



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**DÁIL ÉIREANN**

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

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# DÁIL ÉIREANN

*Dé Céadaoin, 10 Iúil 2013*

*Wednesday, 10 July 2013*

Chuaigh an Ceann Comhairle i gceannas ar 10.30 a.m.

*Paidir.*

*Prayer.*

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## Leaders' Questions

**Deputy Micheál Martin:** The failure of a large number of defined-benefit pension schemes, involving an estimated 30,000 workers, to submit recovery plans to the regulator before 30 June confirms, if we needed it, the crisis facing the pensions of thousands of workers across the country and illustrates the absolute need for the Government to intervene in this crisis. Many schemes will close over the coming months. On Monday, for the first time ever, we witnessed IBEC, ICTU, the Irish Association of Pension Funds and the Society of Actuaries in Ireland collectively calling on the Government, particularly the Minister for Social Protection, to take immediate action to avert the crisis. They made the telling point that Government inaction is making the matter much worse.

Failure to submit a recovery plan will force many trustees and sponsoring employers to make choices either to continue with schemes, to wind them up if they are in deficit or to realign their priorities. The Government said it would legislate for this. Just to make this concrete, we are faced with a scenario in which many retired executives will continue to receive pensions of up to €150,000 but a worker at 64 years of age in such a scheme may end up with nothing at all when he retires. Recently, people have lost up to 70% of their expected entitlements in some schemes. This is simply unacceptable.

The alliance that came together on Monday stated that over the coming months many schemes will unravel in an inequitable and unjustified way. The programme for Government promised to amend the Pensions Act 1990 to deal with this particular crisis. The recent Social Welfare and Pensions (Miscellaneous Provisions) Bill failed to do so. When does the Government intend to deal with this particular crisis and introduce the legislation it promised in the programme for the Government?

**The Taoiseach:** This is an issue of considerable importance to thousands of workers around the country. Obviously, the Minister for Social Protection is well aware of this. The Government has yet to consider the submissions made arising from the requirement to submit plans and how it is proposed to deal with them.

Strong regulation of defined benefit pension schemes is essential to protect scheme members and the taxpayer. Stronger pension regulations could have prevented the situation in which

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some workers have lost almost all of their pensions. It is harrowing to speak to somebody who worked all their lives but found their expected pension diminished or gone entirely. Those calling for further regulatory forgiveness should reflect on the consequences of what light-touch regulation has brought about in this case and in the financial sector.

We cannot stand over a situation of allowing employees, by virtue of their employment contracts, to be forced to make contributions into a pension scheme from which they may never get a pension. It is morally wrong to expect workers, by contract, to pay into a pension scheme from which they may never draw a pension. The persistent funding difficulties of many of these defined benefit schemes due to increased life expectancy and the financial downturn is well recognised. Employers, unions and trustees have been making strenuous efforts to protect the viability of their schemes and many measures have been introduced to support them.

The funding standard for defined benefit schemes was suspended in 2008 following the downturn in the financial markets to give trustees and sponsoring employers adequate time to get their schemes in order and to consider a response to improving the funding position. Following the reintroduction of the funding standard in June 2012, pension schemes were required to submit funding proposals to the Pensions Board by 30 June 2013. We have had some initial reflections on the outcome of this. Where funding proposals have not been submitted, the Pensions Board will formally contact the schemes in question to ascertain their particular circumstances. The board will decide what steps to take on a scheme-by-scheme basis, taking into account the individual scheme's circumstances.

It must be emphasised that trustees are required to meet their legal obligations. Ultimately, the Pensions Board will use its regulatory powers where underfunding is not properly addressed.

A number of things have happened. Significant changes in social welfare and the Pensions Act 2009 allowed for the restructuring of underfunded schemes by removing the priority given to post-retirement schemes for pensioners to ensure a more equitable distribution of assets in the event of a wind-up of a defined benefit scheme. The powers of the Pensions Board were strengthened to ensure pension contributions were remitted by employers to scheme trustees. The pensions insolvency payments scheme was established to reduce the cost of purchasing pensions for trustees where the employer became insolvent. Legislation was introduced in 2010 and 2011 to provide for the option of a sovereign annuity for trustees. Changes to the defined benefit model and the funding standard were introduced last year in the Social Welfare and Pensions Act, including the introduction of a risk reserve. The reintroduction of the funding standard followed the recent announcement by the Minister for Social Protection of a number of regulatory changes to assist defined benefit schemes as they prepared funding proposals. Legislation has since been enacted in the Social Welfare and Pensions Act 2013 to strengthen the powers of the Pensions Board. I expect the Minister for Social Protection to report to the Cabinet on the outcome of the response to the Pensions Board in due course.

**Deputy Micheál Martin:** That is an extremely depressing response. The Taoiseach has simply read out what the Minister for Justice and Equality read out yesterday in the House to Deputy Willie O'Dea, who had raised this issue. The Government is fiddling on it, while pensions are burning fast. Schemes may close in the coming weeks and months, with no respite for workers. We know what happened in the case of Irish Permanent TSB following the Mercer report. The Taoiseach gave an order to cut the pay of executives by 6% to 10% and they decided to hit the defined pensions benefit scheme, leaving workers with absolutely nothing in many cases. The Taoiseach said it was morally wrong. Thousands of workers are now at

risk every day. We know that 212 companies failed to submit recovery plans involving about 30,000 workers. The reason they did not submit recovery plans is that they are in dire straits, not to speak of the other 100,000 workers whose companies did manage to submit such plans but which could also be in difficulty. Potentially, up to 200,000 workers are involved in such schemes. We know that 30,000 workers were involved in schemes that could not even submit a recovery plan to the Pensions Board. The Minister promised in October 2011 to bring forward legislation to amend the priority order. She subsequently promised in September 2012 to bring forward legislation to amend the priority order, but she has failed to do so. Legislation was brought before the House recently and there was a full expectation on all sides that the issue would be dealt with. There may be a number of options through which it can be dealt with, but the Government made a commitment in its programme for Government to amend the Pensions Act 1990, but it has not done so, despite the fact that we are facing an imminent crisis in the pensions of many workers. The Taoiseach is right that it is wrong for people aged 63 years to face the prospect of receiving very little when they retire, but he can do something about this. He promised that he would, but he has not. Is there any timetable for the legislation to which the Government committed? When can we expect to see it?

**The Taoiseach:** The first thing we have to do is to determine the facts and the circumstances that apply. I referred to the consequences of light touch regulation and the financial downturn which have affected thousands of workers. Clearly, the Deputy agrees with this. It is wrong to expect workers to contribute under an employment contract to a defined benefit pensions scheme from which they may never draw a pension. I regard that as immoral. It is just ten days since the deadline passed for the submission to the Pensions Board of proposals by employers in respect of defined benefit pension schemes. It is only right and proper that we ascertain the absolute facts. I have heard some figures being bandied about, but we need to know the facts and I expect the Minister for Social Protection to bring to the Cabinet her analysis of the responses submitted. The Cabinet will then have to reflect on them.

The recent decision of the European Court of Justice in the Waterford Crystal case means that there is a great deal of work to be done before the Government can arrive at a comprehensive policy and a legislative framework to deal with the issues affecting defined benefit schemes in general. The Deputy is aware of this. The issue has been ongoing for many years and there have been a few serious court cases about it. We do not want to have a situation where the taxpayer becomes the paymaster for all of these schemes.

**Deputy Willie O’Dea:** That has nothing to do with the Waterford case.

**The Taoiseach:** It is only right and proper, in the interests of the taxpayer, that the Government be in a position to know the facts before it decides on a legislative response.

**Deputy Micheál Martin:** The Government knows what the facts are.

**The Taoiseach:** The matter is far too serious to be flippant and say we can have an answer in the morning. This issue has dragged on for a long time.

**Deputy Willie O’Dea:** The Government is dragging it out.

**The Taoiseach:** We need to find out the facts before the Government can respond comprehensively and properly in the interests of workers, unions, employers and the taxpayer.

**Deputy Willie O’Dea:** How many of them will have gone under by then?

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**The Taoiseach:** We need to know the facts and the Minister for Social for Protection will bring her report to the Government in due course. The Government will decide how best to address the matter. It is an enormous challenge, as the Deputy is aware.

**Deputy Alan Shatter:** You created this mess in the first place.

**An Ceann Comhairle:** I call Deputy Gerry Adams.

**Deputy Alan Shatter:** Fianna Fáil is responsible for-----

**An Ceann Comhairle:** Please refrain. I have called Deputy Gerry Adams and I expect attention.

**Deputy Gerry Adams:** I raise the issue of symphysiotomy. I understand the independent report by Dr. Oonagh Walsh may be published soon, perhaps even later today. As the Taoiseach knows, many of the victims of this horrific procedure are very elderly. They have waited a very long time for justice. Approximately 350 of the 1,500 symphysiotomies were carried out in Our Lady of Lourdes Hospital in Drogheda, in many cases without the consent of the women involved. There are now just over 200 survivors, some of whom are quite frail. They are all very elderly and carry deep emotional and physical scars from their experiences. They have the support of all parties in the Oireachtas and the Government supported the Statute of Limitations (Amendment) Bill 2013 which was introduced by Deputy Caoimhghín Ó Caoláin. That Bill seeks to accommodate access to the courts for all victims of symphysiotomy who choose that course of action, but the Bill has not even been discussed or scheduled for discussion on Committee Stage. As many of the women concerned come from County Louth, they have been in touch with my office in the past month. There has been no consultation with them by the Government. Has there been consultation between the Government and the groups representing the victims? Will the Taoiseach outline the process that will be put in place to provide justice for the women concerned for what they suffered in this barbaric procedure?

**The Taoiseach:** I thank the Deputy for his question. The Department of Health received the independent report produced by Professor Oonagh Walsh on symphysiotomy at the end of May. It was submitted to the Minister for Health on 31 May and both the Minister and departmental officials have been looking at the conclusions reached in it. A great deal of credit is due to Professor Walsh for the manner in which she conducted the report. It is the result of very considerable work by her and includes both academic research and consultation on that research involving patient groups, health professionals and, in particular, the women who underwent symphysiotomy treatment. The Minister for Health is very anxious to ensure appropriate treatment for the women concerned is made available. The finalised report will inform the Government's consideration of how best to deal with this issue and any action the Government may decide to take in response to its recommendations or to any of the legal implications that arises from it. The Minister will brief the Government very shortly on the report in order that it can make a decision on the next steps to be taken.

I know that the Deputy has expressed concern that the Department or the Minister was involved in dealing with one group on this issue. I can confirm that the Minister has made a commitment to meet representatives of the symphysiotomy support groups, once the Government has made its decision on how to proceed.

Contrary to some reports in the media, neither the Department nor the Minister has engaged in a process of meeting one group only. The Minister has given a clear commitment to meet the

representatives of the support groups involved in this matter.

**Deputy Gerry Adams:** I am mindful that we are going into recess and that it is important that the issue is dealt with before we break because it is an ongoing tragedy for the women involved. Everyone, including the Taoiseach, has acknowledged the barbaric nature of the butchery inflicted on these women citizens. There is a difference between a Government taking a decision and then meeting people to notify them of that decision and a Government consulting before taking a decision informed by those it has met. I strongly urge the Government to take the second course. Some of the women concerned will accept the redress scheme but others want to go to court. They should be able to make that decision. The Taoiseach met some of these women. They were in the Visitors Gallery on a number of occasions. When Fine Gael and the Labour Party were in opposition, they signed up to getting justice for these victims. I ask him to expedite this matter before the recess, to enter consultation with the women concerned or the groups representing them before the Government makes a decision and to give the women concerned a choice between a redress scheme and seeking justice through the courts.

**The Taoiseach:** I seem to have inherited a position of having to deal with a range of difficult issues involving not only financial, political and employment problems but also matters pertaining to the Magdalenes, thalidomide and the Neary cases of symphysiotomy. We want to do something about this issue. I have not yet read Professor Walsh's report, but it has been the Government's practice to engage with the various groups to listen to their stories and then decide what is the best thing to do. We received the report from Professor Walsh. I understand it is a credible report based on academic research and direct consultation with the women involved. We have dealt with a range of challenges in the Presidency for several months. The Minister for Health has not brought his analysis of the report to the Cabinet.

I take Deputy Gerry Adam's point about this being a matter of urgency, but it has moved to the point where we have a clear report and the Minister is committed to meeting the representatives of the groups prior to publication of the report. Given the time constraints on us between now and the summer recess, I will see what can be done. I cannot give a guarantee that it will be addressed, but I assure the Deputy this is one of a number of serious cases that I like to think we can deal with. I am not going to comment on the options he set out. The Government will decide what is the best thing to do arising from the recommendations made in the Walsh report and a consideration of the legal implications. This is a matter the Minister is taking seriously and we will consider his analysis of the Walsh report, meet representatives of the support groups, publish the report and get on with making a decision. It is the Minister's interest to ensure the women concerned are given the best and most appropriate treatment arising from what I described previously as a barbaric process. I have listened to a number of their stories and descriptions of the consequences for their personal well-being after so many years.

**Deputy Clare Daly:** Does the Taoiseach agree that one of the great ironies of the present age is that older citizens are required to work longer simply to make ends meet because half the population do not have any pension provision, while the other half who thought they were the lucky ones have found out that they are not lucky at all after paying tens of thousands of euro into schemes that will be worth nothing? On the other side of the equation, young people across Europe are lying idle. A wasted generation remains unemployed, even at a time when much work needs to be done. It is an indictment of neoliberal capitalism that the youth unemployment rate stands at 50% in a number of countries in Europe. The average rate is 25% and in Ireland one in every three young people is unemployed. That figure would be one in two if the rest of them had not been driven out of the country, leaving their families and communities behind.

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By anybody's reckoning, this is a crisis and an emergency. Where is the emergency response? Last week the Taoiseach and his colleagues lauded a €6 billion initiative to tackle youth unemployment. Will this be their European legacy? We wondered whether it was an escapade into black humour. It is proposed to spend €6 billion over seven years for more than 7 million unemployed young people. That works out at less than €1,000 per person and less than €150 per person per year. It would not even pay for one day of a FÁS course. Everybody knows some of our bankers can pull larger amounts out of lower parts of their anatomy in one go. If that was not insulting enough, the Government decided in the same gesture to allocate a sum ten times that amount for the banks. In effect, it is stating the banks are ten times more important than Europe's young people. The banks have already received €1 trillion at nominal interest rates from the ECB. Imagine what could have been done with this money if it had been invested in a programme of public works to improve the physical and social infrastructure of Europe. Instead of introducing schemes for water meters or bullying homeowners, the Government could have repaired the water system. Why does the Government continue to promote policies that condemn young people to a lost generation? Will the Taoiseach assure us that he will not listen to the lunacy of the ESRI and will abandon austerity? Despite all he has said, austerity, clearly, is not working.

**The Taoiseach:** That was a good rant in two minutes. The Deputy conducted a fine analysis of her version of neoliberal capitalism. Does she think no one over here recognises the scale of the challenge for Europe, where 26 million people are unemployed? Has she not heard me say on many occasions that no leader in Europe could be proud of this situation? That is why the Irish Presidency shoved these major files across the line into reality. Some €960 billion is being provided by European taxpayers in the next seven years. Between €6 billion and €8 billion will be spent on tackling youth employment. The money will be front-loaded for the first two years and there is agreement on flexibility in reviewing the economic circumstances from 2016 and 2017. It is a fact of life that the unemployment rate among young people is at 60% in Greece and 57% in Spain, with varying figures in other locations. This is the big challenge.

Next week I will be calling a special meeting of the Cabinet to deal with the specific issue of job creation. If we do not deal with that challenge, we will not be able to continue on our current path towards meeting our target of reducing the deficit below 3% by 2015. I have most of the ESRI's report. It endorses the Government's programme and states we must continue to achieve our exit from the bailout programme, bring about growth and investment, create jobs and meet our targets by 2015. The challenge for the Government is getting the balance right. Last Monday I visited Waterford with the Minister for Social Protection, the Minister for Jobs, Enterprise and Innovation and the Tánaiste and Minister for Foreign Affairs and Trade to deal with one small element of an initiative. The Government has listened to employers who say the tax credit system for employing people from the live register is too cumbersome and full of red tape. We abandoned that system and those who now take on people who have been out of work for 12 months or more will get a direct cash injection of €7,500 and, in respect of people unemployed for two years, a direct cash injection of €10,000.

*11 o'clock*

This affects their cashflow, to their benefit, and reduces numbers on the live register. It also means that those on the live register are seen as a resource, not just as a list of people who draw other taxpayers' money in social welfare benefits. This is an expression of their motivation. If the Deputy wishes to prove the point, let her go and speak to the directors in HiTech which recruited some 60% of 400 employees off the live register because it is a resource of people with

competence, ambition, motivation and experience.

Of course, many countries in Europe are in difficulty. That is why we were able to broker negotiations with the United States, why we brokered the negotiations now started with Japan and why we hope to conclude the trade negotiations with Canada. That is also why the decision taken at European Council and Presidency level during the Irish Presidency has greatly enhanced the opportunity to deal with this issue, including the very complex and technical areas in which progress has been made under the chairmanship of the Minister for Finance in respect of VAT issues.

**Deputy Timmy Dooley:** The Taoiseach will have to issue work permits since he is creating so many jobs.

**The Taoiseach:** We all know these things. This is not going to be sorted out in one day, but we are heading in the right direction and continue to make progress.

**Deputy Timmy Dooley:** The Taoiseach must have got sunstroke in Killarney at the weekend.

**An Ceann Comhairle:** Will Deputies, please, stop mumbling? Will they, please, allow Deputy Clare Daly to speak and respect her right to contribute. We do not want to listen to Deputies mumbling. Will they, please, stay quiet for the Deputy and show some respect to the House?

**Deputy Clare Daly:** I suppose the problem the Taoiseach has is one that prevails across the Government, namely, that there is an enormous disconnect between their words and the reality on the ground, the proof people experience. The reality on the ground is that there are fewer people in employment now than there were when the Government came to power. The Taoiseach has told us consistently and reiterated today that the Government's policies will turn the economy around and will result in investment and growth in jobs. He has been proved wrong on this, not in words but in reality in that the economy is moving back into recession. The Government's determination to follow the path of austerity being outlined by the ESRI will only condemn more young people to unemployment because that is not a priority for the ESRI.

**An Ceann Comhairle:** Does the Deputy have a question for the Taoiseach?

**Deputy Clare Daly:** If the Taoiseach accepts this is an emergency, as he says he does, where is his emergency response?

**The Taoiseach:** There is no disconnect between my words and what we know is happening on the ground. In the past 12 months we have had some 16,000 individual start-ups in this country, which shows the motivation and ambition of people to get up and work. There is a churn every month of 36,000 on the live register, which indicates that people move off the live register into the world of work. Unfortunately, however, they are replaced by others.

**Deputy Timmy Dooley:** Much of this is due to emigration.

**The Taoiseach:** The unemployment rate has dropped from 14.5% to 13.8%. After the Order of Business today I am going to Naas to turn the sod on a €100 million investment by the Kerry Group which will create thousands of jobs in the coming years in a world-class food innovation centre. This is part of the programme for the agrifood sector which is worth over €9 billion currently. In addition, NexusUCD will employ over 300 highly paid researchers in

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dealing with the world of enterprise and academia. Therefore, it is not a case of despair and despondency at all times, as suggested by the Deputy. Of course, everybody understands the challenge for the Government is to deal with the scale of unemployment and the high numbers on the live register, but it must also open the doors of opportunity for business, to enable access to credit and jobs to be created. That is the challenge for everybody, but in her comments today the Deputy does not make any real proposal, other than the usual waffle which suggests this problem could be fixed with a magic wand which we do not have. However, the Government is setting out on a path balanced between dealing with the necessity for discipline to get our targets below 3% by 2015 and the creation of jobs. That is the reason the Minister for Public Expenditure and Reform introduced two stimulus packages, most recently for 28 additional schools in the capital programme, creating jobs on the ground. These projects involve small contractors, which means people working, confidence and a spend in the local economy. The Deputy may not wish to see this, but it is the reality and we need more of this. I hope next week's Cabinet meeting on job creation will focus on a number of areas, including the construction sector. We hope to be able to create that extra stimulus whereby jobs can be created for men and women all over the country.

### **Order of Business**

**The Taoiseach:** It is proposed to take No. 19, Protection of Life During Pregnancy Bill 2013 - Order for Report Stage and Report and Final Stages; and No. 20, Residential Tenancies (Amendment) (No. 2) Bill 2012 - Order for Report Stage and Report and Final Stages.

It is proposed, notwithstanding anything in Standing Orders, that the Dáil shall sit later than 9 p.m. and shall adjourn not later than midnight; Report and Final Stages of No. 19 shall be taken today and the proceedings thereon shall, if not previously concluded, be brought to a conclusion at midnight by one question which shall be put from the Chair and which shall, in relation to amendments, include only those set down or accepted by the Minister for Health; and in the event a division is in progress at the time fixed for taking Private Members' business which shall be No. 111, motion re distressed mortgages (resumed), Standing Order 121(3) shall not apply and Private Members' business shall, if not previously concluded, be brought to a conclusion after 90 minutes.

**An Ceann Comhairle:** There are three proposals to be put to the House. Before I put the first proposal, I ask the Taoiseach, now that the sitting is being extended to midnight, that a second break be included. The staff and those who service the Chamber only have a break for one hour from 1.30 p.m. to 2.30 p.m. It is not reasonable to ask people to work continuously for 12 hours. Can it be arranged that we will have some break in the debate this evening for the staff?

**The Taoiseach:** The Whip will deal with that matter. I take the Chair's point in respect of the staff. We agree with it.

**An Ceann Comhairle:** Is it agreed that provision will be made? Agreed. Is the proposal that the Dáil shall sit later than 9 p.m. and shall adjourn not later than midnight agreed to? Agreed. Is the proposal for dealing with No. 19, Order for Report Stage and Report and Final Stages of the Protection of Life during Pregnancy Bill 2013, agreed to?

**Deputy Micheál Martin:** It is not. We have consistently opposed the Government's consistent use of the guillotine in dealing with a range of legislation. A substantial number of

amendments have been submitted to the Protection of Life during Pregnancy Bill 2013 and given the enormous interest in the Bill, irrespective of one's perspective, the decision to conclude the debate with one vote, even if all of the amendments have not been reached or debated, is the wrong one. Those who wish to move amendments should be facilitated in doing so and having them debated. What is proposed is that they be wrapped in one vote at the conclusion of the debate. That is not right and I oppose the proposition.

**Deputy Gerry Adams:** I commend the Ceann Comhairle on organising a break for the staff. We are not going to push this issue to a vote, but I would like to make a point that the Government is now engaged in the practice of imposing the guillotine. There are 160 amendments to this Bill, but I know all of the arguments have been rehearsed and all of the issues debated. However, in principle, we need to review how we do business in the Dáil because of the frequency with which the guillotine is being used. This is not a good way to do business. Deputies who submit amendments should have the right to speak to them and have them debated.

**The Taoiseach:** I understand an extensive number of amendments have been submitted. As many of them are connected to each other, they have, therefore, been grouped. Amendments can be discussed individually or in groups and can be voted on in groups. Therefore, I am not sure of the point being made by Deputy Micheál Martin. Very few Bills in the past 40 years have been subject to such extensive discussion, consultation and debate in the House. I suggest to the Deputy that what he should do is allow the procedure proposed to get under way. I understand many of the amendments will be dealt with very quickly, but I cannot predict the future in that sense. I suggest to Deputy Martin that, while we take into account what he and Deputy Adams have said, we let the process start and see how it runs. I have no objection to extending the time again tonight, if that is necessary. We want this dealt with because we have set targets for individual pieces of legislation, and this has drifted for quite a long time. There has been very extensive consultation about it. The House was to rise at 10 p.m. and we have extended that for a further two hours so groups of these amendments can be dealt with. I suggest that we let the process commence and see how that works and how far we get. I do not have any difficulty in dealing with it for a further period but I am going to get rid of it tonight.

**Deputy Micheál Martin:** Is the Taoiseach suggesting we would remain for a further period?

**The Taoiseach:** We will review it at the sos this evening.

Question, "That the proposal for dealing with No. 19 be agreed to", put and declared carried.

**An Ceann Comhairle:** The question is agreed.

**Deputy Micheál Martin:** We did not agree.

**Deputy Timmy Dooley:** We said "Níl".

**An Ceann Comhairle:** You are noted as dissenting. Is the proposal for dealing with Private Members' business agreed to? Agreed. I call Deputy Martin on the Order of Business.

**Deputy Micheál Martin:** With regard to the health information Bill, the Future Health document stated it would have been published by the end of the second quarter of 2013. The Taoiseach might indicate when we can expect publication of that Bill.

With regard to the universal health insurance legislation and the White Paper that was prom-

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ised on that, I would point out that, under the Dutch model, to which the Taoiseach was very attached during the general election, there has been an increase of up to 46% to date to the Dutch taxpayer following the introduction of universal health insurance. The Taoiseach might indicate whether the Government still intends to introduce the set of legislative proposals that would underpin the introduction of a universal health insurance system to Ireland, particularly given that our own private health insurance system is now in a very precarious and difficult situation, and some analysts are suggesting it is in a death spiral given the numbers leaving the health insurance sector. When does the Government intend to publish the White Paper on universal health insurance and when can we expect the health information Bill to be published?

**The Taoiseach:** The Minister for Health is at the Estimates committee this morning. The health information Bill is due for later this year. The publicly funded GP scheme is also due later this year as part of the approach towards universal health insurance.

In respect of the private health insurance business, the Minister and the Department have been engaged with the private health insurers over the past week to ten days. I understand they have made substantial progress in regard to contributions from the sector in respect of reduction of costs and all of that area. The Minister gave an interim briefing to Cabinet yesterday and I expect that those discussions will conclude, hopefully, in the next couple of days, with results in the interests of the taxpayer. When that is reported to the Cabinet by the Minister, we will advise the House on the outcome.

**Deputy Gerry Adams:** Ba mhaith liom ceist a chur faoi reachtaíocht atá geallta agus dhá ábhair eile. Will the Taoiseach clarify the position of the adoption (information and tracing) Bill? This was to provide for an information and tracing service to applicants seeking information about adoptions on a statutory basis. Will the Taoiseach tell us when the Bill will be published and when it will be debated in the Dáil?

On 25 June, the Taoiseach said he would come back within a fortnight and report to the Dáil on the conclusion of the Government's consideration of an apology and redress scheme for the small number of surviving men and women of Bethany Home. Can he confirm it is still his intention that he will report to the Dáil this week?

Finally, I want to mention the decision to put the construction of the Narrow Water bridge on hold. Given it is such a vital infrastructure project for the Louth, south Down and south Armagh region, it is an issue that requires urgent attention by the Government.

**An Ceann Comhairle:** That is not a matter for the Order of Business. I suggest the Deputy finds another way to raise it.

**The Taoiseach:** On the adoption (information and tracing) Bill, there are a number of very complex constitutional issues involved. The Minister would expect to have the Bill before the end of the year but I am not sure how completely the range of constitutional questions that arise can be dealt with. The Bethany Home issue is still under consideration by the Minister for Justice and Equality.

I have seen the figures in respect of the Narrow Water bridge. Obviously, the local authority, Louth County Council, is not in a position to fund the over-run on the estimate. This matter is the subject of some discussion between the county council and the consultants involved on the tender prices but it seems exceptional in terms of the scale of the tender submitted and, indeed, the next one beyond that. It is something we have supported very strongly, as a House, and

something we would like to see brought to fruition. However, in these circumstances, there is obviously a serious complication.

**Deputy Gerry Adams:** A Cheann Comhairle-----

**An Ceann Comhairle:** Sorry, Deputy. I cannot debate that issue. I have been liberal but it is not a matter for the Order of Business.

**Deputy Gerry Adams:** I want to raise the issue of Bethany Home.

**An Ceann Comhairle:** I am sorry. Please proceed.

**Deputy Gerry Adams:** I understand the Minister for Justice and Equality is still considering this. The Taoiseach gave a commitment to come back in a fortnight and, while we cannot hold him to that as he is, of course, very busy, this involves a small number of people who are mostly elderly and frail. I wonder if it could be done before the recess.

**The Taoiseach:** I will ask the Minister for Justice and Equality. It is a different situation than applied in the case of the Magdalen laundries and that is why it is still being considered by the Minister. I will bring the Deputy's interest and the comments he made a fortnight ago to the Minister's attention. There has been a lot going on in the drafting of justice legislation in the past period. The Presidency is out of the way, but it was a big responsibility in terms of time consumption. I will ask the Minister to advise the Deputy.

**Deputy Gerry Adams:** Go raibh maith agat.

**Deputy Derek Nolan:** The programme for Government commits to a review of the immigration system. On upcoming legislation, the Ombudsman today warned of serious concerns about children in direct provision asylum centres. It is an issue I have raised in the House on many occasions in regard to the long delays that families and children experience. When I raise it in the House, I am told that this issue will be sorted by the Immigration, Residence and Protection Bill which is due to come before the House. However, it is always six months away, and it has been six months away for two and a half years now. Can we please get some urgency behind this Bill and can we be told when it will be published?

**The Taoiseach:** I understand the Bill is awaiting Committee Stage and that it is a matter for the committee to decide when it can be taken. That is the delay at present.

**Deputy Dessie Ellis:** The Taoiseach is aware local authorities across the country are dealing with anti-social tenants. People and communities are being terrorised. A recent Supreme Court decision has brought a halt to actions against some of the worst and most serious cases. Section 62 of the Housing Act needs to be reviewed and legislation brought forward, and the Minister accepted that-----

**An Ceann Comhairle:** What Bill are we talking about?

**Deputy Dessie Ellis:** It is section 62 of the Housing Act. I wonder will this issue be included in the upcoming housing Bill.

**An Ceann Comhairle:** We cannot discuss that now.

**Deputy Dessie Ellis:** I know there are three separate Bills but I want to know when that particular one will be coming up. This is very serious. Local authorities have their hands tied

at the moment.

**The Taoiseach:** I am not sure whether the Deputy is talking about an existing Bill. There are two housing Bills, one for later this year and one for early next year. The issue of anti-social behaviour is one that is raised by many Deputies. I will ask the Minister of State, Deputy Jan O'Sullivan, to respond to the Deputy in respect of the housing issue.

**Deputy Robert Troy:** Last week, we learned that a report on child neglect in three jurisdictions remained unpublished by the HSE for 14 months. The Minister, Deputy Fitzgerald, confirmed in response to a parliamentary question that she was in receipt of the Government's independent rapporteur's report on child protection since January of this year. We are waiting almost seven months for that report to be laid before the Houses of the Oireachtas. Will the Taoiseach indicate when it will be done?

**The Taoiseach:** I understand that was a pilot report. The other report to which the Deputy referred was cleared by Cabinet yesterday.

**Deputy Micheál Martin:** It should not take seven months to be cleared.

**Deputy Frances Fitzgerald:** There is a well established precedent in regard to the publication of such reports, as Deputy Martin knows well.

**An Ceann Comhairle:** I have called Deputy Mattie McGrath.

**Deputy Mattie McGrath:** I am ready and willing, a Cheann Comhairle. My first question relates to the electoral (amendment) (referendum spending and miscellaneous provisions) Bill. I am glad the Minister for Children and Youth Affairs is here as I raise this issue. We had a unanimous Supreme Court decision last November regarding the misspending of money by Government in the campaign leading up to the referendum on children's rights. The Bill we are discussing later today relates to a Supreme Court decision taken years ago.

**An Ceann Comhairle:** The Deputy must confine himself to proposed legislation.

**Deputy Mattie McGrath:** There has been no debate in this House on the issues arising from that unanimous decision of the Supreme Court. Does the Government intend to ignore it?

**An Ceann Comhairle:** I am sure the Deputy will not allow that to happen.

**Deputy Mattie McGrath:** The Government is simply ignoring it.

**An Ceann Comhairle:** Let us hear the Taoiseach's response.

**Deputy Mattie McGrath:** I have a second question, if the Ceann Comhairle will allow it.

**An Ceann Comhairle:** Go ahead, Deputy.

**Deputy Mattie McGrath:** Perhaps I will not ask it, after all.

**An Ceann Comhairle:** The Deputy should get all his questions out of the way.

**Deputy Mattie McGrath:** I want a proper answer to both questions, not one half-answer and the second question ignored. When is it proposed to publish the criminal procedure Bill to provide for the reform of pre-trial processes? There are people throughout the country whose mortgages are in negative equity. Houses are being repossessed and people being beaten up in

their homes-----

**An Ceann Comhairle:** All of that will be discussed when the Bill is brought forward.

**Deputy Mattie McGrath:** People are aghast at what is happening. When will the Bill be introduced to bring some clarity to court procedures?

**The Taoiseach:** I do not have a date in respect of the criminal procedure Bill. I understand Second Stage of the electoral (amendment) Bill to which the Deputy referred was ordered last Friday.

**Deputy Michael McNamara:** Members of the Government have welcomed recent progress on immigration reform in the United States. However, the answer my colleague, Deputy Derek Nolan, has been given on the issue of immigration reform in this State is exactly the same as the one I received six months ago. It is very difficult to take seriously the Government's commitment in this regard.

**An Ceann Comhairle:** To which Bill is the Deputy referring?

**Deputy Michael McNamara:** When will the Government's Committee Stage amendments to the Immigration, Residence and Protection Bill be published? If it were serious about immigration reform, particularly the reform of direct provision, the Government would sign up to the European Union's directive on the reception of immigrants.

**An Ceann Comhairle:** That is a separate issue in respect of which the Deputy should put down a parliamentary question.

**Deputy Michael McNamara:** It is not a separate issue, it is a question.

**An Ceann Comhairle:** It is a query suited for a parliamentary question.

**Deputy Michael McNamara:** When will implementing legislation be published to enable the State to sign up to the reception directive? When will the Government's Committee Stage amendments on the Immigration, Residence and Protection Bill be brought forward? These are two concrete questions and I look forward to two concrete replies from the Taoiseach.

**An Ceann Comhairle:** There are certain issues which are in order on the Order of Business and certain issues which should be dealt with by way of parliamentary question. The Taoiseach should reply to what is in order.

**The Taoiseach:** I am not sure of the extent of Government amendments to the Immigration, Residence and Protection Bill that are required to be published following the consultation process which took place. These are serious matters and it is not simply a case of saying they will be published by Wednesday week or whatever. I cannot, at this time, indicate the extent of the amendments that will be introduced or the date on which they are likely to be published. As I understand it, the relevant committee is anxious for the Bill to proceed to Committee Stage. The Minister will update Members in due course. I am sure that in the context of that Bill, there will also be an indication of the decision in respect of the directive to which the Deputy referred.

**Deputy Pat Deering:** There has been rumour and speculation for many years regarding unfair practices within the grocery sector, in the context of the uneasy relationship that exists

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between producers and large multiples in this country. A statutory code of conduct is long overdue to regulate the conduct of the grocery sector. Will the Taoiseach indicate the progress that has been made on the consumer and competition Bill?

**The Taoiseach:** The Office of the Parliamentary Counsel provided revised drafts of the provisions of that Bill which relate to the amalgamation of the National Consumer Agency and the Competition Authority on 28 June. In addition, the office sent a memorandum to the Department regarding certain legal issues on 21 June. A response to most of the issues raised was conveyed back to that office on 8 July.

In regard to the media merger provisions in the Bill, the Office of the Parliamentary Counsel raised a series of very detailed questions on 25 June which are being jointly considered by the Department of Jobs, Enterprise and Innovation and the Department of Communications, Energy and Natural Resources. The Bill is at a very advanced stage, but publication might not happen before the Dáil rises for the summer recess on account of the extensive and very particular range of issues raised by the Office of the Parliamentary Counsel.

**Deputy Bernard J. Durkan:** In the context of the ongoing debate on fraud and the difficulty of proving it in this jurisdiction, when is it intended to bring the criminal records information system Bill before the House? I understand the heads of the Bill, which will facilitate exchange of criminal records between member states of the European Union and other designated states, have already been published. There is an urgent need to bring it forward in the current climate.

**The Taoiseach:** That Bill is expected to be published later this year.

**Deputy Michael Healy-Rae:** When will legislation to implement the Government's proposal to reduce the voting age from 18 to 16 years come before the House? Foróige has welcomed the announcement in this regard, but there has been no clarification of the timeframe involved.

**The Taoiseach:** This was one of a series of recommendations by the Constitutional Convention. The Whips have arranged for a discussion on the first report of the convention next week, which includes this particular issue. Yesterday the Government accepted in principle the recommendations made and, in line with our undertaking in this regard, we are giving an indicative timeline for implementation of the end of 2015.

**Deputy Thomas P. Broughan:** Will the Taoiseach indicate the status of the criminal justice (corruption) Bill? As we approach the end of the session and enter into the third year in which there has been no resolution for the residents of Priory Hall, is there any prospect of an announcement in that regard? Given that the Taoiseach has a personal interest in the matter, will he undertake to give clarity on the matter?

**The Taoiseach:** The heads of the criminal justice (corruption) Bill have been referred to the Joint Oireachtas Committee on Justice, Defence and Equality. I inquired this morning about the ongoing situation in regard to Priory Hall and am sorry to tell the Deputy that it is still tied up in the courts. I hope it will begin moving a little more rapidly toward a conclusion for the people involved.

**Deputy Willie O'Dea:** I seek further clarification on a matter raised by one of the Taoiseach's backbenchers, namely, the consumer and competition Bill. It is a very important Bill, as the Taoiseach has often acknowledged, dealing as it does, among other issues, with media mo-

nopolies. The Taoiseach has indicated on several occasions that it would be dealt with in this session. With only five sitting days remaining, what is the position in this regard?

**The Taoiseach:** As I outlined to Deputy Pat Deering, the Office of the Parliamentary Counsel raised a series of very detailed questions on the media merger provisions of that Bill on 25 June, which are being considered by the Department of Jobs, Enterprise and Innovation and the Department of Communications, Energy and Natural Resources.

**Deputy Charles Flanagan:** I understand the Government has considered the various reports from the Constitutional Convention, which has been operating successfully since January. Will there be an opportunity before the summer recess to consider the content of those reports?

**The Taoiseach:** As I stated in response to Deputy Michael Healy-Rae, there will be an opportunity next week to debate the first report of the convention. Yesterday the Government approved in principle the recommendations of the convention, with an indicative timeline to deal with those recommendations, and possibly others, of the end of 2015.

### **Child Care (Amendment) (No. 3) Bill 2013: First Stage**

**Deputy Robert Troy:** I move:

That leave be granted to introduce a Bill entitled an Act to amend the Child Care Act 1991 (as amended) so as to enable any person to apply to the court seeking an order or direction in respect of a child who is not subject to the proceedings brought under the Guardianship of Infants Act 1964, the Child Care Act 1991 or any subsequent legislation dealing with similar proceedings, but who has been brought to the attention of the Health Service Executive, where there are reasonable grounds for believing the child in question is not receiving adequate care and protection.

**An Ceann Comhairle:** Is the Bill opposed?

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** No.

Question put and agreed to.

**An Ceann Comhairle:** Since this is a Private Members' Bill, Second Stage must, under Standing Orders, be taken in Private Members' time.

**Deputy Robert Troy:** I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

### **Business of Dáil**

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** I move: "That the sitting be suspended from 11.30 a.m. until 11.50 a.m."

Question put and agreed to.

*Sitting suspended at 11.30 a.m. and resumed at 11.50 a.m.*

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## Protection of Life During Pregnancy Bill 2013: Report Stage

**An Ceann Comhairle:** Amendments Nos. 1, 2, 4, 5, 18, 33, 36, 48, 60 and 109 are related and may be discussed together. I call Deputy Boyd Barrett.

**Deputy Mattie McGrath:** On a point of order, I received a letter this morning about amendment No. 3.

**An Ceann Comhairle:** We are not dealing with amendment No. 3.

**Deputy Mattie McGrath:** It is in that grouping.

**An Ceann Comhairle:** No, it is not.

**Deputy Mattie McGrath:** I know it is not.

**Deputy Richard Boyd Barrett:** Are there time limits for speaking on Report Stage?

**An Ceann Comhairle:** Members have received a note about time limits. There are no time limits on the first contribution but there is a time limit of two minutes on the second contribution.

**Deputy Richard Boyd Barrett:** Does this apply to the Deputy who moves the amendment?

**An Ceann Comhairle:** The Deputy who moves the amendment has a third opportunity.

**Deputy Billy Timmins:** On a point of order, I do not mean to be disruptive but I seek clarification. The Taoiseach said on the Order of Business that if additional time was required later in the evening, the House will facilitate it. How will that procedure take place?

**An Ceann Comhairle:** It is up to the Government Chief Whip to come in with a proposal for the House. At the moment, we are finishing at midnight.

**Deputy Richard Boyd Barrett:** It is somewhat complicated today. Should I move all of my amendments?

**An Ceann Comhairle:** The Deputy should move amendment No. 1. The fact that we are discussing the others together, because they are related, is a procedural matter. The Deputy's first amendment and each subsequent amendment will be put separately.

**Deputy Richard Boyd Barrett:** As a final clarification, am I speaking to the group of amendments?

**An Ceann Comhairle:** Yes, they are being debated together.

**Deputy Richard Boyd Barrett:** I move amendment No. 1:

In page 5, line 5, to delete "human" and substitute "maternal".

This Bill has become something of a sham. People expected and hoped the Bill would protect the lives of women and prevent tragedies like that of Savita Halappanavar, the tragic circumstances surrounding X, a 14-year-old child who was raped and became suicidal and the tragic circumstances surrounding the A, B and C v. Ireland and D v. Ireland cases. It failed on all counts to live up to the expectations of ordinary people that the Government would prevent

such tragic circumstances from happening again. The reason the Bill has failed and the reason I am tabling this amendment, along with 40 others with other Deputies, is because we want the Bill to be what it should be and what people expect it to be, one that ensures a woman's life will never again be put at risk because of the State refusing to safeguard the lives of women and the rights of women.

It is a tragic and sad fact that the Bill, instead of preventing those sort of tragedies and protecting the lives of women, has become about the internal politics of Fine Gael, holding the Government together and preventing political defections. The Bill is a fudge and a sham and the lives of women have become secondary to the needs of the Government to protect itself and prevent a major split in its ranks. That means, with absolute certainty, that we will be here again facing the tragic circumstances that prompted the Bill to be drafted and that prompted this debate. We will be back because the Government has not vindicated the rights of women.

The problems with the Bill begin, as my amendment suggests, with its title and the objective the Bill sets itself. It fudges the key issue, which the Bill is supposed to be about, and it talks about human life when the issue is women's lives. Women's lives have been put at risk because of the legal situation in Ireland and the political cowardice of successive Governments. Women have died and suffered and have been forced to flee in the dead of night under a stigma of criminality and of doing something wrong when they simply wanted to protect their lives, their health and their rights. The Government has vindicated none of those things and instead sought to protect Fine Gael and to assure Fine Gael's political interests. That is a tragedy. After the Bill passes-----

**An Ceann Comhairle:** I must interrupt Deputy Boyd Barrett. This is Report Stage of the Bill. The Deputy can only speak about the actual amendment and cannot talk about the principle of the Bill. Otherwise, we will not get through any amendments. We cannot have a general contribution. Does the Deputy understand?

**Deputy Richard Boyd Barrett:** I do.

**An Ceann Comhairle:** The Deputy's contribution can only relate to the amendment and the effect of the amendment on the Bill. This is Report Stage, not Second Stage all over again.

**Deputy Richard Boyd Barrett:** I am saying, Ceann Comhairle-----

**An Ceann Comhairle:** I ask Deputy Boyd Barrett to co-operate.

**Deputy Richard Boyd Barrett:** I certainly will.

**An Ceann Comhairle:** It will not be easy to manage but I will try to be fair to everyone.

**Deputy Richard Boyd Barrett:** I understand that but I am making the point about the failure to specify that the Bill is about protecting maternal life, which is at stake.

*12 o'clock*

It is the thing that prompted the tragedy of Savita Halappanavar's death. It is the thing that prompted the tragic circumstances in which a 14 year old rape victim was denied the right to an abortion. These circumstances could happen again, even if the legislation passes. Were X in the same situation again, it is likely that she would not have the right to an abortion as she would be put through such a terrible interrogation. It is almost certain that no woman in her

circumstances would even attempt to put herself through the hoops the Bill requires her to jump through.

The Bill does not provide the medical certainty doctors require to intervene decisively to protect the lives of women like Savita Halappanavar and others whose lives may be endangered by the continuation of a pregnancy. The Government has made a fudge between its need to assuage dissent from those within its ranks who are opposed to abortion and the legal imperative to vindicate the lives of women. As a result, women's lives have not been vindicated. The Bill should have been referred to as a Bill to protect maternal life. That is the point of the amendment. Similarly, there is a reference in the definitions section of the Bill to the need to have due regard to the right to life of the unborn in relation to the reasonable opinion of a medical practitioner. There is no mention of the need to have due regard to the life of the mother. It is all about assuaging the opposition of the anti-abortion lobby to the Bill as a whole and to prevent defections. That is tragic. It is a recipe for further human tragedies and for putting life and health at risk. People who have suicidal thoughts because of pregnancy are having their lives put at risk. That is unacceptable.

I hope the Minister will take seriously the concerns being expressed and the amendments being tabled and change the Bill. Otherwise, we will be back here within weeks, months or years, faced with tragedies which have resulted from the political failure of the Government to deal properly with the issue.

**Deputy Joe Higgins:** The aim of the amendments in my name and those I am co-sponsoring in the grouping is to bring focus to the issue of the health of women in pregnancy. Unfortunately, the health of pregnant women has been downgraded in much of the debate which has taken place. It is downgraded in particular in the minds and contributions of those who oppose any movement on the right of women to safe terminations of pregnancy where their lives and health are concerned.

There has been a significant emphasis in the Bill on the unborn, as it is termed. "Unborn", according to the definitions section of the Bill, "in relation to a human life, is a reference to such a life during the period of time commencing after implantation in the womb of a woman and ending on the complete emergence of the life from the body of the woman". That is hugely problematic for some of us. It means that an entity in the very early stages of a pregnancy, which is not even visible to the human eye, is superior or supposedly equal to the life of the adult woman in question. That creates major problems for women and is responsible for some of the tragedies which occur.

This is minimal legislation designed to cover in the most minimal fashion the situation thrown up by the Supreme Court in the X case. It is a cowardly Bill from the point of view of the Government. Serious issues of health and well-being faced by women in crisis pregnancies which have come to light and been brought out into the open in the course of the debate are completely ignored. If we leave aside the question of choice for the moment, we face the key, tragic issue of fatal foetal abnormality, where women are faced with horrendous circumstances. There are 1,500 such cases in the State each year and women and their partners are faced with very difficult decisions. Unfortunately, no advantage was taken of the fact that the Bill was going through the Oireachtas to deal with that situation. Those women are still faced with having to go abroad in the event of deciding that a termination is essential and necessary. It is unfortunate, to say the least, that the issue has not been dealt with. It is also cowardly that the question of pregnancy by rape or incest has not been dealt with by the Government. My aim in

the amendments in the group is to direct the focus of the Bill to the health of pregnant women. It is not acceptable that a chasm in legislation is put between the life and health of a woman. Health and life converge and it is not possible to build a Chinese wall between them. The right to life of a woman is engaged where there is a serious risk to her health.

There has been much debate on the chilling effect of the Offences Against the Person Act 1861 on medical personnel, particularly when confronted with women with life-threatening pregnancies. The definition of “unborn” in the legislation will similarly have a chilling effect into the future if it is enacted in its present form. Therefore, we seek to amend the definition of “unborn”. Why should a woman be subjected to a threshold of pain and suffering and not have the ability legally in the State to have a termination of pregnancy where that is required to protect her health? Even the Minister for Justice and Equality, who is very right-wing on most issues, has referred in the Dáil to the massive inequality that exists in legislation between the health of a woman and the health of a man. Unfortunately, that is something that is continued in this legislation.

Finally, the fact is that the Government is way behind the feelings, views, and empathy and sympathy of the vast majority of people in the State with regard to these issues. The Government itself has seen indications of people’s attitudes when a RED C poll in *The Sunday Business Post* found that 85% were in favour of legislation where the life of the woman is threatened but 82% were in favour of taking action where the health of the woman is seriously threatened and also in the case of rape. The Government should have taken advantage of this situation in order to deal with this. Otherwise, what we will have is an ongoing situation, the English solution to the Irish problem and the total hypocrisy of women being forced out of this country and all the trauma and expense that goes with that. Unfortunately, none of that will be changed by this legislation. Therefore, I urge Deputies to think seriously about those amendments that seek to include particularly the health and well-being of a woman as a major consideration in legislation such as this.

**Deputy Richard Boyd Barrett:** On a point of order, I received a text stating there were problems with the microphones. Could the Leas-Cheann Comhairle check? Does anybody know if there were problems with the microphones?

**Deputy Mattie McGrath:** No problem.

**Deputy Michael Healy-Rae:** We have them fine.

**An Leas-Cheann Comhairle:** There have been problems.

**Deputy Richard Boyd Barrett:** There have been problems. Are they resolved?

**Deputy Mattie McGrath:** We can hear the Deputy.

**An Leas-Cheann Comhairle:** We will get a report back on that. It is being looked at.

**Deputy Mattie McGrath:** Report Stage.

**Deputy Catherine Murphy:** I support many of these amendments. They should be supported.

Amendment No. 18 is the one that I have in this grouping and there is much with which I do not disagree in what has been stated already. It is wrong to make the distinction between the

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right to health and the right to life and there is 50% of the population for whom that distinction is made, but I recognise that to provide for that would require a new referendum - which I would support - to delete the Eighth Amendment. I recognise that providing for that within the context of this legislation would not be consistent with the Constitution.

This Bill does the bare minimum of what could be done. There have been sweeping misrepresentations of what this Bill is supposed to do, with all sorts of suggestions such as the floodgates opening. It is highly restrictive.

Given that some organisations have engaged in a highly visible and highly funded political campaign, I question how we manage such campaigns in a democracy and where the money has come from, particularly for the likes of Youth Defence, which states that education and awareness is its remit. Education and awareness is not driving around with large billboards and stopping in inappropriate locations, with large campaigns of delivering leaflets, etc. If there is to be a proper democratic system, one must legislate for that. I question whether, if some of these organisations have charitable status, their remit has been exceeded. That is something that needs to be looked at in its own right. I accept the decision the Irish people made with the Eighth Amendment, although I did not like it. There are many decisions that I do not like, including the one that got me chucked out in 2007. Essentially, I try to stay within the Eighth Amendment, but I think there has been an interference with democracy in the way some of this campaign has been conducted.

This is the bare minimum. We will see further tragedies. It is wrong and difficult to make the distinction between health and life. My amendment has not specifically addressed that issue but has tried to solve one particular aspect of what is provided for in the legislation.

**Deputy Joan Collins:** I refer to amendment No. 60, the amendment we tabled in this grouping. It takes up the issue of the classification of “an unborn human life” and substitutes “a pregnancy”. It tries to take out the worst elements of this Bill in terms of handling the situation of a woman, because that is what it should be about. The points have been made. This should be about the protection of the life of a woman who needs a termination of pregnancy in difficult circumstances.

I understand that many - it has been quite indicative - do not want termination on demand except in certain cases, such as rape and incest. It is terrible that we must discuss this in the Dáil Chamber and degrade women to the point at which we are classified so that we can seek a termination only in certain circumstances, but this Bill, in essence, makes the present position worse. There were cases in which children in care, aged 15, with one psychiatrist, were allowed to travel to Britain to access a termination. By law, under the Supreme Court judgment, they should have been able to access that termination here. From now on, they will be subjected to a panel of three medical practitioners, one of whom will be an obstetrician. This is outrageous. The European Court of Human Rights specifically made the point, in the A, B and C v. Ireland case, the D case and the X case, that there should be accessible legislation to enable terminations in those circumstances. This Bill is going in the wrong direction. That is the reason we are trying at this late stage to deal with the worst aspects of it, put in better terminology and change the nature of the Bill to make it more accessible for women who have crisis pregnancies that they cannot deal with. They need support from this State, not the British, Norwegian or French state, to deal with what is facing them in this country.

**Deputy Clare Daly:** There has been an unbelievable disconnect between the real lives of

citizens in this State and the discussion that has been conducted here in this House and in many elements of the media. It demonstrates how disconnected this House is from society. The reality is that the Bill and the discussion that has been held over the past while represent little more than substantial grandstanding, posturing and abstract debate which is out of sync with the real lives of citizens in this State. It is fair to say never has so much been said by so many about so little. The Minister could not have made the Bill any more restrictive and limited than it is. Not only that, but it has deviated from what it should have been and it is shifting the emphasis away from the protection of women's lives which was the basis of this issue being looked at to a sort of fudge.

I agree with other Deputies who have said the root of this inequity lies in the appalling constitutional provision which equates the life of a woman with the life of an unborn. This is ludicrous and it has put a Chinese wall between women's lives and their health and means that the medical profession is faced with a choice in waiting until a woman is almost at death's door before doctors can intervene to save her life. That will continue, a situation which was so eloquently described by the Minister for Justice and Equality when we introduced our Private Members' Bill the second time around, and will still be the case after today. It can truly be said the right of pregnant women to have their health protected under our constitutional framework is a qualified right, as is their right to bodily integrity and that will remain the position. This is a republic in which we proclaim the equality of all citizens, but in reality some citizens are more equal than others. The rancid hypocrisy of exporting women from this country in their thousands will continue, as will the intolerable cruelty of people being forced to carry to full term or travel to England in cases in which there is a fatal foetal abnormality. That is the root of this issue and what we want tackled. We are adamant that it will be tackled and that there should be a repeal of the eighth amendment.

Like any other civilised society, we should deal with this issue of women's health and human rights as a matter which is not even for legislation because regulation would be sufficient, as is the case in other countries. The fact that the provision is included in the Constitution is ridiculous. The Supreme Court interpreted that constitutional provision as indicating that abortion was permissible where the life, as distinct from the health, of a woman was in danger. That is a false distinction and the Bill perpetuates it and, in our opinion, ensures a case like that of Savita Halappanavar will happen again. It does nothing to address that issue. The Government heaping rights on the unborn and defining it in a manner which was not done previously actually means the medical profession will be curtailed and most definitely will have to wait until a woman is essentially at death's door and demonstrably her life is in danger before it can take action. That is regrettable. The legislation fails to take into account what the Supreme Court said, that the threat to a woman's life did not have to be immediate or inevitable. Nowhere is that factored in to the Bill.

I fully respect people's private views; everybody is entitled to his or her own opinion and there are many very different views. However, there has been a concerted effort to enforce a Catholic ideology and viewpoint on all citizens of the State which is out of kilter with the opinions of people in our society. We received communications from religious leaders of other religions supporting the idea of wider provision of abortion services but also from people who, like me, are of no religion and many Catholics who do not agree with their church's teaching on these issues. I fully respect the rights of all Catholics. I would go out of my way to defend their right to practise their religion and stay true to their beliefs, but people who do not want access to abortion services are already looked after. Thankfully, we do not live in a country which

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compels people to have an abortion against their will. We are not talking about such persons. If because of an ideological viewpoint, some people do not want to have an abortion, frankly, it is great that they are not forced into having one. We are talking about people who need access to abortion services for a whole number of other reasons.

Not only are those victims impregnated in rape or incest case or those cases involving a fatal foetal abnormality not being addressed in the Bill, but the very limited provisions of what the Minister could do are not being catered for. It is ironic that when we introduced our Private Members' Bill previously, Labour Party Deputies, in particular, told us that they could not support it because it did not go far enough. We were apologetic about our Bill because it was so limited, but it now looks like a positive, brilliantly progressive Bill by comparison with this narrow vehicle. It is highly questionable whether anyone will gain any protection from it. All of the motions we have tabled have tried to elevate and put this discussion back to where it was supposed to be, a discussion on protecting women's lives. That is what it was about and that is why we were here. That is what the Supreme Court said and that was the problem in the Savita Halappanavar case - the lack of clarity. This Bill provides no more clarity. In that sense, it is really regrettable that the Government has chosen to pander to some people who have mysteriously discovered a conscience and an interest in the consequences of their decisions here. They do not care about the lives of born citizens and who have unleashed almighty cutbacks and terrible conditions on people's living standards. They have reinvented themselves as some sort of saviour which is completely out of kilter with the real world.

The amendments we have tabled attempt to address within the constitutional limits some of the worst aspects of this very narrow Bill. We also signal our intent - like most citizens of the State - that we will not stop until we have the issue of abortion fully addressed for all of the other important reasons mentioned.

**An Leas-Cheann Comhairle:** I understand there is a problem with the microphone system.

**Deputy Richard Boyd Barrett:** It has been a problem since the beginning of the debate.

**An Leas-Cheann Comhairle:** I am advised that the ambient microphones are recording everything that is said. Nothing said in the debate is being lost.

**Deputy Richard Boyd Barrett:** It is impacting on the broadcast sound. I have received a text from a radio station that the debate cannot be broadcast. This is an important public debate. Is there any guidance on how long it will take to fix the problem? It is problematic to continue with the debate when it cannot be broadcast.

**An Leas-Cheann Comhairle:** I appreciate that. I am waiting for a report from the digital company engineers.

**Deputy Mattie McGrath:** On a point of order, I think our eminent friends in the Press Gallery can do a good job in relaying to the public what we are saying. We depended on them years ago before there was any broadcasting.

**Deputy Mick Wallace:** In my two and a half years in the House, this has certainly been the most talked about issue. Nothing else has garnered quite so much speaking time in here. The most striking point at this stage is that we seem to be no closer to clarity than we ever were. Confusion seems to abound. So much work has gone into the new legislation, yet we do not even know whether the life of Savita Halappanavar would have been saved had this legislation

been in place before her death. This is incredible.

Of the 47 countries in Europe, 44 have more progressive legislation in this area. It is hard to credit the fact that, although such a large proportion of the population agrees with addressing the considerable problem in this area, an incredible fight is being put up by a small minority who have the money. The influence and power that this minority has exercised in the State has been highlighted so much in recent months.

In April 2012, a Bill to address the issue of the X case was introduced. We considered the matter again in November. At the time, the idea was that we should try to address the issue of Ireland exporting its problems. We are not doing anything about that, however. After the Bill before us is passed, will there be a decrease in the number of women going to England for abortions from Ireland? I do not believe there will be.

There are so many aspects to this legislation that really change so little. I understand that the eighth amendment will have to be tackled before this issue can be dealt with in a really substantial way. This Bill could do so much more. It is plain to all that it was difficult for the leadership of the coalition to carry everybody with it. It has had to water down the legislation so much to try to keep as many people as possible on board.

**An Leas-Cheann Comhairle:** There are ten amendments grouped and I ask the Deputy to address them. There are four or five speakers.

**Deputy Mick Wallace:** I will not speak all day. There will be others who will speak for a lot longer than I will.

It is deemed acceptable for 4,000 women to go to England every year but if a woman imports an abortion pill and it is discovered, she will be thrown in jail for 14 years. How can one rationalise that? I do not understand how rational people could come up with such a provision. I have one daughter. If she is ever pregnant and suicidal, I will not be helping her to hop through the system because she would be dead before she would get an answer. She will be going outside the country.

I have no intention of elaborating further and will address the amendments as they arise.

**Deputy Mattie McGrath:** I wish to refer to amendment No. 18, which seeks to delete “which has regard to the need to preserve unborn human life as far as practicable” and substitute “which has regard to the need to preserve unborn human life as far as practicable and with due regard to the right to life of the woman”. I sat through the hearings and heard all the contributions with my own ears; there were no problems with the microphones. All the contributors, each of whom is eminent in his or her field, be it gynaecology or psychiatry, told us that in spite of the 1851 Act and everything else, it has always been their motivation, under Hippocratic oath or otherwise, to protect the life of the mother and human life. How can we play around with the words “which has regard to the need to preserve unborn human life as far as practicable”? Unborn life is unborn life and should be regarded as such. We cannot play around with words and make it less palatable or more palatable to decide that we should have terminations or not.

While it is fine to stand up here and criticise people for putting up billboards, holding marches and issuing communications – that is our job and we are here every day of the week – I am sure some of the critics would have no problem putting up billboards and sticking information in people’s faces when seeking to get elected. We all do that and we often irritate people,

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with the consequence that we have to shift the billboards. There are laws, rules and guidelines. It is fine to dismiss Youth Defence and others, but it must be borne in mind that while they have gone over the top on certain occasions, they and the young people of Ireland should not be tarred with the same brush. I was proud to walk down O'Connell Street on Sunday morning and I saw some Members of this House. We were met with some awful taunts. I do not refer to myself alone – I am used to it – but also to ordinary men, women and children. They were taunted by people proclaiming to be great liberators and to be pro-choice. If they had their way, we would not have been there at all. We would have been running to the Garda as we would have been attacked. Is that what they call modern-day democracy, the object of which is to shake us all, bring us into the new world and liberalise the whole country? Any country that has introduced abortion to account for suicidal ideation has regretted it.

**Deputy Michael Healy-Rae:** I appreciate this opportunity to discuss the various amendments. That the microphones are not working today is an omen. One might call me superstitious but I believe I am actually right.

I was very upset earlier when I heard the Taoiseach responding to Deputy Adams and Deputy Martin regarding the legislation. He said we will get rid of it this evening. In other words, he was implying it would be rushed through this evening. Today is a momentous day in the history of Dáil Éireann and the country. It is with a heavy heart that I hear what is being discussed today, but this is a democracy and everybody is entitled to table his or her amendments. I agree with some and have serious trouble with others. The first amendment that should have been dealt with is amendment No. 3, in the name of Deputy Mattie McGrath, which seeks to change the name of the Bill.

**An Leas-Cheann Comhairle:** We are not on that amendment. Ten amendments have been grouped.

**Deputy Michael Healy-Rae:** We will get to that because it is the most important. I look forward to discussing it at the appropriate time.

**Deputy Caoimhghín Ó Caoláin:** We need to remind ourselves of the Bill's scope and intent, which I welcome. We in Sinn Féin will support its passage through Report and Final Stages today, but the address of the Bill is the protection of life during pregnancy. As party spokesperson on health, throughout the long discourse on this Bill when first mooted at the end of last year, the hearings in January, the heads of the Bill hearings, Second and Committee Stages to today, I have always believed the address of the Bill is the protection of both the life of the pregnant woman and the unborn child. I have never at any time believed the address of the scope of the Bill was other than this.

I reject the amendments that seek to limit the address and scope of the Bill to maternal life only. The address in which I have been involved throughout has been in the context of protecting both lives. While Sinn Féin reflects in its policy some of the measures addressed in the grouping of amendments, including the threat to the health of the woman, the Bill is specific in its address, the threat to the life of the woman. I am anxious that we get in the course to the debate to the amendments that can make a difference to the Bill as they address its scope. They can be accepted and the Minister's response will come in its own course, but I believe some of the amendments have no potential because they are outside the scope of the stated intent and address of the legislation.

I support amendment No. 18. I fully understand and appreciate that the Bill seeks to ensure due regard for the life of the pregnant woman and the unborn child. That is the context in which we must measure the Bill and its subsequent outworking on its passage against the backdrop of the constitutional protections. However, I have no difficulty because what is involved in this amendment is the addition of the phrase, “and with due regard to the life of the woman”. There cannot be any substantive objection to the inclusion of that additional reference to what I understand is reflected and central to the Bill’s intent.

The Leas-Cheann Comhairle may indicate that I am out of order, but with regard to amendment No. 128, I will only abuse the moment briefly. On Committee Stage the Minister indicated to me that he would come back with an amendment that would address the issue of after care. I have retabled my amendment. The Minister indicated on Committee Stage that as an Opposition Member, I could not progress such an amendment regarding optional therapeutic after care for women who had had terminations of pregnancy because it could constitute a charge on the Exchequer but that he would come back, accepting the validity of the points I had made. However, I regret that he has not tabled such an amendment. I appeal to him at this early stage in the deliberations to please recall his commitment and consider what he might do before the day’s end.

