies Alan Kelly and Donnchadh Ó Laoghaire.

Teachta / Deputy Caoimhghín Ó Caoláin sa Chathaoir / in the Chair.

**Intoxicating Liquor (Breweries and Distilleries) Bill 2016: Committee Stage (Resumed)**

NEW SECTION

Debate resumed on amendment No. 1:

In page 3, between lines 8 and 9, to insert the following:

**“Licence for sale of intoxicating liquor at brewery, distillery, etc.**

1. (1) Where a person who holds a relevant licence (in this section referred to as “the applicant”) duly gives notice of his or her intention to apply for a licence under this section in

respect of a relevant premises and, at the proceedings in relation to the application, the applicant shows to the satisfaction of the Court that—

(a) a relevant licence is in force in respect of the premises, and

(b) an appropriate mechanism is in place to restrict the sale pursuant to a licence granted under this section of intoxicating liquor on the premises to persons who have completed a guided tour of the premises, the Court shall cause a certificate to be granted to the applicant entitling him or her to receive a licence in respect of the relevant premises (in this section referred to as a “producer’s retail licence”), unless the Court prohibits the issuing of the licence on the grounds of—

(i) the character, misconduct or unfitness of the applicant,

(ii) the unfitness or inconvenience of the premises, or

(iii) the unsuitability of the premises for the needs of persons residing in the neighbourhood.

(2) Notwithstanding anything contained in the Licensing Acts 1833 to 2018, the Revenue Commissioners shall, subject to *subsections (6) and (7)*, on application to them being made in that behalf by an applicant and on presentation of a certificate granted under *subsection (1)*, issue a producer’s retail licence in respect of the relevant premises concerned.

(3) Subject to *subsections (6) and (7)*, the Revenue Commissioners shall renew a licence issued in accordance with *subsection (2)*.

(4) On the issue of a producer’s retail licence in respect of a premises, any other licence issued under the Licensing Acts 1833 to 2018 attached to the premises, other than a relevant licence, shall be extinguished.

(5) Notwithstanding anything contained in the Licensing Acts 1833 to 2018, a licence issued or renewed under this section shall operate to authorise the sale on the premises to which the licence is attached, between the hours of 10.00 a.m. and 6.00 p.m. each day other than Christmas Day, to persons who have completed a guided tour of the premises, of intoxicating liquor manufactured in accordance with a relevant licence on the premises—

(a) for consumption on or off the premises, where the certificate referred to in *subsection (1)* has been granted by the Circuit Court, or

(b) for consumption off the relevant premises where the certificate referred to in *subsection (1)* has been granted by the District Court.

(6) There shall be charged, levied and paid on every licence issued pursuant to this section and on its renewal, a duty of excise of €500.

(7) A licence shall not be issued or renewed by the Revenue Commissioners under this section unless a tax clearance certificate has been issued to the applicant in accordance with section 1094 of the Taxes Consolidation Act 1997 and such tax clearance certificate has not been rescinded under subsection (2A) of that section at the time of the issue or renewal, as the case may be.

(8) A person who sells intoxicating liquor, for the sale of which he or she is required to take out a licence under this section, without taking out such a licence, shall be guilty of an offence and shall be liable on summary conviction to a Class A fine.

(9) A person who holds a licence issued under this section and who contravenes the terms of the licence or sells intoxicating liquor otherwise than he or she is authorised by the licence shall be guilty of an offence and shall be liable on summary conviction to a Class A fine.

(10) In this section—

“brewer of beer for sale licence” means a licence for the manufacture of intoxicating liquor to be taken out annually pursuant to section 49 of the Finance (1909-1910) Act 1910 by a brewer of beer for sale;

“Court” means—

(a) in relation to an application under this section for a certificate entitling the applicant to receive a producer’s retail licence authorising the sale of intoxicating liquor for consumption on or off the relevant premises, the Circuit Court, and

(b) in relation to an application under this section for a certificate entitling the applicant to receive a producer’s retail licence authorising the sale of intoxicating liquor for consumption off the relevant premises only, the District Court;

“distiller of spirits licence” means a licence for the manufacture of intoxicating liquor to be taken out annually pursuant to section 49 of the Finance (1909-1910) Act 1910 by a distiller of spirits;

“maker of cider or perry for sale licence” means a licence for the manufacture of intoxicating liquor to be taken out annually pursuant to section 10 of the Finance Act 1940 by a person who makes cider or perry for sale;

“maker for sale of sweets licence” means a licence for the manufacture of intoxicating liquor to be taken out annually pursuant to section 49 of the Finance (1909-1910) Act 1910 by a maker for sale of sweets;

“rectifier or compounder of spirits licence” means a licence for the manufacture of intoxicating liquor to be taken out annually pursuant to section 49 of the Finance (1909-1910) Act 1910 by a rectifier or compounder of spirits;

“relevant licence” means—

- (a) a brewer of beer for sale licence,
- (b) a distiller of spirits licence,
- (c) a maker of cider or perry for sale licence,
- (d) a maker for sale of sweets licence, or
- (e) a rectifier or compounder of spirits licence;

“relevant premises” means a premises to which—

- (a) a relevant licence is attached, and
- (b) persons are admitted for the purpose of a guided tour of the premises.”.

- (Minister for Justice and Equality)

**Chairman:** As we are in public session, all mobile telephones must be switched off as they cause interference with the recording equipment.

This meeting has been convened to resume Committee Stage of the Intoxicating Liquor (Breweries and Distilleries) Bill 2016. It is a Private Members’ Bill sponsored by Deputy Alan Kelly whom I welcome to the meeting. I welcome again the Minister for Justice and Equality, Deputy Charles Flanagan, and his officials. We adjourned yesterday after a lengthy debate on amendment No. 1 proposed by the Minister, which is part of a group of amendments, Nos. 1 to 5, inclusive. The amendment proposes the insertion of a new section. As I indicated yesterday, if the amendment is agreed, amendments Nos. 2 to 5, inclusive, cannot be moved. I believe we completed our debate on the new section. Deputy Jack Chambers has indicated he wishes to make a point.

