DÁIL ÉIREANN

AN ROGHCHOISTE UM DHLÍ AGUS CEART, GNÓTHAÍ BAILE AGUS IMIRCE

SELECT COMMITTEE ON JUSTICE, HOME AFFAIRS AND MIGRATION

Dé Máirt, 19 Bealtaine 2026

Tuesday, 19 May 2026

Tháinig an Roghchoiste le chéile ag 3 p.m.

The Select Committee met at 3 p.m.

Comhaltaí a bhí i láthair / Members present:

Teachtaí Dála / Deputies	
Tom Brabazon,	
Catherine Callaghan,	
Matt Carthy,	
Martin Daly,+	
Albert Dolan,	
Gary Gannon,	
Alan Kelly,	
John Lahart,+	
Jim O'Callaghan, (Minister for Justice, Home Affairs and Migration)	
Ryan O'Meara,+	
Pádraig O'Sullivan,	
Mark Ward.	

+ In éagmais le haghaidh cuid den choiste / In the absence for part of the meeting of Deputies Albert Dolan and Pádraig O'Sullivan.

I láthair / In attendance: Deputies Ruth Coppinger, Helen McEntee (Minister for Defence) and Barry Ward.

Teachta / Deputy Paula Butterly sa Chathaoir / in the Chair.

Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026: Committee Stage

An Leas-Chathaoirleach: I remind members to turn off their mobile phones or to switch them to flight mode. This meeting has been convened to commence the Committee Stage debate on the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026. I welcome the Ministers, Deputies Jim O'Callaghan and Helen McEntee, and their officials to the meeting. As the Bill deals with matters for which both Ministers have responsibility, they are both in attendance. To assist in consideration and to provide procedural clarity, the following procedure will be followed. When dealing with sections, as a section does not need to be moved, the relevant Minister can speak to the section, as appropriate. When dealing with amendments, when both Ministers are in attendance at the same time, only the Minister, Deputy O'Callaghan, as sponsor of the Bill, may move Government amendments. Should an amendment or part of the Bill relate to Deputy McEntee's brief, the Minister, Deputy O'Callaghan, should move it and then defer to her to speak on the matter.

Should only one Minister be present, that Minister will move and speak to all Government amendments. When the votes are called, in terms of divisions, if both Ministers are present, only the Minister, Deputy O'Callaghan, will be called upon to vote. If only one Minister is in attendance, that Minister will be called upon to vote. I wish to remind members that it is important to note that in order to participate in a division in committee, members must be physically present.

I believe the Minister, Deputy O'Callaghan, would like the opportunity to make some brief opening remarks.

Minister for Justice, Home Affairs and Migration (Deputy Jim O'Callaghan): I thank the committee for providing time to facilitate the Committee Stage amendment discussion on the Criminal Law and Civil Law (Miscellaneous Provisions) Bill 2026. As the Leas-Chathaoirleach indicated in her opening remarks, the Minister, Deputy McEntee, and I are here. The Minister will deal with the section of amendments contained in group 1. I do not envisage that she will have to spend all of her time here.

I appreciate the engagement of committee members in respect of the Bill. Before we deal with the proposed amendments, I would like to briefly signal a number of other amendments currently at an advanced stage of drafting in the Office of Parliamentary Counsel and that I intend to bring forward on Report Stage.

First is the insertion of a new Part into the Bill providing for an application-based scheme to enable the disregard of historical convictions relating to consensual sexual activity between men. The provisions to be brought forward will clearly set out the offences and scope, the criteria for a disregard, the legal effects of same and the procedures for making, considering and determining applications. Provision will be made for independent assessment of applications and for an applicant to request an independent review where it is proposed to refuse a disregard. Provision will also be made for the revocation of a disregard should this be found necessary in any case. Again, there is provision for an independent review where revocation is proposed.

Second is an amendment to the International Criminal Court Act 2006 to incorporate the 2010, 2017 and 2019 amendments to Article 8 of the Rome Statute on war crimes and to address

a drafting issue in the Act to make it clear that Ireland's co-operation obligations with the International Criminal Court cover all offences within the court's jurisdiction, including the crime of aggression and offences against the administration of justice.

Third is an amendment to the to the European Arrest Warrant Act 2003, additional to the amendment being moved today. This further amendment will be made to section 35A of the 2003 Act and will simply ensure that the retrial or appeal mentioned in subsection (2) of that section will take place without undue delay.

Fourth is an amendment to the Social Welfare Consolidation Act 2005 to add the Courts Service as a specified body under Schedule 5 to the Act. This amendment is necessary to enable full effect to be given to section 22 of the 2020 miscellaneous provisions Act, which envisages a personal public service number as a means by which the Courts Service may verify the identity of a person who is transmitting documents to a court by electronic means.

Fifth is an amendment to section 6 of the Bill, which amends section 67 of the Court of Justice Act 1936 to reduce the number of Supreme Court and Court of Appeal judges that sit on the superior rules committee. A further amendment may be necessary to ensure these provisions operate as intended.

Finally, there are some technical amendments to section 95 of the Family Courts Act 2024 and section 27 of the Criminal Justice (Miscellaneous Provisions) Act 2023. These amendments have been determined as necessary to avoid a lacuna being caused by the commencement of certain provisions of the Family Courts Act 2024, which would result in proceedings under section 28 to 30, inclusive, of the 2023 Act not being subject to the same reporting restrictions as they are at present.

I thank the Leas-Chathaoirleach.

Deputy Matt Carthy: I strongly object to the manner in which the Government has dealt with this Bill. The Minister has treated this committee with utter disrespect throughout this process. We had a pre-legislative scrutiny stage where the committee tried but was ultimately unable to go through each part of the heads of the Bill and the general scheme to try to give each aspect the deliberation it deserved.

I have come from Leaders' Questions, where the Taoiseach said by way of an excuse that the delay in implementing legislation that should have been implemented years ago was because a different committee had to undertake pre-legislative scrutiny. The truth of the matter is that, under the current Government, the pre-legislative scrutiny process is a scam. There is no real consideration, in particular when dealing with a miscellaneous provisions Bill, that covers numerous and completely unrelated topics to such a point that we are not only going across multiple areas of the Minister's Department but also another Department entirely in the first round of amendments. We are even changing the Title of the Bill.

It speaks of rushed legislation and I believe, as has been the case with other Bills from the Minister's Department, there will be unforeseen consequences and problems. Ultimately, the real failure of pre-legislative scrutiny is that, in the areas that the committee had an opportunity to examine, namely, counselling notes, the recommendations of the committee have been completely disregarded. I want to stress in the strongest possible terms that this is an absolute farce. We are dealing with two different Ministers, one in respect of defence matters. This Bill

is being brought before the Dáil at the very last minute, primarily, it appears to me, because the Minister for justice inadvertently exposed a lacuna in the Bill when he threatened to use the Defence Forces during fuel protests. It now appears that he had no legal basis to do so. I want to make those points as forcefully as I can.

Deputy Jim O'Callaghan: It is not my intention to show any disrespect to this committee. I have consistently come before the committee and engaged with members. I very much value the process and work that this committee contributes to the criminal justice process and the justice area in general. I have listened to what the committee said in respect of counselling notes. When we come to discuss them, the committee will note that further amendments have been proposed by me on Committee Stage to ensure that I set in place a statutory non-disclosure presumption in respect of counselling notes. That is something the committee wanted me to head in the direction of.

In terms of issues around the Defence Act and matters that the Minister, Deputy McEntee, will deal with, they were issues that came before the Government and were discussed before any fuel protest. No disrespect is intended or given. We are here to do our work.

An Leas-Chathaoirleach: I thank the Minister. As members are aware, we are at a stage where general discussion is not forthcoming. We will move on with the Bill.

SECTION 1

An Leas-Chathaoirleach: Amendments Nos. 1, 5 and 37 are related and may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 1:

> In page 6, line 4, to delete "Criminal Law and Civil Law" and substitute "Criminal Law, Civil Law and Defence".

These amendments will be dealt with by the Minister, Deputy McEntee.

Minister for Defence (Deputy Helen McEntee): I thank the committee and my colleague for the opportunity to speak on this group of amendments, which I brought to the Cabinet on 9 March and have been made public since 11 March. They have been on the website of the Department of Defence since those dates.

Amendments Nos. 1 and 37 amend the Short Title and Long Title, respectively, of the Bill to reflect that the Bill will now include amendments to the Defence Act.

Amendment No. 5 inserts a new Part IIIA into the Defence Act 1954. The purpose of the new Part IIIA, which will consist of three new sections, namely, sections 40A, 40B and 40C, is to include necessary provisions in the Defence Acts to help to protect and defend our territorial seas and international waters and protect the sovereign rights of the State in our exclusive economic zone, to make provision for the long-standing role of the Defence Forces in aid of the civil power, and to enhance the protection of military installations.

The new section 40A deals with maritime security-related matters. The section will ensure that members of the Defence Forces will have enhanced powers to safeguard, protect and defend the security of the State in the maritime domain. The provisions are particularly relevant in today's increasingly volatile geopolitical situation, which, as we know, is resulting in new

and evolving threats in the maritime domain. Progressing these amendments is a matter of urgency, as it is a priority for me and the rest of the Government to ensure that the Defence Forces have the powers they need to respond to emerging threats in our waters, in particular from vessels linked to the Russian shadow fleet. In broad terms, the new section 40A of the Defence Act will provide the Defence Forces with stand-alone statutory powers that will include the power to use force that is reasonable, proportionate and necessary in order to safeguard, protect and defend the security of the State and maritime domain. In practical terms, this proposed legislation will allow, for example, the captain of one of our State's naval ships to hail, board, search and redirect those ships suspected of engaging in non-innocent passage in the seas around our island.

The Bill also makes provision for the Chief of Staff to provide guidance on the exercise of these new powers. This guidance will be developed with my consent and, where appropriate, in consultation with the Department of Foreign Affairs and Trade, insofar as it relates to the application of international law at sea. It is important to note that these legislative proposals do not provide for any prosecutions or arrests or detention of vessels. I am satisfied that the legislation is proportionate and will address the urgent needs of the Defence Forces when carrying out operations at sea. I have asked my Department to undertake a comprehensive review of all maritime security-related legislation envisaged as part of the new national maritime security strategy that I launched at the end of February. I will bring forward further legislation in this space if required.

The proposed new section 40B to be inserted into the Defence Act will make express provision in primary legislation for the long-standing role of the Defence Forces when they assist An Garda Síochána, which is referred to in the Defence Acts as aid to the civil power. The new section sets out the legislative framework under which members of the Defence Forces may be deployed in aid of civil power and clarifies that a member of the Defence Forces so deployed is authorised to use such force as is appropriate or proportionate, necessary and reasonable. This is a necessary provision to clarify the powers of a member of the Defence Forces in any such circumstances.

There are ongoing close liaisons between An Garda Síochána and the Defence Forces on security matters, including aid to the civil power deployment. In any given year there can be a wide range of aid to the civil power operations, including explosive ordnance call-outs, cash in transit escorts, hospital guarding operations, euro cash in transit escorts, Naval Service diving operations, Central Bank security guarding operations and prisoner escorts. There are a lot of different ways in which the Defence Forces are called out. The new section 40B will replace existing provisions in secondary legislation concerning aid to the civil power as set out in the Defence Forces regulations. Existing arrangements for routine deployments in aid to the civil power, for example, explosive ordnance duties whereby requests for assistance are made by An Garda Síochána to the Defence Forces using a C70 form, will broadly continue in line with current practice. There will not be any change to how these forms are applied for or to the process thereafter.

The proposed new section 40C to be inserted into the Defence Act 1954 clarifies the powers that may be exercised by a member of the Defence Forces for the protection of military installations. The section will replace existing provisions in regulations - again, secondary

legislation - made under the Defence Act. It is important such powers, as was advised to my Department last year, be set out in primary legislation.

Deputy Matt Carthy: I reiterate that it is entirely inappropriate to deal with the issues these amendments deal with as part of a Bill that covers a wide range of unrelated matters. These amendments are being brought forward outside of the remit of this committee and that of the Department which has been steering the legislation. All of this means that there has been no opportunity for proper Oireachtas scrutiny. The amendments were not part of the provisions we dealt with during pre-legislative scrutiny. We did not have sight of them on Second Stage. Instead, we had minimal debate in which Opposition parties were given something like seven minutes last week to respond to something that had been provided to us in the days prior.

There will be broad political support for provisions that strengthen Defence Forces authority regarding military property and that expand Defence Forces powers in respect of maritime security. We all strongly support the need to protect our maritime territory. We have been very critical of the slow action on the part of successive Governments which have meant that large areas of Irish territorial waters have essentially been unguarded for long periods. We have seen a reduction in our naval services over the past decade or more.

I have a real concern about the new section 40B, as outlined. Will the Minister clarify that this section was included in the memorandum which was brought to Cabinet in March and to which she referred? Was it part of the overall proposal? What inspired it? What led to the consideration that this would be required? It is important that the Minister clearly outline the current legislative basis for aid to the civil power by Defence Forces.

I mentioned the fuel protests. What happened during those protests was both incredibly worrying and antagonistic in nature. It escalated tensions at a time when the Government should have been trying to de-escalate them. The wording the Minister used to justify that is essentially the wording we have in this new section. It states that the Minister "approval for the deployment of a member of the Defence Forces in aid of the civil power ... as agreed with the Minister for Minister for Justice, Home Affairs and Migration." That is exactly what the Minister, Deputy O'Callaghan, said he was going to invoke and that caused all of the consideration to which I refer to happen.

The Minister, Deputy McEntee, stated that this is currently underpinned by secondary legislation. What is the primary legislation underpinning aid to the civil power? Secondary legislation is a statutory instrument based on regulation. In other words, it is not included in an actual piece of law, but a piece of law has given authority for a Minister to approve such legislation. The Government is expecting to use this committee for a rubber-stamping exercise. Prior to the committee being asked to rubber-stamp this, it is imperative that we get full details as to why this is needed and why it is needed now. What lacuna is this filling? Is it the case that our Defence Forces have been used without there being an underpinning legal basis? If they have had such a basis, why is there a need to change it at this time? Does the underpinning legal basis not cover something the Government wants to cover at some point in the future? Which of the three is it? The Irish public deserves answers to those questions, and we clearly deserve them because there are real concerns about what the Government is trying to pull off here. It has all the hallmarks of a stroke, to be quite honest, and this committee deserves full clarification on the matter.

Deputy Alan Kelly: This is a miscellaneous Bill. It certainly is miscellaneous because it is very wide-ranging. This is not the appropriate way in which to do our business. We are crossing over two totally different areas with this Bill. What is proposed here was not part of the initial legislation. When it comes to defence matters, we are bypassing the committee that should be dealing with this. Our committee should not be dealing with this. In the 20 years I have been here, I do not think I have seen this happen. It is pretty serious. I have seen crossovers in committees, particularly in the context of the relevant line committees that deal with financial issues and all that sort of stuff with the Department of Finance. Here, however, we are talking about defence matters being dealt with by the justice committee. I do not know if that has ever happened before. It is totally inappropriate and avoids proper Oireachtas scrutiny. There are so many questions relating to this that I do not know where to start.

I am 100% with the Minister when it comes to the protection of maritime territory. I am surprised that we have not brought this in previously. The Minister has spoken about this matter, as have I. We all know that there is a huge weakness here. In principle, we will be supportive across the political divide, without a shadow of a doubt. In fact, the Minister will probably be coming back to the Oireachtas with more legislation in the not-too-distant future. I expect that she will have to as this evolves. As the world is changing, we need to ensure that we, as a country, change with it.

Section 40B is probably one of the most intriguing subsets of pieces of legislation I have seen put before a committee in a long time. Either our Defence Forces have been acting without legislative permission and there is no legislation to back up what they have been doing, we are trying to reverse engineer a situation where they can now have permission or there is something we do not know. One of three things is going on here and none of them are good. If there is a lacuna or something we need to know about the Minister should tell us. It might be there was no legislative basis for the operation of Defence Forces in aid of civil power previously – we can all list a range of measures in which the Defence Forces operated this way. I grew up with the Defence Forces outside banks across Ireland transferring money and doing a whole range of other things like helping out with strikes and other issues. Either it was not doing so with legislative basis or something else is going on. Why are we bringing in this legislation? I am not being flippant. Obviously there is the issue of the fuel protests and what the Minister's colleague, Deputy O'Callaghan, said and, to be fair, what he said and what happened were not exactly the same. However the narrative that came out of what he said was the concerning bit since the execution did not happen. Why are we bringing this in if we already had aid of civil power from our Defence Forces? If we did not, how could they act in the manner in which they did? Is there something we do not know? I do not think it is the latter, to be fair.

Sometimes honesty is the best policy. Sometimes it is best to say, "Legally we have been advised that from a legislative point of view we need to firm up this area." If that is the case then that is the case. Either there was no basis previously and we need to fill it in, which raises other questions, or there is something we do not know. It looks like we are trying to reverse engineer legislation to ensure everything is covered going forward. We faced similar issues during the fuel crisis. It is intriguing. This was not in the first draft of the Bill and did not arise in any pre-legislative scrutiny. There was nothing. It was nowhere to be seen. I know the Minister cannot necessarily talk in detail about what happened at Cabinet but it would be interesting to know when this was first proposed. Will the Minister clarify to the committee when this was first proposed by her Department to her? We can find out other ways but it

would be better if she just told us. We need to put in place the timeline as to how, in a very rushed manner, this was shoehorned in on Committee Stage to a Bill which is so wide in its breadth already and going into a whole different section and not only a whole different Department but doing so on an issue that is so important. It affects the civil liberties of people, potentially, where the Army or Defence Forces can come in and act in a certain way on the basis of a recommendation from the Minister to aid An Garda Síochána under the Minister sitting beside her, the Minister for justice. This is very serious stuff. To have it shoehorned in at the end of a Bill at this Stage creates a huge democratic deficit for anyone watching and it should not happen. I do not think anybody in politics, even on the Minister's side of the fence, believes this is the right way to do things. They will support it but it is not the right way to do things.

In her reply, the Minister might answer the following. Have we a legislative basis for aid of civil power as of today, 19 May 2026? If we do not, on what basis were our Defence Forces acting previously? That is the first thing. Second, why is there such a hurry and a rapid demand to bring this in now? What has happened or what changed recently? Third, when was this first brought to the Minister's attention and by what route? Was it through the Minister's own Department or by another route?

I also have an amendment to amendment No. 5. I am assuming the Minister will accept this amendment. It would be very unusual if she did not considering what I have just said about the democratic deficit and the way this has been shoehorned in at the end of a Bill. My amendment adds a further subsection (6) to the Minister's amendment to the effect that where the Minister gives a direction, the direction or approval for deployment of the Defence Forces must be laid before the Dáil. That would provide some democratic oversight. I hope that will be accepted.

Deputy Helen McEntee: I thank both Deputies for their questions and points. I will acknowledge at the outset I appreciate this is not the normal route legislation is brought. It does happen and happened in the previous Government I was in. Generally, the reason is time and the need to introduce legislation within a certain timeframe. To be very clear, my reason for asking for this to be included or for this vehicle to be used was to ensure the maritime security legislation was in place for our Presidency and that we respond as quickly as possible to provide our Defence Forces, in particular our Naval Service, with the legislative requirements that they need. They currently operate under customs legislation, An Garda Síochána legislation and environmental legislation so I see it as my job to ensure they have their own consolidated and specified legislation. Importantly, I wanted to make sure this was in place before 1 July and this was the only vehicle that it was possible to do that in. I appreciate that it is not the norm but I did bring this to Cabinet on 9 March, very soon after publishing the maritime security strategy, and made it very clear that I wanted to bring legislation so that we could do this quickly. Obviously it has gone through the process of developing the amendments and going to committee. My Department has worked with me on that and I thank colleagues for the opportunity last week in the Chamber to discuss this and now the opportunity at the committee again.

On the second amendments, this was the first and only opportunity I have at the moment because there is no other legislation through defence to bring forward any other amendments. The first time the need for the aid to civil power and way in which it was used to be put in

primary legislation was raised was last year in the Department, before I was Minister. At the moment it is set out and provisions relating to the Defence Forces in regulations made under the Defence Act 1954. There is case law to stand this up. I do not have it here but I can provide it to the House to show it has been tested. The advice last year from the Attorney General was that it would be better to have this on a statutory footing. The amendments we see here do not change how these are going to be deployed. They do not change why they are needed. In the list I have, which I can provide to the committee, the main ways in which they are used are Central Bank patrols, airport security duties, explosive production, security guard, Central Bank security guard, prisoner escorts, explosive ordnance disposal call-outs, explosive escorts, Naval Service diving operations, euro cash-in-transit escorts, hospital guards, VIP visits, search operations, Air Corps, Air Corps repatriation flights and Naval Service. They are the reasons why the civil power is generally used. There are over 3,000 in the years I have here between 2021 and 2024 – I do not have the figures for 2025. The advice was very clear that to put this on a primary legislative footing would be a better thing to do. As Minister for Defence my view was that if I had the opportunity because I do not have legislation before the House to bring this forward and put it on primary legislation that I would do that.

The Deputy mentioned the protests. This was brought forward and worked on well before that. This does not change anything. Most people would realise that even during the recent fuel protests the support the Defence Forces provided was through the use of Bison. These are vehicles used to remove other large vehicles. There was no deployment of actual military personnel. That shows the considered and measured way in which the Defence Forces support An Garda in any of its duties.

The majority, if not all, of the C70 forms that come in on a yearly basis are for all of the reasons that I have outlined. I appreciate that, with the timing, the Deputies are trying to infer that there is something else here, but this was brought to the attention of my predecessor last year and it was brought to my attention early this year because of the fact that I was bringing forward the maritime legislation. I sought and asked if it was possible to bring this at the same time because it simply puts in primary legislation what is already there in secondary legislation. It does not change how they go about their business. It does not change the way in which the Defence Forces can operate. When I am told something would be better on a legislative basis, it is prudent that I as the Minister for Defence would move on that and that I get the support of others. I appreciate that it is not the norm and it is not the way amendments tend to come. Certainly, my primary focus was to make sure the maritime legislation was *in situ* by the summer and that we had it as quickly as possible. There is an opportunity later on, when the review more broadly of maritime security comes forward, that there will possibly be further amendments giving further legislative powers to the Defence Forces, but because of the timeline I wanted to ensure we brought this forward.

An Leas-Chathaoirleach: I thank the Minister.

Deputy Matt Carthy: I am not clear on one thing. Actually, I am not clear on a lot of things, to be quite frank about it. The Minister mentioned a number of times the Cabinet memo from 9 March. Did section 40B form part of that memo?

Deputy Helen McEntee: The amendments were not set out but I made clear in what I brought to the Cabinet that I would be bringing forward legislation on aid to civil power and

that it would be putting it on a statutory, primary legislative footing, as well as the intention to bring legislation on search and rescue and the maritime security piece.

Deputy Matt Carthy: Okay. I heard very clearly the Minister mention the maritime security aspect-----

Deputy Helen McEntee: It included aid to civil power-----

Deputy Matt Carthy: The Minister included at that point the aid to civil power, and she said that this was before her appointment as Minister-----

Deputy Helen McEntee: That was 9 March this year, but this was well before any inference that it was because of protests. That was 9 March. We know when the protests took place. This was brought well before that because of the advice last year from the Attorney General-----

Deputy Matt Carthy: Yes, so this matter came to the Attorney General. The Attorney General provided advice to the Government. Had that advice been sought?

Deputy Helen McEntee: I can come back to the Deputy on the exact reason as to why, but the advice at the time was that this would be a better legislative footing. My understanding is that there was not any specific reason for-----

Deputy Matt Carthy: Is it that the Minister cannot say why the Attorney General came out of the blue and said that his office had done this piece of work to help the Minister or did the Department seek from the Office of the Attorney General some clarification in respect of aid to civil power?

Deputy Helen McEntee: I can come back to the Deputy, but as is the case with any Department and the Attorney General, there is often an engagement on different pieces of legislation. Issues arise, and as they arise, there is often advice from the Attorney General or there is information sought-----

Deputy Matt Carthy: The question I have asked, and I think Deputy Kelly has asked the same question, is what issues arose. Was it a case that the Attorney General's office said to the Department that this was an issue it needed to be aware of? Was it a case that the Department went to the Attorney General? It speaks to the due diligence that has been done, if nothing else, in terms of this matter. The ultimate question is why is this change being brought now? The Minister is saying that it is being done on the back of the Attorney General's advice provided to her predecessors. I think it is a reasonable question for this committee to ask. What led to the Attorney General's advice? Was there an upcoming legal challenge? Was there a legal decision specifically that led to it? What was it that actually resulted in the Department receiving this piece of legal advice from the State solicitor?