**Deputy Peadar Tóibín:** Like all Members present, I believe in every single case where people’s lives are threatened, they should receive every medical treatment necessary to save their lives and that there should never be any confusion whatsoever about this within the system and that where there is confusion, the necessary guidelines should be put in place to ensure the medical professionals have all the information necessary to do what they are trained to do.

It is shocking that the debate on the Bill is being guillotined. The opportunity to engage in debate in this process has been front-ended, yet, at the end of the process, when Members have a genuine opportunity to contribute to the detail of the legislation, it is being guillotined. I have no doubt that this legislation will end up before the Supreme Court. Members present who are overpaid for the job they do will not have an opportunity to bring their experience, knowledge and understanding to the content of the Bill.

With regard to the campaigning on the legislation, any organisation that has campaigned disrespectfully in any regard should be condemned, but anybody who seeks to demonise campaigns that have campaigned respectfully should also be condemned.

**An Leas-Cheann Comhairle:** Will the Deputy move on to the amendments?

**Deputy Peadar Tóibín:** There is so little time that many of the amendments under discussion will have no opportunity for success owing to the fact that they are outside the constitutional limits. I have a worry that there may be an effort to filibuster affecting the opportunity to have the amendments that have an opportunity under the Constitution discussed.

**Deputy Billy Timmins:** It is important to realise that this is a human rights issue and that is the way I look at it. With respect to all religions and none, this is immaterial. In many respects, these amendments go to the heart of the differences people have because, with the exception of Deputy McGrath’s amendment, there is a failure to recognise the position of the unborn human life. That failure causes a difficulty for me.

I agree with most of the sentiments expressed by Deputy Peadar Tóibín. Whatever medical assistance and so on is available should be made available, about which there should not be any

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doubt. However, with regard to the amendments, I did not hear at the hearing a demand from the medical profession - perhaps with the exception of one gynaecologist subliminally - for such an action. The amendments demonstrate a lack of recognition for the existence of unborn human life. They probably are also contrary to Article 40.3.3°, which is why they will probably be ruled out of order. One can argue about the pros and cons of this article, but it is difficult to interpret and history has shown this to be so. I read Mr. Justice Flaherty's contribution in the Supreme Court over the weekend. Perhaps we might seek to legislate for that article as opposed to legislating for the X case judgment. That is the false premise on which the Government is operating. There seems to be a liberating concept of legislating for the X case judgment when it is anything but. One of the reasons the Government has drawn my wrath, that of others close to me and that of some on the Opposition benches is the mixed message that has come from it.

I agree with one aspect of Deputy Richard Boyd Barrett's contribution. This legislation will do nothing to address the situation in the tragic death of Savita Halappanavar and to maintain that it will does an injustice to everybody involved in the process. The gynaecologist – I do not whether it was an expert opinion or a personal opinion – Peter Boylan stated if there had been an intervention on the Monday or the Tuesday, her life could have been saved, but at that stage the diagnosis was there was just a threat to her health. That goes to the kernel of why thee amendments have been tabled. The threat was to her health, not to her life. It would not have made one iota of difference to her tragic situation. For Members of Government to seek to endorse the emotion of that case to support the legislation they are bringing in, which I believe to be flawed for other reasons, is disingenuous.

I disagree with the point raised by Deputy Higgins about opinion polls, and the public being ahead of us. It would be a poor Parliament or Government that would legislate on the basis of opinion polls which, in respect of social issues, are highly unreliable, as evidenced by the poll on the children's referendum.

**Minister for Health (Deputy James Reilly):** I thank the vast majority of speakers for the tone they have adopted but I regret that of Deputy Boyd Barrett, and also the fact that he would deliberately seek to omit the right to life of the unborn, which is implicit in this Bill on the protection of the life in pregnancy of both mother and unborn child.

As the last speaker noted, what was lacking in legislation would not have been what led to the tragic death of Savita Halappanavar. Unlike him, however, I disagree that the Bill would not have had some impact because it would have brought clarity to her and her husband as to what care they were entitled to, and clarity to the doctors as to what were their responsibilities. That was a specific report by the HSE and anybody who has read it realises this is not what was at the root of the problem.

To all those Deputies who raised the issue of "reasonable opinion", I point out that this has gone from section 2 but has been clearly defined in sections 7, 8, 9 and 13, all of which are primarily focused on saving the woman's life. The need to add the extra language was not deemed appropriate by the Attorney General.

Deputy Higgins mentioned the issue of life or health, which was also raised by several other Deputies. The Supreme Court is clear on this and has stated bluntly it is the life as opposed to the health of the woman.

Deputy Catherine Murphy acknowledges the equal right to life of the unborn which is men-

tioned in the eighth amendment to the Constitution, as she noted. That equal right is very clear and the people have spoken.

Deputy Clare Daly stated the Bill was very restrictive and she is right. I believe, however, that she wants me to ignore the Constitution and the Supreme Court case decision in the X case, which I cannot and will not do. She mentioned a republic which values life. I believe it is a republic that values all life, including that of the unborn, and I am proud to be a citizen of such a republic. It is not true to state that a woman has to be at death's door. The Deputy herself mentioned that the risk need not be immediate or inevitable.

I must disagree with Deputy Wallace. I believe this Bill brings clarity for doctors and, most important, clarity for women on what they are entitled to and how they can access it.

I note Deputy Mattie McGrath's comments and what Deputy Healy-Rae had to say, but must point out that people have waited 21 years for this legislation. Hearings were held before and after the heads of the Bill were published. We had a long debate in this Chamber on Second Stage to which virtually every Deputy contributed, and we had an extensive Committee Stage where many of the issues before us were teased out. I do not believe there has been another Bill in the history of this State that has received so much attention and so much time.

I believe I have addressed the issues raised by Deputy Ó Caoláin in regard to amendment No. 18. He stated that I had committed to an amendment in respect of services for women. I did not do so; what I stated was that I will return to that point in later amendments.

I know Deputy Tóibín has concerns around a filibuster. It is certainly not this Government's intention to shorten this debate in any way but there has to be a time limit at some point. We will sit until midnight and given the way the day evolves I would have no problem staying here all night and all morning on this subject.

To reiterate, and subsequent to comments I have made, I cannot accept these amendments as I believe they are unnecessary. The main purpose of the Protection of Life during Pregnancy Bill 2013 is to restate the general prohibition on abortion in Ireland in line with Article 40.3.3° of the Constitution, while regulating access to lawful termination of pregnancy in accordance with the X case and the judgment of the European Court of Human Right in the A, B, and C v. Ireland case. Its purpose is to confer procedural rights on a woman who believes she has a life-threatening condition so that she can have certainty as to whether she requires this treatment. I reiterate that the Bill provides for existing rights only, namely, within the constitutional provisions and the Supreme Court judgment in the X case. It specifically does not confer any new rights to a termination of pregnancy.

**An Leas-Cheann Comhairle:** I thank the Minister. As we are on Report Stage, the second contribution of Members is limited to two minutes. I call Deputy Richard Boyd Barrett, to be followed by Deputy Peter Mathews.

**Deputy Richard Boyd Barrett:** In response to what the Minister said, the point of these amendments is to state the key imperative is to protect women's lives because they have not been protected. Of course the Minister is right to say that the Constitution as it currently stands, reinforced by the X case judgment, provides protection for what is called the "unborn child" although it did not define what that is. This is something the Minister has done, in such a way as to expand that definition to a point that is very problematic. As we will see when we return to it, it is extremely problematic particularly in the tragic circumstance of fatal foetal abnormali-

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ties. It may preclude any future effort by the Minister's Government or any other to allow for terminations in those tragic circumstances.

The substantive point of these amendments is to state that although legal protections have existed and continue to exist for what is termed the unborn child no protections have existed for the lives of women which is what we are trying to address. That is what most people believe this Bill was supposed to do, to prevent tragic circumstances such as those of the X case, where a 14 year old child was raped and became suicidal, was threatened with incarceration and denied the right to have an abortion in this country, or the case of a woman like Savita whose life might be put at risk because of the legal situation surrounding abortion.

**An Leas-Cheann Comhairle:** Thank you, Deputy.

**Deputy Richard Boyd Barrett:** That is what we are trying to address in these amendments. As it stands, and in the way the Minister has structured this Bill, including the extra amendments he has introduced on this Stage, the matter is further confused. The Bill does not provide the clarity the Minister claims it will provide but will again leave open the likelihood that any woman subjected to this process would have her life put at risk. We would be back to the same tragic circumstances we saw in Savita's case, the X case and the cases of A, B, C and D. That is the point. We are trying to shift the focus of this Bill to where it should be, on the protection of women's lives which have not been protected until now.

**Deputy Peter Mathews:** I will pick up a point mentioned by Deputy Caoimhghín Ó Caoiláin.

*I o'clock*

I wish that this Bill was indeed the Protection of Life During Pregnancy Bill, to protect what is set out in the Constitution explicitly, that the value of life once it comes into being, whether born or unborn, is of equal value. To call this Bill restrictive is not enough. The Bill should be protective of both lives. As Deputies Mattie McGrath and Tóibín said, of course we do everything, and medicine is duty bound at every level to do everything, to save the life of a mother.

To use an analogy, the important part of a ship for safety on the seas is the hull. Section 9 of this Bill is a fault-line across its hull. The psychiatrists and obstetricians pointed that out at the hearings in May, which regrettably no Minister attended. That was a shocking chasm in the discussion and exploration of this Bill. In France, 25% of pregnancies end in abortion and in Britain, 30%. That is the reality. We have heard other Members talk about realities. That is a shocking reality, the gift of life being snuffed out at a rate of 30% for every time it starts. Bad law is not good for a society. As a very experienced obstetrician pointed out, wars and famines come and go but abortion stays with a society and eats out its heart.

I said to the Minister earlier today that in the United States, which is the paragon of medicine, and Deputy Shortall is aware of this, 25% of medicine is iatrogenic, that means tidying up the mistakes and misdiagnoses of other doctors dealing with patients. A total of 25% is tidy-up, correction work by doctors. Just because a doctor holds certificates and degrees does not mean that they carry out the vocational work to which Deputy Mattie McGrath referred, or that they are on the look-out for the best interests of their patients, whether mothers, fathers, babies, teenagers or elderly people. Where does the respect for life come and go, begin and end? We talk about the foetus. Life begins at conception and ends in natural death. People who have lived their lives, whether powerful or powerless lives, deserve respect because they carry the

gift of life by their very existence. I do not want to be party to any Dáil, or parliament or party that does not understand that.

My younger colleagues in our party are under a shocking stress at the moment. It is visible. They say they are going to vote with the party because they signed a pledge against their conscience. They have said that. That is absolutely perverse.

**Deputy Michael Healy-Rae:** It is a disgrace.

**Deputy Peter Mathews:** I hope that before this debate is out that the leadership of our party wakes up to the truth of the situation.

**Deputy Joe Higgins:** I want to reiterate that with the key amendments in this tranche we want to end the invidious distinction made in legislation between the health and the life of a woman. We seek to include health as a key factor in legislation that provides the right to a termination of pregnancy. There is no chasm in real life between life and health. To insist on a threat to life as the only justification for a termination of a pregnancy can put women in a dangerous situation and it is certainly a highly invidious situation because an issue in pregnancy that presents purely as a health issue at the beginning, can go over to a life-threatening situation. As we have seen in tragic instances life was lost because it was not possible to meet the threat to health with a termination at an earlier stage in the process. The Minister cites the constitutional prohibition against us on this issue. I say go to the people with a constitutional amendment to remove the absolute prohibition except in the very narrow circumstances that have been laid down by the Supreme Court. My point about the opinion polls, which show huge majorities in support of the right to a termination in crucial areas of foetal abnormalities, rape and so on, was to show that the opinion of our people has moved on hugely in this regard and therefore to do justice to that. There should in fact be not just an extension in this legislation but a constitutional amendment to cater for this opinion.

**Deputy Michael Healy-Rae:** I have serious concerns about what is being proposed in amendments Nos. 72 and 109 and I would not like to see them going through.

**An Leas-Cheann Comhairle:** To which amendments is the Deputy speaking?

**Deputy Michael Healy-Rae:** Amendments Nos. 109 and 72.

**An Leas-Cheann Comhairle:** Only amendment No. 109 is in this group. The Deputy may speak to amendment No. 109.

**Deputy Michael Healy-Rae:** I compliment Deputy Mathews on what he said to the Minister with regard to allowing people vote with their conscience and not under the party Whip. Every person who was elected to this Chamber should be allowed today and tonight to vote with their own minds, hearts and souls and the party Whip should not be imposed on them. What the Government is doing to people who are unwilling to break ranks with their political parties and vote with their conscience is a disgrace.

**An Leas-Cheann Comhairle:** Will the Deputy return to amendment No. 109 please?

**Deputy Michael Healy-Rae:** I have a serious problem with amendment No. 109 which seeks to insert "or health" after "life". I hope that there will be a vote on amendments such as this because this is about people's lives. It concerns the unborn life, which, to me, starts at the moment of conception and finishes the day that God takes that person out of this world. No-

body else should take away a person's right to life.

**Deputy Catherine Murphy:** We start out in life looking at things in a very black and white way and as we go through life we discover that things are not quite as we saw them at earlier times in our lives. Most of our life is lived in a grey zone. We would not be legislating for something like this if every pregnancy was guaranteed a safe delivery or if every pregnancy produced a live and healthy baby. We need legislation to set out parameters. The citizens of this State voted on three separate occasions on this matter. Not only should we legislate but we have a duty to legislate if we call ourselves democrats. We might not like what people decided but we have a duty to respect what they decided.

Deputy Mathews talked about the gift of life. Savita Halappanavar also had the gift of life and in her case it was cut short in a very tragic way because we failed to provide certainty. We need to provide certainty. My criticism of this Bill is that it is the bare minimum. It is very difficult, if not impossible, to make a distinction between life and health. That is why I feel that the way the Bill has been framed is very limited.

**Deputy Clare Daly:** We are well aware of the deficiencies in this as a result of the eighth amendment. It was important for us to point that out in our contributions. Even within that restrictive basis, this Bill could have gone further than the Minister has allowed. He talks about there being no new rights in it on which he is absolutely correct. The point we are making is that not only are there no new rights but some of the provisions, particularly those defining "the unborn", could be a worsening of the situation or make it more difficult to deal with the complicated and tragic cases such as fatal foetal abnormalities or inevitable miscarriage. The overwhelming majority feel this must be legislated for, should be provided for and, according to a significant legal viewpoint, could be provided for within the realms of our deficient Constitution. When one puts a private health matter into the Constitution involving potentially half of the population, then one will have a problem.

I take issue with Deputy Mathews. This is not about whether there will be Irish abortion or not. There is Irish abortion; there has always been. Unfortunately, some very sick or suicidal women will have to leave this country to avail of that medical treatment. The Constitution allows them to travel but does not allow them to avail of it at home.

I do not know why Members are under shocking stress. Some reprehensible decisions have been made in this Chamber like cutting special needs assistants to young people with disabilities. Deputies on the other side did not seem to be in any stress over that. I cannot see why they are so stressed on this. Everyone has a conscience, particularly the mothers, daughters, sisters and wives who, for various reasons, decide they need to have an abortion in the interests of their health or overall well-being. I respect their decision. I respect the ability of the medical profession to treat them on this health matter, as in others. The issue is whether this Bill assists women and their doctors and gives clarity. Unfortunately, it does not.

**Deputy Éamon Ó Cuív:** I have listened to this debate with interest. It is fair to say that various Members have radically different views on the status of unborn human life. There is no absolutist view. If one believes that unborn human life is human life and that, as is done in the Constitution, that human life should be protected, then one must approach this from the point that one has to protect unborn human life and that it is not just a matter of personal choice, just as many other issues in this State are not matters of personal choice if they inflict harm on others, no matter how close. Accordingly, this debate will not finish today because there is a

fundamental philosophical difference between people on that issue.

There are some issues spoken about here today that fly in the face of well-established fact. The one I find totally objectionable is an insinuation, sometimes directly, other times indirectly made, that Members do not believe that a woman's life should be protected at all times. Allegations have been made against some of us that we have a cavalier attitude towards protecting women's lives. Such an attitude cannot be found when the facts are analysed. A false impression is created that some Members do not care. I care, as every other Member does, about protecting all human life.

I want to address the issue of Savita Halappanavar and maternal care. The Minister said on Committee Stage in reply to an issue I raised, that this country has one of the best records of maternal care of any country in the world. In its simplest terms, we are the fifth best place for a woman who is expecting a child. I want to see that improved and for Ireland to be number one. The everlasting challenge is to maintain these high standards in our hospitals. Unfortunately, people, not only women expecting babies, die in our hospitals who should not have because at times the care in our hospitals was not optimum. All of us know about the tragedy when that happens.

In the case of Savita Halappanavar, from any objective reading of the report into her death, it is fair to say there are issues which need to be addressed immediately and have nothing to do with legislation. Instead, they have to do with procedures in the hospital. In fairness to the Health Service Executive, it has recognised that and it has moved forward to put in protocols to ensure this is never repeated. Accordingly, the charge that in some way by protecting the life of the unborn, we are putting at risk the life of the mother is wrong.

Those of us who believe that the unborn are human, just as the rest of us, are trying to ensure the highest standard of maternal care for the mother. We do not believe these are competing but complementary rights. In looking to give the highest protection to the life of the unborn, one does not do that at the expense of the mother. If sections 7 and 8 improve this and there are issues which the legislation can make clearer, then I have no philosophical difficulty with them.

In this House we know how important the meaning of words is. We must ensure what the words convey in law is what we and the Constitution put there by the people intended to convey. However, one cannot be over-prescriptive because one has to allow doctors clinical flexibilities to make correct decisions in real-life situations which vary enormously. In such situations I am sure a doctor would have to make swift decisions which became very clear in the Savita Halappanavar case regarding delays and so forth. For those who believe that the constitutional position is correct, which is that we seek to preserve at all times both the life of the mother and the life of the unborn, the amendments being put forward by the Deputies are fundamentally trying to shift the goalposts to a place that neither the Constitution nor, I believe, Irish society wants to go.

**Deputy Mattie McGrath:** I would also like to refer to amendments Nos. 48 and 72. The Minister is here today, although that he was held up and arrived late. He was not held up the morning of the committee hearings. He arrived in and we expected to have a robust debate with him that morning, as we had with the other contributors who had given honest speeches. The Minister read out a script and he fled out of the committee. He left us.

**An Leas-Cheann Comhairle:** Can we stick to the amendments?

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**Deputy Mattie McGrath:** Of course I will, but the Minister referred to the committee himself when he spoke, and I am referring to the hearings as well. The Minister looks surprised. He fled from the hearing that morning.

**Deputy James Reilly:** What has this got to do with the amendments?

**Deputy Mattie McGrath:** It has to do with the sabotage of the whole Bill. A person resigned from the expert group, but we never found out why. Did the Minister meet the person or brief him or her?

**Deputy James Reilly:** To which amendment is the Deputy referring?

**Deputy Mattie McGrath:** I am referring to amendments Nos. 48 and 72. The Minister referred-----

**An Leas-Cheann Comhairle:** Amendment No. 72 is not in the group.

**Deputy Mattie McGrath:** I am sorry. I am talking about amendment No. 48. Others are well able to stray from the amendments, so I can stray a small bit as well. The Minister's script was 13 minutes long. He mentioned that he was willing to stay all night tonight, but he could not stay that day. What was the big hurry that day? Why did he not stay to listen to the specialists? They came in from all faculties and gave their opinion freely and were questioned robustly.

We are rated as the fifth safest country in this area. One would not think that if one was to listen to people in here and people outside, but we are. God help us, it was so sad what happened to Savita, but it has been proven that what happened was due to simple neglect and mismanagement. The people in that hospital have been subjected to awful abuse. The issue has been hijacked to further the aims of I do not know what in these amendments. Amendment No. 72, as I said-----

**An Leas-Cheann Comhairle:** Amendment No. 72 is not in this group.

**Deputy Mattie McGrath:** I apologise. I was referring to amendment No. 48.

**An Leas-Cheann Comhairle:** I would like to call the next speaker.

**Deputy Mattie McGrath:** I am not finished. The amendment proposes to delete "an unborn human life" and substitute "a pregnancy". All the words put in here are there for one reason, which is to make this Bill more liberal. They will use any means, foul or fair, as if the Savita issue was not bad enough, to hijack it for personal gain and support a push for this liberal law. The Minister said he could stay here until the morning, yet he could not stay in the committee.

**An Leas-Cheann Comhairle:** We will come back to that. I call on Deputy Ó Caoláin.

**Deputy Caoimhghín Ó Caoláin:** Some of the earlier contributions would even question the purpose of the Bill. I am absolutely of the view that the Bill addresses the protection of life both of the pregnant woman and the unborn child. There are other battle lines within political groupings and they are not unique to any one party in this Chamber, but they are there. The fact is that a significant body of opinion in this House believes what I have said and accepts the veracity of the case made by the Minister in support of the Bill's passage.

Amendment No. 18, in the name of Deputies Catherine Murphy, Boyd Barrett and Higgins, is in no way in conflict with the purpose and intent of the Bill. It is a reaffirmation, in its own

way, of what is already understood and enshrined within the legislation. It is therefore not a proposition that should either challenge or test the Minister's acceptance levels. I would encourage its acceptance because it has a purpose. There are other amendments that provide that reiteration. Some believe that is important. I do not need it. I can accept that it is there and that is given. However, if it helps, I think that it should be given due and favourable consideration.

In his response, the Minister said that I had misrepresented whatever commitment I understood he gave on Committee Stage regarding after-care. That was my clear understanding of his response to me at that time, and I do not propose to put words in his mouth. That was my understanding and I hope at some point that he will clarify the matter. I hope he will live up to what I had expected him to do.

**Deputy Mick Wallace:** I do not understand how the right to life of the unborn and the right to life of the mother can be separate items at the point when the unborn cannot survive outside the womb. How can they be separate? We all like to think that we cherish the gift of life. It is an awful pity we were not as worried about the million people that have died in Iraq in the last 20 years, which we facilitated by allowing the Americans to use Shannon Airport.

I would like to remind the Minister what the UN special rapporteur, Anand Grover, said on the issue of the right to health:

Criminal laws and other legal restrictions on sexual and reproductive health may have a negative impact on the right to health in many ways, including by interfering with human dignity. Respect for dignity is fundamental to the realisation of all human rights. Dignity requires that individuals are free to make personal decisions without interference from the state, especially in an area as important and intimate as sexual and reproductive health.

Criminalisation generates and perpetrates stigma. Criminal laws and other legal restrictions disempower women, who may be deterred from taking steps to protect their health to avoid liability and out of fear of stigmatisation. The likely effects of the criminal penalties in the legislation is that they will make women afraid to disclose information to their doctors about previous abortions and to seek medical assistance in the event of complications arising from an illegal abortion.

**Deputy James Reilly:** The definition of the unborn is from the Attorney General, and it is for the purposes of this Act alone. Deputies Boyd Barrett and Clare Daly raised that issue.

I accept that everybody has a conscience and strongly held views and beliefs, but I believe the Bill gives clarity to women on their legal entitlements and how to access them, and to doctors and nurses who must deliver that service.

I agree with Deputy Ó Cuív that we have one of the safest maternity services in the world, but it can always be improved and there is no question about that. We know that to err is human, so the challenge for us is to create good systems that protect patients against those human errors. We have done much of that. Even before the report was completed, things had changed at University College Hospital, Galway. HIQA will bring us a new report in the next few weeks which will have wider implications for our service.

Two new things will be done this year that have never been done before. There will be a national early warning system under which clinicians, nurses and doctors will assess patients in respect of their clinical well-being and determine whether they are deteriorating. This will

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be done in the same way whether they are in Letterkenny or Cork, Dublin or Galway. We now have a maternity early warning score as well, because the parameters are slightly different.

I thank Deputy Ó Caoláin for his statement of support.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

Debate adjourned.

### Topical Issue Matters

**An Leas-Cheann Comhairle:** I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 27A and the name of the Member in each case: (1) Deputy Jim Daly - the need for the Government to provide financial assistance to job action groups; (2) Deputy Brendan Griffin - the shortage of beds at the new west Kerry Community Hospital; (3) Deputy Patrick O’Donovan - the urgent need for the Construction Contracts Bill to be enacted; (4) Deputy Jonathan O’Brien - the concerns raised by the national activity planning group that physical education will be downgraded from 180 hours to 100 hours over the three years of the junior certificate curriculum; (5) Deputy Gerald Nash - the need for improved services for young people with inflammatory bowel disease and furthermore to ensure the provision of a dedicated ward at the new national children’s hospital for young people with IBD; (6) Deputy Michael Moynihan - the need to provide an update on the proposed building of an amalgamated primary school in Kanturk, County Cork; (7) Deputy Simon Harris - the need for the DART fare anomaly which exists for Greystones commuters to be reviewed and rectified; (8) Deputies Brendan Ryan and Dominic Hannigan - the need to compensate women who were previously excluded from the Lourdes Hospital redress scheme on age grounds; (9) Deputy Gerry Adams - the future of Narrow Water bridge in County Louth; (10) Deputy Eamonn Maloney - the need to confront medicinal drug pricing; (11) Deputy Andrew Doyle - the need for a direct commercial air route between Ireland and Asia as part of national aviation policy; (12) Deputy Mattie McGrath - the absence of a crime prevention officer for Tipperary for the last two years; (13) Deputy Dessie Ellis - the need to approve funding for the long overdue refurbishment of Lower Buttercup, Darndale, Dublin 17; (14) Deputy Mick Wallace - the plight of asylum seekers in Ireland; (15) Deputy Martin Ferris - special needs assistants at Coolard school, County Kerry; (16) Deputy Clare Daly - the situation facing asylum seekers in Ireland; (17) Deputy John Lyons - the description of learners as customers on the Department of Education and Skills website; (18) Deputy Timmy Dooley - the changes to the rural transport programme and the impact on services; (19) Deputy Bernard J. Durkan - the refusal to allow Leixlip Town Council to carry out works to be funded from savings achieved over a number of years; and (20) Deputy Colm Keaveney - the holding to account of those who have been the cause of our banking crisis.

The matters raised by Deputies Brendan Ryan and Dominic Hannigan; Simon Harris; Bernard J. Durkan; and Michael Moynihan have been selected for discussion.

*Sitting suspended at 1.30 p.m. and resumed at 2.30 p.m.*

*Dáil Éireann*  
**Ceisteanna - Questions**

**Priority Questions**

**Export Growth**

1. **Deputy Dara Calleary** asked the Minister for Jobs, Enterprise and Innovation his views on the likely impact of the recent fall in exports on employment levels in the State; how exporting firms can be assisted in maintaining and winning new markets in the context of the ongoing eurozone economic weakness; and if he will make a statement on the matter. [33643/13]

**Minister for Jobs, Enterprise and Innovation (Deputy Richard Bruton):** Ireland's open economy needs to have the export of goods and services at the heart of its economic strategy. The excessive reliance on property in the years up to the crisis was not only unsustainable but also undermined Ireland's competitiveness in export markets and caused a steady decline in our export market share. The economic transition we are now undertaking must be founded solidly on exporting, with the innovation and enterprise that is necessary to support it.

Employment in agency-supported exporting companies fell by more than 46,000 between 2007 and 2010. However, in the past two years this has been reversed and 22,000 net additional persons are now at work in those exporting companies. This has been built on strong performances by Irish and foreign-owned companies in export markets. The fall in exports recorded in the first quarter has broken this trend. My Department and agencies are closely monitoring the situation. It is clear there has not been a negative impact on employment during that first quarter. A number of factors are at work, such as the repricing of pharmaceutical products coming off patent and a downgrading of demand in many of our key trading partners. Other sources of data suggest that export growth can be sustained. It is clear, however, that we cannot take export growth for granted.

This underpins the importance of building up our position in export markets through initiatives in trade promotion and innovation. In this context, Enterprise Ireland has established a potential exporters division as a new way of engaging with Irish companies and providing them with mentoring, business advocacy support and financial support. A pilot initiative will also be commenced to focus on enabling companies to research, evaluate and plan market-entry strategies in new geographical markets. A total of 15 ministerial trade missions will take place in 2013 to existing and emerging markets. In addition, Enterprise Ireland's overseas offices will work with indigenous companies to help them realise new market opportunities. We are developing a series of initiatives to assist our manufacturing companies to step up their performance and penetrate new markets.

**Deputy Dara Calleary:** Export growth in 2011 was 5.4%, compared to 1.6% last year. That is substantially below expectations. Goods exports, which are dominated by the pharmaceutical sector, were down by almost 10% on the corresponding period last year. Services exports from Facebook and the other new industries in which we have invested so much effort dipped in the first three months for the first time in three years of growth.

The lack of demand in our primary markets is out of the Minister's direct control, but what

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plans are in place at EU level to deal with this issue? The so-called compact for growth and jobs was announced last year but we have seen no initiative to back it up in order to sustain key European markets. I highlighted the upcoming patent cliff for the pharmaceutical industry with the Minister approximately six months ago. We have invested considerably over many years in developing the pharmaceutical industry and this Government continues to invest in research and development. However, while investment in research and development brings long-term returns, it will not create the jobs that are needed now. What is being done in the coming months to identify any further impact of the patent cliff? While the Minister indicated that employment growth was not negatively affected in the first quarter, it will follow if we allow this to become a trend.

**Deputy Richard Bruton:** At EU level we put a strong emphasis on creating opportunities for growth in export markets during our Presidency. We successfully closed an agreement on a mandate for EU-US trade negotiations. These negotiations hold out the potential for increasing transatlantic trade between the EU and the US by 28%. If they can be concluded quickly they will offer good opportunities. Similarly, negotiations with Japan are ongoing and there are a number of opportunities in other free trade agreements.

Clearly, however, the EU has a broader base. There was a big emphasis on completing the Single Market and opening up freedom of access to public procurement and e-procurement, and to allow more exporting within the Community. The digital market is another area in which the EU sees opportunities for growth.

Domestically, the Deputy raised the issue of the pharmaceutical industry. The IDA and the Department have been acting strategically on this issue for quite some time by diversifying their packages. We are not simply dealing with the patent cliff and its impact but also seeing the growth of bio-pharma, which is compensating for areas of the sector that are in decline. The SSPC is a new €40 million research centre based in Limerick that is designed to support the process of diversification.

**Deputy Dara Calleary:** Can the Minister give an indication of the most up-to-date figures for the first six months of 2013? Has the trend worsened or has it stabilised? At what level is the Department engaged in examining these figures in order to stem the fall in value of the exports on which the Department's credibility has been based over the past two and a half years?

**Deputy Richard Bruton:** Both Enterprise Ireland and the IDA track investment, employment and volume flows. The trends are quite positive. We have encountered some difficulties in export markets but the April figures have shown recovery. There is a positive outlook among purchasing managers in respect of service prospects for the export markets. They are monitoring the trends closely but the signals are diverse. That only underlines the need to redouble our efforts to improve competitiveness in these markets and diversify into new and emerging markets. That is what the agencies are doing.

## Youth Unemployment Measures

2. **Deputy Peadar Tóibín** asked the Minister for Jobs, Enterprise and Innovation the achievements made by his Department in increasing the number of young persons in employment. [33596/13]

**Deputy Richard Bruton:** The economic crisis has had a severe impact on young people in Ireland and the rest of the EU. Youth training, progression to employment and unemployment among young people continue to present a major challenge for Ireland, as they do for most member states. The aim of the Action Plan for Jobs is to develop a supportive environment for enterprise to create and sustain jobs. All of the measures in the action plan are designed to promote employment. The Pathways to Work scheme provides opportunities for young people through further education and employment services. A range of new initiatives are in place in Ireland to support young people looking for employment, such as JobsPlus, JobBridge, Springboard, Momentum and the ICT action plan, which are delivered by the Departments of Social Protection and Education and Skills.

My Department, supported by its agencies, actively encourages enterprises to engage with specialist programmes designed to support young people in accessing employment opportunities. The agencies' focus is primarily on supporting enterprise development and job creation rather than specific age-related interventions. However, many of our interventions are closely aligned to new technologies and institutes of higher education where young entrepreneurs play an important role. We are also reviewing entrepreneurship policy and will be investigating the scope for special programmes to help young people to consider starting a business as a career choice. We will also work with the Department of Education and Skills to help refocus apprenticeship as an alternative progression route into employment for school leavers.

**Deputy Peadar Tóibín:** Yesterday at committee I mentioned to the Minister that the issue of jobs was a central platform of the Government when it stood for election in 2011. On every occasion Fine Gael has gone to the country in the past five or six years, be it for an election or referendum, the issue of jobs has been central. However, we are still struggling to deal with the issue of the creation of jobs. The quarterly national household survey states clearly that since the Government has come to power, there has been a reduction of 24,000 young people in the workforce. This net reduction is a very stark figure. There is a net reduction of 35,000 young people in the labour force since the Government has come to power.

These figures reflect the migration patterns here, where one third of the 87,000 people who left our shores because of the lack of jobs in the State were people under the age of 25. Some 30% of the population in this age bracket in this State is unemployed, the fifth highest level in the eurozone. Every time we speak about this, the Minister speaks of an ecosystem of projects and plans that are being put into place, yet he is failing miserably on the the key measure, the creation of jobs. This is a policy choice of the Government. Now that the Government is half way through its term should it not face up to the lack of growth in jobs and change its policy?

**Deputy Richard Bruton:** Deputy Tóibín keeps repeating the myth that we are failing. In the past 12 months we have 20,000 additional people at work, net. If we remove from the equation the fact the public sector figures are declining, the private sector has expanded employment by 2,000 jobs per month. That is in sharp contrast to the economy we inherited where there was a loss of jobs of 7,000 per month. I recognise and it is clear that young people have been particularly adversely affected by the crash. The predominant share of the loss in employment occurred among young people. We must rebuild a sustainable economy and that is what we are doing. We are building an economy that is now supporting 20,000 additional jobs per year and we need to build further on that base.

I agree there is an unacceptably high level of youth unemployment. However, the 30% figure to which the Deputy referred refers to 2012. The most up to date figure in that regard is

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now 26.7%. There has been an improvement. The improvement may not be enough, but it is an improvement in youth unemployment. The Deputy is correct that young people are not participating as early as previously in the labour market. There is definitely a drop in participation rates. This reflects changes. People are staying on in education and this is clear from statistics. People are staying out of the labour market to build extra skills.

**Deputy Peadar Tóibín:** Unemployment stabilised ten months before the Government came into power, but it has remained at the bottom since. The Minister can pick a couple of months here and there and use those statistics to try to argue in favour of his policies. However, from 2011 to 2013, the period of the Government's Administration, there has been a major net fall in the level of young people employed and in the level of those in the workforce. We have seen nothing substantial in regard to trying to sort that out. In the context of the youth guarantee, we called in committee for the Minister to ensure young people in the State would be guaranteed a job and opportunities for education and training. What is the Minister doing to guarantee those jobs for the young people who, because of the Government's economic policies, remain unemployed in the State?

**Deputy Richard Bruton:** Sinn Féin seems to be of the view that it must talk down what is happening.

**Deputy Peadar Tóibín:** These are the facts and figures.

**Deputy Richard Bruton:** Deputy Tóibín is picking facts selectively. Some 20,000 more people are at work today than there were 12 months ago and there are many employment programmes designed to help young people get such jobs. JobBridge has been very successful and has dealt with 17,000 young people, resulting in a 60% employment take-up from the programme. Springboard has also been exceptionally successful, with 6,500 people retrained and another 6,500 being retrained this year. These 13,000 people have been very successful at accessing employment opportunities in expanding companies.

The programmes that have been put in place by the Minister for Education and Skills, Deputy Quinn, and the Minister for Social Protection, Deputy Burton, are having an impact and are helping young people. That is why we are seeing a reduction in the rate of unemployment among young people. We are not at a point where we are complacent about the situation, but we are at a place where we see the interventions we are putting in place are working. We also have an economy that is globally creating more employment. We must continue to work on this approach. We are on a path that is showing results and we need to strengthen that.

Last week we introduced JobsPlus, a new initiative designed to help new opportunities to be opened up for people, particularly young people, and to help them progress from community employment programmes and others into real employment opportunities.

### **Innovation Union Scoreboard**

3. **Deputy Catherine Murphy** asked the Minister for Jobs, Enterprise and Innovation if, in view of Ireland's ranking as an innovation follower by the EU innovation union scoreboard, he has identified the State's weaknesses in this area and the measures he proposes to achieve a higher ranking; if he specifically has identified Ireland's copyright and intellectual property regime as a major barrier to innovation; and if he will make a statement on the matter. [33468/13]

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Sean Sherlock):** In the most recent innovation union scoreboard it was most encouraging to see Ireland retaining its position among those member states with above average performance in their research and innovation systems. This complements Ireland's recent ranking of tenth in the Global Innovation Index 2013 which is also a very positive affirmation of our capabilities in this area. In the Innovation Union Scoreboard, Ireland is notably ranked first for economic effects due to its strong performance in employment in knowledge-intensive activities and third for human resources. Ireland also performs well above the EU 27 average for indicators such as population, with tertiary education, international scientific co-publications, and knowledge-intensive services exports. The average annual growth rate of Ireland's performance, as calculated over the five-years 2008 to 2012, is positive at 0.7%, notwithstanding the economic difficulties experienced over the period. There is, of course, room for improvement in our performance and in the context of the development of a framework for monitoring the impact of public investment in science, technology and innovation developed as part of the research prioritisation exercise soon to be published, we have set a target for Ireland to increase its ranking from tenth to eighth place overall by 2017.

The scoreboard identifies a number of areas where Ireland's performance is below the EU average, including venture capital; non-research and development expenditure by firms and sales of new-to-market and new-to-firm innovations. A number of initiatives are in place to strengthen Ireland's innovation position generally and to address these specific weaknesses.

We recently launched a new €175 million seed and venture capital scheme, 2013-2018, aimed at providing additional funding for high-growth Irish companies with the potential to generate large amounts of additional export sales and grow jobs. The scheme is part of a series of funding mechanisms put in place by the Government to improve access to finance for companies, including the micro-finance fund, the development capital scheme, the credit guarantee scheme, the international start-up fund and innovation fund Ireland.

Implementation of the recommendations in the report of the research prioritisation steering group, which I chair, will see an enhanced focus on commercialisation of research and collaboration with enterprise.

**Acting Chairman (Deputy Seán Kenny):** The Minister of State has exceeded his time.

**Deputy Sean Sherlock:** I will be able to answer the second half of the question, relating to copyright review, in the second tranche of the time allocated.

**Deputy Catherine Murphy:** That is the bit I have been waiting for. Clearly we have many advantages, but the reason I raised this issue is because I believe we can exploit those advantages to a greater extent. When the Minister of State talks about young people and this particular area, he is getting it right. We now call young people digital natives, because they are so in tune with technology. The innovations mentioned by the Minister of State are one thing, but would he agree that creating a transparent, fair and cost effective copyright system would go a long way towards stimulating growth in areas that are currently untapped? Will the Minister of State outline when the expert report is likely to be published? People should be fairly compensated if they have copyright, and I certainly would not argue that this should not be the case. However, it seems-----

**Acting Chairman (Deputy Seán Kenny):** The Deputy is over time.

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**Deputy Catherine Murphy:** It seems that because our legislation is now 13 years old, we are probably restricting our potential. Does the Minister of State agree?

**Deputy Sean Sherlock:** The straight answer to that question is “Yes”. I will read into the record the issue in regard to the independent copyright review committee. This committee was established in May 2011 and its aim is to examine the Irish copyright framework in order to identify areas that might be considered to create barriers to innovation and to make recommendations to resolve any problems identified, whether at national or EU level. I expect this committee will present its final report during this month.

I agree that we in this country must ensure we strike a balance to ensure that, where new business models are coming forward in this digital age - Deputy Catherine Murphy referred to the digitalised society - we create a legislative package that is in line with the times we live in. I agree the legislation is possibly outdated in that sense.

The copyright review is an independent process and is being done on a *pro bono* basis.

**Acting Chairman (Deputy Seán Kenny):** The Minister is over time.

**Deputy Sean Sherlock:** I apologise but I want to answer the question. We want to ensure that if the recommendations of that independent review group state that changes to legislation are needed, we will have to look seriously at what those recommendations are in the first instance. I have not seen the report, although we are expecting it this month. It could be that Ireland wants to place itself ahead of the EU curve. It must be remembered that we are at present hindered in some respects by the EU’s legislative framework on copyright.

**Acting Chairman (Deputy Seán Kenny):** I have to ask the Minister of State to conclude.

**Deputy Sean Sherlock:** I would like to come back in if I can.

**Deputy Catherine Murphy:** I am glad the Minister of State is open to the idea of Ireland becoming a first mover, given companies like Twitter and Facebook did not exist when our legislation was framed. Highly successful enterprises are at present partially based on consumption of pre-existing material. I reiterate that people need to be compensated for their intellectual capital but, at the same time, there are real opportunities here. The Minister of State might tell us if the report indicates that legislation is needed, and I would be surprised if it does not indicate that. When might we see that legislation?

**Deputy Sean Sherlock:** I have not seen the report because it is an independent body and we have absolutely respected the fact it is independent. The terms of reference set out by the Government are to examine current national copyright legislation and identify any areas that are perceived to create barriers to innovation, and to identify solutions for removing these barriers and make recommendations as to how these solutions might be implemented through changes to national legislation. There might be a challenge where there is both EU legislation and national legislation, and where a national legislature like our own might want to move ahead of the EU position. On the other hand, it might transpire that national copyright legislation requires to be amended but cannot be amended, bearing in mind that Irish copyright legislation is bound by the EU’s directives on copyright and related rights and other international obligations. The terms of reference also included making recommendations for changes to EU directives that will eliminate the barriers to innovation and optimise the balance between protecting creativity and promoting and facilitating innovation.

Everybody recognises the right to protection of copyright but there are so many new business models that have evolved in an online setting in this digital age we live in. Given the fact our own situation is such that we have so many “born on the Internet” companies present here in Ireland and employing thousands of people, the legislation has to be framed in a way that is reflective of the times we live in.

**Acting Chairman (Deputy Seán Kenny):** Again, the Minister of State is way over time. We must move to the next question.

### **Entrepreneurship Forum**

4. **Deputy Dara Calleary** asked the Minister for Jobs, Enterprise and Innovation the remit of the recently established entrepreneurship forum; the reason he has not sought a better gender balance on the forum; and if he will make a statement on the matter. [33644/13]

**Deputy Richard Bruton:** The remit of the entrepreneurship forum, under the chairmanship of Mr. Seán O’Sullivan, is to provide advice on matters of policy in the area of entrepreneurship and to draft appropriate policy conclusions and recommendations which will support business start-ups, sustainable growth and long-term job creation. The forum will generate actions for the 2014 Action Plan for Jobs.

The membership of the forum is focused on a core group of active and dynamic business people who run highly successful businesses and have direct experience of the challenges facing entrepreneurs and can provide a relevant insight into the responses needed in the current economic environment. The forum also has the capacity to call in various stakeholders for specific thematic discussions where required. As stated in the press release announcing the membership on 27 June, “the initial membership will be supplemented at different meetings with representatives and experts from different areas of the economy that can help the work of the forum”. In this regard, at its first meeting Ms Paula Fitzsimons from GEM presented research on entrepreneurship and pointed to areas of potential and models of best practice.

I am keen to take advice and recommendations from people across the country who have actually taken the entrepreneurial route, as well as from experts in the area. That is why I held a public consultation inviting submissions from interested parties to support our work. More than 70 submissions were received from entrepreneurs, business organisations, members of the public and academics. These submissions will provide a starting point for the forum’s work.

The forum and my officials are committed to engaging actively with various representatives around the country in the coming months to obtain a variety of views and to discuss the key issues affecting entrepreneurship activity. I am confident that this process will ensure that the entrepreneurship policy statement which is being developed will contain recommendations which reflect the fullest spectrum of business interests in Ireland.

**Deputy Dara Calleary:** I welcome the *raison d’être* of the forum, which has the usual Andrex puppy feel of all of the Department’s statements at the moment. The Minister described the seven people as “a core group of active and dynamic business people”, yet he could only find one woman to fit that profile - there is only one woman out of seven people on the core group that will devise and drive entrepreneurship policy. The Minister is kidding me if he thinks there is only one woman who fits the profile of an active and dynamic business person.

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I suggest he looks around this Chamber or the other Chamber, where he could no doubt find seven such women.

We need to encourage entrepreneurship. In terms of the Minister's mission to recast the economy, as a nation we need to change completely our attitude to entrepreneurship and encourage and support it. We need to encourage women who are entrepreneurial by nature to get into the entrepreneurial space yet the Minister is telling me that among active and dynamic business people, he can only find one woman.

**Deputy Richard Bruton:** It is our intention to engage with thousands of women in this process. I could hardly be accused of discriminating against women in business because, for the first time, under my guidance we established a competitive start fund dedicated specifically to women entrepreneurs. I put €750,000 into that last year and it was massively oversubscribed. There are encouraging signs that women entrepreneurs, who were very much a minority, are becoming much more actively engaged.

What we sought to do was to move across a number of areas, such as retail, food and the entrepreneurial hub. We are going to develop each of those sections and there will be a particular dedication to looking at how we promote more women and young people in entrepreneurship, and how we spin more entrepreneurship out of our R&D investment. We are going to have a very thorough assessment of this area. I assure the Deputy we will have a very wide engagement through this process.

**Deputy Dara Calleary:** I have previously welcomed the fund. However, it was one of the lowest of the funds made available in Enterprise Ireland's suite last year. I want to see whether that fund will be launched again this year and, given the oversubscription to the fund, I want to know whether there will be a bigger budget.

*3 o'clock*

Second, the fact that the fund was oversubscribed must give the Minister an indication - it certainly must give Enterprise Ireland an indication - of the strength of female entrepreneurship throughout the country. Surely the Minister, in assembling what he has described as a core group of active and dynamic business people, could have found three or four women, out of the total of seven, to drive this initiative. He has given no proper explanation for his failure to do so. It sends a very poor message in encouraging female entrepreneurship.

**Deputy Richard Bruton:** The Deputy seems to have misunderstood what I said. The purpose of this group is to set the ball rolling. We will be engaging with thousands of women involved in business.

**Deputy Dara Calleary:** The Minister described it as the core group.

**Deputy Richard Bruton:** It is not a board with any continuing role, rather it is a group tasked with starting the consultative process over a three month period. We will attempt in that very short timeframe to meet as many relevant persons as we can.

I will be providing additional money this year for women in entrepreneurship by way of a competitive start fund confined to women. This is an area in which we are confident of achieving success. I intend to develop the programme already in place, but I am also looking to new areas where we might perhaps learn from best practice in other countries. This will include ex-

amining what has been done in mentoring, for example, and the elements that have contributed to success elsewhere. We will also examine areas such as manufacturing where we are weak in entrepreneurship start-ups. We are looking at a wide range of areas of opportunity and I would welcome any submission from Deputies and others in this regard.

### **Enterprise Support Services Provision**

5. **Deputy Peadar Tóibín** asked the Minister for Jobs, Enterprise and Innovation the impact departmental policies are having on encouraging enterprises and creating employment in the current recession. [33597/13]

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Perry):** The policies being pursued by the Department are having a positive impact in supporting enterprises and job creation. Despite international and domestic difficulties, there was an annual increase in employment of 20,500 people, net of public sector reductions, in the first quarter of 2013. The unemployment rate decreased from 15% in the first quarter of 2012 to 13.7% in the first quarter of this year, the first time it has fallen below 14% for some years.

In 2012 Enterprise Ireland and IDA Ireland companies had their best performance in many years, with the agencies' clients creating nearly 10,000 additional jobs between them last year. This reflects the major effort that has gone into key programmes operated by them. These include competitive start funds for specific groups of very early stage entrepreneurs and high potential start-ups; a pilot initiative which will focus on enabling companies to research, evaluate and plan market entry strategies in new geographical markets; LEAN initiatives on enhancing productivity; and the introduction of a development capital fund scheme.

In regard to foreign direct investment, IDA Ireland has partnered with companies across five key areas to transform their businesses by way of training support, technology uplift, research and development, and product improvement. In addition, the Succeed in Ireland scheme was launched and there has been a greater focus on new and emerging companies and sectors.

The Action Plan for Jobs is a key vehicle for implementing specific and practical measures to support the enterprise sector. A number of substantial actions have been delivered through this process by my Department to enhance the business environment. These include the introduction of measures to improve access to finance for businesses such as the micro-enterprise loan fund, the temporary credit guarantee scheme, the development capital scheme and the seed and venture capital scheme. New structures have been put in place in Enterprise Ireland to assist companies seeking to grow their exports. Meanwhile, the first of the new local enterprise offices was launched in May, heralding the start of a radical reform of the system of supports for micro and small enterprises. There has been a stronger focusing of our research investment through the work of the research prioritisation group. In addition, we have been looking at sectors such as manufacturing, construction, retail and the green economy, among others, to see how best they can be developed.

Progress reports on the delivery of the full range of measures under the Action Plan for Jobs are published on my Department's website on a quarterly basis.

**Deputy Peadar Tóibín:** I meet skilled and experienced people on a daily basis who, through no fault of their own, find themselves unemployed. In many cases, their self-worth has been

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crushed. I meet families who are struggling in extremely difficult situations, trying to pay the electricity and heating bills and keep the roof over their heads. I meet people who tell me, through their tears, about the children and grandchildren they have lost to Australia, Canada and elsewhere. It is certainly not my intention to talk down the economy, but the people in question must be represented in this Chamber.

We must face reality. In the two and a half years since the Government came to power 167,000 people have emigrated and 10,700 full-time jobs have been lost. The 3,800 new jobs created correlate exactly with the number of part-time posts. Unemployment has stabilised, but that process had already begun before the Government came to power. Some 30,000 workers have been under-employed during its tenure. At the same time, the results for the past two quarters show we are back in recession. The point I am trying to make is that despite the hollow ecosystem of initiatives and jobs, there is no focus on the real economy which is not growing. A myriad of businesses are hamstrung by an inability to access credit and paralysed by the lack of demand and low expectations in the economy. The issues over which the Minister has some control such as the availability of credit, utility costs and rental costs are not being properly addressed. There has been no effort whatsoever to stimulate the economy sufficiently to create jobs. We need a growth level of 2% for jobs to be created, but there is no growth.

**Deputy John Perry:** The objective of the Government is very clear in the actions of the Minister and his team, which have been very effective. For the first time since 2008, 20,500 jobs have been created in a single quarter, net of public sector reductions. Some 1.8 million people are at work. Exports from companies supported by Enterprise Ireland are worth €16 billion. This is worth €30 billion to the economy, €14 billion to the domestic economy and €19 billion in GDP. Jobs are being created every day, but many of them require specialised skills. This week I met representatives of a company which has been forced to recruit people from other jurisdictions because of the lack of a skills base here among domestic workers. People from eastern Europe are being recruited to do a specific job, for which particular qualifications or experience are required. One only has to look at the job vacancies in newspapers to see that a major upskilling effort is required, a task which is being met by the third level colleges. We are focusing on this through collaboration with the universities and the institutes of technology.

**Deputy Peadar Tóibín:** Is the Minister of State advising the 400,000 people on the live register to buy the newspaper?

**Deputy John Perry:** That is not what I am saying. I am pointing to the opportunities available within the economy.

We have introduced a range of initiatives to assist business, including the micro-finance fund, the loan guarantee scheme and the credit guarantee scheme. A sum of €4 billion has been targeted for bank lending. We are constantly meeting the financial institutions to discuss how people can be facilitated to access finance. We are engaged in an uphill recovery programme and it is a very difficult job. There is no doubt, however, that progress is being made. This week I met several business people in Limerick who are confident the situation is stabilising. Notwithstanding the challenges that remain, jobs are being created in the economy.

**Deputy Peadar Tóibín:** The Government can choose to focus on a month here or there or some other time span to bolster its argument that change is happening and that we have turned the corner. In reality, however, when one looks at the two and a half year period in which the Government has been in office, the trend is clear. The figures are also clear when one examines

initiatives such as the credit guarantee scheme. The Minister of State knows they have not been a success.

The Government has set itself a target of creating 100,000 net new jobs, but it has achieved only 3,800 to date. If it is to reach that threshold of 100,000, it will have to create 32,000 net new jobs every year until the end of its term. What are the plans it intends to put in place to achieve job creation levels of 32,000 per year for the next three years?

**Deputy John Perry:** The Government has a very clear plan, which is more than can be said for the Deputy's party. We are not cherry-picking figures but simply stating the facts. Some 20,500 jobs were created in one quarter, net of public sector reductions. The opportunities are available, despite the difficulties facing the economy. We have a clear plan of action. The Action Plan for Jobs is in place and we have reduced red tape for businesses.

**Deputy Peadar Tóibín:** The Minister of State is being very selective in what he chooses to highlight.

**Deputy John Perry:** Deputy Tóibín can be very selective too in what he picks on. Deputy Tóibín should get his facts clear. Some 20,500 net jobs have been created in the private sector, net of public sector jobs.

**Deputy Peadar Tóibín:** What timescale is the Government working to?

**Deputy John Perry:** Enterprise Ireland, with €16 billion, is at the highest ever and its turnover in Ireland is €30 billion.

**Deputy Peadar Tóibín:** Some 3,000 jobs have been created in two years.

**Deputy John Perry:** An initiative announced by the Taoiseach and the Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, of giving €10,000 in respect of long-term unemployed people-----

**Deputy Dara Calleary:** There are some 2,000 places.

**Deputy John Perry:** That is under review.

**Acting Chairman (Deputy Seán Kenny):** The Minister of State is over time.

**Deputy Peadar Tóibín:** The size of the problem far exceeds the efforts of the Government.

**Deputy John Perry:** We look at the glass being half-full, while Deputy Tóibín is very selective in what he picks on. We look at the reality and we talk to business people.

**Deputy Dara Calleary:** It is only lately the Government started looking at it that way.

**Deputy John Perry:** We meet business people on the ground and we are not being selective like Deputy Tóibín.

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## Other Questions

### IDA Supports

6. **Deputy Billy Kelleher** asked the Minister for Jobs, Enterprise and Innovation if the Industrial Development Agency Ireland will be restricted in its ability to provide grant support for job creation to major companies as a result of a recent decision of the European Commission; and if he will make a statement on the matter. [33561/13]

**Deputy Richard Bruton:** Regional aid, also known as investment aid, is paid in the form of grants by the industrial development agencies to businesses in order to support new investment and new employment in productive projects in Europe's most disadvantaged regions. Such aid must be in accordance with each country's regional aid map, as approved by the European Commission, which has responsibility for the regional aid guidelines.

The guidelines for the period 2014 to 2020 are being revised as part of the state aid modernisation reform package. The final iteration of the guidelines was adopted by the College of Commissioners on 19 June 2013. The guidelines will enter into force on 1 July 2014. The Commission initially proposed a complete ban on aid for investments made by large enterprises in the more developed assisted areas, known as C areas. This would have meant that such aid would not be permitted in Ireland. The proposal presented significant challenges for Ireland and the implications could have been very serious in terms of our enterprise agencies being able to attract investment into disadvantaged regions in Ireland.

Following significant engagement by Ireland, at both official and political levels, the final proposal represents considerable progress from the initial Commission proposal in December 2012. The compromise agreed with the Commission will allow member states to provide investment aid to large enterprises for new economic activities and diversification of existing enterprises into new products or new process innovation.

With regard to population coverage, Ireland secured entitlement to maintain regional aid qualification for areas accounting for 50% of the country's population for the period 2007-13. For 2014-20, that will increase to 51.28%. It was threatened with reduction by half.

It should be noted that the Commission has announced a transition period of six months for the new guidelines. Therefore, the new rules will not take effect until 1 July 2014. All of the country, including those areas not entitled to regional aid, can qualify for other forms of aid such as research, development and innovation aid, SME investment aid, training aid and aid for environmental protection.

**Deputy Dara Calleary:** It is only fair to acknowledge the huge effort put in by the Minister and the Department in respect of what Commissioner Almunia first proposed, which would have been detrimental to Ireland. We now have the opportunity to focus on a number of issues. The 50-50 split in job announcements, between the old southern and eastern region and the BMW region is not happening. Is that still a commitment of the IDA and the Department or has it been abandoned in the context of the new rules?

Can the Minister specifically define how these changes affect the IDA way of doing business? We have had much controversy and discourse about taxation levels. The change in re-

spect of aid of foreign direct investment has potentially more impact and a more serious impact. Does diversifying activities mean companies involved in new product development and that may be working with SFI can continue to do so? Are we still in a position to support them if they move new product development into job creation?

What does the Minister mean by fresh investments? Does this involve new plants producing the same product or expanding the product line in response to market demand? Will we be allowed to support that? Has the IDA given a formal response to the new proposal on the table?

**Deputy Richard Bruton:** Our negotiating position was closely co-ordinated with the IDA and Enterprise Ireland as we developed these proposals in order to make sure we protected the capacity of the IDA to promote regional development. The categories for large enterprises include new economic activity, new products and new process innovation. It is a broad range of areas where we can continue to support large companies. We have always had considerable support for small and medium-sized enterprises in those regions, which are at higher rates of 20% and 30%. The rates are unchanged.

With regard to the IDA targets, it is part of the five-year plan of the IDA. This is a difficult target in light of the projects we are winning. We are seeking to diversify the instruments the IDA uses, which is why we have been keen to promote ConnectIreland, which is a new instrument seeking to use connectors. It has a better regional spread. We are also looking to encourage emerging companies that may not have the same---

**Acting Chairman (Deputy Seán Kenny):** The Minister is over time.

**Deputy Peadar Tóibín:** How do the new regulations affect our competitiveness in attracting foreign direct investment and supporting our own businesses in comparison to other EU countries? How does it affect our capacity to compete with other locations for foreign direct investment, such as Singapore?

Some counties within existing regions do not experience the same level of investment. For example, Meath does not experience the same level of investment as the mid-east region. It suffers greatly with regard to the level of investment in Kildare, Wicklow, Dublin and Louth, even though Louth was formerly in the BMW region. What elements of change in the new regulation will allow those sectors of those regions to have a rebalancing of their opportunity to attract foreign direct investment?

**Deputy Richard Bruton:** In terms of competitiveness with other countries, we have 51% of the country's population in the C regions. Overall, a lower percentage than that in all of Europe is covered by C regions. We have proportionately more C regions than the EU as a whole. We have much more than some very developed markets and much less than some of the emerging markets. I do not have the exact population percentage coverage to hand but I can get it for the Deputy. The issue of regional development is central. With regard to our agencies dealing with export-oriented companies, last year some 43% of new jobs, 9,500, were in Dublin. I do not have the exact figure for Cork. Overall, export-oriented jobs were reasonably spread. There are concentrations around cities. There is a reasonable spread and our challenge in regional development is to build it stronger. It is not just about foreign direct investment, which is important, but the key is indigenous growth. Given the Deputy's background in supporting indigenous companies, he will agree with that. In C regions, we have 30% capacity for small, 20% for medium and 10% for large. That is graded in order to allow the emergence of smaller

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indigenous companies that have greater difficulty in travelling the path. We must seek to build on regional competitive advantage, which must be part of the strategy as well as encouraging a regional spread of foreign investment.

**Deputy Dara Calleary:** I am concerned. I accept that we must support and build our indigenous economy but we have traditionally depended on a strong presence of foreign direct investment, which assists the indigenous economy. Many of our more successful indigenous companies grew from initially servicing foreign direct investment companies in the State. I am somewhat concerned about the vagueness surrounding this issue. We must do more than diversify the instruments. If large-scale projects are no longer to be located in the regions, there must be more urgency in developing an alternative strategy. Will the Minister outline what will be different now? What will IDA Ireland no longer be able to do after July 2014?

**Deputy Richard Bruton:** Those are the categories, which means that this is not entirely open-ended. To qualify for regional aid, it is necessary to demonstrate that a new investment represents a new economic activity by a company and involves a new process or innovation. Companies must show that they are modernising their production and developing new products or ways of doing things. There must be a step-up in technology or diversification. That is the test. It is a very broad mandate compared to the suggestion there be no aid for large companies. If a company is simply replicating the same technology, that is restricted for companies which already employ 250 staff. There is broad scope. Having discussed matters with IDA Ireland, we are satisfied that the measures cover the typical expansion. There is always an upgrade in research and development and the value chain is always being climbed to bring in new technologies. This is a broad, workable mandate.

## Illegal Immigrants

7. **Deputy Brendan Smith** asked the Minister for Jobs, Enterprise and Innovation his plans to amend the Employment Permits Act 2003 to provide recourse for undocumented foreign workers who have little recourse in cases of exploitation; and if he will make a statement on the matter. [33564/13]

**Deputy Richard Bruton:** I assume the Deputy is referring to foreign nationals defined in the Employment Permits Acts 2003 and 2006 as foreign nationals other than nationals of member states of the EEA and Switzerland. The law is clear on the employment of third country nationals. It is illegal for a third country national to be employed without the State's permission and the offence where a third country national is employed is committed by both the employee and the employer concerned. Illegal employment of third country nationals creates a serious problem for the employees. They do not have a legally binding contract of employment and cannot, therefore, assert their rights under the contract or rely on the wide spectrum of employment rights legislation. Following the High Court judgment concerning Mr. Younis, I committed to amending the legislation to provide a defence for the employee and to give the courts some discretion when faced with similar circumstances. Subject to Government approval, I intend to introduce new safeguards in the legislation to ensure the situation which arose in the Younis case will not recur. The new safeguards will not undermine legal principles and are intended to ensure an employer cannot benefit from the fact that a contract of employment is illegal and, therefore, not legally binding.

Subject to Government approval, another key feature of the new Bill will be the establish-

ment on a statutory footing of an employment permit for third country nationals who have fallen out of the employment permits regime. I recognise that there can be situations where a third country national finds that he or she has fallen out of the employment permits regime through circumstances beyond his or her control or even as a result of an omission in keeping a permit up to date. It will continue to be the case that an employer can be prosecuted for breaches of employment law, including the Employment Permits Acts, and it is the National Employment Rights Authority's policy to pursue such breaches.

The drafting process in respect of the employment permits Bill is almost concluded. I expect a further draft of the Bill this week. Subject to it fully meeting policy objectives, I envisage submitting it to the Government for approval at the earliest opportunity.

**Deputy Dara Calleary:** Let us recall the Younis case. Mr. Younis was forced to work a 77 hour week with no days off. He was forced to live in cramped, substandard conditions and brought his case to the Labour Court which awarded him €92,000. The employer appealed the award to the High Court which overturned the decision on the basis that as an undocumented migrant worker, Mr. Younis was not allowed to go to the Labour Court. The matter is before the Supreme Court. There are 24,000 people in the economy who are exposed on foot of the High Court judgment.

The initial promise to publish the new legislation to remove the loophole was made last year. None of us wants the situation to continue. One year later we are still at the drafting stage. I acknowledge that the NERA has stepped up its work in the area considerably. It is working very closely with the Migrant Rights Centre of Ireland on some of the worst cases. While the NERA can bring prosecutions, there is little it can do to provide recourse and compensation for those whose employment and human rights are being trampled on because of this legal lacuna. Can some timeline be provided for the legislation? Obviously, we will not have it by the end of the session. Will we have it early in the next session to allow us to address the issue once and for all?

**Deputy Richard Bruton:** As I indicated, I expect to have a draft of the Bill soon. We are in the final stages of the process and it appears that we will have it imminently. I hope we will have it before the end of the session. We will certainly make it available for the very start of the new session.

Mr. Justice Hogan reversed a Labour Court award having found that the contract of employment was illegal as Mr. Younis did not have an employment permit. The judge noted that the Employment Permits Act made it an offence for certain employees to work without a permit. The Acts do not provide for any defence for an employee which suggested to the court that it could not take into account mitigating circumstances and had no discretion to consider the contract of employment as other than illegal. The result, arguably, was that the employer benefited from the illegal contract. There are procedures for pursuing employers who seek to abuse the system. Clearly, there is a lacuna in that there has not been a defence for the employee. That is what we are seeking to correct in the legislation. The Bill will be before the House as soon as I can bring it forward. The Deputy will know about the frustrations of the legislative process, but we are at the end in this case.