**Deputy Jack Chambers:** Two of the amendments in the group make sense in the context of the section the Minister proposes to insert. The first proposal, in amendment No. 3 in the name of Deputy Mick Wallace, is to extend the time during which sales will be permitted to 7 p.m. I support this proposal and ask the Minister to consider it before the Report Stage debate.

A second proposal by Deputy Wallace would ensure breweries that are unable to provide guided tours are not prohibited from selling their product to customers. This proposal should be reflected in the Bill before it is passed and I will support on Report Stage any amendment by the Minister or Deputy Wallace to give effect to it.

**Deputy Donnchadh Ó Laoghaire:** I echo the remarks of Deputy Chambers. It makes sense to allow smaller breweries and distilleries to provide off-sales. It is reasonable to argue that such a provision would assist tourism. I also support the amendment to extend the permissible opening time by one hour.

**Chairman:** Deputy Wallace will find the comments of Deputies Chambers and Ó Laoghaire

very encouraging.

**Deputy Mick Wallace:** On the basis that Fianna Fáil and Sinn Féin are willing to support extending the permitted opening time until 7 p.m. and allowing small breweries that may not be able to provide tours to engage in off-sales, I will support the Government amendment and I will not move my amendments in this group. We can address these issues on Report Stage in the Dáil Chamber.

**Deputy Peter Fitzpatrick:** I take the opposite view. As we heard on the news today, pubs in rural areas need to generate income of between €8,000 and €9,000 per week to stay open. Deputy Mick Wallace stated yesterday that he comes from a rural part of County Wexford. We should provide as much support as possible to pubs in rural areas. I fully support breweries offering tours but, as I stated yesterday, we should take small rather than big steps. The main reason I support the Bill is that it will encourage tourism and job creation.

**Deputy Alan Kelly:** What we are proposing is a small step that would support an indigenous industry and address an anomaly. We are united on the need to address this anomaly and the majority of us are coming to the same conclusions on two other issues. I do not have a problem with the proposal to extend to 7 p.m. the time during which off-sales would be permitted. One minor issue that remains to be addressed is the sale of products below the wholesale price. We must deal with this matter on Report Stage. I share the views expressed by other Deputies on it. I propose that we accept the Government amendment and address the two other issues on Report Stage. I will be willing to work with other Deputies and departmental officials on drafting amendments that would meet the requirements.

**Deputy Mick Wallace:** To respond to the point raised by Deputy Fitzpatrick, under current legislation, the large breweries are able to do what we propose allowing small breweries to do. Diageo and Heineken account for more than 99% of the beer products sold in pubs. We were approached by a large brewery which tried to bribe us. It promised us X amount free per month if we included their beers and excluded Irish craft beers from the provisions. That is the truth. The large breweries have an incredible stranglehold on the industry. The *status quo* is that Diageo and Heineken have complete control of the market. They invest money, create banners and so on and get young people into drinking. They have played a major role in alcohol becoming a serious problem in this country. Most Deputies agree that promoting craft beer and small breweries will lead us to a better rather than a worse place in terms of our approach to alcohol.

**Minister for Justice and Equality (Deputy Charles Flanagan):** I acknowledge the contributions of Deputies, in particular Deputy Kelly when he stated he would be disposed towards accepting amendment No. 1 and that we might revisit what I would describe as ancillary issues on Report Stage. Perhaps we will get a broader flavour of the disposition of Members of the House during the Report Stage debate. However, in saying we can revisit issues on Report Stage, I do not want to raise expectations. When Deputy Wallace talks about facilitating people who “call around”, that is his terminology, that may differ somewhat from the purpose of the Bill, which Deputy Kelly described in 2016 as being to facilitate visitors on guided tours to tourist attractions. That is a little at variance with people calling around to stock up from off-sales and treating the facility as an off-licence, I would be concerned about that but we will return to it on Report Stage.

**Deputy Mick Wallace:** I understand the Minister’s point and I can understand that he would rather that Diageo and Heineken continue to make money from the Irish people than promote indigenous industry. It is disingenuous of him to present the situation as if Deputy

Kelly and I are in different places because we are in agreement that-----

**Deputy Charles Flanagan:** I did not.

**Deputy Mick Wallace:** -----we should bring small craft breweries forward and help them get off the ground and give indigenous industry some chance. It would be a welcome change from our total dependency on foreign direct investment. Even if the small brewers make an impact on the pockets of Diageo and Heineken both companies would survive that.

**Deputy Charles Flanagan:** Rather than try to divide the views of Deputies Wallace and Kelly, let me say that I support what we are trying to do here. I want to see consensus and would be happy to reflect on what has been said between now and Report Stage so that we can enact legislation that is in keeping with what the proposer, Deputy Kelly, sought to do as far back as November 2016.

**Deputy Alan Kelly:** I will work with the Deputies and the Department. I thank the Department for its help and co-operation which was always available to me on this.

We will deal with one or two issues on Report Stage but many craft brewers are waiting for this legislation. In fairness to the Minister he has met several of them and supports this. I would like everyone's help in scheduling this in as short a space of time as possible so that it can go to the Seanad. Many of these breweries are waiting to take up investments, create jobs and develop their products when this legislation is passed.

**Chairman:** It is the intention of this committee to conclude Committee Stage today and the scheduling of Report and Final Stages will rest with the Minister and the Department. I have no doubt that he will heed the Deputy's appeal.

**Deputy Alan Kelly:** That is why I took the opportunity to ask him.

**Chairman:** As people have reflected on craft breweries in their own necks of the wood I have to say there are fine producers in Cavan and Monaghan as well.

**Deputy Mick Wallace:** There we were thinking not much good came out of that place.

**Chairman:** My colleagues will all remember receiving a very fine bottle from Brehon Breweries in County Monaghan, Christmas 12 months ago.

Amendment agreed to.

Section 1 deleted.

Amendments Nos. 2 to 5, inclusive, not moved.

Section 2 agreed to.