Deputy Helen McEntee: There was no court case that I am aware of. The Deputy will know that often advice is provided by the Attorney General. I can provide more information to the committee but my understanding is that it was not based on-----

Deputy Matt Carthy: The problem is that we are expected to vote on this now.

Deputy Helen McEntee: It was not based on any specific issue. To be quite honest, as the Minister for Defence, if I am advised that it would be better to put something on a primary

legislative footing then I am going to take that advice. I think it is good practice by the Attorney General, by Departments and by our legal teams to make sure that, with any legislation, if it is suggested that it could be put on a primary footing, I would do that. There is case law that has stood up what is currently there. It is not to suggest that this is the reason it is being done, but again, the advice was provided. I think it is good practice, certainly as the Minister for Defence, to bring it forward.

Deputy Matt Carthy: Does the Minister not think it is reasonable to ask what led to that advice being sought or given? Yes, the Minister is right that the Attorney General provides different Departments at different stages with legal advice in respect of different matters, much of which is suggesting that there is a legislative necessity to bring forward a new Bill or to amend a current Bill, but this is usually based on something. It is either based on the Attorney General becoming aware of a legal lacuna, sometimes from a legal action and sometimes from a threatened legal action, or it is the Department having sought from the Attorney General's office clarification in respect of legislation it is operating under. It is astounding that the Minister cannot tell us which one it is in this case.

Deputy Helen McEntee: My understanding is that this was in relation to the use of force. This is just to clarify any of the operations that would have been in place here previously, including the ones I have outlined.

Deputy Matt Carthy: What does the Minister mean by that?

Deputy Helen McEntee: In the way that it is outlined, a member of the Defence Forces deployed in aid to civil power may use such force as is reasonable, proportionate and necessary in the performance of his or her duties. It is the case, and I outlined it, even, in the earlier amendment on maritime security, that it should be set out in primary legislation that this clarification is put in place, as in the previous regulations, which I have here and can provide to the committee. It makes no reference to that. I can outline what was in the previous regulations:

> (1) The Minister may, at anytime when occasion appears to require, direct that all or so many reservists as he thinks necessary be called out in aid of civil power, in the maintenance or restoration of the public peace.
>
> (2) Whenever direction is given by the Minister under this section, a notice shall be served on every reservist to whom the direction relates requiring him to attend at a time and place specified in such notice, and such reservists shall after that time, for the purposes of the Act, stand called out in aid of the civil power and remain called out in aid of civil power until the prescribed military authority directs his release.

This does not at this stage include the reference to being proportionate, necessary and reasonable in their duties. Over time, this is what has been included in all elements of the legislation. It is also included in the piece on the maritime security, where it refers to and sets out about the Chief of Staff, as soon as is reasonably practicable, regarding the exercise of the power by the Defence Forces pursuant to this section. This is putting on a statutory footing what is the case for other elements of legislation for the Defence Forces.

Deputy Matt Carthy: I am obviously not going to get clarification as to how this originated. The Minister is saying what the basis of the advice was. Essentially, it is to permit the Defence

Forces engaged in aid to civil power to use force as reasonable, proportionate and necessary, as it may be.

In terms of protests, the Minister mentioned that aid to the civil power would be known in the general public, as she set out, and the Minister mentioned assisting in cash transit and monitoring explosives manufacturers and such matters. Is it the Minister's view that the legislation that has been in place, the statutory framework, would have allowed, if deemed necessary, and if the Minister for justice asked the Minister for Defence for aid to the civil power, for the Defence Forces to be used in terms of personnel rather than vehicular assistance? Was that the case prior to this? Will that be the case subsequent to this amendment being passed?

Deputy Helen McEntee: In my understanding, the legal underpinning provides for that, yes. What this is doing is putting it very clearly in primary legislation. How that operates is a matter for the Defence Forces to set out. We do not set out here in the primary legislation how that would operate. It is a matter for the Defence Forces to set out how that is deemed as appropriate or reasonable use of force. What I am providing here is a clear legislative basis, on the advice of the Attorney General, where he is saying that primary legislation is the preferred option. I repeat that there is case law to stand up what is currently in regulation via secondary legislation. I think it is good practice as the Minister that, if there is advice there to introduce primary legislation, that is what I would do. I appreciate this is not always the normal channel that is used, but it is important that I do so where this advice is made, and this is the first opportunity I have as Minister to bring this forward**.**

Deputy Matt Carthy: My final point on this is that the role is different from most other roles that fall under the Defence Forces in that there is considerable autonomy left with the Chief of Staff in respect of operational matters. It is very clear that it is the Minister for Defence who shall give general approval for the deployment of the Defence Forces, as agreed with the Minister for justice. It is very clearly about where the Defence Forces would be used with the approval of, and usually with the instruction of, the Government, as opposed to the position with operational matters. As the Minister has outlined, this would include the deployment of members of the Defence Forces to police protests. Despite this, in dealing with this legislation the Minister can provide us with no clarity as to where exactly this all originated from. I repeat that this is underhand and a really worrying way of dealing with such important legislation.

Deputy Helen McEntee: The Deputy is trying to conflate two things. He is referring to protests that happened a year after anything was suggested here-----

Deputy Matt Carthy: No, to be clear, I am talking about future protests.

Deputy Helen McEntee: In general, that is what the Deputy is referring to.

Deputy Matt Carthy: No, to be absolutely clear, I am talking about future protests.

Deputy Helen McEntee: To be clear, the Deputy is trying to conflate the two.

Deputy Matt Carthy: No, I am not.

Deputy Helen McEntee: On the language used, the Defence Forces, unlike An Garda Síochána, for example, are subject at all times to civilian control. The Minister for Defence has ultimate responsibility. In any legislation when it comes to the Defence Forces, it will state

"the Minister for Defence". It is no different here. What the Deputy sees in subsection (2) is that the Minister may, subject to such conditions as he or she may specify, give general approval. As is the case now for all the measures I have outlined, in 99.9% of cases, if not more, the C70 will be used in this manner. Once the provision comes into effect, I will sign what is essentially an approval, which means that in every single instance the Defence Forces or An Garda Síochána will not have to come directly to me. There will be an ability to approve in the way that happens now. One might have an individual request every couple of days. This just references and replicates what is currently the case, but because the Defence Forces are at all times subject to civilian control, there will be a reference to the Minister. However, section 40B(2) will make it very clear that I can give general approval, and that is exactly what I would intend to do.

I do not propose to accept the amendment proposed by the Deputy. The reason I say this is that it provides that a copy of any direction issued under subsection (1) of section 40B, or any approval issued, should be laid before the Houses of the Oireachtas. The Deputy can appreciate that in one year there were 3,066, so there is quite a large number. The statistical information I have to hand and that the Deputy is referring to is already laid before the Houses. The data on deployments of members of the Defence Forces in aid to the civil power are provided by my Department annually in a report by it and the Defence Forces. This report is laid before the Houses of the Oireachtas. It is appropriate that a report with all of the information be laid before the Houses, as opposed to up to 3,066 individual reports, with some being laid every couple of days, if not daily. There is definitely a report laid before the Houses and I am happy to provide a copy of it to show Deputies exactly how the information is presented.

Deputy Matt Carthy: I will just make a couple of points in response to the Minister's answer to me. To be very clear, my questions were in respect of future protests. I asked whether the existing legislation would have covered protests, but I was referring to future protests. What the Minister is saying is that this legislation does allow the Defence Forces personnel to be used.

The Minister stated correctly that a number of provisions of the Defence Act allow the Minister to give general approval for various actions. Is there any other section relating to the Defence Forces, in terms of aid to the civil power, that includes a provision such as the one that refers to "such class or classes of assistance as may be agreed with the Minister for Justice, Home Affairs and Migration"? Is there any other aspect of the Defence Forces in respect of which a Minister other than the Minister for Defence has a role in giving approval to the Defence Forces for any actions?

Deputy Helen McEntee: I will obtain clarity on this. The Defence Forces cannot deploy themselves overseas, so there would be a reference to that.

Deputy Matt Carthy: To the Minister for Defence, not another?

Deputy Helen McEntee: To me as Minister for Defence, not to another Minister.

Deputy Alan Kelly: We will edge down a small bit further. This all comes down to subsection 40B(3). If I am reading correctly between the lines of all the interaction up to now, the Minister needed to include the subsection so force could be used that is reasonable, proportionate and necessary. This is because it is not written anywhere and has no current legislative base. Is that correct?

Deputy Helen McEntee: It is not specific in the regulation, no.

Deputy Alan Kelly: Okay.

Deputy Helen McEntee: However, it is the case in other forms of legislation for the Defence Forces.

Deputy Alan Kelly: Okay, but it is not-----

Deputy Helen McEntee: It is to align-----

Deputy Alan Kelly: But it is not in the 1954 Act.

Deputy Helen McEntee: It is not in this regulation.

Deputy Alan Kelly: Can the Minister read out the regulation under which she would be acting today, 19 May, if there were a situation outside where the Defence Forces were needed? On what legislative basis would she be acting?

Deputy Helen McEntee: I apologise, but-----

Deputy Alan Kelly: Let me repeat the question. If we need a measure put in under section 40B(3) – I am summarising the Minister's interaction – and it is not in the regulation or legislation, presumably the country, or the Minister, is operating under the 1954 Act.

Deputy Helen McEntee: We are.

Deputy Alan Kelly: Can the Minister read out the part that gives cover to ensure aid to the civil power is covered as of today, before we pass this legislation?

Deputy Helen McEntee: It is spread out. The specific paragraph is not in it but it is spread across the legislation. For example-----

Deputy Alan Kelly: Sorry, but I do not understand.

Deputy Helen McEntee: For example, there are references to firing conditions to be observed, revocation, reports, disposition of troops and principles. The references are spread across different areas, but what we are saying, and what the advice to me and the previous Minister states, is that it is for the Defence Forces and the Chief of Staff to set out what constitutes the reasonable use of force and what is proportionate and appropriate, as opposed to setting it out in the legislation here. Again, I can provide a copy of the current regulation. I am satisfied that what is in it ensures actions that have been taken by the Defence Forces through aid to the civil power are covered under law. However, what was proposed to me is what we have here now, namely a proposal to be put into primary legislation. The section the Deputy mentioned reflects something that, in any military operation, would be available. This would be developed by the Defence Forces. Subsection (3) would be developed specifically by the Defence Forces. What we are proposing is to deal with this succinctly in subsection (3) rather than having the set of relevant provisions spread across all the regulations. We can provide the regulations to the Deputy.

Deputy Alan Kelly: Okay, so it is spread across the regulations. Could the Minister give us an example of where she believes this is covered and state where she is reading from?

Deputy Helen McEntee: For example, regarding the disposition of troops, according to section 3(3) the officer commanding the military party-----

Deputy Alan Kelly: Which part is the Minister reading from?

Deputy Helen McEntee: This is from the regulation. I apologise if the Deputy does not have this.

Deputy Alan Kelly: What regulation?

Deputy Helen McEntee: CS1.

Deputy Alan Kelly: We should not be going through this like this, by the way. This is crazy stuff.

Deputy Helen McEntee: Again, this is CS1.

Deputy Alan Kelly: What is CS1?

Deputy Helen McEntee: It is the current regulation and it refers to the employment of troops in aid of the civil power in the maintenance or restoration of the public peace.

Deputy Alan Kelly: On what legislation is that regulation based?

Deputy Helen McEntee: This is not in primary legislation but it is made under the Defence Act 1954. It is secondary legislation.

Deputy Alan Kelly: Let me refer to the history of the regulation the Minister is reading from. There is a reason I am asking my question, obviously. There is the legislation of 1954. What is the regulation called?

Deputy Helen McEntee: It is on the employment of troops in aid of the civil power in the maintenance or restoration of the public peace.

Deputy Alan Kelly: That was a regulation built out of the legislation. When was that regulation introduced?

Deputy Helen McEntee: In 1967.

Deputy Alan Kelly: In 1967.

Deputy Helen McEntee: In 1967.

Deputy Alan Kelly: That is one of many.

Deputy Helen McEntee: Again, I believe that is another reason it is important for us to update our legislation and why we were advised to put the provision into primary legislation. The regulation was introduced in 1967. It is what has been in place in respect of the C70s in respect of aid to the civil power. Again, as I have said, there is already case law that has stood this up. However, the recommendation is that it be put in primary legislation.

To answer the Deputy's question and give an example, under the heading on the disposition of troops, the officer commanding the military party shall be solely responsible for deciding the action the troops under his command are to take and the degree of force, if any, they are to use in the particular circumstances. It also states that, depending on the situation, the action

necessary to restore law and order may vary from mere appearance of troops to the use of all forces at the commanding officer's disposal. However, this is something that is generally set out and provided for by the Defence Forces, through the Chief of Staff. What is set out here allows for that. Section 3 on aid to civil power states that a member of the Defence Forces deployed in aid of the civil power may use such force as is reasonable, proportionate and necessary in the performance of his or her duties. This is the case in any military operation that they take part in, not just in the aid to civil power.

Deputy Alan Kelly: The Minister said earlier that the advice to her was that it was the better thing to do. If we did not do this, would anything change?

Deputy Helen McEntee: Most likely, no.

Deputy Alan Kelly: What does the Minister mean by "most likely"?

Deputy Helen McEntee: Sorry. No.

Deputy Alan Kelly: Is the answer "Most likely" or "No"?

Deputy Helen McEntee: No. Nothing would change. It has been made very clear to me that the case law has stood up to what is there. However, the advice is that it would be better to have this in primary legislation. It does not change the way in which this is done. The C70 form that is asked for by the Garda of the Defence Forces, the approval, the way in which the Defence Forces would be deployed, none of that is changing in terms of how it is going to be approached. This is simply putting it on a statutory footing.

Deputy Alan Kelly: Why now? The Minister said it was her predecessor's work. Was this prompted by the Minister's Department or was it prompted by the Attorney General? That is the first question. When was the decision made to change this and put it into a Bill? My third question is, is there a need for this to be done prior to taking up the EU Presidency? Those are my three questions.

Deputy Helen McEntee: In regard to the last question, no.

Deputy Alan Kelly: Okay. That is clear.

Deputy Helen McEntee: The advice was obtained last year. I will have to get the date and come back to Deputy Kelly on that in terms of when it was given.

As to why now, as Minister, I see it as my role to bring forward legislation. In the previous Departments I have been in, I brought forward a lot of legislation. A number of Bills are coming down the line in my Department but they are not currently ready at the moment. If there was advice from the Attorney General, I would see it as my role to bring forward legislation. It is for the reason that I had a vehicle-----

Deputy Alan Kelly: It was the Department that prompted this, not the Attorney General.

Deputy Helen McEntee: I will come back to the Deputy to provide absolute clarity. I do not want to give a wrong answer, so I will get absolute clarity.

Deputy Alan Kelly: It is a pretty obvious question for this committee to ask.

Deputy Helen McEntee: I will revert with that answer.

Deputy Alan Kelly: Does the Minister want to confer with her colleagues? A Leas-Chathaoirligh, this is a pretty obvious question to ask: was this prompted by the AG or was it prompted by the Department? If it was prompted by the Department as a clean-up exercise, that is one thing. If it was prompted by the AG, that is probably more concerning from a committee point of view because there is probably a legal issue here that the AG is concerned about.

Deputy Helen McEntee: It is often the case that the Attorney General and Departments engage. However, I do not to give an incorrect answer, so I will revert to clarify the exact time.

Deputy Alan Kelly: It is not just about the time.

Deputy Helen McEntee: Again, this is not coming from any specific incident that I am aware of. This has not come from any specific issue.

An Leas-Chathaoirleach: The Minister can come back to us on it.

Deputy Helen McEntee: Absolutely, and I think it would be better that I do and provide that information.

Deputy Alan Kelly: I have no problem with that, but it would have been expected that the Minister would have the answer to this pretty obvious question, to be fair, a Leas-Chathaoirligh. The Minister will revert with the date and who prompted it.

We are convinced that, if aid to the civil power was necessary today, nothing would be different regardless of whether this legislation was in place. Is that correct? That is 100% correct.

The reports were mentioned. How often are reports on such use laid before the Oireachtas?

Deputy Helen McEntee: Once a year. At the moment, my Department is compiling the 2025 information. That will be laid before the Houses soon. I do not have an exact date but it is generally once a year.

Deputy Alan Kelly: I do not mind not having a date. It might be a suggestion that, given we are putting this into primary legislation and there is a necessity to put it into primary legislation for some reason that we actually do not know, the reports should be laid before the Houses more frequently. In the spirit of co-operation and from a democratic deficit point of view, if I table an amendment on Report Stage requiring reports to be laid every quarter, the Minister might accept it purely because of the amount of these actions and because we as the Oireachtas should scrutinise them more often, especially now that there is a concern about why this provision has needed to be brought in all of a sudden. For the right reasons, if I table that amendment, the Minister might consider it.

The Minister said she needed to do this, and that is fine, but this is not the vehicle for doing it. This is not the legislation for doing it. Nobody on this committee could believe that this was the way we were going to do it. Why did the Minister not consider introducing a Bill herself? This is a piece of legislation on its own. I asked her about the urgency and the EU Presidency but there does not seem to be any reason. Case law seems to cover it. This a tidy-up exercise according to the information in front of us and the discussion we have had. Why did the Minister not introduce a Bill, as small as it might be, if there is not that urgency? To call a spade a spade and to be fair to the Minister, Deputy O'Callaghan, and given what

happened in relation to the fuel protests, the Minister, Deputy McEntee, admitted herself that, while that might not have been the reason, the timing is not great. Why did the Minister, Deputy McEntee, not introduce legislation herself from the Department for Defence in relation to this?

Deputy Helen McEntee: Deputy Kelly has himself said that what we are doing here, and what I am doing here, is responding to a recommendation. It does not change how the C70 is deployed. It does not change how the Defence-----

Deputy Alan Kelly: The Minister told us that. I did not-----

Deputy Helen McEntee: I am saying very clearly that it does not. What I have set out here does not change it. What it does is put it on a primary legislation footing. It does not change any of the ways in which the Defence Forces may be deployed in respect of many of the areas that I have outlined. It does not change the engagement that takes place between An Garda Síochána and the Defence Forces. My view as Minister for Defence was that I would take the opportunity. I appreciate what Deputy Kelly is saying about how this is not the norm and I know it is not, but it has been the case in the past where other Departments have introduced amendments - not larger pieces of legislation, but amendments - through other vehicles that were available to them. My primary intention was to bring forward the maritime security legislation. There is a time sensitivity to that. There is no time sensitivity to this, but for all of the reasons I have outlined, these are two amendments that do not change the practice or the way in which any member may be deployed. They simply change it from secondary to primary legislation. What we have discussed as regards the protests had not yet happened. For me, this was a matter of bringing forward this legislation, doing my job as Minister for Defence and making sure that where there was advice, it was acted on when we could.

Deputy Alan Kelly: The clerk will have taken a note. There are quite a number of questions on which the Minister is to revert. Can we set a short timeline well before Report Stage to make sure we get those? Obviously, I presume that the answers come pretty quickly. Can we get a response by next week on those questions?

Deputy Helen McEntee: There is one main answer really, but the others are to provide the regulation and any of the other elements-----

Deputy Alan Kelly: There were questions about timelines as well.

An Leas-Chathaoirleach: I believe that is matter for the Department. Maybe-----

Deputy Helen McEntee: We will be back.

An Leas-Chathaoirleach: Is Deputy Kelly happy that his amendment has been dealt with or would he like to speak to it further?

Deputy Alan Kelly: I do not want to speak to it further. In the spirit of co-operation and in light the democratic deficit that we see here, I will table another amendment, which I hope the Minister will take, on shortening the reporting period, given the scale of what we are talking about here. She might engage with us on that.

Deputy Ruth Coppinger: I am not a member of the committee and I had no knowledge that the Minister was bringing this forward. I would say that most TDs would have been unaware. Why is this needed? The Minister has not given any clarity on that. Why is it being rushed through? Correct me if I am wrong, but I am deducing that the Minister wants to make this

measure primary legislation to give more power to an individual soldier who may not feel confident or want to intervene in, perhaps, protests and strikes.

The Government got a fright from the recent events in this country where people blockaded critical infrastructure, roads and so on. That has the Department of justice or the Department of Defence worried. I am gobsmacked that yet another thing has been added on to this Bill to assist the Garda in aid of the civil power. A lot of people were shocked by the protests and the statement by the Minister for justice about bringing in the Army. I was not shocked because I remember times when the Army was used in strikes. Bin workers had their heads battered on Henry Street. I am old enough to remember that but most people would not. It seems to me now that the Government has got worried that maybe it needs to give more legal backing to the Army intervening against ordinary people. We are not talking about terrorists, foreign actors or anything like that.

I think it will be news to a lot of people that this provision is being brought in now in this Bill along with a million and five other things.

Deputy Matt Carthy: The difficulty with the Minister providing additional information next week is that the Bill will already have passed Committee Stage and these amendments will be included in the legislation. We have no way of knowing that Report Stage will not be guillotined, which is another hallmark of the Bill's parent Department under its current Minister. I could continue for another hour because there are so many questions, but I am conscious that there are Deputies who are not members of this committee who are here to speak to, primarily, the group of amendments containing amendment No. 10 and have taken time off work to be here for that. All of that speaks to this dysfunctional approach.

There is a clear solution. I have not heard any member raise any question or objection in respect of section 40A in the amendment, which is what she has told this committee is the priority and the reason this route was taken in order to have it in place with regard to maritime security. The simple answer is for the Minister to withdraw the aspects relating to sections 40B and 40C and deal with them in the appropriate place, which is the sectoral committee that has responsibility for defence, and in a way that will allow proper pre-legislative scrutiny and passage through the House in an appropriate way. That is the compromise. If we accept as bona fide, as outlined by the Minister, that there was a deficiency in the legislation, which we all accept and appreciate, it was in respect of maritime security. Section 40A deals with that. Sections 40B and 40C, from what the Minister has told this committee, are incidental and clean-up mechanisms that have come about as advice from the Attorney General. I suggest that the Minister remove them from her amendment. It will be passed and the matter of urgency she has outlined will be dealt with, and the issues and concerns that have been raised by members here can be dealt with at a later stage through a more appropriate mechanism.

Deputy Helen McEntee: Obviously, it is not for me to decide how quickly or how this legislation passes, but there are other opportunities to engage on these matters. I have been very clear that I will come back and provide any answers or clarifications to the Deputies.

I want to be clear because there is again an attempt to conflate two things. This is not as a result of anything that has happened in the last month. I could not have been clearer when bringing this to the Cabinet on 9 March that this was being introduced and that it would not in any way change the way in which the Defence Forces worked with An Garda Síochána, as they

have done for decades, or the way in which a C70, if sought, would be deployed. What this simply does is take what is currently there in secondary legislation and put it into primary legislation. I am happy to provide any clarifications.

We had an opportunity to debate this in the House last week, we have an opportunity to discuss this here and now and the legislation will progress in the normal manner, but there is no intention here other than to put in primary legislation what is currently in secondary legislation. It does not change the structure of how the process will operate. This is something that has been worked on by my Department since last year and that I flagged on 9 March. Again, the attempt to conflate this with anything that has happened in the last month simply does not ring true and is not borne out by any of the timelines or facts.

Deputy Mark Ward: This is absolute bonkers. We have a miscellaneous Bill that deals with a wide range of issues that are not getting the scrutiny they deserve. As I said during pre-legislative scrutiny, each aspect could have been dealt with on its own but they have been thrown in together.

For the benefit of the people who are watching, we are tagging something to do with defence onto something that deals with firearms, extradition, probation, counselling notes for sexual assaults, arrest warrants and sex for rent. The Minister for Justice, Home Affairs and Migration has come here today and said that he will bring a whole raft of other amendments to this miscellaneous Bill, including on the issue of historical offences involving gay men, an amendment to the International Criminal Court Act 2006 and an amendment to the European Arrest Warrant Act 2003. This is bonkers. I would not have any confidence that this is the right way of doing things. If people are looking in here, I would say that they are shocked by how this committee is being treated.

No one has mentioned any issues with the maritime defence element. I do not think anybody has a problem with what the Minister for Defence is trying to do there. She should have introduced separate legislation on it instead of tagging the provision onto this Bill, but we are where we are. I do not think that she answered the question on why we needed to tag the provision onto this legislation when there is no rush around this legislation and it does not change anything. A question was asked and I do not know if it was answered, but why did the Minister not introduce her own legislation to deal with the issue that we are talking about? She could have done that and put it forward for pre-legislative scrutiny instead of tagging it onto something that we did not have time to deal with.