**Deputy Peadar Kirby:** The reaction of the Houses to this issue appears hypocritical sometimes when contrasted with the reaction of Members to the undocumented Irish working in the USA. We focus on the rights of Irish people but do not necessarily afford the same rights to mi-

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grants working here. It is a massive problem for those who are forced to work in the grey areas, many of whom are exploited because unscrupulous employers know they have significant legal leverage. We have seen this, in particular, in the case of au pairs working in the State.

While the Minister is attending Cabinet meetings, he might tell the Minister for Justice and Equality that migrant rights organisations, which do a tremendous work with individuals are having their funds cut and closing, while European funds channelled through his Department and the Department of the Environment, Community and Local Government remain unspent. It is important that advocacy groups have the resources needed to represent this section of society. When will the Minister ratify International Labour Organisation Convention 189 on domestic workers? Will he provide a precise timetable for the resolution of these outlying issues?

**Deputy Dara Calleary:** The Migrant Rights Centre of Ireland, with which I had severe disagreements when I was sitting where the Minister is now sitting, has built a bond of trust with undocumented workers and tends to be their first port of call rather than the law. The centre does a superb job but has funding difficulties which affect its capacity to continue to do this work. The Minister is beginning to sit down to prepare for 2014 and might look at that issue. As Deputy Peadar Tóibín said, there is unspent money available. It is not as if someone else would have to face a cut. The Department of Justice and Equality has an unspent fund which would allow the Migrant Rights Centre of Ireland and local organisations to do this work. If it is not done, we will not be able to expose those rogue employers who are exploiting people.

**Deputy Richard Bruton:** Deputy Calleary will have to take up the issue of unspent funds with the Minister for Justice and Equality. As the Deputy stated, there is a close relationship with the migrant rights organisations who have been instrumental in trying to make this system work. What we have recognised is that there are legal defects. We are seeking to correct those in the two types of cases that I outlined in the reply and we hope that will be a better legislative framework.

I held a ministerial conference at the ILO on the domestic workers convention and under the Irish Presidency we passed provision in the Council of Ministers to initiate the sanctioning by EU members of the domestic workers convention. We have initiated the change, not only for Ireland but right throughout the EU.

**Acting Chairman (Deputy Seán Kenny):** Question No. 8 is in the name of Deputy McGuinness.

**Deputy Dara Calleary:** It is already answered.

**Acting Chairman (Deputy Seán Kenny):** I beg the Deputy's pardon.

**Deputy Dara Calleary:** Question No. 8 is more or less already answered.

**Deputy Richard Bruton:** It is a repeat of an earlier question.

**Deputy Dara Calleary:** It relates to entrepreneurship and gender issues.

**Acting Chairman (Deputy Seán Kenny):** Then we will move on to Question No. 9.

*Question No. 8 withdrawn.*

## **Enterprise Support Schemes**

9. **Deputy Aengus Ó Snodaigh** asked the Minister for Jobs, Enterprise and Innovation if consideration has been given to focusing additional supports in his Department on indigenous business through additional supports to Enterprise Ireland and the county enterprise boards. [33497/13]

**Deputy John Perry:** The Deputy will recall that the capital budget for enterprise supports was broadly protected for 2013 to ensure continued support for Irish business and the implementation of the Action Plan for Jobs programme. This plan is about using available resources in smarter ways and achieving new forms of collaboration across Government to promote enterprise and jobs.

Many of the innovative ideas developed under the Action Plan for Jobs have been aimed at developing new opportunities for indigenous business. These include: improving enterprise competitiveness and access to finance through measures such as the seed and venture capital, development capital, credit guarantee and microfinance schemes; the creation of a micro and small business focused centre of excellence within Enterprise Ireland and the establishment of local enterprise offices within local government, heralding the start of a new radical reform of the system of supports for micro and small businesses and the creation of a culture of excellence for micro-enterprises and start-ups; establishing the potential exporters division in Enterprise Ireland as a new way of engaging with Irish companies that are not yet exporting; a recently launched manufacturing strategy which has the potential to support the creation of 20,000 jobs by 2016 - this will be achieved by focusing on sectors with potential, adapting and responding to changing global supply chains, developing and adapting new technologies and developing indigenous potential for start-up and scaling; a new national step change initiative available to all Enterprise Ireland client companies that will systematically support manufacturing companies; new start-up and capability funds to be run by Enterprise Ireland specifically targeting supports for new manufacturing start-ups and to support capital investment; and roll out of the three new technology centres in the areas of pharmaceutical production, data analytics and connected health. Twelve to 15 companies will be supported by each new centre and this number will increase over time.

These policies are having a positive impact and are supporting enterprises and job creation. There has been a return to stability in the labour market since the middle of 2012 in spite of international and domestic difficulties. The Deputy will be aware that there was an annual increase in private sector employment of 20,000 people in the year to March 2013 and about 18,000 of this was in indigenous business.

My Department continuously monitors the needs of Irish businesses to ensure that policy and programmes reflect their needs. We are currently assessing how policy supporting entrepreneurship can be improved with the help of the group of entrepreneurs under Mr. Sean O'Sullivan. We are also reviewing our capacity to improve-----

**Acting Chairman (Deputy Seán Kenny):** The Minister has run over his time.

**Deputy John Perry:** The Minister, Deputy Bruton, will be working on the Action Plan for Jobs which will review all of the actions.

**Deputy Peadar Tóibín:** No doubt there has been a reliance on foreign direct investment

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by the Government for job creation. We welcome foreign direct investment and all that can be done to ensure foreign direct investment is brought to the State should be done. It is worth noting that the multiplier effect from foreign direct investment creates 0.7 new jobs for each job that is directly created and these are also to be welcome.

In this area, Ireland should focus on its competitive advantages *vis-à-vis* attracting foreign direct investment. It should focus on the issues of skills, languages, infrastructure, culture, efficiencies and productivity. We should not be putting all our eggs in one basket in terms of Ireland's attractiveness on tax avoidance. I believe strongly that such focus creates a bubble effect whereby when those loopholes are closed internationally, it will have a negative effect on Ireland's foreign direct investment.

Indigenous business is in large part the poor relation in this State. It creates, in comparison, 1.4 new jobs for every direct job created. In general, indigenous businesses contribute properly in taxation to the State.

Over the past five years, and the past two years of Deputy Bruton's stewardship, the county enterprise boards which are directly responsible for indigenous small business development have been directionless. They still do not know what is happening. They are in the nowhere zone. Typically, they provide a better regional distribution of job creation. When will these issues be resolved?

**Deputy Dara Calleary:** On the same issue, when will we see the legislation? This is the most talked about show in town. We were promised legislation would be published this year. We are coming to the end of a session and we still have not seen it. There are local elections next year.

Second, the Minister might let us know what conversations he has had with the Minister for the Environment, Community and Local Government, Deputy Hogan, on the underspend in Leader. Leader is one of the greatest sources of funding, particularly for indigenous businesses in rural areas. Many Leader companies cannot get access to Leader funding to support business because of more messing around by Deputy Hogan in his Department. Has Deputy Perry, as Minister of State with responsibility for small business, raised the issue of the slowness in Leader funding with Deputy Hogan?

**Deputy Thomas P. Broughan:** I support my colleagues here. There was a discussion earlier about entrepreneurship on priority questions and the Minister, Deputy Bruton, launched the global entrepreneurship monitor, GEM, report a few days ago. Was he disappointed that there was such negative feedback and that among prospective entrepreneurs, particularly the young and women, fear of failure, lack of ambition and funding are still fundamental issues with which they must contend? Would it be fair to say that the Government's approach to local development - I speak from the other side of the fence as somebody who has been involved for many years - needs to be much more proactive at local level and we need to get away from the austerity mindset, which seems to be predicated, perhaps with the ESRI report yesterday, on something that might continue for the rest of a lost decade? Deputy Bruton will be aware, for example, that the Northside community and business centre of which I am a long-standing director recently launched a programme to encourage and support young women entrepreneurs. Is the Minister certain that the existing rules, in particular, in the Department of Social Protection, do enough to facilitate women who have the idea of starting a business?

**Deputy John Perry:** First, on the points made by Deputies Broughan and Calleary on the issue of women in business, the aim of Deputy Joan Burton's Department is very much to encourage people back into work. The announcement this week of the fund to provide up to €10,000 to an employer of the long-term unemployed is one example of this. As I stated initially, the purpose of this Government is business. The actions of the Minister, Deputy Bruton, and all of the Departments are focused on jobs and getting people back to work. It is about confidence and credit. Obviously, the latter is a big issue in any business.

From the point of view of the Action Plan for Jobs, the legislation is ready for stamping. It is being signed-off on. It is imminent. Regardless of that, the county and city enterprise boards are effective. The boards I have met are working on the ground with business and their allocation of funding is being spent on the creation of jobs in the domestic economy.

On indigenous economy and foreign direct investment, while there were exports of over €16 billion from Enterprise Ireland supported companies, the highest ever level of exports, the agency expects the corresponding figure this year will be €17 billion. If one looks at the added value of jobs, it is about commercialising good ideas into jobs.

Let us be under no illusion. It is quite difficult to create jobs. There is nothing more difficult than to establish and manage a business.

**Acting Chairman (Deputy Seán Kenny):** The Minister of State has run over his time.

**Deputy John Perry:** I reiterate the commitment of the support agencies, who are doing the best they possibly can. We attended the launch of the pilot local enterprise office in south County Dublin and the county manager was also in attendance. This scheme will be quite revolutionary when it is rolled out from next September and it will mark a new beginning for local enterprise. The point about Leader partnership companies has been raised-----

**Acting Chairman (Deputy Seán Kenny):** The Minister of State must conclude.

**Deputy John Perry:** I thank the Cathaoirleach for his indulgence.

**Deputy Dara Calleary:** Deputy Phil Hogan is the Minister.

**Deputy John Perry:** He is dealing with that.

**Deputy Peadar Tóibín:** May I ask a supplementary question?

**Acting Chairman (Deputy Seán Kenny):** A final question.

**Deputy Peadar Tóibín:** We are in favour of supporting indigenous companies that are exporters. However, I caution against talk of high levels of exports in the context of jobs. There has been a decoupling of the connection between job levels and export levels in recent years. The two are not correlated as they were a number of years ago. Indigenous business is better for job creation, for taxation and for long-term sustainability. I suggest there should be a re-balancing in the Government's policies to ensure that indigenous business, the poor relation in business terms, is given the attention it deserves.

**Deputy John Perry:** The 2013 budget contained an effective plan for the domestic economy and I am confident the action plan for 2014 will reflect the policy of entrepreneurship and the policy to encourage women in business.

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We are becoming more competitive. It is not just the 12.5% rate of corporation tax that attracts foreign direct investment. Companies come here because they get highly motivated, highly intelligent people who are capable of doing the job.

I refer to the recent announcements by the Taoiseach and the Minister for Jobs, Enterprise and Innovation, Deputy Bruton, with regard to job creation and foreign direct investment. For every large company there are many small companies. The Government is focusing on the 200,000 companies in the domestic economy employing up to 700,000 people. The Minister is focusing on creating confidence and credit and encouraging positivity among employers. It is important to give support to employers. I meet company representatives and I know that many employers are very positive. They are confident about the future of Ireland and the jobs that can be created.

### **Youth Enterprise Initiatives**

10. **Deputy Thomas P. Broughan** asked the Minister for Jobs, Enterprise and Innovation the current supports provided by his Department to Irish residents under 25 years of age to start their own businesses; if he will be introducing further support for this category of entrepreneurs; and if he has any further plans to assist and encourage women entrepreneurs. [33414/13]

**Deputy Richard Bruton:** Encouraging and promoting an enterprise culture in those under 25 years is an important area of activity for the county enterprise boards and the local enterprise offices. These offices seek to influence student attitudes in favour of enterprise at both primary and secondary level through the annual student enterprise awards and local or inter-county initiatives such as Exploring Enterprise, in which more than 20,000 students participate annually.

There are three areas dealing with young entrepreneurs. Young entrepreneurs interested in starting a business can contact their local enterprise offices to discuss options available. This is the first stop for enterprise, offering both grant support and soft support such as mentoring and training. The second support source is Enterprise Ireland, which provides a general suite of supports for start-up companies. These include the competitive feasibility fund and the competitive start-up funds, seed and venture capital, development capital funds, high-potential start-up funds, and the HALO business angel partnership, which is mandated to match business angels with appropriate projects.

The Government also established a microfinance loan fund in 2012 to improve access to credit for entrepreneurs and to facilitate the growth and expansion of viable businesses. This is particularly relevant to young entrepreneurs who do not have a track record or credit history, previous business experience, or other assets to act as security, which other financial institutions typically seek.

Enterprise Ireland has a number of initiatives to support young third-level researchers to establish businesses. These include the Enterprise Ireland commercialisation fund, innovation vouchers, applied research enhancement centres, incubation units in third-level colleges and community enterprise centres. The issue of youth entrepreneurship features large in the submissions received under the recent public consultation on the proposed entrepreneurship policy statement, which is currently in preparation by a group chaired by Sean O'Sullivan.

**Deputy Thomas P. Broughan:** When will that report be available? It will be a major na-

tional statement on entrepreneurship. Is it expected this year?

**Deputy Richard Bruton:** Yes.

**Deputy Thomas P. Broughan:** I refer to the GDM report. Some of the comments about supports for young entrepreneurs and women entrepreneurs were somewhat disappointing. Even allowing for the impact of the great recession, I wonder if more could be done. Youth unemployment is a common problem in most European Union countries. I refer to an interesting article in *Süddeutscher Zeitung* which states that what happened to Ireland was the result of a failure of the political class. I suppose this relates to a failure of Fianna Fáil and Fine Gael down through the decades in that we could have had a much more community-controlled economy, as Deputy Tóibín said, and a more entrepreneurial economy based on our own strengths. Instead of which, the article notes the massive emigration figure of 300,000, which compares to 5 million Germans leaving Deutschland-----

**Acting Chairman (Deputy Seán Kenny):** The Deputy is over time now.

**Deputy Thomas P. Broughan:** -----which would be regarded as a national catastrophe. Because of the failure of overall macroeconomic policy, are we not losing perhaps some of our most innovative, dynamic and business-orientated young people to Australia, Canada, the United States and Britain?

**Acting Chairman (Deputy Seán Kenny):** The Deputy must conclude.

**Deputy Thomas P. Broughan:** Is this not a great tragedy? They will be entrepreneurs in a different culture. It is critical to get the macro policy right and follow it up. I know the Minister and the Minister of State are sincerely determined to try to keep the numbers at work at the current 1.845 million. They need to keep doing that.

**Acting Chairman (Deputy Seán Kenny):** The Deputy is now one minute over his time.

**Deputy Thomas P. Broughan:** The Acting Chairman is used to my being slightly over time in different forums, although I have not been in a forum with him for a long time. The Minister knows where I am coming from.

**Deputy Dominic Hannigan:** I thank the Acting Chairman for allowing me to speak. Like Deputy Broughan, I wish to compliment the Minister and his team on some of the great schemes that are available to help entrepreneurs. However, I think we could do with a bespoke scheme for young entrepreneurs because of the types of project and the age of the applicants. They might be at a disadvantage compared with older applicants. I ask the Minister to look at this again. A scheme designed specifically for young entrepreneurs would help to address the haemorrhage of talent from these shores.

**Deputy Richard Bruton:** The decline in entrepreneurship is disappointing but it is concentrated in certain sectors such as construction, which used to be a major entrepreneurial sector. As I mentioned in reply to Deputy Calleary, a bespoke scheme for women entrepreneurs was launched last year. It was very successful and was oversubscribed. We are continuing to build on that.

On the question of whether our most dynamic young people are leaving the country, it is recognised that Ireland has a really good start-up culture and that we have good availability of seed capital and many strong clusters in technology, medical devices and so on. In many areas

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we have really good environments for business start-ups and we are actively seeking, through the likes of Connect Ireland and other programmes, to get people to recognise Ireland as a good place for start-ups.

In reply to Deputy Hannigan, youth entrepreneurship will be at the heart of this review of entrepreneurship. Start-up support is located in higher education institutes in order to target young people who are undertaking research. There may be merit in having dedicated competitive start funds targeted at young people, as was the case for women entrepreneurs last year. On the wider issue, the Deputy asked whether this is a failure. The Irish economy can be very successful and has been. There is no doubt but that it took a wrong turn in the 2000s and got wedded to a property bubble that was unsustainable, but basic enterprise, innovation and the capacity to export have been sound. The challenge for us in politics is to rebuild the capacity to build strong enterprises based on innovation and the ability to export. That is really what we are seeking to create.

*Written Answers follow Adjournment.*

## **Topical Issue Debate**

### **Lourdes Hospital Redress Scheme Extension**

**Deputy Brendan Ryan:** I am grateful for the opportunity to speak on this important matter and to share time with my colleague, Deputy Hannigan. Our colleague Deputy Gerald Nash, who is unable to speak this afternoon, has long advocated with me and Deputy Hannigan on behalf of the women excluded from the Lourdes Hospital redress scheme. I am very grateful to the Minister, Deputy Reilly, for attending in person to deal with this important issue. We share a constituency in which people are affected by the issue I raise.

There is a commitment in the programme for Government to seek a mechanism to compensate those women who were excluded on age grounds alone from the Lourdes Hospital redress scheme. Over the past 18 months, this matter has been raised by way of Topical Issue debate, on the Order of Business and in numerous parliamentary questions. Despite all this pressure, we have seen absolutely no progress towards a resolution for the affected women. Responses received by all public representatives have been very similar and give no comfort to the women. In May of this year, following my raising of the matter with the Taoiseach on the Order of Business, I received a letter from the Minister's office stating a review is ongoing to identify a mechanism to compensate the women, and that the review included instructions and legal advice from the Attorney General. The letter also stated it is the Minister's intention to bring a proposal to the Government on this matter before the summer recess. Given that we are so close to that recess now, can the Minister give us concrete information today on proposals for the women? The delay thus far has been inexcusable. I implore the Minister not to allow the delay to go any further.

**Deputy Dominic Hannigan:** I am thankful for the opportunity to raise this issue. I thank the Minister for being in the Chamber for this debate. He has recently returned from Vilnius and I hope his journey home was comfortable.

I have been raising this issue with Deputy Brendan Ryan and Deputy Gerald Nash since the Government was formed two and half years ago. We tabled parliamentary questions, had Topical Issue debates and requested meetings with the office of the Minister. As Deputy Ryan stated, we have been receiving the same answer for two and a half years. While all this has been happening, there are still 35 women who are waiting to find out whether they will receive the redress that they deserve and to which they are entitled. We feel the women deserve better than what they are getting.

My office spoke to the advocacy group Patient Focus this morning. It is very concerned about the response that the Taoiseach gave in this House on this issue. The group's concern, based on his answer, is that the commitment to publish the Walsh report, along with a credible plan to include the 35 women within the redress scheme, will not now be met before the end of next week, when the House is to rise. To quote the Taoiseach from this morning, "Given the time constraints on us between now and the summer recess, I will see what can be done." The Minister knows very well from his involvement in this issue that we made a commitment in the programme for Government to compensate the 35 women. We did so with open eyes. In March, the Department made a commitment to have answers for the women by the end of next week. Like Deputy Ryan, I ask the Minister to give us a commitment to bring the Walsh report before the Cabinet on Tuesday and publish it, along with the plans to include the excluded women in the redress scheme by the end of next week. I hope he will be able to do that. It is expected that he can make this happen. He is very concerned about the matter and very committed. We need to see him deliver on it now.

**Minister for Health (Deputy James Reilly):** The Lourdes Hospital redress scheme was established following the findings and recommendations contained in the report on peripartum hysterectomy at the hospital, The Lourdes Hospital Inquiry, published in 2006. The inquiry was conducted by Ms Justice Maureen Harding Clark. The inquiry did not extend to a wider examination of Dr. Michael Neary's general practice or of the clinical practice of his colleagues. During the inquiry, however, Ms Justice Harding Clark became aware that there were patients who had undergone a bilateral oophorectomy - the removal of both ovaries or a remaining single functioning ovary at the time of obstetric hysterectomy or as a gynaecological procedure - which was not clinically necessary. These women lost the ability to reproduce and suffered immediate surgical menopause.

The scheme of redress approved by the Government was a non-statutory *ex gratia* scheme. Awards were determined by an independent redress board in 2007 and 2008. It was chaired by Ms Justice Harding Clark. The objective of the scheme was to provide compensation to former patients of Dr. Neary who received unnecessary obstetric hysterectomies, namely, hysterectomies carried out in association with pregnancy, and also to women under 40 years of age who received unnecessary bilateral oophorectomy.

The Department of Health has been engaged in a review to consider various mechanisms to compensate those women who were excluded from the redress scheme on age grounds alone. This review involves taking instruction and legal advice, including advice from the Office of the Attorney General, with a view to bringing proposals on a scheme to the Government for a decision. It is my intention to bring these proposals on this important and sensitive issue to the Government before the summer recess.

**Deputy Brendan Ryan:** I thank the Minister for the positive response, with just a week to go in this session. I was concerned that previous commitments could not be met. I take the

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Minister's word that a proposal will be brought to the Government before the summer recess and I thank him for it.

**Deputy Dominic Hannigan:** I thank the Minister for his response. It was very clear and we are very grateful for it. I hope that he manages to find the time to talk to the various interest groups in advance of going public so they will be aware of what is being said.

### **Public Transport Fares**

**Deputy Simon Harris:** I very much thank and welcome the Minister for Transport, Tourism and Sport to the Chamber to address this Topical Issue on the anomaly faced by Greystones DART commuters with regard to the pricing structure of their tickets. It is really an issue of fairness and equity. Ten years ago, the DART was extended to my hometown, Greystones, and has been a great success. Every morning, thousands upon thousands of commuters use the service and everything is going well in that regard. The difficulty and lack of fairness arises from the fact that Greystones commuters are paying through the nose for the service. This arises from outdated pricing structures. This would be somewhat understandable if the extension were new but it is now a decade old. It is utterly unacceptable that, ten years on, Iarnród Éireann, in conjunction with the National Transport Authority, has not rectified this pricing structure anomaly.

*4 o'clock*

The Minister does not set the price of train tickets and I am not asking him to. However, I am asking him to bang heads together and ask the NTA and Iarnród Éireann to undertake the necessary review to remove this anomaly. For example, a return DART fare between Bray, the nearest station to Greystones, and Pearse Station, costs €5.80, while a return journey from Greystones to Pearse Station costs €9.60. This is an additional 66% for the luxury of going one extra stop. I have pursued this issue in many ways before tabling it in the House, including extensive correspondence with Iarnród Éireann and the NTA. On 25 May 2011, shortly after my election to the House, I received acknowledgements from the then chief executive of Iarnród Éireann that these anomalies existed and a review of commuter fares would be carried out at the end of that year. More than two years later, while I acknowledge efforts have been made and there is parity of fares in annual tickets, if I board the DART in Greystones today, I will pay 66% more to travel to the city centre than a person boarding the train in Bray. This is not justifiable or fair. We are happy to pay our way but this must be done in a fair manner. The people of Greystones should not pay more than the people of Sandymount or any other DART location, proportionate to their distance from the city centre, for the luxury of using the service.

Following a frustrating period trying to rectify this, I ask that the process be sped up and timeframes put in place. I understand it is a difficult time for Irish Rail financially but we cannot have a situation in which the pockets of Greystones commuters are being picked because of an anomaly in the fare structure. That anomaly needs to be rectified and fairness is needed. I look forward to the Minister's response.

**Minister for Transport, Tourism and Sport (Deputy Leo Varadkar):** Public transport fares are matters for the CIE operating companies in conjunction with the NTA. Under the Dublin Transport Authority Act 2008, as amended by the Public Transport Regulation Act 2009, the NTA is responsible for determining fares in respect of publicly funded bus and rail

services and I have no role in this matter. I have received, however, the information from both Irish Rail and the NTA.

Irish Rail states that the adult day return fares for Greystones are higher than those for Bray, as Greystones is the longest journey within the short hop zone. The distance from Greystones to Pearse Station is 29.6 km while that from Bray to Pearse Station is 22.4 km. The price per kilometre on the Leap card is 29 cent from Greystones to the city centre and 25 cent from Bray to the city centre. Although point-to-point prices are different for Bray and Greystones, Irish Rail points out that regular commuters can avail of monthly and annual tickets that are parity priced for both Bray and Greystones at €122 and €1,220, respectively. These offer significantly better value for customers travelling from Greystones.

I have also been in touch with the NTA about this issue and I have been informed that under Part 3, Chapter 2, of the Dublin Transport Authority Act, the authority has statutory responsibility for securing the provision of public transport services by way of public transport services contracts. Those contracts must, among other things, provide for the “fares to be charged and provision for the variation, including increase or decrease, of fares”. The NTA has concluded contracts with Irish Rail, Dublin Bus and Bus Éireann and these are available on the authority’s website. Details of the its determinations on fares are also available on the website.

Irish Rail’s current ticket pricing scheme is a product of a system that has developed over a number of years and the build-up over time of a wide range of differing fare levels has limited the opportunity for a clear pricing policy, relating fares to the service offering and providing consistent relationships between fares. The NTA is conscious of these challenges and is attempting to ameliorate the fare structures by gradually improving pricing and removing anomalies in the respective fare increase determinations. This is being done to implement a more distance-based fares scheme, whilst also protecting revenue at this critical time. One example of this from the NTA’s most recent fares determination is that trips from Greystones to Lansdowne Road were changed from fare band E to fare band C. Prior to that change, a single adult trip, paid for in cash, between Greystones and Sandymount cost €3.30, whereas a trip from Greystones to the next station on the line, Lansdowne Road, cost €5.20. The fare from Greystones to Lansdowne Road has been improved to €4 from €5.20.

With regard to the differences in Irish Rail’s fare levels from both Bray and Greystones to various destinations, the NTA has indicated that it will review these issues as part of the fare determination process later this year. However, the authority points out that examining the Greystones issue will not necessarily involve a reduction in the price of a fare from Greystones to the city centre, as this may result in an additional problem in trying to create a more consistent and well-designed fare structure overall. The fares from Greystones are more favourable if they are compared to the fares and distances on the northern commuter line.

The NTA has stated that it will continue to gradually implement changes to remove fare anomalies, extend consistent distance pricing and smooth the differences at the boundary of the intercity and commuter zones. This should lessen the concerns of the travelling public in particular locations but should also prevent the need for large fluctuations in ticket prices and provide more certainty and transparency in ticket fares, thereby achieving a better pricing structure that protects and supports travel by all.

**Deputy Simon Harris:** I thank the Minister for his response. On 25 May 2011, people from Greystones paid 67% more than people from Bray to get to the city centre, while today they pay

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66% more. That demonstrates how slow and gradual this process has been. If it continues at this pace, people of my generation in Greystones need not worry about it because by the time the anomaly is rectified they will be entitled to the free travel pass. There is no justification for the failure of bureaucracy on this. I accept a number of the points made and I acknowledge the great work done on the Leap card. However, I have received correspondence from the NTA and Iarnród Éireann acknowledging that when the DART was extended to Greystones, they never upgraded the pricing structure. Greystones has always been viewed as an add-on to the overall DART system. This needs to be rectified. I was told in 2011 that there would be a review at the end of the year and this would be addressed. Now these bodies are telling the Minister that there will be a review at the end of this year.

The people of Greystones are not looking for a more favourable fare than those elsewhere but they are seeking fairness in order that when people look at the DART map and see they are going one stop further south or north, they see some fairness. Bureaucracy needs to catch up, particularly if we want to encourage people to use public transport. It costs €9.60 return to travel from Greystones to the city centre compared to €5.80 to travel from Bray to the city centre. This acts as a disincentive to use the DART.

**Deputy Leo Varadkar:** I note the Deputy's comments. Nobody disputes that anomalies exist. I agree with him that there is a need for greater equity, but equity in train fares cannot apply only to the DART system. It must take into account the western and northern commuter lines. People travel similar distances to those from Greystones on an inferior service but pay more than them. In many ways, I am making the Deputy's case for him. There is inconsistency and a lack of equity. The NTA and Irish Rail want to phase in more consistent fares over a period without a big bang effect or a significant revenue loss. Perhaps that is the wrong approach and there should be a big bang effect rather than an incremental change, which is what is happening.

I am due to meet the chief executive officer, chairman and board of the NTA on Friday morning. I commit to making this an agenda item for discussion and I will get back to the Deputy following that.

### **Local Authority Finances**

**Deputy Bernard J. Durkan:** This is a simple matter that arises from a scenario whereby, through good management and prudent administration, Leixlip Town Council has achieved savings over the past number of years. We all subscribe to that as being important, progressive and admirable in the present climate. There are those of us who suggest that should have applied more in the past. The town council, having accumulated savings of approximately €300,000, would like to spend the money in its administrative area but because, I presume, of the proposed abolition of town councils, that is not in accord with departmental policy and, as a result, the town council is concerned about this. The town councillors, naturally, want to spend the money in their area because they feel they have adequate and important capital projects that require this expenditure. Apropos of nothing, in general I do not agree with the principle that taxation should be spent where it is raised. That is unconstitutional. However, in the case of an authority at local level that has done its job well and achieved savings for a particular purpose, it is difficult to explain why it should not be allowed to spend that money. It is unfair. The only reason is the change in the administrative areas in the proposal to abolish town councils, notwithstanding their replacement by extra membership on local authorities.

I ask the Minister to consider the situation because of the good management of the authority in question. We must recognise what it has done so far and acknowledge its good management and practice in keeping with the best international traditions. Would it be possible to allow the town council to spend the money on the capital projects and programmes it has identified that would be of benefit to the local community, rather than spending the money in the wider amorphous area that will exist after the local elections?

**Minister for the Environment, Community and Local Government (Deputy Phil Hogan):** Before I go into the detail of the case Deputy Durkan raised, I will give him some background information about certain controls in place since 2009 when a circular was issued by my Department in respect of the control and monitoring of local authorities' contribution to the general government balance, or GGB. The GGB is the measure of the borrowings and surpluses or deficits across the wider government sector, including local government.

The downturn in the economy and the pressures on Government funding generally require a sharp focus in all sectors, including local government, to ensure effective control and management of the public finances. In this context, the Department of Finance advised in 2009 that there was a deficit limit within the national GGB assigned to local government. That limit was set at €200 million. In February 2009, my Department set out details of the financial requirements for local authorities relating to their overall management of capital and current accounts. These requirements flow directly from the requirement for government finances, as a whole, to be managed in accordance with the EU-wide limitation on budget

In order to stay within the overall GGB limit, it is necessary for local authorities to maintain both their current and capital accounts broadly in balance in any one year. The only restriction on local authorities is that, in aggregate, capital income should equal capital expenditure in the year. Balance is only required at an overall level and this allows considerable scope for authorities to draw on their existing capital reserves as an element of their overall investment programme. The precise manner in which capital and current accounts are managed in order to achieve the overall balance necessary is a matter for individual local authorities. Within these overall limits, however, there is additional capacity for non-mortgage borrowing and the expenditure of capital balances on hand by local authorities. The process of prioritising applications for such projects for 2013 has been completed and my Department was guided by local authorities in respect of priority projects requiring funding this year.

While I appreciate that these GGB requirements impose limitations on local authorities, there are considerable funding constraints at all levels of Government. It is a matter for every local authority, including Leixlip Town Council, to determine its own spending priorities in the context of the annual budgetary process, having regard to both locally identified needs and to the available resources within the GGB limits, as outlined.

I checked further into the accounts for Leixlip. Deputy Durkan may wish to note that no request has been received from Leixlip Town Council to spend the balances in hand this year, although I have received a request to meet a delegation from the council. Leixlip has a non-rating town council. In 2012 its overall expenditure budget was €355,725 and its own local income was €3,000. In order to bridge the gap it would have submitted a schedule of town charges to Kildare County Council. The council has been transferring money from its revenue account - €41,000 in 2012 - towards capital projects to deal with matters such as the town hall fund, election costs, a playground project, town improvement and the Leixlip spa. I also inform the Deputy that the balance on the capital account at the end of 2012 was €348,167.

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**Deputy Bernard J. Durkan:** I thank the Minister for his comprehensive and informative reply. If I were a thinking person - which I am not - and on the ground, I would come to the conclusion that the Minister would be open to a submission from the town council seeking permission to spend the moneys in an appropriate fashion in concert with its entitlement and requirements, that due regard would be had to its adherence to good fiduciary policies in recent years and that, as a result, it might be possible to work out an equitable solution.

**Acting Chairman (Deputy Olivia Mitchell):** Is the thinking man correct?

**Deputy Phil Hogan:** I assure the Acting Chairman that Deputy Durkan does not interpret me correctly. I have set out clearly that Leixlip Town Council has sufficient money in its capital account, as it had in 2012, to do some of the things it wishes to do. It should not take money from the revenue account in order to achieve the same purpose.

### **Schools Amalgamation**

**Deputy Michael Moynihan:** The very important amalgamation of the two primary schools in Kanturk has been a long-running issue. Much work has been done in the past three or four years under the stewardship of Canon Jackie Corkery, who has brought great impetus, fairness and transparency to the ongoing issue. A considerable effort has been made by the VEC. In 2010 the Department of Education and Skills sanctioned a site and asked the VEC to look for one. It has been engaging with the county council, the planning authorities and so forth in regard to securing that site.

What I am trying to find out in this debate is the exact current position, the commitment of the Department to the project and the discussions that have taken place between the Department and the various stakeholders in the past month or six weeks. There had been a planning issue. The Department must be very clear about this. Will the Minister of State in the Department, Deputy Ciaran Cannon, outline clearly to the House the Department's commitment to this project, and will he ensure that everything that can be done at that level is being done to move the project steadily along?

There is no doubt this project is necessary and is a priority for Kanturk. As is the case with all amalgamations that reach category 1 within the Department, it should move sharply off the agenda. Again, I stress the commitment at local level on the part of the two boards of management, given the stewardship and hard work of Canon Corkery and the goodwill he has garnered in recent years, which is great to see. We now need to establish the facts. Both schools need a clear time guideline for the amalgamation. It has been discussed for a long time and there has been much interaction with the Department, the OPW and local bodies. The OPW was in discussions about the proposed site, entry and exit to it and the need for a second entry and exit point. In discussions with landowners and the OPW it was clearly indicated that there was a logjam and those concerned were asking the Department to commit to buying other land where there would be safe access. The OPW constantly gave the impression it was taking its instructions directly from the Department of Education and Skills.

Will the Department commit completely to the project and ensure there is no logjam on its side? This is a very important infrastructural project for the town of Kanturk and its hinterland and there have been many attempts over the years to try to bring it to fruition, with goodwill present on all sides, especially within the past three or four years, if perhaps not beforehand.

That is a different issue we need not go into, although I could keep the Minister of State entertained all night in regard to what was done at the time. The important point is that we make sure there is a timeline in place, that there is a full commitment from the Department of Education and Skills and that the OPW is fully engaged to ensure the application to the county council for further planning permission is proper and will ensure the outcome of having an amalgamated primary school in Kanturk, County Cork.

**Minister of State at the Department of Education and Skills (Deputy Ciarán Cannon):**

I thank the Deputy for raising this matter as it gives me an opportunity to outline to the House my Department's position on the construction of a new school building for St. Colman's boys' national school and convent girls' national school in Kanturk, County Cork. As the Deputy is aware and as he has outlined, my Department is endeavouring to maximise the efficient use of all available capacity in the public sector to assist in the delivery of the schools programme. In this context, the new school building in Kanturk referred to by the Deputy is one of 15 schools where responsibility for the delivery of the projects was devolved to the Office of Public Works. A service level agreement is in place between my Department and the Office of Public Works which outlines the roles and responsibilities of each of the parties in the delivery of education projects. It is a central tenet of devolution that responsibility for the delivery of projects, within certain agreed timeframes and parameters as laid down in the service level agreement, rests with the Office of Public Works.

In August 2012 a planning application for the construction of a new 24 classroom national school in Kanturk was lodged with Cork County Council by the Office of Public Works. In September 2012 a request for further information was received from Cork County Council covering access, drainage issues and landscaping. The Office of Public Works submitted a response to the issues raised in March 2013. Subsequently, in April 2013 Cork County Council notified the Office of Public Works that planning permission for the new school had been refused. Cork County Council stated it was willing to work with the Office of Public Works and my Department to endeavour to deliver the proposed school within a reasonable timeframe and that senior officials would be available to arrange pre-planning meetings to consider a revised planning application.

Officials in the building unit of my Department are examining the reasons given by the local authority as to why planning was refused and whether these reasons can be addressed from a value for money perspective. The Department will continue to liaise with the Office of Public Works, Cork County Council and other relevant stakeholders to establish if a solution can be found that is satisfactory to all concerned. Separately, my Department, in consultation with the patron and school authorities, has undertaken a recent review of demographic needs in Kanturk. The outcome of this review is that a 16-classroom new school building is sufficient to meet the long-term needs of the area. My Department has received written agreement from the patron's office and the school authorities to this change to the brief.

**Deputy Michael Moynihan:** I thank the Minister of State. The one concern I have relates to the phrase in the second last paragraph "the value for money perspective", but we will leave that issue to one side. Time is passing. I know that requests were made that the officials from the OPW, the Department of Education and Skills and Cork County Council meet the local stakeholders, the patrons and members of the boards of management. Is the Department absolutely and completely committed to this project? Without further delay will the Minister of State give a commitment, on behalf of the Department, that departmental officials with their colleagues in the OPW will commit to having an immediate meeting with officials in Cork County Council,

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the local stakeholders and the boards of management of the two schools within the shortest possible timeframe? Months are slipping by. There was a problem, on which Cork County Council deliberated very hard. I would like direct and straight answers from the Minister of State because this has been a long-running issue. Is the Department fully committed to the project and will the Minister of State instruct his officials to meet the OPW officials who will take the instruction to sit down with officials of Cork County Council? The county council has given me and others a commitment that it will meet at a moment's notice with the Department and the OPW and representatives of the boards of management to advance the project in order that everybody will know where they are at, what the issues are and how they can be dealt with.

**Deputy Ciarán Cannon:** I have indicated that officials in the building unit of my Department are examining the reasons given by the local authority for the refusal of planning permission and whether these reasons can be addressed, taking into account a value for money perspective, which is important. The Department would not be engaging in this assessment of the outcome of the planning process if it was not committed to the project. It has also undertaken a review of demographics in Kanturk and its hinterland, the area to be served by the new school. The review was part of the ongoing process to deliver the school. I glean from this response that the Department remains, and shall remain, committed to delivery of the project. Cork County Council raised one issue in the planning process. It was not satisfied with the access road to the school proposed by the OPW and required the road to continue past the school site to link with the town centre. The cost of providing the link outside the school site on third party lands has and should raise serious value for money issues for the Department. This is and should be the primary subject of any subsequent meeting between OPW officials, officials of the county council and officials of my Department. I will endeavour to have that meeting arranged as soon as possible. It needs to take place and I am confident that, with the collective expertise of those sitting around the table from the Department, the OPW and Cork County Council, a satisfactory conclusion can be reached soon.

### **Estimates for Public Services 2013: Messages from Select Committees**

**Acting Chairman (Deputy Olivia Mitchell):** The Select Sub-Committee on Health has completed its consideration of the following Revised Estimates for public services for the service of the year ending 31 December 2013: Vote 38 - Department of Health and Vote 39 - Health Service Executive.

The Select Sub-Committee on Children and Youth Affairs has completed its consideration of the following Revised Estimates for public services for the service of the year ending 31 December 2013: Vote 40 - Department of Children and Youth Affairs.

### **Business of Dáil**

**An Leas-Cheann Comhairle:** I call on the Chief Whip, Deputy Paul Kehoe, Minister of State at the Department of the Taoiseach, to present a proposal.

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** Following the Order of Business this morning and notwithstanding anything in Standing Orders or the order of the Dáil today, the sitting shall be suspended for 30 minutes from 7 p.m. until 7.30 p.m.

**An Leas-Cheann Comhairle:** Is the proposal that the sitting be suspended from 7 p.m. until 7.30 p.m. agreed to? Agreed.

### **Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed)**

**Deputy Joe Higgins:** I move amendment No. 2:

In page 5, line 5, after “pregnancy;” to insert “to make provision for lawful abortion where there is a risk to maternal life;”

Amendment put and declared lost.

**An Leas-Cheann Comhairle:** Amendment No. 3 in the name of Deputy Mattie McGrath has been ruled out of order and cannot be moved because it depends on other amendments. I think the Ceann Comhairle has written to the Deputy about this.

**Deputy Mattie McGrath:** I wish to seek clarification.

**An Leas-Cheann Comhairle:** The Deputy will have to be brief.

**Deputy Mattie McGrath:** This morning I received a letter in which the Ceann Comhairle stated he regretted he had to inform me that amendment No. 3 would have to be ruled out of order as it was declaratory in nature. Will the Leas-Cheann Comhairle explain what that means?

**An Leas-Cheann Comhairle:** The amendment does not arise as a consequence of any other amendment proposed in the Bill. It must be related to another amendment.

**Deputy Mattie McGrath:** The amendment relates to the Title which is false and erroneous in the extreme. It should be called what it is.

**An Leas-Cheann Comhairle:** That is the Deputy’s opinion.

**Deputy Mattie McGrath:** It is not about the protection of life during pregnancy. It is about the deliberate killing of unborn children.

**An Leas-Cheann Comhairle:** The Ceann Comhairle has ruled the amendment out of order. We must move on.

**Deputy Mattie McGrath:** It should be called the termination of pregnancy Bill.

**An Leas-Cheann Comhairle:** The amendment is declaratory and does not arise as a consequence of any other amendment proposed in the Bill.

Amendment No. 3 not moved.

**Deputy Richard Boyd Barrett:** I move amendment No. 4:

In page 5, line 14, after “of” to insert “maternal”.

Amendment put and declared lost.

**Deputy Joe Higgins:** I move amendment No. 5:

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In page 5, line 14, after “Life” to insert “and Health”.

Amendment put and declared lost.

**Deputy Catherine Murphy:** I move amendment No. 6:

In page 5, lines 15 to 17, to delete all words from and including “on” in line 15 down to and including “provisions” in line 17 and substitute “not later than 30 days following enactment”.

**Deputy Richard Boyd Barrett:** We believe such legislation should be enacted quickly and not left in the hands of the Minister. We have waited too long already.

**Minister of State at the Department of Health (Deputy Alex White):** The absence of a specific commencement date is due to the fact that operational issues will require to be addressed before the Bill can be commenced. For example, under section 11, the Health Service Executive, HSE, needs to establish a panel of medical practitioners for the purpose of the formal medical review provisions in the Bill. This process will entail contacting the relevant bodies seeking and receiving the relevant nominations and appointing the identified medical practitioners.

In addition, under section 12, the HSE must put in place the required administrative facilities that will be necessary to enable the review committee, drawn from the review panel, to perform its functions.

I wish to reassure Members that this is not some sort of delaying tactic as has been suggested by Deputy Boyd Barrett but a necessary provision to ensure all the requirements of the Bill are in place to enable its implementation when it is commenced. For that reason, I do not propose to accept the amendment.

**Deputy Mattie McGrath:** Obviously, the Bill is rushed and could not be done fast enough. The Minister is going to stay here all night but now we find out that the arrangements for the institutions are not even made. I know that from my hospital in south Tipperary. No one knows what is happening but the general threat is that hospitals which do not conform to and perform the Bill’s provisions will be starved of cash and dealt with. It is appalling.

**Deputy Billy Timmins:** Will there be a requirement for physical infrastructure changes in any of the approved centres?

**Deputy Alex White:** I am not aware of any issue arising as to physical structures requiring to be altered.

As for Deputy Mattie McGrath’s contention, the argument could not be possibly sustained that this Bill is being rushed. The opposite is manifestly the case.

**Deputy Mattie McGrath:** Of course it is being rushed.

**Deputy Alex White:** There is no basis for alleging this legislation is being rushed.

**Deputy Mattie McGrath:** This morning the Taoiseach said he wanted to get rid of the Bill before tonight. What does the Minister of State call that?

**Deputy Clare Daly:** We have been waiting 21 years for it.

Question, “That the words proposed to be deleted stand”, put and declared carried.

Amendment declared lost.

**An Leas-Cheann Comhairle:** Amendments Nos. 7, 72 and 97 are related and may be discussed together.

**Deputy Joan Collins:** I move amendment No. 7:

In page 5, between lines 24 and 25, to insert the following:

“ “appropriately qualified practitioner” means a general practitioner, medical practitioner, midwife, obstetrician, gynaecologist, as defined in this Act;”.

This amendment is about broadening the Bill. That does not mean we are supportive of it in its present draft. It proposes to broaden those qualified to be able to give a certification on whether a woman is suicidal.

Having three medical personnel determining whether a woman is suicidal is, however, a disgrace. The provision in this regard in Deputy Clare Daly’s Bill was much more appropriate. The cases of young women in HSE care who were sent to Britain for terminations were determined by one psychiatrist. I believe there should be only one psychiatrist dealing with a woman in a suicidal situation. This amendment aims to broaden those qualified personnel who should be able to deal with certification and not just confine it to an obstetrician. For example, an obstetrician may only meet a woman once or twice during a pregnancy. Her general practitioner, GP, would be much more aware of the woman’s overall medical condition and history.

**Deputy Mattie McGrath:** These amendments are using words lightly and glibly. We were told by Women Hurt by Abortion, a group which was not allowed to give its evidence at the committee hearings on the Bill, that they would have lied and claimed they were suicidal. This is just playing with words and semantics. I think it is very distasteful.

**Deputy Clare Daly:** This is primarily a health matter and concerns a medical opinion. The status and qualification of the medical practitioners is particularly relevant. The amendments seek to broaden the remit as to what defines an appropriate medical practitioner.

Given that it is a relatively routine procedure in terms of termination and where suicide is a risk, it is a medical opinion which in any other scenario would be dictated by a psychiatrist and the person’s doctor. Who knows one’s medical condition better than one’s GP? They are eminently qualified to have an insight into one’s mental health and physical well-being. We make points about how great our maternity services are here. However, the chances of a pregnant woman meeting a gynaecologist or an obstetrician when accessing our public maternity services are few and far between. If a pregnant woman meets them at all, she will be lucky. The idea that those people know the woman and her physical or mental health or well-being is an absolute joke. Her GP will be much better qualified to do that. The inclusion of an obstetrician to deal with mental health, an area in which such a person has no qualifications whatsoever, is actually an obstructionist clause inserted by the Government to make it more of an obstacle course for women who are suicidal. In that scenario, the last thing a woman needs is more barriers put in her way. The support services should be there to assist women and not to inhibit them. The purpose of our amendments is to make them more accessible.

It should be pointed out that the expert group, which was the Government’s own idea,

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recommended that two medical practitioners were sufficient and that they should come from a broad pool of specialities, including both physical and mental health. Our amendments are in line with that. It broadens out the provision to give a better mix of medical practitioners to adjudicate on health and medical matters. We think they are eminently qualified.

**Deputy Richard Boyd Barrett:** I would like to follow on from the points that were made and also speak about amendment No. 97, which relates to the requirement to have an obstetrician on the review committee. Why the hell is there a requirement for an obstetrician when dealing with the threat of suicide? To be crude about it, the Minister of State or I or anybody else in here is as qualified as an obstetrician to certify whether somebody is suicidal or not. In other words, none of us is qualified. Unless one of us happens to be a psychiatrist, we are not qualified to assess suicidal ideation, so why is the obstetrician included? It is simply inexplicable and no justification has been provided for that inclusion. Many psychiatrists, including one I heard interviewed on the radio a few days ago, as well as Doctors for Choice, have questioned the objective of including a requirement either to have an obstetrician to certify suicidal ideation that might be a risk to the life of the mother or to have an obstetrician on the review committee in those cases. There is no reason for it, so one would have to draw the conclusion that it is a blocking requirement. It simply increases the possibility that a woman who is suicidal, with a consequent risk to her life, could have that risk certified by two psychiatrists, but then have it blocked by an obstetrician who has no qualification whatsoever to make any assessment of whether there is a risk to that woman's life due to her suicidal feelings. I would like the Minister of State to explain all that, but I do not think there is an explanation. I think it is unacceptable.

**Deputy Joe Higgins:** The intent of the amendment is to make very slightly less onerous a massively onerous provision affecting a woman who presents in this acute situation. We should call on the Minister of State to recognise that the provisions in his Bill for three practitioners at the first stage, and three again at the review stage, present an obstacle course to women in a very difficult and traumatic situation which will not be faced by the vast majority of people. Women in a dreadful, traumatic mental predicament in respect of a crisis pregnancy will not be able to find a remedy in this State. That is the reality of the situation and the Minister of State should be honest and admit that. It is a mechanism to ensure that a woman suffering in this situation will be forced out of the country rather than face the barrage that is provided in this legislation, which is simply inhuman and the complete opposite to compassion for somebody in this very difficult situation.

**Deputy Alex White:** I cannot accept the Deputy's amendments. Under the terms of the Bill, a "medical practitioner" means a doctor registered by the Medical Council under the Medical Practitioners Act 2007, which indicates a person permitted by law to practise as a medical practitioner in the State. In the performance of their professional activities, all such medical practitioners are subject to the ethical and professional control of the Medical Council. It is not intended that it should be possible for a person other than a qualified doctor to undertake the procedures involved in this Bill. Other than in emergency situations, doctors who can certify in regard to a real and substantial risk to the woman of loss of life that can only be averted by a medical procedure as a result of which unborn life is ended must be registered by the Medical Council in its specialist division.

The Bill also requires that the medical procedure, in order to be lawful, must be carried out by an obstetrician or gynaecologist rather than by any other registered medical practitioner. This stricter provision is to ensure the procedure is carried out by highly skilled and qualified

medical personnel only, in order to secure the best possible care for the woman whose life is at risk and for the unborn.

Finally, the Bill refers to medical practitioners with a “relevant speciality”. This is defined with reference to specialist knowledge to ensure that doctors involved in the certification process have a high level of knowledge and skills. However, it is not limited any further, in order to ensure that all clinical specialties that might be relevant may be included in the definition.

**Deputy Joan Collins:** As far as I am aware, GPs are covered under the Medical Council in respect of ethics and so on. Why is the obstetrician there? Just being registered with the Medical Council is not a good enough reason to explain why an obstetrician is included and a GP is not included. I do not accept what the Minister of State is saying and I do not see why he cannot accept the amendment.

**Deputy Richard Boyd Barrett:** It would be helpful if we could get an answer from the Minister of State on that point. Our argument is that the Bill is too prescriptive in respect of the medical professionals required in the first instance and on the review committee. In the case of a threat of suicide, why would one need an obstetrician? An obstetrician’s qualifications have no bearing whatsoever on the assessment of whether there is a real and substantial threat of suicide by a woman. Can the Minister of State explain why this is so prescriptive? We are arguing that it should not be so prescriptive. The bar is being set higher for a woman whose life is threatened than would be the case if there was no pregnancy at stake. In any other circumstances, one doctor rather than three would be required to make an assessment of whether somebody’s life is under threat. Therefore, the Government is setting a higher bar here and consequently jeopardising the safety of women.

**Deputy Alex White:** The suggestion that we are jeopardising the safety of women is completely unsustainable in the context of what we are doing.

Deputy Daly quoted the expert group in support of her argument, and I have heard her do this before. If we are invoking the expert group report in support of the argument, it is important to read all of the report. I read it into the record before for Deputy Daly when she made the same point. I do not have the report with me, but I will have it later in case this arises.

**Deputy Clare Daly:** I have it and I will read it out in a minute.

**Deputy Alex White:** The expert group is very clear about the case for having a different approach in the case of a physical threat to the life of the mother from that in the case of a threat of suicide, and the report mentions the lack of objective clinical markers in that respect. It is very clear in the narrative of the report and in one of the options it outlines. It makes the case for a different approach in the context of a threat to a woman’s life arising from suicide. It is interesting that amendment No. 72 does not reduce the number of doctors required to make the assessment under section 9 from three to two. It simply states that the doctors should include a GP or some other doctor with a relevant speciality rather than an obstetrician. The amendment does not do what the Deputies claim for it.

**Deputy Richard Boyd Barrett:** We have tabled a different amendment on that issue.

**Deputy Alex White:** I reject Deputy Boyd Barrett’s suggestion that the mother’s safety is being endangered. This legislation has to address the life of the unborn child and the life of the mother in the context of Article 40.3.3° of the Constitution. A compelling case can be made

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for including an obstetrician in the assessment provisions in sections 7 and 9. It is likely that a foetal assessment will be required in a particular clinical situation arising under sections 7 or 9. It is entirely proper and prudent to involve an obstetrician in such a setting. That is not to say individual professionals would not draw on their own specialties when making their assessments, but the expert obstetrician or gynaecologist should be involved in making an assessment. We do not propose to change those provisions.

**An Leas-Cheann Comhairle:** Deputy Boyd Barrett has spoken twice already.

**Deputy Richard Boyd Barrett:** I am one of the movers of amendment No. 97.

**An Leas-Cheann Comhairle:** Only Deputy Joan Collins is regarded as the mover. She may speak again if she so wishes.

**Deputy Joan Collins:** We would like to reduce the number of practitioners to two or one but we know that would never be accepted. We hoped the Government might at least accept this amendment. An obstetrician could refuse a termination to a woman with suicidal intent on the basis of suicidal ideation. Many people do not believe an obstetrician is in a position to make that decision when a psychiatrist is already involved. I ask the Minister of State to accept the amendment. A GP or other medical practitioner can play that role and the GP is probably in the best position to assist a woman making that decision.

**Deputy Clare Daly:** I am glad to be able to assist the Minister of State because, unlike him, I have access to the expert group's report.

**Deputy Alex White:** I ask the Deputy not to quote it selectively as she did previously.

**Deputy Clare Daly:** Section 6.4 of the report, on the number and role of doctors, states: "it was generally considered that two doctors with the relevant training and expertise appropriate to the case would be sufficient for making a clinical decision as to the risk to the life of the woman, whether the risk arose because of a physical or mental health condition." I appreciate that obstetricians can play a role in carrying out a foetal assessment, but assuming that we are not arguing the foetus is suicidal, I do not know how his or her opinion is relevant in assessing the suicidal ideation of a woman whose life is in danger and whose life we are legislating to protect. That is the purpose of these amendments. The points are valid and they stand.

**Deputy Richard Boyd Barrett:** On a point of order, I understand that movers of amendments have the opportunity to speak again.

**An Leas-Cheann Comhairle:** I understand that when amendments are grouped it is the proposer of the first amendment who speaks again.

**Deputy Richard Boyd Barrett:** That is not what I have been given to understand. May I speak on the amendments?

**An Leas-Cheann Comhairle:** I will have to check that but I will allow the Deputy to speak if the House agrees. Is that agreed? Agreed.

**Deputy Richard Boyd Barrett:** The Minister of State made an alarming admission on the issue of the obstetrician. Section 9 provides that if there is a real and substantial threat of suicide, the woman is entitled to a termination of her pregnancy. He is arguing that her right is qualified because an obstetrician who can make a foetal assessment but is not qualified to assess

the threat to life of the mother as a result of suicide will have a say on her right to a termination. That is a shocking dilution of her right to protect her life or the right of the psychiatrists who assess the threat to her life to make the decision to allow a termination. We are getting a heavily qualified protection of the woman's life in such a way that her life is threatened by the qualification. It is disingenuous of the Minister of State to say the amendments do not deal with the issue of three doctors versus two doctors. They deal with the issue in so far as an obstetrician is required in addition to two psychiatrists or, as we propose, one psychiatrist and a GP. His insistence that an obstetrician should have an input into the process increases the number of doctors to three, places more hoops for the woman to jump through and endangers her life.

**Deputy Alex White:** I do not propose to add much to what I have already said. The expert group stated:

the role of the psychiatrist is key where a termination of pregnancy is prescribed as appropriate treatment in case of suicidal ideation/intent. There are recognised clinical challenges in correctly diagnosing expressed suicide intent, for instance, the absence of recognised clinical markers. Therefore, it could be argued that this is a more subjective process and requires more safeguards to be put in place for the protection of both the woman and the unborn. The need to keep up to date with clinical research on this issue is highlighted in the Medical Council Guidelines referred to in section 3.6.3 with a view to ensuring that the decision is evidence-based.

Among the options suggested in the report was:

to require that one of the medical specialists responsible for the decision-making process is an obstetrician in all cases, even when this expertise is not strictly relevant to the diagnosis. This option gives the obstetrician, as the health professional who is going to carry out the procedure, the capacity to acquire confirmation that the medical treatment is appropriately recommended.

Amendment put and declared lost.

**An Leas-Cheann Comhairle:** For clarification, under Standing Order 133, even when amendments are grouped it is only the mover who has the third contribution.

*5 o'clock*

Amendment No. 8 in the name of Deputy Tóibín is grouped with amendments Nos. 8, 20, 23 and 24, Nos. 55 to 58, inclusive, Nos. 69 to 80, inclusive, Nos. 86 to 89, inclusive, Nos. 93, 98, 102, 114, 115, 120, 133 and 140, Nos. 142 to 144, inclusive, and Nos. 148, 149 and 156. Amendments Nos. 148, 149 and 156 are related. Amendment No. 24 is an alternative to amendment No. 23. Amendment No. 62 is an alternative to amendment No. 56. Amendments Nos. 71, 73, 74, 99 and 100 are related to amendment No. 62. Amendments Nos. 87 to 89, inclusive are alternatives to amendment No. 86.

Amendments Nos. 8, 20, 23 and 24, Nos. 55 to 58, inclusive, Nos. 62, 69, 70, 71, 73 and 74, Nos. 77 to 80, inclusive, Nos. 86 to 89, inclusive, No. 93, Nos. 98 to 100, inclusive, Nos. 102, 114, 115, 120, 133 and 140, Nos. 142 to 144, inclusive, and Nos. 148, 149 and 156 may be discussed together. I call on Deputy Tóibín to move his amendment.

**Deputy Peadar Tóibín:** I move amendment No. 8:

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In page 5, lines 26 and 27, to delete “*section 9 certification*”.

This amendment is a consequential amendment to the suicidal intent element within the legislation. I support the medical treatments provided for in this Bill, which are, without a shadow of a doubt, based on medical evidence. However, I have a difficulty with regard to treatments that are not based on any medical evidence. This abortion Bill is not a medical or psychiatric response to suicidal ideation. It is a political response to a flawed, medical evidence free Supreme Court judgment. In many ways, this legislation is a compromise hatched at the Cabinet table between Fine Gael and the Labour Party. Now, because of this Bill, it will become a treatment without the necessary medical evidence.

We should put medical evidence at the centre of this Bill. We know, first and foremost, that abortion extinguishes the life of the unborn child. It is often damaging to the health of the mother and it increases maternal suicides. The most up to date in-depth analysis and longitudinal surveys carried out internationally on this have come to this conclusion. We are told that the provision in the Bill will not open the floodgates to abortion, but nobody in this Chamber knows how many abortions will be carried out on the basis of this legislation. All we know is that where countries have legislated in this area, there has been a radical increase in the number of abortions over a period of time. Even if there is not a radical increase in the number of abortions, how many medical evidence free abortions are tolerable in our society?

We have been told over and over again that this Bill will only provide for a situation where a woman will commit suicide and both the mother’s life and the child’s life would be lost. In fact, the Bill does not provide for that, because the system it uses to predict the probability of suicidal intent, as we heard repeatedly at the oral hearings, has only a prediction accuracy level of 3%. Therefore, current figures indicate that on 97% of the occasions where a psychiatrist identifies a patient as likely to commit suicide, the psychiatrist gets it wrong.

I can wholeheartedly support the part of the Bill that provides for treatments founded on medical evidence, but when this Chamber reaches a state where it legislates and composes policy for areas outside of medical evidence, we are in trouble. We need to ensure that both the legislation and medical evidence are fully orientated towards each other and do not take different directions.

**Deputy Éamon Ó Cuív:** I tabled amendments Nos. 20, 55, 58, 89, 98, 133, 140, 142, 144, 149, and 156 and they are all connected because basically, what they seek to do is to remove the suicide provision from this Bill, the so-called suicide clause. Substantially, this relates to section 9. I propose the deletion of section 9 of the Bill and the making of the necessary consequential amendments.

When we examine this, what we must decide is whether section 9 is compatible with the Constitution and the principle therein that all human life is worthy of protection. As I said on Second Stage, a human rights approach to this issue leaves a choice as to whether unborn human life is human life and if it is, whether it deserves the same basic protection as born human life. Not only do I think unborn human life is human life, but the Irish people in referendum after referendum have confirmed that simple principle in Article 40.3.3°.

The argument put forward by the Taoiseach and the Government regarding Article 40.3.3° is that there is an obligation to legislate for the X case judgment. As time goes on, I believe it is becoming clearer that this is not the case and that it would be open to us to pass this legislation

without section 9. The worst case scenario if we did that would be a challenge in the courts. I am certain that if we pass the Bill as proposed, it will also be challenged in the courts as not “protecting the equal right to life of the unborn”. In fact, I am certain that the Bill will open up a constitutional and legal mine field.

Why do I believe we are not bound by the X case judgment? The reasons are legal, ethical and medical and are based on all of the knowledge gathered in the intervening years on this subject. It is important to remind ourselves of the simple facts of the X case, a very sad case. A young 14 year old was raped and became pregnant. In the High Court, on the evidence of one psychologist in a case not contested by the State, it was accepted as a matter of fact that there was a real and substantial risk to her life if she did not get an abortion and that an abortion was the only way of avoiding that risk. The Supreme Court in its ruling could not examine the evidence and gave a majority ruling which granted her permission to have an abortion.

We have been told time and again in a mantra like fashion that the ruling in this case created a general obligation on the Oireachtas to legislate for abortion if a pregnant woman had a suicidal ideation. This always seemed to me to generalise what had been a unique set of circumstances in an extraordinary way. I was always wary of this approach, as I had seen over the years how the interpretation of the Constitution had changed according to circumstances and knowledge. This is very obvious in recent years in regard to the interpretation of property rights clauses in the Constitution, where the previous mantra that property rights, including salaries and pensions of public servants, could not be interfered with was subsequently modified. To have no less a person than retired Supreme Court Judge Hugh O’Flaherty say that this point is moot or arguable or as the Irish dictionary says, *inphléite*, is very significant. As he said, “to say the X case is some giant talisman hanging over us is wrong”. That this is arguable is doubly so when we consider he was one of the judges who gave the majority verdict in the X case. Therefore, it seems the Oireachtas would be perfectly within its powers to delete section 9 and pass the Bill. If it was to do this, the vast majority of people with objections to the Bill would come out totally in support of it. As I said before, I have no principled objection to the rest of the legislation. In fact, I welcome it as it brings clarity to the medical crisis covered in sections 7 and 8.

Section 9 will make bad law that will be open to abuse and will also put doctors in an invidious position in trying to predict the unpredictable. It is generally accepted that, thankfully, suicide in pregnancy is rare. This, however, increases the difficulty which is not addressed in the Bill as to how it is possible to establish a real and substantial risk to the life of the mother as required in condition No. 1 by proponents of the Bill. What we do know is that, even if this could be established with some accuracy, in the absence of biochemical markers, abortion is not a treatment to prevent suicide. This was clearly established at the Oireachtas hearings. That the Oireachtas will legislate to provide for a so-called treatment that flies in the face of all reputable evidence-based medicine is extraordinary. That this is being provided for as the only treatment in these cases is beyond belief. If the Oireachtas was taking a similar approach to any other medical issue, the proponents of the Bill would ridicule them as indulging in bad practice.

As I said, the Oireachtas hearings show abortion is not a treatment to prevent suicide. None of the learned textbooks on psychiatry on the management of mental health issues in pregnancy, even those from jurisdictions in which abortion is freely available, mentions or recommends abortion as a treatment for suicidality in pregnancy. I support the work done by the Minister of State, Deputy Lucinda Creighton, in drafting an amendment which would provide for a care plan for those who experience suicidal thoughts in pregnancy. This seems to be a practical

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and well based approach to this issue, one likely to save the lives of pregnant women and their unborn.