#### NEW SECTIONS

**Chairman:** Amendments Nos. 6, 7 and 8 stand alone and amendments Nos. 9 and 10 will be taken together by agreement.

**Deputy Charles Flanagan:** I move amendment No. 6:

6. In page 3, after line 29, to insert the following:

**“Amendment of section 13 of Licensing (Ireland) Act 1833**

3. Section 13 of the Licensing (Ireland) Act 1833 is amended by the deletion of—
- (a) “Distiller,” and
  - (b) “Rectifier or Compounder of Spirits,”.”.

This new section includes a technical amendment to section 13 of the Licensing (Ireland) Act 1833 which will remove the prohibition in that section on distillers and rectifiers or compounders of spirits from selling intoxicating liquor products for consumption on their premises. Without this amendment the provisions of section 1 that we have just inserted might well be open to legal challenge. I am keen to ensure that every effort is made to obviate that likelihood.

Amendment agreed to.

**Deputy Charles Flanagan:** I move amendment No. 7:

7. In page 3, after line 29, to insert the following:

**“Amendment of section 1094 of Taxes Consolidation Act 1997**

4. Section 1094(1) of the Taxes Consolidation Act 1997 is amended—

(a) in the definition of “licence”—

- (i) in paragraph (o), by the substitution of “2003,” for “2003, and”,
- (ii) in paragraph (p), by the substitution of “2010, and” for “2010;”, and
- (iii) by the insertion of the following paragraph after paragraph (p):

“(q) section 1 of the Intoxicating Liquor (Breweries and Distilleries) Act 2018;”

and

(b) in the definition of “specified date”, by the substitution of “paragraphs (a) to (q);” for “paragraphs (a) to (p);”.”.

This is also largely a technical amendment. I bring it forward at the request of the Revenue Commissioners. Section 1094(1) of the Taxes Consolidation Act 1997 deals with tax clearance requirements. This amendment is required to bring the tax clearance conditions attaching to the licence created under this legislation for the new licence into line with the conditions which are applicable to the other licences in the code of intoxicating liquor licences.

Amendment agreed to.

SECTION 3

**Deputy Charles Flanagan:** I move amendment No. 8:

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

“(2) This Act shall come into operation on such day as the Minister for Justice and Equality may by order appoint.”.

The Revenue Commissioners will require some time to make the necessary and appropriate adjustments to their information technology systems for the purposes of issuing licences under this legislation as soon as it is enacted. For this reason amendment No. 8 inserts a commencement provision in the form of a new subsection (2) in section 3 of the Bill, which is not dissimilar to many such provisions in many Bills coming before this committee. In moving this amendment I am mindful of the comments made by Deputy Kelly, which I am sure are echoed around the table. It is my desire that this legislation, if enacted, will come into force on the earliest possible date and I wish to assure members of the committee of that. Notwithstanding that, I am advised this technical amendment is necessary.

Amendment agreed to.

**Chairman:** Amendments Nos. 9 and 10 in the name of the Minister are related and will be discussed together.

**Deputy Charles Flanagan:** I move amendment No. 9:

In page 4, line 4, to delete “2011” and substitute “2018”.

Without wishing to pre-empt the committee, I do not think these amendments will attract any great debate or controversy. They are drafting amendments to update the Title of the Bill and the collective citation of the Licensing Acts which will read “Licensing Acts 1833 to 2018”.

Amendment agreed to.

**Deputy Charles Flanagan:** I move amendment No. 10:

In page 4, line 5, to delete “2016” and substitute “2018”.

Amendment agreed to.

Section 3, as amended, agreed to.

Title agreed to.

Bill reported with amendments.

### **Message to Dáil**

**Chairman:** In accordance with Standing Order 87, the following message will be sent to the Dáil:

The Select Committee on Justice and Equality has completed its consideration of the Intoxicating Liquor (Breweries and Distilleries) Bill 2016 and has made amendments thereto.

I thank Deputy Kelly and commend his initiative. I wish the Bill every success in its further Stages and hope we see its implementation at the earliest possible date this year. I thank the Minister and his officials for attending. The Minister is staying to deal with the next Bill but the officials seem to be escaping - well done. I thank them for joining the Minister. We will take a moment to allow for a switch in personnel.

**Judicial Appointments Commission Bill 2017: Committee Stage (Resumed)**

SECTION 47

Question proposed: “That section 47 stand part of the Bill”.

**Chairman:** There are no proposed amendments to the section, but it is challenged.

**Deputy Clare Daly:** Section 47 is redundant now because of the other amendments we have made. As such, we have to vote to remove it.

**Chairman:** I take Deputy Daly’s point and ask her to give me a moment to look at the briefing. For the information of members, we are addressing section 47 and the proposition is that it stand part of the Bill.

**Minister for Justice and Equality (Deputy Charles Flanagan):** Having regard to previous decisions I took of a similar nature, I register my wish to preserve the section and my dissent from the view of the members of the committee, but I will not press a division. I ask members to accept that.

**Chairman:** It is therefore not agreed that the section falls. Am I correct?

**Deputy Jim O’Callaghan:** The section falls but the Minister will bring forward an amendment on Report Stage.

**Chairman:** The opposition of the Minister to that position is noted.

**Deputy Jack Chambers:** However, the section falls.

Question put and declared lost.

SECTION 48

**Chairman:** For the information of members, if amendment No. 150 is agreed, then amendment No. 151 cannot be moved.

**Deputy Mick Wallace:** I move amendment No. 150:

In page 34, lines 12 to 14, to delete all words from “shall” in line 12 down to and including “Act” in line 14 and substitute “shall consider for appointment only those persons whose names have been recommended to the Minister”.

Amendment put.

The Committee divided: Tá, 3; Níl, 5.	
Tá;	Níl;
Daly, Clare.	Brophy, Colm.
Ó Caoláin, Caoimhghín.	Chambers, Jack.
Wallace, Mick.	Fitzpatrick, Peter.
	Flanagan, Charles.
	O’Callaghan, Jim.

Amendment declared lost.

Amendment No. 151 not moved.

Section 48 agreed to.