Deputy Helen McEntee: I have answered that question. This was a vehicle through which I was able to bring the provision forward. It is not changing any practice of the Garda or Defence Forces. This is changing from secondary legislation to primary legislation what is already in practice. From my point of view, this is an amendment to put a measure on a primary footing. It does not change the actual practice. I have been very clear and can set that out again. I appreciate that we have had an opportunity in the Dáil, and also here now, to discuss this matter as the legislation progressed, but this is a small change compared to what I appreciate is a large-scale miscellaneous Bill. I think I have answered that question quite broadly.

Deputy Catherine Callaghan: A lot has been said about the numerous pieces of this Bill, which I accept. I always find it interesting that there is an awful lot of discourse about us not

passing enough legislation and that the justice committee is not doing enough. Here are the Ministers bringing forward legislation. Granted, we would all like more time to talk about things, but the laws that are being brought forward are to protect our citizens. The Ministers are seeking to place the legislation on a primary footing, particularly the provisions brought forward by the Minister, Deputy McEntee. That is welcome. The Minister has outlined the reasons. We are all agreed that section 40A on the maritime strategy and legislation is welcome, important and time sensitive, in that it needs to be introduced by 1 July prior to Ireland taking over the EU Presidency. It is efficient, then, to include the other matters that need to be tidied up. As the Minister said, they are not going to change anything in the way that the Defence Forces operate in aid to the civil power. However, it does give a degree of security to have it in primary legislation, which I welcome. I fully support the amendments.

Deputy Helen McEntee: I thank the Deputy.

Amendment put:

The Committee divided: Tá, 6; Níl, 3.	
Tá	Níl
Brabazon, Tom.	Carthy, Matt.
Butterly, Paula.	Kelly, Alan.
Callaghan, Catherine.	Ward, Mark.
Dolan, Albert.	
O'Callaghan, Jim.	
O'Sullivan, Pádraig.	

Amendment declared lost.

Section 1, as amended, agreed to.

Sections 2 and 3 agreed to.

SECTION 4

An Leas-Chathaoirleach: Amendments Nos. 2 and 36 are related and may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 2:

In page 7, between lines 8 and 9, to insert the following:

"(c) by the insertion of the following section after section 4C:

"Seizure and detention of firearms or ammunition by An Garda Síochána in interest of public safety, security or peace

4D.(1) Where a member of An Garda Síochána who is—

(a) in a public place,

(b) in any other place—

(i) under a power of entry authorised by law, or

(ii) to which he or she was expressly or impliedly invited or permitted to be,

or

(c) carrying out a search authorised by law,

finds or comes into possession of any firearm or ammunition and has reasonable grounds for suspecting that, in connection with the firearm or ammunition, there is a danger to the public safety, security or the peace, he or she may seize and detain said firearm or ammunition for a period not exceeding 14 days.

(2) Where a member of An Garda Síochána has seized and detained a firearm or ammunition in accordance with subsection (1), a member of An Garda Síochána not below the rank of superintendent may, before the expiration of the period specified in subsection (1), if he or she is satisfied that—

(a) there are reasonable grounds for suspecting that the possession, use or carriage of the firearm or ammunition will endanger the public safety, security or the peace, and

(b) there are sufficient grounds, having regard to paragraph (a), to consider revocation under section 5 of the firearm certificate in respect of the firearm or ammunition seized and detained under subsection (1),

authorise the detention of the firearm or ammunition for a further period not exceeding 21 days so that an issuing person may determine whether the firearm certificate should be revoked under section 5.

(3) A person who obstructs or impedes a member of An Garda Síochána in the exercise of his or her powers under subsection (1) shall be guilty of an offence under this section and shall be liable on summary conviction to a class A fine or imprisonment for a term not exceeding six months or to both.

(4) This section shall not affect any other power, under any enactment or the common law, to seize or detain a firearm or ammunition.

(5) In this section, 'enactment' has the same meaning as it has in the Interpretation Act 2005.",".

This amendment proposes to amend section 4 of the Bill, which in itself amends the Firearms Act 1925. I want to put in a new paragraph, section 4D, which will provide a statutory basis for a member of An Garda Síochána to seize and temporarily detain a lawfully held firearm or ammunition where the member of An Garda Síochána has reasonable grounds for suspecting that, in connection with that firearm or ammunition, there is a danger to "the public safety, security or the peace". This is a targeted and proportionate measure to address the legislative gap. The Garda sometimes needs the tools to respond swiftly and effectively to seize a lawfully held weapon when there is an immediate risk to public safety.

Deputy Alan Kelly: I thank the Minister. I am glad he said what he said. I was looking around corners when I saw this pop up because he did not flag it on Second Stage. To be clear, this amendment gives members of the Garda the power to seize a firearm that they come across but that is legally held.

Deputy Jim O'Callaghan: Yes.

Deputy Alan Kelly: Obviously, the Garda has the power to take firearms and ammunition that are illegally held. In scenarios where gardaí are searching or going about their job and duties, and where they feel there is a reason to take a firearm off somebody legally holding one, this amendment gives them the legislative basis for doing so. There was a lacuna or gap there.

Deputy Jim O'Callaghan: There was.

Deputy Alan Kelly: Have there been legal cases in this regard? How was this gap spotted?

Deputy Jim O'Callaghan: No. This is something that has emanated-----

Deputy Alan Kelly: This seems like it is common sense, but how was it spotted?

Deputy Jim O'Callaghan: The Garda recognise that there is a gap in the legislation if they go to a house or an abode and a person is there about whom there could be issues in terms of the mental health of the individual concerned-----

Deputy Alan Kelly: Yes, I understand.

Deputy Jim O'Callaghan: -----and concern about public safety. In that instance, the Garda has no basis upon which to seize a lawfully held weapon. This change will fill that gap. If we look at section 24 of the 1925 Act, and section 5, which provides for a revocation of a firearms certificate, that is a process that has to be gone through. There is nothing in our law, however, to address situations where gardaí are concerned about a person having a lawfully held shotgun. That is a threat to the public and I think it is a gap that needs to be filled.

Deputy Alan Kelly: I will be supporting this amendment. I just wanted to get an explanation of whether this was the reasoning behind the amendment.

Deputy Jim O'Callaghan: It is.

Deputy Alan Kelly: I have a technical question. If someone has a legally held firearm and it is obvious to gardaí that the person is suffering from some form of mental health episode or something like that, they can take the firearm. There can be other reasons besides that, including the situation, circumstances, etc. Does this amendment cover both a firearm left in a premises or as part of somebody's property - it covers that obviously - and also disarming somebody?

Deputy Jim O'Callaghan: If we look at subsection (1), it can happen in a public place or any other place. This means that if a garda has a warrant to go onto somebody's property and becomes aware that the person has a lawfully held firearm, it can be seized in that instance. It is not just for the purpose of mental health concerns, which was the example I used. It is for situations where "there is a danger to the public safety, security or the peace". Now, that could be a situation arising where somebody is going through a mental health episode, but there are broader areas than that.

Deputy Alan Kelly: The Garda can disarm somebody.

Deputy Jim O'Callaghan: Members of the Garda can disarm somebody, obviously. They can seize and detain a firearm for a period of 14 days. Obviously, if somebody is threatening a member of An Garda Síochána with a firearm, then they are entitled to disarm that person.

Deputy Alan Kelly: That is fine. I am just asking if it extends to everything, because it seems to me to be a pretty obvious amendment. It is kind of strange that we have got this far in life without it, to be honest.

Deputy Jim O'Callaghan: I know, but I will not criticise people. The Garda says it is necessary, and I can understand why it is necessary, as every member of the committee can, I am sure.

Deputy Matt Carthy: I want to put on record that there are a number of amendments that would, under normal circumstances, cause me to have questions for the proposers. Over the next while, we are dealing with amendments from the Minister, Deputy Kelly and Deputy Ward. I am just conscious of the point made earlier that we have people who have gone to great lengths to be here for a particular aspect of the debate. I have sought clarification, which I think is that we cannot jump amendments-----

An Leas-Chathaoirleach: Skip them.

Deputy Matt Carthy: -----and come back to them, which is unfortunate. I will just say that there are aspects of the amendments we are dealing with that in the normal course of events it would be appropriate for me to ask questions about, but because of the circumstances we have found ourselves in, I do not think that approach is available to us right now.

An Leas-Chathaoirleach: Does the Minister wish to comment?

Deputy Jim O'Callaghan: No. I agree with Deputy Carthy. I would like to speed things up, so I have nothing else to add.

Deputy Alan Kelly: That is a rarity.

Amendment agreed to.

Section 4, as amended, agreed to.

Sections 5 to 7, inclusive agreed to.

NEW SECTIONS

Deputy Jim O'Callaghan: I move amendment No. 3:

In page 8, between lines 25 and 26, to insert the following:

"Amendment of Judicial Council Act 2019

8. The Judicial Council Act 2019 is amended—

(a) in section 12—

(i) in subsection (1)(a), by the substitution of "or their replacements nominated under subsection (2A) or (3), as the case may be" for "or their replacements nominated under subsection (3)",

(ii) in subsection (2)(a), by the deletion of ", who shall act as chairperson of the Board",

(iii) by the insertion of the following subsections after subsection (2):

"(2A) The Chief Justice may, from time to time, nominate in writing a judge (other than a judge who is a member of the Board) of the Supreme Court, Court of Appeal, High Court, Circuit Court or District Court to perform the functions of the Chief Justice as such *ex officio* member during such period or on such occasion or occasions as are specified in the nomination.

(2B) The Chief Justice shall be the chairperson of the Board and—

(a) shall nominate another member of the Board to act as chairperson during the period or on such occasion or occasions referred to in subsection (2A), and

(b) may, at any other time, nominate another member of the Board to act as chairperson during such period or on such occasion or occasions as are specified in the nomination concerned.",

and

(iv) in subsection (3)—

(I) by the substitution of "An *ex officio* member of the Board, other than the Chief Justice, may" for "An *ex officio* member of the Board may", and

(II) by the substitution of "of which he or she is President" for "of which he or she is Chief Justice or President, as the case may be,",

and

(b) in section 44—

(i) in subsection (1)(a), by the substitution of "their replacements nominated under subsection (2A) or (3), as the case may be" for "their replacements nominated under subsection (3)",

(ii) in subsection (2)(a), by the deletion of ", who shall act as chairperson of the Committee",

(iii) by the insertion of the following subsections after subsection (2):

"(2A) The Chief Justice may, from time to time, nominate in writing a judge (other than an elected member of the Judicial Conduct Committee) of the Supreme Court, Court of Appeal, High Court, Circuit Court or District Court to perform the functions of the Chief Justice as such *ex officio* member during such period or on such occasion or occasions as are specified in the nomination and a reference in this Act to the Chief Justice as such *ex officio* member of the Judicial Conduct Committee shall, during such period or in respect of such occasion or occasions, be taken to be a reference to a judge so nominated.

(2B) The Chief Justice shall be the chairperson of the Judicial Conduct Committee and—

(a) shall nominate another member of the Judicial Conduct Committee who is a judge to act as chairperson of that Committee during the period or on such occasion or occasions referred to in subsection (2A), and

(b) may, at any other time, nominate another member of the Judicial Conduct Committee who is a judge to act as chairperson during such period or on such occasion or occasions as are specified in the nomination concerned.",

and

(iv) in subsection (3)—

(I) by the substitution of "An *ex officio* member of the Judicial Conduct Committee, other than the Chief Justice, may" for "An *ex officio* member of the Judicial Conduct Committee may", and

(II) by the substitution of "of which he or she is President" for "of which he or she is Chief Justice or President, as the case may be,".".

This is a short amendment. It is designed to facilitate the Chief Justice, who has a lot of non-judicial functions. One of them is in respect of his membership of the Judicial Council and the Judicial Conduct Committee. I am proposing this amendment as an efficiency measure to reduce the non-judicial obligations of the Chief Justice and similar obligations on ordinary judges of the Supreme Court, thereby allowing them more time to deal with pressing judicial matters arising for the Chief Justice and the Supreme Court.

This provision will amend sections 12 and 44 of the Judicial Council Act 2019 for the purpose to enable the Chief Justice to nominate a judge of the Supreme Court, Court of Appeal, High Court, Circuit Court or District Court as a replacement for him or her on the board and the Judicial Conduct Committee, rather than just a judge of the Supreme Court as is currently provided for. It does the same in respect of the Judicial Conduct Committee.

Amendment agreed to.

Deputy Alan Kelly: I move amendment No. 4:

In page 8, between lines 25 and 26, to insert the following:

"PART 4

AMENDMENT OF POLICING, SECURITY AND COMMUNITY SAFETY ACT 2024

Amendment of Policing, Security and Community Safety Act 2024

8.The Policing, Security and Community Safety Act 2024 is amended—

(a) by the insertion of the following section after section 98:

"Intimidation

98A.A person who attempts in any way to coerce or intimidate a member, or any other person, in connection with the performance by the member of his or her functions as such a member shall be guilty of an offence and shall be liable—

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

(b) on conviction on indictment, to a fine not exceeding €30,000 or to imprisonment for a term not exceeding 5 years, or to both.",

and

(b) in section 50, by the insertion of the following subsection after subsection (3):

"(4) Regulations relating to the suspension from duty of a member under this section shall include provision for an appeal by the member concerned against such a suspension.".".

This amendment is to address issues raised by the Garda Representative Association, GRA, at its conference. I hope the Minister will work with me on this amendment. It is to deal with the intimidation of gardaí and introduce an independent appeals mechanism for those gardaí who are suspended. We all know about what has happened down in Limerick in recent times in relation to the number of gardaí, 11, who have been suspended. After many years, a number of them have now been told they can go back to work.

The first part of this amendment makes it an offence for anyone who attempts "to coerce or intimidate a member" of An Garda Síochána going about their duties. It also covers family members, partners or close friends who may be targeted. It also extends the offence to cover those being coerced or intimidated in respect of the actions of a garda.

This legislation is an omnibus Bill. This amendment should really be going into a Bill dealing with An Garda Síochána, but given that the kitchen sink has gone into this Bill, this is something I said we would put forward.

I believe it is absolutely necessary to support An Garda Síochána, particularly in modern times when phones are being put in their faces and everything is being recorded. That is the manner in which they have to go about their duty and intimidation of members of An Garda Síochána is at a level we have never seen before. Something has to be done about it. The Minister may not accept this amendment as constructed but I would appreciate if he would work with us as regards a Report Stage amendment that we could bring in to deal with this issue of intimidation. It cannot continue. I live amongst gardaí; some of my best friends are gardaí. I represent Templemore. We all know very decent ordinary gardaí, and gardaí at every level are decent. There is a degree of intimidation of them, their families, their colleagues and people around them, people who are even just associated with them, because of the fact they are being recorded constantly. There is abuse being thrown at them across all formats - online, offline, in their faces, from every direction. I would appreciate if the Minister considered this as an attempt to deal with what the GRA has been calling for for some years. It would be an offence and somebody found guilty of it would be liable to a fine or a term of imprisonment, depending on the situation.

The second part of this amendment is to bring in regulations related to the suspension from duty of a member to include provision for an appeal by that member against such a suspension. The reason the GRA want this brought in is obvious. We all know about the number of gardaí who are suspended at the moment. It has dramatically increased in the last number of years. I have spoken at length, as the Minister is well aware, about what has happened down in

Limerick and the wider mid-west, that being, the number of gardaí who have been suspended and have now no case to answer. It is shocking. I will not repeat everything I have said in relation to that. Surely in any right scenario, there should be a system whereby gardaí being suspended can make an initial appeal against that. First, it is a question of decency. Second, it could help deal with some of these issues a lot quicker because the length of time gardaí are suspended for is crazy. We might find some mechanism within An Garda Síochána for a bit more proportionality as regards how it deals with some of the disciplinary issues. That might be done a lot quicker if there was an appeal process that the Garda knew it would have to go through rather than just suspending gardaí on the spot. It may be another mechanism by which the Garda could deal with things internally, particularly from a disciplinary point of view. There are a number of occasions where gardaí are suspended but where a proper internal disciplinary process, dealt with fairly and quickly, would be a far more efficient way of dealing with things. Obviously not all cases, but there were probably some cases in the past where the sledgehammer was brought out instead of what should have been done. I am sure the Minister will agree with me on this. The second part of this amendment is to try to deal with that. I would hope that the Minster would embrace the two sections of this amendment in a collegial way.

Deputy Jim O'Callaghan: I thank Deputy Kelly for tabling this important amendment. There are two parts to it. I agree with Deputy Kelly that anyone who is intimidating or harassing a member of An Garda Síochána because they are carrying out their duties is engaged in reprehensible behaviour. It is criminal behaviour, they should be prosecuted and, if convicted, they should face the full penalty of the law. We spoke earlier about the blockades. Regrettably, during and after those blockades, there was a lot of harassment of members of An Garda Síochána, particularly online. Politicians are well aware that anonymous social media accounts are the platform of the coward. Many politicians are exposed to it. Similarly, gardaí are as well. I just want to echo what Deputy Kelly said in terms of that. Anyone engaged in this behaviour should recognise that they are involved in attacking the community, not just members of An Garda Síochána.

Of course I am happy to examine the matter and work with Deputy Kelly, obviously in consultation with the Garda Commissioner, the Attorney General and other stakeholders, on the need for a specific offence along the lines he has suggested in the first part of his amendment. However, while I will work with the Deputy, who has highlighted this and called it intimidation, I have to point out that, at present, we do not have a criminal offence of intimidation. We have the criminal offences of coercion and harassment. It is noteworthy that, if someone is involved in trying to coerce a garda, the maximum penalty is larger than what has been set out by Deputy Kelly here. There is an unlimited fine if someone is convicted on indictment. In terms of harassment, someone convicted of harassing a member of An Garda Síochána can face up to ten years in prison. That is a message that needs to be got out there and people need to be aware of it.

Also, under section 19 of the public order Act 1994, anyone convicted of assaulting or threatening to assault a peace officer, which includes a garda, is liable for imprisonment of up to 12 years. Section 41 of the Criminal Justice Act 1999 contains an offence of intimidating a person who is assisting a garda in an investigation or a witness in criminal proceedings. Section 5 of the Non-Fatal Offences against the Person Act 1997 includes the offence of threatening to kill or cause serious harm. Section 9 of the 1997 Act contains an offence of compelling another

person to abstain from doing or to do any lawful act, including by the use of violence or intimidation. There are a series of legislative powers there that can be used to prosecute individuals who are involved in harassing and intimidating gardaí.

We will all be aware that individuals – I am aware of two - have recently been convicted and received serious sentences for intimidating Members of the Oireachtas. I similarly would like to see, and it is inevitably going to happen, people being convicted of intimidating or harassing members of An Garda Síochána. It may take that for the message to get out more broadly that this type of behaviour will not be tolerated by the State.

I will work with Deputy Kelly. I cannot give him a guarantee that I will bring forward an offence provision on Report Stage. I have to consult with others and I do not want to do something where we have a series offences in different areas. We need to see what is the most powerful weapon for the purpose of seeking to protect the Garda. I thank the Deputy for the amendment.

The second part of Deputy Kelly's amendment is a proposed amendment to section 50 of the 2024 Act. Last year, I signed regulations, which were put in place, to provide for a review of any imposed suspension following receipt of submissions from the Garda member concerned and not less than one such review every three months. I am of the view that those provisions adequately cover the issue that the Deputy is seeking to address.

On the statistics in terms of the number of gardaí who are suspended, the latest figures I have show there were 98 members of An Garda Síochána on suspension at the end of February. Of those suspensions, 42 were effected in 2025 while six new suspensions had been effected up to February. It represents just over 0.6% of the total number of gardaí in the State. However, having said that, suspension in any workplace is a complicated matter. The employer has to weigh up the fact that an allegation has been made and how serious it is. At the same time, the employer has to weigh up the rights of the individual to the presumption of innocence and the fact that there has been no finding against them. That is a difficult process and, as everyone will agree, it is sometimes necessary for a suspension to be put in place because of the nature of the allegation that has been made. In other instances, a suspension may not be necessary. That is a balancing act that has to be performed by the Garda Commissioner. In terms of any suspension, we are always going to have situations where a decision will have to be made one way or the other. I would just be concerned about putting in place regulations whereby we will have another process where an independent person from outside comes in and starts assessing whether the Garda Commissioner's suspension is appropriate in the circumstances.

What we all need to seek to ensure happens, as I have stated publicly before, is this. No matter where you are, if you are subject to a workplace inquiry or a disciplinary inquiry, it is only fair that the process be completed and concluded as quickly as possible. That is where the fairness ultimately lies. If an allegation is made against somebody and they are suspended, we need to have the disciplinary process concluded within a short period so that, if there is found not to have been any wrongdoing, they can go back to the job and the suspension is lifted. If there is found to have been wrongdoing, whatever the appropriate penalty is can be imposed.

As Deputy Kelly appreciates, it is a complicated issue. I am satisfied and want to emphasise that any processes that involve disciplinary inquiries involving An Garda Síochána need to be speeded up.

Deputy Alan Kelly: I thank the Minister.

Fundamentally, I think the right of appeal should be there. I accept the changes the Minister proposes. I think they are positive in nature, but there should be a right of appeal in any scenario. That is why I put this forward. Regarding the first part of this amendment, on intimidation, I genuinely feel we need to put down a marker. I know exactly what the Minister spoke about in relation to the legislation on harassment and so on, but we need to clearly set out a marker regarding anyone who tries to intimidate a member of An Garda Síochána or their family, in many different formats, whether offline or online, in their face or not. People are jumping up and down in front of somebody with a camera, recording him or her and the people he or she is with, whether on-duty or off-duty, once they know that person is a garda. I do not think what is there covers that. I think we now live in a world where we need to ensure that scenario is covered. Ultimately, I can tell the Minister, from speaking to gardaí all the time, that they are totally affected by this. What is more, their loved ones are affected by this. When it comes to doing their work, you would have to be concerned that many of them and their families are concerned about how they can carry out their duties and do their work in a society where that goes unpunished.

I understand how the provisions and legislation the Minister has outlined deal with harassment and intimidation to a point. I am not sure how often it has been prosecuted. We need specific provisions relating to the intimidation of a garda. I would be surprised if anyone in this House did not feel it in modern times. I get a sense from talking to gardaí that it is shortening their careers. They are making decisions regarding their careers, advancement in their profession, the type of work they will volunteer for and train for, and a whole range of other things. None of this is good. As a Legislature, we need to deal with that. I do not want to own this amendment. I would be happy if the Minister brought it forward and worked in the coming weeks and months to try to deal with this issue. I think he would get huge support across the board, from the Commissioner down to the ordinary rank-and-file garda, if he did that. I will certainly support the Minister entirely. Please work with me on that.

Deputy Jim O'Callaghan: I will certainly look at it. The second thing I want to say is that the overwhelming majority of Irish people are enormously supportive of An Garda Síochána.

Deputy Alan Kelly: One hundred percent.

Deputy Jim O'Callaghan: What is happening online, as we all know, is not representative of what the vast majority of Irish people think. Second, I agree that we need a marker. The best marker, in my view, would be a conviction of somebody-----

Deputy Alan Kelly: I agree.

Deputy Jim O'Callaghan: -----who is involved in intimidating a garda or a family member. That really softens the cough of online bullies. Third, later this year, body cameras will be rolled out on a much broader basis. They are having a very positive impact, because once anyone who is aggressive to An Garda Síochána sees a camera on a garda, it changes their

mood because they know they are being recorded in the same way. I will work with Deputy Kelly on it.

Deputy Alan Kelly: Finally, for example, if a garda is going about his duties and is being videoed and is then videoed entering his neighbourhood, housing estate or house, that is the type of issue I want to see prosecuted. I am not sure the legislation as currently constituted will cover that. I propose that we nail this down to make sure it is covered.

Deputy Jim O'Callaghan: I will look at it.

Deputy Alan Kelly: I would really appreciate it. On the basis of the Minister's comments, I will not push my amendment.

Amendment, by leave, withdrawn.

Deputy Jim O'Callaghan: I move amendment No. 5:

In page 8, between lines 25 and 26, to insert the following:

"PART 4

AMENDMENT OF DEFENCE ACT 1954

Insertion of Part IIIA in Defence Act 1954

8.The Defence Act 1954 is amended by the insertion of the following Part after section 40:

"PART IIIA

SAFEGUARDING, PROTECTING AND DEFENDING SECURITY OF THE STATE, AID OF CIVIL POWER AND PROTECTION OF MILITARY INSTALLATIONS

Safeguarding, protecting and defending by Defence Forces

40A.(1) Without prejudice to any other powers of a member of the Defence Forces in that behalf, a member of the Defence Forces shall have all such powers as are necessary or expedient, including the power to use such force as is reasonable, proportionate and necessary, for the purposes of safeguarding, protecting and defending the security of the State in either or both of the following circumstances:

(a) where the passage or any activity of a foreign ship in the territorial sea or internal waters is considered to be prejudicial to such security;

(b) where there is considered to be a risk to the sovereign rights and jurisdiction of the State in the exclusive economic zone.