One of the obligations under the Bill, as drafted, and a constitutional obligation is to seek to preserve the life of the unborn if a termination takes place once viability outside the womb has been reached. How many will be left disabled as a consequence of the unnecessary head 9? The figures are startling and have been provided for me by a well known obstetrician. The fact of the matter is that for babies delivered between 23 and 24 weeks, there is a 50% risk of cerebral palsy; between 24 and 25 weeks, the risk drops to 20%; between 25 and 26 weeks, it is 22%; between 26 and 27 weeks, it is 12.3%; between 27 and 28 weeks, it is 11%; between 28 and 29 weeks, it is 8.2%; between 29 and 30 weeks, it is 8.3%; between 30 and 31 weeks, it is 7%, and between 31 and 32 weeks, it is 4%.

Before we rush willy-nilly into passing this totally flawed legislation, we should picture in our minds some future Dáil that will be confronted by people, men and women, seriously disabled because of this section of the Bill, who will sue the State for introducing a Bill that led to them having lifelong disabilities, based on introducing bad medical practice in our laws. Therefore, I ask the Minister to go to the Taoiseach and ask for permission to accept the amendment. In view of the radically changed position, legally and medically, thrown up by the process that this House and the Government have set in train, it is time to review this section. If the Government accepts the amendment and the other relevant consequential amendments, the Bill will pass with widespread support inside and outside the House.

Greatness is not about sticking to one's tack when new information comes to light that changes the position. It is about recognising new facts and adjusting policy accordingly. The Taoiseach has said time and again that he is pro-life, pro the mother's life and pro the life of the unborn. I ask him to act accordingly. I ask that we support these amendments in order that the whole provision on suicide will be taken out of the Bill and replaced with proper medical evidence-based care paths.

**Minister of State at the Department of Foreign Affairs and Trade (Deputy Lucinda Creighton):** Amendments Nos. 58 and 78 are in my name, although I am happy to support the spirit of a range of other amendments tabled by colleagues which deal with the suicide clause in this abortion legislation.

I want to start by saying I very much respect the Members on the Opposition benches who have been at least very honest in terms of what they aspire to achieve in an abortion regime in this country. It is clear that we do not agree, but I respect the frankness and the honesty with which they approach the debate. For me, it is the distortion of facts and, in some cases, revisionism which disturbs me most. I very much support the overall intention of the legislation which is supposed to be about protecting and saving the lives of women and babies, but I cannot support a clause which is essentially built on sand. This issue has already been addressed by Deputies Peadar Tóibín and Éamon Ó Cuív and I am sure others will speak about the litany of medical experts who have contacted us to express their concern about the complete inability to make this section work and their inability to make it work, as practitioners, as we heard repeatedly during the Oireachtas hearings.

I want to talk about the underlying argument which has been made and repeated as a mantra from all quarters, that we have to do this because of the X case. That is fundamental to all of the amendments. I have heard a lot of talk in recent days about people cowering behind the

party Whip. People can only examine their own consciences and make up their own minds on the matter. However, what about those cowering behind the Supreme Court? This is a real question that we, as legislators, who function as an organ of the State, an organ which is distinct from the Supreme Court by virtue of the separation of powers, must address.

The first question we must ask ourselves is whether the Supreme Court ordered the Oireachtas to legislate and, of course, the answer is no. Under the Constitution, Bunreacht na hÉireann, the Supreme Court and all other courts have no capacity or authority to direct the Oireachtas to enact legislation. This is borne out in a litany of case law, including *Holland v. Ireland*, *Cummings v. the Director of Public Prosecutions* and a range of other cases. The Supreme Court held in these cases that it had no authority to direct the Legislature. Article 15.2.1° enshrines the right of the Oireachtas as the sole legislative authority. We need to understand the responsibility that lies on our shoulders, not on those of Supreme Court justices in making decisions on legislation in this House.

In the X case, while the Supreme Court bemoaned the fact that the Oireachtas had not legislated in this area, it never suggested that it could or should require or instruct the Oireachtas to legislate. Mr. Justice Niall McCarthy described the failure to legislate for Article 40.3.3° as inexcusable, a comment which has been repeated many times. It is important to note, however, that this was a retrospective observation, albeit a legitimate one and one I share, relating to the absence of legislation. It was not, however, a direction from the Supreme Court to the Oireachtas on whether we should legislate or, much more importantly, how we should legislate, which is a matter for this House and the Upper House.

I will now address the question of *obiter dictum*. Under Irish law the binding elements of court decisions are known as *ratio decidendi*, which is the reason or logic behind the decision. This is a principle of law as applied to the facts of the given case and is something any first year law student will know all about. I hope Members of this House are familiar with it. All other statements of law within a judgment are called *obiter dicta*. These statements are not of direct relevance to the decision and are consequently not binding. They do not have a value in precedent.

In the X case a decision was reached based on certain facts which ultimately did not transpire. Miss X tragically had a miscarriage before an abortion was carried out. While this might appear to be some type of trivial distinction, the reality is that under the Irish legal system, whether or not it suits people's agenda, this has a profound effect on whether a decision is binding in law or is merely persuasive. It has been bizarrely overlooked that one of the judges who made up the majority of the Supreme Court in the judgment in the X case, Mr. Justice O'Flaherty, made the following observation in recent days: "[W]hen it [the Supreme Court, of which he was a member] gives an opinion on a case, [and] that doesn't work out as submitted to it, then it's really an *obiter dictum*." In other words, it is not binding. Mr. Justice O'Flaherty also said: "They're all talking about the X case, but in effect the X case is moot because the girl didn't have an abortion. She had a miscarriage. To say the X case is some giant talisman hanging over us is wrong." On the question of whether the Government was obliged to legislate for the suicide clause, he said it was not necessarily the case "for the reason that the case wasn't as binding as a different type of case would have been".

Despite this clarification, the terms of the X case keep being dangled over us as justification - for some, particularly in my party, the only justification - for the inclusion of this flawed section in the legislation, which is not evidence-based and which the majority of the medical

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professionals in psychiatric care and indeed in general practice keep telling us is not workable. We, however, keep telling them we have to do it because of the X case. The Supreme Court did not hear any legal arguments on the issue of whether suicidal ideation could validly satisfy the real and substantial risk test. In fact, the Attorney General conceded the point and, therefore, all the medical, legal and public policy arguments that should have been considered were not considered. Under the doctrine of precedent that governs whether court decisions are binding, a court must rule on the question. If the point has been conceded, it is not a part of the decision of the court. Again, this is known by any law student. If something is not argued before the court, the latter cannot make a decision on that particular point. The Supreme Court itself laid down this rule in the case of the Attorney General v. Ryan's Car Hire Limited, in which Mr. Justice Kingsmill Moore expressly pointed out that where a point has been entirely overlooked or conceded without argument, the authority of the decision may be weakened to vanishing point. According to the Supreme Court's own test, since the point on suicidal ideation was not argued in the X case, this point weakens to vanishing point and is therefore not binding either on the courts, on the Oireachtas or on the Government. There has been no discussion of this very basic legal point. We are being told that we must legislate for X when, in fact, that decision is weakened to vanishing point in the eyes of the Supreme Court.

I move now to the question of checks and balances. Our Constitution gives specific powers to the three branches of government, namely, the Legislature, the Executive and the Judiciary. Each is supposed to act as a check on the power of the others as a kind of corrective mechanism. No one arm can instruct the other. Just as when the Government or the Oireachtas errs as to its powers - which, believe it or not, they can do - the Judiciary steps in to correct it, as we have seen in the past, the reverse can also be the case. In the Oireachtas in recent months we have seen a perfect example of this process in action. The legislative branch, by means of the January Oireachtas committee hearings, has managed to identify the fundamental mistake in the legal logic and the medical science - one might say the complete absence of medical science - accepted by the Supreme Court in 1992. By gathering evidence at the hearings, the Oireachtas has fulfilled its constitutional role and now has a huge volume of testimony that the Supreme Court did not have which shows that the judgment in the X case was incorrect and that it ought to be corrected under the separation of powers principle and the system of checks and balances. That is our responsibility in this House. The Executive, however, has not only chosen to ignore this fact but is now seeking to entrench this decision, which is not binding, by forcing the Oireachtas to compound the error made by a Supreme Court which did not hear any medical evidence. I find that bizarre, to say the least. It sets a very grave precedent for the doctrine of the separation of powers. Not only is one branch of government ignoring its duty to act as a check on another branch, but it is actually seeking to legitimise, entrench and enshrine this error in the law of the land. I consider that to be deeply worrying and something I certainly cannot be part of.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Lucinda Creighton:** My final point continues this very important underlying thread. We have all been repeatedly told that we must include the suicide clause, against all of the medical evidence, in order to satisfy the X case test. However, this legislation ignores a very recent Supreme Court case and indeed a range of developments in that court in recent times. I draw Members' attention to the case of Cosma v. the Minister for Justice, Equality and Law Reform from 2006, in which a woman sought that her deportation order be quashed on the grounds that if she were to be deported she would commit suicide. She argued that an action

by the State should not be allowed to occur because she felt suicidal. The finding in that case is now the binding test laid down by the Supreme Court and I ask Members to pay attention, please, as I outline it.

The court found, first, that the absence of a treatment plan for a psychiatric condition and the fact that the person was not undergoing therapy or counselling were relevant factors in determining how real and substantial was the risk to life. Several Members of this House have proposed precisely the same thing - a treatment plan - to enhance this legislation, but it has simply been dismissed out of hand by the Minister. Second, the court found that the fact that the woman had not even considered removing the risk to life by treatment or some other means was relevant to considering whether the risk could only be averted by the course of action she preferred. The third finding was that the Minister was entitled to take into consideration arguments of public policy, as he had argued very vigorously in submissions that he should be, making the point that “to permit the threat of suicide to act as a stop on the execution of administrative decisions such as deportation would be to open a Pandora’s box of potential abuse with possible effects of paralysing administrative activity in any given area of government”.

On the Cosma reading of the X case, section 9 would fail to meet the necessary standard because it does not require evidence of a treatment plan or consideration of other means of avoiding the risk to life of the mother, and does not take into account, as the then Minister for Justice, Equality and Law Reform insisted we should, the public policy arguments that are relevant in assessing claims of suicidality. This is not to mention the medical evidence. If we value the X case so much, which I argue is an *obiter dicta* judgment, how can we ignore this very specific and refined test urged by the Minister in the case of *Cosma v. Minister for Justice, Equality and Law Reform*? It is an entirely contradictory position and a position of convenience to suggest that the threat of suicide of a person at risk of deportation, who may be an inconvenience to the State, is not entertained but in other circumstances it is. It is entirely inconsistent, contradictory and hypocritical. Selective constitutional interpretation is happening in the Department of Health.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Lucinda Creighton:** I am deeply concerned about it and I appeal, as I have done a multitude of times, to the Minister for Health to listen to the evidence put forward by medical experts and the psychiatrists the Minister is asking to administer the flawed section. They say they cannot do it. Please let us listen to them and please let us not enshrine flawed logic and flawed legislation on our Statute Book. The legislation may be reversible but the consequences of the legislation are not reversible. They will change the culture in this country and they will change how we deal with vulnerable women. Why can the Minister not accept the proposal that we put in place a clinical care pathway for vulnerable women feeling suicidal thoughts or feeling at risk of suicide during pregnancy? Why can we not talk about improving services and standards and putting in place the kind of clinical care path accepted as best practice in the United Kingdom? Why must we be the poor relation in terms of the service we provide to vulnerable people? Why are we insisting that abortion, which has no medical grounding, will be enshrined in our Statute Book as the only treatment for women who find themselves in that desperate place? I am lost for words because I cannot understand why this proposal is being insisted upon by the Minister and his Government.

**Deputy Michael Healy-Rae:** It is a pity there are not more like Deputy Creighton.

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**An Leas-Cheann Comhairle:** The next speakers are Deputies Terence Flanagan, Mattie McGrath, Séamus Kirk, Billy Timmins, Clare Daly, Mick Wallace, Michelle Mulherin, Denis Naughten, Patrick Nulty, Billy Kelleher, Michael Healy-Rae and Ciara Conway.

**Deputy Terence Flanagan:** I support the amendments of the Minister of State, Deputy Creighton, regarding the clinical pathway. They should be supported by the Minister as outlined. I tabled amendment No. 56 to remove section 9, which deals with the risk of the loss of life from suicide. Of all the elements in the Bill, this is the most controversial. There would be little or no opposition to the Bill if section 9, the cornerstone of the Bill, was removed. We have repeatedly heard that the Bill is about providing clarity for doctors and protecting the lives of pregnant women but section 9 does not serve these worthy objectives. Its purpose is simply to give statutory effect to the X case decision, which we know is a flawed judgment. It legislates for the direct and deliberate destruction of unborn human life. The desire to legislate for the X case is what has us here today and is reflected throughout the Bill. Unfortunately, it has corrupted other sections of the Bill, which are about ensuring pregnant women in Ireland continue to receive the high standard of medical care to which they have become accustomed. As the Minister of State, Deputy Creighton, stated, retired X case judge, Hugh O’Flaherty stated explicitly that the X case ruling is moot in current abortion debate because the girl did not have an abortion but a miscarriage. The definition of medical procedure used in sections 7, 8 and 9 was devised to meet the purposes of section 9 alone. It reads: “It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended.” It is only a medical procedure during, or as a result of which, unborn human life is ended that is made lawful by this Bill. This is at odds with the current medical practice in our hospitals but is being made lawful by the Bill. It has changed sections 7 and 8.

The obstetricians who testified before the Oireachtas Joint Committee on Health and Children made clear, regardless of their view on the Bill, that they do everything possible to save the lives of viable babies. I hope they continue to do so but they will be acting outside the boundaries of this Bill if they do so. That causes major concern. The barrister Mr. Paul Brady stated that section 9 marks a change in the law. He said that it is not accurate to say otherwise and that it creates, for the first time, a statutory basis in Irish law for where there may be a direct and intentional termination of an unborn child’s life.

Psychiatrists are very concerned about the change in their role. It is a role they have not had to date and they will be asked to determine whether there is a real and substantial risk to the life of the mother in order that she may procure a termination of pregnancy. Many do not see this as their role as medical practitioners and the role could be construed as making psychiatrists the gatekeepers to abortion. Psychiatric practice relates to the assessment and treatment of patients, not the assessment and adjudication. Psychiatrists are not judges. Dr. Maria Cahill said during the hearings that the Constitution gives permission to the Dáil and Seanad to legislate rather than imposing an obligation on them. The retired Supreme Court judge, Mrs. Catherine McGuinness, said that on the question of whether the Oireachtas has acted unconstitutionally over the past 21 years:

I do not think that can be said. [...] It is free not to legislate.

We know from the X case, decided 21 years ago, that no psychiatric evidence was considered by the courts. The compelling evidence, as the Minister of State stated, is that abortion is not a treatment for suicidal intent. In fact, it may contribute to it. I am concerned that the law

is changing in this area and that, as the expert Mr. Kevin Malone stated in his submission to the Joint Committee on Health and Children that “the proposed legislation runs the risk of further invisibilising, normalising, and at worst exacerbating the much more real and volatile threat of increased suicide risk in Irish men, and potentially accelerating suicide risk in young women also.”

No one now knows how many abortions will be procured under section 9. I am concerned as Sam Coulter Smith stated that there is no gestational limit in respect of the Bill. Delivering the baby at 25 weeks gestation could lead to death, extreme prematurity or a child with cerebral palsy or significant developmental issues for the future. The Minister for Health, Deputy Reilly, has acknowledged that situation by stating that the Bill will result in more babies suffering damage because of premature delivery.

We know no country has ever been successful in restricting abortion on these limited grounds of suicide. The State of California introduced therapeutic abortion legislation in 1967. The legislators thought it was a strict, regulated provision which would be very rarely used. Within three years, the number of abortions had risen from 500 to 63,000. For those and other reasons, there is no way I can support section 9 of the Bill. The Government assures us that section 9 will rarely, if ever, be invoked. Clearly, I hope that proves to be the case, but fear that it will not. I am not prepared to be responsible for the deaths of those unborn children who will be killed if section 9 is enacted. As a matter of conscience, I will not be in a position to support section 9.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Mattie McGrath:** In particular, my input is directed to amendment No. 23. I compliment the bravery, understanding and research of colleagues across the floor who cannot accept the decision based on the X case. It was a flawed judgment. Anybody who sat through our committee hearings understands that. It is the one thing that emerged. The Supreme Court in the X case heard no proper legal arguments on suicide. There was no proper, in-depth hearing. How could the court deliberate properly without hearing the evidence on both sides - for and against? I put down an amendment previously on the Title of the Bill, which is misleading, erroneous and false.

I note that the Minister for Children and Youth Affairs is in the Chamber. The Government has kept going back to a Supreme Court decision from a long time ago but it ignored a recent Supreme Court judgment, which was unanimous, having heard all the facts, on the misappropriation and misspending of money voted by the House in the children’s referendum. We can ignore it when it suits us. We can use it and abuse it when that suits us. That is what the Government has been doing. The separation of powers is quite clear for the Legislature, Executive and Judiciary. There was a total absence of medical science at the time of the Supreme Court decision in 1992. We have moved on in so many ways. Great progress has been made in our understanding of medical science and health care. As the Minister of State, Deputy Creighton, has said, the absence of a treatment plan in the Bill illustrates that it is cobbled together legislation involving Fine Gael kowtowing to the Labour Party. I would not even call it the Labour Party, but the takeover Labour Party. It is not the Labour Party I knew.

**An Ceann Comhairle:** Please, stick to the amendments.

**Deputy Mattie McGrath:** A further contradiction is that where a person facing deportation claims suicide, it is to no avail. A person that is suicidal needs treatment. Abortion is the last

treatment any pregnant woman needs. It is not a treatment in any shape or form for a person suffering stress and trauma. A woman needs to be treated and to have a health care plan worked out. In the fullness of time, everything should be dealt with when the person is able to make a decision. I have heard from women who were hurt by abortion, who were not allowed to attend the committee hearings. To a woman, they told us they felt more suicidal after the fact than before.

**Deputy Seamus Kirk:** I am glad to have the opportunity to add my voice to the comments and observations of a number of people who have moved amendments, including my party colleague, Deputy Éamon Ó Cuív, and the Minister of State, Deputy Lucinda Creighton. In many ways, their contributions anticipate what other Members have to say generally on the issue.

Section 9 is where the real problem exists in the Bill. If the Government agrees to remove section 9 from the Bill, its passage will be relatively easy. That is what is needed. The arguments against the provisions in the section are compelling. We have heard them in the past half hour. There was no psychiatric evidence provided in the context of the original Supreme Court decision. A decision was taken in the X case without the benefit of necessary psychiatric evidence. The reflections and review of the decision by retired Supreme Court judge, Hugh O'Flaherty, are very interesting in the context of today's discussion. Section 9 is not required to be included in the legislation. If the motivation and spur to bring forward the legislation is the unfortunate case of Savita Halappanaver in Galway, the old principle that hard cases make bad law should be remembered. Section 9 provides for no time limit on abortion within the gestation period, which is horrendous. I hope the House will not come to regret its decision if the section is voted through tonight. It will provide in law for something we may regret for a very long time in terms of its impact on humanity.

It has been interesting to read and reflect in recent times on the observations of Lord David Steel, who introduced abortion legislation in the United Kingdom in 1967. If he were brought in as an adviser to the Government, he would give advice which would be contrary to the provisions in the Bill. I will not traverse the ground which has been covered more than adequately by previous speakers on the section. I simply exhort and encourage the Minister to reflect on what he is providing for in section 9. I hope he will. If the debate and the decision on the legislation were postponed to allow for an 11th hour Government meeting on the removal of section 9, the Irish people would be very grateful.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Lucinda Creighton:** Hear, hear.

**Deputy Billy Timmins:** Amendment No. 56 is the last to which I will speak. I will be pressing the amendment. I concur with much of what has been said by previous speakers. This is a profound moment for the Oireachtas and for the State. This is the most barbaric section - the suicide clause - that has been put before the House since the foundation of the State. I was in the Nutley wing of St. Vincent's Hospital at lunch time to visit a friend on St. Anne's ward. I had time to read at the back of the nurses' station a notice to the effect that they strive to provide care based on the best available medical research. To paraphrase my good friend, Deputy Mathews, who often talks about the banking difficulties, I can understand how the last Government got the financial crisis and bank guarantee wrong based on the information it had. I cannot understand this Government, which has the correct information in front of it, making an incorrect decision.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Billy Timmins:** Based on the suicide clause, the Bill is unconstitutional. I would like the Minister for Health to tell me whether the Attorney General and Cabinet are satisfied that it is constitutional. Do they have doubts about its constitutionality? Many Members will come in here tonight and vote for this Bill, and will vote against amendment No. 56, on the basis they believe they have no other choice because of the judgment in the X case. I concur with the points made by earlier speakers and I will not re-plough the ground on the issue of whether it is binding or not. I believe it is not.

Looking at Mr. Justice O’Flaherty’s comments at the weekend, it appears the Supreme Court was saying we need to legislate for the constitutional Article 40.3.3°, not for the X case.

**Deputy Peter Mathews:** Correct.

**Deputy Billy Timmins:** That is what is required. I believe that most people would concur on that because the equal right to life is impossible to implement. It is a flawed article; I acknowledge that. However, we have laboured under a false illusion in this House and many Members going to vote tonight will labour under a false illusion by voting to retain this clause based on the X case judgment because it is wrong. I believe this will end up in the Supreme Court and I ask those who sit on that court to take cognisance of the fact that many of the Members who vote on this will do so on that basis.

I have a few points that are also important to raise with respect to the amendment. With respect to the psychiatrist, Deputy Creighton raised some issues to which the Minister will reply.

We can all selectively quote from the expert group but there are a few points I want to make. We all look at this through our own eyes. I realise on my left-hand side here there are many genuinely held views and, while I do not agree with them, I respect them. However, I have a difficulty with what is my own side of the House when matters are purported to be what they are not. On one simple issue, legislating for the X case is not in the programme for Government. How often must we repeat that? I have heard Minister after Minister come out and state it is. One should check the programme for Government. It is not in it.

With regard to the psychiatrists, virtually every psychiatrist who is in favour of the legislation happened to be at the hearings. We had a number who are opposed to it. When making his submission, Dr. McCarthy - this is important for historical record - stated that “we know that among our 864 members there will be a wide range of opinions with regard to the sensitive issue of abortion, reflecting the deep divisions in society ... about this issue.”, and, therefore, the council of the college was confining its comments to the general scheme of the heads of Bill rather than any overall comment about abortion. It is important to remember that. When Dr. McCarthy gave his evidence, he did so in the context that the Bill was before him and it was how best to deal with the Bill. He made the same point at the earlier hearings in January.

With respect to the 864 members, that evidence was given on the Monday of the hearings held in May last. On the Friday, when the gynaecologists were giving evidence, Dr. Boylan, in his submission, referred to his understanding that the Council of the College of Psychiatrists of Ireland, the elected decision-making body representing more than 864 members, had made a single submission on behalf of all members. I note that Dr. John Sheehan, who is a psychiatrist and member of the college of psychiatrists, when he gave evidence on the Monday, had not seen the submission from the college of psychiatrists and was not familiar with it, and yet the gynae-

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colologist who gave evidence on the previous Friday was. It is important to put that on the record.

During the evidence of the expert group, from which the Government widely quotes, on the day the three gynaecologists from the main hospitals appeared before the committee, two of them from Holles Street were asked if their evidence was personal or made on behalf of the institute of Holles Street. They did not answer, perhaps by default. If they had answered, they would not have been able to answer that it represented Holles Street because when evidence was given at the earlier hearings in January a number of gynaecologists from the greater Dublin area and elsewhere wrote into the committee. I do not know whether it is on the record of the hearings, but a written submission - an email was sent in and circulated - stated that they disagreed that there was a requirement for any legislation on this, be it threat to either the physical or mental health - I am not saying I agree with them - whereas when Dr. Sam Coulter-Smith was asked, and he had alluded to it in this speech, he stated his submission to the committee was based on his own views and the views of his consultant colleagues at the Rotunda following their consideration of the draft heads of Bill. For historical reasons, it is important to put that on the record.

While dealing with Dr. Coulter-Smith, I want to make a few points. I made them on Committee Stage, which was held down in the basement, a matter with which I disagreed, where 150 or so Members could not submit amendments which is unusual for such important legislation. I made a couple of points with which the Minister disagreed and I want to read them into the record. First, I have mentioned Dr. Coulter-Smith speaking on behalf of the institution. I will extract some of his quotes. He stated, "there is currently no available evidence to show that termination of pregnancy is a treatment for suicidal ideation or intent and, as obstetricians, we are required to provide and practice evidence-based treatment." He went on to elicit concerns they have about the gestational period, which was well covered by Deputy Shortall at the hearings. I will not go over that ground again. When the issue was put by Mr. Seán O'Rourke on "The Week in Politics" on Sunday night to the deputy leader of the Sinn Féin, she asked him not to present it in such fashion. I will not do so here, but that was the fashion that was presented by Dr. Coulter-Smith and these are the doctors who will have to implement this legislation. At the end, Dr. Coulter-Smith stated:

This outcome would be entirely iatrogenic and the responsibility of those clinicians who have agreed to be involved in the process. This is a source of serious concern for myself and my colleagues.

He also went on to state that it is the view of many of his colleagues:

that the inclusion of suicidality within the legislation may ... in the long term lead to an increased demand for termination in this country. We currently do not have any real understanding of how big that demand may be.

I am not one of those who state this legislation will open the floodgates. I would like to think it will not, but history has shown that in every other jurisdiction it has. I would like to think Ireland would be different. If we look back, Bourne, the gynaecologist in the 1930s in England, joined SPUC afterwards. Ms Norma McCorvey, who I have quoted here previously, the woman at the centre of the *Roe v. Wade* case, sought a judicial review of the decision in her case in the late 1990s based on what transpired. I think the term she used was that barristers legislated out of thin air for abortion in the United States, not dissimilar to what we are doing here following the X case.

On Friday last, when I put it to the gynaecologist in Portiucula, Ballinasloe, I stated that ultimately the implementation of this legislation will end up in front of him and I asked him what he would do. He stated that he would not implement it. He stated that he could not implement it because his whole medical well-being and medical ethical background is to do good and he would not do something that he believed to be bad and that was not evidence-based for good. The Minister will respond that there is a conscientious objector clause in the Bill that will cover that doctor, but it is poor legislation where one of its defences is that the Minister has the conscientious objector clause as a strength of the section in the Bill in the first place.

Perhaps this legislation will codify the law. We can use whatever terms we like, but it will change the practice and ethos in this country. I raised the issue of the six minors in the care of the HSE who, in so far as I can establish from the Minister for Children and Youth Affairs, went abroad for abortions based on the X case decision on the suicide clause. Four of the cases went to court; two did not - I do not know why that differentiation existed. I asked the legitimate question: if this legislation is about saving women's lives, why did these minors in the care of the HSE have to go abroad for the treatment? I have not read "the Blacks", but the Minister stated one of the reasons was that this legislation would give clarity to those where there might have been uncertainty. Is he saying now that in future they will be able to get the terminations here at home? If so, to state that this legislation does not change the practice is inaccurate. We cannot have it both ways, and let us be honest about what is happening here.

History will show that the College of Psychiatrists of Ireland has failed the profession. I have got to admire the courage of individual psychiatrists. I understand 120 consultant psychiatrists made a submission stating that they would not participate in this process because it was not evidence-based. With respect to the 864 members who were circulated by the college of psychiatrists, it went to consultants, trainee psychiatrists, etc., my understanding is that somewhere in the region of 30 of them responded to the president of the college.

*6 o'clock*

The submission on behalf of the council represented, in theory, the views of those 30 members. Some of the members who responded have claimed that the submission did not represent their views. I do not think, therefore, that it is built on very firm ground.

I wish to make two points in conclusion. Many Members have had difficulty with this legislation and I appreciate these difficulties. However, they have been given assurances from members of the Government - I do not mean to be flippant or cynical and I raised this point on Committee Stage - but I do not see anywhere in the definitions in the Bill the status of an assurance from the Taoiseach, the Minister for Health or the Attorney General. What is the legal basis of an assurance given by a Minister? In my view, it is no better than Willie the Crow's assurance; it makes no difference and has no legal status whatsoever. Let us be honest - if we want to include a ministerial assurance in the Bill, let us give it a status. Let us not hide behind such language.

I do not believe the sky will fall in tonight if this legislation is passed. Neither do I believe it will fall in tomorrow night. However, I do believe, as sure as night follows day, that there will be a time when people will come into this House and ask, "How did the Oireachtas of 10 July 2013 pass the suicide clause, which is not based on a lack of knowledge?" We can talk about the Magdalen laundries and the abuse of children and hide behind the fact that we did not know. I want to state clearly that we do know, as the evidence is there in bucketfuls. They will ask

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how did we pass this legislation. I believe in life that I can generally find the answers to most questions, but I cannot understand how people will support this section. I will be pressing the amendment which goes to the core of the Bill. This provision is built on sand.

**Deputy Clare Daly:** The previous speaker has given a very good illustration of why this matter should be left out of the hands of politicians and treated for what it is, a health matter that should be adjudicated on between women and their doctors. We should remind ourselves of why we are here and why we are in this mess. It is precisely because the Constitution equates the life of a woman with that of an unborn. If they were two independent lives, perhaps one might have an argument about this but because the life of an unborn is intrinsically linked with that of the woman; when there is a conflict, there has to be an adjudication. The Supreme Court adjudicated on the matter in the X case and determined that in the event of a conflict where the life of the woman was in danger, including from a risk of suicide, she was legally entitled to an abortion in Ireland. While it did not direct us to do anything about it, in fairness, it made its opinion abundantly clear. Mr. Justice McCarthy has been quoted here already. He said the failure to enact appropriate legislation was not just unfortunate or inappropriate but that it was inexcusable.

This very narrow Bill is based on the premise of protecting a woman's life if in danger, including from a risk of suicide. Inevitably, that means we are talking about a tiny number of the thousands of Irish women who have abortions every year. We do not know, but it may be 40 or 50. A very small number will be affected by the provisions in this Bill, but a very small number nonetheless is still not none. There are people who are pregnant and suicidal. The Deputy gave as examples the cases of six young women in State care. A psychiatrist adjudicated that it was best for their mental health that they should have an abortion. Unfortunately, these young women were taken out of the country for that treatment. Presumably, the purpose of the Bill means precisely that these young women would not have had to travel. The point has been made previously that women who are not in the care of the State, where they, their parents or partners have the means to travel, if they are suicidal, will continue to do what they do now; they will get on a Ryanair aeroplane or a boat and travel to England because they certainly will not put themselves through the Star Chamber that is envisaged by the Government. We need to be very clear on this matter. We know for a fact that suicide in the case of pregnant women is a reality.

Speakers made a point this morning about the high level of maternal care and the excellence of Irish maternity services. They are not bad, but they are not the best. They are nowhere near the best; they are probably average at best. We can say this with certainty because the method of calculating such figures in Ireland is at variance with that used by some of our European peers. The latest figures show that out of the 25 maternal deaths in recent years, two were women who had committed suicide. I do not know if an abortion would have saved the lives of these two women; nobody knows. I do not know the circumstances, but perhaps it might have done. If it would save the life of even one person, I would be glad to see such a provision in the Bill.

I take great offence at Deputy Peadar Tóibín's talk about medical evidence. He dismisses the issue of mental health and the risk of suicide as if it was spurious and not really an issue at all. That is what lies behind a great many of the contributions to this debate. It is a fundamental assertion that women would scheme and lie, pretend to be suicidal, hoodwink their doctors who are so cowardly and ridiculous that they would go along with it to enable themselves to have a termination here. Lads, they will not; they will travel to England and do what they are doing already. It is disgustingly disrespectful and I find it quite offensive, not only to women who

make these difficult decisions but also to the many victims of suicide and their families, that people would seek to trivialise mental health issues. People slag off medical opinion produced by the College of Psychiatrists in Ireland, the expert body when it comes to mental health. They throw that opinion out the window and then lean on the medical opinion of obstetricians. One might as well get the medical opinion of vets on issues of mental health. It is ludicrous. The psychiatrists are the ones who make the decisions in this regard and they are medical decisions.

There was the derogatory use of the word “floodgates” with reference to other states which had legislated on this issue, as if this was an easy decision for any woman in any circumstance. Examples were given from Britain and America. I fully respect everyone’s individual opinion which he or she is entitled to express. I remind Deputy Terence Flanagan that to express an opinion and state it as fact and back it up with studies, some of which are spurious, having been the beneficiary of a trip to America and welcomed by these bodies which purport to stand over these scientific studies, is not to engage in a scientific analysis. He should declare his vested interest in these matters.

**Deputy Terence Flanagan:** What are the Deputy’s vested interests?

**Deputy Clare Daly:** I refer to the facts given about Britain because they have been used and bandied about in the media. The argument is that the 1967 Act allows abortion under the suicide clause. That is not the case. Under the 1967 Abortion Act, 90% of the abortions are on the basis of ground C which deals with pregnancies under 24 weeks, where the continuation of a pregnancy involves a risk greater than if the pregnancy was terminated, of injury to the physical or mental health of the woman. Because it is always safer to have a termination in the early stages of pregnancy, rather than later, most abortions are granted using these criteria. It is not that people pretend to be suicidal as Deputies who are making the point are clearly implying. Suicide is a very tragic reality in our society and the issue should be adjudicated on by medical staff, not unqualified politicians. Factual evidence, rather than just opinion, has been given indicating that where no abortion is permitted, 10% of women who commit suicide are pregnant at the time. Where there is not an option of abortion, evidence seems to suggest that the rate of suicide among pregnant women is higher.

Other issues have entered into the debate that are purely spurious. The idea that there would be a time limit is such an idea. This legislation is founded on the basis of medical intervention necessary to save a woman’s life. If it is necessary to save the woman’s life, that is the only show in town, the only decision to be made. Anything else is irrelevant. It is highly derogatory for Deputies to believe that women would go through the latter stages of pregnancy and then, at a whim, decide to pretend to be suicidal because they have suddenly changed their mind. This has no relationship with reality or the tragic, hard decisions that women who often choose abortions must make.

For all these reasons, the amendments are seriously unfounded, and we have stated why. I do not believe the way in which the Minister has dealt with this is ideal. He has put far too many restrictions in the legislation. There are amendments in this grouping that touch on the points we made on why the opinion of only two medical practitioners should be sought. A woman’s general practitioner is eminently qualified to make the decision. This was included in our Bill last year. It is a psychiatrist that will make the determination, not a gynaecologist, obstetrician or other such practitioner. For all these reasons, I am vehemently opposed to not dealing with the issue of suicide. It is not because of anything the Supreme Court said, however. If one is unsure about this, one should note that the people had a choice to remove the

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suicide provision in 2002 but they decided to keep it, that it was valid and that suicidal ideation is certainly a threat to life that should be dealt with.

**Deputy Mick Wallace:** The Minister says Ms X tragically miscarried but I would say she was tragically raped. Given that she wanted to terminate her pregnancy, I do not believe the miscarriage was her greatest misfortune. Nobody is saying that abortion is a treatment for suicide. Although a woman can become suicidal during a crisis pregnancy, are we supposed to tell her, “Listen, woman, an abortion won’t cure your problems.”? Dealing with an unwanted pregnancy through abortion may deal with the woman’s problems. It could be that she has been raped. Perhaps continuing with pregnancy could prove too much to bear.

We proposed that one obstetrician and one psychiatrist is sufficient. The Irish Family Planning Association has stated:

The diagnosis of expressed suicide intent is a routine process for psychiatrists and the requirement of a second psychiatrist when this does not occur when a pregnancy is not involved has no justification. Imposing a different standard of decision-making in cases where the risk arises from threat of suicide risks stigmatising mental health conditions.

The proposal for suicidal pregnant women in the Bill could be described as being barbaric and tantamount to mental torture. It tells women that mental health is not real health and that the State does not trust them. It tells them they must be interrogated and prove themselves not to be liars. The Bill is based on the premise that women are manipulative and untrustworthy, and this is an insult to them. Anyone who tries to argue that women are going to have equal rights with men following the manner in which this Bill has been structured is not thinking rationally.

**Deputy Michelle Mulherin:** The amendments, as proposed, seek to address the many concerns I have in regard to the nature of the suicide provision and how it will operate. The ultimate responsibility for whether a pregnant woman has an abortion lies with that woman. How restricted, or otherwise, her ability to have an abortion is constitutes a matter for the State. Our Constitution sets out the parameters within which this Oireachtas must work in passing our laws. The eighth amendment to the Constitution, as inserted by the citizens, guarantees that the State will defend and vindicate the right to life of the unborn, with due regard for the life of the mother. This legislation could be drafted in a more prescriptive way in order to respect this constitutional provision and strike a fairer balance between the legal rights of both the mother and unborn child.

In view of this and the fact that the Taoiseach has stated that only Government amendments or amendments tabled through the Government will be accepted, I wrote to the Minister for Health setting out my concerns and suggestions for the draft legislation. I am very disappointed that there is very little accommodation of the legitimate concerns expressed by me and many others, not least within the Chamber, in the Government amendments, as published. I met the Minister, Deputy Reilly, for an hour last night, and the Taoiseach for nearly an hour and a half. I am now faced with either supporting the Bill or being booted out of the party, my party. I am not going to allow myself to be booted out so I am supporting this legislation.

**Deputy Denis Naughten:** I support the amendments tabled. Much has been said about the issue of suicidal intent and suicide. The reality is that suicide in pregnancy is a reality, and there is absolutely no doubt about that. The issue is the scale. As I stated on Second and Committee

Stages, suicidal ideation is quite frequent in pregnancy. Between one in eight and one in three women experience suicidal ideation at some stage during pregnancy. This is up to a third of all pregnancies and, therefore, the phenomenon is quite common. I am thankful that the number of women who act on their ideation is very small. All possible supports need to be put in place to ensure the rate is reduced.

It is important to remember that there is a differentiation being made between physical illness and mental illness. Deputy Daly, Deputy Wallace and a number of others made reference to that. Let me outline the difficulty. A woman with a physical illness resulting in a threat to her life during the pregnancy is entitled to a termination under this legislation but a woman with a treatable underlying mental health condition is not entitled to a termination. That differentiation has been made in the legislation. A difficulty is that where there is no underlying mental health condition other than suicidal ideation or intent, the psychiatrist has no choice but to certify the woman so as to allow her to avail of a termination if she wants it. It is impossible to prove or disprove suicidal intent. When I raised this point with the Minister on Committee Stage, he said, correctly, that a consultant can use his or her professional skills. A consultant can also identify underlying mental health conditions but Professor Veronica O'Keane, who gave evidence to the joint committee on two occasions, made it crystal clear that if a woman states she is suicidal, she has no other choice but to believe her. As I stated on Second Stage, I recently spoke to a consultant who pointed out that where someone is suicidal, there is no skill set for a consultant psychiatrist to determine whether the intent is there or not. No consultant can make that determination. One consultant pointed out that the hospital electrician is as equally capable of making that determination as anyone and that is the sad reality of suicidal ideation and suicidal intent. It is impossible for anyone. The hands of consultants left in that situation, where there is no other underlying mental health condition and where a woman presents with suicidal ideation, are tied because if they refuse to certify the woman and she subsequently dies by suicide, the consultant faces a significant personal and professional liability for not certifying her.

I refer to another issue teased out on Committee Stage. The Minister made it clear that where a foetus is viable, it is sacrosanct in the legislation that any procedure that would threaten the viability of the foetus outside the womb cannot be provided for and cannot be used to terminate the pregnancy. That will lead to cases where a woman with suicidal intent who obtains a termination of pregnancy beyond the cusp of viability will give birth to premature babies with significant disabilities who will become the responsibility of the State. We are returning to a situation where we could see children in institutions again and surely none of us wants to go down that particular road.

It is also important to recall evidence given by Professor Kevin Malone to the joint committee hearings about his beliefs. He is, sadly, an expert on the incidence of suicide. He firmly believes there is a strong possibility that this legislation could increase the overall incidence of suicide in this State. That needs to be taken into consideration by every Member.

It is argued that section 9 needs to be included because of the X case judgment. If anyone is of that opinion, he or she should read last week's newspaper article by one of the judges involved, Mr. Justice Hugh O'Flaherty. He did not say that. It would be worthwhile for everyone to take time to read it in advance of making a decision on this issue. This was well argued by an t-Aire Stáit, Deputy Creighton, earlier but I do not wish to revisit it. We are told that because we are legislating, we must legislate for the X case. That is not the case and a number of examples have been given. I outlined one example on Second Stage. The Government parties made the argument well on the issue of blasphemy. We introduced legislation at the time, which we knew

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could never be implemented, because there is a blatant reference in the Constitution that we must provide for a law of blasphemy. Here we are doing it on a supposition based on a Supreme Court judgment in the X case and Deputy Creighton has made the point well about that.

The Government parties argue that their hands are tied and they must legislate for suicide but that is not the case. I tabled an amendment on Committee Stage that would allow us to legislate for the issue before us to protect a woman's life where there is a risk based on medical issues, and leave the issue of suicide silent until there is an opportunity to amend the Constitution.

The Government parties also argue this legislation is about women and protecting their lives. All of us want their lives protected. I acknowledge where the thrust of the legislation is coming from and the vast majority of Members do not have a difficulty with the principle underpinning it but suicidal intent is an issue. I am disappointed that two issues that focus on the women who unfortunately will have to use this legislation have not been addressed in the Report Stage amendments tabled by the Government. One relates to the review mechanism under both sections 7 and 9. Unfortunately, a woman who has to go before a review committee must do so on her own, face three consultants and argue her case without being accompanied by an advocate. She is not legally entitled to an advocate. I do not know how one can say this legislation is pro-women when a woman is not legally entitled to an advocate when appearing before the review committee.

The second issue, about which I have tabled an amendment, is the legislation does not state that the consultants on the committee must review a woman's case at the closest location to her. In other words, a woman who is physically or mentally ill may in certain circumstances have to travel to the other end of the country to see the consultants on her own and advocate on her own behalf while ill. I cannot understand why those issues have not been addressed in this legislation if its focus is on dealing with women in a sympathetic manner when they are faced with serious illness. This provision is more about achieving an objective in the manifesto of one political party than dealing with what should be the focus, which is improving the health of pregnant women in this State and their lives.

**Deputy Patrick Nulty:** I oppose this cohort of amendments. One issue that has been lost in the discussion by those advocating for these amendments is there was a detailed national debate on this issue in a referendum ten years ago when the people were given the specific option to remove the suicide clause, which they rejected. Some Members argue that our citizens would somehow be grateful to us if we supported these amendments and deleted section 9, which deals with suicide but, on the contrary, they would be appalled and ashamed that we would so clearly disregard their opinion on this matter, which was decided by referendum.

There is a bizarre and deliberate attempt to distinguish between a physical risk to life and a psychological risk to life. All the advocates of these amendments to repeal section 9 have not come either clean or clear about why that section, more than any other, is a problem for them. Surely it is perfectly clear that if a woman is in the tragic situation of being pregnant and suicidal that must be taken as seriously as if there were any other risk to her life during her pregnancy. That seems a reasonable proposition. More important, morally, ethically, philosophically and constitutionally, she has a right to have that pregnancy terminated in this State if that is what is required. While I respect everybody's right to amend legislation, even where I disagree profoundly with it, there is an attempt in these amendments to undermine a person's constitutional right in that respect.

As has been noted, the restrictive nature of the legislation means that if one has the means, wherewithal and financial resources to leave the country to have a termination in these circumstances, one probably will do so. This legislation provides a basic protection for women who face such a difficult situation. One can only imagine the context in which they would be suicidal as a result of pregnancy, which is what this legislation seeks to address.

One of the contributors observed that when the record of this debate is being reviewed and assessed, questions will be asked as to why in 2013 the suicide clause was retained within the Bill. I believe questions will be asked about why this Oireachtas is debating a Bill which I support although it is so minimalist in content that it is totally out of synch with public opinion on this issue. As has been seen in the outcomes of referendums and as has been demonstrated in recent opinion polls, the vast majority of Irish citizens fully support legislation in this regard. It is not contentious for them, being basic public health legislation to protect 50% of our population. As soon as this legislation passes tonight, as I believe it will, comprehensively, if the Second Stage vote is anything to go by, we will need to move straight away to push for a referendum to appeal the eighth amendment as quickly as possible and address the substantive issue of a woman's right to choose overall.

**Deputy Billy Kelleher:** I refer to amendment No. 80, which I am surprised to see included in this raft of amendments because it does not seek to exclude suicide as grounds for a lawful termination in the State. What it proposes is that where the unborn is potentially viable outside the womb every effort must be made to sustain its life after delivery. The other part of the amendment states: "Notwithstanding anything in this section every attempt shall be made to explore with the woman, by means of counselling and support, alternatives to carrying out the medical procedure referred to in subsection (1)."

I have listened intently to the debate, not only in the Chamber but in my office. I remember that Deputies on all sides of the House raised the issue of cyber bullying and the fact that young girls have taken their lives because they were bullied in this way over a long period. A number of cases in Ireland come to mind, along with that of Phoebe Prince in Massachusetts, who took her life because of cyber bullying. If we genuinely believe that a young girl might take her life because she has been cyber bullied it is possible - and very probable - that a young girl, alone, afraid and vulnerable, who looks at the pregnancy test kit and finds she is pregnant may, because of that vulnerability, decide that suicide is the only way out of her dilemma. That is not something we can dismiss in the abstract - it is real, has happened and will happen again, as night follows day. At present that young girl has a few options. She can continue with the pregnancy, may go to England or may go on the Internet and procure abortifacient pills. In extreme circumstances, however, she may decide that ending her life is the only way to deal with that crisis pregnancy. That is the reality of the situation that confronts a very small number of women in this country.

People referred to the Oireachtas committee which heard that the overwhelming evidence is that a termination is not a treatment to prevent suicide. Every psychiatrist who spoke agreed this was the case because there is no treatment for suicide. This has been bandied about but what was clear in the evidence given is that there is a very small group of people who may, for whatever reason, decide to take their lives because they are in a crisis pregnancy. That is indisputable - it has happened and will happen again.

For all those reasons, therefore, I submitted my amendment in order to talk about the need for support, therapy and counselling in conjunction with discussions with the girl concerned.

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If people are genuinely concerned about this Bill, I ask them to think for one moment about this point. If one is a young girl who believes a termination is the only way to address her difficulties, as the law stands she will go to England. I argue that if the girl presented to her GP in Ireland and went through the process offered in this legislation she might realise, given support and assistance, that a termination is not the treatment for her crisis pregnancy. With counselling, therapy and assistance she may very well decide, in conjunction with her GP, her psychiatrist and her obstetrician that continuing with the pregnancy is a valid way to proceed.

People talk as if suicide in this case was something that does not really happen. It does happen and all the evidence presented in the Oireachtas hearings found that it was rare but real. We discussed this issue in January during the Oireachtas hearings and heard further evidence in May during those further hearings. We had Committee Stage and are now on Report Stage. The one area where this matter was discussed twice, however, was with the people - in 1992 and 2002. On two occasions they were asked to delete the interpretation in the X case in respect of Article 40.3.3°. On both occasions they decided it should be retained. People can argue as to whether the Government has an obligation to legislate but what is clear is its obligation to bring clarity to what is now the constitutional right of a woman in this State to procure a termination in the event of her life being at real and substantial risk and termination the only option left. That last is critically important - it must be the only option. In section 9 of the actual legislation it is stated it must be the "reasonable opinion" ...of registered medical practitioners "that risk can only be averted by carrying out the medical procedure".

We trust our psychiatrists in cases where they commit people and take away their freedom. We commit people in this State under our Mental Health Acts on the word of a psychiatrist. We sometimes decide a person is suitable to go to trial on the word of a psychiatrist. In regard to some of the most heinous crimes we take the view of a psychiatrist as to whether a person can stand trial for reason of their mental state. I am convinced that if psychiatrists are obligated to vindicate the life of the unborn, as they are so obligated under Article 40.3.3°, they will do so. They must always take into account what is best because this is a two-patient strategy about what is best for both the woman and the unborn.

When we talk about and refer to England and consider the 1967 Act presented by Lord Steel to the House of Commons and House of Lords, there is no comparison with this country. The United Kingdom does not have a written constitution and there is no obligation there to vindicate the life of a child. In Britain a termination is the intentional destruction of the life of a child. In the context of Article 40.3.3° I have tabled other amendments to this legislation, to make it crystal clear there is an obligation to vindicate the life of a child.

Reference has been made to the gestation period and I have thought long and hard about this. I listened to the evidence that was presented at the Oireachtas Joint Committee on Health and Children hearing. That evidence, the interpretation of the X case and the legislation before us concern saving the life of the woman, not more or less. If there is a threat to a woman's life, be it physical or mental, regardless of the stage of gestation of the unborn, there is an obligation on medical practitioners to save the life of the woman and equally to save the life of the child. If the child is born at 23 or 24 weeks there is a chance that it may not survive or may be born with disabilities. That is a medical fact but if the alternative is to allow the woman die then both woman and unborn die.

We need to keep to the facts before us in the context of this legislation. I supported the Bill on Second Stage and I tabled some amendments on Committee Stage which the Minister con-

sidered and he is bringing forward some to ensure an obligation to make every effort to save the life of the child. I welcome that. We are being asked to adjudicate on legislation that is already a constitutional right for a woman, to have access to a termination where her life is in substantial danger. We should speak to that area.

I spoke earlier about psychiatrists. At the hearings of the Oireachtas Joint Committee on Health and Children all agreed that termination is not a treatment for suicidal intent. Some people said that it should not be countenanced in any case. The strong body of opinion was that people do commit suicide because of crisis pregnancies in very rare circumstances. Equally, they have confidence in their professional ability to assess and adjudicate on who is and is not suicidal. Reference was also made to the fact that in diagnosing suicidal intent there is a 3% accuracy rate. For every 100 women who may be suicidal three will actually commit suicide. If my wife was going into an operating theatre tomorrow morning, or my brother, or my neighbour, or anybody else and they were told that they had a 3% chance of dying because of a procedure I would consider that an exceptionally high risk rate. We would not want to dismiss the fact that the rate is 3%.

Another interesting observation made during the hearing was that all these people being assessed for suicidal ideation or a threat of self-destruction are in therapy, which proves that with treatment, counselling, therapy and supports people who are suicidal can be treated. That is the important point. It is not as if the 100 women were not treated and we found out that three destroyed themselves. All these women were being treated, which proves that with psychiatric supports, counselling and therapy, people who are suicidal or have self-destructive intent can be treated.

I am not speaking to the amendments that support the deletion of section 9. I am speaking to my own amendment No. 80, which I think is very fair and reasonable. The Minister should consider it, for all the reasons I have stated because, as I said on Committee Stage, my concern is that the panel for assessment and adjudication is not just a box-ticking exercise for a girl or woman, who has presented to her GP in crisis, threatening self-destruction or self-harm and believes that the only solution to her difficulties is a termination. We are talking about a human being, a girl who is vulnerable. There should be an obligation for a patient-clinician type of relationship whereby every support and assistance would be given to that girl to deal with her threat to destroy herself. It is important to make the point that it is not just a clinical decision or box-ticking exercise, yes or no.

I do not believe that an avalanche of girls will present themselves as suicidal. There are several reasons for this. First, I believe that the threat of self-destruction is rare but real in pregnancy. We also have to believe and trust the women and girls in this country. We have to believe and trust our medical professionals. We trust our obstetricians and gynaecologists and our anaesthetists every day of the week. Why are we not willing to trust our psychiatrists, the professionals who deal on a daily basis with people with mental health problems, people who threaten to destroy themselves and other mental health issues and psychoses? We already take into account their views on taking freedom from people when committing them under the Mental Health Act and in the context of a court of law. That is why I said I would be clear about my amendment.

We cannot just dismiss the threat of suicide. We must be humane and understanding and believe because the evidence is there that girls who are vulnerable and in crisis have killed themselves. Others have accessed termination of pregnancy in Britain and others procure abor-

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tifacient tablets from the Internet. That is real life. That is what happens in the outside world. This legislation, as drafted and crafted, is restrictive. Some say it is too restrictive. I do not. I believe it is right, it is balanced, proportionate and it is there to assess a real and substantial risk to the life of a girl or woman in the context of section 9 and I welcome that. There should, however, also be some obligation not only to assess but to support and treat a girl in a crisis.

**Deputy Ciara Conway:** I oppose those seeking the deletion of section 9. In February 2013, a Wexford Coroner's Court heard, very tragically, that ten out of 14 inquests concerned suicides. One person under the age of 17 dies by suicide every month in this country. In 2010, 486 certified suicides were recorded, 386 very tragically were male and 100 were female. Suicide is the leading cause of death. It is a real risk for our citizens, male or female, or a woman, regardless of whether she is pregnant. Some people in this House seek to undo the erosion of the stigma from this issue following campaigning and lobbying to see mental health as an issue that needs to be addressed. Deputies Tóibín and Naughten said they do not consider this a medical issue. They should tell that to the medical doctors, the psychiatrists who have gone to medical school, who treat our citizens who have poor mental health and mental illnesses in our acute and community medical facilities all over the country.

Much legal analysis has been read out in the course of this debate and we have been asked to listen to it. I ask those Deputies to listen to the people. On two occasions the people asked that the X case be legislated for. Is democracy a mere inconvenience for these Deputies? Much has been made in this discussion about the need for evidence. I stated at the Bill's committee hearings, on Committee Stage and on other occasions that the evidence they so badly seek that suicide is a threat for women is evidence that should never be collected. It would mean that out of 100 pregnant women who are suicidal, 50 of them would get the treatment they need while 50 would not. I am not prepared to stand over that kind of evidence or that kind of risk to 100 pregnant women in our State. Members should reflect on what they are seeking.

Suicide is real. In 2010, 100 women died in this country very tragically because of suicide. People need to reflect on that. They need to reflect on the damage that is being done to mental health advocacy. For decades we have campaigned to erode the stigma around mental health issues. All of this is being undone by saying it is frivolous and not a medical issue. People need to choose their words carefully when they speak of mental health.

Having worked on a mental health team, I know it is our job, including that of psychiatrists, to reduce risks. We are trained to deal day in and day out with hundreds who present to general practitioners, accident and emergency departments and elsewhere with suicidal thoughts. As a mental health social worker, if a girl presents to me telling me the reason she is suicidal is that she is pregnant, am I to dismiss it? All people who present with suicidal intentions, be they male or female and pregnant or not, must be believed. It is our job as trained professionals - it is not some hocus-pocus, pulling things out of the sky - to assist them. It is so difficult to work in the area of mental health because the risks are so high. Am I not to believe the girl who tells me she is suicidal because she is pregnant? In some cases, the only treatment that will help her is termination.

We must reflect carefully on the kind of language being used when discussing mental health. I for one know the great stigma that is still associated with it. I know how difficult it is for those affected by it and their families to admit they need help. Are we to dismiss this now? Deputies who have spoken so spuriously about mental health in this debate tonight have in the past lauded the idea of removing the stigma. That is now all to be wiped clear if a pregnant girl says

she is suicidal.

**Deputy Michael Healy-Rae:** I applaud and congratulate Members such as the Minister of State, Deputy Creighton, and her colleagues on the other side of the House who have gone against this Bill. The only disappointment I have is that tomorrow, as a result of her actions tonight, I will no longer be able to refer to her as Minister of State. That is blatantly wrong. I appreciate when Members speak in this Chamber according to their consciences and from the heart, doing what they believe to be right instead of being dictated to by a party Whip. A very smart man once told me, "The wheel is always going around." People will be remembered for voting with their consciences. Some Members will be giving up much for themselves because of their beliefs. They do not care what they are sacrificing for themselves. They are putting their principles before themselves, as well as the betterment of their political careers. It is good to see politicians put this issue and their views before their careers. This must be acknowledged and appreciated. I appreciate it because a politician who will not stand for something will fall for everything.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Michael Healy-Rae:** It is good to see a few Members tonight who are willing to stand for something and put it on the record. Time will thank them for it. Tomorrow will not, but time will.

This Bill before us is wrong on the suicide issue. Every Member here is as interested in the protection of women's lives as they are in the lives of the unborn. We want to put the unborn life at the same level as that of the living person. In England, up to 6 million abortions have been carried out since 1967. Is anyone seriously trying to tell me that 72% of the people who had these abortions were suicidal? We are being asked to believe that over 70% of 6 million would have committed suicide if they had not had an abortion. I do not believe that.

The statistics in Ireland show that in our three maternity hospitals, out of 675,000 thankfully successful births, only two people committed suicide. They had other personal issues and it was nothing to do with their pregnancies. Everyone knows that it is natural for a person who is going to have a baby to be more concerned about her health and the protection and nurturing of that child. We are being told, however, that suicide is a massive problem. That is the lie that is being told here.

In 2008, 1.2 million abortions took place in the United States. In 2000, there were 1.36 million. Since the *Roe v. Wade* case in 1973, there have been 53 million legal abortions in the US. Were the majority of those ladies going to commit suicide? Today, the price of a legal abortion in the USA is €451. That is the price of a life in America. There are 3,500 legal abortions every day in America and 125,000 abortions per day worldwide. In China, over the past 40 years there were 330 million abortions. In Russia, for every ten live births there are 13 abortions. Every one of those people - they are people - denied their right to live is every bit as good as me, as Deputy Mattie McGrath, as any of the Ministers. They are every bit as good as any one of us. What we will do later tonight is to introduce this into our country. It is wrong and sad, and it will be remembered for a long time that it was the wrong decision. It had to be based on something, so it was based on the suicide issue, which is not an issue. That is the lie. In Ireland, out of 675,000 live births, two ladies committed suicide.

*7 o'clock*

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**Deputy Mattie McGrath:** Two too many at that.

Progress reported; Committee to sit again.

*Sitting suspended at 7 p.m. and resumed at 7.30 p.m.*

### **Mortgage Arrears Proposals: Motion (Resumed) [Private Members]**

The following motion was moved by Deputy Michael McGrath on Tuesday, 9 July 2013:

“That Dáil Éireann:

notes:

— the latest mortgage arrears statistics published by the Central Bank showing a further increase in the number of arrears cases with 142,118 family home mortgages in arrears at 31 March 2013;

— that, as a result of various initiatives by Government and the Central Bank, the balance of power has shifted firmly in favour of the banks and against the distressed mortgage holder;

— the recent publication by the Central Bank of the Revised Code of Conduct on Mortgage Arrears;

— the imminent enactment of the Land and Conveyancing Law Reform Bill 2013 which, *inter alia*, nullifies the Dunne judgment;

— the number of family home mortgages in arrears of greater than 12 months has increased significantly and now stands at over 54,000;

— comments from senior officials in the Department of Finance and the Central Bank predicting a significant increase in the level of home repossessions;

— that the banks hold an effective veto on any proposed arrangement involving the mortgage under the new Insolvency Service; and

— that under the Mortgage Arrears Resolution Targets:

— the banks are not yet required to achieve any targets for reaching agreement with borrowers;

— the banks decide on the nature of the sustainable solution to be offered to the borrower; and

— the sustainable solution can involve interest only, putting the borrower into the insolvency process or the repossession of the property by way of a court order;

recognises:

— the widespread concern among distressed borrowers of imminent legal action by

banks to initiate repossession proceedings; and

— the evidence from advocacy groups and from direct contact with mortgage holders that banks are now taking a more hard line approach with those in mortgage arrears;

— calls for the Code of Conduct on Mortgage Arrears to be revised to enshrine the following provisions:

— a clear definition of what constitutes an unsustainable mortgage following a process involving representatives of both borrowers and lenders;

— an entitlement to a minimum protected level of income for a borrower entering an arrangement with their bank;

— reinstatement of a maximum number of successful contacts that a bank is allowed to have with a mortgage holder in any calendar month;

— in recognition of the difficulty with placing a value on a tracker mortgage, where a borrower is faced with an offer which involves surrendering their tracker mortgage, a requirement that a third party verify if the offer from the bank is in their best interests;

— reinstatement of the 12 month moratorium on repossession proceedings for mortgage holders who have entered the Mortgage Arrears Resolution Process;

— the Central Bank to require that banks record all calls with borrowers and that these can be stored so that Central Bank staff can access them randomly to check them for any incidents of harassment or following a specific complaint;

— an obligation on a bank seeking an order for repossession to first obtain written confirmation from the Central Bank that it has exhausted every other course of action available to keep a family in their home; and

— an obligation on any bank seeking to classify a mortgage holder as unco-operative and moving for immediate repossession to obtain confirmation from the Central Bank that they can be properly classified as uncooperative; and

— further calls for regulation of debt collection agencies, in particular, where they are engaged by banks in respect of customers in mortgage arrears.”

Debate resumed on amendment No. 1:

To delete all words after “Dáil Éireann” and substitute the following:

“- acknowledges that this Government inherited a severe mortgage arrears crisis;

- recognises that the Government has already taken a number of significant steps to address the mortgage arrears problem;

- in particular, acknowledges that the current Government established the Interdepartmental Mortgage Arrears Working Group and subsequently published the group’s report in October 2011;

- notes that the group’s report indicated the mortgage arrears problem is complex and that a range of measures, such as personal insolvency reform, the development of

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mortgage-to-rent, the provision of mortgage advice, direct engagement by banks and the development of sustainable options by banks for their customers who are experiencing mortgage difficulty, need to be advanced to address the problem;

- recognises that the Government has moved to implement the main recommendations of the Interdepartmental Mortgage Arrears Working Group report; and that a special Government committee, chaired by an Taoiseach, is overseeing the implementation of the measures across Government;

- acknowledges that significant progress has now been made, including the fact that:

— the Personal Insolvency Act 2012 was signed into law on 26 December 2012;

— the Insolvency Service of Ireland was formally established on 1 March 2013;

— the mortgage-to-rent scheme is now available across the country; and

— a mortgage advisory function is now in place;

- encourages the Government and other authorities to continue this work, in particular to enhance action by mortgage lenders to appropriately address unsustainable mortgage loans;

- notes that the Government has taken steps to address a lacuna in the law arising from the High Court decision in July 2011 which created uncertainty in the law relating to the exercise by lending institutions of their repossession rights;

- notes the targets set by the Central Bank requiring the main mortgage lenders to offer durable solutions to mortgage holders over 90 days in arrears;

- notes that the latest Central Bank mortgage arrears and repossession statistics for end March 2013 show that there was a total stock of 79,689 principal dwelling house mortgage accounts classified as restructured and that 76 per cent of these are deemed to be meeting the terms of their restructured agreement;

- acknowledges the Central Bank's initiative of the Framework for a Pilot Approach to the Co-ordinated Resolution of Multiple Debts owed by a Distressed Borrower;

- notes the revision of the Central Bank's Code of Conduct on Mortgage Arrears; and

- recognises that there are provisions in the Central Bank's Consumer Protection Code for Licensed Moneylenders which provide protections to consumers in relation to the debt collection activities of licensed moneylenders."

- (Minister for Finance).

**Acting Chairman (Deputy Peter Mathews):** As a point of interest, the phrase "distressed mortgages" in the motion should actually read "distressed mortgagors". Mortgages are contracts; they do not get distressed.

**Deputy Finian McGrath:** Thank you, a Chathaoirligh, for that point of information.

**Acting Chairman (Deputy Peter Mathews):** I understand Deputy Ross is sharing time with Deputies Finian McGrath, Stephen Donnelly, Maureen O'Sullivan and Catherine Murphy.

You each have two and a half minutes.

**Deputy Shane Ross:** Thank you, a Chathaoirligh, for the very pedantic correction. You are absolutely correct and we are grateful to have someone as accurate and precise as yourself in the Chair this evening.

It is an appropriate motion from Fianna Fáil at this time, when we are apparently seeing an extraordinary solution to the mortgage problem, supported by the Government. The solution appears to be the final capitulation to the banks. As a solution to the mortgage problem, it is open season for the banks on the victims, who are the people who hold mortgages in this country. We are seeing an extraordinary situation in which the banks are being given, with the consent of the Government and the consent of the Central Bank, a licence to harass their customers. The existing restriction limiting the number of contacts that they could make has been lifted. We have also seen the end of the moratorium on repossessions and we have seen legislation introduced in this House to facilitate repossessions from people who have mortgages which are in difficulty. The result of that will be to give the banks freedom to move where and when they choose, without restriction. It is back to business for the bankers. It is open season on the borrowers.