#### SECTION 49

**Deputy Jim O’Callaghan:** I move amendment No. 152:

In page 34, lines 16 and 17, to delete “a relevant committee” and substitute “the Commission”.

Amendment put.

The Committee divided: Tá, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O’Callaghan, Jim.	Flanagan, Charles.
Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

**Deputy Jim O’Callaghan:** I move amendment No. 153:

In page 34, lines 17 and 18, to delete “a relevant committee” and substitute “the Commission”.

**Deputy Charles Flanagan:** I take the same view as in amendment No. 152, as I have indicated earlier, on the basis that these are related.

**Chairman:** That is in order. I think we have done it more particularly in relation to sections but I do not think there is any issue in adopting the same position on actual amendments. The Minister’s dissent is noted.

Amendment agreed to.

**Deputy Jim O’Callaghan:** I move amendment No. 154:

In page 34, lines 19 to 25, to delete all words from and including “*Subsection (3)*” in line 19 down to and including “office” in line 25 and substitute the following: “*Subsection (3)* has effect where a person, who is a member of the Commission, has made an application under *section 41* as respects a particular judicial office.”.

**Deputy Charles Flanagan:** I have a similar position on this amendment.

**Chairman:** The Minister’s dissent is noted.

Amendment agreed to.

**Deputy Jim O’Callaghan:** I move amendment No. 155:

In page 34, line 20, to delete “a relevant committee” and substitute “the Commission”.

**Deputy Charles Flanagan:** I have a similar position if that is acceptable to the committee.

**Chairman:** The Minister’s dissent is noted.

Amendment agreed to.

**Deputy Jim O’Callaghan:** I move amendment No. 156:

In page 34, line 26, to delete “relevant committee” and substitute “Commission”.

**Deputy Charles Flanagan:** I would like my dissent noted.

**Chairman:** The Minister’s dissent is noted.

Amendment agreed to.

Question proposed: “That section 49, as amended, stand part of the Bill.”

**Chairman:** Does the Minister wish to adopt the same position in relation to this section?

**Deputy Charles Flanagan:** I do, with the assent of the Chair.

**Chairman:** The Minister’s dissent is noted.

Question put and agreed to.

#### NEW SECTION

**Chairman:** Amendments Nos. 157 to 161, inclusive, are related. If amendment No. 157 is agreed, then amendments Nos. 158 and 159 cannot be moved. This represents a new section and acceptance of this amendment involves the deletion of section 50.

**Deputy Donnchadh Ó Laoghaire:** I move amendment No. 157:

In page 34, between lines 29 and 30, to insert the following:

**“Notice of appointment to be published**

**50.** (1) Notice of an appointment to judicial office shall be published in *Iris Oifigiúil* and the notice shall, if it be the case, include a statement that the name of the person was—

(a) recommended by the relevant committee to the Minister in accordance with the provisions of this Act, or

(b) recommended to the Government under *section 46*,

as the case may be.

(2) In the event that a person appointed to judicial office has not been recommended by the Commission under this Act, the notice of that appointment published in *Iris Oifigiúil* shall include a reasoned written explanation of the decision of the Government not to nominate a candidate recommended by the Commission.

(3) In publishing the reasoned written decision in accordance with *subsection (2)*, the persons recommended by the Commission shall not be identified.”.

For the benefit of the committee and how we do our business, there are many amendments dealing with removing the relevant committee and general tidying up. I tried to identify those necessary to preserve the procedures committee, which I think is a decision we agreed. Amendment No. 162 relates to that. I will try to indicate those amendments I will be opposing and those I will be supporting as I go on.

In respect of amendment Nos. 157 and 160, which are related, these are amendments proposed by Dr. Patrick O’Brien, who was referred to in previous sessions. We have had a debate recently about the Government requiring, or at least the perception that it requires, discretion in relation to appointments. I refer to the conflict between that and the desire to have a fully transparent process with the judicial appointments commission making as much of the decision as possible. Where the person appointed to judicial office is not a person who was recommended by the judicial appointments commission, amendment No. 157 requires that a reasoned written decision would be published in *Iris Oifigiúil* explaining the reason for that person’s appointment outside of the judicial appointments commission process. Similarly, amendment No. 160 relates to the placing of a statement before the Houses of the Oireachtas within 30 days of that appointment giving a written decision as to why a person was appointed who was not nominated by the commission. There is clear and obvious sense to it. Whatever the arguments about constitutionality, if the committee accepts the case that the Government must have a greater degree of discretion than the judicial appointment commission provides to it, then in the exceptionally rare circumstances that people would be appointed outside this process the Oireachtas and the public deserve to have an understanding as to why this was the case. This provides for that.

**Chairman:** Before returning to the Minister, does anyone else wish to make a contribution on that or will I go to the Minister first? I will go to the Minister first.

**Deputy Charles Flanagan:** I cannot accept these amendments for reasons we discussed on a previous occasion regarding the constitutional imperative on the part of the Government on these issues, with particular reference to the appointment of members of the Judiciary. Amendment No. 157 would require a proposed new subsection (2), the publication in *Iris Oifigiúil* of a reasoned written explanation of any decision. In addition, under the proposed new subsection (3), the persons who are recommended by the commission must not be identified in such publication. My difficulty is that the amendment would require the Government to explain in writing the hows and wherefores of why, in any particular instance, the advice given to the President in regard to an appointment may concern a candidate other than the one actually recommended by the commission. It, therefore, puts a clear onus and responsibility on the Government to justify actions taken on foot of the exercise of what is a constitutional provision. There is that problem but aside from that, I am not sure what the value or benefit of such an amendment might be, and what its practical impact might be in terms of fairness to all those involved in the process, be they a recommended candidate or a candidate that did not make the cut. I note what Deputy Ó Laoghaire has said, that it is a desire on his part for increased transparency around the process of how, in what circumstances and in what way the Government would advise the President as to the appointment. I have said this before and rather than delaying the committee’s proceedings, I reiterate that my position is the same. As a fundamental position, I cannot support any amendment that might give the impression or be perceived to undermine what is a clear constitutional prerogative on the part of the Government in the matter of judicial appointments.