(2) The Chief of Staff shall, with the consent of the Minister, prepare and issue guidance to members of the Defence Forces on the exercise of any power by a member of the Defence Forces pursuant to this section.

(3) The Chief of Staff shall, as soon as is reasonably practicable, regarding the exercise of any power by a member of the Defence Forces pursuant to this section, provide the Minister with such information as may be required by the Minister.

(4) In this section—

‘Act of 2021’ means the Maritime Jurisdiction Act 2021;

‘exclusive economic zone’ shall be construed in accordance with section 13 of the Act of 2021;

‘foreign ship’ has the same meaning as it has in the Act of 2021;

‘internal waters’ shall be construed in accordance with section 8 of the Act of 2021;

‘sovereign rights and jurisdiction of the State in the exclusive economic zone’ means the sovereign rights and jurisdiction of the State provided for in section 14 of the Act of 2021;

‘territorial sea’ shall be construed in accordance with section 7 of the Act of 2021.

Aid of civil power

40B. (1) The Minister may, subject to subsection (2), following a request to the Minister from the Minister for Justice, Home Affairs and Migration, direct the deployment of a member of the Defence Forces in aid of the civil power.

(2) The Minister may, subject to such conditions as he or she may specify, give general approval for the deployment of a member of the Defence Forces in aid of the civil power for such class or classes of assistance as may be agreed with the Minister for Justice, Home Affairs and Migration.

(3) A member of the Defence Forces deployed in aid of the civil power may use such force as is reasonable, proportionate and necessary in the performance of his or her duties.

(4) The Chief of Staff shall, with the consent of the Minister, prepare and issue guidance to members of the Defence Forces deployed in aid of the civil power.

(5) In this section, ‘aid of the civil power’ means assistance provided by the Defence Forces to An Garda Síochána under this section.

Protection of military installations

40C.(1) A member of the Defence Forces engaged in security duties within a military installation may use such force as is reasonable, proportionate and necessary to protect the military installation and any persons within the installation.

(2) The Chief of Staff shall, with the consent of the Minister, prepare and issue guidance to members of the Defence Forces engaged in security duties referred to in subsection (1).

(3) In this section, ‘military installation’ means—

(a) a State ship,

(b) a service aircraft, or

(c) a building or place (or portion thereof) occupied by, used by, or under the control (whether temporarily or otherwise) of, the Defence Forces,

and includes the airspace above the military installation.”.”.

Deputy Alan Kelly: I move amendment No. 1 to amendment No. 5:

In section 40B, to insert the following subsection after subsection (5):

"(6) Where the Minister gives a direction under subsection (1) or an approval under subsection (2) he or she shall, as soon as may be after it is given, cause a copy of the direction or approval to be laid before both Houses of the Oireachtas.".

Amendment to amendment, by leave, withdrawn.

Amendment put:

The Committee divided: Tá, 6; Níl, 3.	
Tá	Níl
Brabazon, Tom.	Carthy, Matt.
Butterly, Paula.	Kelly, Alan.
Callaghan, Catherine.	Ward, Mark.
Daly, Martin.	
O'Callaghan, Jim.	
O'Sullivan, Pádraig.	

Amendment declared carried.

Question, "That section 8 stand part of the Bill", put and declared carried.

Section 9 agreed to.

SECTION 10

An Leas-Chathaoirleach: Amendments Nos. 6 and 7 are related and may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 6:

In page 9, to delete lines 19 and 20 and substitute the following:

"(d) by the substitution of the following subsection for subsection (7):

"(7) If, within the period of 28 days after such person's arrest, no such certificate is produced, he shall be released from custody or the terms of his bail.",".

As Deputies are aware section 10 of the Bill amends section 27 of the Extradition Act 1965 to enable the provisional arrest without warrant of persons named in a Schengen information system, SIS, alert, from Switzerland or Liechtenstein to non-EU countries. This addresses a gap in the implementation of the SIS system in Ireland. Under section 27(7) of the 1965 Act, a person who has been provisionally arrested may be remanded for a maximum of 18 days from the date of arrest pending production to the High Court of a certificate from the Minister stating that an official extradition request has been made. Section 10(d) of the Bill contains a technical amendment to section 27(7) of the 1965 Act to clarify that this applies not only to a person remanded in custody but also to a person remanded on bail. It is a very technical amendment. Amendment No. 6, which is intended to replace section 10(d) of the Bill substitutes a new subsection for the existing section 27(7) of the 1965 Act. The new subsection includes the aforementioned clarification regarding the meaning of remand to remanded in custody or remanded on bail. It also increases to 28 days the period for which a person may

be held on remand on foot of such a request. This further amendment arises from advice that the Department received from the Chief State Solicitor's office that, in order for the amendments in the Bill to operate as intended, the current 18-day maximum remand period should be increased to 28 days. This proposed change will ensure that, where a person has been remanded on foot of a provisional arrest, there is sufficient time for the formalisation and processing of the extradition requests from Switzerland and Liechtenstein, but also from other countries, which for various procedural reasons have often proved difficult to finalise within 18 days.

Amendment No. 7 is consequential upon amendment No. 6. It amends section 29A(6) of the 1965 Act to delete the reference to 18 days specified in section 27(7) and instead to simply refer to the number of days specified, which is now 28 days.

Amendment agreed to.

Section 10, as amended, agreed to.

NEW SECTION

Deputy Jim O'Callaghan: I move amendment No. 7:

In page 10, between lines 23 and 24, to insert the following:

"Amendment of section 29A of Act of 1965

11. Section 29A(6) of the Act of 1965 is amended by the substitution of "the period specified in section 27(7)" for "the period of 18 days specified in section 27(7)".".

Amendment agreed to.

Section 11 agreed to.

SECTION 12

An Leas-Chathaoirleach: Amendments Nos. 8 and 9 are related and may be discussed together.

Deputy Mark Ward: I move amendment No. 8:

In page 11, line 3, to delete "paragraph" where it firstly occurs and substitute "paragraphs".

Amendments Nos. 8 and 9 were proposed by a group of academic researchers with expertise in probation services.

Many of them appeared before the joint committee as witnesses. They also have expertise in community sanctions, judicial attitudes, sentencing and the use of research evidence in criminal justice policy. They sent the amendments to the Minister. I hope he has had time to read and consider them.

Amendment No. 8 is technical in nature. It proposes replacing the word "paragraph" with that of "paragraphs".

Amendment No. 9 deals with a situation where someone is convicted and is sentenced to less than 24 months in custody and where a community service order is considered but not issued. The amendment proposes that a probation order should to be considered. If, after

consideration, a probation order is not issued, the amendment calls for the reasons for that decision being made to be outlined. The idea behind this is that alternatives to custodial sentences have been shown to be rehabilitative for people who have committed offences. Community service orders allow for an individual who is convicted of an offence to work in the community without pay in a role that benefits the community for a set period of hours. It may not be suitable for certain individuals who have issues which may prevent them from completing these hours.

A probation order can allow for the individual to remain under the supervision of the probation service while remaining in the community. Not only would this increase prison capacity, and we all know how full the prisons are at present, it could also work better in the context of rehabilitating offenders. On numerous occasions, I have raised how difficult it is to get rehabilitation in prison, particularly in light of substance misuse and mental health and other issues. This will complement the community service order provisions in the Bill.

As with a decision not to issue a community service order, if a probation order is not issued, a reason needs to be provided. This will help identify gaps in rehabilitative practices in the community and place the emphasis on the courts considering such orders.

Deputy Jim O'Callaghan: I thank Deputy Ward for tabling the amendment, and I will give consideration to it. I want to set out my thinking. I will start with where there is agreement. Like Deputy Ward, I agree that we need better alternatives to imprisonment. This is not only a solution to the prison overcrowding crisis, it is also important that we do not automatically assume that every breach of the criminal law should result in a custodial sentence.

What is proposed by Deputies Ward and Carthy is an amendment to the community service legislation of 1993 to encourage the courts to consider community service orders in a broad range of circumstances. The purpose of amendment No. 9 is to provide that where a court has decided not to make a community service order in lieu of a prison sentence of 24 months or less, the court shall then consider whether to make a probation order and give reasons if it decides not to make such an order. I need to emphasise that the probation system and the community service system are two separate statutory regimes. Probation is dealt with under the Probation of Offenders Act 1907. A court may dispose of a summary offence by dismissing the charge outright or by discharging the offender conditionally on a good behaviour bond. This is something that operates repeatedly, and it is something the courts do use. There is a different statutory framework for the imposition of probation orders than happens in terms of a community service order.

One of the things I am being asked to consider is requiring a court to consider a probation order only after it has considered and decided against issuing a community service order - I need to think about the logic of that - as opposed to allowing the court to consider both at the same time. When a court has had the evidence in a case presented to it and is coming to sentencing, it would be important that it takes into account whether a probation order or a community service order is required. That is something I will examine. Deputy Ward suggests that we provide for a system where there is dual consideration by the court of community service order sand probation orders. This is not done at present. Just because it is not done or legislatively provided for, does not mean it is not a good idea, however. It may be a good idea. I will consider it.

Similar to Deputy Kelly's amendment, I may not be able to guarantee coming back to Deputy Ward on this on Report Stage. I know the committee recommended expediting publication of the review of the community sanctions Bill, which is a legislative instrument that would be useful in the context of what Deputy Ward is proposing. I expect to be in a position to publish the review in the near future when I have had an opportunity to fully consider its contents. This is something I will keep an open mind on. I thank Deputy Ward for putting the amendment forward.

Deputy Mark Ward: I thank the Minister. I accept that he will give consideration to the amendments. You never know, he might be able to get something done by Report Stage. On that basis, I will withdraw the amendment. I may revisit it on Report Stage.

Amendment, by leave, withdrawn.

Deputy Mark Ward: I move amendment No. 9:

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

"its decision.

(ab) Where a court, by or before which an offender stands convicted, is of the opinion that the appropriate sentence in respect of the offence of which the offender is convicted would, but for this Act, be one of imprisonment for a period of 24 months or less, and where, having considered in accordance with subsection (3) whether to make a community service order, decides not to make such an order, the court shall, as an alternative to that sentence, consider whether to make a probation order in respect of the offender and the court may, if satisfied, in relation to the offender, that such an order is appropriate, make a probation order in accordance with this section.

(ac) Where a court, having considered in accordance with paragraph (a) whether to make a probation order, decides not to make such an order, it shall give reasons for its decision.",".

Amendment, by leave, withdrawn.

Section 12 agreed to.

NEW SECTION

An Leas-Chathaoirleach: Amendments Nos. 10 to 14, inclusive, 28 and 39 are related. Amendments Nos. 11 to 14, inclusive, are physical alternatives to amendment No. 10. Amendments Nos. 10 to 14, inclusive, 28 and 39 may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 10:

In page 11, between lines 32 and 33, to insert the following:

"Amendment of section 19A of Criminal Evidence Act 1992

13.(1) Section 19A of the Act of 1992 is amended—

(a) in subsection (1)—

(i) by the insertion of the following definitions:

" 'Act of 1950' means the Nurses Act 1950;

'Act of 1985' means the Nurses Act 1985;

'Act of 2005' means the Health and Social Care Professionals Act 2005;

'Act of 2011' means the Nurses and Midwives Act 2011;

'applicable record', in relation to criminal proceedings for a sexual offence, means a child protection record, a counselling record, a medical record or a social work record—

(a) in relation to which there is a reasonable expectation of privacy,

(b) which was not compiled for the purposes of, or in contemplation

of, the investigation into, or the prosecution of, the sexual offence concerned, and

(c) whether or not the service the subject of the record was provided for remuneration;

'child protection' means an intervention or a series of interventions designed to safeguard children from abuse, neglect, violence, exploitation or harm and to promote their safety, wellbeing and rights;

'child protection professional' means a person who has undertaken training or study resulting in a qualification, or who has professional experience, relevant to child protection;

'child protection record' means any record, or part of a record, made by any means, by a person who was a child protection professional at the time of the making of the record, in the course of investigating or managing concerns, or carrying out assessments or interventions, in relation to the safety, welfare, or protection of a complainant when the complainant was a child;

'complainant' means a person in respect of whom a sexual offence is alleged to have been committed;

'disclosure application' has the meaning assigned to it by subsection (2);

'medical professional' means—

(a) a registered medical practitioner,

(b) a registered nurse, or

(c) a registered midwife;

'medical record' means any record, or part of a record, made by any means, relating to the medical treatment of a complainant by, or ordered or initiated by, a person who was a medical professional at the time of the making of the record;

'registered medical practitioner', in relation to a particular point in time, means a person—

(a) who was a registered medical practitioner within the meaning of section 2 of the Medical Practitioners Act 2007,

(b) whose name was entered in the General Register of Medical Practitioners established under section 26 of the Medical Practitioners Act 1978, or

(c) who was registered in the Register of Medical Practitioners prepared and established under the Medical Practitioners Act 1927,

at that point in time;

'registered midwife', in relation to a particular point in time, means a person whose name was entered in—

(a) the midwives division of the register of nurses and midwives established under section 46(1) of the Act of 2011,

(b) the midwives division of the register of nurses established under section 27 of the Act of 1985, or

(c) the midwives division of the register of nurses maintained under section 41 of the Act of 1950,

at that point in time;

'registered nurse', in relation to a particular point in time, means a person—

(a) whose name was entered in the nurses division of the register of nurses and midwives established under section 46(1) of the Act of 2011,

(b) other than a registered midwife, whose name was entered in the register of nurses established under section 27 of the Act of 1985,

(c) other than a registered midwife, whose name was entered in the register of nurses maintained under section 41 of the Act of 1950,

or

(d) who was registered in the register kept in pursuance of the Nurses Registration (Ireland) Act 1919,

at that point in time;

'social care worker'—

(a) in relation to a particular point in time prior to the establishment under section 36 of the Act of 2005 of the register of members of the profession of social care worker, means a person who was practising as such and who held a qualification that is listed opposite the profession of social care worker in the third column of Schedule 3 to the Act of 2005 or a qualification that is a corresponding qualification, within the meaning of Part 9 of that Act, to that qualification, or

(b) in relation to a particular point in time following the establishment of that register, means a person whose name was entered in that register,

at that point in time;

'social worker'—

(a) in relation to a particular point in time prior to the establishment under section 36 of the Act of 2005 of the register of members of the profession of social worker, means a person who was practising as such and who held a qualification that is listed opposite the profession of social worker in the third column of Schedule 3 to the Act of 2005 or a qualification that is a corresponding qualification, within the meaning of Part 9 of that Act, to that qualification, or

(b) in relation to a particular point in time following the establishment of that register, means a person whose name was entered in that register,

at that point in time;

'social work record' means any record, or part of a record, made by any means, by a person who was a social worker or social care worker at the time of the making of the record, as part of a professional practice relating to assessing or supporting the welfare of a complainant or any related intervention by the social worker or social care worker.",

(ii) in the definition of "counselling", by the deletion of "(whether or not for remuneration)", and

(iii) by the substitution of the following definition for the definition of "counselling record":

" 'counselling record' means any record, or part of a record, made by any means, by a competent person in connection with the provision of counselling to a complainant;",

(b) by the substitution of the following subsections for subsection (2), (3), (4), (5) and (6):

"(2) Where, in criminal proceedings for a sexual offence, the prosecutor or the accused is of the opinion that an applicable record ought to be disclosed to the accused under subsection (11), the prosecutor or the accused, as the case may be, shall make an application (in this section referred to as a 'disclosure application'), in writing, to the court stating the reasons grounding the application.

(3) Where the prosecutor intends to make a disclosure application under subsection (2), he or she shall, not later than the beginning of such period as may be prescribed in rules of court, notify the accused of his or her intention to make the application.

(4) Where the accused intends to make a disclosure application under subsection (2), he or she shall, not later than the beginning of such period as may be prescribed in rules of court, notify the prosecutor of his or her intention to make the application.

(5) Where a disclosure application is made under subsection (2), the court shall consider the application and where it is satisfied that the grounds relied upon in the application—

(a) establish that the record is likely to be relevant to an issue at trial, the court shall order that a hearing referred to in subsection (8) be held, or

(b) do not establish that the record is likely to be relevant to an issue at trial, the court shall refuse the application.

(6) Where the court orders, under subsection (5)(a), that a hearing referred to in subsection (8) be held—

(a) the court may order that the person who has possession or control of the applicable record concerned shall produce the record to the prosecutor not later than the beginning of such period in advance of the hearing as may be prescribed in rules of court, and

(b) without prejudice to subsection (7), the prosecutor shall, not later than the beginning of such period as may be prescribed in rules of court, notify the person who has possession or control of the applicable record concerned, the complainant, and any other person to whom the prosecutor believes the applicable record relates of the order of the court under subsection (5)(a) and, where applicable, paragraph (a).",

(c) in subsections (7) and (8), by the substitution of "applicable record" for "counselling record" in each place it occurs,

(d) in subsection (9)—

(i) by the substitution of "applicable record" for "counselling record", and

(ii) by the substitution of "applicable records" for "counselling records",

(e) in subsection (10)—

(i) by the substitution of "applicable record" for "counselling record", and

(ii) in paragraph (f), by the substitution of "to engage with the provision of services by a child protection professional, a competent person, a medical professional, a social care worker or a social worker" for "to seek counselling",

(f) by the substitution of the following subsection for subsection (11):

"(11) Subject to subsection (12), a court shall not, after the hearing referred to in subsection (8), order disclosure of the content of the applicable record concerned to the accused, and where applicable, the prosecutor, unless the court is satisfied, having examined the record, that—

(a) the record is likely to be relevant to an issue at trial, and

(b) one or both of the following apply:

(i) there would be a real risk of an unfair trial in the absence of such disclosure;

(ii) it is otherwise in the interests of justice to so order.",

(g) in subsections (12), (13) and (16), by the substitution of "applicable record" for "counselling record" in each place it occurs, and

(h) by the deletion of subsection (17).

(2) (a) The amendment of section 19A of the Act of 1992 effected by subsection (1) shall not apply in respect of criminal proceedings for a sexual offence (within the meaning of the said section 19A) that were instituted prior to the coming into operation of subsection (1).

(b) For the purposes of paragraph (a), criminal proceedings are instituted—

(i) when a summons or warrant of arrest is issued in respect of an offence,

(ii) when a person is arrested without a warrant, or

(iii) when a person is remanded for trial pursuant to Chapter IV of Part V of the Defence Act 1954.

(3) In this section, "Act of 1992" means the Criminal Evidence Act 1992.".

I welcome to the Gallery the people who are particularly interested in these amendments, which relate to counselling notes. I will make a number of preliminary points and then deal with the detail of what I propose and respond to what my colleagues propose.

Everyone in the room would agree that counselling is an absolutely essential service and a necessity for people who have survived sexual assault, whether it be rape or another form of serious sexual assault. Sexual assault is an extremely traumatic event. Counselling is an essential part of trying to recover from it. Everyone in the Oireachtas is aware of the very valuable work done by counsellors throughout the country who provide counselling to survivors of rape or serious sexual assault.

The problem that has arisen in our legislative system and in the practice that obtains in the courts is that in criminal prosecutions for rape and sexual assault, counselling notes provided in private by survivors to their counsellors, which no one ever thought would be used in subsequent criminal prosecutions, have become routinely available to the accused and the defence counsel. That was never envisaged. In fact, it was a problem nine years ago. I was a Member of the Dáil in 2017 when we changed the legislation to deal specifically with it. In fairness to the bona fides of the Minister and the Oireachtas at the time, we thought we had found a solution in respect of this matter. The solution was included in section 19A. It has not been a solution, however, and, in fact, the problem continues.

The main thing that is happening in practice, and that is causing concern, is that under the legislative provision introduced in 2017, a waiver mechanism was put in place. The effect of the waiver was that a complainant or survivor in a rape or sexual assault case could make the decision to waive their entitlement to have an oral hearing in respect of the counselling notes that would be handed over. This may have come about on foot of it becoming the practice in courts or it may have been down to convenience or a desire to deal with cases on very quickly.

In practice, however, what was happening was that counselling notes were being handed over routinely to the accused in criminal prosecutions and were then being used by defence counsel. That is something the Oireachtas did not envisage or intend, and it is something I want to end. The way to try to achieve that is by putting forward further legislative proposals.

Colleagues will be aware that in the Bill that passed Second Stage, a provision was introduced by me that said that the waiver would be removed. If the waiver is removed, it will mean that there will have to be a hearing before a court in respect of the provision of counselling notes whereas at present, in general, there is no hearing.

I listened to what people had to say after the publication of the Bill and after the Second Stage debate. I listened to what members of this committee repeatedly said to me in terms of its reports and what they have said to me in the Oireachtas. I have very much listened to stakeholders, who made an invaluable contribution in contributing and putting forward their views on the issue and because of that, I am coming forward with further amendments today. I will go through the detail of the amendments in due course but, ultimately, the primary objective and what strengthens it in the amendment I am putting forward today is that there is now going to be a statutory presumption of non-disclosure, which will be set out in the new subsection 11. This will state that:

> ... a court shall not, after the hearing [I will come back to that presently] ... order disclosure of the content of the applicable record concerned to the accused, and where applicable, the prosecutor, unless the court is satisfied, having examined the record, that ... the record is likely to be relevant to an issue at trial, and ... one or both of the following apply: ... there would be a real risk of an unfair trial in the absence of such disclosure; ... it is otherwise in the interests of justice to so order.",

That is a further amendment. I believe the effect of that amendment will be that it will be in exceptional circumstances that a counselling record will be disclosed. In fact, the only time it will be disclosed or could be disclosed if this legislation is enacted is there would have to be a hearing, the hearing would be presided over by the High Court or a Circuit Court judge, the judge would have to look at the counselling note, and the judge would be aware there is a statutory presumption telling him or her that his or her court should not disclose the content of the record, unless it is likely to be relevant to the issue of trial and without which there be a real risk of an unfair trial. That is a very strong, heightened statutory test.

Very well-meaning people - people I listen to - have asked me why I do not just ban counselling notes. They have said that it is intrusive and a breach of the privacy of, predominantly, a woman because of the fact that counselling notes are provided in an environment where no issue was arising in respect of the criminal trial and where there was a presumption of privacy. They asked why those notes cannot be fully protected. What I am doing is putting forward the statutory mechanism that gives as much protection as it can give to that right to privacy. As we know, no right is absolute but when I am considering the right to privacy of the person who has sought and received counselling, I must also take into account the right of the accused to a fair trial. I am just not permitted to ignore it. I have to take it into account.

The unambiguous advice I have received from the Attorney General is that if I were to adopt the amendment put forward by Deputy Carthy, and I very much accept Deputy Carthy's bona

fides in this area, or if I were to accept the amendment put forward by Deputy Coppinger, and similarly I accept her bona fides in this area, I would be in violation of the Constitution. In effect, what would happen is that shortly after the legislation was enacted, somebody accused of rape and-or a serious sexual offence would challenge this legislation. They would challenge it on the basis that it is exceptional in our legal system that there is a category of potential evidence that is ruled as being immune not just to inspection but to disclosure. The argument that would be put forward is that information is contained within a counselling note that is highly relevant and exculpatory of a person accused of a serious charge that could result in life imprisonment, but the person cannot use that information or even look at it because of what the Oireachtas has done in saying counselling notes are banned.

I know it is an extremely sensitive issue but I cannot ignore the right to a fair trial and the constitutional provision. However, I do believe the provision I am introducing here will have a significant impact in ensuring that the disclosure of counselling notes, as it happens at present, will completely change. It will only be in exceptional circumstances where a judge having looked at it will turn around and say, " I have looked at that counselling note. There is information in that which if a jury were aware of it, may facilitate the accused at the trial, or without them getting it could lead to an unfair trial." A note in itself - a piece of information - proves nothing so a counselling note in itself is not proof of the content of the note. In his amendment, Deputy Carthy categorised it as hearsay. Potentially, a note that just records something is hearsay but, to be blunt, the argument that will be made is that it would provide a mechanism to ask a question of a complainant in a criminal justice prosecution if the content of the counselling note is inconsistent with the narrative that is being given in court. That is why I cannot rule it out completely. Even if I decided to go down the route of saying we are going to permit them to be completely banned, I am fairly satisfied that the court would regard it as unconstitutional. That is an overview of what I am proposing in the amendment.