What will we see? My guess is that we will not see a rush of repossessions. That does not suit the banks, not just in public relations terms, but in practical terms. We will see selective repossessions. We will see examples made of soft targets. We will see those who are not necessarily in negative equity being selected; in fact, we will see those who have equity in their houses being selected by the banks, because the banks will be able to sell those and get something back. This will avoid what the banks so greatly fear, which is a crystallisation of the losses on their loans and a realistic acknowledgment of the fact that their balance sheets are bogus. They will hit a few people here, there and everywhere, but they will avoid the reality they do not want to face, which is the fact that they remain insolvent.

There is much talk about an Oireachtas inquiry into what happened in 2008. That is fair enough, but what is happening now? This crisis, which is building up now, has the potential to be as big if not bigger than the crisis that engulfed us in 2008. The latest figures underline this. There is no reason the inquiry should not extend to how decisions are being made now on the issue of mortgages in distress.

**Deputy Finian McGrath:** A Chathaoirligh, thank you for giving me the opportunity to speak on this important debate on the mortgage arrears crisis. A total of 142,118 family home mortgages are in arrears as of 31 March 2013. This is a further reaction to the current recession, but also to the current economic policy of this Government, which seems to be words, spin and a lack of action. This is occurring on top of the scandal of the Anglo Irish Bank tapes and the manner in which our banking system is still working in this country. In the last election, the people voted for change and reform. A big part of the change was reform of our banking system and support for the mortgage holders. Our people are in pain, yet the banks want to kick them again and again. This is not acceptable. It is not good enough. Our so-called public interest directors should fight and stand up for these people and the SMEs. If they do not do so, they should get off the pitch and go home. The arrogance of our banking system should never be allowed to raise its ugly head again.

Our people want action. Our people want justice. Our people want the truth, and above all, our people want solutions based on top-quality regulation and good governance. These are the

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demands of our people and nothing below that is acceptable.

I have concerns about the fact that the number of family home mortgages in arrears of greater than 12 months has increased significantly, and now stands at 54,000 people. There have been comments from senior officials in the Department of Finance and the Central Bank predicting a significant increase in the level of home repossessions, and the banks hold an effective veto on any proposed arrangement involving mortgages under the new personal insolvency service. Under the mortgage arrears resolution targets, the banks are not yet required to achieve any target for reaching agreements with borrowers.

I strongly support this motion, which is about protecting the interests of people who are under pressure from the banks. It is about protecting homes and families, but it is also about ensuring that we have proper regulation and good governance in the banking system. I urge everybody in the House to support this motion.

**Deputy Stephen S. Donnelly:** I would like to support this Private Members' motion on the code of conduct on mortgage arrears and the mortgage crisis. I compliment Deputy Michael McGrath on his motion. Early in 2011, I co-sponsored a Private Members' Bill that urged action in the mortgage crisis, and it is quite a crisis. The figures we are talking about are the latest Central Bank figures, which refer to 95,000 mortgages. They are not the right figures. When we add in those in arrears of less than 90 days, the buy-to-lets and the restructured mortgages that are not in arrears, the figure is closer to 240,000. That equates to 650,000 men, women and children in Ireland living in these properties. I accept the Government's genuine efforts to set targets to restructure those mortgages in arrears. However, the arrears are simply the symptom. The cause is too much household debt and too little household income.

I encourage every Deputy to look at a piece of analysis by McKinsey from 2012 called "Debt and Deleveraging", which shows that all over the world, the only way to grow economically and create jobs is to deleverage or reduce the amount of household debt. That is when the private sector invests, that is when the economy grows and that is when jobs get created. That is why the recent changes to the code of conduct on mortgage arrears are not going to help the situation. In fact, they are likely to make the situation worse, because they will make it easier for the banks to restructure mortgages. However, most of these restructures will not involve any reduction in the total amount of debt. In fact, in many cases they will make the borrowers pay even more money, as they are put on interest-only arrangements or given a longer period over which to pay.

Split mortgages have been proposed as a solution, but they are not a solution. As the household hopefully becomes wealthier, the mortgage simply gets topped up again and again by the bank. Debt for equity mortgages offer a solution that both protects the balance sheets of the banks and helps to reduce household debts, thereby allowing for private sector investment. I will be submitting a paper to the Government presently on this subject. It is a way of deleveraging debt while maintaining the integrity of banks' balance sheets and, critically, allows individuals and families to engage in good economic behaviour and helps us to grow our way out of the crisis.

**Deputy Maureen O'Sullivan:** Aontaím leis an seanfhocal breá atá againn as Gaeilge, "Níl aon tinteán mar do thinteán féin". Ceapaim go bhfuil sé riachtanach gach rud a dhéanamh i dtreo is go mbeidh seans ag daoine fanacht ina dtithe féin. Every avenue to avoid repossessions has to be explored. Evictions played a part in the bleakest moments of our history and

we do not want to return to them. However, this is what we see in the case of those who are in mortgage distress. I recognise that the Government inherited the problem and that personal responsibility plays a role in that people took out these mortgages, but Governments and banks also have responsibility for the hype and all but forcing people into taking out these big mortgages without deposits. People bought houses at inflated prices and then encountered a variety of circumstances, including, in particular, job losses, which brought them to their current position. People in negative equity are generally in a particular age group.

The crisis was identified several years ago and if the measures already introduced had been effective, we would not be seeing an increase in the number of mortgages in arrears. The number of mortgages on family homes in arrears for longer than 12 months has increased significantly and there is a real danger that the new code of conduct will make matters worse. I refer to the moratorium and the prospect of limitless contacts by banks. I am told the contact is supposed to be proportionate, but to what will it be proportionate? The lack of an independent appeal mechanism is also significant.

Another distressing aspect of the problem, as related by New Beginning, is that the more responsible mortgage defaulters will be hit hardest. FLAC has pointed out that the new code gives lenders more control than ever and could result in repossessions. I recently had a meeting with Bank of Ireland and acknowledge that what its representatives told me about the position in Dublin Central is positive. One owner-occupied house has been repossessed in the past year and the holders of 92% of the bank's restructured mortgages are meeting their commitments. Public interest directors have an ironic title. Whose interests are they protecting?

**Deputy Dominic Hannigan:** I welcome the opportunity to speak on the motion. I agree with the part of it that expresses concern at the huge number of mortgages in arrears. Some 140,000 families throughout the country are suffering the stress of being in mortgage arrears. Not only is it difficult for them to make their mortgage repayments, but they also have less to spend on groceries and to meet their children's needs. This affects their bank balances, family relationships and mental health. When we debate this issue, we need to be mindful of the effect it is having on every facet of individuals' lives. As Deputy Maureen O'Sullivan noted, evictions have an historical resonance for Irish society. All of us are aware of the impact of the Great Famine in terms of people being thrown onto the road and having to emigrate. We are concerned to do all we can to keep people in their houses.

It galls me to see Fianna Fáil tabling this motion. It is trying to take the high moral ground on a problem it helped to create. For too long when it was in power it allowed lax financial regulation of the banks. This led to cheap money flooding the market. It took no action when banks started to lend 100% mortgages or offered multiple credit cards to individuals, regardless of how much they were earning or repaying. When people tried to shout "Stop, this is going too far," the then leader of Fianna Fáil offered useful advice. What did he tell people to do with themselves? I will not repeat his words in this House because Deputy Michael McGrath remembers exactly what he said. It galls me that Deputy Michael McGrath is now telling us that we are doing something wrong when his party got 140,000 families into this mess.

**Deputy Michael McGrath:** We are trying to solve the problem.

**Deputy Dominic Hannigan:** I know people in my constituency who are hurting because of this. I have met individuals who were given huge mortgages that they had no chance of repaying and are now trying desperately to keep a roof over their families' heads.

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**Deputy Michael McGrath:** The Government's answer is to give more power to the banks.

**Deputy Anthony Lawlor:** The Deputy's head is in the sand.

**Deputy Dominic Hannigan:** The Government is trying to clear up Fianna Fáil's mess. We know how difficult it is for people and have introduced a number of schemes to make things better. The Insolvency Service of Ireland was established on 1 March. The mortgage to rent scheme is now available across the country. We have also put in place a mortgage advisory function. There has been some, albeit limited, good news. The Central Bank's figures for March indicate that almost 80,000 mortgages have been restructured and most people are now meeting the terms of their restructured arrangements, which is welcome. In the coming weeks we will receive further reports from the banks outlining what they are doing to restructure mortgages and keep families in their houses. If the figures are lower than we wish, we will tell them they are unacceptable. We set the banks a target and put money into them. We expect them to deliver and will be keeping a close eye on them to make sure we keep as many people as possible in their homes.

**Deputy Arthur Spring:** I previously worked in a bank, but I have never provided a mortgage for anybody. Unfortunately, I took out a mortgage in 2006 and still feel the legacy. Like my colleague, I find it a bit rich that the people in the Galway tent-----

**Deputy Michael McGrath:** I was never in it.

**Deputy Arthur Spring:** -----who allowed the developers to ride into the sunset with all their money are now telling us they have a solution for the 140,000 families in mortgage arrears. That is harsh but fair. The only thing missing from Fianna Fáil's motion is the apology its leader gave for what he did to the country. I am sorry, but it will not go away because every day I meet people who are dealing with the legacy in the form of their mortgages. They may be paying interest only or some of the capital on 30 or 40 year mortgages, some of which were for 100% or more. I respect Deputy Michael McGrath, but it is difficult to stomach the motion.

On the idea that Irish banks are somehow against Irish people, if the Central Bank is licensed by the Government, it must do the right thing by the people. It is of paramount importance politically that we are astute about what is happening. The consequence of leaving people in houses when they do not make repayments is that the individuals concerned never get on with their lives, the bank never finds a resolution, the country never gets its money back and we are in limbo forever and a day. The banks want to be sold, but in order for them to be privatised and the money to come back to the State, they need to be in good order and their mortgage books need to be subject to due diligence by prospective purchasers who will examine whether the mortgages are sustainable. That is independence and objectivity on the part of a potential buyer. If the banks have not done their work properly, we will not be able to sell them.

David McWilliams advised us to go the mart if we wanted to see people bargain and trade. Unfortunately, we are leaving people to the skill of the pits. Their awareness and capacity to speak are being withdrawn a little because comparability is necessary in my book. People need to go to the bank to say they will declare bankruptcy if they are not given a split mortgage or another sustainable solution. They would rent a home and be back in the market in three years and could hope to save towards purchasing a house in a depressed market because the housing market will be in an even worse position than it is if there is no movement to that effect. There is no doubt about this. People can offer banks the choice of either having a bad debt on their

books or a potential contingent liability through a split mortgage.

Some people are coming here with real solutions. Deputy Stephen S. Donnelly suggested a debt for equity solution, but I do not know of many financial institutions that would buy into such a bank. I have a proposal for people of my generation. We should look at how we go about making our mortgages sustainable. Currently, mortgages offer nothing other than a form of air space in which many of us do not want to live as they cannot support sustainable families. Often all that we have are apartments, but we want to trade up and move into homes. Can we include these apartments and first properties in a private mortgage which could be isolated in a pension investment? In other words, could we convert them to a personal pension fund that would be tax efficient for us? I have suggested this to the Minister of Finance on many occasions. Rather than investing, this would be a way to deal with the issue.

On the code of conduct, I believe the banks are delighted with the idea of having a watchdog and a central bank. The majority of bankers I know are good, honourable people, but they hang their heads in shame because they are associated with particular institutions and certain political parties that are largely responsible for what we are talking about tonight. I believe there are two big issues for the Government. The first concerns the need to deal with the mortgage arrears crisis, while the second concerns the need to deal with the unemployment crisis. We are doing everything we can to deal with these issues, but it is not helpful to suggest that a code of conduct that we will supervise and watch is not the way to move forward on this issue. It is also unhelpful to tell people that we have not done right by the banks. They do not feel confidence in the integrity of the institutions as a result of their being undermined.

The Central Bank is in a much better state than it has been heretofore. I believe that when individuals contact MABS, banks, solicitors and personal insolvency trustees, they will find that there is a way for them to support sustainable debt and for the economy to become buoyant again, rather than for bankers and developers to make exorbitant profits and run off into the sunset. There is a way for people to have a decent standard of living and to have aspirations to trade up and sustain and develop families. The MABS welcomes applications. Banks also welcome approaches from people. The Central Bank knows what it is doing and has targets.

Not being partisan on this issue, it is for this House to observe the Central Bank and ensure it does the right thing. We can, through freedom of information requests and parliamentary questions, ensure it does the right thing. I urge Deputies in non-government parties to do this also. People of my generation who are bearing the brunt of this problem are either emigrating or dealing with mountains of debt. I urge them to go to the banks and seek a solution. The Personal Insolvency Bill is coming down the tracks and will have the greatest impact on our society at this time because people will be able to get on with their lives and the banks will no longer be the burden they are on the Government and the people.

**Deputy Anthony Lawlor:** I hope Deputy Michael McGrath does not take what I have to say personally as my tirade is being launched at his party and organisation.

**Deputy Michael McGrath:** I thought the Deputy would make a positive speech and talk about solutions.

**Deputy Anthony Lawlor:** I love it when Fianna Fáil brings forward motions because that gives all of us on this side of the House the opportunity to remind the people of the dung heap left behind by Fianna Fáil.

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**Deputy Michael McGrath:** The Deputy is wasting time. He should deal with the substance of the motion.

**Deputy Anthony Lawlor:** Fianna Fáil left people in the position in which they find themselves today. I look at it and see it as like a big elephant with a small brain. It can only look ahead and forgets the big pile of dung it has left behind. Invariably, in recent years Fine Gael and the Labour Party have had to clean up after Fianna Fáil and try to sort out the mess. This happened in 1977 when Fianna Fáil introduced an expansionist programme which caused havoc in the 1980s. I am one person who had to leave the country in the 1980s because there were no jobs to be found. In 2011 Fianna Fáil again left the country in a mess. We must examine the position in which the country was left and try to see what positive moves we can make. One of the good things the former Minister, the late Brian Lenihan, did towards the end of his career was to make Professor Patrick Honohan Governor of the Central Bank. He then selected Mr. Matthew Elderfield as Financial Regulator and he has done great work for the economy. I wish him all the best in his future career.

I want to focus on the problem that occurred, our current position, why we are in a mess and people are still suffering as much as they are. In 2010 when Fianna Fáil was in power, nearly 50,000 people were in mortgage difficulties. What did Fianna Fáil do about this? The reason many of the people concerned were in mortgage difficulties was the policies that had been put in place by Fianna Fáil. We must ensure we do not carry on any of these policies during the party years, between 2000 and 2008. During these years, at the height of the Celtic tiger, people could obtain any type of mortgage they wished. At the height of the Celtic tiger there were almost 380 mortgage packages available. Currently, there are 146. The types of package available at the time included those for first-time buyers and 100% mortgages which were offered, in particular, by companies that had moved into Ireland such as Bank of Scotland Ireland. Also available were top-up mortgages, switcher mortgages and a variety of other mortgages available for residential investment properties. We have done our best to put an end to these and the number of packages now available has been reduced to 146. What did Fianna Fáil do to reduce the number of mortgage packages available at the height of the Celtic tiger and try to prevent what happened taking place? We have put a regime in place where nothing like that can happen again.

We should also look at what else happened. Fianna Fáil allowed in excess of 1,200 small mortgage brokers to be established during the period in question. Most of these ended up dealing with sub-prime lenders. One of the problems we now have is that we must deal with sub-prime companies that lent money to people for whom they did not engage in due diligence when offering loans. When we look at one of the schemes we have put in place, the mortgage to rent scheme, we see that it offers people involved in the resolution process a chance to stay in their homes. When we look at the numbers involved, we see that 60 out of 100 home owners applying for this scheme are home owners with sub-prime loans. AIB has only four such loans per 100. Some banks were providing for due diligence, but the problem was that there were too many companies in operation. Sub-prime lending was a practice Fianna Fáil permitted and we have had to sort out that problem and ensure it will not happen in the future.

One other issue I wish to raise relates to housing lists. There are in excess of 5,000 people on the housing waiting list in Kildare. A great scheme was introduced in 2000 by the former Minister, Mr. Noel Dempsey, under Part V of the planning Act which dealt with social and affordable housing. This was a great idea at the time and what happened was that a portion of the huge amount of property being built by private developers was taken over by local authorities.

However, many of the people who bought affordable housing at the time are now in trouble because they are paying more for their affordable house than other people in the neighbourhood. This scheme must now be scrapped. Part V no longer offers a workable solution. This year fewer than 10,000 houses will be built. How many of these will come back to the people? We must make dramatic changes. We must get local authorities back in the business of building houses, as we said to the Minister of Finance previously. We must scrap Part V and put in place a new scheme.

It is welcome that we are allowed to speak and remind the people of who caused the mortgage crisis.

*8 o'clock*

We are putting in place a variety of schemes to help people to stay in their own homes, unlike what Fianna Fáil did and failed to do when it noticed this was going to happen in 2010. As I said earlier, it is like the big elephant, walking forward, forgetting about the dung heap it left behind.

**Deputy Dan Neville:** I welcome the opportunity to speak on the motion. Previous speakers referred to distressed mortgages and I want to deal with this issue and the people involved. Some 47% of those who have mortgages are seriously distressed people. I get my information on this from MABS, which is an excellent organisation dealing with this issue at the coalface, and with which I had discussions earlier today. There is considerable personal distress among mortgage holders. While 47% is a suggestion, there are no clear statistics around the level of distress. We are dealing with the whole area of how to handle the mortgages, the banks and so on but we are not dealing with, examining and quantifying the level of personal distress.

Let us make one point clear. The majority of people want to pay back their debts. While there is of course a very small cohort who want to misuse the situation, let us put to bed the idea that people do not want to pay their debts, because they certainly do.

Most of the people involved, although not all, are male clients of the banks who are dealing with debts that are out of control. MABS has told me that, increasingly, it has to hold people's hands to try to help them through the crisis they are experiencing. People who are in long-term distress are tired and weary, lack confidence, have lost self-esteem and have lost hope. Let us realise where people are. MABS told me that the first thing it often tells people is to visit their GP immediately. The support systems that are available are all over the place and, to some extent, MABS is being sidelined. Is there a clear strategy by the Government in regard to the role of MABS, which has fantastic expertise? My organisation, the Irish Association of Suicidology, examined this issue at one of our conferences and we know the people in MABS have a lot of expertise to contribute.

There is a lot of confusion around what is going to happen, including what will happen to these people in the context of the Personal Insolvency Act and whether there is long-term support for them. What about the whole area of repossessions? There is no clarity in the talk about repossessions. Targets are given to people but how significant are those targets?

The banks have training for their financial advisers at different levels but the implementation of those skills is the problem. If the bank manager does not support how they handle their clients and the bottom line is the only thing that matters, the stress created becomes an issue. The banks' financial advisers have to be very careful how they handle people on the telephone.

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Males, in particular, often answer “Yes” and “No” in response to questions they are asked on the telephone. The banks are advised to opt for more face-to-face discussions with people in distress and clients with difficult mortgages, rather than looking for financial information over the telephone, because it is sometimes difficult to communicate in that way. If the banks feel they are not getting the full story, they can get suspicious about their clients, which creates further distress. Face-to-face discussion with body language is vital but it is missing on the telephone. It is important that face-to-face communication is used.

There must be an understanding of how to deal with distress. The banks must ensure the training and skills of financial advisers are improved rather than just focusing on the bank’s bottom line. Everything is concentrated on the bottom line rather than the situation of the person. We know about the pressures of the recession but this is an aspect that is not discussed or understood except by those experiencing it.

**Acting Chairman (Deputy Peter Mathews):** Thank you. It is important for us all to remember the human side of what is behind these mortgages.

**Deputy Jim Daly:** I thank the Chair for the opportunity to speak. To follow on from the previous speaker, whatever about the actions of the past, including those of Fianna Fáil or any other political party, the actions of the present are far more worrying. The previous speaker is correct that there is serious distress for mortgage holders. All of us have a duty of care and a responsibility to put politics aside and not to take advantage of the distress, fear, emotion, the highly charged atmosphere and the hatred towards the banks, and not to ride on that bandwagon. We have to be more responsible in what we do and say. Whatever about the legacy of its past, and let the judgments of history be formed later, I appeal to Fianna Fáil to be more responsible. I charge Fianna Fáil with being irresponsible in many of the statements it has issued that take advantage of that fear factor. It might help it in the polls but, by God, going on the basis of what the previous speaker has said, it will certainly harm an awful lot of people.

I want to take the opportunity to reassure people, in the first instance, that no bank can repossess their home. That is a myth. No bank, no financial institution or no Government has the power to take a person’s home. Only the courts can take a person’s home. While the banks can take a home with the consent of the homeowner, they cannot do it without the authority of the courts. It is a matter of regret to see the scaremongering tactics being employed by Fianna Fáil on this worrying issue. It is important that people realise that only the courts can repossess a home, not a bank.

Fianna Fáil is constantly making the argument that the Government is not doing enough for mortgage holders. It fails to recognise the measures that the Government has put in place or acknowledge the steps that have been taken to assist people affected by this crisis, such as the Personal Insolvency Act, the Insolvency Service of Ireland, the Land and Conveyancing Law Reform Bill, the Central Bank targets required by lenders to create sustainable solutions, the revised code of conduct, the mortgage to rent scheme and the mortgage advisory service, which had 110,000 hits on its website in the past 12 months.

Some commentators, ably supported by opportunistic politicians, are trying to lead people down the fear route into believing the revised code of conduct somehow allows lenders to start legal proceedings after three months - in fact, this was a glaring headline in one of the newspapers. This is not the case. The earliest a bank can begin legal proceeding is three months after negotiations fail between the bank and the borrower, and a minimum of eight months has to

have passed after the account went into arrears. These are the facts people need to be aware of. There are no provisions in the revised code that will enable banks to fast-track repossessions.

Fianna Fáil has further tried to imply that the Land and Conveyancing Law Reform Bill will lead to mass repossessions across the land. This, of course, is not the case. In fact, the purpose of this Bill is to correct a legal uncertainty that arose as a result of a High Court ruling on legislation brought in by Fianna Fáil in 2009. It certainly was not the party's intention when publishing that Bill that this particular legal glitch would prevent repossessions in the future.

There are a certain number of properties that should be repossessed, including some of the 30,000 buy-to-let properties where the mortgage holder has been in arrears for more than 90 days. These are the unsustainable loans that the banks will move to repossess, not family homes. Claims to the contrary are nothing but opportunistic populism by Fianna Fáil. That party has been calling for some time for an independent mortgage resolution office to deal with the arrears problem. This is yet another example of opportunistic populism and a totally unrealistic, unviable and potentially toxic notion. Members opposite are not living in the real world and are instead spouting fanciful and fantastical economic theories. It simply is not realistic to propose that an independent body should decide whether a bank gets paid all, some or none of its outstanding loans to distressed borrowers. The notion that a financial institution would be expected to lend money to potential borrowers in a situation where that institution is denied any say in how the money is recovered should the loan become impaired is absolutely farcical and would undermine the entire financial system.

The Minister for Justice and Equality, Deputy Alan Shatter, and his colleagues in government have gone to great effort to put in place the new personal insolvency regime which will ensure, for the most part, that homeowners can remain in their homes. A range of measures were put in place to absolve people from household debts of up to €20,000 and investment choices of up to €3 million. It is a fact that the agreement of 65% of creditors will be required to approve a debt resolution plan. I ask Members opposite, however, to put themselves in the shoes of a bank manager who is owed, say, €100,000 by a client. Would they consider it fair and reasonable that a third party, independent of the process, should decide how much, if any, they would be repaid? If this proposal were to be implemented, would any bank ever again be interested in lending to anyone in this country?

**Deputy Michael McGrath:** That process already applies to every other form of debt.

**Deputy Jim Daly:** The purpose of the new Insolvency Service of Ireland is to encourage lenders to come to a reasonable accommodation with borrowers which allows them to keep their family home. I am confident that this will happen, provided that borrowers make a full and honest disclosure of their affairs.

Where agreement is not reached, it will ultimately be up to the courts to adjudicate on a fair solution. This route would, however, involve great costs for the banks and, as such, they will have no interest in pursuing it where they are confident the borrower is co-operating. In a case where the debt resolution proposal is that an individual's mortgage be reduced from €300,000 to €200,000, why would the bank possibly choose to incur legal fees of perhaps €30,000, the time delay of a legal battle and the possible sale of the property for €100,000 less, which would result in the balance being written off? The appeals board Fianna Fáil is seeking to put in place already exists in the form of the courts. Moreover, it is not envisaged that it will be necessary to refer many cases to the courts as common sense will and must prevail. This proposal, if imple-

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mented, has the potential to stall the mortgage market completely and have a massive negative effect on the economy as the Government continues to rectify the situation it inherited from its predecessors.

**Deputy Michael P. Kitt:** I propose to share time with Deputies Robert Troy, Sean Fleming and Michael Moynihan.

**Acting Chairman (Deputy Peter Mathews):** That is agreed.

**Deputy Michael P. Kitt:** I thank Deputy Michael McGrath for bringing forward this motion which deals with a very serious issue for people throughout the country. It is an issue that is brought to our attention every day. As the Deputy highlighted, the latest mortgage arrears figures published by the Central Bank show a further increase in the number of arrears cases, with 142,118 family home loans in arrears as of 31 March this year. This begs the question as to what action the Government has taken to address the problem.

Mr. David Hall of the Irish Mortgage Holders' Organisation is of the view that the figures point to a complete lack of action on the Government's part. He has offered as evidence the fact that only 144 split mortgages have been given out in the whole country. He has further observed that the number of people in arrears, particularly long-term arrears, is on the rise, which should worry us all. He has also pointed out that the banks' preferred method, the term extension, offers little solace to distressed homeowners. A term extension is fine if one is very young, he has remarked, but for most people, it is simply a case of delaying payments. The problem is that not all of the supposed solutions are available to everybody. Instead, it is a case of the banks choosing the solutions that suit them.

There seems to be some surprise that the figures were quite so bad, with the number in arrears for more than one year at well over 50,000. *The Irish Times* of 22 June pointed out that the number of home loans in arrears for 90 days or more had risen to 12.3% in the first quarter of the year. The Free Legal Advice Centres, FLAC, have expressed the view that the Government has failed distressed borrowers and is more concerned with protecting the State's banks. It has further stated there are 95,000 households in very serious difficulties, which equates to hundreds of thousands of people. In other words, this is not merely a debt problem but also a major housing issue.

The Central Bank must have a more significant role in the matter of property repossessions. We are calling for the code of conduct on mortgage arrears to be revised and, in particular, for the 12-month moratorium on repossession proceedings for mortgage holders who have entered the mortgage arrears resolution process to be reinstated. We also call on the Central Bank to require that banks record all calls with borrowers and allow Central Bank staff to access these recordings randomly to check for any incident of harassment or following a specific complaint.

The current level of mortgages in arrears for over 90 days amounts to a sum of €1.8 billion owing to financial institutions. The former head of lending with Danske Bank, Mr. Fran Dalton, has highlighted some of the problems with one of the commonly discussed options for people struggling with debt, namely, the split mortgage. In the case of a mortgage of €400,000, for example, of which €180,000 is parked, the borrower might well be able to service the remainder of €220,000. If, however, the parked portion of €180,000 continues to accrue interest at, say, 4%, after 25 years it will have grown to €400,000. This will put the person back at square one, except that he or she is now older and has very few options.

The implications for people's health arising from the stress of unsustainable debt are very serious. I read an article recently about a woman who had been in business for ten years when she was diagnosed by her GP as being out of her mind with stress and anxiety. As we know, the self-employed have always had a bad time dealing with banks. This particular individual had a personal loan and a car loan and also a bill from Revenue for some €26,000. She received calls from the bank every day in which her weekly expenses were worked through line by line. The story had a good ending in that she restarted her business and is now on a decent salary, but her final comments were interesting. She said all she wanted from the bank was time, which would have allowed her to avoid defaulting. The problem, she said, was that she did not owe enough and the bank was, therefore, absolutely merciless in its treatment of her.

The Governor of the Central Bank, Mr. Patrick Honohan, said at the weekend that he expected there would be repossessions by Irish banks of buy-to-let properties where the mortgage was in arrears, but he hoped there would be very few repossessions of owner-occupied family homes. In an interview on RTE Radio 1 Mr. Honohan said temporary solutions such as only repaying the interest part of the loan would not do the trick for a large number of people in arrears. It was clear, he said, that there would have to be more fundamental and sustainable approaches. The Central Bank has given banks a timetable to meet in tackling arrears, with the first target being to provide solutions for 20% of such customers by the end of June. Last week, however, Ulster Bank stated it was prepared to take legal action against borrowers not servicing their mortgages.

Fianna Fáil's position is that keeping people in their family home, in so far as it is practical to do so, makes for good social policy and also makes sound financial sense.

**Deputy Robert Troy:** I welcome the opportunity to contribute to this extremely important debate. I compliment my colleague, Deputy Michael McGrath, on bringing forward the motion. It is greatly to his credit that all Members, on both sides of the House, have been given a chance to debate this critical issue for the people. It is unfair to say my party is playing on people's fears. In fact, in recent months I have been inundated with requests for help from people struggling with mortgage arrears. They are asking me to intervene with the bank, fill in forms and so on, but what they really want is a reasonable solution.

The sensible solutions we have brought forward were not conceived in recent months. More than two years ago we introduced legislation to allow for the establishment of an independent debt settlement agency and introduce measures to safeguard the family home. That Bill which was introduced in Private Members' time was not opposed by the Government. At that time, the Government felt it was good legislation and was, in some way, dealing with the issue. Unfortunately, in the intervening two years, instead of getting better, the problem got worse. It is not Fianna Fáil saying it is getting worse; any right-minded or fair-minded independent analysis tells us it is getting worse. The figures speak for themselves. The Central Bank director of credit institutions and insurance supervision, Ms Fiona Muldoon, speaking to the Irish Banking Federation conference in 2012, criticised the lack of long-term sustainable solutions to the arrears problems. She said it was a drag on the economy, new lending and future profitability of the banks. The distressed credit review carried out by the Central Bank found in February of that year that there was an absence of an appropriate cultural skill set in banks to deal with the mortgage crisis and that work-out teams were under-resourced and poorly equipped to engage with customers. Short-term forbearance has been the main response, leading to high default rates and few long-term solutions.

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We brought forward sensible solutions, in contrast to what the Government has done. While in opposition, Government parties said they would swoop into office and put manners on the banks. In the past number of years we have seen the number of families in arrears escalate to 144,000. As a result of the arrears, they are having sleepless nights and suffering psychological problems, as alluded to by a previous speaker. If we ask what guidance the Government has given the banks to deal with these families, recent initiatives by the Government, far from putting manners on the banks, ensure the balance of power has moved away from distressed mortgage holders and firmly into the hands of the banks. In the past few weeks, the Government has approved the revised code of conduct on mortgage arrears. The new code of conduct removes essential protections from the homeowner. It removes the limit of three successful unsolicited communications per month. For the first time, the banks' personnel can call directly to the home of a person and there are no safeguards to ensure this level of conduct will not be abused. The moratorium on legal proceedings has gone from 12 to eight months or three months after the mortgage arrears process is complete. Some 15,000 houses fall within that category, meaning 53,000 families could face eviction and mortgage repossession. There is no entitlement to a minimum level of income. What a family must survive on month to month will be determined at the total discretion of the bank. All Members of the House can give examples of experiences of so many families in the past number of years, before the new code of conduct and before the Government gave the banks a pathway to move into an aggressive mode of dealing with the issue.

Previous Government figures have tried to apportion blame for where we are today. In Davos, the Taoiseach said we all partied and that we all must take some element of responsibility. It is very easy to score political points off one another and grandstand. That is very little help to thousands of people who feel neglected and let down and that there is no sense of hope or light at the end of the tunnel. The onus is on all of us in the House to come up with sensible solutions and a sense of hope that things will get better and that people can retain ownership and live in their family homes. Not only is it one of the biggest barriers to growth and recovery in Ireland, it is doing untold psychological damage to the men and women weighed down by the burden of debt. There are no statistics for Ireland but a 2011 survey of 7,000 people in the UK found those in debt were twice as likely as those not in debt to contemplate suicide.

We can move away from the need to address this from an economic perspective. We should look at the damage from a psychological perspective to men and women who are citizens of the State. The onus is on us to bring forward a sensible solution. The charter and the decisions should not remain with the bank. Fianna Fáil produced a number of solutions to ensure there was an independent arbitrator so the banks could not ride roughshod over the citizens of the State. Have we learned nothing over the past number of years about how banks can mislead and mistreat people? There should be an independent arbitrator to determine the terms and conditions of sustainable solutions. Some people are blatantly not paying their mortgages, and they should be dealt with, but 95% of the 144,000 people want to pay what they can.

I met a woman recently whose husband walked away from her four years ago. He left her on her own with two young children. Her only means of income is the one-parent family allowance and child benefit. She has a variable rate mortgage of €700 per month. The ECB has maintained rates at an unprecedented low level but she is paying a variable rate of over 4%. She finds it hard to put food on the table. When she sought help from the local community welfare officers, she was advised they are unable to help her because her estranged husband's name remains on a mortgage. An arm of the State is unable to help someone who is making every

effort to repay a mortgage.

There are only 144 cases of split mortgages. The mortgage to rent scheme was championed by the housing section of the Department of the Environment, Community and Local Government. It was going to apply to families who were never in a position to repay mortgages and who are weighed down by the burden of debt. The mortgage to rent scheme was introduced over 12 months ago and the figures to the end of March show 37 cases complete. I do not know how any Government Deputy can come into the House and say the Government is taking the crisis seriously. The figures speak for themselves and unfortunately it is not giving the crisis the attention it deserves. I thank the Acting Chairman for his forbearance.

**Deputy Sean Fleming:** I welcome the opportunity to speak in this debate. I join colleagues in thanking Deputy Michael McGrath, the Fianna Fáil spokesperson on finance, for tabling the motion. When all is said and done, this is the most important issue facing Irish families, especially those with young children and people who purchased houses over the past decade. They are in a severe situation and they are becoming more and more distressed, not just because of the financial distress but also because of social and family distress caused by difficult mortgages. Deputy Michael McGrath has highlighted in his motion the latest mortgage arrears statistics published by the Central Bank. There were 142,118 family home mortgages in arrears at the end of March last. I am sure the figure has increased by 3,000 to 4,000 since then at a rate of 1,000 per month. I am not even including buy-to-let mortgages but refer only to family homes. Various initiatives of the Government and Central Bank have shifted power in favour of the banks and against the mortgage holders who are their customers. The recent publication by the Central Bank of the revised code of conduct on mortgage arrears is causing further problems and distress. The banks hold the veto on any proposed arrangements involving mortgages under the new insolvency service. Under the mortgage arrears resolution targets, banks are not yet required to achieve any targets for reaching agreement with borrowers. The targets relate only to the making of offers. An unsustainable offer can be made, allowing the bank to send a figure to the Central Bank to demonstrate that it is meeting the targets. Such targets are fictional as they do not deal with cases which are being concluded or arrangements being entered into. They may simply relate to an offer.

Fianna Fáil calls for the code of conduct on mortgage arrears to be revised as it must include a clear definition of what constitutes an unsustainable mortgage and require a process involving representatives of both the borrower and the lender. Currently, a bank may unilaterally decide what constitutes an unsustainable mortgage and will base such assessment on its own subjective criteria. The code should also include an entitlement to a guaranteed minimum level of income for a borrower and his or her family, taking into account the number of children living in a house. That is not adequately catered for at the moment. There are differing views on the guidelines and a level of inconsistency exists in the approaches of various financial institutions. The code must also include an obligation on a bank seeking an order of repossession to obtain written confirmation from the Central Bank that the bank itself has exhausted every other course of action available to keep a family in their home. I stress that this is perhaps the most important issue that needs to be dealt with. We cannot allow banks to decide unilaterally that they have made every reasonable effort. Somebody must be able to certify on behalf of the public and in the public interest that the banks have done so. There should be an obligation on any bank seeking to classify a mortgage holder as unco-operative and to move to immediate repossession to obtain, again, written confirmation from the Central Bank that such person can be properly so classified. There must be independent verification of the process.

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Fianna Fáil also calls in its motion for regulation of debt collection agencies, in particular those engaged by banks as representatives who want to contact customers on their behalf. It is an issue which has been overlooked. There are a number of unsavoury people out there, some of whom have criminal convictions and records, calling to people's houses to collect debts. It is a practice which must be regulated. Fianna Fáil does not consider that adequate safeguards have been put in place to counteract the possibility of abuse and increased contact by the banks with distressed borrowers. The new code fails to enshrine an entitlement to the minimum level of income required for a household. FLAC, which advocates for a number of people in the firing line, has said that the revised code confirms that the lender is the sole arbitrator of whether a mortgage is unsustainable or not. The bank will decide whether a borrower is co-operative or not and what the sole solution will be. There is no proper appeals mechanism and there is no guarantee of advice to borrowers going through negotiations with the lender.

We published draft legislation some time ago in relation to the Personal Insolvency Act. We believe a number of options should be considered and included in the mortgage resolution order, including split mortgages, which has not adequately been addressed, and interest-only payments. When we talk about interest it might not be the full interest but two thirds or 60% depending on the particular case. We have looked at extending the period of mortgages and also we want to talk about the debt for equity swap. In the draft legislation we highlighted that in the event of a voluntary surrender, a financial institution should rent the family home back to the borrower at the current mortgage rent. That rental or lease agreement should provide that in the event that the person sees their financial situation improve through obtaining good employment, they should have the first option to re-purchase the house. That should not even have to be done at the voluntary surrender stage. That can be done informally between the financial institution and the borrower. It is important that people are given the option to remain in their houses. Why do we have such arrears? It is because of the level of unemployment. From whatever angle one considers the matter, it is clear that people are in arrears because they have lost their jobs. Many who still have jobs are on reduced incomes. Until the Government takes action to deal with unemployment, we will continue to have mortgage arrears.

I am concerned that the banks will pick the easy targets. They will target people with substantial equity rather than to go after those with negative equity as they do not want to face up to having to sell properties at a loss. They will go after people who have paid a substantial portion of their mortgages. In particular, they will go after people in areas where house prices are beginning to rise. They will not go after people in areas where property prices are not rising. The Government is giving the banks *carte blanche*. This is strengthening bankers' hands and reinforcing the old culture. Banks will not learn from this process. If they do not, they will come back and cause havoc in another decade or 15 years when the current draft of managers has moved on. This is happening now because the banks want it to happen. They did not want these extra powers three years ago when house prices were still dropping. They did not want it two years ago when prices were dropping. They see that, in some cases, the property market has stabilised and that property prices are beginning to rise. Now is the time they want to come in for the kill and repossess properties in a rising market. They are taking this power now because it suits them. Mortgage arrears are causing families stress, creating mental health difficulties and leading to family break-up. We must restore the balance between customers and the banks from which they obtained their mortgages.

**Deputy Michael Moynihan:** I welcome the opportunity to speak on the debate and compliment Deputy Michael McGrath on moving a timely motion. This is one of the more serious

issues with which every public representative is dealing on a daily basis.

Deputy Fleming said the banks must learn from this. The parties opposite will remember that a bubble was created in the agricultural sector when we joined what was then known as the Common Market. Enormous prices were paid for agricultural land in the mid to late 1970s. It took a decade or more for farmers to trade out of it. A debt relief system was introduced in the 1980s to sort out the difficulties of the farming community. Many farms were sold and repossessed. Deputy Fleming's point is that in the case of that crisis, things were softened and farmers were allowed to trade out of difficulty. The banks did not learn the lessons of that credit bubble. We must ensure, whatever decisions are made at Government level or in the Oireachtas, that what has happened in the past will not be allowed to happen again. If we take that as an example, the fundamental issue with regard to house repossession is the targeting of those who simply cannot pay their debts but want to pay them. I have constituents coming in to express their concerns in this regard. For instance, I went with a couple to a meeting with their bank in the fall of last year. The couple, who have a number of children in secondary school and possibly going on to college, outlined their expenditure, which was of the most modest kind. There was no extravagance whatsoever. When the meeting on the debt was over, the bank's representative gave an assurance that there would be no house repossession. The debt problem has not resolved itself and we had occasion to meet the bank again in the past four to six weeks. When we were finishing that meeting, the bank official was not able to give us the assurance on the house repossession that was given to the family in the fall of last year. That is where that family is at. That is where thousands of families are at right across the country.

We must look at the banks. The capital and the returns and all the rest of it will have to be marked up, but politics is about managing to ensure there is not only an economic policy but a social policy. This country, by and large, has developed a significant social policy over the years, to the betterment of many families, and we want to continue on that path. That episode in which I engaged with the banks shows clearly that there is a different attitude within the banking sector. There is a significantly different attitude coming down the line and the staff who are at the coalface meeting borrowers are being told a different story.

In the small-to-medium business sector there is a considerable overhang of debt as well. Until we deal with this in a manageable way - we can repossess houses all we want, and we saw an episode of this last week when auctions were disrupted and stopped - why would a bank take on a repossessed house when it will not be sold on the market?

A person who came to me on Monday last, and on Friday of last week, told me he had been engaging with the bank and had no arrears with it in any shape or form. He said he had told the bank that he had encountered a considerable difficulty due to a loss of employment. After leaving the bank on Wednesday, he got a letter from one of the banks, the opening paragraph of which stated that the best option for him was to sell the house. That letter was issued after discussions, but there was not one cent of arrears on that mortgage or on any other private borrowings of that couple. Those are the instances with which we are dealing, and there are far worse cases. I will not even refer to the pressures moneylenders are applying right across the country. This is one of the most fundamental issues challenging the ordinary decent people of this country at this time, and how we handle it will be a measure of how our society will develop.

**Minister of State at the Department of Finance (Deputy Brian Hayes):** While the minds of many people may be elsewhere in terms of legislation being debated in this House, I agree with the Opposition on one point, namely, that this is the fundamental issue of primary impor-

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tance to this country right now. This affects real people in real situations, not the theological debates - dancing on pinheads and the like - in which some are engaged. This is a real issue that affects 100,000 families in the country. It is a bread-and-butter issue that affects real people. While other ideological debates take place in this House late into the evening and beyond, fascinating and all as they are-----

**Acting Chairman (Deputy Peter Mathews):** The Minister of State should stick to the motion.

**Deputy Brian Hayes:** My apologies. The reason I have expressed that in such forceful terms is that the Members opposite will be aware from discussions with real people in their constituencies that this is the primary issue that must be tackled this year.

The Government is tackling this issue. We have introduced a suite of measures that will help those who are in this position in a way that is consistent with the policy we have set out. The Members opposite will be aware of the Keane report, which was published in the autumn of 2011. It is the case that the great majority of its recommendations have already been acted upon. At the highest level of Government, we have a Cabinet subcommittee chaired by the Taoiseach, with the Secretary General of the Department of Finance responsible for delivering the implementation of the mortgage arrears strategy. Not since the foundation of the State has there been a radical look at personal insolvency legislation. The Personal Insolvency Act took a significant effort on the part of everyone in this House and the other House to get through, and that is now in place. We now have a specialist mortgage information and advice service, which we did not have previously, with the important staff who will give borrowers the advice and support they need in working out the best solution with the covered institutions that are involved.

Deputy Troy and others spoke of their disappointment about the mortgage-to-rent scheme. The fact is there have been 37 cases thus far, but there are a total of 735 cases under the existing scheme, and I hope we can make progress on those. On split mortgages, Deputy Michael McGrath raised this by way of a Topical Issue matter, at which time I told him that in the first quarter of this year the evidence from many of the banks was that this option was now being worked through. That is something to be welcomed.

Crucially, we have set with the Central Bank clear targets for each of the institutions - I refer to ACC, AIB, Bank of Ireland, KBC Ireland Bank, Permanent TSB and Ulster Bank - with regard to proposed solutions that must be put in place. As the Members opposite will be aware, the banks should have proposed sustainable mortgage solutions for 20% of distressed borrowers by the end of June this year, 30% by September and 50% by the end of the year. As I understand it, we will know in the next two to three weeks whether we have hit our target in the first tranche of proposed solutions by the end of June. That is a position the Central Bank will make known in due course, as it has the responsibility of ensuring that these targets have been set with the banks.

The Government is determined that those targets be adhered to. This is an issue upon which the entire economy is based - not merely people's livelihoods, but their future, their homes, the future of their children. This is an issue upon which the economy depends, because until we resolve this issue we will not see any improvement in the domestic economy due to the fact that a group of people are effectively locked out of it.

I assure the House, irrespective of the points that have been made by the Opposition, that the

Government is focused on what it needs to do. This is the primary target and responsibility on which the Government has to deliver this year. We have got to deliver on our targets this year. The banks know that, the Department of Finance knows that, and the Central Bank knows that. As far as we are concerned, we will be judged at the end of the year on the targets that have been set and whether they have been achieved.

Whether additional measures will be countenanced is, obviously, an issue that we will keep under review. That would be the sensible course of action. However, we need to get to a point at which these cases are moved on. The suite of options is there. It is now a matter for the banks to deliver on that and we are determined that the banks will deliver on their side of the equation.

**Deputy Charlie McConalogue:** I support the motion brought forward by my party colleague, Deputy Michael McGrath. It is consistent with the approach he and our party have taken since the last election in terms of ensuring we are a credible Opposition and that we are bringing forward credible proposals on the most important issues.

It is more than two years since Deputy Michael McGrath and other party colleagues introduced a Bill to establish an independent mortgage resolution office to ensure independent oversight so that those mortgages in arrears and people in trouble with repayments would have some type of independent arbitration available to them. Oversight of the banking sector failed in the boom years. Unfortunately, when mortgages are in trouble, it seems that independent oversight and governance of the banking sector will be weak in this instance also. We saw the problems created as a result of banks being left to their own devices when mortgages were being handed out. Little regard was paid to a person's ability to repay a mortgage and many people are in difficulties now.

I know of a single person who was granted a mortgage worth €500,000 in the good times which, fortunately, the person did not take up. That same person, who had not taken on any debt and who is employed, was refused a credit card during the boom. That was the type of lending policy the banks adopted when left to their own devices. Those will be the types of principles and action we can expect from the banks now when we leave it in their hands - when we give them the power of veto in striking deals with mortgagors who are in distress.

Unfortunately, it is not the good and betterment of society which drives the banks; it is the need for profit and the need to ensure that the interests of the banks win out and are served. We cannot expect that the banks will act in a way that is in the best interests of the people who need our protection and who need independent oversight in order to ensure they are not left behind or failed.

There are now 140,000 mortgagors in distress, which means that half a million people are living in houses in which the household is unable to keep up with the mortgage repayments. Deputy John Browne outlined one instance of how the Government's failure to implement independent oversight may play out. One mortgagor with €27,000 remaining on his mortgage and with equity in his house, who has been paying an interest-only mortgage, was asked by the bank to sell the house in order to repay that money. It has been very disappointing to listen to the contributions from many of the backbenchers on the other side of the House. Instead of dealing with the issue at hand, they have been finger-wagging and blaming as a means of covering up for their failure to deal with the issues and to present real solutions. There was an unfortunate failure in the past with regard to oversight of the banking sector. People can claim they were not aware of this failure at the time. Nobody can claim they were not aware of the situation

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and the troubles facing the country. There is no excuse for not ensuring that proper oversight is implemented and that mortgages in default are dealt with appropriately and in the best interests of citizens and not of the banks.

**Deputy Timmy Dooley:** I welcome the opportunity to contribute to the debate. I congratulate our spokesperson on finance, who has brought forward credible proposals and has done so consistently over recent years. As the Minister of State rightly said, the mortgage issue, which is bedevilling so many families and which requires a resolution, is central in Irish life today. Just last week, the Minister effectively handed the banks a charter for home repossession. He previously enacted personal insolvency legislation which gives the banks the final say in that process. There will be no independent arbitrator, as advocated by Fianna Fáil and others, to solve the banking situation to ensure that families and banks are treated fairly. The Minister of State will then understand why I find it difficult to accept the political charge levelled here last week by the Taoiseach that there existed an axis of collusion between Fianna Fáil and the banks when it could easily be asserted that this Government is colluding with the banks to force hard-pressed homeowners into a state of penury. It seems to me and to many others that the Minister is using the situation in which people find themselves to drag out the process and hope the Government will get to the next election on the back of the mistakes of previous Administrations. The Irish people will not forgive him for that cynical approach to doing business.

Last week the Taoiseach informed the House that there was a need to establish the truth and to remember the thousands of victims - the property owners - of the axis of collusion that existed between Fianna Fáil and the bankers. The Taoiseach has consistently been at variance as to whom to attribute the blame. He had previously proclaimed that those so-called victims went mad. I remind the Minister of State of what the Taoiseach said to the World Economic Forum at Davos in 2012:

What happened in our country was that people simply went mad with borrowing ... The extent of personal credit, personal wealth created on credit, was done between people, banks - a system that spawned greed to a point that this went out of control completely with a spectacular crash.

Nowhere in his speech did he mention that the political establishment colluded with the rogue bankers to deliberately steer us towards a crash. Then again, how could he? He had already voted for it in this House. Indeed, at the time, he had also said that he supported the bank guarantee, insisting subsequently that far more wide-ranging action should have been taken by the then Administration. It is clear that the Taoiseach picks and chooses for political gain on whom and where he apportions blame for the country's economic woes, not forgetting that we slipped back into recession two weeks ago. The so-called get-tough approach with the banks on mortgage arrears seems to be another appeasement moving towards giving the banks what they want. One could assert that this Government is part of an axis of collusion with the banks to allow the banks to do what they want at the expense of homeowners. That has escaped the minds of many of the backbenchers who have used it in order to level political gain in recent weeks.

In his Ard-Fheis speech in 2008, the Taoiseach said that the nation had been damaged by the bankers' reckless behaviour and that they must be held to account. He said that under Fine Gael they will be held to account. I do not see any sign of that, nor any effort by the Government to hold the banks to account for past or current omissions. He said at the time that Fine Gael was the only party who would hold people to account for failure, irresponsibility and criminality. I do not see any of that whatsoever, and neither do the people who are finding themselves in

extremely distressed situations as a result of the continued procrastination of the banking institutions. The people have lost faith and hope.

These words should have been uttered in this House last week when the Taoiseach was talking about the axis of collusion. He has consistently failed to address the issues relating to the decision to award the second mobile phone licence to Esat, when nine members of the current Administration were in Cabinet at the time. None of them has cried foul with regard to the collusion that existed, in my view, between the then Government and the company that won that licence.

The Minister must accept that he has failed abysmally in supporting homeowners who find themselves in a distressed state. He has sought to level political charges against my party and others. He has sought to apportion blame. He has done so in advance of the establishment of an inquiry. In my view, he has created an inability for such an inquiry to act impartially. All the while, the Taoiseach and the Government failed to address the findings of the Moriarty tribunal. They are prepared to splash around and suggest that there is an axis of collusion between my party and others. Unless the Government, including the Taoiseach, addresses what happened in regard to the Moriarty tribunal and all its aspects, the Minister of State will not be in a position to come in here and level any charges.

*9 o'clock*

**Deputy Michael McGrath:** I thank all the Members who made a contribution to this debate last night and tonight. By and large, it has been very constructive. The purpose of my tabling the motion was to highlight the plight of borrowers. Some 142,000 families are living in houses in respect of which the mortgage is in arrears. Furthermore, some 39,000 buy-to-let mortgages are in arrears.

I am not suggesting for a moment that the Government is not taking action. I acknowledge that it wants to resolve this issue and I am not questioning its bona fides. However, I am questioning whether it is taking the right actions. My party and I believe that, in a number of respects, it is not taking the right actions. Our view is that the Government has given far too much power to the banks. Its approach has been deferential. By any independent measure, the protections afforded to borrowers in distress have been diluted. That is beyond question. If one examines the key elements in the revised code of conduct on mortgage arrears, for example, one will note the removal of the cap on the number of contacts a bank can make in a calendar month. If after three successful contacts where the bank actually gets to speak to the borrower and the borrower cannot make the mortgage repayment in the month in question, will a fourth, fifth or sixth telephone call make any difference? It will not, but it will add greatly to the level of stress and anxiety of the affected family.

For the first time, those with the benefit of a tracker mortgage find that it is no longer sacrosanct. The bank can, as part of an overall deal if no other option is on the table, remove the tracker rate from the borrower. That is a very significant and serious development. Even more significant is the reduction in the moratorium. The length of time the bank must wait before it can initiate legal proceedings has been reduced from 12 months to a maximum of eight.

In a very bizarre contribution last night, Deputy Ciarán Lynch stated that he was very worried about Fianna Fáil's proposal to reinstate the 12-month moratorium. When I re-examined the programme for Government, I noted that Labour and Fine Gael signed up to increasing the

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moratorium from 12 months to two years. If the Deputy is very worried about reinstating the period of 12 months, what must they think of the two-year moratorium that the Government signed up to?

The Minister of State put a lot of stock in the issue of targets. Targets are important but the banks will no doubt, in the next week or so, say they have achieved the target of offering sustainable solutions to 20% of those in arrears. Some have stated this already, and the Central Bank will verify it. What does that actually mean? What are the targets? The banks are required to offer sustainable solutions. Page 25 of the mortgage arrears resolution targets document contains an attempt at defining “sustainable solution”. It is left up to the banks to decide what it is. It can be putting somebody into an insolvency arrangement or it can be repossessing the property, by way of either voluntary surrender or court order. When the Central Bank states the banks have achieved their target of 20%, it tells us nothing. It is the composition of the offerings that is important, in addition to the agreements reached.

We must ask why there were only 144 split mortgage arrangements. Why have there been only approximately 240 permanent interest rate reductions? Why has there been no serious effort whatsoever to enter into debt-for-equity arrangements, for example? This is a question that the Government and the Central Bank will have to face up to.

I acknowledge the work of the many advocacy groups in this area, including the Irish Mortgage Holders Organisation. Mr. David Hall was in the Visitors Gallery for the past couple of nights. Other groups include New Beginning, the Phoenix Project and FLAC. We should listen to what they are saying because they are actually dealing with borrowers on a day-to-day basis.

I acknowledge that repossessions are inevitable in certain cases. I am not burying my head in the sand at all. There are some who would actually be better off surrendering their properties and starting afresh financially. However, there is no doubt that the structures in place and the powers given to the banks are such that there will be unnecessary repossessions. That is the key issue. We will see a significant spike in the number of family home repossessions.

There is no doubt in my mind that the vast majority of mortgages can be rescued if there is sufficient will. While it is fine to say the banks are not doing as desired, it must be acknowledged that they will act in their own commercial interest, and we cannot expect them to do otherwise. However, borrowers in distress expect that their elected Government will watch out for them, advocate for them and protect them. They expect the Central Bank to do likewise. Unfortunately, that is not what we have seen thus far.

Many Government Deputies stated that repossession is a last resort. Can the Minister of State put his hand on his heart and say the banks are currently treating repossession of the family home as a last resort? Only today I received an e-mail from a lady in County Tipperary who owes her bank €38,000 on a mortgage. She has just completed 12 months on interest-only payments. She sought a renewal of her arrangement but the bank stated that the mortgage was unsustainable and that it wanted her house. The reason it wants the house is that, when it sells it, it will clear the €38,000 loan fully and its balance sheet will be fully intact. Therefore, we need to examine what is happening. Evidence on the ground is very different from the rhetoric we are hearing from the Government and the Central Bank. The proof will be in the pudding when we see exactly what the banks have offered.

Amendment put:

<i>The Dáil divided: Tá, 103; Níl, 54.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Bannon, James.</i>	<i>Adams, Gerry.</i>
<i>Barry, Tom.</i>	<i>Boyd Barrett, Richard.</i>
<i>Breen, Pat.</i>	<i>Broughan, Thomas P.</i>
<i>Bruton, Richard.</i>	<i>Browne, John.</i>
<i>Burton, Joan.</i>	<i>Calleary, Dara.</i>
<i>Butler, Ray.</i>	<i>Collins, Joan.</i>
<i>Buttimer, Jerry.</i>	<i>Collins, Niall.</i>
<i>Byrne, Catherine.</i>	<i>Colreavy, Michael.</i>
<i>Byrne, Eric.</i>	<i>Cowen, Barry.</i>
<i>Cannon, Ciarán.</i>	<i>Crowe, Seán.</i>
<i>Carey, Joe.</i>	<i>Daly, Clare.</i>
<i>Coffey, Paudie.</i>	<i>Doherty, Pearse.</i>
<i>Collins, Áine.</i>	<i>Donnelly, Stephen S.</i>
<i>Conaghan, Michael.</i>	<i>Dooley, Timmy.</i>
<i>Conlan, Seán.</i>	<i>Ellis, Dessie.</i>
<i>Connaughton, Paul J.</i>	<i>Ferris, Martin.</i>
<i>Conway, Ciara.</i>	<i>Flanagan, Luke 'Ming'.</i>
<i>Coonan, Noel.</i>	<i>Fleming, Sean.</i>
<i>Corcoran Kennedy, Marcella.</i>	<i>Fleming, Tom.</i>
<i>Costello, Joe.</i>	<i>Halligan, John.</i>
<i>Coveney, Simon.</i>	<i>Healy, Seamus.</i>
<i>Creed, Michael.</i>	<i>Keaveney, Colm.</i>
<i>Creighton, Lucinda.</i>	<i>Kelleher, Billy.</i>
<i>Daly, Jim.</i>	<i>Kirk, Seamus.</i>
<i>Deasy, John.</i>	<i>Kitt, Michael P.</i>
<i>Deenihan, Jimmy.</i>	<i>Lowry, Michael.</i>
<i>Deering, Pat.</i>	<i>Mac Lochlainn, Pádraig.</i>
<i>Doherty, Regina.</i>	<i>McConalogue, Charlie.</i>
<i>Donohoe, Paschal.</i>	<i>McDonald, Mary Lou.</i>
<i>Dowds, Robert.</i>	<i>McGrath, Finian.</i>
<i>Doyle, Andrew.</i>	<i>McGrath, Mattie.</i>
<i>Durkan, Bernard J.</i>	<i>McGrath, Michael.</i>
<i>English, Damien.</i>	<i>McGuinness, John.</i>
<i>Farrell, Alan.</i>	<i>McLellan, Sandra.</i>
<i>Feighan, Frank.</i>	<i>Martin, Micheál.</i>
<i>Ferris, Anne.</i>	<i>Moynihan, Michael.</i>
<i>Fitzgerald, Frances.</i>	<i>Murphy, Catherine.</i>
<i>Fitzpatrick, Peter.</i>	<i>Naughten, Denis.</i>
<i>Flanagan, Charles.</i>	<i>Nulty, Patrick.</i>
<i>Gilmore, Eamon.</i>	<i>Ó Caoláin, Caoimhghín.</i>
<i>Griffin, Brendan.</i>	<i>Ó Cuív, Éamon.</i>

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<i>Hannigan, Dominic.</i>	<i>Ó Fearghail, Seán.</i>
<i>Harrington, Noel.</i>	<i>Ó Snodaigh, Aengus.</i>
<i>Harris, Simon.</i>	<i>O'Brien, Jonathan.</i>
<i>Hayes, Tom.</i>	<i>O'Dea, Willie.</i>
<i>Heydon, Martin.</i>	<i>O'Sullivan, Maureen.</i>
<i>Hogan, Phil.</i>	<i>Pringle, Thomas.</i>
<i>Howlin, Brendan.</i>	<i>Ross, Shane.</i>
<i>Humphreys, Heather.</i>	<i>Shortall, Róisín.</i>
<i>Humphreys, Kevin.</i>	<i>Smith, Brendan.</i>
<i>Keating, Derek.</i>	<i>Stanley, Brian.</i>
<i>Kehoe, Paul.</i>	<i>Tóibín, Peadar.</i>
<i>Kelly, Alan.</i>	<i>Troy, Robert.</i>
<i>Kenny, Seán.</i>	<i>Wallace, Mick.</i>
<i>Kyne, Seán.</i>	
<i>Lawlor, Anthony.</i>	
<i>Lynch, Ciarán.</i>	
<i>Lynch, Kathleen.</i>	
<i>Lyons, John.</i>	
<i>McCarthy, Michael.</i>	=
<i>McEntee, Helen.</i>	
<i>McFadden, Nicky.</i>	
<i>McGinley, Dinny.</i>	
<i>McHugh, Joe.</i>	
<i>McLoughlin, Tony.</i>	
<i>McNamara, Michael.</i>	
<i>Maloney, Eamonn.</i>	
<i>Mitchell, Olivia.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Dara.</i>	
<i>Murphy, Eoghan.</i>	
<i>Nash, Gerald.</i>	
<i>Neville, Dan.</i>	
<i>Nolan, Derek.</i>	
<i>Noonan, Michael.</i>	
<i>Ó Ríordáin, Aodhán.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	
<i>O'Reilly, Joe.</i>	
<i>O'Sullivan, Jan.</i>	
<i>Penrose, Willie.</i>	

<i>Perry, John.</i>	
<i>Phelan, Ann.</i>	
<i>Phelan, John Paul.</i>	
<i>Quinn, Ruairí.</i>	
<i>Rabbitte, Pat.</i>	
<i>Reilly, James.</i>	
<i>Ring, Michael.</i>	
<i>Ryan, Brendan.</i>	
<i>Shatter, Alan.</i>	
<i>Sherlock, Sean.</i>	
<i>Spring, Arthur.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>Twomey, Liam.</i>	
<i>Varadkar, Leo.</i>	
<i>Wall, Jack.</i>	
<i>Walsh, Brian.</i>	
<i>White, Alex.</i>	

Tellers: Tá, Deputies Emmet Stagg and Paul Kehoe; Níl, Deputies Michael Moynihan and Seán Ó Fearghail.

Amendment declared carried.

Motion, as amended, put and declared carried.

### **Estimates for Public Services 2013: Message from Select Sub-Committee**

**An Ceann Comhairle:** The Select Sub-Committee on Communications, Energy and Natural Resources has completed its consideration of the following Revised Estimate for public services for the year ending 31 July 2013 - Vote 29.

### **Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed)**

Debate resumed on amendment No. 8:

In page 5, lines 26 and 27, to delete “*section 9 certification*”.

- (Deputy Peadar Tóibín)

**An Ceann Comhairle:** Deputy Healy-Rae was in possession but is not present, so I call Deputy Boyd Barrett. I ask Deputies who are not taking part in the debate to leave the Chamber.

**Deputy Richard Boyd Barrett:** I will refer to some of the Technical Group's section 9 amendments that are in this grouping, but I also wish to comment on some of the amendments tabled by the Minister of State, Deputy Lucinda Creighton, and others who are opposed full stop to the section, who are coming at it from a different perspective. Deputy Tóibín and the Minister of State referred a number of times to the concern they have about the floodgates opening. It is important to respond to this point. In recent hours I listened to the debate, which often got bogged down in the important and necessary detail of the Bill and the arguments around that detail. It is important to say that in so far as the term "floodgates" is even useful in this debate - I am not sure it is - the floodgates are open. Whatever happens with this Bill will not affect one jot the number of desperate Irishwomen who seek and receive abortions. Desperate women whose health or whose lives are at risk, desperate women who are suicidal, desperate women who get the awful news that their baby has been diagnosed with a fatal abnormality, desperate women in a whole range of circumstances will still make the decision to have an abortion. The only issue is where they will have that abortion, not whether they will have it. Those who profess to be pro-life or anti-abortion when they make their arguments fail to acknowledge that fundamental point. Abortion is an Irish reality and Irishwomen in their thousands are forced to travel to Britain to receive the treatment they need or want.

In spite of those Deputies who propose to strike section 9 from the Bill, although it is clear the Government will not accept their arguments, women will still seek those abortions. It will make no difference. The Deputies have to answer that question if they are addressing these issues in good conscience. If women need or are going to seek those abortions in any case, do those Deputies believe it is acceptable or right that those women are forced to go abroad and be away from their homes, with all the stigma, without support and in spite of the costs involved? I believe it is unacceptable, and those who call themselves pro-life and express a concern for the care of women must address that point.