Similarly, on amendment No. 160, I see it as compromising, interfering or even undermining the constitutional position, where the Government is free to reject the recommendation of the commission.

**Deputy Jim O’Callaghan:** Deputy Jack Chambers and I will support amendments Nos. 157 and 160, partly because there is a similar provision in our own legislation which has passed Second Stage. I note the Minister says he is opposed to it because he thinks that it is constitutionally frail and could impinge on the prerogative of the Government to nominate individuals for appointment. That point is valid in regard to amendments Nos. 150 and 151, tabled by Deputies Clare Daly and Wallace, which we voted down. I am not sure that their suggestions were unconstitutional but I had concerns if the Government was told that it must select, and could only select, a person from the three names given to the Government by the commission. That is on the borderline of constitutionality. However, what is proposed in amendments Nos. 157 and 160 is different. What is proposed there is that the commission gives the three names to the Government. Under the Minister’s proposal in the legislation, as drafted, all that is required is that if the Government does not select one of those three names, it must publish that fact in *Iris Oifigiúil*. That is exactly the same as the current position, so there is no substantive change in the law. It is appropriate that if the Government makes a decision that it is not going to appoint one of the three people nominated, that it should provide a reasoned explanation as to why it is not doing so. It does not involve referring to the individuals who have not been appointed. If, say, Jack Chambers was appointed but he was not one of the three on the list, the Minister or the Government should say that Mr. Justice Chambers was appointed, although he was not nominated by the commission, and it should explain the reason it selected him. Maybe he has particular expertise in medical legal law and the Government needed an expert in that area to hear many cases or perhaps he has an expertise in the Irish language and there was a vacancy in the area and we needed more expertise in the Irish language. It is not something that is difficult to do. If we do not have that, we will have gone through all this process of putting in a new structure when, ultimately, there will be no change from the current situation. For those reasons, we will support the amendments.

**Chairman:** If no other members wish to contribute, I will return to Deputy Ó Laoghaire.

**Deputy Donnchadh Ó Laoghaire:** Deputy O’Callaghan put it well. I ought to have acknowledged that he had included this in his original Bill, although it was brought to my attention via Dr. Patrick O’Brien. We have had a debate around whether or not the Government could be constrained. I am not convinced that it is unconstitutional but we have arrived at a decision in regard to that. What this does is clearly quite different. It tries to ensure that there is an incentive for the Government not to ride roughshod over the process, and to ensure that it is not too easy for Government to constantly go outside the process. The process is very clear. If the Government sees a compelling reason for appointing someone to a particular position, a person who was not considered by the judicial appointments commission, it is at liberty to do so but it is absolutely reasonable that it be required to justify that and give a reason in the process that is outlined in the amendment. It is standard enough in legislation and in many processes for a Minister or Government to make a statement. I will press the amendment.

**Chairman:** Does the Minister wish to make any comment?

**Deputy Charles Flanagan:** No, I would just point out that section 50 adequately fits the issue in hand here. I have listened to both Deputies. I am wondering what type of reason is envisaged. What might the reason be and in what form might the publication take? Deputy O’Callaghan gave an example of the appointment of his colleague, Deputy Jack Chambers,

but what kind of reason would he see as being appropriate should Deputy Chambers not be the subject of a recommendation? In what detail would the notice be required? I am concerned that we will have entered constraining territory, from the Government's point of view and constitutionally.

**Chairman:** I congratulate Mr. Justice Chambers on his appointment. He has indicated he wishes to speak.

**Deputy Jack Chambers:** I would like an explanation from the Minister about why the Government is refusing to shift from the current position that Deputy O'Callaghan has outlined. Surely, if the Minister is trying to reform the process, there is a need to provide explanation and further detail. That is in Deputy Ó Laoghaire's drafting. No person will be identified. It is a case of formalising and opening up the process in the context of transparency. Perhaps the Minister can provide further detail on how he believes this would impinge constitutionally, apart from saying that it has constitutional implications. The committee should know what exactly these are in the Minister's view.

I can understand the position in respect of the previous amendment if the only recommendation has to be that someone would be appointed by Government or "the Government shall" appoint a particular person. That certainly has constitutional implications but I am unsure how this drafting would have any constitutional implications.

**Deputy Charles Flanagan:** I see the line being crossed in terms of the unfettered constitutional prerogative on the part of Government in the appointment of judges. Asking the Government to justify actions taken on foot of the exercise of such a provision is, to my mind, legally problematic.

**Deputy Mick Wallace:** If Deputy Jack Chambers was appointed to the Judiciary without being recommended by the commission, the Government of the day should definitely explain itself. Deputy O'Callaghan has pointed out that this situation already prevails. Will the Minister clarify the position? Is that true? Is Deputy O'Callaghan right in what he said or is he wrong?

**Deputy Charles Flanagan:** To which point is Deputy Wallace referring? Deputy O'Callaghan said a number of things.

**Deputy Mick Wallace:** I am referring to the current arrangement before we even enact the new legislation. If this situation were to occur, the Government would be obliged, as matters stand, to give a reason for it. Is that true? I am only asking - I do not know.

**Deputy Charles Flanagan:** I do not see where the evidence of that is.

**Deputy Jim O'Callaghan:** Deputy Wallace is making the point that if the Government nominates for appointment a person who has not been recommended by the Judicial Appointments Advisory Board, all it has to do at present is state in *Iris Oifigiúil* that X has been appointed and was not recommended by the board. It only happens exceptionally, although it happened recently. This would be the position under the legislation we are discussing. Let us suppose that the commission nominates three and the Government decides not to accept and opts to nominate another individual instead.. Then, under what is proposed, all that would happen would be that the Government would have to say that the person appointed was not recommended by the commission. There is no change.

**Deputy Charles Flanagan:** I think the import of the amendment goes further in so far as a

written explanation is concerned.

**Deputy Jim O’Callaghan:** That is correct.

**Deputy Jack Chambers:** The current position does not change.

**Deputy Charles Flanagan:** The current position would change if this amendment was carried. The Deputies have indicated their support.