I will deal with the other amendments. Deputy Kelly's amendment, and I have no criticism here, is a proposal and suggestion that was put forward to me recently by the Dublin Rape Crisis Centre, which I commend on its excellent work in this area and whose report I launched today. Under the proposal put forward by the Dublin Rape Crisis Centre, an independent review panel would be established. In the correspondence that was sent to me originally, that was to be a panel of barristers. I note that in Deputy Kelly's amendment, it is not a panel of barristers. Be that as it may, the purpose of Deputy Kelly's proposal is that an independent review panel would be established to look at the counselling note and put forward a narrative of what is contained within it. The reason I find that problematic and cannot accept it is because inevitably, even if the independent review panel, whoever they are, decided having looked at the note to provide its own narrative about the note, if there is a narrative that is suggestive of evidence being out there that could be used to exculpate the accused, it will be extremely hard to say to him that he cannot see the note. I do not think that would survive judicial scrutiny. I do not know who the people on an independent review panel will be but even if they are barristers, the advantage of having the Judiciary there is that it is independent. Judges take an oath, we rely upon them to administer justice in this country and they do administer justice. They are the ones responsible for administering justice. They take an oath and I would much prefer to have a judge inspecting a counselling note to assess whether or not it is probative, or whether without it there would be an unfair trial, than some persons on a board who have not taken any oath and where I do not know what conflicts they may have in respect of it.

That brings me to the amendments from Deputies Carthy and Coppinger. In different terms or in a different manner, they have both suggested that there should be a blanket ban on the disclosure of counselling notes. I cannot do that. The right to privacy of people who are getting counselling is a really important and fundamental right but it is not an absolute right. I cannot think of any right to privacy that is absolute but it is an exceptionally strong right. The difficulty I have in navigating this legislation is that while I want to give as much protection to that right to privacy as I can, at the same time, I cannot completely ignore the right to a fair trial. If I did just say that, someone could never rely on a counselling note, could never look at it and could not even disclose it, even if there is information in that note that completely corroborates what the accused person is saying and completely undermines what the complainant in the trial is saying because the Oireachtas has said they cannot. That would be really damaging to survivors of rape and sexual assault. It would mean that the legislation would be struck down and we would be in a far worse position.

In conclusion, the proposed amendment I have put forward will significantly strengthen the position of people who have received counselling.

It will enable people to continue receiving counselling in the knowledge that those notes will not be disclosed save in exceptional circumstances. In effect, what I have put in there is a statutory presumption of non-disclosure. It is a very high level of protection and that will be evident to any judge who has to assess the document or counselling note for the purpose of appraising the legislative provision.

An Leas-Chathaoirleach: We will start with Deputy Carthy, who will be followed by Deputies Coppinger, Ward and Kelly.

Deputy Jim O'Callaghan: Can I just say I have also extended it to other personal records? It is not just counselling notes. I have extended it to medical records and child protection records and other issues.

Deputy Matt Carthy: Can I get clarification? Has the Leas-Chathaoirleach indicated that if amendment No. 10 is passed, others will automatically fall, or will there be votes taken on amendments Nos. 11 to 14, inclusive?

An Leas-Chathaoirleach: If amendment No. 10 is agreed, the others cannot be moved.

Deputy Matt Carthy: I will begin by thanking those in the Public Gallery for their patience. I suppose they have shown patience not just today but over many years in pursuing this matter.

I commend those who have campaigned on this issue. I will be the first to admit that I recently became educated on this matter. I was not aware until relatively recently that this was an issue and that it was essentially just an integral part of a certain type of trial. The reason I and probably most Members of the House and members of the public are aware of it is because of the campaign that has been run by people who have had direct experience of the courts and of having their counselling notes sought and divulged.

It is important that we commend Deputy Coppinger, who played an important role in ensuring that Members of the House were aware of the impact of that through a Private Members' Bill that she moved and by raising this issue consistently. The campaign has been incredibly dignified throughout but also impactful and the responsibility on us as legislators now is to show that we have heard, listened and acted. It is true that the Minister has moved

way beyond where it was proposed to go at pre-legislative scrutiny and even on Second Stage and now on Committee Stage. There has been movement but we have not moved, and amendment No. 10 does not move, to where victims and survivors have said that we need to move.

We have heard deeply traumatic experiences from victims and survivors who were forced to disclose counselling notes during sexual violence trials. We have heard, including at the joint committee, from women who were questioned about unrelated matters as to what, as I say, was, in fact, hearsay evidence that was introduced and used against people who sought justice in respect of rape and sexual assaults that were carried out against them.

We heard from other people - this is what was incredibly powerful - who felt that they had no choice but to stop going to counselling in order to pursue justice, who felt that it was a choice to either pursue justice or pursue personal healing and that both were not available to them. That is incomprehensible. I have never had need to go to a personal counsellor. I would probably be reluctant to do so because, like a lot of Irish people, I do not like talking about intimate details. I am speaking as somebody who has never endured the trauma of a sexual assault but if I thought that any personal information I divulged to a counsellor could be shared with any third party, it would fill me with dread. Then we consider people who are going to counselling in order to save their lives, their marriages, their family life and their sanity and who have that question mark about that. Such people have been crying out for the Oireachtas and the Minister to understand the reality that they have had to go through because in many cases what we have actually had is a public hearing by victims and survivors. They have told us and the public their most intimate details in order to spare others from having to do so. It is incredibly brave and generous of those people who have done that.

The Minister has been consistent on one point, which is that a full ban in his view is not attainable under the Constitution. It is important that we also recognise that, in amendment No. 10, the Minister is falling short in terms of what he indicated that he would deliver. I want to be clear about this. The Minister's amendment does not introduce the statutory presumption of non-disclosure that he repeatedly stated here. In fact, I would argue that the amendment creates a two-stage gate-keeping test which is different than a complete statutory presumption of non-disclosure because a presumption would have the mandatory starting point that shifts the burden of proof, whereas a gate-keeping mechanism just allows applications to be filtered. Without an express presumption, courts are not required to begin from the position of a presumptive non-disclosure, which is what the Minister indicated he would deliver and, in fact, what he said here today he had delivered. I would take guidance from organisations such as Rape Crisis Ireland which have been telling us that they have been engaging with the Minister. They have been of the view that a commitment had been made that a disclosure would only occur where there was a real risk of an unfair trial but this amendment puts in a second undefined ground in terms of disclosure "in the interests of justice". That was added, I understand, without consultation. I agree with Rape Crisis Ireland when it argues that this broad flexible standard risks becoming the dominant route to disclosure and that "in the interests of justice" would create the conditions that previously enabled systemic over-disclosure. I would point the Minister's words back to him when he stated that Members of this House thought that we had found a solution. I fear that a successor of the Minister will be before another committee stating that in 2026 we thought we had found a solution, although

on this occasion the Minister cannot say that because the people with the direct experience in this area are telling us that we are creating the root that allows this practice to continue.

In the Minister's amendments, there is also no explicit ban on direct contact outside the statutory process. That leaves a significant gap.

I repeat that this is hearsay evidence. It is not even what somebody said in counselling but how somebody interpreted what they said in counselling. On how it is meaningfully used, I have asked a number of people from the legal profession if they can point to a single case where the disclosure of counselling notes led to substantive information that resulted in a fair trial that would not otherwise have been provided or led to an acquittal that would not have otherwise been provided. Some people have said to me that they could see scenarios whereby the divulging or even the threat of divulging would ensure a witness backed off and, therefore, some people might have got off. Technically, they got an acquittal, but it was not on the basis of the evidence; it was on the basis of this threat being used.

Can the Minister point to a single case where counselling notes were used as a meaningful, substantive part of a defence? From what I see and all the experiences that have been relayed to me, they have simply been used as a mechanism to embarrass, humiliate and threaten people seeking justice for themselves and others.

A huge number of people will be really disappointed by what the Minister has brought forward. From the heads of Bill to Second Stage to Committee Stage, we have seen changes at each stage. Perhaps there will be more. Amendment No. 12 - the Minister mentioned there were similar amendments - provides for a full ban on the disclosure of counselling notes. That is what is needed. I believe there is a strong argument in terms of the Constitution. For the constitutional right to a fair trial to be impeded, there has to be meaningful evidence that that right to a fair trial is being impeded by an Act of the Oireachtas. Without a single case study having come to my attention that points to the use of counselling notes having a substantive impact on someone's defence, I do not see how such a case could be won.

For all the criticism of the pre-legislative scrutiny phase I made earlier, one aspect of the Bill we went through in detail and on which we heard powerful evidence from Hazel Behan and representative organisations was this exact provision. As a result of that engagement, this committee put forward on a cross-party basis a report calling for the complete and unconditional ban on the use of counselling records. I would argue we have a responsibility to follow through on our own report.

Crucial to all of this was listening to the voices of victims and survivors. I have lost count of the number of events I have been at - reports being launched, testimonials being launched - where we have commended organisations and individuals who support victims and survivors. On each occasion, we paid platitudes to their efforts. We talk about the scourge of sexual and gender-based violence, which appears by every metric to be increasing. We all commit ourselves to doing something about it; the first step is listening to those with direct experience of our criminal justice system. They have told us they want us to ensure victims and survivors are not subjected to the degrading treatment of having their most intimate conversations - conversations that in many cases have not been shared with even their closest family members or friends - handed over to the person who raped or abused them. That is a simple request. Rather than finding reasons not to do it or to skirt around the edges of that issue, we have to be

upfront and say we will listen and will find a way to ban the disclosure of counselling notes. That is what we have been asked to do by the people we promised we would listen to. Let us do it.

Deputy Ruth Coppinger: I appeal to the committee to carry through what it said unanimously it stood for, which was a total ban on this traumatising and damaging practice in our courts, and not to vote for the Minister's amendment but to vote for the other amendments that get to the heart of that. The Minister began by saying he had listened. I do not know who he listened to before coming forward with this. He has not listened to survivors or therapists. I was surprised he did not meet any therapists, who are the people expected to hand over these notes. He has not even listened to the Dublin Rape Crisis Centre. I have an issue with this. He was up there launching the report, getting his picture taken, getting into the newspaper, having his face all over social media-----

Deputy Jim O'Callaghan: It invited me.

Deputy Ruth Coppinger: I know it did. I was just about to say that. The Dublin Rape Crisis Centre cannot say this but I am saying it. He would not even meet it to discuss what it, working within the system, felt was a solution to the situation.

I do not agree with the claim that this is unconstitutional because I feel there are numerous rights in the Constitution. It is very arguable. There are other rights to healthcare and privacy that we hear nothing about. We are only hearing about this right to a fair trial. As has been said, nobody has ever put forward a plausible case where a single counselling note has been useful to a fair trial. Let us say that it is useful, though. The Minister began by saying how important therapy was. Given the value that therapy provides to thousands of people, including survivors of gender-based violence, in comparison to the possibility that one in a thousand accused people might be able to get a fair trial from a counselling note, where is the balance there?

I have said in the Dáil many times that gender-based violence is becoming a non-prosecuted offence in this country, if you look at the statistics. I do not mean for the Minister to cite all the cases where people are found guilty; I am talking about in the round. Most people are not reporting when they are being sexually assaulted. We have no real way of knowing but probably about 5% of people who disclose it to anybody ever report it to gardaí and a small fraction of those get all the way to court. That is because of things like this. It is because of character references, which we have heard so much about in the past week, and the likes of counselling notes being used in court. Anyone who puts themselves through that trauma is extremely brave.

Earlier today, survivors who are here – I want to thank them for coming and waiting – stood outside with a red handprint across their faces to symbolise the way they were silenced. We also had therapists with their hands tied to symbolise that they were forced to hand over notes and breach the important confidentiality they had with their clients. That sums up how most people in this country feel about this practice when they hear about it.

I will talk about the Minister's amendment. I will run through how it will work. Somebody makes a disclosure application in writing to the court. Then the prosecutor and accused must be notified. That is grand. A disclosure application can be granted if it "is likely to be relevant to an issue at trial". That is really broad. It is the only rule to get the hearing for the disclosure.

Then the hearing is granted. A couple of paragraphs further down in the amendment, it refers to the notes being handed over. The only thing that has to happen is "the court may order that the person who has possession or control of the applicable record concerned shall produce the record to the prosecutor". Granted, it is to the prosecutor but I am saying it is being handed over to a legal person. So, it is handed over - confidentiality breached already - and the next step is at the hearing. The only criteria the Minister has introduced are:

(a) the record is likely to be relevant to an issue at trial, and

(b) one or both of the following apply:

(i) there would be a real risk of an unfair trial [that sounds higher than what existed before] in the absence of such disclosure;

[then the Minister waters it down completely with the next thing] (ii) it is otherwise in the interests of justice ...

That is very broad. Where are the protection and non-disclosure the Minister promised? They are not written down here anywhere.

The Minister repeated it. I went back and looked at how we finished up on this in the Dáil Chamber. The Minister stated:

I want to assure the House that today's legislation is not the end of the matter. I am committed to restricting intrusions into victims' privacy rights to the maximum extent permissible under the Constitution.

Is the Minister seriously saying that this is the maximum extent permissible? For example, something he could agree to look at for Report Stage is that all records carry a presumption of confidentiality. He could write that in. I do not know why he did not do that, subject to the courts or to whatever rules obtain. The Minister has not nailed down that there is any presumption of non-disclosure at all. He made a very firm promise and got people's hopes up that he would do so. In the Dáil, he went on to state:

[A]ny such disclosure will be subject to impartial and objective judicial scrutiny. I expect to be in a position in the near future to bring concrete proposals before this House …

The Minister also stated that the proposed disclosure is presumed to be confidential.

It is arguable, and both of the rape crisis centres feel, that this possibly makes things worse than before. The Minister has taken away any agency from the complainant. He has taken away their right to say "No" and has passed it straight over to a judge. We all know that it is not compulsory for judges to do training in this area. How would a judge have the training to read therapy notes? As somebody said, where they see legal evidence, other people see trauma. The independent review panel that was put forward would involve people who are trained in reading and understanding therapy and counselling notes. The point was to stop raw, unfiltered counselling notes being read by the accused. The Minister dismissed it very quickly, but that is an important thing for survivors.

I want to mention the other things that are not in the Bill. Arguably, the Minister has made the situation worse. Raw notes can still be read, there will be yet another pretrial court hearing for the complainant to have to sit through and endure, and the Minister has added a load of

other documents. I do not know how the courts are going to cope with this, but there will a be many people who will have to testify. As I said, the Minister has really watered down the risk of an unfair trial with the broader thing.

The amendment that I propose has been operating in Tasmania, a state of Australia, for a number of years. Basically, it gives the notes a confidential legal status. It gives them a very high level of privilege, which the Minister's proposal does not. A person cannot be required to hand over counselling notes unless they consent. The Minister is right that there is no such thing as absolute privilege, and people might go to court. Let people go off to the High Court if they want to access these notes. That would be my idea. Why should we make it so easy for there to be a disclosure hearing?

I would be very supportive of the idea of hearsay, because these are third-party notes. They are said outside court, and the person who is writing them is not the person who said what they contain. I do not understand how they get such credibility in our courts. Let us reiterate what these notes are about. They are about undermining the complainant, namely the woman - although it could be a man, of course - who is already dealing with a very patriarchal system, which is what the judicial system is. No offence, but look at this committee as well. It is very male-dominated, as is the Dáil.

I am disappointed for survivors and the people who have campaigned that the Minister did not go a hell of a lot further, which he could have done. I do not have a vote at this committee because I am not a member. I urge members to reject what the Minister is doing and allow the other amendments to go forward for debate at a full Dáil hearing.

Deputy Mark Ward: Right from the very start with this Bill were the voices of survivors of sexual assault. At the heart of pre-legislative scrutiny were the voices of survivors of sexual assault. It is important that we keep those voices central to this part of the legislation. In that spirit, I welcome the survivors who are in the Visitors Gallery today and thank them for educating me on this journey. I have worked as an accredited counsellor in the past, and I know the code of ethics that we are meant to be working under.

I received correspondence last night from survivors, as I am sure the Minister did. I want to read it into the record because it pertains to amendment No. 10 and speaks in favour of the other amendments. It states:

> Ahead of tomorrow's meeting on the Minister for Justice's proposed amendments to Section 19A, we are writing to remind members of the position this Committee itself took in November 2025 when it voted, on a cross-party basis, in favour of an unconditional ban on the use of counselling notes in sexual offence trials.
>
> As previously outlined in engagement with the Committee, counselling is often a lifeline for victims and survivors of sexual violence. It is the one place where trauma can be spoken about safely and honestly, often for the first time. Survivors engage in counselling to heal and recover — not with the expectation that their most intimate therapeutic conversations may later be scrutinised within a criminal process.
>
> That is why counselling records are among the most private and sensitive documents a survivor can possess. Their disclosure is not a minor procedural issue. It is a profound

invasion of privacy that can retraumatise survivors, undermine confidence in counselling services, and deter victims from both seeking support and reporting sexual violence.

In January 2026, the Minister publicly committed to introducing a presumption of non-disclosure, stating that "the default position will be that counselling notes will not be disclosed." Survivors, advocacy organisations, and frontline support services understood this to mean that meaningful reform was finally being delivered.

However, the amendments now before the Committee fail to provide that protection. There is no genuine presumption of non-disclosure contained within the proposals. The commitment made to survivors has not been realised in the legislation before you.

We appreciate that the Attorney General has advised that an unconditional ban may not be constitutionally permissible. However, this cannot become the end of the matter. If one approach is constitutionally problematic, then renewed efforts must now focus on identifying alternative legislative mechanisms that provide survivors with meaningful and effective protection for their counselling records.

Committee members now face a critical choice. You can uphold the clear position this Committee already adopted in November 2025 — recognising the unique and harmful impact disclosure has on survivors of sexual violence — and press for stronger alternative protections, or you can allow a significant retreat from the protections survivors were led to expect.

A justice system cannot claim to be trauma-informed while continuing to leave survivors uncertain as to whether their confidential therapeutic records may be exposed during legal proceedings. Survivors should never have to choose between healing and justice.

We urge the Committee to stand by the principles underpinning its previous position and to continue pursuing every available avenue to strengthen protections for counselling notes within the bounds of constitutional law.

The letter is signed by Paula Doyle and Lisa Murray. The Minister should have received this correspondence last night. It is absolutely powerful. I would never be able to put that into words without the help of the victims and survivors who are here today.

As I said before, my background is that I am a qualified, accredited counsellor. The counselling room is a private space, a safe space, a space that allows healing and allows people to move on from trauma. As I mentioned at the pre-legislative scrutiny stage, I checked the code of ethics that is set out by the accredited body that I was approved by.

The only time that code of ethics required me to break the confidence of the counselling room was if I felt the person was a danger to themselves or to somebody else. The code of ethics of the body I was accredited by never stated I might be required to hand over any notes relating to somebody who came to me talking about being a victim of sexual violence.

There is another point that has not been made. I have been thinking about this. As we speak, counsellors, psychotherapists and psychologists are still not regulated. They are still not regulated because CORU has been delayed in regulating them. A scenario could now arise where the notes of an unregulated counsellor, psychologist or psychotherapist are used against a victim or survivor of sexual assault. Last year, we saw this happening in a different scenario

in a "Prime Time" programme. We have also seen instances of the HSE refusing to accept diagnoses from a psychologist in respect of children who are trying to get an assessment of need. Counsellors, psychotherapists and psychologists are not regulated but we are going to allow their notes to be used in court. Through no fault of my own, I was not regulated. I was accredited by a body but, as a counsellor, I was unregulated because of the failure of the Government to provide regulation through CORU. I ask the Minister to reconsider and withdraw his amendment No. 10, and to look favourably on the subsequent amendments that ban counselling notes from ever being used against victims and survivors.

Deputy Alan Kelly: I welcome those victims who are here today. As the Minister is well aware, the Labour Party amendment is based on a proposal brought forward by the Dublin Rape Crisis Centre. It was drafted by Lorcan Staines and Gemma McLoughlin-Burke. There has been a lot of discussion here about what is constitutionally possible. The amendment that has been drafted, which we are putting forward on the Dublin Rape Crisis Centre's behalf, goes to the limits of what is constitutionally possible.

Before I move on, I will note that, at times, you nearly have to force people to go to the High Court to challenge legislation. This is probably such a case. From the point of view of the Legislature, there are times when we just have to do the right thing. I do not believe what the Minister is putting forward is the right thing. To be fair, the amendment I have brought forward on behalf of the Dublin Rape Crisis Centre is not necessarily what the centre or I believe is 100% the right thing. It is an attempt to stretch the legislation while allowing it to remain within the constitutional parameters the Minister must work within. We are obviously willing to work with the Minister on any changes to it.

I listened to the Minister's comments earlier and I am not sure I fully understood them. What he is bringing forward tilts the balance in a different direction when he includes a component relating to "the interests of justice". When you move to that level, you move the bar farther away. This means the pendulum has gone too far as regards the capacity of those who want to interrogate these notes. That is what is deeply concerning. It puts victims and counsellors in a really tricky or even impossible situation. The Minister has obviously taken the advice of the Attorney General in relation to where he is going with this but, if he is going to pursue this in this manner, I honestly believe we are going to back here again. There will a whole load of different test cases. God knows where that will end up. The Minister will probably end up amending his own legislation again. The Minister might move jobs in the future. You would not know. However, whoever follows him will end up dealing with this again. That is never good. Bad legislation is bad legislation. Your first thought in developing legislation should not be about how far you can go. Whether it will work will obviously be a consideration but we must also ask whether it is appropriate and the right thing to do, even if it is within the limits of the advice you are being given. I have been there. I have been a Minister. What you do has to work and it has to be right. Despite what officials tell you, if you do not think something is right, will work and will pass any challenges, you should not bring it forward.

The amendment I am bringing forward relates to an independent review panel. Everyone is aware of the amendment. A panel member will prepare a narrative and there will be limitations on the information provided and so on. I thought the Minister was a little bit dismissive of it. In fairness to those who drafted it and who are putting it forward through me, this is a reaching

out. It is a compromise. If the Minister has a way to improve the amendment they have brought forward - let us call a spade a spade; they are the experts in this area - I am here to listen. I have no ownership over this. The Minister can take it, change it and do whatever he wants as long as it gets us to a point where victims are not traumatised, where counsellors are protected and where we are dealing with this in the manner the committee unanimously decided we should, which is to say, where counselling notes would not be used.

If I had been asked some time ago, I would have said that I thought the Minister was going to be able to work on this with us. I am afraid that, if it comes down to a vote in this room later on and the Minister's amendment is passed while the rest are dismissed, nobody in this room, whether in opposition or in government, will be happy with what is passed. I say that genuinely. Forget about the politics because this is way beyond politics. Nobody will be happy with it. I genuinely do not think the Fianna Fáil and Fine Gael members will be happy with it because it is not what we said we would do and it is not what the Minister said he would do either.

I know the Minister has talked about limitations but allow me to restate my point. The Minister obviously has to bring forward proper and good legislation. He cannot bring forward legislation that he believes to be unconstitutional. A Minister is not allowed to do that. I know that. However, bringing forward legislation that has the potential to fail and that does not deal with the substantive issue - this sensitive issue of how people are to deal with their own cases and whether they will go forward with them at all - does not protect counsellors. It puts them in a very difficult situation, leaves all of these issues outstanding and shows no compassion. That is bad legislation.

Deputy Barry Ward: I usually start these by declaring my interest. I am a member of the Bar. I practise in criminal law. I have prosecuted and defended cases. I have recently been involved in cases involving section 19A applications so I do know what I am talking about.

I have not been a victim and people who have not been victims cannot properly understand the perspective of victims. However, I have seen it from a professional perspective. I have also travelled a journey - I think that is what politicians say when they change their minds - on this issue. As a defence practitioner, for a long time I maintained that the process by which disclosure was made of notes and medical records was an essential part of a criminal trial. I have revised my opinion on that because I initially opposed any limits to it. I felt it was an encroachment on the fair trial rights given to accused people, and they are hugely important. We often think of ourselves as victims, or friends or family of a victim, in a criminal case and decide what the rules should be on that basis when, in fact, we should be thinking of ourselves as someone who might be falsely accused. The protections we provide in our system are hugely important and also effective. We do not have certificates of miscarriages of justice as a regular feature of our criminal justice system and that is not true of every jurisdiction in Europe, so the protection of those free trial rights is hugely important.