The Minister of State, Deputy Creighton, made the argument that it was the job of the Oireachtas, not the Supreme Court, to legislate. The implication that what we are doing in legislating for the X case was somehow dictated by the Supreme Court, which was going outside its remit, is a very legalistic and convoluted argument that does not stand up at all. The Supreme Court has not dictated to the Parliament. We know that because its judgment was made 20 years ago, yet the Parliament still has not legislated for it. It was forced to legislate not because of anything the Supreme Court said but because of the tragic case of Savita Halappanavar. That is why we are here today. It is why we have finally been forced to deal with this issue. We had tragedy after tragedy and then, most recently, we had the awful and terrible case of Savita Halappanavar. The argument made by the Minister of State in comparing the threat of suicide in this situation to a threat of suicide by a person who may be deported is a terrible one that tries to undermine the seriousness of that threat. People who are deported generally speaking receive awful treatment. They are incarcerated, they are often grabbed in the middle of the night, in many cases they are bound and gagged and shoved onto planes with little or no regard for the consequences of their deportation. For the Minister of State with responsibility for European Affairs, Deputy Creighton, to say that to concede the argument of somebody facing that prospect who might feel suicidal would be to open the floodgates to people to make false claims of suicidal ideation in order to avoid deportation, desperately trivialises the horror

of deportation for many people who face that reality. When she says the alternative put forward in a case to which she referred, that there should be a care plan, as she proposes in cases of suicidal ideation in pregnancy, and compares that with a judge saying a care plan is necessary for someone who faces deportation and says they might be suicidal, she should acknowledge that no such care plan is ever put in place for deportees, irrespective of whether they say they are suicidal. They are just bound, gagged, put on a plane and deported once the decision has been made to deport them. It is a very bad comparison for the Minister of State to make. The logic of it is to suggest that women who threaten to commit suicide, or say they are suicidal because they are pregnant should be incarcerated rather than have their wishes for a termination granted. That is completely unacceptable.

It is a pity that some of those who oppose abortion have constantly said, and say again in the debate on this group of amendments, that abortion is not a treatment for suicide, as if that were ever the issue. Nobody has ever claimed abortion was a treatment for suicide. Those who oppose giving such rights to the women who are suicidal and whose lives are at risk as a result of suicidal ideation need honestly to admit, or at least address when debating this issue, that if a woman is pregnant and feels suicidal at the thought of continuing with that pregnancy, and if she is forced against her will to carry on that pregnancy, that will almost inevitably increase the anxiety, suffering and stress she will feel and very likely contribute to a greater risk to her life and of her carrying through with that threat of suicide. It does not mean that having the right to a termination automatically does away with suicidal ideation but they surely must acknowledge that forcing a woman who does not want to have a child and feels suicidal at the thought of having one is dangerous and puts women's lives at risk.

As other speakers have said, there is an unacceptable and unsustainable distinction being made by those who oppose any limited introduction of abortion in the case of suicidal ideation. They are making an untenable distinction between physical and mental health, suggesting that somehow the bar that one has to reach for a threat to one's life because of mental illness or suicidal ideation should be higher than it would be for a physical medical emergency. In medicine no such distinction is made. No distinction can be made in medicine between a physical and a psychological threat to life and it is wrong to do so.

I disagree fundamentally with the arguments that these people make. My problem with section 9 is the opposite of theirs because sadly, as a political fudge, the Government has made unnecessary and unacceptable concessions to the untenable arguments made by those who oppose any limited introduction of abortion in the case of a possible suicide. The Government also makes the distinction in the legislation between a physical threat to life and a threat to life as a result of suicidal ideation or psychiatric illness. The Minister makes that distinction in the Bill and I believe it is absolutely untenable. As I said on Committee Stage, and the point was made very strongly to the Minister by psychiatrists and groups such as Doctors for Choice, if somebody has to be certified in a situation where there is no pregnancy involved as being a threat to themselves, as a result of mental illness, there is only a requirement for one psychiatrist and a GP. There is no requirement for two psychiatrists, an obstetrician and indeed a fourth doctor, in that the Bill requires consultation with the GP as well. Why does the Minister make that distinction? There simply is no basis for doing it. It puts more obstacles in the way of women whose lives are at risk and who are feeling suicidal because of their pregnancies. The Minister is making that distinction only because there is a pregnancy. That means he is in a dangerous way playing fast and loose with a threat to the life of a woman, putting extra obstacles in her way in accessing the service she needs or feels she needs. That is unacceptable. That require-

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ment, among other serious flaws and weaknesses in this Bill, has forced some of us who are pro-choice to say we simply cannot vote for it. Much as we wanted a Bill that would legislate for the X case and even if, as far as we were concerned, it did not go far enough, we would have voted for it, had the Minister not tightened it up to such an extent that it is actually regressive and puts more restrictions in the way of women accessing terminations when they need them than there were before this Bill was drafted. That is quite shameful on the part of the Government.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Jan O’Sullivan):** That is not true.

**Deputy Colm Keaveney:** I am speaking to amendment No. 58. Many parts of the Bill are to be welcomed in that they provide legal clarity for medical professionals when they are faced with a situation in which a woman’s life is at risk and where action is necessary to save her life that may result, as an unintended consequence, in the death of the unborn. The Bill, however, contains some flaws and once again, as I said last week, we are suffering from a belief in Irish exceptionalism or indeed what has been described in the Chamber today as a group-think. We somehow believe that we alone, relative to other jurisdictions which have attempted to introduce legislation, can bring in limited access to abortion on the grounds of mental health. We know from experiences in the United Kingdom, California and New Zealand in particular in the 1960s that they could do this but within a few years the number of abortions being carried out reached into the tens of thousands. Many other jurisdictions have had a similar experience and a similar debate. In this area we seem, as Irish people, determined not to learn from the mistakes of other jurisdictions. We know from experience in the United Kingdom, California and New Zealand that a few years after abortion was introduced, the number of them being performed reached into the tens of thousands. Many other jurisdictions have had a similar experience and debate. In this area, many of us seem to be determined not to learn from the mistakes of other jurisdictions but rather copy them so we may learn the lesson the hard way. This determination flows from an odd belief that we are exceptional relative to other countries. We often say such and such might have happened that way in that country but Ireland is the exception. I do not believe that. The present economic calamity we are enduring was caused by that type of belief. We were told we could not go wrong with property prices, that the fundamentals of the economy were sound as well as good and we were different than anywhere else in the world.

Section 9 will lead to abortion becoming far more widely available than its supporters disingenuously now claim. Many of its supporters need to be honest with themselves first and then to the public. Some supporters of this Bill have been very honest and see what I have foreseen. They have also been honest with the public with respect to their decision on it.

Earlier today Deputy Ó Cuív raised an issue which I have encountered over the course of this debate. When one raises an objection to aspects of this debate, one is normally met with slogans such as “You do not trust women”. That is unacceptable and is a nonsense in this debate. As I said last week in the Chamber, people in general are trustworthy. People occasionally lie to achieve a purpose. Some people are women. I am sorry, a Cheann Comhairle, to have to reduce the debate to this extent. However, when one is met by protestors claiming one does not trust women, sometimes one has to reduce the debate to this type of nonsense to address the issue.

We have seen interviews with David Steel who introduced the Abortion Act in 1967 in the UK Parliament in which he has expressed regret at how the operation of the legislation eventu-

ally worked out. He has stated that if he had known the eventual consequences of what had materialised he would not have proposed the Bill. David Steel has some excuse. He did not know what we know now.

**Deputy Peter Mathews:** Hear, hear.

**Deputy Colm Keaveney:** One could argue that in 20 years' time many of us will regret supporting or rejecting the Bill. We could look back and feel guilty or somewhat foolish. As legislators, it is our responsibility to reconcile both sides of this debate. The rhetoric that has been deployed by some people in this debate has been somewhat dishonest.

It is not a fair representation when an opinion poll asks if one supports legislation to protect the life of the mother during pregnancy and then presents its results as being indicative as full support for the legislation. Of course, one is going to support that legislation. When it asks if it is important that medical professionals have clear guidelines and legal clarity around the circumstances in which an intervention to save a woman's life which would result in the unintended death of an unborn baby, one would have to question what the answer would be. When it asks if one supports legislation that allows for an abortion in the case of suicidal ideation, knowing that in every jurisdiction it has been introduced it has led to abortion on demand, what would the answer be? When it asks if one supports legislation that allows for an abortion up until the final week of pregnancy, what would the answer be?

We all approach the House with very good intentions. I have grave concerns about the lack of time limits in this legislation. We are in a dangerous place with respect to the notion the State would take any hand, act or part in the precipitation of the conclusion of a pregnancy of a woman where a baby would be born prematurely. We would not be in a position to assess the human rights concerns for that baby with respect to disability, pain or the State's role with respect to the late development of that child.

I appreciate it is a sensitive issue. In that respect, I will be pressing my amendment No. 57. I would be grateful if the Minister could take my concerns on board. I have been moved by the quality of the debate tonight. It has been the most honest debate on legislation over the past three years. It has been a difficult position for many of us. Will the Minister carefully consider my amendment?

**Deputy Catherine Murphy:** I will be supporting this Bill although with some regret because I believe it could have gone further. Some of those calling for the deletion of the section on suicide do not refer to the 1992 or 2002 referendums. In 1992, there were three separate ballots. The first sought to limit the right based on suicide and the citizens decided they did not want to limit that right. The second was the right to travel which was passed. The third was the right to information which was also passed. The referendums arose from the issues around the X case when a 14 year old brought into sharp focus what was at stake. This was not an academic issue but a real issue for a child.

The 2002 amendment to the Constitution also sought to tighten the constitutional ban on abortion. It would have removed the threat of suicide as grounds for legal abortion in the State. It was rejected by the people. We have a written Constitution that places the citizen at its heart. They have given us a set of instructions which we have failed to put into law over several decades. I cannot think of another issue which would have been so disregarded.

Deputy Keaveney talks about group think. Was it group think in 1992 and 2002? That was

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not an opinion poll but the people giving us a set of instructions as legislators to take on board and deliver upon. If this section is excluded, how will it be provided for as the people have given it as a constitutional right?

Could someone who is suicidal be committed? Just think of the consequence if we take it to the logical conclusion. Is the Government going to curtail or remove the right to liberty of a woman or a child?

To our disgrace, we have seen how we have treated women in the past. We have seen things like the Magdalen laundries and the mother and baby homes. It may well be for different reasons. It may well have been partly because of that type of a reason. We have an obligation here. Why did citizens decide to include suicide? It was because the evidence was there that there was a 14 year old child who had been suicidal following a rape. I believe the Irish people displayed the kind of compassion that is a part of something that we can proud of in this country.

Last week I saw similar compassion, but I did not see it in Ireland. I saw it in Liverpool when I went to visit the Liverpool Women's NHS Hospital. The visit was specifically organised for the issue of fatal foetal abnormalities by the group, Doctors for Choice. We met an obstetrician and many other members of the staff in several sections of that fine hospital, which is the biggest maternity hospital in Europe and is attached to the university. I will go into that later if we have time to deal with the next segment. We asked what was different about Irish women. Was there anything noticeable that was different about Irish women when they presented with fatal foetal abnormalities, very often with a much wanted pregnancy? They told us that Irish women expected the staff to judge them and to be judgmental. It is almost a conditioning. They got compassion in another country when they should have got the same compassion and the same duty of care here because of that terribly tragic situation in which they find themselves. I would like the Government today to deal with that issue. If it cannot be dealt with in the context of the eighth amendment, I want to see this Government committing to dealing with that issue by way of referendum because it is absolutely barbaric. I found myself thanking the staff for their compassion, and I felt ashamed that our country could not offer that kind of compassion to the women here.

At a time when a young woman or a child find themselves in a situation where they are suicidal - if it happens to one, it can happen to others - when they need compassion and when they most need their family and friends around them, how does excluding this very restrictive segment from the legislation make them feel about themselves? Does it make them feel judged because they are going to another country? Does it make them judged as well because of the very fact that they are suicidal?

Then there is the issue of floodgates. Floodgates were going to open with artificial contraception, and we had an Irish solution to the Irish problem. We had two referendums on divorce and we had floodgates. The second time it was passed, it was passed with a very restrictive four-year minimum term limit. This morning somebody on the radio said we should relax that. Is there anybody batting an eyelid about that now? No, they are not. This notion of floodgates is rolled out on every single occasion when there is a social issue that needs to be addressed in this country, and we need to grow up and start doing things because they need to be done. We should not take this overly cautious approach.

I have met and spoke with numerous people over the past few months. I find that many men will say that they do not really feel comfortable dealing with this issue, and it is noticeable that

they would say it to you. Many women just ask for one thing. They ask to be trusted. It is the women who are asking to be trusted.

One of my amendments was ruled out of order on the basis that it would be a charge on the State. I would love to see what has been the poor relation of the health service, namely, the mental health service, beefed up where it would be at a level that we would all like to see. The reality is that it is currently very under-resourced. I know we are in a very difficult financial situation, but it is an area that needs to be protected. The care path that has been identified would require very significant resources. I do not understand why some amendments are ruled out of order because there will be a charge on the State, while something like this can be included, because it is a very substantial obligation that is being sought. I would love to see it happen.

I believe that much more needs to be done. I will be supporting the legislation, because I think it is movement, even if it is very limited movement.

Debate adjourned.

### **Business of Dáil**

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** It is proposed that, notwithstanding anything in Standing Orders, or the Order of the Dáil today, the Dáil shall sit later than midnight and shall adjourn no later than 5 a.m.

**An Ceann Comhairle:** Is that agreed? It is not agreed.

**Deputy Éamon Ó Cuív:** This is a very important issue and many people want to make serious contributions. There is nothing that requires us to pass this Bill tonight. I cannot understand why we cannot adjourn the debate and resume it tomorrow, and continue having this debate until everybody who wants to make a genuine contribution gets an opportunity to do so. It is fair to say-----

**An Ceann Comhairle:** I think you have made your point.

**Deputy Éamon Ó Cuív:** I would like to finish. Nobody has been-----

**An Ceann Comhairle:** You are just using up time.

**Deputy Éamon Ó Cuív:** -----speaking for the sake of speaking. The public are anxious to hear what Deputies have to say, and I think they would prefer that we would continue this debate in a proper manner tomorrow and take whatever time is needed.

**Deputy Gerry Adams:** I am not going to oppose the Government on this, but we discussed this at our group meeting earlier on, and the case was made that there is no provision for the staff. There had to be an intervention earlier on to have a break. There are many women here who have children and who came in this morning at 7.30 a.m. It is a big argument for changing the way we work this institution.

*10 o'clock*

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Question put: “That the Dáil shall sit later than midnight and adjourn no later than 5 a.m.”

<i>The Dáil divided: Tá, 103; Níl, 54.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Bannon, James.</i>	<i>Adams, Gerry.</i>
<i>Barry, Tom.</i>	<i>Boyd Barrett, Richard.</i>
<i>Breen, Pat.</i>	<i>Broughan, Thomas P.</i>
<i>Bruton, Richard.</i>	<i>Browne, John.</i>
<i>Burton, Joan.</i>	<i>Calleary, Dara.</i>
<i>Butler, Ray.</i>	<i>Collins, Joan.</i>
<i>Buttimer, Jerry.</i>	<i>Collins, Niall.</i>
<i>Byrne, Catherine.</i>	<i>Colreavy, Michael.</i>
<i>Byrne, Eric.</i>	<i>Cowen, Barry.</i>
<i>Cannon, Ciarán.</i>	<i>Crowe, Seán.</i>
<i>Carey, Joe.</i>	<i>Daly, Clare.</i>
<i>Coffey, Paudie.</i>	<i>Doherty, Pearse.</i>
<i>Collins, Áine.</i>	<i>Donnelly, Stephen S.</i>
<i>Conaghan, Michael.</i>	<i>Ellis, Dessie.</i>
<i>Conlan, Seán.</i>	<i>Ferris, Martin.</i>
<i>Connaughton, Paul J.</i>	<i>Fleming, Sean.</i>
<i>Conway, Ciara.</i>	<i>Fleming, Tom.</i>
<i>Coonan, Noel.</i>	<i>Halligan, John.</i>
<i>Corcoran Kennedy, Marcella.</i>	<i>Healy, Seamus.</i>
<i>Costello, Joe.</i>	<i>Healy-Rae, Michael.</i>
<i>Coveney, Simon.</i>	<i>Higgins, Joe.</i>
<i>Creed, Michael.</i>	<i>Kelleher, Billy.</i>
<i>Creighton, Lucinda.</i>	<i>Kirk, Seamus.</i>
<i>Daly, Jim.</i>	<i>Kitt, Michael P.</i>
<i>Deasy, John.</i>	<i>Lowry, Michael.</i>
<i>Deenihan, Jimmy.</i>	<i>Mac Lochlainn, Pádraig.</i>
<i>Deering, Pat.</i>	<i>McConalogue, Charlie.</i>
<i>Doherty, Regina.</i>	<i>McDonald, Mary Lou.</i>
<i>Donohoe, Paschal.</i>	<i>McGrath, Finian.</i>
<i>Dowds, Robert.</i>	<i>McGrath, Mattie.</i>
<i>Doyle, Andrew.</i>	<i>McGrath, Michael.</i>
<i>Durkan, Bernard J.</i>	<i>McGuinness, John.</i>
<i>English, Damien.</i>	<i>McLellan, Sandra.</i>
<i>Farrell, Alan.</i>	<i>Martin, Micheál.</i>
<i>Feighan, Frank.</i>	<i>Mathews, Peter.</i>
<i>Ferris, Anne.</i>	<i>Moynihan, Michael.</i>
<i>Fitzgerald, Frances.</i>	<i>Murphy, Catherine.</i>
<i>Fitzpatrick, Peter.</i>	<i>Naughten, Denis.</i>
<i>Flanagan, Charles.</i>	<i>Nulty, Patrick.</i>

<i>Gilmore, Eamon.</i>	<i>Ó Caoláin, Caoimhghín.</i>
<i>Griffin, Brendan.</i>	<i>Ó Cuív, Éamon.</i>
<i>Hannigan, Dominic.</i>	<i>Ó Fearghail, Seán.</i>
<i>Harrington, Noel.</i>	<i>Ó Snodaigh, Aengus.</i>
<i>Harris, Simon.</i>	<i>O'Brien, Jonathan.</i>
<i>Hayes, Tom.</i>	<i>O'Dea, Willie.</i>
<i>Heydon, Martin.</i>	<i>O'Sullivan, Maureen.</i>
<i>Hogan, Phil.</i>	<i>Pringle, Thomas.</i>
<i>Howlin, Brendan.</i>	<i>Ross, Shane.</i>
<i>Humphreys, Heather.</i>	<i>Shortall, Róisín.</i>
<i>Humphreys, Kevin.</i>	<i>Smith, Brendan.</i>
<i>Keating, Derek.</i>	<i>Timmins, Billy.</i>
<i>Keaveney, Colm.</i>	<i>Tóibín, Peadar.</i>
<i>Kehoe, Paul.</i>	<i>Troy, Robert.</i>
<i>Kelly, Alan.</i>	<i>Wallace, Mick.</i>
<i>Kenny, Seán.</i>	
<i>Kyne, Seán.</i>	
<i>Lawlor, Anthony.</i>	
<i>Lynch, Ciarán.</i>	
<i>Lynch, Kathleen.</i>	
<i>Lyons, John.</i>	
<i>McCarthy, Michael.</i>	
<i>McEntee, Helen.</i>	
<i>McFadden, Nicky.</i>	
<i>McGinley, Dinny.</i>	
<i>McHugh, Joe.</i>	
<i>McLoughlin, Tony.</i>	
<i>McNamara, Michael.</i>	
<i>Maloney, Eamonn.</i>	
<i>Mitchell, Olivia.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Dara.</i>	
<i>Murphy, Eoghan.</i>	
<i>Nash, Gerald.</i>	
<i>Neville, Dan.</i>	
<i>Nolan, Derek.</i>	
<i>Noonan, Michael.</i>	
<i>Ó Ríordáin, Aodhán.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	

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<i>O'Reilly, Joe.</i>	
<i>O'Sullivan, Jan.</i>	
<i>Penrose, Willie.</i>	
<i>Perry, John.</i>	
<i>Phelan, Ann.</i>	
<i>Phelan, John Paul.</i>	
<i>Quinn, Ruairí.</i>	
<i>Rabbitte, Pat.</i>	
<i>Reilly, James.</i>	
<i>Ring, Michael.</i>	
<i>Ryan, Brendan.</i>	
<i>Shatter, Alan.</i>	
<i>Sherlock, Sean.</i>	
<i>Spring, Arthur.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>Twomey, Liam.</i>	
<i>Varadkar, Leo.</i>	
<i>Wall, Jack.</i>	
<i>White, Alex.</i>	

Tellers: Tá, Deputies Emmet Stagg and Paul Kehoe; Níl, Deputies Michael Moynihan and Seán Ó Feargháil.

Question declared carried.

**Deputy Micheál Martin:** I would like to place on record the absolute absence of any consultation with the Opposition Whips in regard to the farcical motion just put before the House. In terms of the public perception of this House, the motion put by the Government, without notice, has reduced this situation to a farce.

**Deputies:** Hear, hear.

**Deputy Micheál Martin:** The public perception will be one of incredulity in terms of what has been proposed.

**An Ceann Comhairle:** Thank you, Deputy. We are returning to the Bill.

**Deputy Micheál Martin:** It is wrong of the Government to do this. It is bad enough if people want to use jackboot tactics against their own Members, but it is not good enough that they try to use them against every other Member.

**Deputies:** Hear, hear.

**Deputy Micheál Martin:** There is no national emergency here. This session could, if the Government wanted, be postponed until tomorrow. If Members want to deliberate further, we have no difficulty with that.

**An Ceann Comhairle:** Thank you, Deputy.

**Deputy Micheál Martin:** For the Government to treat the Opposition in the manner it has, and indeed some of its own backbenchers, and keep them here until 5 a.m. is a joke. Nor does it do justice to the issue. It does not do justice to the sensitivity of the issue.

**Deputy Alan Shatter:** This is an issue Fianna Fáil would not address for 14 years.

**Deputy Billy Kelleher:** How many bankers has Deputy Shatter locked up so far? None yet.

**An Ceann Comhairle:** The Deputy talked about a farce. Please do not make it a farce.

**Deputy Micheál Martin:** At 9.57 p.m. there was a text message from the Chief Whip - no consultation, no meeting, and they talk about Dáil reform. No wonder they want to abolish the Seanad.

**Deputies:** Hear, hear.

**An Ceann Comhairle:** We will return to the Bill.

### **Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed)**

Debate resumed on amendment No. 8:

In page 5, lines 26 and 27, to delete “*section 9 certification*”.

-(Deputy Peadar Tóibín)

**Deputy Brian Walsh:** I want to address two of my amendments, Nos. 69 and 77. I, like others, have serious difficulties with section 9 of the Bill. To my mind, it threatens to defile the Statute Book with the absurd premise that the suicidality of one individual can in some way be abated by the killing or destruction of another human being. This principle was not conceived in any centre of medical excellence or research, but rather in the Supreme Court. To my mind, this court issued a flawed judgment in the X case, and not having heard any medical evidence at the time, it operated in an information vacuum.

We now have an abundance of up-to-date medical evidence and research from our nearest neighbour, the United Kingdom, which clearly states that abortion is not an appropriate treatment for suicidality. In fact, the provision of abortion in such circumstances has been shown to result in creating more mental health issues in women than it would seek to negate. We heard all of this evidence here in spades during the two sets of Oireachtas hearings, yet we are poised to ignore all of that medical evidence and pass legislation that has no basis in medical fact.

I have submitted a number of amendments with a view to making improvements to the Bill

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as opposed to making the Bill acceptable. I did not propose the deletion of section 9, as I know that to do so would render the Bill unconstitutional. What I would like to see is the question of suicide, and perhaps questions raised by other Deputies during the debate, to be put to the people again by way of a referendum, in light of the new evidence and research that is now available and in order to address the incompatibility of certain aspects of the X case judgment with up-to-date contemporary medical evidence regarding abortion and suicidality.

People will argue that we have had two referenda in the past, but medical evidence and research evolve and, most importantly, best medical practice evolves. I believe it is incumbent on us as legislators to make the decisions we make, having regard to the best possible information available to us at any given time. If, for example, we were to frame legislation concerning the health of women in pregnancy based on the best advice that has been available previously, we could be looking at providing for symphysiotomy in the legislation. If we went back further and were to frame legislation concerning the health of women in pregnancy based on the best medical advice available 40 to 50 years ago, we could be looking at the administration of thalidomide in legislation. We, however, are in the process of framing legislation for the protection of life during pregnancy in 2013 and we must be guided by the evidence available to us today, not bound by a decision manufactured in the courts back in 1992.

In formulating the proposed legislation, the Government has ignored everything the experts had to say during the two sets of Oireachtas hearings. It has come up with a Bill that is shaped by political considerations rather than medical evidence. In truth, abortion is no more a treatment for suicidal ideation than suicide is a treatment for it. Many Deputies have spoken about the low incidence of women who will avail of this, but let us refer again to our nearest neighbour, the United Kingdom. In England and Wales in 2011, almost 200,000 terminations were performed and over 95% of these were on the basis of mental health issues.

Section 9 of the Bill also threatens to normalise suicide. Some psychologists and psychiatrists have suggested this, although it represents a departure from best practice as outlined in suicide prevention guidelines. We are proposing to codify in legislation the premise that suicide is a legitimate option, the contemplation of which has the potential to make legal something which is otherwise illegal. Suicide is not an option; it is a manifestation of false perception that there are no options. We have had numerous debates on this in the two and a half years I have sat in this House. All of our efforts on suicide prevention have centred on getting the message out that there are options for people, that people can seek help and that there is support out there. Our guidelines state that suicide must never be represented as a valid choice, but this Bill conflicts with that and it threatens to normalise it as a legitimate response to anxiety and distress.

I also have concerns, as have many others, in regard to the absence of a gestational time limit in the proposed legislation. One scenario which might arise is if a pregnancy is terminated under section 9 at, say, 24 or 25 weeks gestation, when the unborn child is on the cusp of viability. That child may well survive the termination, but being prematurely induced at that stage exposes it to a high risk of incurable conditions such as cerebral palsy, brain damage, blindness and other debilitating illnesses. It may consign the child to a hopeless future of institutionalisation and disability. As I said on Second Stage, it is not difficult to envisage how a child needlessly damaged like this, unwanted by its parents and destined to subsist in a desolate limbo, could ultimately have recourse to the courts arising from the State having failed in its duty of care.

I also believe this legislation may herald a fundamental shift in the culture of care in this country's hospitals. Our health care professionals, in making every effort to protect the life of the mother and that of the child, in accordance with their own guidelines, have made Ireland one of the safest countries in the world for women in pregnancy. What impact will this legislation have on the culture of care in Irish hospitals if, one day, a doctor is striving to save the life of a woman and her child, and the next is perhaps gowning up to perform a procedure that will result in the death of the unborn child?

One aspect of this debate which saddens me is the fact that some Members opposite have used the tragic death of Savita Halappanavar to advance one side of the argument. I believe it is shameful of those Members who have engaged in such dishonest and disrespectful politics. Savita's death has been wrongfully used to further one side of the argument. I believe everyone in this House welcomes the clarity this Bill brings for medical professionals operating in this sphere, as I welcome it. It is dishonest of Members opposite to suggest or imply otherwise.

I do not believe, and this is my honest assessment, that the lack of clarity in the Medical Council guidelines which are in place at present contributed to Savita's sad passing. I attended her inquest and I read the report into her death. To my mind, the problem in Galway was that her medical team did not recognise in time that there was a threat to her life. Had they done so, they would have acted, as they have done in Galway in the past, and as has been done in an average of 30 cases each year, as we were told at the Oireachtas hearings. They would have acted to terminate the pregnancy but, sadly, they did not recognise the threat to her life in time.

Let us be clear. This Bill does not change the law in so far as it applied to Savita's case. Had this legislation been in effect at the time of that tragedy, sadly, I believe the outcome would have been no different.

I am under no illusion that the stance I have adopted concerning this legislation is not a popular one, it is not prudent from a political perspective and it is a decision for which I am likely to pay a heavy price. However, if political isolation and future electoral defeat is the cost of doing what I believe to be right and in the best interests of the people I represent, then I will gladly pay that price. Too often in the past, our decisions have been guided by having an eye to the next general election and to what is popular. Political foresight has only extended to the next election. It is perhaps because of that mindset that we find ourselves in the economic crisis from which we are trying to recover.

It is time for us to not only look further but also in a different direction on this issue, not towards what is momentarily popular but towards what is clearly right. It remains my hope that those of us from within the Fine Gael family who will vote against this legislation tonight can continue to be accommodated within the party. I have spent 30 of my 40 years actively involved in Fine Gael. I have the very highest respect for the Minister and, indeed, for the Taoiseach. I believe the Minister is genuine and sincere in what he is trying to achieve here. I do not agree with that point of view but I would hope he would also show me the respect I believe my point of view deserves.

The Taoiseach has been magnanimous in the past in dealing with those who have been disloyal to him, and I think a far greater level of disloyalty has been displayed towards the Taoiseach and the party in the past. I do not believe that I have digressed from the party's values. I gave a commitment to the people based on my understanding of Fine Gael's position in advance of the last general election. I made a commitment on the doorsteps and that is a commitment

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I intend to keep. One senior Minister said recently on “The Week in Politics”, when he spoke about broken election promises, “Isn’t that what you do at election time?” It is not what I do at election time, and it is not what I intend to do here.

**Deputy Michael McNamara:** We have heard a lot in recent days and in particular tonight about conscience and the importance of voting with one’s conscience. I salute each and every Member of this House tonight who will vote with their conscience on this important issue. However, it needs to be said that people on both sides of this House will vote with their conscience. People will vote with their conscience when they go through both of the lobbies tonight.

There is something hanging in the air that somehow only those who oppose either section 9 or the Bill in its entirety are voting with their conscience and the rest are somehow voting through political expedience. Nothing could be further from the truth. Was it conscience that led this Legislature for the nine years from 1983 to 1992 to legislate for when a pregnancy could be terminated in order to save the life of a pregnant woman? I accept that the legislation at that time would not have included suicide as a ground. Was it conscience that led this Legislature to ignore this issue or was it political expedience? Was it fear of powerful political forces in the land?

Was it conscience after 1992, when the Supreme Court clarified exactly the meaning of Article 40.3.3°, and the Chief Justice stated: “I, therefore, conclude that the proper test to be applied is that if it is established as a matter of probability that there is a real and substantial risk to the life, as distinct from the health, of the mother, which can only be avoided by the termination of her pregnancy, such termination is permissible, having regard to the true interpretation of Article 40.3.3° of the Constitution.” Of course, we heard tonight that the Supreme Court cannot order this Legislature to legislate, which is correct. However, it is important to also bear in mind that it is for the Supreme Court to determine what the Constitution means - the Constitution, as chosen by the people, not by this Legislature.

After the rejection of the referendum in 1992 to remove suicide as a ground, was it conscience that for ten years led the Legislature to do nothing? In 2002, another referendum was put to the people to remove suicide as a ground, and it was again rejected by the people. Was it conscience that led the House to again ignore the people and their Constitution? I say it was not; I say it was political expedience, and that needs to be recognised.

Was it conscience that led some people to somehow suggest that the X case was invalid and was all some kind of an *obiter dictum*, when of course it was not? Yes, the circumstances of Miss X changed after the judgment, but an *obiter dictum* is defined in *Murdoch’s Dictionary of Irish Law* as an observation by a judge in a case on a legal question based on facts which were not present or not material. The reality, however, is that all of the facts were present and relevant when the Supreme Court made its decision in the X case. They might have changed later, but that does not in any way render that judgment *obiter*. It was and remains a valid judgment.

The Cosma case was also cited as being relevant to this matter. That case related to a conflict involving a woman who threatened to commit suicide because she was being deported, whereas the X case involved a very real dilemma and conflict as between vindicating the life of a girl and the right to life of the unborn, whose life was dependent upon that girl’s life. It was an entirely different scenario from that encompassed in the Cosma case. In the X case judgment, Mr. Justice McCarthy noted that the right to life of the girl in question was a right to a life in

being, while the right of the unborn was to a life contingent on its survival in the womb until successful delivery.

If there was any fault with the X case judgment, it was that it was conceded that there was indeed a threat to the life of the mother through suicide. That will not be the case in the real circumstances that will come before a panel of doctors for adjudication in accordance with section 9. Section 9(1) reads: “It shall be lawful to carry out a medical procedure in respect of a pregnant woman in accordance with this section in the course of which, or as a result of which, an unborn human life is ended where ... three medical practitioners, having examined the pregnant woman, have jointly certified in good faith that there is a real and substantial risk of loss of the woman’s life by way of suicide, and in their reasonable opinion [being an opinion formed in good faith which has regard to the need to preserve unborn human life as far as practicable] that risk can only be averted by carrying out that medical procedure.” The reference to a “real and substantial risk” of loss of life is exactly the same term that was used by the Supreme Court in its judgment in the X case. There is no prospect that the question of whether the risk to life meets that test will be conceded. Instead it will be for three suitably qualified practitioners to determine whether there is a risk to the life of the woman posed by suicide. It is not a matter of a legal concession or something as trivial as that. It is indeed a matter of life and death. That is why three suitably qualified medical doctors will determine the issue.

I commend the Bill, including section 9, to the House.

**Deputy Peter Mathews:** It is some ten and a half hours since I made a short contribution on these proposals. I preface my comments tonight by reminding everyone - in which I include myself - that life is an extraordinary gift and that mothers and babies are extraordinarily valuable human beings. The Constitution recognises that in Article 40.3.3°. The problem, if it is a problem, is to interpret that article in a way that is mindful of the enormously sacred or valuable lives in existence. Of course, medicine in all its disciplines should do everything possible to support and care for the life of a mother at risk. There is no question about that.

As we heard from Deputy Billy Timmins and others, we have come a long way in understanding what psychiatry has shown us. We know by the overwhelming evidence, and we cannot afford to avoid that evidence, that a threat or intent of suicide is not medically dealt with or treated by a termination of pregnancy that could end in the destruction of the life of a baby or damage to that baby. The evidence in that regard to the Oireachtas committee was overwhelming. We would be absolute fools to create some sort of legal labyrinth which says that the only way to avert that intent or risk to the life of the mother is to legislate or make it lawful to end that other life.

We should have listened to the voices of some of the women who have had abortions. They asked to present their testimony in a gentle and educational way, to offer a sharing of their experience before their abortion, at the time of the abortion and afterward, and how it has since affected their lives and their family’s lives, including their husbands or partners and their other children. We declined to allow them to tell us their stories. That is quite weird, in my book.

The Minister said that this debate has been fulsome, that it has charged most of us and made us look into the corners of our conscience and knowledge, to find out more, listen more and read more. Yet I can see that my own colleagues are full of angst, anxiety and worry about this, because it is a very serious thing. It is the fabric of our country, our people and our culture. It is the fabric of our faith in humanity, even if there is not faith in Christianity or, for that matter, in

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Islam. After all, Islam does not like abortion or anything to do with this Bill. We can selectively choose which bits of social consciousness we will discuss, accommodate, trim, prune back or whatever, but it is clearly not good when so many people are angst ridden.

It hurt and saddened me - I felt empty, in fact - when one of my colleagues said earlier today that having spoken to the Taoiseach for an hour and a half yesterday - and that was not the first such meeting - and also to the Minister for Health for an hour, and despite being dissatisfied with the answers she received to her proposals and questions, she decided nevertheless to vote for the Bill so that she is not thrown out of her party. That is unbelievable. If any of my children did that, I would ask them, please, to look into what they are doing and how they do it. I hope everyone here would say the same to their own children. It is wrong to have this type of coercion. If a company treated senior, respected employees who have given a lot of professional input to their firms in a similar manner, employees who have informed themselves and read, studied, listened and looked into a particular matter at hand, it would be equally wrong. It is wrong, plain and simple.

If we feel that something is not right, we must acknowledge it. If it does not feel right then there is probably something wrong about it. As I said earlier, the hull of a ship is what gives that ship and all on it their safety. It does not matter what amendments one does in terms of lifeboats or lifejackets or beacon lights and all the things we have been discussing in recent days, including what happened to the poor Bolger brothers and all of that. Will the beacon lights work if someone falls into the water? This is about future children, little babies. Let us make this a better country so that women do not have to go to England, France or America, 4,500 of them every year. I hear people saying these women have to go to England; they do not have to go. We should gather them up and give them support, give them money, give them encouragement.

**Deputy Kathleen Lynch:** The Deputy does not understand.

**Deputy Peter Mathews:** I do understand. The Minister of State was not at all the committee hearings and did not hear what was said. None of the Cabinet Ministers was at those hearings. That is a very big gap and I am ashamed of it.

**Deputy Mattie McGrath:** I have a point of order.

**An Leas-Cheann Comhairle:** I cannot allow it, Deputy McGrath. Deputy Peter Mathews has the floor.

**Deputy Peter Mathews:** We heard about the law.

**An Leas-Cheann Comhairle:** We are dealing with amendments to section 9.

**Deputy Peter Mathews:** This touches on all sections and all the amendments without exception. We must get this right. We are not obliged to legislate for the Constitution. That was well put. Deputy Timmins rightly said that we would be all fools to ignore the reality of what psychiatrists tell us and that they said they are being put into a naturally repugnant dilemma whereby if a woman is distressed, and my compassion goes out to her, to the point that she says she does not want any of the care pathways, and she is entitled to do so, the psychiatrists must conduct what was referred to as the gatekeeper exercise, whereby they certify jointly that there is a continuing real intent on committing suicide and a risk. The only way to avoid it for the mother is to allow legally a lawful termination that, if it occurs in week 15 or week 16, is certain death to the little baby and is damage if it occurs in week 16 through to week 23 and beyond.

We are in bad territory. We should stop. We are looking over the edge of a very steep cliff and we, as a people, should stop.

It is a disgrace that the debate is trundling on until 5 a.m. The people of Ireland deserve better. We should be sleeping on what we have heard today, listening more, reading more and having open minds and fresher minds with clearer thinking tomorrow, the next day or the day after. Is it not tragic that in France women did not have the vote until after the Second World War? That was really bad. Only 30 years later, they legislated for abortion for the first time. Today, girls in France can go to their GPs and have lawful abortions without their parents' knowledge. Some 25% of all pregnancies in France end in abortion at the moment.

**Deputy Michael McNamara:** Is the Deputy suggesting it is because of women's right to vote?

**Deputy Peter Mathews:** I am saying that in a short space of time legislation moves on and socially countries can lose their path. Law gets meddled with and interfered with.

**Deputy Kathleen Lynch:** It is called legislating.

**Deputy Peter Mathews:** Some 30% of pregnancies in America and England end in abortion. Deputy Michael Healy-Rae referred to it as 1.2 million babies every year in America or 3,500 a day. This amounts to a 9/11 every day but we do not hear from them because they are little. They do not have relatives except the parents, who allow it to happen. People might think this is extreme but it is extreme.

Deputy Kirk made a very good suggestion, that the Parliament should ask the Taoiseach to reconsider this. That was an excellent and seriously sound suggestion. Deputy Tóibín made an excellent contribution and the Minister of State, Deputy Creighton, was spot on, with a clear focus on how we have travelled to where we are in the terms of the law.

I met Hugh O'Flaherty after the second Lions rugby match against Australia. I met him socially in a tennis club of which I am a member and I did not go there to mention anything to him but I was delighted to read what he wrote last weekend, six days later. We ought to sit up and pay attention to it. He was a Supreme Court judge for that case. Like the other five members of the Supreme Court, he used his professional skill and judgment, which was limited to the facts in front of him, as pointed out by Deputy Michael McNamara. The facts, which were very limited, were the experience of a psychologist with six years experience-----

**Deputy Kathleen Lynch:** Does the 14 year old girl who was raped have no say?

**Deputy Peter Mathews:** Can I speak please? The limited professional experience was given as best he could to judges who knew they were getting only limited professional opinion but it was a crisis and they had to move and think fast. The judges would have liked to have heard more and would have loved to hear what we now have the benefit of but they did not have it. The Minister of State, Deputy Creighton, said they made a judgment, which was a contained judgment for that case, as best they could. It does not travel as a precedent.

Deputy McNamara provided a definition of *obiter dicta*, which contained one word that does not make quite what it seems. I want to give an example of how framing of information can lead to a different understanding and a different result.

**Deputy Kathleen Lynch:** Was she not 14 and was she not raped?

**Deputy Peter Mathews:** This is an excerpt from the chapter about frames and reality in *Thinking, Fast and Slow* by Daniel Kahneman, a Nobel prize-winning behavioural psychologist, economist and philosopher who has written perhaps this year's bestselling book. His reputation in the area is world class and is a hallmark. He and his colleague, Amos, carried out an experiment with colleagues at Harvard Medical School. It is a classic example of emotional framing.

Physician participants [and remember these are qualified physicians at Harvard] were given statistics about the outcomes of two treatments for lung cancer: surgery and radiation. The five-year survival rates clearly favor surgery, but in the short term surgery is riskier than radiation. Half the participants read statistics about survival rates, the others received the same information in terms of mortality rates. The two descriptions of the short-term outcomes of surgery were:

The one-month survival rate is 90%.

There is 10% mortality in the first month.

[It is the same information framed differently.] You already know the results: surgery was much more popular in the former frame (84% of physicians chose it) than in the latter (where 50% favored radiation). The logical equivalence of the two descriptions is transparent, and a reality-bound decision maker would make the same choice regardless of which version she saw [note that he switches to she]. But System 1, as we have gotten to know it, is rarely indifferent to emotional words: mortality is bad, survival is good, and 90% survival sounds encouraging whereas 10% mortality is frightening. An important finding of the study is that physicians were just as susceptible to the framing effect as medically unsophisticated people (hospital patients and graduate students in a business school). Medical training is, evidently, no defense against the power of framing.

I use the example to make a point about the title of the Bill, which I would love to do what it says it does. However, it does not do so because section 9 does not do it. The psychiatrists and the obstetricians said, if any Ministers had chosen to attend the hearings, there was a repugnant dilemma and that it was the labyrinth of the law that said if the mother said she did not want any of the medical treatments, the only way to avert the real and substantial risk of suicide was to terminate the pregnancy, which meant losing the life of the baby. They said it was a repugnant dilemma and they did not like it and it was all against their medical training, their medical objectives and their code of caring philosophy and everything.

We must be very careful about this. The legislation is supposed to provide clarity. As I said to the Minister earlier, iatrogenic medicine represents 25% of all medicine in the United States of America. It is probably the same here. It relates to doctors doing follow-up or tidy-up work on earlier medical interventions or diagnoses. We are human beings and we make mistakes, as happened in the unfortunate case of Savita Halappanavar in Galway. It is human error. How do we think that we can legislate to instruct doctors, who we hope have the objective of doing no harm and, in fact, doing good? We hope they will look after everybody, including mothers, fathers, children and older people. Within the frame of reference and principles of the Constitution, we should let them get on with it. Wisely, we do not legislate for how bridges should be built or brain, open-heart or eye surgery performed. We do not even tell solicitors how to do things or accountants how to measure profit or loss. They have developed ways of dealing with accruals and of observing prudential assessment. When professionals let their standards

slip, as bankers and accountants did, the ratios and balance sheets, which should have been kept in check, fell by the wayside. Then, we saw the collapse. The difference in this case is that we have been told by the professionals what the realities are. Psychiatrists tell us that abortion is not a cure for suicidal intent. We are choosing to ignore that in framing the legislation. In the banking collapse, we were told lies, which led to a financial collapse. Do we want a social collapse?

**Deputy Olivia Mitchell:** Is this on section 9 of the Bill?

**Deputy Kathleen Lynch:** This is about protecting women.

**Deputy Peter Mathews:** I told you at the outset that we have asked the medics to do everything.

**An Leas-Cheann Comhairle:** Deputy Mathews, please speak through the Chair.

**Deputy Mattie McGrath:** He is entitled to have his say.

**Deputy Peter Mathews:** Medicine has been doing that in the interim 21 years.

**An Leas-Cheann Comhairle:** We cannot have these conversations.

**Deputy Mattie McGrath:** He is being interrupted.

**Deputy Peter Mathews:** We have wonderful standards. They are the best. Doctors, nurses, midwives and medical attendants do their very best. Let us not make them overly neurotic about law and what lawyers would like them to do in lawyers' language instead of caring for people and taking necessary, courageous risks. As I said to the Fine Gael Parliamentary Party meeting, my father would not have wanted clarity for Freddie Woods to do his open-heart surgery. He trusted Freddie to do it. There has been a highly politicised and disingenuous attempt to do something here that we should stand back from and take stock of. We must be honest. It is shocking that 4,500 women and girls go to England and France every year and my heart goes out to them. We should prevent it.

**Deputy James Reilly:** Lock them up.

**Deputy Peter Mathews:** Whatever society needs to do to prevent it.

**Deputy Kathleen Lynch:** We had a referendum on that.

**Deputy Peter Mathews:** I know orphans who were the product of a conception through rape. They certainly do not want to think that their lives might have been snuffed out. I know a couple of them. It is shocking that women have had the experience and consequential emotional effects travelling through their lives and to their husbands, partners and children. We cannot repeat this enough. We must understand it. It is not a quadratic equation or legal treatise that we have to undertake. We must look after women and babies from the moment of conception and the whole human family on the island until natural death. Otherwise, we may begin to look at people who have lost their minds and memories as being at the other end of the spectrum from what some people call a foetus rather than a baby - an old bag of bones or whatever remote medical term might be used. No. Everybody is worthy and life is a gift. I did not decide to be born in August 1951 and my children did not decide to come into the world. I will leave it at that as some thoughts on which to reflect.

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**Deputy Mattie McGrath:** Good man, Peter.

**Deputy Michael Healy-Rae:** Well said.

**An Leas-Cheann Comhairle:** People have asked me where they are on the list. Deputy Durkan is after Deputy Ó Caoláin. Deputies Shortall, Shatter, Bannon, White, John Paul Phelan, Seamus Healy, Kathleen Lynch and Pringle are the names that follow.

**Deputy Michael Healy-Rae:** I should be added to the list. I was locked out when I was in possession.

**An Leas-Cheann Comhairle:** The Ceann Comhairle will deal with that.

**Deputy Michael Healy-Rae:** Can I be added?

**Deputy Caoimhghín Ó Caoláin:** Sinn Féin opposed the proposal to sit until 5 a.m., not because we did not want additional time to discuss the Bill but because the time arrangement is unreasonable. The Bill should not be debated by ever-tiring heads. The Government should have rescheduled for tomorrow and Friday, if necessary, whatever time was required. Fresher, clearer contributions were what we hoped for.

The greater number of Irish people realise and accept that this is not a black and white issue nor indeed is it a them-and-us issue. Accordingly, it should not be a question of a them-and-us debate between one body of opinion strongly held and another body of opinion equally strongly held, with no prospect of a meeting of minds. Those who argue for the greater number of amendments in the grouping, most of which seek the deletion of section 9, do not have a monopoly on care and conscience. It is because I care and exercise my conscience that I have concluded that I must act as legislator and face up to the fact that certain circumstances can and do present.

I noted in an earlier contribution a Member's concluding remarks. The question was posed as to why the Bill provided for the termination of pregnancy as the only treatment for those unfortunate women confronted with suicidal thoughts or ideation while pregnant or as a result of the pregnancy. There is a simple answer. It does not so provide. That is not what the Bill says. Section 9(1)(a)(ii) refers to the reasonable opinion of three medical practitioners, two of whom will be highly qualified psychiatrists, that a risk can only be averted by carrying out the medical procedure. What does the word "only" tell us? The practitioners have a responsibility to reach a conclusion using their professional judgment as fully trained and registered psychiatrists who have assessed, explored and employed every other reasonable, realistic approach in their address of those cases that will present.

*11 o'clock*

This is not the only action provided for. It is the last action provided for when all of the other avenues of exploration and address have been properly explored, employed and exhausted.

In the case of the risk of loss of life from suicide, it is worth reminding the House again that this is already the law. This is what is already acknowledged practice in the guidelines to all medical practitioners. If one has any doubt, he or she should check section 21.1 of the Irish Medical Council guidelines. How many such terminations due to the risk of loss of life from suicide have taken place over the number of years since that has been the legal case? Such is the legal position and it is what the guidelines of the obstetricians' collective professional body,

the Irish Medical Council - which is the amalgam of all medical practitioners - clearly indicate. One of the obstetricians who appeared before the committee hearings in January and May indicated there could be no doubt about this aspect, not as is provided for here in terms of further opinion to ensure certainty. It is interesting to note that despite this, not one of the obstetricians who appeared before those committee hearings had a personal experience as an obstetrician of ending a pregnancy following on such an assessment. They acknowledged in the course of their contribution that there were - there was some little difference of opinion - perhaps two or three cases that they knew of going back over many years, and each of those are very sad in their own situation.

No doubt the medical practitioners involved in determining those interventions are the self-same medical practitioners who will continue to operate by the terms of this legislation on its passage and who will employ the highest professional standards within their respective disciplines in medicine, by which I mean across the board without distinction in terms of physical illness address or mental illness address. I have confidence in them and in their ability to do so. We must recognise that first and foremost in the minds of all practitioners is their obligation to address the need of the pregnant woman and the need to preserve the life of the unborn child. There should be no doubt that such would be their approach and that such is their professional commitment.

The Bill provides for review and for reporting so that the Minister of the day is fully aware of the incidence in any of the sections, be it section 7 certification, section 8 certification or section 9 certification. On the matter of any irregular incidents, I will accept when the Minister states - he and I are not noted to be in regular agreement - that he would act appropriately if any concerns presented in terms of incidents.

My conclusion on section 9 is that it is an integral and necessary part of the Bill. I would appeal to Members because, make no mistake about it, it is not an easy path, either for me and for many of my colleagues and friends across all political opinion in this Chamber, to come to these sets of judgments. We do so, not on the basis of any of the personal concerns and views we have held but as legislators recognising that we have a bounden responsibility to judge each piece of legislation as to it being fit for purpose. I believe that the Bill is exactly that - fit for purposes and worthy of our support. This is a time for all legislators to step up to the plate and lift their heads from the sands.

**Deputy Bernard J. Durkan:** I fully endorse and agree with the points raised by Deputy Ó Caoiláin. I am sure that does not come as a shock because we both, like the Leas-Cheann Comhairle and others, have been around this House for quite a while.

In issues of this nature, we should remember one or two points. First, this is a question of conscience. Many have conscientious concerns and there is provision made in the legislation in respect of conscientious objectors. Conscientious objection is recognised nationally and internationally as a reason for adopting a particular position.

However, legislators also have another problem, that is, the point raised by Deputy Ó Caoiláin. We have a responsibility to do what is deemed to be right, having regard to all of the citizens, having regard to all of the opinions and having regard to circumstances that emerge at a particular time. Those circumstances may not be the ones that were in the public arena one year ago, ten years ago or 30 years ago, but we must do the best we can and presume that we are doing right. We must do right, by ourselves and by the Constitution.

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I do not propose to lecture anybody else in this House as to what one should do in these circumstances. I do not want to be told by anybody that I face the threat of excommunication unless I proceed in a particular fashion. Like everybody else, I am as good as I can be and probably not as good as I should be. For those who want to sit in judgment, they should judge everybody - there are many judgments hanging in the balance in this country over the past 50 years.

This also gives us an opportunity to come out of the valley of the squinting windows and come into the light and recognise some of the debate which has been targeted at some of us over the past six months for what it is, and the undercurrents displayed therein. In particular, I would posit to the House tonight that there is an undercurrent of disrespect for women, suspicion of women, and suspicion that women are liable to do wrong and opt for, in this particular case, abortion virtually in every circumstance. That is an injustice we should not do. The male population of this country should recognise the significant contribution women have made to our society in difficult times, economically, socially and of every kind, when many of them were condemned to oblivion and were restrained and restricted in where they could go and what they could do if they did what was seen as wrong by society at the time. Let society stand up now and be counted, individually and collectively. Let us, as Members of the House of Parliament, recognise that we also have a duty to the women of this country as well as to those who would seek to divert our attention in a different direction. This is important at this time.

In particular, I want to address the issue, suggested in some posters, to the effect that this Bill was a deliberate attempt to kill babies up to the time of birth. That is incorrect. There is no such proposal in the Bill. Anybody who can within reason read the English language should recognise that. It is wrong to suggest that. It is disingenuous and misleading the people, and those who say that know full well that is wrong. As we know, the only provision in the legislation is for situations where the life of the mother, as opposed to her health, is in danger and then only after careful consideration and reference to professionals in the field at the time and cross-checking and double-checking.

I have heard it suggested that the Supreme Court is wrong in its decisions. This is a common complaint against court decisions from people who have a decision made against them. The Supreme Court decided on the case as presented to it at the time. The judges of the Supreme Court had to make a decision. They could not shilly-shally. It was a convincing majority decision rather than a split decision. They made their decision based on the evidence presented to the court. There is not much sense in suggesting now that if they had more evidence they might have made a different decision. That is pure hypothesis and it does not stand up. They made the decision in good faith. It may be that this does not set a precedent but if a similar case is presented again tomorrow or next week the judges of the Supreme Court will have to make a decision again. They cannot opt out. They will make a decision on the basis of the legislation and the evidence before them.

It is alleged the present Government is legislating for abortion, to create a situation that did not exist before. This is not true. It has been suggested to me and to other Members in recent correspondence that there was no need to legislate. That is not true because if there is no clarity in the legislation and no legislation other than the decision of the people as interpreted by the Supreme Court, then it will be a defence in some cases, at some time in the future that there was no clarity, no statute law to support what was done or not done. The result would be disaster.

I am totally opposed to abortion, as I am sure is virtually every other person in this House. I do not regard it as a remedy for anything. However, there are tragic circumstances arising from

time to time where an intervention might have to be made in order to save the life of the mother. I did not hear a great deal of emphasis on the need to ensure that the lives of mothers must be protected in many of the submissions we received and listened to over the past six months. The lives of mothers are important as well. The mother is an adult and in full control of her circumstances and surroundings but this may not always be the case. She may have a condition that has gone past the point at which she is able to contribute. Then it rests with those professionals around her to make a decision. It had better be the right decision in the case of both the mother and the unborn child because if the decision is not made or if the condition is ignored and tragedy ensues, there is no good saying that these things happen. We are in the business of ensuring that there is clarity for those professionals on one side or the other who may decide to prescribe a particular procedure.

I fully realise that people with conscientious objections may say - rightly so - depending on their own preference, that they do not wish to be involved in such procedures. This applies in the UK and in most other jurisdictions. However, the patient or patients - mother and the unborn child - have a right to clarity and to know that justice is being done and that some particular course is applicable and will be followed. Otherwise, it will be at the behest of whoever has the particular preference, depending on the side of the argument. I attended the hearings in their entirety. It is not true to say that there was unanimity in respect of psychiatric or even medical evidence. There was a difference of opinion. Nobody suggested for one moment that abortion would be a cure for suicide but it was not suggested that a situation would never arise where this did not become a possibility. In a society that has been beset by suicide as much as our society, it would be very remiss of any professionals to avoid or overlook the issue. To be fair to them, they did not do so. They were not as judgmental as people predicted. There is a tendency for people to quote those whose opinion coincides with their own. There is a certain pattern running through the system and I can predict the likely response in the event of a particular question. Legislators understand this to be the case. However, in the case of a woman who has a crisis in the pregnancy such as an issue of physical or mental health, if nothing is done the woman will die. The Constitution protects the life of the unborn and it also protects the life of the mother. It is a question of what is the right thing to do. In my view, we need to legislate for this situation in order to ensure some uniform response in hospitals and among professionals and some uniformity in the way the patients are treated. Otherwise it will depend on which hospital a woman elects to attend when pregnant or whether she decides to go to the UK where she will receive a different type of treatment. We have a duty to legislate which is not intended to liberalise the availability of abortion. It is a legislative procedure to inhibit and to proof the basis and the grounds under which a termination could occur. That is for the benefit of both the mother and the unborn child and I strongly support it.

I have to be somewhere else in a couple of moments. Reference has been made in the debate to other jurisdictions. I do not understand why such references are made. We have our own Constitution, independent of other jurisdictions. We can decide ourselves and the people have decided. I remind any of those who have any doubts that the people decided twice about the suicide clause. If once was not enough they decided twice. The argument will be that they did it for different reasons. The reasons are not important. The people made their decision and they did so in good faith and knowingly, in the full and clear knowledge of the effect of that decision.

Those of us who have been in this House for a number of years should be aware, as should newer Members, that it is an issue of who governs. Do the legislators govern or someone else? Are we controlled from inside the country or outside the country? Are we influenced by people

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from other jurisdictions who have their own views? Do we make up our minds based on our own knowledge and on the Constitution? As legislators we must legislate for all of the people, fairly and without fear.

**Deputy Róisín Shortall:** What is the Government playing at tonight? This nonsense of continuing until 5 a.m. is demeaning of everyone here in the House. It brings the House into complete disrepute and there is absolutely no need for it. I do not know what the Government's game is. I do not know what it is doing if it believes it is somehow smart or clever to allow people to tease out the legislation until the early hours of the morning. It is completely wrong and there is no reason we could not go home, have a night's sleep and return here at 10.30 a.m. to resume the debate and, if necessary, continue on Friday. The Government is really bringing the entire House into disrepute with its carry-on tonight. It reflects very badly on everybody, but particularly the Government.

Unfortunately, the debate on abortion has traditionally been very much dominated by the two extremes of the argument. Most people are very much turned off by the two extremes, namely, the pro-life side and the pro-choice side. The reality is that the vast majority of people occupy the middle ground. We do not hear from the middle ground often enough. This legislation does not reflect the views of the middle ground. In many ways, it does not go far enough and, in others, it goes too far. It would be much more honest if the Government decided to address the issue of abortion in a way that reflected the reality of the issue and in a way that the public would support.

The vast majority want a regime that does not result in abortion on demand or a very liberal abortion regime. Equally, most recognise the very real and difficult circumstances that arise for people when very difficult calls have to be made in respect of balancing the two sets of rights. For most people, the starting point is a belief that we are talking about two sets of rights, the rights of the woman and the rights of the unborn. It is important that we keep this to the fore all the time. There is, however, a limited number of circumstances in which those rights must be balanced. These are the difficult circumstances. I refer in particular to inevitable miscarriage. Speakers tonight on both sides invoked the name of Savita Halappanavar to support their argument. This legislation has very little to do with that tragic case. However, there are inevitable miscarriages and this legislation does nothing for people who find themselves in such circumstances. It would be serving the memory of that unfortunate woman well if we dealt with this matter and the very close to dangerous circumstances that currently obtain in many of our general and maternity hospitals through under-resourcing of the services. This issue was referred to by a number of speakers who appeared before the health committee. I refer also to the tragic circumstances in which several hundred Irish women find themselves every year when they discover they are carrying a foetus with fatal abnormalities such that it is not compatible with life outside the womb.

There is fairly broad public support for addressing circumstances in which women find themselves pregnant as a result of rape and incest. It would have been much more honest for the Government to have set out to address those real-life issues that force people into circumstances in which they feel the right thing to do is terminate a pregnancy. Legislating for those circumstances would have public support. Unfortunately, that is not the approach taken in dealing with this issue in the round. The principal concern for the two parties in government has been the politics of the matter rather than the reality. We have a political proposal that is not a solution by any means. It is quite disingenuous of the Government to suggest it is addressing this issue. It is failing to address the very difficult circumstances to which I referred and the

legislation is quite seriously flawed.

I very much welcome sections 7 and 8 of the legislation, which provide the clarification and certainty that women deserve and which the medical profession has been looking for. However, there are serious flaws in the provisions in section 9 with regard to circumstances where a woman presents as suicidal. There was much talk earlier tonight about the issue of suicide, which is a very pressing issue in our society. It is a major problem, particularly among young people. It should be dealt with and services should be resourced. Services are desperately under-resourced in spite of many promises over recent years.

It is important to bear in mind that what is referred to in section 9 is a very particular set of circumstances. The Bill does not provide for the circumstances of a woman with an underlying psychiatric condition. In such cases, other treatments are provided. This legislation provides specifically for cases where women present as suicidal as a result of their pregnancy. A very peculiar regime is being proposed that would provide for termination of pregnancy but make a distinction between termination of pregnancy and ending the life of the unborn. I am not aware of a regime like that in any other country. That, in itself, raises many issues. Most notably, Dr. Sam Coulter Smith spoke about this at some length at the hearings. The kinds of issues he raised are very serious and he raised them at some length, both in his written submission and oral presentation. He was raising the issues on behalf of a large number of his colleagues. He said on a number of occasions that this legislation raises the most serious ethical issues for the medical profession. Many in the medical profession regard the provisions as unworkable and believe they place doctors in virtually impossible ethical and medical positions. Despite the concerns having been raised, they were not addressed in any form at the hearings, on Second Stage or on Committee Stage. The questions remain hanging in the air and have not been responded to, unfortunately, by any of the Ministers involved with this legislation.

Dr. Coulter Smith made the point very clearly that it is very rare for women to find themselves suicidal as a result of their pregnancy. It was suggested that the rate is one in 500,000. It was also suggested that the medical profession is legally and ethically obliged to practice evidence-based medicine and that there is no evidence to suggest the termination of pregnancy is any kind of treatment for suicidal ideation or intent. Dr. Coulter Smith raised the scenario of a pregnancy of between 22 and 24 weeks where a doctor is put in an impossible position when a request is made for a termination. The doctor knows carrying out a termination will not be a treatment because there is no evidence to suggest termination is a treatment for the suicidal intent. Doctors have a responsibility to the unborn child and they are expected to carry out a treatment that will likely result in a child being delivered who has serious disabilities. How is a doctor expected to balance the responsibility to the woman with the responsibility to the child to do no harm? As Dr. Coulter Smith said, that places medical practitioners in an impossible position. The legal difficulty and ethical dilemma has not been addressed in the debate on this legislation.

Where doctors have no legal protection for taking action that will result in a baby being delivered prematurely and all that may go with that, and where there is no protection for doctors in the case of them refusing a termination on the grounds that they conclude that the woman is not suicidal, there is a fear among many people about the implications for doctors in those circumstances. What if the woman goes on for whatever reason to commit suicide at a later point? Is the doctor liable to be sued? In the case of the doctor taking action to prematurely deliver a child of early gestation and him or her being seriously disabled, what is the legal position of the doctor? Can he be sued? Can the State be sued? Can the hospital that the procedure takes place

in be sued? All these serious questions were raised on Committee Stage and answers were not provided for them.

**Deputy Alex White:** They were answered.

**Deputy Róisín Shortall:** I would like to elaborate on the issue of the lack of gestational limits. An extraordinary regime is proposed under which termination of pregnancy can take place right up to 39 weeks. At 39 weeks, there is a good chance the baby will be fine. Perhaps at 32 weeks that would also be the case but, as was pointed out earlier, the further one goes back to, say, 22 or 23 weeks, the greater the risk of permanent disability. Deputy Ó Cuív went into the risks involved at different stages of pregnancy. I suggested on Committee Stage that we should provide for a gestational limit in those circumstances but the Minister of State, Deputy White, and others stated we could not introduce them because it is a constitutional right and such rights cannot be limited.

That is one view but there are many other views. Mrs. Justice Catherine McGuinness suggested during the joint committee hearings that it would be wise for the Dáil to put a gestational limit on terminations. Professor Gerard Whyte of Trinity College Dublin law school stated: "The decision in X can have no application to cases in which the pregnancy is at such an advanced stage that it may be practicable to save both lives." To that extent, he considers the right to an abortion established in the X case to be a time limited one that expires once it is practicable to save the lives of both the mother and the foetus. If he is correct, then it would seem entirely appropriate for the Oireachtas, if it saw fit, to legislate for time limits, indicating at what point in the pregnancy it could be deemed practicable to save both lives. I do not know if this has been considered at all. The curt replies we got to this issue suggest that it has not been seriously considered.

On Committee Stage, I suggested that if it is the watertight legal advice - I do not accept it is because Professor Whyte's point is at least strongly arguable and is supported to a certain extent by Mrs. Justice Catherine McGuinness - then, at a minimum, an undertaking should be given before this legislation is commenced to hold a referendum along with the other referenda in October to provide for this. The public does not support a termination regime without gestational limits and which provides for termination of pregnancy right up to the 39th week. That is a serious flaw in this legislation.