**Deputy Jack Chambers:** As the Minister has drafted it, the position would remain the same.

**Deputy Charles Flanagan:** How many times has this occurred in recent years? The answer is infrequently.

**Deputy Mick Wallace:** It has happened.

**Deputy Charles Flanagan:** If it were to occur under current legislation, it would be a mere statement of the fact that the recommendation has not been accepted. Under the current amendment, Deputy Ó Laoghaire is going further than that in so far as a reasoned written explanation is concerned. That is where we are getting into constitutionally fraught territory. In fact, it is far more than the current requirement.

**Deputy Donnchadh Ó Laoghaire:** The point was made that it would be interfering with the unfettered discretion of the Government. The entire Bill is about putting fetters, to some extent, on the discretion of the Government. That is the purpose of the legislation. If the Government wanted unfettered discretion in appointing people to the Judiciary, then we would not have processes of this kind. It is perfectly reasonable to provide an explanation and justification.

It is the case that this has not happened often. I hope it would be the case that it would not happen often. However, if there was a Government that was minded to appoint multiple judges outside the standard process on several occasions, this measure would act as a disincentive. That is the purpose of the legislation. It is a constraint, not an unreasonable constraint.

**Chairman:** I do not think there are other contributions. We are in a position to move to a decision if everyone is okay with that.

Amendment put.

The Committee divided: Tá;, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O’Callaghan, Jim.	Flanagan, Charles.
Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

**Chairman:** Since amendment No. 157 has been agreed, amendments Nos. 158 and 159 cannot be moved.

Amendments Nos. 158 and 159 not moved.

Section 50 deleted.

NEW SECTION

**Chairman:** Amendment No. 160 has already been discussed with amendment No. 157. For the information of members, if the question on amendment No. 160 is agreed, then amendment No. 161 cannot be moved. We have already discussed this. I am going to proceed.

**Deputy Donnchadh Ó Laoghaire:** I move amendment No. 160:

In page 34, after line 36, to insert the following:

**“Statement to Houses of the Oireachtas**

**51.** (1) Within 30 days after the end of each year, the Minister shall cause to be laid before the Houses of the Oireachtas a statement of appointments to judicial office made by the President during the previous year (not being appointments made before the commencement of this section) and that statement shall include—

(a) the name of each appointee and the judicial office to which he or she was appointed,

(b) particulars of the education, professional qualifications and experience of each appointee, and

(c) if it be the case in relation to a particular appointee, a statement that the appointee’s name was—

(i) recommended by the relevant committee to the Minister in accordance with the provisions of this Act, or

(ii) recommended to the Government under *section 46*,

as the case may be.

(2) In the event that a person appointed to judicial office has not been recommended by the Commission under this Act, the Minister shall within 30 days of that appointment cause to be laid before the Houses of the Oireachtas a statement containing a reasoned written explanation of the decision of the Government not to nominate a candidate recommended by the Commission.

(3) In publishing the reasoned written decision in accordance with subsection (2), the persons recommended by the Commission shall not be identified.”.

**Chairman:** Is the amendment being pressed?

**Deputy Donnchadh Ó Laoghaire:** It is.

**Chairman:** Amendment No. 160 is a new section. For the information of members, acceptance of this amendment involves the deletion of section 51 as it stands.

Amendment put.

The Committee divided: Tá;, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O'Callaghan, Jim.	Flanagan, Charles.
Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

**Chairman:** Because of the adoption of amendment No. 160, amendment No. 161 cannot be moved as amendment No. 160 introduces a new section and involves the deletion of section 51.

Amendment No. 161 not moved.

Section 51 deleted.

Section 52 agreed to.

**Chairman:** Amendment No. 162 was discussed with amendment No. 8 in the names of Deputies Jim O'Callaghan and Jack Chambers. Is the amendment being pressed?

**Deputy Jim O'Callaghan:** No, it is not. We will come back to it on Report Stage. As it concerns the procedures committee as opposed to other committees, I will not be pressing it or amendments Nos. 163 to 165, inclusive.

Amendments Nos. 162 to 165, inclusive, not moved.

Section 53 agreed to.

Section 54 agreed to.

## SECTION 55

**Chairman:** Amendment No. 166 was discussed with amendment No. 8. Is it being pressed?

**Deputy Jim O'Callaghan:** No, for the same reason I mentioned.

**Chairman:** Will the same reason apply as we proceed through the amendments? Does it apply to amendment No. 167?

**Deputy Jim O'Callaghan:** Yes, it does.

Amendments Nos. 166 to 172, inclusive, not moved.

**Chairman:** Amendment No. 173 in the name of Deputy Clare Daly was discussed with amendment No. 24.

**Deputy Clare Daly:** I move amendment No. 173:

In page 37, line 16, to delete “, to the extent feasible and practicable,”.

**Chairman:** Amendment No. 24, in the name of Deputy Seán Sherlock, must also have been part of a later grouping. My recollection is that it was not moved.

**Deputy Clare Daly:** Then the amendment has not been discussed, has it?

**Chairman:** It was discussed with later amendments.

**Deputy Clare Daly:** I was wondering whether we had discussed it. I thought we had not discussed it.

**Chairman:** We discussed it with amendment No. 49.

**Deputy Clare Daly:** Okay, we did discuss it.

**Chairman:** I was just checking to be on the safe side.

**Deputy Clare Daly:** The amendment is about the extra qualifier being included in respect of diversity which I do not think it is necessary to include as it is implied and does not need to be spelled out. It makes diversity less important than gender equality.

**Chairman:** It was discussed.

**Deputy Donnchadh Ó Laoghaire:** I support the amendment, with which I agree. As the provision is inserted after the words “have regard to”, it is already implied.

Amendment put.

The Committee divided: Tá;, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O’Callaghan, Jim.	Flanagan, Charles.
Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

**Chairman:** Amendment No. 174 is a stand-alone amendment in the names of Deputies Jim O’Callaghan and Jack Chambers. It has not been previously discussed.