I have listened to the debate and I do not think an absolute ban is constitutional. I also do not think it can be said to be arguable. It is not. Removing something that might be pertinent to a defence and refusing access of the defence team to that item is a breach of the fair trial rights provided for by the Constitution. It is not the case that these records are given wholesale to the defendant - they are given to the legal teams - but that does not mean that damage is not caused to the complainant or victim. I use the term "victim" in the sense of the directive definition. However, it is important to be clear about what we are talking about and to

acknowledge - and I agree with the Minister about this; I do not agree with him about much on this subject - that an absolute ban is simply unconstitutional. That is a reality we have to live with. It is also a reality that accords with the system I have described, which protects the rights of people who are accused of crimes. The obvious example is if a complainant in a case said something in counselling that was absolutely exculpatory of the accused person. Which of us, if accused of a crime, would not want access to that material?

Unfortunately, the difficult thing the law, and the courts in applying the law, must do is balance the rights of those two people. A person who has been the victim of a crime is entitled to have his or her - it is both, but I recognise that by some distance the majority are women - rights vindicated before the courts, have his or her case heard and have justice meted out against the person who wronged him or her. Victims are entitled to that and the balancing act that must be done is between those people and the people who are accused, rightly or wrongly, and enjoy the presumption of innocence up to the point at which they are convicted. The defence must have access to material that assists the rendering of justice. It might be exculpatory and might assist the court or jury to come to the right decision. For that reason if no other, an absolute ban is not constitutional.

The question is then what can be done to have a fairer or more equal balancing of those rights because there is no doubt but that the disclosure of what has been described as the innermost thoughts or most intimate records - and I agree with that description - to any third party, let alone a group of people who might be involved in a defence team, is damaging to victims. It is an extraordinary intrusion on the privacy of individuals and it is understandable that it exacerbates the harm done to them in the first place when they were victims of the crime. The breach of that privacy, therefore, needs to be minimised in whatever way it can be.

I thought there was an agreed position on this. I have spoken about it to many different people who represent victims. I am thinking of people like Noeline Blackwell who I have had this out with many times, and more recently Rachel Morrow, the director of Dublin Rape Crisis Centre. I understood there was an agreed position that is largely represented by Deputy Kelly's amendment No. 11, that there would be a process whereby we would not have wholesale, regular disclosure of enormous volumes of material - and they can be enormous - to the defence team, for it to go to the court under section 19A to ask to be able to use certain portions of it. I thought there was an agreed position to have an independent person, taken from a panel of people who have been instructed specifically in the law and psychology around this, review the material and come up with a decision about what might be relevant. I would go further than the amendment, which suggests a panel of barristers who have training review the material and use the criteria set out under the section 19A, as it is proposed to amend it under amendment No. 11, to decide what should be given to the defence. I would go beyond that. The defence should be given the right to engage with that person and perhaps to confidentially explain to that person what the defence is in the case, so the person reviewing the material might have an eye on something that might be exculpatory, that might be of assistance to the defence so it could also be included. I thought there was an agreement that this person would do that work and would be the only person who would have access to this documentation of a highly personal nature. I thought that independent analysis would be an opportunity to avoid handing over lots of personal information from the victim to the legal team for the defence. That was my understanding. The Minister can correct me if I am wrong.

It feels from speaking to those groups that there has been totally inadequate consultation with them. The Minister said in his opening comments on this amendment that he has listened to them. I accept his bona fides, but I do not believe he has spoken to them. These amendments were made available to us at the end of last week. I am told there has not been consultation with those groups about the amendments and they were not given forewarning that these amendments would come in the way they have and that they would do what they propose to do. If we are serious about addressing this and addressing the legitimate concerns they have, there should have been consultation and notice and there should have been an opportunity for all those parties to engage with the possibility of changing the way it would be framed in the Bill.

In the absence of that, I understand the Minister is proposing to do something that is the same as what happens at the moment. There will be a disclosure hearing where the defence comes to the hearing equipped with all the information, without any restriction on what it is given to consider whether it is needed, and thereby the breach of the privacy rights of the victim will already have occurred. The defence will come to the hearing to argue in court, not open court - it is important to mentioned these matters are heard *in camera* - but nonetheless potentially in the presence of both the accuser and the accused. That will not be easy for the victim either. There will then be a hearing where it is meted out between the various legal parties, the prosecution legal team, the defence legal team and a legal team representing the victim under section 3. There will be three legal teams in the court, plus the registrar of the court, the stenographer and the judge, and then there is the court time. A huge circus has to be gone through to decide what should and should not be adduced in the course of a trial. I understood the position was that whole process would be done by one person who would be paid to look at the documentation so the breach of the privacy of the victim would be minimised insofar as possible and limited to one barrister who would look at the material, maybe having spoken to the prosecution and defence to know what they are both looking for, so the barrister can separate any relevant material in the counselling notes or medical records, if it exists.

What I understand the Minister to be proposing is not more efficient. It is less efficient. It will not be less expensive - it will be more expensive - and it will not be the same from the point of view of victims. It will be more damaging than what I understood to be the agreed position. My concern is not that the Minister thinks this is the right course of action, but that an accounting decision has been made. Someone heard the notion of a panel of barristers making decisions about this, thought it would cost money and decided this would be a better way to do it because it is the way it is and they cannot be criticised for spending more money on lawyers. That is the only rationale that could justify the change from what I understood to be the agreed position.

The Minister engaged with Lorcan Staines, Gemma McLoughlin-Burke and the Dublin Rape Crisis Centre and other victims groups. I understood that everyone had looked at the situation and recognised that an absolute ban was not possible and that something had to be done to minimise the effect this disclosure has on victims and that there was a methodology that would be employed to minimise the effect on them and reduce the harm that exacerbates the original harm caused by the offence. It makes sense to me. It serves all the sides. It preserves the free trial rights and the rights of all the parties before the court to engage in that process with the minimum intrusion and damage to them.

For some reason, the amendments the Minister has brought forward here throw that out the door and instead bring in a cumbersome, ineffective, expensive and damaging process that does not improve the old section 19A. Arguably, it makes it worse. It is disappointing and all of those who are here from those victims' organisations, and victims themselves, are deeply disappointed by this. It should not be allowed to happen at all, never mind in the way it has come before the committee. I support the amendment put forward by Deputy Kelly and drafted in conjunction with those organisations. I hope the Minister will take this opportunity to reconsider and maybe put off this amendment until Report Stage, in order to have the opportunity to engage with those groups, to properly discuss it with them, properly hear their views and maybe take on board some of the things they have to say because that will make for better legislation at the end of the day.

Deputy Jim O'Callaghan: I thank all colleagues for their contributions. I listened very carefully to them. I will start on an area where I think there is agreement. The current position is unacceptable. I do not think there is anyone here who would dispute that. It is unacceptable because, routinely, confidential and in many respects irrelevant counselling notes are being handed over to the accused in criminal prosecutions. That situation has to change. There have to be legislative changes to this. I am not prepared to allow this to continue without making an effort for there to be an improvement in respect of this.

I think it was Deputy Kelly who said that nobody is going to be happy at the end of this. When it comes to balancing rights and putting in place legislation, my priority is trying to find a path and steer between conflicting constitutional rights. It has to be stated in regard to the amendment put forward by Deputy Kelly, that the Dublin Rape Crisis Centre clearly has advice that banning counselling notes is unconstitutional, otherwise it would have put forward the proposal along the lines of Deputies Coppinger, Mark Ward and Carthy. The Dublin Rape Crisis Centre clearly has received advice that the ban on counselling notes would be unconstitutional, so they are in the same position I am.

I listened very carefully to what Deputy Barry Ward had to say in respect of the amendment that has come from the Dublin Rape Crisis Centre and was put down by Deputy Kelly. The concern I have about that proposal, which has nothing to do with it being a cost issue and cost is not the reason I was concerned about this, is that what is in the amendment here is that into the judicial process would be put what is referred to as an independent review panel appointed by the Department of justice. In effect, it is putting me as Minister into the middle of a judicial process. This independent review panel, which I note was identified as being a panel of barristers, would then have a role in the administration of justice in assessing documentation, trying to produce a narrative afterwards and then responding to queries in respect of it. I have serious concerns about an independent panel of people, whether they are independent barristers or not, appointed by the Minister for justice having a role in this process. You heard what Deputy Coppinger wanted to say. This is not a criticism but she does not envisage this panel as being an independent panel of barristers. She believes this should be a panel made up of stakeholders, maybe representatives from the domestic, sexual and gender-based violence sector.

Deputy Ruth Coppinger: I did not say that.

Deputy Jim O'Callaghan: You do not want an independent panel of barristers. I think that is correct.

Deputy Ruth Coppinger: No, I never said that actually.

Deputy Jim O'Callaghan: I listened and am just responding.

Deputy Ruth Coppinger: You just mischaracterised me.

Deputy Jim O'Callaghan: In terms of that independent review panel, I am deeply uncomfortable about introducing an independent panel of people appointed by the Minister into this process, where they are playing a role. Ultimately, no matter what system we have here, leaving aside the amendments from Deputies Carthy and Coppinger, if there is to be a process put in place, such as the one I am putting in place or the one advanced by Deputy Kelly, somebody has to perform the role of appraising the document. Somebody, at some stage, has to look at the document and say that it contains information that, unless it is provided, there would be an unfair trial and it is in the interests of justice for it to be provided. Under the proposal from Deputy Kelly, that would be ultimately done by the independent review panel. Under my amendment it will be done by a Circuit Court judge or a High Court judge. Since it is such a crucial role, my preference is that it is a function that would be performed by the Judiciary.

I will deal with some other issues. Deputy Carthy spoke about how personal information should not be disclosed. I entirely agree with him that such personal information should not be shared, and it will not be shared unless, as is provided for in the legislation, in the failure to do so there would be a real risk of an unfair trial.

(Interruptions)

Deputy Jim O'Callaghan: I know. I am going through them individually. That is something no one could dispute. We do not want there to be a real risk of an unfair trial. It is that it is in the interests of justice. I am just saying, why would somebody be opposed to the disclosure of a document if it is in the interests of justice that document be disclosed? This is the test.

Another thing mentioned was that this is not a presumption. If you look at what I am proposing in subsection (11), it clearly sets out the position for the court. Having gone through the previous application, if the court is considering the counselling record or applicable record, the court shall not order a disclosure of its contents. That is the tenet the court starts from. It is not to order disclosure of this unless it is satisfied, having examined the record, that it is likely to be relevant to an issue at trial and there is a real risk of an unfair trial, or it is in the interests of justice, or both. I have gone as far as I can in pursuing it.

In fairness to Deputies Carthy and Coppinger, they believe there should be an outright ban. I want them to think what could arise in respect of an outright ban. Deputy Mark Ward indicated, and I hope he does not mind me using this as an example, that he has performed counselling. I hear what he said about the fact the sector needs to be regulated, but what if an individual whom he was counselling provided information to him in that counselling session, and subsequently there was a criminal trial taking place and he had a record of what was said to him that completely undermined what was said in the prosecution? Surely, in a situation like that he could recognise there may be some relevance to the document he has.

Part of the problem here is when we are dealing with the right to a fair trial we generally do not have a group of people representing the interests of those who are being prosecuted. I commend the stakeholders here who are representing the interests of people whose privacy

rights are being intruded on at present as a result of the law that exists, but I have to take into account the interests of a fair trial. I think it was Deputy Coppinger who said there may be one in a thousand. I have to be careful that the legal system that is in place ensures a satisfactory and fair trial for people who come before the courts. If I do not, it will be challenged. I know Deputy Kelly may say let us just wait for the challenge to come. In terms of how it could be challenged, in general, in prosecutions for rape, the accused has their anonymity preserved, certainly during the trial process. It will not be difficult for somebody to challenge this, as Deputy Barry Ward no doubt will confirm. If there were a ban, it would be challenged very quickly and very rapidly before the courts.

I have listened to people here. I will press the amendment I have. I believe it is the best of the amendments that are here. To be frank, I cannot ban the counselling notes and I say that with the greatest of respect to Sinn Féin and Deputy Coppinger. In terms of Deputy Kelly's amendment, I believe my amendment is preferable because of the fact the independent review panel is a group of people, and I do not know who they will be, involved in the criminal justice process. What I will do is look again at the issue of the interests of justice. I know the point that has been made, which is that the interests of justice adds on another test and it should just be limited to whether an unfair trial will occur or not. I will give consideration to that before Report Stage, but I cannot give a guarantee that it will.

On an issue like this, I am bound. If I get strong legal advice, it is inadvisable to just reject it in circumstances where the consequences could be very severe.

Officials in my Department consulted widely on the development of the amendments that I am bringing forward with advocacy organisations, with other Departments, and also with stakeholders across the justice system. I believe that these amendments represent the most effective way forward in this complex legal area. I am committed to this significant reform. I will be keeping it under review and I will give further consideration before Report Stage. The easy thing for me to do is to do nothing and just say we should have more consultation. I am not prepared to allow the *status quo* continue. Everyone recognises that the *status quo* is unacceptable.

Finally, on the point that Deputy Coppinger raised about how I had taken agency away from victims in the criminal justice process, part of the reason we have these difficulties is because there was the waiver scheme available. It was happening routinely - maybe it was the pressure to get the case on quickly - that counselling notes were being handed over on the basis of the waiver that was contained, I believe, within subsection (17). We cannot achieve everything but I am trying to get a pathway that I believe will provide much greater protection for survivors of rape and sexual abuse. I believe that this proposal I have will considerably improve the situation.

In answer to Deputy Carthy's concern, I do not believe we will be back here in seven years trying to amend it again because I believe that changes so clearly set out in legislation will change the practice as it operates at present.

Deputy Ruth Coppinger: To clarify, I did not put forward the independent review idea. I was merely taking the Minister up on being so dismissive of it. It is my belief that it is an independent review panel of barristers, and I never disputed that. The whole point of that was to try to find a way of stopping the notes being read by the accused. By "trained", it would

mean that they were trained in the area of sexual violence and in things to look out for in that regard. Obviously, rules would have to be drawn up. A new idea that comes along should not just be dismissed. That is all.

The Minister says that I or whichever Deputy wants a ban. It was this committee that said it wanted a ban. The Minister makes it sound like it is just the lefties again. It is the survivors, the therapists, the United Nations, the Psychological Society of Ireland, all of the professional bodies, such as the Group of Experts on Action against Violence against Women and Domestic Violence, GREVIO, and the National Women's Council of Ireland that want a ban. It is not just a marginalised group of people. I want to apologise to the survivors who are sitting and listening to this because it is getting Jesuitical in here with the way the Minister is going on about the right to a fair trial. I do not think the Minister wants a ban. That is the whole vibe I am getting off him here. He does not want to find a way to sort this out. He clearly believes that this is necessary for a fair trial. Just spit it out and say it. Most people do not and most of society does not. We are trying to find a way and the Minister is just shooting it down all the time.

I know and accept that the Minister is getting advice. I accept what Deputy Barry Ward is saying in that regard. I believe that there are competing rights and that part of the problem we are up against is the staidness of the legal profession. Legal professionals work off of past rulings that judges have handed down, and they are very boxed in for that reason.

If the Minister genuinely believes that there is no way that this can be done under the Constitution, then we need to talk about a referendum because this is actually damaging survivors of gender-based violence. If the Minister does not believe that this can be done within the Constitution, then for the moment, what the Rape Crisis Centre is putting forward would be way better than what the Minister is putting forward. The Government Deputies on the committee should go with it. It was drafted by a trained barrister. It is not just something pulled off by AI or something like that. Work has been put into it. I appeal to people to look at it.

I would like a ban. I do not think that counselling and therapy notes have any place in trials. Neither does this committee.

I appeal to the Government TDs. This has been a big issue and has been going on a long time. I have been campaigning. Lots of people have been campaigning. What legislation has come forward from this Dáil to make trials easier for gender-based violence cases? Can anyone name any? I cannot. The previous Dáil was pretty much the same. Nothing is ever done to counteract rape myths and victim blaming in the courts, and here we are again. The issue of character references arose recently, too. That was meant to be amended but it still seems not to apply to parole hearings, for example. Ex-Fianna Fáil TDs, or whoever it is from whichever party, can get up and give references.

People are living under this terror that the Constitution is going to be cited. I agree with Deputy Kelly that sometimes you have to do what is right and face a challenge. There are a few options on the table here. The committee should vote the Minister's amendment down and let the other options go forward if its members are to stand by what they said.

Deputy Matt Carthy: I accept that this is a very political issue but it is not a party political issue. I have spoken to people from different parties who have a longer track record than I of

following this issue and who have very strong views on it. I know there are members of a Government party who do not want to be here today because they are actually ashamed, or at least disappointed - not to put words in their mouths. We just need to acknowledge that. No doubt, Deputy Coppinger will be politically kicking me up and down the place tomorrow or the next day if she sees an opportunity, and we all do that. On this issue, however, the views of the members of this committee came about as a result of the testimonies and the evidence that we had heard. To me that is the job of a committee when we are dealing with pre-legislative scrutiny. We brought in the representative organisations and the legal bodies. We heard what they were saying about their analysis. Crucially, this committee heard evidence from a survivor who had gone through the process of the criminal justice system and was speaking on their behalf and on behalf of many others. They told us in stark terms that the choice they had, and that many people in that position found themselves making, was to pick if they wanted counselling or justice. When I say "counselling", I mean healing and how that can be provided.

The problem I have is with the term "in the interests of justice" as regards the right to a fair trial. I am the first to acknowledge that I am not a practising solicitor or barrister but I would a wager a bet that this is the type of term most solicitors and barristers have the most fun with. They have the craic with that when it gets into court, playing around with a term of that nature. That is a legal practitioner's dream because that could mean different things to different judges on different days. It is as clear as that.

Here is the problem. I have asked a question of the Minister a number of times now, and I have asked legal practitioners across the board who deal with these cases. Can the Minister point me to a single case study? Perhaps Deputy Barry Ward can help, or anyone. Can somebody show me a case where evidence divulged from counselling notes had a substantive impact in a trial, not in terms of scaring away the victim, but in terms of something that was taken from them? I do not know how that would happen.

There have been so many discussions on this.

Whether it is Deputy Ward or somebody else who is taking a counselling note, the person is writing a note of what they hear and how they interpret it. I do not know how that has value in a court. I know of one family where a child was repeatedly getting sick. The doctors decided that the child had an eating disorder. The child was taken into hospital and treated for that. As part of the work, a therapist was assigned to the family. Subsequently, the family made a freedom of information request and got all the therapist's counselling notes. The therapist was a good one, but the entire notes were made up, referring to the parents being in denial and the child refusing to admit. That was the whole tenor of the notes. It turned out the child had a genetic disorder, which had nothing to do with an eating disorder. She had an underlying illness that the doctors missed at first but eventually found.

If you were to take what was written down by a therapist, you can see how somebody in a court of law could use that type of information against somebody as part of a legal process. It was not true, however. It was an interpretation and even with the best therapist, their interpretation of something that somebody has said could be used. I do not believe there are any scenarios in which, for example, a prosecution would be able to get counselling notes. If somebody was in court for a particular crime and the prosecution sought those notes, I would love to know to how and where that has worked. The Minister is nodding. I would be delighted to hear all about it.

I will also make a point that has been mentioned peripherally. The Minister is right that the vast majority of people affected by this issue are women, but it also affects men. There are many men, particularly victims of childhood sexual abuse, who have to go to counselling. The week before last, we had statements in the House on the Michael Shine case. The victims were predominantly, if not exclusively, men. We have now established the first step towards an inquiry into how that was allowed to happen. It struck me while listening to the debate that if one of Michael Shine's victims had the wherewithal to initiate a criminal charge against him, Michael Shine's legal team could have sought his former victims' counselling records. It then struck me that this is what is happening across the board. There were people nodding when the Minister was talking about prosecutions. I would imagine in most cases that it would not even cross a prosecution team's mind to seek counselling notes because in most instances they would have no idea whether the accused had attended counselling or not.

Here is the crux of the problem and issue we are dealing with here. Defence legal teams know that if the victim was genuinely a victim of sexually violence, there is a high likelihood that he or she needed counselling. That is why this has become *pro rata*. It is the very fact that people are victims and survivors of sexually abuse and needed to seek counselling that has created the scenario that this has now become standard. That is the evidence we have heard. It is one of a number of things that is checked off a list - meet the client, discuss the case with prosecution and seek the most intimate personal records. What we have heard and the evidence we have suggests the Minister's amendment will allow that to continue. That is not what the committee has been asked to do and it is not what the committee has recommended. We have to come quickly find a route to annul what is an obscenity in Irish law, one that is now a commonplace practice.

Deputy Alan Kelly: We need to get to a point where we do the right thing here. The formula I am putting forward is a compromise. The Minister has already provided, under the new section 13(1), that "it is otherwise in the interests of justice to so order." He is, therefore, already committed to looking at that.

Deputy Jim O'Callaghan: I will have a look at it.

Deputy Alan Kelly: Let us tick that one off. Is there any journey that the Minister can go in relation to the panel issue?

Deputy Jim O'Callaghan: Does the Deputy want me to answer?

Deputy Alan Kelly: In a second. I will not be long. I am trying to narrow down where the differential is here. Obviously, we have the issues of a real risk of an unfair trial and all of that. The Minister may be moving towards my amendment. We could possibly work on it. As I said earlier, nobody is going to win here. There are going to be questions over this legislation, including legal questions. What we are doing collectively is not right. The Minister is going to look at the interests of justice. In relation to my amendment, can he move in a way that would potentially bring us closer together when it comes to the issue of the panel, with which the Minister seems to have a massive issue? That is what I am proposing. Is there any way the Minister can work with us on that? Ultimately, we are trying collectively to do our best here. I will hand back over to the Chair.

An Leas-Chathaoirleach: I was listening to the clerk. My apologies.

Deputy Alan Kelly: I am finished.

Deputy Ruth Coppinger: Can I ask a question?

Deputy Jim O'Callaghan: I am noting the Deputy's questions.

Deputy Ruth Coppinger: Can the Minister not go further by stating the notes have confidentiality in the first place? There is no filter or list of steps that need to be gone through here. It is far too quick. There is an issue in the trial and suddenly the notes are handed over. There is no presumption of non-disclosure. I do not think anyone here feels there is. Could the Minister not amend that on Report Stage?

Deputy Mark Ward: To return to what the Minister said in relation to notes being requested from a counsellor, I was always of the understanding that therapy notes are not evidence. I have never sat in a counselling session and took notes afterwards that I ever thought would be used against the person who was disclosing information to me. No matter what that information was, I never thought that would happen. I have worked with different therapists, and they take notes in a different way. I know therapists who would use bullet points. Others nearly write books when taking notes. That goes back to my point that the sector is unregulated.

A therapeutic encounter differs fundamentally from all other forms of disclosure. It is meant to be a safe, confidential space. Somebody who is experiencing trauma may at different times reflect on the traumatic situation that they experienced in a different way. We have heard before that at certain times in somebody's journey through counselling, they may even blame themselves for a situation which they had nothing to do with and which the perpetrator put on them. They may blame themselves at a certain point in time, but that certain point in time is the bit of evidence that could be used against them. That has happened before. I have spoken to victims and survivors about this. Notes are not evidence. They are there to help the therapist who the person is sitting in front of.

On the lack of regulation, the more I think about this, the more important I realise it is. There may be a situation where a person is not qualified to be a counsellor or psychologist.

We have seen a situation in the past year on "Prime Time" in which someone was able to get on the Internet to do a course in a couple of hours to get a certificate to say he or she was a psychologist and then to stick it on the door and be able to work as a psychologist. One of these people was even able to go into court on behalf of Tusla in respect of children whose parents were seeking access to them and gave evidence on behalf of Tusla. That is what happens in an unregulated industry and that needs to be worked on.

That is what could happen here. You could have an unregulated counsellor, psychotherapist or psychologist and all of them are currently unregulated because of the Government's failure to put in place the means or the barriers in CORU for this. We could have that situation whereby people could go on the Internet, get their certificate, call themselves a psychotherapist, counsellor or psychologist - whatever they want to call themselves - and then their notes could be taken and used against people who were there to try to get help.

Deputy Barry Ward: First, what Deputy Ward has said about the lack of regulation is a point well made. I am sure the Minister will take it on board but I do not think that is relevant in this discussion because that is a failure of a different sort. We have to work on the assumption and within the context of a proper counselling session with a person who is ethically aware and

properly qualified in whatever way he or she needs to be. If we start working on the basis that people are unqualified, we are going to go down a rabbit hole.