With regard to what is proposed in section 9, the proponents of the Bill and even people who have serious difficulties with it say it will not make a difference and that the numbers will be tiny. However, the truth is we do not know because there is no clinical way of assessing a person's suicidal intent in cases where there is no underlying psychiatric illness. If a woman presents as suicidal by virtue of her pregnancy, there is no clinical way of establishing whether that is the case. I referred to my concerns that the default position may well be because of the lack of legal protection for doctors in those circumstances that the safer action for doctors may be to agree if the woman says she is suicidal. When we consider this in all honesty, we cannot ignore the experience in other jurisdictions where termination of pregnancy has been introduced on these grounds and what has happened in most cases in that regard.

I do not believe the Government is setting out to introduce a liberal abortion regime but because of the difficulty in a diagnosis of suicidal intent and because of the likely unintended consequences, there is a concern that under this legislation the rate of termination will increase significantly over time. The public does not want that to happen generally in these circumstanc-

es. It is important for that reason that the operation of this legislation is monitored clearly and that we have reports on how it is operating. The legislation, as drafted, provided for the Minister for Health to report on the notification he receives. I did not believe the headings under which those notifications were to be reported were sufficient. If we are honest about this, if we want to be open about it and see what its impact is, we should be entitled to information about the grounds on which terminations have been granted. That is a breakdown between sections 7, 8 and 9. We should be entitled to know what was the outcome of those terminations for the woman concerned and for the unborn. I had suggested amendments along those lines. When I was going through the legislation and the amendments I was very concerned to see the Minister's amendment which very much weakens the reporting arrangements on the notifications he has received. Rather than giving a breakdown of where procedures have been carried on, under what sections, who carried them out, whether there were significant clusters and that kind of thing, the Minister is proposing to amend the legislation so as to weaken those reports. Again one would have to ask why this is happening. If the Minister believes what he says the impact of this legislation will be why would he not be open about such reporting? That is another flaw.

Overall, we should have a review of this legislation, giving people the benefit of the doubt. There are those on the Government side who say this legislation will not result in a significant increase in the number of terminations. If that is the case let us have full reports every year and a review of the legislation after, for example, three years. That is reasonable. Given that nobody can say for certain what will be the impact of this legislation, why not have a review after three years? Let us discuss it here openly and look at the impact it has had.

That the Government will not agree to that and is being much more circumspect in respect of reporting arrangements lead me to have serious concerns about this Bill. Overall, the principal flaw I see in the legislation is in respect of the lack of gestational limits. That provides for a regime which most people would find unacceptable. For that reason I cannot support the provisions of the legislation in that regard.

**Minister for Justice and Equality (Deputy Alan Shatter):** I have been listening with great interest all day to this debate. When I was not in the Chamber I had it on in my room. A number of things strike me about it in the context of the amendments we are dealing with and going back to first principles might help. The first principle is that the X case involved a 14 year old rape victim who was suicidal. Many of those who oppose section 9 in the Bill have found it very difficult to refer to those facts. Concerning the rape victim who was 14 years of age, a psychologist gave evidence to the court, which was uncontroverted to the High Court, that she was suicidal and that if the pregnancy was not terminated she would take her own life. Disparaging remarks were made about the psychologist by my colleague, Deputy Peter Mathews. "Was he not qualified for only six years?" he asked. He may have been qualified for only six years but he was a qualified psychologist. In the case of some speakers, though in fairness to everybody who spoke, not all, the humanity this legislation is trying to address has got lost in legal jargon. Some of this jargon has gone beyond anything accurate. I will put it this way if I may - rhetoric does not make something that is inaccurate correct. It is important that is understood.

The X case was a seminal case to interpret Article 40.3. 3° of the Constitution and was a judgment I have written about academically and extensively. It was not a particularly complex judgment - it has been made to sound more complex than it is by some. Simply said, where there is a real and substantial risk to the life of the mother posed by pregnancy, the pregnancy can be terminated. Many people who are opposing this provision have focused on the life of the unborn and have said very little about the lives of women. I come from a perspective I know

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many people in this House share, where I regard the life of an unborn child as of extraordinary value. However, I regard the life of the mother as of equal value and I recognise that if the mother takes her life the unborn child will not survive. The unborn child's life is dependent on the life of the mother.

We have been subject to a lot of legal casuistry, what I describe as *à la carte* interpretations of High Court and Supreme Court judgments. Again I emphasise that rhetoric does not make what is said right when it is clearly and blatantly incorrect. What is incorrect about what has been said about the X case? We have been told a number of things about it, first that it is not a binding decision. As a lawyer who has practised for more than 30 years I can say the X case is a clearly set out decision of our Supreme Court that binds the lower courts in this State, and the Supreme Court, until such time as it might formulate a different view. I do not know on what basis anybody can say the X case is not binding.

The next issue is that we were told by former judge, Hugh O'Flaherty it was a rather exotic statement. I do not know whether he thought this through fully or whether he was accurately reported. We were told that because subsequent to the Supreme Court judgment in the X case the poor unfortunate 14 year old victim of rape suffered a miscarriage, in some way that made the five judgments, delivered in a 4:1 majority, what is described in legal parlance as *obiter dicta*, or a judgment which is not directly on the issue before the court. To fall into other legal jargon, the principle a court utters on the central issue before it is called the *ratio decidendi*. *Obiter dicta* is all about side issues the court has not been asked to determine, where judges make some comment about issues of indirect relevance which are not before the court. There was only one issue before the Supreme Court - where there is a suicidal pregnant victim of rape is it permissible to terminate the pregnancy if one accepts there is a real and substantial risk to her life? A majority, 4:1, of the Supreme Court answered that very simply with a "Yes". That particular rape victim suffered a miscarriage shortly before the termination was to take place but this does not, on any basis of legal interpretation, turn a decision of the Supreme Court, the central decision on the main issue before it, into something that is either irrelevant or a side issue that does not bind the courts in later cases. For any lawyer to say otherwise is grossly and seriously inaccurate. For a former Supreme Court judge to suggest it is truly bizarre and inexplicable. It is important to say this. We are told by some that the Supreme Court judgment was mistaken and that we can ignore it. Is that a principle we are going to adopt in this House to decisions we do not like delivered by the courts?

**Deputy Mattie McGrath:** What about the whistleblower legislation?

**Deputy Alan Shatter:** The courts deliver decisions on a regular basis.

**Acting Chairman (Deputy Bernard J. Durkan):** As Deputy Mattie McGrath has already spoken, will he, please, allow the Minister to speak, without interruption?

**Deputy Alan Shatter:** Some of the decisions the courts deliver make Governments uncomfortable. Litigants litigate. Citizens litigate against the State and win. Are we to say in this Parliament or in government, "Oh well, they got it wrong, we will ignore it"? That is not the way the separation of powers works. The separation of powers works on the basis that we respect the decisions delivered by the courts. It works on the basis that this Legislature, when enacting legislation, does so within the parameters prescribed by the Constitution and as interpreted by the courts, particularly the Supreme Court. The Government, when bringing forward legislation, has a constitutional obligation to bring before this House legislation that is constitutional.

If there is any doubt about the constitutionality of legislation, it is open to the President to refer it to the Supreme Court. This legislation is circumscribed by the constraints of Article 40.3.3° and the manner in which the Supreme Court has interpreted it. It is no more, no less.

Some Deputies who initially welcomed this legislation went out on the plinth this evening to oppose it because it does not do a variety of things that cannot be done within the current constitutional parameters. I find this surprising. This legislation cannot address some of the issues Deputy Róisín Shortall mentioned, or that Deputies Mick Wallace, Clare Daly, Richard Boyd Barrett and others have announced it should address and they are now, apparently, not voting for it. If this legislation attempted to address the issues these Deputies are calling for it to address, it would be unconstitutional. First, the Government could not constitutionally have published legislation which covered these issues. Second, if it covered them, it would certainly be referred to the Supreme Court by the President under Article 26 and third, for certain, based on the precedent of the Supreme Court in the X case and having regard to Article 40.3.3°, it would be struck down as being unconstitutional. The effect of this would be that instead of finally putting in place a legal architecture to provide clarity for the medical profession and women whose lives are at risk as to what are the procedures to bring about a termination to save one's life, we would be back where we started, in a big black hole with no legislation, simply with court principles. These court principles do not provide and prescribe adequate procedures, which is another reason to have this legislation.

I was interested in listening to those opposing the Bill. I cannot recall hearing during the day - I am sure I am open to correction, but perhaps I missed it at some point - a reference by those opposing this legislation and dealing with this issue that the amendments address to the European Court of Human Rights in the A, B and C case which has stated we have violated the rights of citizens of the State as delineated in Article 40.3.3° of the Constitution because there is supposed to be a legal architecture that ensures that where a woman's life is at risk, she knows how to go about dealing with the medical profession and seeking the help that she requires. That is about protecting citizens. Article 40.3.3° was given birth to or conceived in group-think. I was in the House during its gestation period. It was proposed by individuals who, inspired by some from America, said the Supreme Court was one day going to legislate for abortion on demand and that, therefore, we needed Article 40.3.3° which would ensure there would never ever be a termination anywhere in the State. They saw it as genuflecting in the direction of the safety of woman, but it did not have much in reality to do with women. The disappointment for its originators has been that it has provided some protection for the rights of women, but they do not like this and say the Supreme Court is mistaken. The description of the Supreme Court being mistaken is not new to this debate. It has floated through the ether with much repetition since 1992. I have very strong views on this issue and they are not new. They are on the record of the Dáil, over decades, but they are of no relevance to this legislation. This legislation provides an architecture that no Government has previously had the courage to provide to ensure we will know how this issue should be dealt with.

Various Deputies have made various comments. Deputy Róisín Shortall refers to the gestation issue and full-term terminations. I have seen the posters which suggest this legislation concerns terminations in the 39th week of pregnancy. If a woman's life is at risk in an advanced pregnancy and some medical intervention is required, that is early delivery. It is not murdering the unborn child. It is about doing what one can to save the child and the mother. All of us in this House have friends, relatives or neighbours who had an early delivery because of substantial medical complications and in the vast majority of cases mother and child came through.

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There was a great deal of excitement outside the House and I noticed in some of the reporting from this House the suggestion there was some very important decision delivered by the High Court that the Government had ignored, of which my colleagues, the Minister for Health, Deputy James Reilly and the Minister of State at the Department of Health, Deputy Alex White, had no knowledge and that perhaps the Attorney General did not know anything at all about it. Reference was made to a judgment delivered in the High Court on 15 February 2006 in the case of Lidia Cosma v. the Minister for Justice, Equality and Law Reform, a case taken nominally against one of my predecessors. The suggestion is there is something terribly profound in this judgment which indicates that the Government has got it entirely wrong and that we should not be addressing the issue of the suicidal mother who is pregnant. I am afraid it is a little like the interpretation of the X case, it is an *à la carte* interpretation of what the High Court stated. What is curious is that this judgment confirms that the Government has got it right and effectively confirms that there are circumstances in which suicide can pose a real and substantial risk to the life of a woman or a mother. In the judgment Mr. Justice Hanna quotes expressly an extract from the X case as a guiding principle in the decision he had to make. A Romanian national who had arrived in the State on 5 September 1999 applied to be allowed to stay here. She applied for asylum alleging she was suffering religious oppression. She went through the various applications that could be made through the Refugee Applications Commissioner, the Refugee Appeals Tribunal and the conclusion was that there was no basis on which she should be granted asylum. She then changed her lawyer and it was alleged that if she was deported - a deportation order had been made - she would commit suicide.

*0 o'clock*

The submission of Mr. Justice George Birmingham, then a senior counsel acting on behalf of the Minister at the time, was effectively accepted by the court. In it he said:

In reality there was no evidence of any real and substantial risk of suicide upon which the Minister could or should act. The threat of self-harm and the circumstances giving rise to it were not raised until well into the year 2003. [This was after all the decisions had been made.] The applicant had originally sought refugee status on the grounds of religious persecution and no reference was made by her to the circumstances which allegedly gave rise to a suicide threat, namely the tragic death of her sister's child in her original application. Thirdly, it was argued that the documents compiled by Dr. McCaffrey, who is a psychiatrist, and submitted by the applicant's solicitors did not amount to psychiatric reports to which any great weight should be attached. They were inadequate and offered no sufficient diagnosis or prognosis. They comprise no more than a handwritten record of a narrative account given by the applicant to the doctor as a result of one meeting with her and subsequent observations of an unsatisfactory and inconclusive nature.

The issue in this case was to determine if this individual was truly at risk of committing suicide. Was there evidence before the court that could be relied upon? Was there evidence that she was suicidal before the then Minister made the final decision on the individual's deportation? The conclusion of the court was:

I am not satisfied that the applicant has established that there was a real and substantial risk that she would kill herself. There was undoubtedly a threat to do so. The background circumstances of this threat were investigated and analysed in detail. During the course of this confirmation in my view more weight was attached to the medical reports by Ms Keane [an official in the Department] than I would consider appropriate ... In the first instance they

do not evidence whether or not the doctor ever treated or had intention of treating the applicant. By any yardstick, the reports fall well short of what one would expect in terms of actual analysis of the applicant's condition, an objective diagnosis. There was no attempt to address the issue of treatment even in the event going ahead.

This was not a case about saying an individual was suicidal and that we should provide treatment. This was a case about saying there was no real basis for determining she was suicidal at all. What was particularly interesting was the judge referred to a matter which is directly relevant to what we are discussing tonight, namely, the X case. He stated:

This case dealt with the issue of whether the right to life of the mother prevailed over that of the unborn where there was a real risk of suicide. The Chief Justice in that case stated:

In my view it is common sense that a threat of self-destruction such as is outlined in the evidence in the case which the psychologist clearly believes to be a very real threat cannot be monitored in that sense and that it is almost impossible to prevent self-destruction in a young girl in the situation which this defendant is if she were to decide to carry out a threat of suicide.

I am, therefore, satisfied that on the evidence before the learned trial judge, which was in no way contested, and the findings which he has made that the defendant has satisfied the test I have laid down as being appropriate and established as a matter of probability that there is a real and substantial risk to the life of the mother by self-destruction which can only be avoided by the termination of her pregnancy.

The difference between the X case and the Cosma case is that in the X case there was direct evidence given by a psychologist which was not contradicted. There was no counterevidence claiming the woman was not suicidal. There was evidence of a professional psychologist that she was and the evidence was accepted by the Supreme Court and the High Court and laid the foundation for the decision. In the Cosma case it was determined that there was a single meeting between a psychiatrist and the woman who simply wrote out the narrative. There was no analysis, diagnosis or confirmation that the woman was truly suicidal. The judge went on to say:

A crucial issue when the Minister made the decision was the Minister's knowledge of whether there was a real and substantial threat to the applicant's life by suicide as a direct consequence of his decision.

Any suggestion the Cosma case undermines the legal analysis on which this Bill is based is entirely, completely and utterly inaccurate, no matter how beguiling that argument may be in its presentation. What is interesting is that the emphasis in the X case was that there was uncontroverted evidence that someone was suicidal. Since the enactment of the article in 1983, there has been no legal architecture for those decisions being made. Section 9 is an architecture which will involve an assessment undertaken by two psychiatrists.

I have heard it said the obstetrician should have no role. Obviously, the psychiatrists will be the primary individuals determining whether someone is truly suicidal. The obstetrician is important in the context of the safety of the mother, as he or she will undertake whatever medical procedure is required, as well as in the context of the safety of the unborn child, if it is a circumstance in which the life of that child can also be saved. To suggest the obstetrician has no role is not accurate.

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This legislation has been produced by the Government on the basis of the best advice of the Attorney General, the State's law officer who advises the Government. She has an onerous and particular duty which she carries out in good faith. She is an independent constitutional officer. We in this House are entitled to be guided by the advice she gives and show respect for it. This legislation is not simply a product of the Minister for Health or his Department. It is a comprehensive Bill, designed to address an issue that every Government in the past 30 years has failed to address and is based on the best legal advice available to us.

I am disappointed that some who have called for this legislation will now vote against it. I am disappointed that some who want other issues to be addressed refuse to recognise or for political position will not recognise the limitations of where we are. It will be no surprise to any Member for me to repeat for the 30th time in the past 20 years that I believe it is a great cruelty that a woman, where there is a fatal foetal abnormality, cannot have her pregnancy terminated, as it cannot be done without a referendum.

The people would have to agree in a referendum. I do not know what the outcome of that referendum would be, should it ever happen in the future. In the context of the Government-----

**Deputy Richard Boyd Barrett:** Will they be given an opportunity to agree in a referendum?

**Deputy Alan Shatter:** -----our commitment was to examine what needed to be done following the A, B and C case and the X case and we are delivering on that commitment. We need to get on with enacting this legislation and let it settle down. There are people outside this House, even some inside it, who are suggesting this will lead to abortion on demand or is the thin end of the wedge, or that this is a single-sided conscience issue. First, this is as restrictive as legislation could be, which I know is something to which some Members object, but the restrictions are required by the Supreme Court, no more, no less.

**Deputy Peter Mathews:** It is supposed to be protective, not restrictive.

**Deputy Alan Shatter:** Second, the legislation recognises the rights of the unborn and the rights of the mother and seeks to have the balancing of rights that Article 40.3.3° prescribes, but, ultimately, it seeks to ensure that where the life of a mother is at real and substantial risk, a required intervention can take place.

Some new Deputies have only come to this issue in recent weeks and have been at the receiving end of very substantial lobbying by individuals outside the House who are always, categorically, infallibly certain about everything they have to say. The only thing I will say to those Deputies is, "Beware." The same people suffered from the same sense of infallibility 30 years ago and there is not a single legal prediction that they have made on which they have ever been proved right in those 30 years. Let us not get carried away with all of that.

Reference was made to the Bill as being a failure of our culture. Do we want to be proud of not protecting the lives of women? Is it part of our culture that we just bury our heads in the sand and ignore the fact that 4,000 to 5,000 women effect terminations in England every year? I was here in 1983 discussing this issue when I said the constitutional amendment would have no impact on that figure and that the trail to England would continue. I heard similar comments about embracing all of the women going to England to have an abortion. We even had an Attorney General who tried to get an injunction to stop them travelling under the guise of a different Government. The people resoundingly put a stop to this in a referendum. For those who think

the majority do not believe a raped, suicidal 14 year old should be denied the possibility of a termination, I can tell them that despite the atmosphere in this House and all of the pressure being put on Members, ordinary, sensible people outside the House who come to this issue from a common-sense view and are beating no drum, most of whom do not spend their time writing to any of us, will take the view that if their daughter was raped and suicidal, they know exactly what they would do and they would not need to debate it at the length we debate the issue in this House. Many sensible people take the view that if their daughter was raped, she should not have to be suicidal for her pregnancy to be terminated. That is the view of an overwhelming majority outside the House. I believe most Members, if they had a 14 or 15 year old daughter who was a victim of rape, would take the same view. We cannot address that issue within the current constitutional parameters, but we can ensure that if a victim in these circumstances is suicidal, we will provide her with the protection she deserves. That is what we are doing and why the amendments tabled to stop us doing from so fail completely to reflect the views of the overwhelming majority who are watching this debate; those who remain awake.

**Deputy James Bannon:** I am not going to delay the House too long because I have spoken several times on this issue, back in December when it was first mooted and again on Second Stage. I am happy that I live in a country that has so far not allowed abortion. I understand we have been in a very difficult position for the past 21 years since the Supreme Court's decision in the X case. That judgment found that abortion was legal under the Constitution if there was a real and substantial risk to the life of the mother. The court held that this also included the threat of suicide. While I had many serious concerns about the danger that any legislation or regulations in this area could be broadened in the future, I have received commitments that this will not be the case.

I am not a legal person, unlike the Minister who spoke before me. I would disagree with him on many issues, but we are in the one party. From reading up on the X case, there is an opinion that some of the opinions at the time were flawed. The evidence of the threat of suicide came from a Garda report, not from the medical profession. I seek clarity on this issue and I am sure the Minister for Health will provide it for me when he speaks tonight. It was Mr. Rogers who stated this at the time. No expert witnesses were called and there were no cross-examinations of the evidence presented. Criticisms were made of the evidence in the X case by a senior judge at the time, Mr. Justice Hederman. What concerned me greatly was that a number of people around the X case were actively campaigning for the introduction of abortion in Ireland, which would be very much against my conscience.

This provides us with an opportunity to begin discussing solutions to problems women face, especially the root causes of abortion for the 5,000 women whom we are led to believe go abroad each year for an abortion. This is because there is a huge lack of practical resources and emotional supports for women with crisis pregnancies. The services are not available and this leads to many women being traumatised in the State. It is an issue that forces many of them to travel abroad for an abortion. It is an issue that cannot be ignored. I sympathise with all of those who face this crisis, but better supports for women need to be put in place and would go a long way towards dissuading many women from travelling abroad for an abortion.

What evidence is there to suggest a woman who is suicidal and has an abortion enjoys better mental health afterwards? Perhaps the Ministers might cite studies and the facts in this respect. What markers are used to help to identify that a woman is going to commit suicide? Can we be sure those markers are accurate?

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The Minister of State says the Bill is about saving lives. Does the Title of the Bill reflect everything contained in it? We need clarity on that issue. My voting intentions tonight are based on the best available medical and legal advice that it will protect women and babies during pregnancy.

I consider this an ethical, moral and medical issue rather than a political one. We must admit that in the run-up to the last election all of us sent out letters stating that Fine Gael would not legislate for abortion. I want to make it clear this legislation is not for abortion. In March 2002, when the Minister for Finance, Deputy Noonan, was leader of Fine Gael, he stated that the party would bring forward legislation in line with the Supreme Court's decision in the X case. That is what we are now doing. I was assured by the Taoiseach that the Bill will fully protect the lives of pregnant women and their unborn children despite scaremongering to the contrary. It is a restrictive Bill and there has been a lot of scaremongering. There are no restrictions at present and this Bill will set the bar considerably higher. That is important to all of us. We are addressing sections 7, 8 and 9 of the Bill. I have already spoken at length on the Bill and on every occasion I stated that I never want to see a situation in this country in which a Government introduces abortion on demand.

**Minister of State at the Department of Health (Deputy Alex White):** The amendments we are now discussing deal with what are clearly the most contentious aspects of the Bill, namely, the provisions under section 9. I listened closely to Deputy Walsh's contribution. He made a point with which I fully agree. In addressing his own amendments, he said that had we omitted suicide from the Bill we would not be acting in accordance with the Constitution. That is true and, in fairness to the Deputy, his amendments attempt to do other things without attempting to fully remove section 9. As he rightly acknowledges, we cannot do that. If we are to be true to the Constitution as interpreted by the Supreme Court in the X case, we cannot omit the threat of loss of life arising from suicide. We cannot pick and choose parts of the Supreme Court's interpretation of the Constitution. The opinion has been expressed that the judgment on the X case was flawed and somebody - I cannot remember whom - made the gratuitous suggestion that the judgment was manufactured by the Supreme Court. People may hold such a view but that is the law. The judgment has not been disturbed, varied or reversed by the Supreme Court in the 20 years since it was made.

A considerable number of questions have been raised in the course of the debate and some of them have been answered, although others were asked rhetorically. I have an opportunity now to ask one or two questions of my own. Are people seriously suggesting that we ignore the parts of the judgment they do not like? They say they have no problem with sections 7 and 8 but have a problem with section 9. That requires them to pick the parts of the judgment with which they are happy and ignore or exclude those with which they disagree, despite the uncertainty associated with such a course of action. At the minimum, a legal vacuum would obtain for doctors. Most important, women would be deprived of a right they unquestionably possess under the Constitution. Even if we were to leave this right out of the legislation they would still have it. It simply would not be legislated for. A procedure would not be established to determine the circumstances in which the right would be exercised but the right would still exist. Although the Oireachtas has many powers, it does not have the right to set aside or jettison a decision of the Supreme Court on the meaning of an article of the Constitution. That is not our job. We cannot rewrite the X case according to how we would like it to have been decided. We cannot decide the case again. We are not an appeal mechanism from the Supreme Court. We can go to the people to invite them to reconsider a matter if there is some doubt as to their true inten-

tions. We did that twice and on neither occasion did they decide to change the relevant clause in their Constitution.

If we omit suicide we will not be acting in accordance with the Constitution as interpreted by the Supreme Court. That is why, for example, amendment No. 57 is unstatable. All of the amendments that propose to extract suicide from the provisions of the Bill are manifestly unstatable as a matter of law and would render what we are doing unconstitutional. There is no doubt about that.

There has been considerable debate about the nature of our role. It was suggested that we are in danger of cowering behind the Supreme Court and that it is wrong to say we are obliged to legislate. We have debated whether we are under some sort of cosh. Of course we are not subject to some sort of edict such that we are ordered to do something by the Supreme Court. That cannot occur and it is not what we are doing. The position is very clear. The people enacted the Constitution and they amend it as they see fit, as they did in 1983. Where doubts arise about the meaning of a provision of the Constitution, the Supreme Court decides the point in question. That is clearly set out in Article 34 of the Constitution. The problem in this and many other areas is that we cannot require the courts to adjudicate on issues of policy. Arguably, we ought never to look to the courts to address such issues but we have done so too often in this and many other cases. The other organs of the State, namely, the Government and, most particularly, the Oireachtas, have the responsibility for policy.

Deputy Creighton quoted Article 15.2.1° of the Constitution, which provides that the Oireachtas has the sole and exclusive power of making laws for the State. That is true and there is no doubt about it. The problem occurs when we fail to do. That is the difficulty here; we have failed to do it. If the Oireachtas declines or fails to legislate, as it has, there is no question or suggestion that it will be sanctioned or punished in some way. We are not saying that. That is nonsensical. There is no question of there being a punishment or sanction against the Oireachtas or its Members for not legislating.

The question should not be whether we can get away with not legislating. We know we can get away with not legislating, because we have got away with not legislating for 20 years. The question should be whether it is right to allow the legal position to be and remain so uncertain as to lead to a state of affairs, as is the case here, where a woman has a constitutional right but cannot avail of it. There is, at the least, a serious doubt as to how she can avail of it and in what circumstances.

When we legislate, as we are doing here, we are prohibited by Article 15.4 from enacting any law which is in any respect repugnant to the Constitution or any provision thereof. We are subject to the Constitution in that important sense. However, we have responsibilities and duties. It is not that somebody is standing somewhere ready to sanction us in the absurd way that has been suggested. That is not the position. When we think about our role here as legislators, we have responsibilities and duties. We are sent here and are given important duties to carry out. The courts have their duties, which are different. The people have their duties also, which they exercise in the enactment of a Constitution and in decisions to amend it or not.

We must understand our duties in this situation. The suggestion that when we say we are obliged to legislate this connotes some sort of compulsion misrepresents the point being made here. We are talking about duties and responsibilities and about the Parliament living up to its responsibilities, which it has failed to do to date. I find it hard to understand how this

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Parliament doing its duty to legislate within the context of the Constitution, as interpreted by the Supreme Court, undermines or risks undermining the separation of powers. The opposite is the case. Far from undermining the separation of powers, acting and legislating now upholds the principle of the separation of powers and makes it very clear where the duty lies to legislate, which is here.

An additional dimension is the broader question of the decision of the European Court of Human Rights. This brings us back to whether we have been pressured or told we must do something we do not need to do. I accept the decision in *A, B and C v. Ireland* does not enjoin the Oireachtas to legislate in a particular way. Nobody ever said it did. What we are required to do as a consequence of the European Court of Human Rights decision is to ensure there is legal clarity, whatever the law is. We decide on what the law is, not Europe or the European Court of Human Rights. Nobody ever said we were bringing forward legislation under some sort of diktat from the European Court of Human Rights. That is not the case.

What we did say was that the European Court of Human Rights decision in *A, B and C v. Ireland*, particularly with regard to Miss C, was that there should be legal clarity. It was up to us to decide what the law should be, but there should be a law. In deciding what that law should be, we must have regard to our Constitution and the interpretation of it by the Supreme Court. It is not a question of compulsion or of being ordered to do things. It is a question of clear, delineated roles, duties and responsibilities. We must face up to them and carry them out.

The Minister for Justice and Equality, Deputy Shatter, has addressed a number of the issues. It is late now and with all the discussion about extending the debate to 5 a.m. it hopefully will not come as a surprise to the public that we are capable of exercising our brains after midnight and can continue to debate this issue as we are required to do. I would like to touch on the reference to the point made by retired Mr. Justice O'Flaherty. Like the Minister, I found it somewhat bizarre and quite inexplicable that it could be suggested that because Miss X did not ultimately have a termination, this somehow cast doubt on whether she had engaged the right she had been found in the Supreme Court to have. I found it very difficult to understand as a matter of law that her failure to have a termination somehow cast doubt on whether she had engaged the right she had been found to have. I find it very difficult to understand as a matter of law that if a court determines somebody has a right, but the person does not avail of that right, this means the person did not have the right. This needs to be explained. It is not clear to me how that could be so.

The Minister, Deputy Shatter, has also dealt with the question of what constitutes the *ratio* of a case and what constitutes the core of the X case. With genuine respect, the suggestion that the finding of an entitlement to a termination in the X case was *obiter* is an unstateable and unsustainable argument. Mention was made of first year law students, but anybody who takes even a cursory look, let alone goes into the sort of detail one would expect, will see this. Chief Justice Finlay went through all the argument on that occasion, cited the decision of the High Court and other decisions relevant to the finding and then came to the conclusion:

I am, therefore, satisfied that on the evidence before the learned trial judge, which was in no contested, and on the findings which he has made, that the defendants/appellants have satisfied the test which I have laid down as being appropriate and have established, as a matter of probability, that there is a real and substantial risk to the life of the mother by self-destruction which can only be avoided by termination of her pregnancy.

I cannot see how this could conceivably be regarded as *obiter*. Nobody could suggest credibly that this was beside the point or was not relevant to the decision. Manifestly, it is the decision.

There has been significant reference to Miss X and to the case and its circumstances. Therefore, I would like to read into the record of this debate what Chief Justice Finlay went on to say in this case, because it relates to the facts. He sets down the test that must be passed, applied and satisfied and then asks this question:

Has the appellant by evidence satisfied this test?

With regard to this issue, the findings of fact made by the learned trial judge in the High Court are as follows:

When the defendant learned that she was pregnant she naturally was greatly distraught and upset. Later she confided in her mother that when she learned she was pregnant she had wanted to kill herself by throwing herself downstairs. On the journey back from London she told her mother that she had wanted to throw herself under a train when she was in London, that as she had put her parents through so much trouble she would rather be dead than continue as she was. On 31 January, in the course of a long discussion with a member of the Garda Síochána, she said: "I wish it were all over; sometimes I feel like throwing myself downstairs." And in the presence of another member of the Garda Síochána, when her father commented that the "situation was worse than a death in the family" she commented: "Not if it was me".

On the day of her return from London the defendant's parents brought her to a very experienced clinical psychologist. He explained in his report that he had been asked to assess her emotional state; that whilst she was co-operative she was emotionally withdrawn, that he had concluded that she was in a state of shock and that she had lost touch with her feelings. She told him that she had been crying on her own but had hidden her feelings from her parents to protect them. His opinion was that her vacant expressionless manner indicated that she was coping with the appalling crisis she faced by a denial of her emotions. She did not seem depressed but he said that she "coldly expressed a desire to solve matters by ending her life." In his opinion, in her withdrawn state "she was capable of such an act, not so much because she is depressed but because she could calculatingly reach the conclusion that death is the best solution." He considered that the psychological damage to her of carrying a child would be considerable and that the damage to her mental health would be devastating. His report was supplemented by oral testimony. He explained that in the course of his consultation with the defendant she had said to him: "It is hard at fourteen to go through the nine months," and that she said: "It's better to end it now than in nine months' time." The psychologist understood this to mean that by ending her life she would end the problems through which she was putting her parents, with whom she has a very strong and loving relationship.

The psychologist who gave oral evidence as well as submitting a report, (which was admitted by agreement in evidence before the learned trial judge) stated that when he had interviewed this young girl and was anxious to have a continuing discussion with her parents who accompanied her and not having anyone available to remain with the young girl in the waiting room, his view of the risk of her committing suicide was so real, on his past experience in this field of medicine, that notwithstanding its obvious inappropriateness, he

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requested her to remain in the room while he discussed the problem with her parents.

It then goes back to the judge:

I am satisfied that the only risk put forward in this case to the life of the mother is the risk of self-destruction. I agree with the conclusion reached by the learned trial judge in the High Court that that was a risk which, as would be appropriate in any other form of risk to the life of the mother, must be taken into account in reconciling the right of the unborn to life and the rights of the mother to life. Such a risk to the life of a young mother, in particular, has it seems to me, a particular characteristic which is relevant to the question of whether the evidence in this case justifies a conclusion that it constitutes a real and substantial risk to life.

If a physical condition emanating from a pregnancy occurs in a mother, it may be that a decision to terminate the pregnancy in order to save her life can be postponed for a significant period in order to monitor the progress of the physical condition, and that there are diagnostic warning signs which can readily be relied upon during such postponement [in a physical case].

In my view, it is common sense that a threat of self-destruction such as is outlined in the evidence in this case, which the psychologist clearly believes to be a very real threat, cannot be monitored in that sense and that it is almost impossible to prevent self-destruction in a young girl in the situation in which this defendant is if she were to decide to carry out her threat of suicide.

I am, therefore, satisfied that on the evidence before the learned trial judge, which was in no way contested, and on the findings which he has made, that the defendants have satisfied the test which I have laid down as being appropriate and have established, as a matter of probability, that there is a real and substantial risk to the life of the mother by self-destruction which can only be avoided by termination of her pregnancy.

That is why the defendants were entitled to succeed in the appeal from the High Court to the Supreme Court.

Whatever anybody may think about the X case judgment, no one can suggest that it was decided without regard both to the humanity of the circumstances that were presented to the court or to the terms of the Constitution and the requirement to have in mind the right to life of the unborn as well as due regard to the equal right to life of the mother. That is not a passage from a decision of a court that would appear to any reasonable person to have been lightly decided or lightly arrived at. That is why I object to the suggestion made in this Chamber that the judgment was in some way manufactured. That is an unfair way of characterising this judgment, and I put that at its mildest. It is far from being a judgment where either the legal issues or the factual issues were taken lightly.

The Cosma case was dealt with by my colleague. With regard to the Attorney General *v.* Ryan's Car Hire Limited, I touch on this because I want to refer to a point made by Dr. Maria Cahill during the health committee hearings and which was quoted by the Minister of State, Deputy Creighton, earlier. Since it occurs to me, I want to make the small point that the constant suggestion that because the Minister for Health and the Ministers of State were not sitting through all of the hearings of the committee, therefore, we did not know what occurred there and we did not take the time to look at what happened there or to read the transcripts, or at least

when we were available to observe it on the screen, is unacceptable. I know, from having discussed this issue with both my colleague Ministers in the Department of Health, that there was a full awareness of what was said at the committee. I myself went through the transcripts as best I could and informed myself as to what was said at the committee. I know Dr. Cahill raised these issues about *Cosma v. the Minister for Justice, Equality and Law Reform* and the *Attorney General v. Ryan's Car Hire Limited* because I looked at the transcript. I am not looking for any particular congratulations on that. It is just the job that we do. However, Members should not suggest we are not informed because we were not there. There are a good few Members present but we know there are colleagues who are able to watch and observe this debate without necessarily being in the Chamber, and the same is true of the committee.

The point about the *Attorney General v. Ryan's Car Hire Limited* is that it was suggested to the committee by Dr. Cahill that, because of the well-known decision of Mr. Justice Kingsmill Moore in that case, given no legal submissions were heard on whether suicidal ideation could validly satisfy the test in the X case, we could not rely on the judgment. The point was of course conceded by the Attorney General in the X case that suicidal ideation could validly satisfy the test in the X case or, in other words, suicidal ideation could constitute a risk of loss of life. That is all it is. It is not that it did in that case, but that it could. How could it not be conceded by the Attorney General and can anyone explain to me how it could not be the case that a risk of suicide is a risk of loss of life? Is a risk of suicide a risk of loss of life? It manifestly is, so of course it was conceded by the Attorney General. Why would arguments need to be made to any court-----

**Deputy Peter Mathews:** To examine the risk of suicide.

**Deputy Alex White:** -----that the risk of loss of life includes a risk of suicide? That is just a plain, incontrovertible, undeniable fact that could not possibly not be conceded by the Attorney General, unless anyone here is seriously arguing that a person at risk of death from suicide is not at risk of death. This argument sometimes gets extended to a really absurd level because, quite clearly, a risk of death from suicide is a risk of death. That is what was conceded. It is not an absurd premise at all; it is an absolutely undeniable one. That is why it does not seem to me to be remotely stateable that the X case is to be set aside in some way because of anything that was found in the *Attorney General v. Ryan's Car Hire Limited*.

I am struck by the number of times honesty has been raised in the debate. Deputies Shortall and Keaveney did it. The motivation of people is questioned, as is whether people have a conscience. Conscience seems, in some people's minds, to exist only on one side of the argument. All Members, on both sides of the argument, agree that people approach this debate honestly. We owe it to one another not to attribute dishonesty to one another in the manner in which we approach this difficult issue. Deputy Shortall said it would have been more honest for the Government to legislate for termination in the case of fatal foetal abnormality - and she mentioned rape and incest - than to do what we are doing. It is not possible under the Constitution to do so, for the reasons clearly set out by the Minister for Justice and Equality, Deputy Shatter, which we have heard over and over. Deputy Clare Daly's Bill did not do so.

Returning to the honesty issue, we are attacked for not doing something that everyone knows we cannot do. I welcomed Deputy Clare Daly's intervention in this matter. Colleagues on this side looked at me askance when I said that Deputy Daly's introduction of a Bill was a very honest intervention at the time. We did not accept the Bill, as we did not think it was adequate; we thought there were problems with it and we said we would do it ourselves, which is what we

have done. People come back a few months later and throw at us the question of why we have not done things that she did not do in her Bill. She did not include these additional circumstances in her Bill because she could not do so for the same reason we cannot. She looked at the Constitution when drafting her Bill, which is what we did. It is no different on either side.

I hesitate to make this point, but I reject out of hand the notion that we are dishonest or disingenuous. The Minister for Justice and Equality said towards the end of his contribution that we were carefully and expertly advised by the Attorney General and that we understand the implications of the Constitution and the importance of upholding the terms of the Constitution in anything we do. We have different views and I share the view that there are circumstances in which the Irish people may well consider revisiting Article 40.3.3° of the Constitution in a referendum. Members should not try to persuade the people that it can be done simply by putting it down on a piece of paper and telling the Government it is dishonest by not doing so. That is disingenuous. Let us all be honest with one another and not ascribe dishonesty to others when the position is quite clear.

It was suggested that on Committee Stage we did not deal with the implications for doctors for doctors' legal liability. We dealt with it carefully on Committee Stage and we said that, as best we could describe the law, if doctors and medical practitioners act within the law and the scope of the Bill, no liability is attached to them. There is a general legal context in respect of the requirements on doctors and the standards of their profession. These are well-known principles of medical negligence that doctors understand and must uphold.

With regard to gestational limits, the test is whether there is a real and substantial risk to the life of the mother that can only be averted by a termination. If people who want to set a gestational limit pick a certain limit, such as 22 weeks, the clear implication is that the test of a real and substantial risk to the life of the mother that can only be averted by termination disappears beyond that limit. The test must give way. That is not the law; it is not what the Supreme Court said or what the Constitution means. The test is whether there can be a real and substantial risk that can only be averted by termination, and the test applies at all stages. There must be a question of honesty and people must understand the position. Some people do understand that but may want to argue otherwise.

**Deputy John Paul Phelan:** It seems like hours since I signalled my intention to speak in this debate, but I am glad to have the opportunity to make a few comments. Many of the amendments addressed in this group revolve around section 9 of the legislation. I refer to my comments on Second Stage, which I premised on a belief that everyone shares, which is that doctors ultimately need the freedom to act in emergency situations. Everyone on each side of the debate has emphasised that point over a number of months. I certainly believe it. The Bill is a realistic solution considering the three parameters facing the Government, which I outlined in my speech on Second Stage. The three parameters are Article 40.3.3° of the Constitution, the Supreme Court decision of 1992 and the A, B and C v. Ireland judgment.

During my speech on Second Stage, I raised three principal issues I wanted the Minister to address. That is why I supported the Bill on Second Stage. I asked him to examine section 15 and the review mechanism. I did not believe that what was proposed was strong enough, and changes have been made in that area. On several occasions, particularly at party meetings, I asked him about the need to amend sections 7, 8 and 9 to reflect the best available clinical practice. Those amendments are included in what we are discussing tonight. The third principal point I raised with him was the issue of gestational limits. I have listened to the discussion

on both sides of the House about the matter. Over the course of the past few months, I have met a number of women who came forward, having been in emergency situations and having received the treatment they needed. Putting a limit on what is a constitutional right as outlined by the Minister of State, Deputy Alex White, and the advice provided by the Attorney General is probably repugnant to the Constitution. I understand that explanation. While I have misgivings, I will support the legislation.

*I o'clock*

My remaining misgiving has not been referred to in most of the debate this evening. It was raised on Second Stage and concerns vindicating the legal right under Article 40.3.3° to legal representation for the unborn. I have not heard many speakers, if any, refer to it. The Minister might outline his thinking on that issue before the discussion finishes tonight.

Like many colleagues, I consulted widely among my circle of friends and in my constituency on the Bill. I have been particularly struck by the number of people who have come forward with their own stories and views. They came forward unsolicited and were not part of any group. The overwhelming consensus has been that I should support the Bill. It is a classic situation for a politician to face. He or she might have personal misgivings but be asked by the vast majority of the people, who he or she knows and who are identifiable, to follow a certain course of action. I know that my decision will not please everybody. A very dear friend with whom I discussed the matter last night was particularly upset when I indicated how my views on the matter were moving. I am particularly disappointed with the way our political system works and that many Members, for whom I have the greatest regard and who find themselves on a different side to me, will face expulsion from political parties for expressing their views. The whip system that is employed in this country, which is more severe than anywhere else, has not served the country well. One need not look too far back into our past to see that. People should not be cast aside for giving a true reflection of what they believe.

I have thought very deeply about section 9 over the last number of months and made up my mind. The decision I am making tonight reflects a position I adopted two months ago. I have changed my mind on a number of occasions since. Psychiatrists are more appropriate persons than lawyers, judges or politicians to make judgments on matters of mental health. I am conscious of people thinking in legal terms of the proportionality test and of those who consider that where an abortion is carried out for someone expressing serious suicidal thoughts, it is the ultimate end of a life before it has really begun. I have been trying to weigh over the last few months that test and the fact that mental health issues and suicide are a real cause of death and threat to people's lives in this country. No more than anyone else, I have been affected. We in the House have been affected. It is real. The difficulty is that it is almost intangible and very difficult to measure. I attended the six days of committee hearings at which psychiatrists expressed views to that effect. Can we decide in legislation that suicide does not represent a real threat? We cannot.

The debate in the House this evening has been measured and people have expressed their views freely and openly. Despite what might be written and said elsewhere, I, for one, have not felt myself under any undue influence on the matter. I have sought clarification at every point and managed to get it on most issues. I resent deeply some of the views expressed from members of my own Government over the past few months, though not in the debate tonight. They have twisted the provisions of the Fine Gael platform at the last election and the terms of the programme for Government. The programme for Government committed the Government

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to establish an expert group. I have heard several Cabinet Ministers say that it committed to legislation. The expert group outlined a number of options, one of which was legislation followed by regulation, which is the option the Government chose. The idea that it was the only option is simply not true. It has been said on several occasions. People should not twist what is written to suit their own agenda.

I have thought for a long time about what I would ultimately do and did not announce my decision until now as I wanted to see if the Minister would adopt some of the amendments I suggested. He has. I have a significant misgiving about the issue of legal representation and vindicating the rights of the unborn. Many lawyers with whom I have consulted and who support much more liberal legislation in this area believe that when that is challenged, it may be found to be unconstitutional. It is my most significant outstanding issue with the legislation. The legislation is a realistic solution to the position the Government was in once the decision to introduce legislation was made and it meets the need to balance the Constitution with the Supreme Court and European Court of Human Rights judgments. For that reason, I support it.

**Deputy Seamus Healy:** The ordering of the debate by the Government is bizarre. It brings the Oireachtas into disrepute and is an insult to Members and the public generally. Any reasonable person would have adjourned the debate to tomorrow. I have supported the legislation on Second and Committee Stages and will support it later this morning when a division is called. However, it is limited and restrictive legislation which should and could, within the terms of the Constitution, provide for terminations in the case of inevitable miscarriage and fatal foetal abnormalities. I will address those issues later in the debate when I move amendments on those issues.

Opponents of section 9 wish to give the impression that it involves the introduction of abortion on demand and that women who are suicidal will be able to get a certificate and termination with ease. Nothing could be further from the truth. Those suggestions are at best disingenuous and at worst dishonest. It is important to remind ourselves that the conditions attached to the section and legislation generally are onerous and restrictive. They require a real and substantial risk to the life of the mother as distinct from her health and that such substantial risk can only be averted by a termination. It also provides that three medical practitioners must certify jointly under the section. These are onerous and restrictive conditions. It is a near certainty that those who wish to access a termination on those grounds will continue to do so in other jurisdictions, mainly Britain, rather than subject themselves to the onerous and restrictive conditions provided for in the Bill. Opponents of this section and the Bill in general constantly argue that the majority of the people are opposed to the condition now known as the suicide condition. Nothing could be further from the truth. This argument is, at best, disingenuous and, at worst, dishonest. We know that there is incontrovertible evidence that the majority of the people support the X case judgment in the case of suicide. The evidence is there for all to see. It is the result of two referendums in 1992 and 2002 which clearly supported the inclusion of suicide under this general heading. I support the Bill, limited though it is. I have supported it in the past and will support it tonight, or rather this morning.

**Minister of State at the Department of Health (Deputy Kathleen Lynch):** I attended the hearings held in the Seanad Chamber and all of the debates on this legislation. One would be forgiven for believing this was a debate about some kind of legal concept that did not affect any individual but rather concerned the Supreme Court, the High Court, Europe and every lawyer and barrister in the country, that it had nothing to do with women, human life and how we live our lives. We have had sermons from the mount on several occasions and I am sure we will

have another one because I saw the Deputy indicating again. Women have been lectured to. I do not take the view that men do not have a role to play in this issue. There are as many men as women who are feminists; there are men who are compassionate and realise women may find themselves in circumstances, not only as a result of rape or incest, where they simply cannot continue with a pregnancy. Compassion for their circumstances is fundamental.

The argument seems to have settled on the issue of suicide. The people who now think they know more about me than I know about myself have decided that women who are pregnant cannot be suicidal. That is a fallacy. They are of the view that of the 500 who die by suicide in this country every year - an unacceptable figure which is of concern to everyone in the House - none of them can be a pregnant woman because, if so, she is telling lies and faking it. That is deeply insulting. If the same people are saying that when a woman presents as being suicidal, psychiatrists cannot deal with the issue, on what are we spending our money? They deal with people who are suicidal every day of the week across a range of individuals and age groups, not just young men. They deal with middle-aged men, older men, young women and older women. Psychiatrists can say whether a person is in danger of dying by suicide. They do so every day of the week because that is their job and profession. However, it seems they cannot do so if the patient is a woman and she is pregnant. Frankly, I find the argument that they cannot do so amazing. In the case of those who trot out this line, it is not about pregnancy, it is about control. They look into their hearts and tell me what is best for me. I thought that kind of Ireland was gone, but it seems it is not.

**Deputy Ruairí Quinn:** It is on the way out.

**Deputy Kathleen Lynch:** I hope it is on the way out. If one is a woman and pregnant, one cannot be suicidal. If a woman presents as being suicidal in these circumstances, there is not a psychiatrist in the country who can tell her that she has a possibility of dying by suicide because of that pregnancy. It is our job, as legislators, to ensure that in the rare case where someone is pregnant and feels suicidal as a result of that pregnancy - whatever its cause - we legislate to ensure that person is protected. If we do not do this, we are derelict in our duty. One can stand up and talk about angels dancing on the head of a pin all one likes, but the central issue concerns women, pregnancy and their lives and their families.

I have heard several speakers tonight say this has nothing to do with Savita. I very seldom mention that woman's name because what happened to her was a tragedy, not just for her but also for her entire family. That tragedy made this country far more sensitive to pregnancy than it had ever been. However, perhaps we were that sensitive when Miss X came before the courts - I think we were - and when Ann Lovett died. There have been periods when we have been that sensitive, but we have not acted. It is a certainty that if this legislation were in place when Savita was in hospital, the process that kicks in as soon as a woman says, "I want a termination," would have kicked in. I am not saying the circumstances or the end result would have been any different, but, at least, there would have been a process.

**Deputy Ruairí Quinn:** A legal process.

**Deputy Kathleen Lynch:** When Deputies start to talk here about legal definitions and about whether the evidence was available at the time, they should remember that they are talking about a woman who is pregnant and that pregnancy could be a threat to her life. I have said to Deputy Clare Daly on another occasion that we should start to look seriously at the issue of fatal foetal abnormality and the threat to the health of the mother because some pregnancies

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can have an enduring effect on the health of a mother, as well as being a danger to her life. I advise Deputies that they should forgo talk of legal concepts in the abstract. They should think very carefully about whom they are talking because it is not some distant ethereal being; they are talking about mothers, sisters, aunts and daughters. Women, in the main, do not want to end their pregnancies, whether that happens by way of a miscarriage or it having to happen through a medical procedure. This is not something stepped into lightly, and I have never heard any of them say it is something they chose willingly. We must be very careful about that, and it is deeply insulting to women to think we have people telling us that somehow or other, we are not to be trusted. If that were true, none of us would be sitting here tonight. Women are to be trusted and have always had the best interest of their children at heart down through generations. The notion that control must continue because, somehow or other, we are not to be trusted, is ridiculous. We have heard about legal concepts and angels on the head of the pin, with people wondering if a judge said this or that, but in between all of this, the woman and her baby are getting lost. This is about the protection of life in pregnancy.

**Deputy Thomas Pringle:** I will contribute briefly to the discussion on the amendments relating to the so-called suicide clauses, or section 9 of the Bill. After the contributions of the Ministers of State, Deputies White and Kathleen Lynch, there is little that I need to say. Anybody listening to either of those contributions should be in favour of maintaining section 9 as proposed in the Bill. It is not often in this Dáil that I agree fully with either of those Ministers of State.

A factor may have been lost in much of the debate about the so-called suicide clauses. The Supreme Court is part of a body which makes law in this country by adjudicating on legislation and cases that come before it. It is already part of the law that suicide is considered and a termination can be granted in the case of suicidal ideation. We need to regulate such a process. Deputy Mathews spoke earlier about emotional framing being used in these arguments to pull at people's heart strings and force them into decisions. I have seen nothing but emotional framing from the pro-life side in this argument.

**Deputy Peter Mathews:** I did not say it. The author said it.

**Deputy Thomas Pringle:** People have told me that 95% of abortions in England take place on the basis of suicide, which is clearly wrong. The legislation in England refers to a risk to the physical or mental health of a pregnant woman, and there is no mention of suicide. Irish people are being told such things by the pro-life side every day of the week, which is an example of emotional framing in this argument. We have also heard that this legislation will open the floodgates to abortion on demand, with every woman at risk of abortion across the country because of abortion factories opening. That is the type of emotional framing that the pro-life side has put into the campaign and we must stand up against it in resistance. We must legislate for what is already the law of the land.

The Irish people have rejected the change of the suicide clause on two occasions, with the last in 2002. The Irish people are way ahead of the pro-life campaign in the argument, and they are way ahead of the Members in the House who argue against this legislation. We must support section 9 of the Bill and I wish we could move to the vote and get it out of the way, as many other important arguments must be debated tonight as well.

**Deputy Olivia Mitchell:** The nub of this legislation rests in sections 7 to 9, inclusive, which detail the physical threat to health, emergency situations and suicidal intent. The debate,

particularly in recent weeks, has focused on section 9, which deals with suicidal intent. The suggestion from some is that hordes of suicidal pregnant women will suddenly come forward and these will run rings around professional psychiatrists. There is also a suggestion that these women may only “think” they are suicidal and that they should be locked up for their own protection. The reality is that women in crisis pregnancies, whether suicidal or not, will continue to do what they have always done when this legislation is passed, as I hope it will be. They will go to England. To stay in Ireland and subject themselves to the process we are putting in place means they would be suicidal when finished with it if they are not when they begin.

What application will section 9 have in that regard? The evidence suggests it will apply to one in 500,000 cases, meaning the issue is very rare but it exists. How many of those cases are likely to happen after 20 weeks gestation? I suggest there would be none. The main concern, which I understand, has been that there is no gestational limit. Everybody understands it and nobody would be happy with terminations of almost viable foetuses. If suicidal intent occurs with a pregnant woman, it may come about due to her pregnancy and particularly in the early weeks after the discovery. A woman would not suddenly become suicidal five months after learning she is pregnant; that is a very unlikely scenario. If the overall instance of such cases is one in 500,000, the likelihood of an instance occurring after 20 weeks gestation is virtually zero, and it would come about only when there is no other treatment available.

The only application of section 9 will be for women or girls already in care and where assessments for determination are sought by the HSE. The irony is that the HSE is already obtaining terminations in England with no restrictions such as the assessment of three doctors, certifications or reports to the Minister or these Houses. The only effect of section 9 will be to circumscribe the circumstances in which terminations can be obtained. Nevertheless, we seem to be pointlessly convulsing about the matter, as it will have little application in reality. Section 9 exists because it forms part of the Supreme Court judgment, and omitting it would be unconstitutional. We cannot, as some would have us think, pick and choose decisions of the Supreme Court and neither can we be so arrogant as to argue that it is wrong. By definition, the Supreme Court cannot be wrong and its decisions are the law.

Terminations required in emergency cases are also quite rare but we know, tragically, that they exist. Section 7 deals with the physical threat as grounds for a termination and it will have a greater application; these cases will not be as rare as the other two examples. We do not have precise figures for affected women but the anecdotal evidence is that the section may apply to a considerable number of sick women, where as a pregnancy progresses the threat to life would increase. Such women are travelling to Leeds, Liverpool and London and they may have cancer, high blood pressure, kidney diseases or other chronic conditions. After discussions with doctors, these women have no alternative in trying to save their lives but to travel to England.

This is really very minimal legislation and my only hope for it is that these sick women will no longer have to travel. I know that is the intent in the legislation and the Minister has reiterated the point. I am concerned that the legislation does not articulate it nonetheless, and specifically that doctors are covered by this legislation even where the threat to life is not imminent or inevitable. I hope the legislation works and I know its purpose is to provide clarity, so we should take the opportunity to give such clarity by writing it into the legislation. Doctors must be absolutely clear they are covered. It became quite clear that some doctors thought it only applied in emergencies or where the threat was imminent. It is important for GPs to have clarity around this situation because, in most cases, when women first become pregnant, they see their GP first and they do not see an obstetrician until much later. If a decision such as that has to be

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made, it is better made earlier than later. The Minister is not minded to accept amendments to insert this in the legislation but I ask him to consider this for guidelines later. What is often lost in this debate is that these sick women desperately want to have babies but they cannot if their lives are to be saved. It is only this cohort of women to whom this legislation has any relevance or application.

Many people think the legislation does not go far enough while others think it goes too far. The truth is it is neither; it merely reiterates existing law and clarifies it. I commend the Bill to the House.

**Deputy James Reilly:** This is a substantive part of the Bill, about which many people have concerns. I acknowledge it is particularly difficult for some Members.

The Minister of State, Deputy Creighton, talked about the lack of a treatment plan or a pathway of care, yet one psychiatrist I can quote described the Bill as creating this pathway of care. She mentioned the issue of retired Supreme Court judge, Mr. Justice Hugh O'Flaherty, but both the Minister for Justice and Equality and the Minister of State at the Department of Health, Deputy White, dealt with that. As a non-legal person, it strikes me that following his logic, if one were found to be right in a case and awarded, for example, a sum of money but subsequently won the Euromillions and did not bother collecting it that somehow one was not vindicated. That is a nonsense to be quite frank. The *Cosma v. Minister for Justice, Equality and Law Reform* case has been dealt comprehensively by both Ministers.

As legislators, our duty is to enact laws in accordance with the Constitution. I utterly reject any suggestion that we cower behind the Supreme Court.

**Deputy Ruairí Quinn:** Hear, hear.

**Deputy James Reilly:** The Supreme Court interprets the Constitution; we make laws. When the court makes a clear and definitive statement as to the basic law, as legislators, we must listen. The test in *Attorney General v. X* is not *obiter dictum*, as others have said. It is one of the clearest statements of the basic law the court has given. It has been understood as such since the judgment was delivered in 1992 and it has been the basis for two referenda. It has been accepted by the superior courts in numerous cases since 1992. There is a desperate attempt to suggest that the Supreme Court's interpretation of Article 40.3.3° can be qualified or discounted or somehow ignored. That simply is not the case.

The most cursory perusal of the authorities recognises that the X case is, and has been, since 1992 the basic law of the land. We have, as Mr. Justice McCarthy said and as the Minister of State, Deputy Creighton, acknowledged, been in default as legislators in providing a framework for the rights which the Constitution grants and which the Supreme Court declared.

**Deputy Ruairí Quinn:** Exactly.

**Deputy James Reilly:** When the Statute Book is silent on matters of life and death, great mischief can occur. We remedy that through this Bill. Twice the Supreme Court confirmed that the X case decision is the state of our law in the baby O case in 2002 and in *Roche v. Roche* in 2010. If the court wanted to alter or vary the decision in any way, it could have done so but it did not. The Minister for Justice and Equality referred to how the X case was referred to in *Cosma v. Minister for Justice, Equality and Law Reform*. The decision of the Supreme Court in the X case has never been added to, varied or contradicted by any subsequent decision of the

court. It is the law and we are bound by it.

Other issues were raised. I was implored to listen to the psychiatrists. I will quote Dr. Anthony McCarthy, president of the College of Psychiatrists of Ireland:

I will specifically discuss a phrase that is being quoted frequently at the moment that “abortion is never a treatment for suicide”. This is true, and abortion is never a treatment for suicide, but neither is counselling, psychotherapy, antidepressants or anything else. There is no treatment for suicide. What society needs to address in general, and what we as psychiatrists have to do specifically, is try to prevent suicide, and this requires looking at the causes of suicide and what can be done to address those causes. The question is not whether abortion treats suicide but is there ever a case where a woman will kill herself because of an unwanted pregnancy, and if so, what can we do to save her life, and would that ever be a termination of pregnancy? This Bill is about legislating for that very small but real possibility.

He further stated:

Suicide in pregnancy is real; it is a real risk and it does happen... Much has been made and will be made about the so-called lack of evidence with regard to abortion and whether it will ever prevent a suicide. I believe there will never be statistical evidence to prove this point one way or other because trying to prove anything statistically for such a rare event is extremely difficult, if not impossible. Only a study involving thousands of women who were expressing suicidal ideation in pregnancy and wanted an abortion, and where half of them had that abortion and the other half did not... could answer this question about statistical evidence. This study will almost certainly never be done, I hope.

I am listening to the psychiatrists. The same psychiatrist on the radio two mornings ago stated that dialectical behaviour therapy is for emotionally disturbed women with a personality disorder. To suggest that should be the treatment for every woman who finds herself in this situation is not logical.

A great deal of work has been done by the crisis pregnancy agency and the number of women travelling from this country to the UK has fallen by one third from 6,000 to 4,000 annually. Much more work needs to be done and I acknowledge that, as does the Government.

I would like to address the issues raised by Deputy Terence Flanagan who contended that the Bill was a change. It is not a change in the law; it is a clarification of existing law. He stated that psychiatrists are not judges and I agree but every day, they must make clinical judgments as part of their work. As somebody else said, they are better positioned to make those clinical judgments than anybody else, including the Judiciary. It was contended that I said on television this law would lead to increased numbers of babies being born with a disability. I did not say that but I acknowledged that it could happen.

Deputy Kirk said the arguments made, particularly by the Minister of State, Deputy Creighton, were compelling but we have seen clearly that not alone are they not compelling, they are deeply flawed. The Minister of State, Deputy Alex White, the Minister for Justice and Equality, Deputy Alan Shatter, I and others have detailed the reason. He also suggested that taking section 9 from the Bill would be the easy thing to do. However, the right thing is often not the easy thing. As others have pointed out in respect of gestational age, there can be no limit to a right. Are we to say to a pregnant woman in this situation that we can save her life up to 20 weeks of pregnancy but cannot do so after that date, and she has no right?

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I refer to issues raised by Deputy Timmins. Would he prefer to leave the right to termination on grounds of suicide unregulated? It is legal now, as the X case has shown. The Deputy might say no such terminations have taken place. I already pointed out I cannot confirm that but I know that as the law stands without this Bill, a doctor anywhere who forms the opinion that the risk of suicide is real and substantial and the only way to avert it is to terminate the pregnancy, is entitled under the law to perform that termination in any institution, with no certification and without referring to any other doctor. It is not unreasonable to go further and state that had this law been put in place in 1992 some lives might have been saved.

A number of speakers have asked how we came to this point, as a Government, and noted it is said that one party in particular wrote a letter, giving certain commitments. In the letter it was stated we would not legislate for abortion. We are not doing so - it is already legal. In our manifesto we stated we would have an all-party committee on the A, B and C case. The programme for Government went further, stating we would form an expert group. That group's report made it very clear to the Government, giving three options, that the safest and best way forward was by legislation and regulation. We know there is no available evidence as a treatment for suicidal intent; I have covered that.

I admire the courage of all, professionals and non-professionals, who have joined the debate. In response to Deputy Daly, I acknowledge that risk of suicide is real. We must trust the mothers of the next generation and must trust our doctors. That should be our starting point. The Deputy spoke of the GP. The expert group had input from GPs and although it did not believe GPs should be involved in certification it believed they should be consulted. That is covered in the Bill.

Deputy Wallace asked why two psychiatrists and one obstetrician would be required. That was one of the options given by the expert group and has nothing to do with any contention on the Deputy's part that certain people on this side of the House believe that women would lie or be manipulative. It has to do with the more subjective nature of assessment of the threat of suicide and the risk it represents. We do not have biochemical markers, imaging X-rays, etc., as we have in physical cases and have to depend on clinical opinion and assessment. We must acknowledge that the outcome of that assessment could be the end of the life of the unborn.

Deputy Naughten contended we are doing this merely because of the Supreme Court. We have covered the importance of the Supreme Court and do not need to return to that. It is not true to say that in the case of a review a woman cannot have somebody with her.

I thank Deputy Kelleher for his contribution. Along with others, I agree that suicide risk is rare but is real, as the Deputy noted. We cannot be prescriptive to doctors doing their work. The Deputy's amendment is already contained in the Bill in that it is stated repeatedly that termination must be deemed the only treatment that can avert this risk. This means that all other treatments must have been explored and considered.

Deputy Conway made her points very clearly and I share her concerns around mental health and some of the comments that have been made.

Deputy Boyd Barrett claimed the Bill does not go far enough. I believe we understand that we are bound by the Constitution, the Supreme Court and the A,B,C judgment of the European Court of Human Rights. As others observed, we cannot selectively choose from any of those. We cannot select bits of the Constitution we like and ignore the bits we do not like. We cannot

select decisions of the Supreme Court we like and ignore others. Nor, as some have suggested, can we, having signed up to the ECHR take an *à la carte* view of that institution.

I accept that some people have a serious problem with this but I reject the contention made by Deputy Walsh that this Bill will in any way normalise suicide. I have addressed the issues the Deputy raised about gestational time.

Deputy McNamara made a point on legal interpretation which is absolutely correct. Deputy Ó Caoláin was supportive, for which I thank him. He stated that I had told the committee I would amend the Bill in regard to treatments available. What I stated, as seen in the blacks in front of me, was that I would return to this and mention it in my speech on Report Stage, which I am happy to do. However, given the lateness of the hour I do not know whether Deputies will want me to go through all of that. If it is their wish, I will do so.

**Deputy Caoimhghín Ó Caoláin:** I would be more concerned about what the Minister will do after the Bill is passed. It is in the context of aftercare.