**Deputy Jim O’Callaghan:** I move amendment No. 174:

In page 37, between lines 21 and 22, to insert the following:

“(f) the need for each Court to have members of the judiciary who are proficient in the Irish language.”.

Every person in the country is entitled to have his or her case heard through Irish if he or she so wishes. That means that there has to be proficiency in the Irish language within each court. It certainly does not mean that one can only be appointed a judge if one can speak Irish. The vast majority of people appointed as judges will not be able to hear cases in Irish, but it is important that each court has within it judges proficient in the language in order that the constitutional right of citizens to have their cases heard through the national language can be vindicated.

**Deputy Charles Flanagan:** Amendment No. 174 appears to be consequential on amendments Nos. 18 and 20 which we discussed in grouping No. 6 with reference to section 7. I outlined my position during that discussion and it has not changed. I am not in a position to support the amendment. There is nothing in section 55 that would prevent the procedures committee from considering whether proficiency in the Irish language was required or needed for appointment to a particular judicial office. I am, therefore, not inclined to accept the amendment. Even if I was so inclined, I do not believe this is the appropriate section in which to include such a provision since the subsection deals with selection procedures in the statement. Section 55(6), on the other hand, deals with skills and attributes, issues we discussed at length when we discussed amendments included in a previous grouping. That might be a better fit for such a provision. However, I am not minded to accept the amendment.

**Chairman:** Would Deputy Jim O’Callaghan like to respond to the Minister’s remarks?

**Deputy Jim O’Callaghan:** No.

Amendment put.

The Committee divided: Tá;, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O’Callaghan, Jim.	Flanagan, Charles.
Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

Amendments Nos. 175 to 177, inclusive, not moved.

Question proposed: “That section 55, as amended, stand part of the Bill.”

**Deputy Charles Flanagan:** I wish my dissent to be noted, having regard to the amendment already made.

Question put and agreed to.

#### SECTION 56

Question proposed: “That section 56 stand part of the Bill.”

**Chairman:** I note that this section is opposed by Deputies O’Callaghan and Jack Chambers.

**Deputy Jim O’Callaghan:** We will not push our opposition because section 56 concerns the procedures committee. I know this committee has adopted a different position from other committees as regards the procedures committee.

Question put and agreed to.

Amendment No. 178 not moved.

Section 57 agreed to.

## SECTION 58

Amendment No. 179 not moved.

**Deputy Jack Chambers:** I move amendment No. 180:

In page 39, to delete lines 25 and 26.

This adds another arm to the procedures committee in the context of administrative support. Surely the commission will have the necessary administrative support. I do not see the necessity to have a specific reference to it in the legislation. While the committee has taken a position to support the procedures committee, I do not see the need for this to be part of section 58.

Amendment put.

The Committee divided: Tá;, 4; Níl, 4.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O'Callaghan, Jim.	Flanagan, Charles.
Wallace, Mick.	Ó Caoláin, Caoimhghín.

Amendment declared lost.

**Chairman:** Standing Order 97(1) negatives a question when there is an equality of votes.

Amendment declared lost.

Amendments Nos. 181 to 184, inclusive, not moved.

Section 58 agreed to.

Section 59 agreed to.

## SECTION 60

**Deputy Jim O'Callaghan:** I move amendment No. 185:

In page 40, line 29, to delete "A relevant committee (within the meaning of the *Act of 2017*) of the" and substitute "The".

We will press this as it is consistent with all the other amendments about relevant committees.

Amendment put.

The Committee divided: Tá;, 5; Níl, 3.	
Tá;	Níl;
Chambers, Jack.	Brophy, Colm.
Daly, Clare.	Fitzpatrick, Peter.
O'Callaghan, Jim.	Flanagan, Charles.

Ó Caoláin, Caoimhghín.	
Wallace, Mick.	

Amendment declared carried.

**Deputy Clare Daly:** I move amendment No. 186:

In page 40, line 33, to delete “Senior Judicial Appointments Advisory Committee” and substitute “Commission”.

Amendment put and declared carried.

**Deputy Clare Daly:** I move amendment No. 187:

In page 41, lines 12 and 13, to delete “Senior Judicial Appointments Advisory Committee” and substitute “Commission”.

Amendment put and declared carried.

Question, “That section 60, as amended, stand part of the Bill”, put and declared carried.

Sections 61 and 62 agreed to.

#### SECTION 63

**Deputy Jim O’Callaghan:** I move amendment No. 188:

In page 42, line 8, to delete “relevant committee” and substitute “Commission”.

**Deputy Charles Flanagan:** Having regard to previous amendments, I indicate my dissent but I will not press it any further.

**Chairman:** The Minister’s dissent is noted.

Amendment put and declared carried.

Question proposed: “That section 63, as amended, stand part of the Bill.”

**Deputy Charles Flanagan:** I do not agree but I will take a similar position as on previous occasions.

**Chairman:** The Minister’s dissent is noted. Is that agreed? Agreed.

Question put and agreed to.

#### SECTION 64

**Deputy Mick Wallace:** I move amendment No. 189:

In page 43, between lines 4 and 5, to insert the following:

“(4) In the performance of its functions under this Act, a relevant committee shall be prohibited from any consideration of an applicant’s political affiliation.

(5) In the performance of its functions under this Act, the Government shall be pro-

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hibited from any consideration of an applicant's political affiliation.

(6) An Applicant for judicial office shall not have been a member of, or a representative of, or a donor to any political party in the State in the three years immediately preceding the date of application for judicial office.”.

**Deputy Mick Wallace:** I will withdraw the amendment and I reserve the right to reintroduce the amendment on Report Stage. I need to look at it and make it a bit cleaner.

Amendment, by leave, withdrawn.

Section 64 agreed to.

Sections 65 agreed to.

Schedule agreed to.

#### TITLE

**Chairman:** There are two amendments, both in the names of Deputies Jim O'Callaghan and Jack Chambers. The first of these is amendment No. 190 which has already been discussed with amendment No. 9.

**Deputy Jim O'Callaghan:** The Minister will have to look at the Long Title again because the committee's removal from it means it will have to be changed. I am sure he will do so prior to Report Stage.