The other point Deputy Ward made, which is very important, is that counselling notes are not evidence and he is absolutely right. The Minister, however, will be aware of the decision of the Supreme Court in the case of Director of Public Prosecutions *v.* A.M., in which Mr. Justice Collins set out many concerns about the way in which notes are disclosed. It is probably one of the cases giving rise to the review we are looking at now. However, it requires the notion that the person who made the notes can come to court to give evidence on what was said to him or her. That is evidence but what Deputy Carthy was referring to was opinion. He said that if the parents are making it up or not accepting it, that is the opinion of the counsellor and not the fact of what was said to him or her.

Deputy Carthy also asked whether there had been any instances where there has been disclosure material that proved to be germane in the trial of evidential value. There absolutely are and one of the benefits of these things is that they are *in camera*, so you do not hear about them and nor should you. I can tell the committee, from my own professional experience very recently, that they do come up.

The context I discussed in my initial contribution was where something is said, and I think the Minister made reference to this circumstance, that is entirely different from the account a person might have given to the Garda, which is what happened in A.M. The version given to the Garda and the version given to the counsellor were quite different. That is something the defence must be given access to, if the trial is to be fair. It is not nice, it is not pleasant and I still have deep reservations about the effect it has on the person who sat down, as they believed, in confidence with the counsellor and said something to them in a presumably unguarded moment.

The other thing that is important to note is that a complainant will give evidence in court in the case and he or she will have an opportunity to put context around something like that. A.M. requires such people to be notified of any record that is going to be put to them, so that they are not ambushed with it in the course of a trial, which is exactly the way it should be. There are safeguards on both sides.

Deputy Carthy also asked about the prosecution getting disclosure, and I think he was referring to the accused person here. There is disclosure because the whole of the State apparatus is there to investigate the accused person. Bodies such as An Garda Síochána, the forensic science laboratory and whatever else is available in the State are there to investigate them. However, one of the other rights that is enshrined in our Constitution and the European Convention on Human Rights is the right to silence. It is not the responsibility of any persons accused to incriminate themselves, nor should it be.

My concern is we go down rabbit holes that are not really considerations we need to look at in the context of this legislation. The reality is that this looks at a relatively narrow thing and what we should be trying to do is to arrive at a conclusion that properly balances the rights in a trial in this legislation and which does so with the minimal amount of damage, primarily to the victim. That is what we should be trying to do. There is no point in saying the committee previously decided there should be a total ban when all of the informed contributors to this debate recognise that an outright ban is unconstitutional, and I say that with respect.

One of the points the Minister made, which is accurate, is the Dublin Rape Crisis Centre has clearly accepted this. Otherwise, it would be seeking an absolute ban but it is not; it is approaching this in a very constructive way. The particular difficulty I have with this amendment is that it appears that constructive approach has been overridden and ignored in terms of the amendment the Minister is putting down. That is the real difficulty I have with this.

As I said initially, I thought there was an agreed position and it was a much better position than the one that appears to be put forward by the Government in this debate.

Deputy Jim O'Callaghan: I thank colleagues for their contributions. I am not going to repeat myself, so I am just going to try to answer the questions.

At the outset, I will make a general point in respect of the my amendment, which we are discussing. I want members to know that the process outlined in the amendment will fundamentally change the way counselling notes and other personal records are handled in sexual offence trials. Any disclosure will only occur after a written disclosure application, an oral disclosure hearing - at which the victim's lawyer will make submissions on his or her behalf - and an examination of the material by the court.

The legislation is being strengthened by the inclusion of these very safeguards and with the deletion of the waiver provision, it will no longer be the case that these protections can be sidestepped. These reforms will ensure that any disclosure of sensitive material only occurs where strictly necessary and always will be subject to rigorous judicial scrutiny.

Deputy Coppinger asked about what other legislation has been introduced in respect of trying to protect survivors and victims of sexual assault and violence of a sexual or gender-based nature. Tomorrow, I am introducing the guardianship of infants Bill to the Dáil, which will provide for a mechanism to restrict or remove the guardianship rights of partners who have killed-----

Deputy Ruth Coppinger: Sorry, on a point of order, I said trials. The Minister keeps misrepresenting what I have said. That has nothing to do with trials.

Deputy Jim O'Callaghan: I am entitled to respond. In respect of trials, I am introducing legislation inspired by Jennifer Poole that will relate to trials and will provide a disclosure system for a register of judgments arising from criminal trials. That is to answer the Deputy's question.

Deputy Ruth Coppinger: Again, that is nothing to do with a trial.

Deputy Jim O'Callaghan: Deputy Coppinger also raised a question regarding why there is not anything in the provision recognising the confidentiality of the material. If the Deputy looks in my amendment, in the definition of applicable record, it refers to a reasonable expectation of privacy. That is something that recognises the confidential nature of the counselling notes.

Deputy Carthy raised a series of questions. He first asked if these have been used by the prosecution, and they have. Gardaí have got access to counselling notes in respect of somebody being prosecuted and have used the information from the counselling notes to prosecute the

individual and to undermine the narrative he or she has given to An Garda Síochána. That has happened on many occasions in the past.

With regard to looking for an example, I am not going to provide examples but were the Deputy was to look at the A.M. judgment decision of the Supreme Court, he would see an example there. I have spoken to two senior counsels who have told me of cases they have been involved in where counselling notes have been relied on for the purpose of determining the outcome of the case.

Deputy Kelly asked where I am going with this. I will certainly look again at the issue of the interest of justice, and I am being respectful to Deputy Kelly, his amendment and the Dublin Rape Crisis Centre. I am not going down the route of the panel. I do not think it is a good idea to introduce people who are not judges and who have not taken oath, as judges are required to take, to make determinations in respect of fundamental issues about the judicial process.

Deputy Mark Ward spoke about disclosure. I fully appreciate the confidentiality and privacy associated with these counselling notes, and it should not be the case that people have to question whether it is counselling or justice. I am trying to change that, so that people will necessarily need to and want to have counselling. They have to have that but combined with that, they must also be able to get justice; these are not incompatible. I am trying to ensure they are achievable.

Disclosure of psychiatrist reports is quite common in civil actions. If somebody is raped by another person, he or she can take civil action. If such people take a civil action, the defendant in the civil action case can seek access to their medical records and is given that access, because it is relevant to the determination of some of the issues.

Deputy Ward is correct that counselling notes themselves prove nothing. However, if there is a record of what was said, that can be relevant to the issue of a fair trial. I have listened to what the Deputy has to say. I will consider it in the interests of justice issue but other than that I am not prepared to go down the other route. The easy thing for me to do is kick this to touch and ignore it because it is getting too heated. I will do something about this. I am committed to doing something about it. I believe the amendment I have put forward will significantly improve the situation that operates at present.

Deputy Barry Ward: I know the Minister has finished. I understand the point he is making about the independent review panel, and I understand the reservations he has about it. He said that is a job that needs to be done by the Judiciary. That is fine, but the job is not being done by the Judiciary. You do not have a situation where the notes are being given to a judge, and the judge goes away for hours to consider what is in them and decide what is relevant. What you have is a situation where the notes are being disclosed to both sides and the lawyers have an argument about what is or is not accessible. The Minister is right insofar as the judge is ultimately making the decision, but the review is not being carried out by the Judiciary. I think the method proposed by the Dublin Rape Crisis Centre is a review by a person who will have the time and the space. We do not have the judicial capacity for them to spend ten or 12 hours going through copious medical notes to consider what is there. A person who is committed to that cause would potentially have that time and I think that is the difference, but I hear what he is saying.

An Leas-Chathaoirleach: Before we move to the vote, as Chair I want to acknowledge that this has been a highly emotive issue. I thank the members and the people in the Public Gallery today for sitting through all of this. I sit here and have to act completely impartially. However, I think the debate and the issues raised this afternoon by the members will merit further consideration by the Minister. That is not just with regard to the interests of justice. A number of points were made, and I ask him to reflect on them and engage again with the stakeholders, such as Dublin Rape Crisis Centre. They have brought in a number of issues with regard to the presumption of non-disclosure and the real risk of unfair trial. Something I did not note, but perhaps was said, is the mandatory jury warning. I ask the Minister to take that on board.

Deputy Jim O'Callaghan: Fair enough. I will do that.

Amendment put:

The Committee divided: Tá, 6; Níl, 3.	
Tá	Níl
Brabazon, Tom.	Carthy, Matt.
Butterly, Paula.	Kelly, Alan.
Callaghan, Catherine.	Ward, Mark.
Lahart, John.	
O'Callaghan, Jim.	
O'Meara, Ryan.	

Amendment declared carried.

Amendments Nos. 11 to 14, inclusive, not moved.

Section 13 deleted.

An Leas-Chathaoirleach: I suggest that we take a ten-minute break to allow the staff to take a moment. We will then come back and carry on if all members agree.

Deputy Alan Kelly: Can we not just plough on?

An Leas-Chathaoirleach: Neither the Members nor the staff have had a break. We must consider the staff. I am not too worried about Deputy Kelly. We will take a ten-minute break and then continue. During the break, we will agree what time the meeting will finish or whether we will keep going until the very end.

Sitting suspended at 7.14 p.m. and resumed at 7.29 p.m.

NEW SECTION

Deputy Matt Carthy: I move amendment No. 15:

In page 12, between lines 10 and 11, to insert the following:

"Amendment of Criminal Justice Act 1993

14. The Criminal Justice Act 1993 is amended by inserting the following section after section 5B:

"Requirement for sworn character evidence in specified offences

5C.(1) Where a person is convicted of—

(a) a homicide offence,

(b) a serious harm offence,

(c) a domestic violence offence,

(d) a coercive control offence,

(e) a stalking offence,

(f) a harassment offence, or

(g) a child abuse offence,and intends to adduce character evidence for the purpose of the determination of sentence, such evidence shall—

(i) where given orally, be given on oath, or

(ii) where not given orally, be given by affidavit.

(2) Subsection (1) applies whether the evidence is given by the convicted person or by any other person on his or her behalf.

(3) Subsection (1) shall apply only in respect of a person who is convicted of the offences listed in that subsection after the coming into operation of this Act.”.”.

Amendment No. 15 relates to a matter I raised with the Minister in the Dáil Chamber last week. For members' information, the provisions of section 14 of the Criminal Law (Sexual Offences and Human Trafficking) Act 2024 require that character references be given on oath. This amendment calls for that to be extended to other criminal offences, including the offence of unlawful killing and more serious harm offences.

There is obviously a big debate going on about the veracity and reliability of character references given in court. While those concerns often relate to sexual offences, they are not confined to such offences. It is clear that this is an area within the criminal justice system that needs to be better regulated. As I mentioned to the Minister last week, character references can be unreliable or overly sympathetic. They are often disconnected from the offence and risk minimising harm, creating bias in sentencing and allowing untested assertions to influence outcomes if there is not proper scrutiny and accountability. Requiring that any such references be made under oath, particularly for very serious crimes, would ensure that the person making the reference understands the seriousness of what they are doing. It would also ensure they can be cross-examined. I have spoken to people who were in court for the sentencing of perpetrators convicted of the unlawful killing of their loved ones.

It is clear to me, following those conversations, that the introduction of character references which were unverified and not given under oath added to the trauma and the sense that the court was not getting a true picture of the offender. There would be widespread public support for such a provision. Extending the provisions that are in place in respect of other crimes such that character references would be provided under oath would enhance fairness and ensure that only reliable character evidence is provided. It would also strengthen the confidence of victims in the judicial process by applying consistent, sworn statement standards across all serious offences.

Deputy Jim O'Callaghan: I thank Deputy Carthy for tabling this amendment. We had a discussion about this last Thursday during Oral Questions when the Deputy raised the issue. As I said at that stage, sentencing is a complicated part of a judge's function. Obviously, the accused has, at this stage, been convicted of the offence and the issue for the court to determine is the nature of the sentence that should be imposed. Should it be custodial and what other ranges are available to the judge? We already have a situation, as Deputy Carthy knows, since 2024 that if a person is convicted of rape or a sexual offence and others want to give a character reference evidence on his or her behalf, they have to do so on oath, either on affidavit or by getting into the witness box. That is a sensible way to approach character evidence, not just in terms of sexual offences but in terms of all offences. There are circumstances in which, in order for the court to find out information about the convicted offender, the court needs to be given evidence not just about the offence but about the offender. No one - including Deputy Carthy, in fairness - is suggesting that people should not be permitted to give evidence in respect of a convicted person's character but what is provided for in the sexual offences legislation is that if people want to give such evidence, they have to do so under oath or in an affidavit.

What Deputy Carthy is seeking to do here is to extend the provision that exists in respect of rape and sexual offences to other offences. I will give consideration to it. It is something that I would like to introduce but there are a number of issues with the current draft. I want to point them out to Deputy Carthy, not as a criticism but to show him the areas I would need to focus on. First, the Deputy sets out seven offences for which it would be required to give character evidence on oath. For instance, paragraph (g) refers to "a child abuse offence" but that is not a term that is defined in legislation, so I would need to be more specific. Similarly, paragraph (b) in the list refers to "a serious harm offence" and while there is an offence of "assault causing serious harm", I would need to be more specific about that.

My own view, having considered the matter, is that there are lots of other offences that are omitted. For instance, aggravated burglary is a very serious offence, as are other types of offences. What I will do is request Deputy Carthy not to push the amendment, although he can do so if he wishes, and I will go back and consider it. What I may do is come forward with a proposal referring to someone who is convicted of an "indictable offence". That would just make it broader and easier to define, so that if someone wants to give character evidence for a person convicted of an indictable offence, he or she would have to do so from the witness box or by way of affidavit. I will see if I can expedite that for Report Stage but I cannot give a guarantee that it will be ready then. As people are aware, there are lots of provisions already on this miscellaneous bus at present. If I can include it, I will because I agree with Deputy Carthy that the law should be changed to reflect this. I will try to do it on Report Stage. If I cannot, I will come back to the Deputy on it and he can put down an amendment himself on Report Stage. I will try to do it but if I cannot, I will seek to implement it when the next appropriate legislative instrument comes along.

Deputy Matt Carthy: On that basis, I will withdraw the amendment. I urge the Minister to introduce a provision on Report Stage or on one of the Stages in the Seanad. There is a bit to go in terms of this legislation so I will withdraw this amendment for now, with a view to hopefully supporting the Minister's amendment on Report Stage. Otherwise, I will be resubmitting this amendment.

Amendment, by leave, withdrawn.

Section 14 agreed to.

NEW SECTION

Deputy Matt Carthy: I move amendment No. 16:

In page 12, between lines 15 and 16, to insert the following:

"Amendment of the Criminal Justice (Victims of Crime) Act 2017

15. The Criminal Justice (Victims of Crime) Act 2017 is amended by the insertion of the following after section 8:

"Information regarding death of offender

8A. (1) A victim shall, insofar as is practicable and without delay, be informed by An Garda Síochána, the Irish Prison Service, the Probation Service, or any other relevant competent authority, of the death of the offender who committed the criminal offence against them, where that offender was—

(a) serving a custodial sentence,

(b) subject to post-release supervision,

(c) under the supervision of the Probation Service,

(d) otherwise within the criminal justice system in circumstances where information relating to their status is ordinarily communicated to victims, or

(e) subject to the notification requirements of the Sex Offenders Act 2001.

(2) The duty under subsection (1) applies whether or not the offender was, at the time of death, still serving a sentence or subject to any form of supervision, provided that the offender remained within a category in respect of which competent authorities ordinarily hold and communicate status information to victims.

(3) The Minister may issue guidelines to ensure the consistent application of this section across all competent authorities.".".

This amendment pertains to information regarding the death of an offender. A case has come to light and was brought to public attention by Sonya Stokes who attended a justice committee hearing a couple of weeks ago. Obviously, this is not about every victim or every perpetrator but focuses on those who, at the time of their death, were under the supervision of the Probation Service or under post-release supervision or subject to the requirements of the Sex Offenders Act. It might not seem like a significant issue or one that affects a large number of people but we are dealing with victims who have a right to be informed about developments in respect of their abuser or attacker. In this case, what happened was that Sonya, who was living in fear and wondering whether her attacker and abuser, who was her father, would try to reproach her. She was one of the people who inspired the civil protection orders legislation that is currently before the Oireachtas committee. She found out in April that, in fact, her abuser had died in December, so she had suffered five months of unnecessary worry and stress, even though he was part of the post-release supervision requirements. It appears that his

probation officer was not even aware of the fact that he had died which, in itself, is concerning but, in any case, it is a legal anomaly that needs to be addressed.

The aim of the amendment is to ensure that the criminal justice system, in the context of the Criminal Justice (Victims of Crime) Act, allows for victims to be informed of various developments, and the death of the offender is one such development. The amendment also provides that the Minister would issue guidelines to ensure that the application of this section would run across all competent authorities. It would provide some solace to some victims.

Deputy Jim O'Callaghan: I thank Deputy Carthy for his amendment. Just so he and other Deputies are aware, the Criminal Justice (Victims of Crime) Act 2017 already makes provision for a victim to be informed of the death of an offender who has been convicted and imprisoned, including where he or she is on temporary release or parole, committed to the Central Mental Hospital, or in child detention. Section 8 of the Act transposes Article 6 of the victims directive that establishes minimum standards on the rights, supports and protection of victims of crime.

I advise the committee that there are also important developments taking place in the area of victims' rights at European level which will impact our domestic legislation. The victims' rights directive is currently being amended, with the revised text being finalised for formal adoption. This is expected to happen shortly. Once the text of the amended victims' rights directive has been finalised and adopted, officials in my Department will review our victims' rights legislation and policies during the transposition process. It is anticipated that this process will include consideration of whether additional guidelines or protocols are required to further improve co-operation and co-ordination in safeguarding victims' rights. I expect that informing victims of the death an offender in circumstances where the offender has already served a sentence will be considered as part of this broader review of victims' rights. I will await the conclusion of that process but I am aware of Deputy Carthy's interest in this area and of the story of Sonya Stokes. I will not accept the amendment at this stage because I want to await the outcome of further developments in respect of the directive.

Deputy Matt Carthy: I have made my point and will press the amendment.

Amendment put and declared lost.

Section 15 agreed to.

Sections 16 to 20, inclusive, agreed to.

NEW SECTIONS

An Leas-Chathaoirleach: Amendments Nos. 17 to 23, inclusive, and 38 are related and may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 17:

In page 15, between lines 6 and 7, to insert the following:

"PART 8

AMENDMENT OF EUROPEAN ARREST WARRANT ACT 2003

Definition (*Part 8*)

21. In this Part, "Act of 2003" means the European Arrest Warrant Act 2003.".

These amendments insert a new Part into the Bill to amend the European Arrest Warrant Act 2003. That Act gives effect to the Council decision from June 2002 on the European arrest warrant and the surrender procedures between member states, as amended by the 2009 Council framework decision. All the amendments in this group respond to an infringement proceeding taken by the European Commission against Ireland. It is imperative we add this new Part into the Bill to ensure Ireland is not referred to the CJEU and will not become liable for financial penalties. The amendments will not materially impact the current practical operation of the European arrest warrant framework in Ireland. The amendments are technical in nature and merely ensure the 2003 Act reflects framework decisions even more precisely than is already the case.

Amendment No. 17 inserts a new section into the Bill. It is a standard provision which defines the Act of 2003 as being the European Arrest Warrant Act 2003.

Amendment No. 18 inserts a new section into the Bill clarifying the application of the Part.

Amendment No. 19 inserts a new section into the Bill. It amends section 13 of the 2003 Act. Currently section 13 provides for applications to the High Court to execute European arrest warrants. This amendment will make more explicit Ireland's compliance with Article 6.2 of the framework decision. The amendment is a technical drafting amendment to ensure the language of the 2003 Act is reflected in its practical application The amendment makes explicit that it is the High Court that decides on the execution of the European arrest warrant and the central authority's role is simply to produce the arrest warrant to the court.

Amendment No. 20 inserts a new section into the Bill to amend section 14B of the 2003 Act. The amendment ensures a more effective transposition of Article 18 of the framework decision. The primary change here is made to the process whereby once the High Court has ordered the transfer the Minister is obliged to issue a warrant authorising the temporary transfer of the person out of the State and to the issuing state. This new system will not require any such warrant from the Minister as the High Court will issue the warrant instead.

Amendment No. 21 inserts a new section into the Bill to amend section 30A of the 2003 Act. The amendment ensures the effective transposition of Article 21 of the framework decision. The amendment guarantees the consent of the state from which a requested person was extradited is requested without delay. Furthermore, the amendment ensures the material conditions necessary for an effective surrender remain fulfilled.

Amendment No. 22 inserts a new section into the Bill to amend section 35A of the 2003 Act, giving further effect to Article 4a.3 of the framework decision. This amendment ensures the detention of a person awaiting a trial or appeal, following *in absentia* proceedings, may be reviewed upon request of the person concerned. Furthermore, the amendment guarantees such a review includes the possibility of suspension or interruption of that detention.

Amendment No. 23 inserts a new section into the Bill to amend section 45 of the 2003 Act, which again gives further effect to Article 4a.2 of the decision. The amendment ensures a person's request of a copy of a judgment under section 45(2) following *in absentia* proceedings does not delay the surrender procedure or the decision to execute the European arrest warrant.

Amendment No. 38 amends the Long Title consequential on the insertion of the new Part.

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 18:

In page 15, between lines 6 and 7, to insert the following:

"Application of Part

22. (1) The amendments to the Act of 2003 effected by this Part shall apply to a relevant arrest warrant and a true copy thereof, that is—

(a) endorsed in accordance with section 13(2) of the Act of 2003,

(b) produced to the High Court under section 14(4) of the Act of 2003, or

(c) issued under section 33(1) of the Act of 2003,

on or after the date on which this Part comes into operation.

(2) In this section, "relevant arrest warrant" and "true copy" have the same meanings, respectively, as they have in the Act of 2003.".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 19:

In page 15, between lines 6 and 7, to insert the following:

"Amendment of section 13 of Act of 2003

23. Section 13 of the Act of 2003 is amended—

(a) in subsection (1), by the substitution of "produce, or cause to be produced, the relevant arrest warrant" for "apply, or cause an application to be made,", and

(b) in subsection (2), by the substitution of "The High Court shall, in relation to a relevant arrest warrant produced to it under subsection (1)" for "Upon an application under subsection (1), the High Court shall, in relation to a relevant arrest warrant".".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 20:

In page 15, between lines 6 and 7, to insert the following:

"Amendment of section 14B of Act of 2003

24. The Act of 2003 is amended by the substitution of the following section for section 14B:

"Warrant for temporary transfer of person to issuing state

14B.(1) The High Court shall, on the grant of an order under section 14A(3)(a), issue a warrant under this section for the temporary transfer of the person the subject of the order out of the State for the purpose of ensuring that that person is heard in the issuing state pursuant to the applicable relevant provisions (within the meaning of section 14A).

(2) A warrant issued under this section is authority for—

(a) where the person the subject of an order under section 14A(3)(a) is remanded in custody or on bail in the State at the time of the making of the order, the taking of that person from the place where he or she is detained or by arrangement where he or she is on bail,

(b) the delivering of the person the subject of an order under section 14A(3)(a) into the custody of a person representing the issuing state at a place of departure from the State,

(c) the detaining of the person in the issuing state, and

(d) where the person the subject of an order under section 14A(3)(a) was remanded in custody in the State immediately before that person was delivered into the custody of a person representing the issuing state, the bringing of the person back to the State and returning him or her to the place where he or she was detained.

(3) A warrant under this section may not be issued unless an assurance is given by the issuing state that the person the subject of an order under section 14A(3)(a) will not be proceeded against, sentenced, detained or subjected to any other restriction on his or her personal freedom in respect of any offence under the law of the issuing state committed before the person's departure from the State.

(4) A person the subject of an order under section 14A(3)(a) is deemed to be in lawful custody when being taken from a place where he or she is detained or to a place where he or she is to be detained under a warrant under this section.

(5) A person the subject of an order under section 14A(3)(a) who escapes from custody or is unlawfully at large may be arrested without warrant by a member of An Garda Síochána and taken in custody to a place where he or she is to be detained.

(6) A person (other than a member of An Garda Síochána) who is authorised to have custody of a person the subject of an order under section 14A(3)(a) is deemed to be such a member for the purposes of this section.".".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 21:

In page 15, between lines 6 and 7, to insert the following:

"Amendment of section 30A of Act of 2003

25. Section 30A of the Act of 2003 is amended—

(a) in subsection (1), by the substitution of "the High Court shall, without delay," for "the High Court shall", and

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

"(1A) Where the High Court has requested the consent of a third country under subsection (1), it shall remand a person to whose surrender the consent relates in custody or on bail (and, for that purpose, the High Court shall have the same powers

in relation to remand as it would have if the person were brought before it charged with an indictable offence).”.”.

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 22:

In page 15, between lines 6 and 7, to insert the following:

“Amendment of section 35A of Act of 2003

26. Section 35A of the Act of 2003 is amended, in subsection (2), by the substitution of “in relation to such detention, upon request of the person concerned and, for that purpose, the High Court shall have the same powers in relation to remand as it would have if the person were brought before it charged with an indictable offence” for “in relation to such detention”.”.

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 23:

In page 15, between lines 6 and 7, to insert the following:

“Amendment of section 45 of Act of 2003

27. Section 45 of the Act of 2003 is amended by the insertion of the following subsection after subsection (2):

“(3) A request under subsection (2) for a copy of the judgment shall not—

(a) extend, suspend or otherwise affect the time limits specified in section 15 or 16 in relation to the person who made the request,

(b) warrant the postponement of the surrender, under section 18, of the person who made the request, or

(c) operate as a stay on proceedings under this Act relating to the person who made the request.”.”.

Amendment agreed to.

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Sections 21 to 23, inclusive, agreed to.

SECTION 24

An Leas-Chathaoirleach: Amendments Nos. 24 to 27, inclusive, are related and may be discussed together.

Deputy Mark Ward: I move amendment No. 24:

In page 16, to delete lines 38 to 41, and in page 17, to delete lines 1 and 2 and substitute the following:

“ “45A.(1)(a) A person who offers a tenancy of, or a licence, in relation to, relevant accommodation, which tenancy or licence is of a type that would ordinarily be

granted in exchange for payment, to another person in exchange for that, or any other person, engaging in sexual activity with the offering person, or any other person, in lieu of payment in respect of the tenancy or licence, shall be guilty of an offence.

(b) The person referred to in paragraph (a) shall also be guilty of an offence where they threaten or cause the cancellation or termination of a tenancy or licence if sexual activity is refused.".

The following amendments relate to the section on sex for rent. It is welcome the Government is finally acting this issue. It was in early 2022 that these deplorable acts were brought to public attention by *Irish Examiner* journalist Ann Murphy. Sinn Féin supported Opposition legislation to make sex for rent a criminal offence, which the Government eventually rejected. Sinn Féin then brought its own legislation in early 2024 to amend the Residential Tenancies Act. This has passed First Stage. It is welcome this is finally progressed but it has taken four years to get to this stage.

The amendments Deputy Carthy and I have brought forward were proposed by the civil society coalition. These organisations represent vulnerable groups of women being exploited and affected by sex for rent, including migrant women, students - including international students - and people at risk of or currently experiencing homelessness. The following amendments relate to Part 10 of this miscellaneous provisions Bill, which amends the Criminal Law (Sexual Offences) Act 2017.

Amendment No. 24 is very straightforward. It brings clarity to the language used in section 24 by stating it is an offence to offer a tenancy in exchange for sex not only with the person offering the tenancy but also with any other person. This amendment also makes it an offence to cancel a tenancy if sexual activity is refused. This gives further protection to vulnerable tenants who might be coerced into sexual activities for rent or who may lose their tenancies and face homelessness if they refuse.

Amendment No. 25 deals with the liability of directors and officers of corporate bodies. The amendment would make agencies liable to criminal offences if a tenancy was offered in return for sex if the person offering this has the consent, connivance or any wilful neglect of a person who is a director, manager, secretary or other officer of the corporate body. This amendment would make the person offering the tenancy under these grounds, as well as the agency they represent, guilty of an offence. Our proposed subsection (2A)(b) extends this to where affairs of the corporate body are managed by members where a member would be liable as if they were a director or manager as in subsection (2A)(a). This amendment is necessary due to the number of corporate landlords and rental bodies in operation. This would discourage this practice at corporate body level.

Amendment No. 26 adds clear language where a defence can be used by the accused who has advertised a tenancy only where there was no reasonable reason to suspect a tenancy was being offered for sexual activity. This amendment also includes that appropriate steps should have been taken in the advertiser's role for this to be used as an expense. This amendment puts the onus on the advertiser to take the necessary steps to ensure tenancies it is advertising are not exploitative.

Amendment No. 27 is a short amendment to include informal tenancies. These types of tenancies exist. It is possible they could be more exploitative given their nature and it is important these tenants are protected against exploitation.

Deputy Jim O'Callaghan: I thank Deputy Ward for putting forward these amendments.

As people are aware, this was a proposal that I put in. It was Senator Harmon in Seanad Éireann who brought forward her own legislation, and I decided I would try to do something about it. It is the advantage of a miscellaneous provisions Bill that one can get something moved more quickly if one can get it into the Bill. Members here can be critical about the fact that everything is on this bus, but there are advantages to putting it on the bus because we can get it done faster. I mention this because I have no ideological objection to accepting amendments put forward by Members of the Opposition - I want everyone to know that - or, indeed, by members of my own party, such as Deputy Brabazon or anyone. I accepted this proposal from Senator Harmon. In fairness to other Opposition Deputies, they had put it down previously. The good news is it is coming.

I know that Deputy Mark Ward wants to try to improve the Bill, but I have an issue with these amendments. I will set out the reasons I cannot accept them.

Amendment No. 24 amends subsection (1) relating to the offence. Subsection (1)(a) provides for the offence of offering a tenancy or licence to another person in exchange for a person engaging in sexual activity with another person in lieu of payment. Importantly, the tenancy or licence is of a type that would ordinarily be granted in exchange for payment. The amendment seeks to ensure that any sexual activity in lieu of payment for accommodation is captured, whether this is between the landlord and the tenant or between other persons on foot of this arrangement. However, this is already encompassed by the legislation. I assure the Deputy that this issue was explicitly considered during drafting, with the language crafted by Parliamentary Counsel accordingly in order to reflect this.

With respect to subsection (1)(b), this would appear to criminalise situations where a person threatens to end or ends a tenancy or licence agreement if sexual activity is refused. Again, I understand the intention behind this provision, but there is a risk of unintended consequences here. It could also potentially capture situations where a consensual sexual relationship has developed between flatmates and then ended, perhaps badly. Legal advice obtained by the Department emphasised that the sex for rent provisions were novel provisions, insofar as they seek to regulate sexual activity between adults. As such, any such legislation must be clear, precise and limited in scope in order to ensure that the provisions are both workable and constitutionally sound. Bearing this in mind, the legislative provisions have been carefully crafted in conjunction with the Office of the Attorney General to achieve this with a focus on criminalising the offer of accommodation in exchange for sex.

I turn to Deputy Mark Ward's amendment No. 25. I should note that section 57 of the Criminal Law (Sexual Offences) Act 2017 deals with corporate liability for all offences within that Act and will apply equally to the sex for rent provisions once inserted into it. As such, there is no need for corporate liability provisions to be replicated within the text of this section and, therefore, this amendment is not needed.

Amendment No. 26 amends the defence of innocent publication in relation to the unwitting advertisement of a sex for rent offer. I do not believe the amendment is necessary if the

provision is designed to capture situations in which unscrupulous individuals take advantage of the current housing crisis by seeking sexual services from those in need of accommodation. There has been no indication that companies are complicit in advertising sex for rent offers. It is also unclear what is envisaged by "steps appropriate to their role" in this context. As the Deputy is aware, Coimisiún na Meán is charged with regulating online platforms through the online safety framework, which includes the prohibition of illegal content. Such ads will in future fall within the online safety framework and the associated obligations on online platforms are therefore engaged.

In respect of amendment No. 27, the term "informal tenancy" does not appear on the Statute Book. I imagine that what is intended here by the phrase is, in fact, a licence, which is explicitly covered in the section. In any event, I reassure the Deputies that officials in the Department of housing were consulted during the drafting of the legislation to ensure that the appropriate language was used in crafting the provisions.

I thank Deputy Mark Ward for tabling these amendments. Much of what he seeks to do is already covered, and the reason I am excluding the others is because they could lead to unintended consequences and make things more difficult in terms of the primary purpose of the section.

Deputy Mark Ward: I have made my points and will be pressing this amendment. I do not mind withdrawing amendment No. 25, but I will be pressing the others.

Amendment put and declared lost.

Deputy Mark Ward: I move amendment No. 25:

In page 17, between lines 9 and 10, to insert the following:

> "(2A) (a) Where an offence under this Act is committed by a body corporate and the offence is proved to have been committed with the consent or connivance of, or to be attributable to any wilful neglect of, a person who, when the offence was committed, was a director, manager, secretary or other officer of the body corporate or of a person purporting to act in such a capacity, that person, as well as the body corporate, is guilty of an offence and is liable to be proceeded against and punished as if guilty of the first-mentioned offence.
>
> (b) Where the affairs of a body corporate are managed by its members, subsection (1) applies in relation to the acts or defaults of a member in connection with his or her functions of management as if he or she were a director or manager of the body corporate.".

Amendment, by leave, withdrawn.

Deputy Mark Ward: I move amendment No. 26:

In page 17, to delete lines 10 to 15 and substitute the following:

> "(3) In any proceedings for an offence under subsection (2), it shall be a defence for the accused to show that he or she did not know and had no reasonable reason to suspect, having taken steps appropriate to their role, that the advertisement related to an offer of a tenancy of, or licence in relation to, relevant accommodation, in exchange for a person

engaging in sexual activity with another person in lieu of payment in respect of the tenancy or licence.".

Amendment put and declared lost.

Deputy Mark Ward: I move amendment No. 27:

In page 17, between lines 35 and 36, to insert the following:

"(d) an informal tenancy,".

Amendment put and declared lost.

Section 24 agreed to.

Sections 25 to 30, inclusive, agreed to.

NEW SECTIONS

Deputy Jim O'Callaghan: I move amendment No. 28:

In page 21, after line 37, to insert the following:

"Amendment of section 28 of Civil Legal Aid Act 1995

31. Section 28 of the Civil Legal Aid Act 1995 is amended by the substitution of the following subsection for subsection (5C):

"(5C) Notwithstanding any other provision of this Act, the Board shall grant a legal aid certificate to a complainant or witness for the purpose of his or her being represented in relation to a disclosure application (within the meaning of section 19A of the Criminal Evidence Act 1992) that concerns him or her and of which he or she has been notified under subsection (6)(b) or (7) of that section.".".

Amendment agreed to.

Deputy Matt Carthy: I move amendment No. 29:

In page 21, after line 37, to insert the following:

"Amendment of section 33 of Domestic Violence Act 2018

31. Section 33 of the Domestic Violence Act 2018 is amended by the substitution of the following for subsection (1):

"(1) A respondent who—

(a) contravenes a safety order, a barring order, an interim barring order, an emergency barring order or a protection order,

(b) while a barring order, an emergency barring order or an interim barring order is in force, refuses to permit the applicant or a dependent person to enter and remain in the place to which the order relates, or does any act for the purpose of preventing the applicant or dependent person from so doing,

commits an offence and shall be liable—

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

(ii) on conviction on indictment, to imprisonment for a term not exceeding 5 years.”.”.

This is an amendment to section 33 of the Domestic Violence Act 2018. The Minister will be aware of Lorcan Staines SC's report into the assessment of the efficacy of bail laws in Ireland, which was published last November. There is an urgency to act on the recommendations of this report. I welcome the fact that the Minister has included a number of measures in this Bill specifically adding forced marriage and coercive control to the Schedule to the bail laws.

With respect to the breach of the domestic violence court order, which is under section 33 of the Domestic Violence Act, the Staines report recommended that the offence should be amended to increase the maximum penalty on conviction to five years imprisonment if tried on indictment and should then be added as a scheduled offence to the Bail Act. Amendment No. 29 is the first step in doing that, and amendment No. 37, which I do not believed is grouped here, is the second part and adds that to the Bail Act.

It is quite astonishing that breaches of domestic violence court orders are not currently listed in the Schedule to the Bail Act. This has been raised with me as a significant problem, particularly by legal practitioners who are dealing with domestic violence cases. In practical terms, this amendment would elevate the seriousness of the offence within the bail framework and change how courts handle accused persons at pretrial stage. At the moment, if somebody is before a court on a charge and they breach a condition of a domestic violence court order, that is not taken into account as a mitigating factor when adjudicating on whether the bail will be served on remand or in custody. That is a major anomaly that this amendment seeks to address.

Deputy Jim O'Callaghan: I thank Deputy Carthy for this amendment. He is correct in noting that this was recommendation 11 of the report prepared by Lorcan Staines SC on the efficacy of the bail laws in Ireland. It is also the case that the content of this amendment is the subject of a Private Members' Bill, which I think is before the Seanad. Officials in my Department are considering it. They have informed me that they will prepare a written presentation for me for the purposes of me making a decision on the issue. I will have to wait until that happens to make a fully-informed decision in respect of it. I appreciate the positive intention of the amendment and that it seeks to increase the protections for victims of domestic, sexual and gender-based violence but I also ask Deputy Carthy to be aware that there are some challenges and potentially unintended consequences to making this amendment to the Domestic Violence Act. Section 33 of the 2018 Act covers the breach of multiple different types of domestic violence orders. These orders are very different and detailed, with finely-balanced statutory provisions governing how they are granted at present. To provide that a breach of any type of domestic violence is a serious offence, carrying a penalty of up to five years' imprisonment and conviction on indictment, means that it might become harder to successfully persuade a court to grant such an order in the first place. Respondents would be expected to contest the case in a more vigorous manner because of the categorisation of it as a serious offence.

Particular concerns relate to interim barring orders, emergency barring orders and protection orders, which can be granted *ex parte* and outside the usual court sittings. Of course, the whole point of getting a domestic violence order in these circumstances is that it can be accessed as quickly as possible. By putting a higher bar here, there is potential that it might not be granted because the person who has been accused would have to be given a right, potentially, to defend themselves in a way they are not afforded at present. The case law of the Supreme Court has set the threshold of severity for respondents' conduct to be considered in the making of a domestic violence order. Such a threshold would possibly be raised further if a section 33 breach were to be made a serious offence, given the potential criminal consequences of breaching an order made pursuant to that section. As I have noted, this could potentially make it more difficult for victims of domestic violence to obtain these civil law protection orders. We are all agreed that improving the tools at the disposal of our law enforcement and Judiciary to combat such violence is a fundamental part of building a safer, more equal society. However, I have to ensure that any changes strengthen the framework in place, rather than giving rise to changes of the equilibrium within it.

I cannot accept the amendments but, as I said, it is the subject of a Private Members' Bill that is before the Seanad. I will receive a submission from officials and I will have to make a decision in respect of this. I will deal with it. If I am not going to introduce it, I will set out the reasons, and I know Deputy Carthy will raise it again. If I am going to do so, it can be dealt with in due course.

Deputy Matt Carthy: I will not belabour the point but I have been taken aback when speaking to members of the Law Society who would specialise in family law and gender-based violence cases. They tell me that the number of people who ultimately are convicted for very violent crimes and previously had multiple breaches of protection orders that had been put in place by courts is astounding. They feel one of the reasons the level of violence used was continuously elevated was that the person saw no consequences in real terms for breaching previous court orders. I will push this amendment. This is an area we should work together on to find the right way to ensure that these orders mean something. They can be granted but they have to mean something. Protection orders are as useful as a speed limit sign. They only work if there is enforcement. I will not labour the point other than to say that in the strongest terms.

Amendment put and declared lost.

SECTION 31

An Leas-Chathaoirleach: Amendments Nos. 30 and 31 are related. Amendment No. 31 is a physical alternative to No. 30, so amendments Nos. 30 and 31 may be discussed together.

Deputy Jim O'Callaghan: I move amendment No. 30:

In page 22, to delete lines 8 to 13 and substitute the following:

"(b) the insertion of the following paragraphs after paragraph 45:

"Offences under the Criminal Justice Act 1999

46. An offence under section 41 of the Criminal Justice Act 1999.

Offences under the Sex Offenders Act 2001

47. An offence under section 12 of the Sex Offenders Act 2001.

Offences under the Domestic Violence Act 2018

48. An offence under section 38 or 39 of the Domestic Violence Act 2018.”.”.

As Deputies will be aware, section 31 of the Bill amends the Schedule to the Bail Act to add to the schedule the offences of forced marriage and of coercive control under sections 38 and 39, respectively, of the Domestic Violence Act 2018. It is doing something Deputy Carthy had identified in his previous amendment but this is limiting it to forced marriage and coercive control offences. Amendment No. 30 amends this amendment to add further offences to the schedule. It adds the offence under section 41 of the Criminal Justice Act 1999 of intimidating a person or family member of a person who is assisting a criminal investigation or is a witness or juror in criminal proceedings. It also adds the offences under section 12 of the Sex Offenders Act 2001 of failing to comply with notification requirements under the Sex Offenders Act, or refusing or failing to enable fingerprints, palmprints, or photographs to be taken by the gardaí in connection with such notification requirements. The addition of these further offences to the schedule was recommended both by the Director of Public Prosecutions and by the review of the bail laws carried out by Lorcan Staines.

The effect of the amendment would be that these offences are serious offences for the purpose of the Bail Act. This would allow a court to refuse bail to persons charged with offences where the court considers it necessary to prevent the person from committing a serious offence.

I will deal with amendment No. 31 from Deputies Carthy and Ward. It has a similar objective to amendment No. 30. However, it also includes the offence under section 33 of the Domestic Violence Act 2018 of breaching a domestic violence order. In this regard, amendment No. 31 is closely linked to amendment No. 29, which we just discussed, which, had it been accepted, would have increased the penalty for a section 33 offence such that it obtained the threshold for inclusion in the Schedule to the Bail Act. As amendment No. 29 has not been accepted, it is not possible to accept amendment No. 31.

Deputy Matt Carthy: Unlike the Minister, I will accept his amendment and will fully support. Without repeating the points that have been made, the lack of inclusion of breaches of domestic violence orders is a serious anomaly. There is a history in this State where we wait until somebody has been murdered or a serious crime is committed before we act. We are aware of this. We have been told that there is an anomaly here which needs to be addressed. I make that point again.

Deputy Jim O'Callaghan: I hear what Deputy Carthy has to say. I do not have anything further to add.

Amendment agreed to.

Amendment No. 31 not moved.

Section 31, as amended, agreed to.

An Leas-Chathaoirleach: Amendment No. 32 is out of order.

Amendment No. 32 not moved.

Sections 32 and 33 agreed to.

NEW SECTIONS

Deputy Jim O'Callaghan: I move amendment No. 33:

In page 22, after line 23, to insert the following:

"Amendment of section 24 of Prisons Act 2015

34. Section 24(2)(a) of the Prisons Act 2015 is amended by the substitution of "two years of the term of imprisonment concerned remain" for "one year of the term of imprisonment concerned remains".".

Amendment No. 33 inserts a new section into the Bill to amend section 24 of the Prisons Act 2015, which provides a power for the Minister to direct that a person serving a term of imprisonment who is subject to a deportation of removal order be removed from prison before the completion of the term of imprisonment, to facilitate their deportation or removal. At present, such a direction may only be made where one year or less of a term of imprisonment remains to be served. However, in practice, the subsequent legal and administrative process that may be necessary to secure the actual deportation or removal can exceed one year, making it impossible to deport the person before they are released from prison. The proposed amendment to the Prisons Act 2015 amends section 24(2) to provide that a direction may be made where two years or less of a term of imprisonment remain to be served. In the interests of victims, communities, and a well-functioning repatriation system, it is essential to avoid, as far as possible, offenders being released from prison before their deportation or removal orders can be carried out.

Increasing the section 24(2) threshold from one to two years is a balanced and proportionate measure that will minimise such occurrences while still ensuring that serious offenders serve out the majority of their sentence.

Amendment No. 34 inserts a new section into the Bill to amend section 34 of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023. Section 34(1) specifies certain documentation that must be forwarded to the Minister by the competent authority of an issuing state before an application for recognition and enforcement of a sentence in the State can proceed. Section 34(1)(b) includes "a Framework Decision Certificate in the Irish language or the English language". Following legal advice it became apparent that this wording gives rise to uncertainty as to whether the Minister may lawfully proceed on the basis of a certified translation of a framework decision certificate or whether the certificate itself must have been formally issued in one of the two official languages. My amendment proposes a simple change to the wording of section 34(1) to remove any ambiguity in relation to whether I may lawfully proceed on the basis of a translation of a framework decision certificate or whether the certificate itself must have been formally issued in one of the two official languages.

Amendment No. 35 inserts a new section into the Bill to amend section 34 of Judicial Appointments Commission Act 2023. Section 34 of that Act provides for restrictions to the Freedom of Information Act in relation to records relating to "the process of selecting and recommending persons for appointment or for nomination for appointment or election to judicial office" under Part 4 of the 2023 Act. The 2023 Act also dissolved the Judicial Appointments Advisory Board and provided that any records of the board were now records of

the commission and transferred accordingly. Similar confidential provisions apply to the records of the Judicial Appointments Advisory Board under the Courts and Court Officers Act 1995. The proposed amendment provides clarity and certainty that records of the Judicial Appointments Advisory Board that were transferred to the Judicial Appointments Commission remain exempt from the provisions of the Freedom of Information Act 2014.

Amendment No. 40 amends the Long Title on foot of the introduction of the new sections.

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 34:

In page 22, after line 23, to insert the following:

"Amendment of section 34 of Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023

35. Section 34(1)(b) of the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 is amended by the substitution of "English language, or a translation of the Certificate in the Irish language or the English language," for "English language".".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 35:

In page 22, after line 23, to insert the following:

"Amendment of section 34 of Judicial Appointments Commission Act 2023

36. Section 34(1) of the Judicial Appointments Commission Act 2023 is amended—

(a) in paragraph (a), by the substitution of "Part 4," for "Part 4, or"

(b) in paragraph (b), by the substitution of "57(5), or" for "57(5)", and

(c) by the insertion of the following paragraph after paragraph (b):

"(c) the Judicial Appointments Advisory Board that was transferred to the Commission under section 68(2),".".

Amendment agreed to.

TITLE

Deputy Jim O'Callaghan: I move amendment No. 36:

In page 5, line 7, after "officers" to insert the following:

"and to amend the Firearms Act 1925 in relation to the seizure and detention of firearms or ammunition by An Garda Síochána in the interest of public safety, security or peace".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 37:

In page 5, lines 7 to 9, to delete all words from and including "to amend" in line 7 down to and including "Justice;" in line 9 and substitute the following:

"to amend the Courts of Justice Act 1936, the Courts Service Act 1998 and the Judicial Council Act 2019 in relation to certain non-judicial functions of the Chief Justice; to amend the Defence Act 1954 to provide for certain powers of the Defence Forces in relation to safeguarding, protecting and defending the security of the State, the deployment of the Defence Forces in aid of the civil power, and the protection of military installations by the Defence Forces;".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 38:

In page 5, line 19, after "2016;" to insert the following:

"to amend the European Arrest Warrant Act 2003 to give further effect to Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, as amended by Council Framework Decision of 26 February 2009 amending Framework Decisions 2002/584/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA and 2008/947/JHA thereby enhancing the procedural rights of persons and fostering the application of the principle of mutual recognition to decisions rendered in the absence of the person concerned at the trial;".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 39:

In page 5, line 28, after "1967," to insert "the Civil Legal Aid Act 1995,".

Amendment agreed to.

Deputy Jim O'Callaghan: I move amendment No. 40:

In page 5, lines 28 and 29, to delete "the Bail Act 1997 and the Multi-Unit Developments Act 2011;" and substitute the following:

"the Bail Act 1997, the Multi-Unit Developments Act 2011, the Prisons Act 2015, the Criminal Justice (Mutual Recognition of Custodial Sentences) Act 2023 and the Judicial Appointments Commission Act 2023;".

Amendment agreed to.

Title, as amended, agreed to.

An Leas-Chathaoirleach: Pursuant to Standing Order 194(3), the clerk to the committee will report specially to the Dáil that the committee has amended the Title.

Bill reported with amendments.

An Leas-Chathaoirleach: On behalf of the committee, I thank the Minister and his officials for their attendance and I thank members for their contributions.

Deputy Jim O'Callaghan: I thank the Leas-Chathaoirleach, all the members of the committee and the staff.

An Leas-Chathaoirleach: Very much.

Deputy Jim O'Callaghan: It is now 8.20 p.m. and we have been here since 3 o'clock. I thank everyone for staying long beyond the call of duty-----

Deputy Alan Kelly: Yes, excellent staff.

Deputy Jim O'Callaghan: -----and my own officials.

Message to Dáil

An Leas-Chathaoirleach: As consideration of the Bill has been completed, in accordance with Standing Order 110, a message, as previously read out, will be sent to the Clerk of the Dáil.

The select committee adjourned at 8.19 p.m. *sine die.*