Amendment No. 190 not moved.

**Chairman:** This brings us, dear Lord, to the very last amendment in this marathon. Amendment No. 191 has already been discussed with amendment No. 1 in the first grouping. Is the amendment being pressed?

**Deputy Jim O'Callaghan:** Regrettably it is not being pressed. The committee has already voted to establish the judicial appointments commission so I will not press the amendment since the committee has decided to hold onto the commission.

Amendment No. 191 not moved.

**Chairman:** Deputy O'Callaghan's point on the Title is not only well noted, but it is accepted that this will certainly be revisited over that period ahead. However, we have to adopt the Title at this juncture and the Minister will appropriately address this with his departmental colleagues in the intervening period.

Title agreed to.

Bill reported with amendments.

#### Message to Dáil

**Chairman:** As the Bill has now completed Committee Stage it is recommended that members submit Report Stage amendments to the Bills Office without delay as Report Stage may be

tabled at short notice.

**Minister for Justice and Equality (Deputy Charles Flanagan):** Unlikely.

**Chairman:** I thought that was just a great way to wind it up.

**Deputy Charles Flanagan:** If I could have moment before we adjourn.

**Chairman:** The Minister may because I have to do a formal declaration at the end.

**Deputy Charles Flanagan:** I acknowledge the importance of the debate and, indeed, the length of the debate over five sessions. I thank members for their contributions. We have had a very in-depth discussion over a number of meetings, and it is clear that members have highlighted differing views on a number of important aspects of the Bill. The committee has amended certain components, sections and parts of the Bill in a significant way.

Arising from our deliberations, and I am sure this will come as no surprise to the Chairman, we still have much work to do on a number of elements of the Bill in the context of looking at approaches, acknowledging amendments we have made and taking stock as to how best we might approach matters prior to and on Report Stage. During the course of the debate, I made a number of commitments that I would, on behalf of the Government, come back with some amendments, which I will do. Of course, I am very keen to give adequate notice, in the circumstances of the Bill, unlike in the normal course of events, having been altered quite significantly.

Given the fact that what may likely transpire to be an additional complement of membership on the board of the commission, we need to do some more work on the matter of the specifications for membership, in light of the changes which have been approved by the committee and on how the lay members of the commission are recruited. I acknowledge on my part and that of my officials, that further consideration must be given to the reformulation of aspects of the Bill to determine the best approach. On whether, on the matter of recruitment, it will be entirely a matter for the Public Appointments Service or whether we can have a nomination arrangement to the satisfaction of the Deputies as debated, I need to see how that might be designed to meet the disposition and clear wishes of the committee. I must consider whether we have a mix of people, some chosen by the Public Appointments Service and some nominated to the commission by specified nominating bodies. Against the background in which the committee structure has been removed, I want to examine the balance between having a manageable number of persons on the commission and ensuring there is an appropriate contribution of all court presidents, having regard to the various strands of appointment.

I invite members of the committee to agree with me on the following point. Our objective must be to have a structure with a balance between having a commission that is not so large as to be unworkable or unwieldy while holding fast to the initial design of the Bill. Specifically, the central principles of the Bill are a lay majority on the commission and an independent chairperson. Those must be reconciled with the importance of ensuring that we have the appropriate inputs of all court precedents, including the presence of the District Court and of the Circuit Court. That is not quite clear now under the Bill as has passed Committee Stage. I want to give the Chairman notice of my intention to table an amendment to address a technical issue concerning advances of funds to the commission. I am sure that will be welcome. Likewise, depending on what the Parliamentary Counsel has to say, we may need to look at tabling further drafting amendments consequential to those that have already been made, particularly in Part 4 regarding the removal of relevant committees as was originally intended, to ensure that there is

no unintended impact on other aspects of the Bill. Even looking at the Long Title, although we have agreed it, we all consequently agreed that it would not be the final word on that.

In light of the fact that we have made a large number of amendments, I am mindful of the need to proof where we are going to ensure that the contents are legally and constitutionally acceptable and that the drafting is fully in order. There will not be an imminent or sudden tabling of Report Stage amendments. I have acknowledged that some work needs to be done and that will take some time. I would be happy to keep the Chairman fully informed of developments. If any members of the committee wish to engage with me or my officials bilaterally, I would not only be open to that but would be keen to engage in such a discussion but we will have to take our time. Ultimately, the Bill can only benefit from the opportunity that it now presents, which is a form of breathing space between now and Report Stage. I also thank the Chairman for the efficient way in which he managed to steer us through almost 200 amendments.

**Chairman:** I will cherish those words of commendation from the Minister.

**Deputy Mick Wallace:** I would not take it too seriously.

**Chairman:** I will hold those words tight. I thank the Minister and both his officials for their contribution and endurance over these five meetings. I will say to all members that we can be very proud of the work we do. It is great to have two Bills conclude Committee Stage here in one day. It does not always happen for us but it has been worthwhile.

**Deputy Charles Flanagan:** I have a final request, if the Chair does not mind my intervention. From time to time in the course of the parliamentary session, the media engages in the production of a league table of Members of Dáil Éireann and the number of times they have voted. I suggest that a record is taken of the number of times we have voted in this committee to ensure that we are well up there as the most active group of parliamentarians.

**Deputy Mick Wallace:** I recommend to the Minister that he stop giving a damn about the media since they are not worth worrying about.

**Deputy Jim O'Callaghan:** There is probably another record. I do not think a Government has suffered so many five-three defeats at one meeting of a committee.

**Chairman:** I leave that to members. There is no question that the positions represented by the decisions taken are sincerely held by all who participated. I thank committee members. The select committee is adjourned *sine die* but I advise members that the joint committee will meet next Wednesday, 21 February, to conduct detailed scrutiny of the Multi-Party Actions Bill 2017. We are launching the wards of court report at 10.30 a.m. in the AV room and I appeal to members to attend.

**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 Judicial Appointments Commission Bill 2017 and has made amendments thereto.

The select committee adjourned at 3.35 p.m. until 3.30 p.m. on Thursday, 22 March 2018.