**Deputy James Reilly:** Deputy Durkan was supportive. Deputy Shortall made points that were well dealt with by the Minister for Justice and Equality, Deputy Shatter and the Minister of State, Deputy White.

Deputy Bannon asked about markers. There are no biochemical markers in respect of the mental health issue of suicide and risk thereof. There are no control trials *per se*.

Does the name reflect the reality of the Bill? I believe it does and have already discussed this. This is the Protection of Life during Pregnancy Bill - the life of the mother and the life of the unborn.

Deputy Phelan raised gestational limits, which we have covered.

It must be stated, as was done by the Minister of State, Deputy White, that the Attorney General is the legal officer of the Government. She is a person for whom I have the height of respect, who does unstinting, Trojan work on behalf of the Government and gives an astonishing service. She is always available whenever a legal opinion is required and has done extraordinary work in answering questions from many Deputies.

Deputy Healy has some reservations about the decision to continue the session tonight. I put it to him that the House has voted so to continue. For a doctor it is not unusual to be up late at night and not unusual to be considering serious matters. I do not think the people in this House are any less able than we are in that. I cannot accept these amendments. Those who proposed amendments will have a chance to come back to them for two minutes each, according to the Chair's rules.

I would prefer if we did not lose the focus on this, so I will paraphrase my good colleague the Minister of State, Deputy Kathleen Lynch. This Bill aims to provide clarity for the women of this country about the services that are available to them and how to access those services, because that was at the core of the A, B and C judgment - there was no clear access and no clarity about how women were to exercise their right. It clarifies for the medical and nursing professions what they are legally obliged to provide and what is legal. Without a shadow of a doubt this does not change the law, but I do hope it changes practice in so far as it improves it by giving all concerned much more certainty about the needs of women and what is legal and

should be provided.

**Acting Chairman (Deputy John Lyons):** It is time for the second contribution from Members who have already spoken. I remind them that they have only two minutes' speaking time. There are several speakers whose names I will call out. Those entitled to speak for up to two minutes are Deputies Healy-Rae, Mattie McGrath, Timmins, Mathews, Boyd Barrett, Halligan, Daly, Wallace and Tóibín. If a Deputy's name does not appear on this list but he or she has spoken in the first round of contributions and wishes to make a two-minute contribution he or she should please come forward to the Chair while the others are speaking. I will remind speakers when they have 30 seconds left in those two minutes and I ask that Deputies adhere to the two minutes.

**Deputy Michael Healy-Rae:** Before we adjourned I was addressing amendment No. 58 and I was complimenting the Minister of State, Deputy Lynch, on the amendment she had proposed.

I wish to condemn in the strongest possible way the decision taken by the Chief Whip and the people who voted for this ridiculous decision to take the vote at 5 a.m. It is not that anybody on this side of the House is flinching at the idea of staying up. If it made sense for us to do this we would support it, but it is nonsense. It is a nonsensical decision because this matter is of grave concern to everybody on both sides of the House and it would have been right and proper to have continued the debate in a proper and orderly fashion tomorrow and on Friday if necessary. We are hearing that the Dáil will not sit tomorrow until 12.30 p.m. Does it make sense to be rushing this debate tonight to try to get through the amendments and have a forced vote at 5 a.m. and then delay proceedings tomorrow until 12.30 p.m.? It makes absolutely no sense. It is ridiculous.

I am sorry I have only a couple of minutes to continue speaking. I was given abortion statistics from around the world. One that jumped out at me was that there have been 330 million abortions in China in the past 40 years. I just think it is wrong. There are 13 abortions for every 10 live births in Russia. It is wrong. There are 125,000 abortions per day in the world. It is wrong.

**Deputy Mattie McGrath:** I wish to place on the record of the House a matter of the utmost importance in respect of the constitutional validity of the proposed Protection of Life During Pregnancy Bill 2013. It has been brought to my attention that the Oireachtas has no right to vote on a Bill that contains provisions that have been put to the Irish people in referendums and which they in a sovereign exercise rejected. The Protection of Life During Pregnancy Bill 2013 contains two provisions that were put to the Irish people in a referendum in 2002 and that the people rejected.

**Acting Chairman (Deputy John Lyons):** The Deputy should stick to the proposed amendments.

**Deputy Mattie McGrath:** These provisions must be removed from the Bill currently before the Oireachtas before it is subjected to a final vote. The decision also puts these provisions out of the reach of the Government. If the Government wants to include them, it must first get the Irish people to reverse its previous decision. The Irish electorate voted "No"-----

**Acting Chairman (Deputy John Lyons):** We are speaking on the legislation that is in front of us tonight.

**Deputy Mattie McGrath:** -----in the 2002 referendum to repeal sections 58 and 59 of the Offences Against the Person Act 1861. The proposal to delete sections 58 and 59 of that Act, which this Bill seeks, would require a new referendum. Similarly, the Irish electorate voted “No” in the 2002 referendum, specifying that the life would be protected from implantation-----

**Acting Chairman (Deputy John Lyons):** I remind the Deputy for the third time that he must speak on the amendments.

**Deputy Mattie McGrath:** -----yet this Bill presumes to legislate for protecting a stage of human life.

In light of these facts which I have placed on the record of the House I am calling for a suspension of the vote on the Bill until the matter is resolved in a manner that respects-----

**Acting Chairman (Deputy John Lyons):** The Deputy must speak on the amendments on which he has spoken already.

**Deputy Mattie McGrath:** I am speaking on the legislation. I am asking for it to be delayed to respect the sovereign decision of the people.

**Deputy Brendan Howlin:** The Deputy has no respect for the House.

**Deputy Mattie McGrath:** The Taoiseach said this morning that he wanted to get rid of this tonight. Those are the words he used. We are getting lectures all night about unsuitable descriptions. He wanted to get rid of it. It is a farce that we are sitting here. The Minister for Health could not come to the hearings of the Oireachtas Joint Committee on Health and Children for more than 12 minutes but he says he can stay here all night and all day.

**Deputy Bernard J. Durkan:** The Deputy is making a Second Stage speech.

**Deputy Mattie McGrath:** He never replies to us. He spent 12 minutes at the committee hearing, which was an insult to all those who came forward.

**Deputy Billy Timmins:** I appreciate the difficulty the Minister has in trying to create legislation in this area to end up ultimately with a medical practice that can be followed. I agree with the Minister of State, Deputy Kathleen Lynch, that much of the talk here has been legalese, but one of the foundations of the Government’s policy is legalese. I regret that the Minister for Justice and Equality, Deputy Shatter, is not here, but he is probably watching the monitor. He came in here to deconstruct an argument by the Minister of State with responsibility for European Affairs, Deputy Creighton, but I briefly remind him – and I could quote *ad nauseam* from material here – that in the past he has asked the Taoiseach if he would not agree that there have been a substantial number of constitutional cases in which the advices of the Office of the Attorney General have been proved wrong. I appreciate the work done by the Attorney General, but the Minister is aware that his own Department lost a naturalisation case in Sligo last year with respect to the Iranians. I could go on about upward-only rent reviews, etc. There was also the case of *McCrystal v. the Minister for Children and Youth Affairs*. That is not the point of this issue.

The Minister spoke about quoting psychiatrists. He can quote a few psychiatrists, but the majority of them disagree. I will not quote the words of Professor Kevin Malone, one of the most qualified people on the issue of suicide. His contributions are in the report of the committee hearings and people can check them there if they want.

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I want to deal with one very important issue that the Minister for State, Deputy Kathleen Lynch, raised. I may be misquoting her, but I think she said there were claims that pregnant women could not be suicidal. I do not think anybody here made that claim. I may have misinterpreted her. Everyone acknowledges that that can be the case. Of course the Minister for Justice and Equality was right when he talked about the X case and the 14-year-old girl who was raped. That is absolutely horrific. It is one of the things that has caused a difficulty for me. I can only quote Jacqueline Montwill, who said when it was put to her that one violation on top of another does not solve the problem, horrific and all as it is. When one hears the emotive language one is of course shocked. Bernadette Goulding of Women Hurt said exactly the same thing. This Government would not allow a referendum.

**Acting Chairman (Deputy John Lyons):** The Deputy is out of time. I have to stop him there.

**Deputy Billy Timmins:** If this legislation is struck down, will the Government also be of the view that it will not hold a referendum on the issue?

**Acting Chairman (Deputy John Lyons):** The next speaker is Deputy Mathews. He has two minutes. I remind speakers that they must stick to the two minutes, in fairness to every other person who has an opportunity to speak for two minutes.

**Deputy Peter Mathews:** I remind the Ministers that the dilemma for the doctors, the psychiatrists and the obstetricians was the repugnant one posed by the fact that if a mother refuses treatments, the law says that a medical procedure is lawful. Jim Sheehan, who founded the Blackrock Clinic, the Hermitage and Galway Clinic, said, "Peter, you are to use the words 'kill the baby' ". We have heard an awful lot about women and I agree that women's health is paramount, but babies are people too.

*2 o'clock*

As Deputy Michael Healy-Rae said, 3,500 babies are aborted every day in America. That is one 9/11 every day. These are babies who someone fathered and to whom someone would have been a mother, only that they lost their lives.

People on both sides have a conscience in this matter. Having informed their conscience of the facts, including the repugnant dilemma presented to us by psychiatrists, those Members who disagree with the Bill have to pay a cost. That is the difference between the two sides. We are chucked out of our parties. Two Members have said they have misgivings about the Bill, but they will still vote for it. Something is not right for them about the Bill. If something is not right, then something is wrong. Come on. Wake up everybody.

**Deputy Richard Boyd Barrett:** I commend the Minister for Justice and Equality, Deputy Alan Shatter, and the Minister of State, Deputy Alex White, on recalling the terrible tragic circumstances surrounding the X case and reminding us that suicide in pregnancy is a real threat which must be dealt with. That is what the X case judgment requires us to do, morally, politically and legally. Given the powerful accounts that they both gave, I do not understand how they can propose a Bill that effectively rows back on that right and gives us less than was agreed to by the judges in the X case judgment. One consultant psychologist made the assessment that X was suicidal and that she had the right to an abortion. The Government, however, is now proposing that similar cases will be examined by an obstetrician, two psychiatrists in consultation with a doctor and then a review panel. Potentially, a 14 year old girl, a victim of rape and

feeling suicidal, could have to be put through a review by eight doctors and potentially denied her right to have an abortion in these appalling circumstances. The X case judgment does not require the Government to do this. That is the point we are making. The number should be reduced to two doctors instead of putting obstacles in the way.

The Minister asked for honesty. Will the Government be honest? As it stands, is Deputy Olivia Mitchell correct in saying most woman who will feel suicidal during pregnancy will not avail of the rights this Bill purports to give them? They will not put themselves through this. Then the Minister asks us what is the point of the Bill and what does it do for women.

**Deputy John Halligan:** I concur with the Minister of State, Deputy Kathleen Lynch, that some Members hold the suspicion that women may falsely claim to be suicidal. Psychiatrists and psychoanalysts have not been able to determine why someone is suicidal and why they take their own lives. The Bill is deeply restrictive and offensive to women in this sense, although I am obliged to vote for it. For instance, certification under the Mental Health Act requires two doctors, but this legislation will force pregnant women to see three. Deputy Richard Boyd Barrett is correct that all this will do is force women, faced with the prospect of proving their state of mental health, to leave the country. We will continue to export the problem out of Ireland.

There are women who are brutalised and raped, even in their own homes, or in cases of fatal foetal abnormalities who may feel suicidal. Those opposed to this section are telling them they are not suicidal. What a cheek for any Member to consider saying this to a woman. To put it simplistically, if a woman, as a result of rape, says she is suicidal, that should be it for all of us, as legislators, to believe and trust her. I have met women who have been brutalised and raped who have had to go through giving birth, as well as others whose child had a fatal foetal abnormality. Every one of them would say they would not have chosen to have had an abortion because of the love of their husband or partner. This was not their choice, but there was an inevitability about it in that their own lives would have been destroyed which might have led to suicide. That is why we have to think about what is in a woman's head if she has been raped, brutalised or is carrying a foetus incompatible with life. Compassionately we must accept that there is a prospect in the woman's mind that she may be suicidal. That is why we should support the Bill.

**Deputy Clare Daly:** When we introduced our Bill, I was asked if the Minister would bring forward legislation and I said I believed he would. I am glad that is so. I recognise that this is important symbolically and that for the first time we are legislating for abortion in Ireland. After today, however, it is not the symbolism at which we must look but the details of the Bill and what is contained in it. In that sense, if the Minister for Justice and Equality, Deputy Alan Shatter, is disappointed that we are not supporting it, I can tell him we, too, are disappointed, but not for the reasons he stated. We are not voting against it because we want measures included in it which are unconstitutional. Our history in this case will prove that to be demonstrably false. We know that some of these issues are outside the scope of the Constitution. However, we have brought forward provisions based on the X case judgment and we would have been willing to support them.

What the Bill does is put obstacles in the way which are not there now, making it more difficult for women and which will result in us not protecting their lives. As the Minister stated, as it stands, legally, one medical practitioner can adjudicate on the issue of suicide. Under this legislation, we are proposing three practitioners. The Minister claims the psychiatrists will make the primary decision, but that is not clear. That is not what the legislation states. It actu-

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ally states it needs to be a unanimous decision of all three practitioners, including an obstetrician, with an appeals mechanism. It does not provide clarity; critically, it provides a definition of the unborn which is unprecedented in Europe and makes it more difficult to deal with other issues such as fatal foetal abnormalities and so on. It is for these reasons that we reluctantly do not support the legislation.

**Deputy Mick Wallace:** This legislation is a significant step, but so much more has to be done. The Minister for Justice and Equality, Deputy Alan Shatter, has made the point that it is not possible to do more because of the Constitution, a claim we do not accept. The criminalisation of abortion has not been removed. The notion that a person can receive 14 years in prison for importing an abortion pill is draconian and not positive. Criminal laws have a negative impact on the right to health. This could have been dealt with without any reference to any problem in the Constitution. I am still not convinced that the Bill brings clarity to the issue. I am not sure all of the confusion around it has disappeared. It appears there is still much confusion, but we have not opposed the Bill for the reasons the Minister stated and it was disingenuous of him to suggest it in that way.

**Deputy Peadar Tóibín:** I genuinely believe every single Deputy in this Chamber has come to his or her view on the basis of compassion and justice, no matter what their perspective is. I also believe we enter dangerous waters when we decouple health policy from peer reviewed medical evidence. In a matter of life and death, if it is a choice between the strident voices in this Chamber and the medical expertise of 130 psychologists, I know where my trust is going to lie. I would like to quote briefly from the peer reviewed meta-analysis from Dr. David Ferguson who is philosophically pro-choice:

There is no available evidence to suggest that abortion has therapeutic effects in reducing the mental health risks of unwanted or unintended pregnancy. There is suggestive evidence that abortion may be associated with small to moderate increases in risks of some mental health problems. [He includes suicidal behaviour in these health problems.] These conclusions have important if uncomfortable implications for clinical practice and the interpretation of the law in those jurisdictions which require abortion to be authorised on medical grounds. In these jurisdictions, the great majority of abortions are authorized on mental health grounds. The present re-analysis suggests that, currently, there is no evidence that would support this practice.

In his comments at the health committee hearings Professor Kevin Malone said:

By foregrounding a theoretical risk of suicide in women, and enshrining “suicidality” in Irish law, the proposed legislation runs the risk of further invisibilising, normalising, and at worst exacerbating the much more real and volatile threat of increased suicide risk in Irish men, and potentially accelerating suicide risk in young women also.

The Minister for Justice and Equality correctly says there was no evidence to challenge the psychologists’ evidence in the X case, but we have dozens of hours of such evidence now. To come to the same decision as the Supreme Court, despite the fact that we have this evidence, would be grossly negligent.

**Deputy Terence Flanagan:** I have three quick questions for the Minister. What would be the acceptable number of direct abortions under section 9? If one accepts the premise of the X case, on which the Bill is based, that a threat of suicide is no less a real and substantial threat

to the mother's life, whether it arises in the first trimester or at eight months, and if the mother says she is suicidal because of the very existence of the baby, rather than simply because of the fact that the baby is inside her, the only way the cause of her suicidality can be removed is by killing the baby. As we know that both the X case and the Bill speak explicitly about ending the life of the unborn, I would like the Minister to comment further on that issue.

Dr. Sam Coulter Smith, the Master of the Rotunda Hospital, expressed serious concern about the idea that under section 9 an obstetrician might be required to induce delivery of a viable but extremely premature baby. He stated:

The fact that there is no gestational limit in respect of suicidality is a major ethical issue for obstetricians. Delivering a baby at 25 weeks gestation could lead to death due to extreme prematurity, or it could lead to a child with cerebral palsy or with other significant development issues for the future.

The Minister has acknowledged previously that the Bill will result in more babies suffering damage because of their premature delivery. Who will be liable for those babies who end up with a disability? Who will take care of them?

**Deputy Jerry Buttimer:** It is extraordinary that we are in this House tonight owing to inactivity and a failure to act. As a consequence, we have done the typical Irish thing - kick the can further down the road. The cowardice has stopped; perhaps this is not enough for some, but perhaps it has gone too far for others. It is time for some people to listen to those of us who vote with our conscience, who have informed our conscience, who have gone away quietly and spoken to obstetricians and psychiatrists and met medical ethics experts, who have done our own analysis and research and made our decision on the basis of what is right, not for any political gain, but only on the basis of what is right for women and unborn children. That is why I am supporting the Bill, because I am pro-life. I weighed 2 lbs when I born and I was 13 weeks premature. Nobody believed my mother when she said she was in trouble, except for a friend of hers who was a doctor, on St. Patrick's Day in 1967.

Medical technology has moved on. The country has moved on. We deserve to be honest with each other. I respect the views of many of my colleagues who disagree with the Government on this issue. They are good, decent people. However, the Bill is about bringing certainty. I would like to provide a quote. We can be selective in our quotations from the committee hearings, but I sat through six days of them and never gave an opinion or did anything other than chair the meetings. A number of quotes struck me. One is from Dr. Rhona O'Mahony who has said that if a woman commits suicide, she dies and her baby dies, too. That is an extraordinary statement because that puts the onus and responsibility on all of us to preserve life. Life is precious, no matter what our view is, and none of us has a right to question this.

I was struck by what the Minister of State, Deputy Kathleen Lynch, said and she is right: we must trust women. I was absolutely stunned last Sunday in Killarney by the number of women walking down Dalton's Avenue after the match who spoke to me about this issue. They were Cork and Kerry people telling me to do the right thing. For many of us in politics, it is about making decisions every single day of the week and we bring our conscience to our work every single day of the week. We get it wrong sometimes and sometimes we get it right. None of us is perfect and none of us has every single answer.

Dr. Anthony McCarthy told the health committee in January and May that "Suicide in preg-

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nancy is real; it is a real risk and it does happen.” He is a perinatal psychiatrist. We all agree that termination of a pregnancy is not the answer, but Dr. McCarthy said we must address the underlying cause of that issue in a woman who feels suicidal.

I was very struck by the presentation made by Dr. Sam Coulter Smith in May. He made a cogent and clear argument. Why are we here tonight legislating? We are legislating because Article 40.3.3° of Bunreacht na hÉireann has been held out as the bulwark by many of those who are against this legislation. The pro-life campaign website states the following.

The amendment protects the right to life of the unborn and ensures that women receive all necessary medical treatments when pregnant. It is regarded internationally as one of the key pro-life victories of the past 40 years.

I am no Einstein, but on reading Article 40.3.3° it gives equal and due rights to both the unborn child and the mother.

The Government can only act within the parameters of that article. We had two referendums which were rejected. How can the floodgates open? They can only be opened by a vote of the people. Any other change can only come as a consequence. Under the Constitution, a woman already has a right to a termination of pregnancy. The Bill makes it more restrictive and places a further burden on the woman. We would be wrong to deny a woman that right, irrespective of how rare it might be that she would claim it.

We must trust the women of Ireland. We must trust mothers. My mother who was a midwife was right in 1967. Some of her colleagues thought she was suffering from mental health issues, but she was not. Let us take a leap of faith on behalf of women. I accept that this is difficult legislation for many of my colleagues and understand their concerns because I, too, have struggled with it. I would not have supported it if I thought it was not the right thing to do. We have a duty, as legislators, to pass laws. If it is bad law, it will be deemed to be unconstitutional, but this legislation upholds a Supreme Court decision, no matter what people may think of it.

**Deputy Éamon Ó Cuív:** Many Government Members believe enacting this Bill allows them to conclude the issue because the legislation is restrictive and will not significantly change the practice of medicine and maternity care in this country. However, a group of people in the Government see this as a first step in making it progressively easier to obtain an abortion in this jurisdiction. As the Minister for Education and Skills, Deputy Ruairí Quinn, has confirmed, the Members who will be voting for the Bill on the benches opposite hold diametrically opposed views. The truth will only be known as the issue is worked out in the next five to ten years. It is likely that the wishes expressed by those who want this to be a first step on a long road will come to pass, much to the disappointment of those who believe they can finish the matter by legislating in good faith for a very restrictive provision.

The Minister quoted a psychiatrist. I will quote the following from a statement by 120 psychiatrists:

We believe that legislation that includes a proposal that an abortion should form part of the treatment for suicidal ideation has no basis in the medical evidence available. We as psychiatrists are being called upon to participate in a process that is not evidence-based and we do not believe that this should be asked of the profession.

**Minister of State at the Department of Foreign Affairs and Trade (Deputy Lucinda**

**Creighton):** It is not possible to respond to all of the points made, but the issues arising are important in the framing of this legislation. The idea that we cannot question or find shortcomings in a Supreme Court judgment is clearly wrong. I respect the legal brain of my good friend, the Minister for Justice and Equality, Deputy Alan Shatter. He has extensive experience of analysing judgments, but others also have experience in this area and their opinions vary. That is the nature of the law. It is a question of interpretations. Judges and courts interpret decisions of the Legislature. The late Supreme Court judge Brian Walsh who was one of Ireland's most eminent constitutional jurists stated shortly after the judgment in the X case that the eighth amendment:

confers no immunity for taking life and its stated objective is the preservation of and respect for life. It is perfectly consonant with the idea of safeguarding of the mother's life without intentional and direct intervention to terminate the life of the foetus. The claim that it admits of direct termination has never been fully argued. In the X case it was conceded. There was no *legitimus contradictor* to argue against such a construction and therefore the court's decision can only bind the particular case as it was based on a conceded and unargued construction. It is well established that neither a constitutional provision nor even a statutory provision can be construed on the basis of a concession if it were to be *binding in rem*.

I would have liked to have had the opportunity to speak to the substance of some of the amendments. I have tried to propose a clinical care path as an alternative. Nobody in this Chamber denies that a pregnant woman can be suicidal. I have deduced from some Members' contributions that what others and I have said has been misinterpreted. I tabled my amendments to reflect the medical reality, to which psychiatrists have repeatedly attested, that abortion is not a treatment for suicidal ideation. The Minister can scoff at certain treatments such as dialectical behaviour therapy, but these are recognised forms of therapy. If he has other suggestions, I urge him to propose an alternative amendment to set out a legitimate clinical care path that could provide meaningful and evidence based care for women who are suicidal in order to protect them and their babies.

**Deputy James Reilly:** A range of views have been expressed and I have responded to all of them. I have made it clear that we cannot be prescriptive in medicine and that a psychiatrist has described the Bill as a pathway to care. It would not be useful to repeat our discussion. This is the Protection of Life During Pregnancy Bill. The phrase "protection of life" refers to the mother and the unborn. I respect all of the views expressed here this evening and during the course of this Bill. Equally, I accept they are held in good conscience and good faith. However, I also respect the women of this country, the mothers of the next generation and the professionals who look after them. As I said earlier, that should be our starting point here. I believe this Bill brings the clarity required to the women of this country so that they can know what services they are entitled to and, most importantly, how to access them. It also brings the clarity and certainty the medical and nursing professions need in order to deliver the services they are obliged to deliver and to know what is legal to deliver.

I cannot accept the amendments proposed and will oppose them. I ask the House to do so.

**Deputy Peadar Tóibín:** I will make a few brief points. The 1992 and 2002 referenda were defeated by both the pro-choice and pro-life campaigns and it is a brave person who will interpret the message of Ivana Bacik and Dana when they speak with one voice on an abortion campaign.

This legislation allows for the State to disable a child without any basis in medical evidence. It is difficult to say this, but a possible outcome is that a child could be damaged and forced to live with a severe disability for the rest of his or her life. This shocking vista would be a shocking legacy of this Dáil. We are told this is an extreme case that is unlikely ever to happen. We were told a number of years ago that we would have the cheapest bailout in history and that it would not cost the taxpayer tens of billions of euro. However, what we have learned is that if it can happen, it will happen and that human behaviour fills the spaces created by legislation.

It has been mentioned that thousands of women travel abroad for abortions every year. I see this as a double tragedy. It is a disaster for the women in crisis, but it is also a disaster for the lives lost. Ireland has an abortion rate of one in 20. In Britain, the abortion rate is one out of every five pregnancies. Clearly, our culture and legislation have created materially different outcomes for both women and children. Tonight, we are faced with the choice of whether to vote “Yes” or “No” on this issue. This is not the only binary issue with which we must deal. We either believe in medical evidence based treatment for women or we do not. We either believe a person is a human being or not and that child lives or dies. These are the stark and grave choices we are faced with tonight. The only yardstick we should use is what is the best available evidence based clinical practice in this regard.

Question put: “That the words proposed to be deleted stand.”

<i>The Dáil divided: Tá, 135; Níl, 24.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Adams, Gerry.</i>	<i>Browne, John.</i>
<i>Bannon, James.</i>	<i>Calleary, Dara.</i>
<i>Barry, Tom.</i>	<i>Flanagan, Terence.</i>
<i>Boyd Barrett, Richard.</i>	<i>Healy-Rae, Michael.</i>
<i>Breen, Pat.</i>	<i>Keaveney, Colm.</i>
<i>Broughan, Thomas P.</i>	<i>Kirk, Seamus.</i>
<i>Bruton, Richard.</i>	<i>Kitt, Michael P.</i>
<i>Burton, Joan.</i>	<i>Lowry, Michael.</i>
<i>Butler, Ray.</i>	<i>McConalogue, Charlie.</i>
<i>Buttimer, Jerry.</i>	<i>McGrath, Mattie.</i>
<i>Byrne, Catherine.</i>	<i>McGrath, Michael.</i>
<i>Byrne, Eric.</i>	<i>McGuinness, John.</i>
<i>Cannon, Ciarán.</i>	<i>Mathews, Peter.</i>
<i>Carey, Joe.</i>	<i>Moynihan, Michael.</i>
<i>Coffey, Paudie.</i>	<i>Naughten, Denis.</i>
<i>Collins, Áine.</i>	<i>Ó Cuív, Éamon.</i>
<i>Collins, Joan.</i>	<i>Ó Fearghail, Seán.</i>
<i>Collins, Niall.</i>	<i>O’Dea, Willie.</i>
<i>Colreavy, Michael.</i>	<i>O’Sullivan, Maureen.</i>
<i>Conaghan, Michael.</i>	<i>Smith, Brendan.</i>
<i>Conlan, Seán.</i>	<i>Timmins, Billy.</i>
<i>Connaughton, Paul J.</i>	<i>Tóibín, Peadar.</i>
<i>Conway, Ciara.</i>	<i>Troy, Robert.</i>

<i>Coonan, Noel.</i>	<i>Walsh, Brian.</i>
<i>Corcoran Kennedy, Marcella.</i>	
<i>Costello, Joe.</i>	
<i>Coveney, Simon.</i>	
<i>Cowen, Barry.</i>	
<i>Creed, Michael.</i>	
<i>Creighton, Lucinda.</i>	
<i>Crowe, Seán.</i>	
<i>Daly, Clare.</i>	
<i>Daly, Jim.</i>	
<i>Deasy, John.</i>	
<i>Deenihan, Jimmy.</i>	
<i>Deering, Pat.</i>	
<i>Doherty, Pearse.</i>	
<i>Doherty, Regina.</i>	
<i>Donnelly, Stephen S.</i>	
<i>Donohoe, Paschal.</i>	
<i>Dooley, Timmy.</i>	
<i>Dowds, Robert.</i>	
<i>Doyle, Andrew.</i>	
<i>Durkan, Bernard J.</i>	
<i>Ellis, Dessie.</i>	
<i>English, Damien.</i>	
<i>Farrell, Alan.</i>	
<i>Feighan, Frank.</i>	
<i>Ferris, Anne.</i>	
<i>Ferris, Martin.</i>	
<i>Fitzgerald, Frances.</i>	
<i>Fitzpatrick, Peter.</i>	
<i>Flanagan, Charles.</i>	
<i>Flanagan, Luke 'Ming'.</i>	
<i>Griffin, Brendan.</i>	
<i>Halligan, John.</i>	
<i>Hannigan, Dominic.</i>	
<i>Harrington, Noel.</i>	
<i>Harris, Simon.</i>	
<i>Hayes, Brian.</i>	
<i>Hayes, Tom.</i>	
<i>Healy, Seamus.</i>	
<i>Heydon, Martin.</i>	
<i>Higgins, Joe.</i>	
<i>Hogan, Phil.</i>	
<i>Howlin, Brendan.</i>	

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<i>Humphreys, Heather.</i>	
<i>Humphreys, Kevin.</i>	
<i>Keating, Derek.</i>	
<i>Kehoe, Paul.</i>	
<i>Kelleher, Billy.</i>	
<i>Kelly, Alan.</i>	
<i>Kenny, Enda.</i>	
<i>Kenny, Seán.</i>	
<i>Kyne, Seán.</i>	
<i>Lawlor, Anthony.</i>	
<i>Lynch, Ciarán.</i>	
<i>Lynch, Kathleen.</i>	
<i>Lyons, John.</i>	
<i>Mac Lochlainn, Pádraig.</i>	
<i>McCarthy, Michael.</i>	
<i>McDonald, Mary Lou.</i>	
<i>McEntee, Helen.</i>	
<i>McGinley, Dinny.</i>	
<i>McGrath, Finian.</i>	
<i>McHugh, Joe.</i>	
<i>McLellan, Sandra.</i>	
<i>McLoughlin, Tony.</i>	
<i>McNamara, Michael.</i>	
<i>Maloney, Eamonn.</i>	
<i>Martin, Micheál.</i>	
<i>Mitchell, Olivia.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Catherine.</i>	
<i>Murphy, Dara.</i>	
<i>Murphy, Eoghan.</i>	
<i>Nash, Gerald.</i>	
<i>Nolan, Derek.</i>	
<i>Noonan, Michael.</i>	
<i>Nulty, Patrick.</i>	
<i>Ó Caoláin, Caoimhghín.</i>	
<i>Ó Ríordáin, Aodhán.</i>	
<i>Ó Snodaigh, Aengus.</i>	
<i>O'Brien, Jonathan.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	

<i>O'Reilly, Joe.</i>	
<i>O'Sullivan, Jan.</i>	
<i>Penrose, Willie.</i>	
<i>Perry, John.</i>	
<i>Phelan, Ann.</i>	
<i>Phelan, John Paul.</i>	
<i>Pringle, Thomas.</i>	
<i>Quinn, Ruairí.</i>	
<i>Rabbitte, Pat.</i>	
<i>Reilly, James.</i>	
<i>Ring, Michael.</i>	
<i>Ross, Shane.</i>	
<i>Ryan, Brendan.</i>	
<i>Shatter, Alan.</i>	
<i>Sherlock, Sean.</i>	
<i>Shortall, Róisín.</i>	
<i>Spring, Arthur.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanley, Brian.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>Twomey, Liam.</i>	
<i>Varadkar, Leo.</i>	
<i>Wall, Jack.</i>	
<i>Wallace, Mick.</i>	
<i>White, Alex.</i>	

Tellers: Tá, Deputies Emmet Stagg and Paul Kehoe; Níl, Deputies Mattie McGrath and Peadar Tóibín.

Question declared carried.

Amendment declared lost.

**An Leas-Cheann Comhairle:** Amendment No. 9 is in the names of Deputies Catherine Murphy, Richard Boyd Barrett and Joe Higgins. Amendments Nos. 9, 28, 42, 75 and 130 are related and may be discussed together. I call Deputy Catherine Murphy.

**Deputy Catherine Murphy:** I move amendment No. 9:

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In page 6, between lines 1 and 2, to insert the following:

“ “consent” means consent obtained freely without threats or inducements, where the medical practitioner—

(a) is satisfied that the woman is capable of understanding the nature, purpose and likely effects of the proposed treatment, and

(b) has given the woman adequate information, in a form and language that the woman can understand, on the nature, purpose and likely effects of the proposed treatment;”.

I want to address the amendments with which my name is associated. Amendment No. 130 is the one that probably outlines in greatest detail what is sought. I would have thought it would be almost self-evident that it should be part of the legislation that consent is stated rather than implied. However, we all know it is unlikely that even one dot on an i or one cross on a t will be changed as a consequence of going through all of this tonight, and I particularly want to deal with the items in the next grouping. At this stage, I want to formally propose amendments Nos. 9, 42, 75 and 130.

**Deputy Denis Naughten:** I want to speak on amendment No. 28 in my name. There are two aspects to my amendment, both of which arise out of the discussions on Committee Stage. My proposed subsection (4) comes back to an issue that was debated at length in committee in regard to the need for regulations that come into force under this Bill to be approved by both Houses of the Oireachtas. There is huge scope within this legislation for regulations under the Bill. As we know, the Taoiseach gave a commitment last December that we would have the regulations published in tandem with the legislation. That has not happened and, therefore, I put forward this provision to allow for these regulations to be discussed and approved by the Oireachtas, which is important.

The other part of the amendment, which proposes the substitution of subsection (3), states: “The Minister shall make regulations to provide for the procedures to be employed where a pregnant woman is unable to give informed consent.” As the Minister and Members who participated in the Oireachtas hearings will be aware, there was consistent agreement by every single witness who came before the committee that the issue of consent needed to be addressed in this legislation or that we would have the capacity legislation in tandem. The Minister was not able to give an indication on Committee Stage as to when the capacity legislation would be published or enacted. In light of that, I believe some provision needs to be made in regard to the issue of consent.

**Deputy Éamon Ó Cuív:** I want to support the contention of Deputy Naughten. As the Minister, Deputy Coveney, knows, when we were taking the Animal Health and Welfare Bill, I made a very strong case that the regulations made under the Act should be brought to the relevant committee of the House before being signed off by the Minister, and that they would come in draft form. The traditional practice of signing the regulations and then laying them before the Houses, and allowing them to stand if they are not annulled within a certain number of days, is outdated. It would be much better practice to bring regulations before the House, listen to proposals from the relevant committee and then, having considered possible amendments from the committee, to make the regulations. Therefore, I support Deputy Naughten on amendment No. 28.

**Deputy Mattie McGrath:** I want to support Deputy Naughten’s amendment. It is a matter

of concern that regulations or statutory instruments could be passed without coming before the House. That is my worry.

**Deputy James Reilly:** These amendments deal with the issue of consent, something we discussed at some length on Committee Stage. This issue was addressed in section 16, which clearly states that the provisions of the Bill will operate within the existing legal provisions in regard to consent for medical procedures. The guide to professional conduct and ethics for registered medical practitioners of the Medical Council provides extensive information on the appropriate process to be followed to obtain valid informed consent for medical procedures - in fact, it contains ten pages on consent. The HSE has also recently published its national consent policy, which includes detailed information on what constitutes valid and genuine consent and how to obtain it. The capacity legislation, to which Deputy Naughten referred, will be published next week. Therefore, I do not propose to accept these amendments.

Amendment put and declared lost.

**An Leas-Cheann Comhairle:** Amendment No. 10 is in the names of Deputies Catherine Murphy, Seamus Healy, Mick Wallace, Richard Boyd Barrett and Joe Higgins. I call Deputy Catherine Murphy.

**Deputy Catherine Murphy:** I move amendment No. 10:

In page 6, between lines 2 and 3, to insert the following:

““fatal foetal abnormality” means a medical condition suffered by a foetus such that it is incompatible with life outside the womb;”.

Some of us felt there should be a space to stretch this legislation to deal with the issue of incompatibility with life, and to deal in a more compassionate and immediate way with the very tragic circumstances that very many women find themselves in, where they are pregnant but there will not be a baby at the end of the pregnancy because the baby has a fatal foetal abnormality.

I said earlier that I had visited Liverpool National Health Trust Hospital last week, specifically in regard to this issue. One of the things the consultant obstetrician to whom I and others spoke said was that the hospital was concerned in regard to the care of the women they see when there is the absence of a complete medical history. The follow-up care that would normally be available is very often not available because people obviously have to travel outside of the country, which is a costly exercise, they are often detached from their family and there are sometimes other children and other considerations. Therefore, they do not get the follow-up care in that hospital that the hospital would wish to give them, including care like genetic screening.

I said earlier that the one thing the staff did say that was different about Irish women as opposed to the other women they see, who are mostly from the UK, was that the Irish women expected that staff would be judgmental. It is really quite tragic that this is the feeling they should have.

We had a young man with us whose wife in late 2011 had a termination in those circumstances in that hospital. He went back there and particularly wanted to thank the staff in the hospital for their compassion, their care and their attention to her.

*3 o'clock*

He could not speak more highly about them. He talked about how they had to come back on Christmas week with people who were coming home for Christmas. Arrangements had to be made before they left about how the ashes were to be delivered. Three weeks later, luckily he happened to be in the house the morning DHL arrived. A man arrived at the door with a big smile on his face, thinking he was delivering a package that someone had ordered online but it was the ashes of the baby they wanted. That is the kind of circumstance people must deal with.

**An Leas-Cheann Comhairle:** I am sorry to interrupt the Deputy. I should have said amendments Nos. 10, 11, 21, 30, 81 and 83 are related and may be discussed together.

**Deputy Catherine Murphy:** A number of us met a group of people who were brave enough to put themselves out there. It seems that one must do that in this country. One must become visible for people to understand the issue. We met men and women in the AV room a few weeks ago and they told us of these harrowing situations. If it is not possible to deal with this in a constitutional way in this legislation, the least we could should get is a commitment that it will be dealt with in a timely fashion by way of a referendum. It is the least we can do to end this absolutely barbarous approach to a tragic time in people's lives. It was said to me that we cannot change the diagnosis but that we can change how women and couples are treated in this situation. I urge the Government, if it cannot accept this, to provide us with that commitment tonight.

**Deputy Richard Boyd Barrett:** The Minister for Justice and Equality, Deputy Shatter, earlier suggested the six avidly pro-choice Deputies voting "No" might be explained by some kind of political posturing. I want to make it clear to him and to the Government that it is a mistaken judgment. Some of us feel we must, reluctantly, vote against the Bill. There is nothing in it for us to vote "No". We wanted a Bill that legislated for the X case and went as far as it could go. We were conscious of the limitations on how far it could go. We do not expect things that cannot be given within the framework of the X case judgment but we do want everything that could be given within the framework and limitations of the X case judgment to advance the welfare and the rights of women to terminations where they need them. We have already discussed a couple of the issues we are particularly concerned about, which are unnecessary, too restrictive and erode the rights given to women under the X case. I refer to the requirement for more doctors than necessary or prescribed by the X case judgment, which does not prescribe a particular number of doctors. Similarly, we are deeply concerned about criminalisation.

For me and for many of the Deputies forced to vote "No", this issue is the dealbreaker. It is unacceptable that the Government passes up an opportunity to deal with the most terrible circumstances. If the Government could not deal with it, we would accept it, although we would ask for, and expect, an assurance and a commitment that it will deal with the matter forthwith. The Government has not provided a commitment, despite the fact that the Government said it agrees pregnancies with fatal foetal abnormality are terrible and tragic and that no woman should have to be put through a situation where she must travel to Britain for an abortion and not be able to avail of the service here with the support of family and friends. Members on all sides of the House accept that the situation is unacceptable and that something must be done yet the Government has made no commitment to do something about it. That is of deep concern and is unacceptable if anything could be done, as we believe is the case.

At least 20 eminent legal experts, barristers, law lecturers and solicitors have said that in

situations where a wanted pregnancy is diagnosed as involving fatal foetal abnormality, because the conditions are incompatible with life, allowing a termination does not clash with the imperative in the Constitution to protect the unborn child. A condition incompatible with life is not a viable life. It is not an unborn child because we are talking about a foetus that cannot live, where there is no prospect of life or viability and therefore there is no clash. We believe it is entirely compatible and that there is legal evidence to support the view that it is compatible with the X case judgment and the current constitutional limitations. The Government has said that it could be subject to legal challenge and that the legal advice of the Government runs counter to the view. That may well be the case and those who support our view accept that our viewpoint is not cast-iron in respect of the potential compatibility with the Constitution of allowing for terminations in these cases.

However, they go on to say something the Minister of State, Deputy White, acknowledged on Committee Stage, that nothing is certain in law until it is tested. It has as good a chance of passing legal muster as many elements included in the Bill. Saying that it could be legally challenged is not a reason to exclude it because it is so important and everyone agrees it is unacceptable that the situation should persist if it does not need to. We have an obligation to include it in the legislation and to try to deal with it. If it is struck down, we can do something afterwards to deal with that. The Government should give a commitment to do so but it has not done so. When that is combined with the criminality clause providing for a potential 14 year prison sentence if terminations are carried out or procured outside the terms of the Bill, it maintains a stigma of criminalisation over women in these tragic circumstances who are forced at a rate of 1,500 a year to travel abroad where a pregnancy they wanted is not viable because of fatal foetal abnormality. It is unacceptable that women forced to travel abroad in those circumstances, which they have a legitimate right to do, are doing something that is treated as a criminal offence in this country subject to 14 years imprisonment. That is terrible. It is bad enough that women should be put through this. To be put through it in circumstances where the State describes what they are doing as criminal and subject to 14 years in prison is appalling. To how much extra anxiety, horror and cruelty does that subject women faced with that appalling situation? It is unacceptable to allow that to persist.

Even if the Minister did not accept those first two points, the third point is unanswerable. The definition of “unborn” included in the Bill sets it down for the first time in law. It states that the unborn child begins at the moment of implantation. That means the Minister is not only failing to deal with the issue of fatal foetal abnormalities in the Bill and maintaining the stigma of criminality over it, he is putting into law something that will prevent him dealing with the situation of fatal foetal abnormalities in the future. Under that definition of the unborn child, a woman who seeks a termination of a foetus with a fatal foetal abnormality will be guilty of killing an unborn child as defined in the legislation. That is unacceptable. We have proposed an alternative wording. I think I speak for the other six Deputies sponsoring the motion in saying that if the Minister changes the definition, we will vote for the Bill, notwithstanding the fact that we want it to go much further and that we have major problems with its regressive characteristics. If he just conceded this unanswerable plea for compassion and action, we could support the Bill.

Families in the Terminations for Medical Reasons group said they did not want any more compassion, they wanted action. We appeal to the Minister on their behalf and on behalf of all those families who will go through this terrible situation and who have gone through it, for action. The action the Minister could take is to change the definition of “unborn” to ensure that

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terminations in these circumstances will not be equated with the taking of the life of an unborn child. It is a different, unique case. We have proposed an alternative definition of “unborn” which deals with that problem. We do not see why the Government cannot adopt it. We do not see why the Minister had to include a definition of “unborn” in the Bill at all. We would appreciate an explanation from the Minister of why he has failed to deal with that and why he appears to be including in the Bill a provision which will preclude him from dealing with these most terrible circumstances without having to repeal this section of the Bill.

**Deputy Seamus Healy:** I rise to speak to the group of amendments, of which Nos. 10, 11, 30 and 81 are in my name. Provision in respect of fatal foetal abnormality and inevitable miscarriage should and could be included in the Bill within the terms of the Constitution. The group Terminations for Medical Reasons have pleaded with the Oireachtas to deal with the tragic issue of fatal foetal abnormality. These are much wanted pregnancies which, sadly, turn out to be incompatible with life. The group states:

It is happening every day. Please do not ignore this crisis. We ask you to include provision for termination of pregnancy on grounds of fatal foetal abnormality as part of the forthcoming legislation on abortion in Ireland.

The group indicates that there are 1,480 of these cases every year. These couples are forced to travel to Britain to seek terminations. As they have said, compassion is all very well, but what they need now is action. They need the provision to be included in the legislation. They have published their own stories. It would be informative for the Chamber to hear one of them. I quote:

At 22 weeks, we went in for our scan. We were shocked when after nearly two hours of scanning, we were told that our baby was incompatible with life and was going to die. We were further shocked when our consultant told us that our options were to continue with the pregnancy or travel to Liverpool. Our baby had no kidneys, brain abnormalities and spina bifida so severe that if it had been the only thing wrong, she would still have died.

This is an example of the tragic circumstances in which as many as 1,500 couples find themselves every year.

These issues could be dealt with within the terms of the Constitution. Quite a number of legal experts have confirmed this view and put forward that view clearly at the hearings of the committee. They are strongly of the view that dealing with terminations for this particular condition is compatible with the Constitution. It is important to note that the State itself is on record as inviting the European Court of Human Rights in *D v. Ireland* to adopt the view that termination for fatal foetal abnormality is compatible with the Constitution. The Irish State argued that *D* should have applied in the Irish courts first because she had a reasonable chance to establish that the Constitution did not apply to a foetus with a lethal anomaly. Although Article 40.3.3° excludes a liberal abortion regime, it was submitted that a court would not apply it with remorseless logic to such exceptional and tragic circumstances. The Government invited the court to adopt that view. An important section of the judgment itself is as follows:

Accordingly, although it was true that Article 40.3.3° had to be understood as excluding a liberal abortion regime, the courts were nonetheless unlikely to interpret the provision with remorseless logic particularly when the facts were exceptional. If therefore it had been established that there was no realistic prospect of the foetus being born alive, then there was

“at least a tenable” argument which would be seriously considered by the domestic courts to the effect that the foetus was not an “unborn” for the purposes of Article 40.3.3° or that, even if it was an “unborn”, its right to life was not actually engaged as it had no prospect of life outside the womb. In the absence of a domestic decision, it was impossible to foresee that Article 40.3.3° clearly excluded an abortion in the applicant’s situation in Ireland.

There is overwhelming evidence that fatal foetal abnormality can be dealt with in this Bill in a way that is compatible with the Constitution.

Briefly, I will refer to amendment No. 11 on inevitable miscarriage. This is also an amendment that I and many others believe could be included in this legislation and would be compatible with the Constitution. Sadly, this is what happened in the case of the late Ms Savita Halappanavar. It is important to recall what the HSE report, only in June of this year, stated on this question of inevitable miscarriage. The report states that “concerns about the law ... impacted on the ... clinical professional judgement”, and recommended that “the Oireachtas consider the law ... in relation to the management of inevitable miscarriage in the early second trimester”. It states that the clinicians’ plan for treating Ms Halappanavar was “wait and see” due to the interpretation of Irish law. If inevitable miscarriage is not included in this legislation, the continued effect of Irish law will be that medical conditions due to pregnancy that are not in themselves life-threatening, such as inevitable miscarriage, must be left to become life-threatening in order for a necessary termination of pregnancy to be legal. That is an unsustainable position, and the amendment must be included in the Bill.

**Deputy Mick Wallace:** As we all would probably agree, ideally, we need a referendum to remove the Eighth Amendment to allow for a woman’s right to choose. At a minimum, Amnesty International has stated that until Ireland’s laws allow for abortion in cases of rape and incest, risk to a woman’s health, or fatal foetal abnormality, they will be out of line with international human rights standards.

I will not repeat what has been stated a hundred times in the past year. The Minister insists that the Attorney General was not content to change the legislation to allow for cases of fatal foetal abnormality. He argued that it would not pass the test of the courts. Some experts seem to insist that it would, and the Attorney General seems to insist it would not, according to the Minister. If that is the case, should the Government be working towards a situation whereby we can deal with fatal foetal abnormalities and with cases of rape and incest? Given that the Government will be in power, I presume, for at least another two years, perhaps two and a half, should it be working towards that?

Surely the Government must agree that the present arrangement is not a good one. The idea that a woman who is raped cannot legally get an abortion in this country is not good. The fatal foetal abnormality cases are too tragic to start talking about again. We have heard the women in here telling their stories and they are just too bad to listen to. This is not a good position for the State and we should do something about it, and likewise in the case of incest. I wonder has the Government any plans after this Bill is passed to progress matters in order to deal with these issues.

**Deputy Joe Higgins:** I will be succinct. Here we really get to the essence of the problem for myself and the Socialist Party. The Bill was supposed to legislate for the tragic circumstances of the X case, for which we fully support the provision of legislation. Unfortunately, the Government then went on to construct a Bill which was so restrictive that, rather than dealing

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with a problem, it created other problems for women in crisis or difficult pregnancies which can result in danger to the health and, potentially, the life of a woman.

The provision we have made for inevitable miscarriage should be accepted by the Government and should be included in this legislation. The current position is that a miscarriage with complications must, in essence, be allowed to continue to the point at which the life of the woman is threatened before a termination is possible. This is not a sustainable position. It arises from the distinction that is made between the life of a woman and the health of a woman, and this shows quite clearly that it is not sustainable. The amendment should be allowed here.

Similarly, with regard to the fatal foetal abnormalities, the arguments have been made. It really is unsustainable for the Government not to accept a change that, even by its standards and within the narrow limits on which the Government states it is legislating, is arguably within the constitutional parameters. As a signal that society should deal with these tragic situations in a humane and compassionate way, the Minister should accept the amendment that allows fatal foetal abnormality as justification for a termination in such cases. It is simply horrific that we are legislating for a situation that forces women who decide to terminate their pregnancies in cases of fatal foetal abnormality to leave the State, because if they remain in the State and avail of a termination here they could be subject to 14 years in jail. This is a breaking point as far as I am concerned. It is because of this combination of issues, in conjunction with the criminalisation of a woman in those circumstances - indeed, in other circumstances - that I am voting "No" to this legislation. I issue a plea that we have to open up a debate immediately on the need for the repeal of Article 40.3.3°, for a new referendum so these restrictions are removed. Then we can legislate for the real needs of women as they exist in Ireland of 2013 and take into account and deal with the situation of inevitable miscarriage, of fatal foetal abnormalities and of the thousands of women who decide they have to terminate a pregnancy but are forced to leave this State in order to carry that out.

**Deputy Finian McGrath:** I commend my colleagues on tabling amendment No. 10 which I fully support. Like many Deputies I have met the families of people directly affected by fatal foetal abnormality. I have also seen the sadness and the hurt in their eyes. These were all wanted pregnancies. This amendment is crucial. I was told of a woman in that situation who had to travel to England. I was asked to support this amendment because the situation had a devastating effect on the woman and on the whole family. The travel issue was also another aspect that had a very negative impact on that family.

In supporting this amendment I refer to the need to show compassion for women and to offer them support. Over the past week there has been much talk with reference to the Minister of State, Deputy Creighton, about integrity and standing up for principles. Those of us on the other side of the debate are standing up for principles, for integrity, for compassion. I ask where is the compassion towards those women directly affected by fatal foetal abnormality. The issue has been dodged this week but this has not been reflected in the media reports. The same applies to victims of rape and incest. This amendment gives meaning to the Title of the Bill in that it deals with the protection of life during pregnancy. I stress the word "fatal" in the amendment. The Minister and the Government should look at the wording of the amendment. Fatal foetal abnormality means a medical condition suffered by a foetus such that it is incompatible with life outside the womb. The amendment is very clear and precise in this regard.

Others may disagree but the key solution to this issue is to give women a choice when faced with this situation. I am a parent of a child with a disability. I do not agree with any kind of

selective termination because of disability or gender, as happens in some countries. I strongly disagree with selectivity. The issue of fatal foetal abnormality must be dealt with and I believe it will be dealt with in the future. The vast majority of Irish citizens have great compassion and they support women. They want this particular issue dealt with. Even though I have concerns because it is not provided for in this Bill I will be supporting the Bill because it is what is on the table and I have no option but to support it.

**Deputy Clare Daly:** It is very difficult at this stage after 11 hours of debate to keep it together but this group of amendments is particularly important, given that they deal with the areas of fatal foetal abnormality, the issue of inevitable miscarriage and critically, in my opinion, the new definition of the unborn which unless it is amended will give rise to serious problems in the future.

Without repeating points made by other Deputies, when we moved our Private Members' Bill over a year ago it was the first time that a number of women - and their partners - came forward and publicly identified themselves as women who had abortions because of fatal foetal abnormalities. People will still remember those four women who went on the "Late Late Show" and really opened the eyes of the nation to the fact that in this day and age people were subjected to what the Minister for Justice and Equality has latterly called the indefensible cruelty of being forced with a choice of carrying to full term a foetus which has a fatal abnormality or being faced with the decision to leave this shore almost under cover of darkness, without support from family and friends. These people have touched all of us. The issue is whether we are going to do anything about their case.

The Minister of State, Deputy Alex White, said on Committee Stage and earlier tonight that the Government is only obliged to deal with the issues related to the convention, the implementing of the A, B and C judgment and the X case, that it is not obligated to go any further. A Government is obligated-----

**Deputy Alex White:** That is not what I said.

**Deputy Clare Daly:** The Minister of State can correct me in his report.

**Deputy Alex White:** I said that was all that could be done. That is different. Please do not misquote me.

**Deputy Clare Daly:** I apologise. I did not realise the Minister of State was infallible. In his opinion he thought that was all that could be done-----

**Deputy Alex White:** The Deputy is misquoting what I said.

**Deputy Clare Daly:** I am quite happy to correct the record of the House, to say that in the opinion of the Minister of State, he thought that this was all that could-----

**Deputy Alex White:** Everything we say in this House is our opinion.

**Deputy Clare Daly:** That is okay. He said I misquoted him-----

**Deputy Alex White:** That includes Deputy Daly.

**Deputy Clare Daly:** I have corrected it. I know that everyone is getting a little bit tetchy as it is late in the night.

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**Deputy Alex White:** The Deputy persists in misquoting people and she should not do that.

**Deputy Clare Daly:** I quoted earlier from the expert group which backed up my viewpoint and not his but I will quote again so that he will have no misapprehension-----

**Deputy Alex White:** The Deputy should pick it out again and I will quote it back to her.

**Deputy Clare Daly:** He should do that. However, can we deal with the facts of the almost 1,600 families who experience fatal foetal abnormalities every year in this State? That issue has touched the hearts of all of us, including the Minister of State. It is the question of what we can do and to do it. If it is the Minister of State's contention - which I believe it is - that he is lawfully permitted to go no further, to not include it at the moment, then our question to him is what is he going to do about it. Why has he not brought other legislation alongside this Bill or a proposal for a referendum if he thinks that is necessary, if he is truly serious about dealing with this issue?

**Deputy Alex White:** Why was it not included in the Deputy's Private Members' Bill?

**Acting Chairman (Deputy Joanna Tuffy):** Please allow the Deputy to finish.

**Deputy Clare Daly:** It is really derogatory of the families facing this situation. If the Minister of State wishes to continue interrupting we have quite an amount of time. However, I want to deal with this State's obligation, under human rights law and the intervention of the State's human rights watchdog, the Irish Council for Civil Liberties which has said that there is an onus on us to go further in this legislation and that the State can go further. Recent case law from the European Court of Human Rights on the issue of reproductive rights as set out in a number of cases relating to Poland, indicates that the Council of Europe states are obliged to ensure that the women seeking lawful terminations are not exposed to inhuman and degrading treatment, contrary to Article 3 of the convention on human rights. The Irish Council for Civil Liberties is of the opinion that it is clear that the current treatment of women with pregnancies involving a defined set of fatal foetal abnormalities would be covered by this. Other Deputies have made the point that the State itself has argued that fatal foetal abnormalities could be legislated for within the confines of the existing constitutional restriction. That is precisely because of the point made by other Deputies that our constitutional provision and protection equates the life of the women with that of the unborn, and if there is no life to protect, the constitutional protection does not exist. That is critical to this point.

Our opposition to this Bill does not arise from what is omitted, although it has some shortcomings, but rather from what it contains. I agree with Deputy Boyd Barrett's point that if this one definition was changed, we could support the legislation. We now have unborn human life for the first time being defined in Irish law and although the Minister, Deputy Reilly, stated earlier that it was only for the purpose of this law and it would not relate to anything else, that is not the case and legislation clearly does not operate that way. The points being made about viability, which have been put forward by the likes of the Irish Council for Civil Liberties, the Irish Family Planning Association etc. could not be envisaged if the definition is made in the manner sought by the Government, giving protection from the moment of implantation until the moment of birth. It is important to state that this is a unique definition in European law and it is not helpful. We would replace that definition as being one where the foetus is capable of independent life, which is a far better and more appropriate definition in the current scenario.

The issue of inevitable miscarriage is not being addressed in this legislation. We have read

the HSE report on the difficulties around Savita Halappanavar's case but a lack of clarity will prevail if this legislation is passed. As long as there is a foetal heartbeat, a doctor's hands can essentially be tied, even in a case where there is the possibility of inevitable miscarriage. We have heard from the doctors in Galway that the risk to a woman's life had to be real and it could not be a "perceived" risk; in that sense, the infection would have had to become critical in Ms Halappanavar's case before they could intervene. Nothing in this Bill is dealing with that issue, which is why amendments have been tabled. People can have different legal interpretations and opinions but some issues are quite clear. It may be immoral and abhorrent that we cannot deal with issues of a woman's health being in danger because of strict constitutional provisions but a sizable body of legal opinion has indicated that we can legislate for this issue. I am very glad about that.

The Minister of State, Deputy White, asked why the provision was not in our Bill. As Opposition Deputies, we do not have access to the Attorney General or lofty legal opinion in the preparation of our Bills but we do our best. We would have been quite open to amendments and it is fair to say that our Bill gave a platform to women and couples to come forward and put their stories into the public domain. This educated society far beyond the realms of what had been done previously. Not only that but it forced the legal profession and other human rights organisations to wake up and consider the issue in greater detail. I am sorry we did not have the knowledge at the time but if we had, it would have been included in our Bill. Nevertheless, it is no excuse for a Minister of State to use, and the arrogance and rudeness he has shown is deeply disrespectful to the families which are the victims of a lack of action. I complimented the Minister, Deputy Reilly, on the fact he has legislated in this instance, and we are talking about women, couples, families and decisions that will have an impact. If the Government is serious about being more than compassionate, it should act to address these issues.

**Deputy Michael Healy-Rae:** I will speak to amendments Nos. 10 and 81, which are extremely important. When we speak about fatal foetal abnormalities, I would rather describe the issue in more human terms by seeing it as being about ill babies. In my opinion, these are babies and viable lives. We have had many instances in the past where prospective parents have been told a child has a fatal foetal abnormality and been advised to avail of a termination of a pregnancy but for one reason or another, it did not happen and the babies in question were born. We have all heard different stories of parents who had many happy years with a child they were told was terminally ill. In other words, they got bad advice.

People are being asked to play God in this instance but there is one person who is entitled to play God, namely God. Mistakes can be made by medical people and if a child is born ill, what would we do except treat him or her for the illness and help him or her in every way possible? It may seem blasé to speak about fatal foetal abnormalities and I prefer to describe the issue in a more humane way. These are ill babies, whether the illness is terminal or not. People have told stories of children born who may live for a number of years, and when they were with their parents, they brought immense joy, even if they were not in perfect health. Even if their lives were short, they brought happiness to the homes to which they were born. We must hear both sides of the debate, and I take grave exception to amendments Nos. 10 and 81.

**Deputy Joan Collins:** When we put forward Deputy Daly's Bill twice last year, if we had known that we could have formed legislation around fatal foetal abnormalities, we would have done so. In the discussion of those Bills, we heard from families who told a tragic story to the Minister and the world about those desperate issues. They received support and legal advice related to the D case in the European Court of Human Rights and whether a foetus which cannot

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survive outside the womb is covered by legislation. That is why the Termination for Medical Reasons group has been in contact with lawyers and drafted good legislation relating to fatal foetal abnormalities.

As has been stated already, the Minister is indicating the Attorney General cannot accept this despite claims that this is a tenable argument under Article 40.3.3° of the Constitution that the right to life of the foetus is not applicable where there is no prospect of surviving to birth. That is what our counsel stated with regard to the D case at the European Court of Human Rights. If that is not the case, it has been argued by the Minister of State, Deputy Kathleen Lynch, that she wants the woman and the decisions made with regard to her pregnancy and instances of rape and incest, for example, to be respected. If the Government, under the guidance of the Attorney General, is saying that cannot happen, why is it taking its stance on inevitable miscarriage? One cannot say categorically that there will be a referendum on Article 40.3.3° to repeal the eighth amendment to allow that. The clarification of the definition of the unborn is particularly chilling as it remains linked to a criminal offence with potential for a 14-year prison sentence not only in the case of fatal foetal abnormalities and inevitable miscarriage, but also in the case of the abortion pill. If a woman takes the abortion pill, aborts, has complications, attends an accident and emergency department, is asked whether she has taken the abortion pill and says “Yes”, a concerned medic might say she has done something illegal. Could that young woman face 14 years in jail because of the unborn being classified from the moment of implantation? That is why we tabled an amendment saying unborn means a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb. The Minister should take that on board. We cannot support this aspect of the legislation. A 14 year sentence is longer than the sentence many men who rape women get in court. That is why we cannot support the Bill in any shape or form.

**Deputy John Halligan:** Two weeks ago on Leaders’ Questions, I brought this issue up during a visit to the House by a number of women who then held a press conference in the hotel across the road. They got together and produced a booklet entitled, A Family’s Journey of Torture, in which 35 women related their stories of fatal foetal abnormalities. If one listened to their stories and what they go through, one could not but be shocked to the core. We have spoken a great deal over the past number of weeks about compassion and crises of conscience. We should all reflect on the crisis of conscience some of these women faced when they were told the foetus in their womb was incompatible with life and it could have a traumatic psychological effect on them if they went through with the birth. Inevitably, a substantial number of them, not all, made decisions that they would be unable to do this and they asked for compassion and help from the State but they did not get it. All of them had to leave the country under dreadful circumstances, some without their families and loved ones. They faced a terrible journey to Liverpool and an even worse journey back.

I find it incredible that we would treat human beings in such a barbaric fashion. During Leaders’ Questions, I told a story about a woman who was due to attend the House that day but who broke down outside the gates and had to be brought home. Her story was horrifying. She said she decided to go through with the birth against advice because the foetus was severely deformed. It suffered from encephalopathy. When she gave birth, the baby died within 12 minutes and to the present day, she has nightmares and she is psychologically traumatised. That was her choice but it is not the choice of many women who are told this may be the case if they decide to proceed with the birth. This affects between 1,400 and 1,500 women a year, which is not a tiny minority. All the medical evidence points to this having a lifelong effect on their

quality of life, their sex lives and how they view children, and we are saying to those women who are psychologically unable to go through with the pregnancy that we cannot do anything for them but something can be done for them in England. We agree that in England they should be able to do something and we say we have compassion for them here. That is appalling and outrageous.

I have some sympathy for the Minister and the Government given how difficult it is to bring in this restrictive legislation. He gave a commitment years ago that he would do something about Article 40.3.3°. He met a group of these women and they openly said he showed great compassion and he was visibly upset. Why would he not be, given all of us were upset when we met them? As previous speakers said, at this stage they need help, not compassion. We cannot continue to ignore such a substantial number of women. We are leaving hundreds of women in the State traumatised for the rest of their lives because we will not give them the choice, which is a compassionate choice.

I refer to amendment No. 11 and inevitable miscarriage. Pregnancy is not a benign condition. Young women who went to full term where the baby did not survive had significant damage done to their lives. I have met women who, having gone through the pregnancy, were physically damaged. I acknowledge the Minister will not accept any amendments at this stage but I believe him to be a compassionate man and he has also met these women. Even if he were to give hope to them for the near future. I am not putting this up to the Minister on the basis of how I will vote for the Bill because I will support the Bill, whether he makes this amendment or not. The Minister for Justice and Equality practically said it should be made. However, I appeal to the Minister, Deputy Reilly, to give some help and some hope to these women and to the 1,400 women who will face the same torment next year and the year after that. We cannot allow this to continue.

The European Court of Justice has commented on this and we cannot allow these women to continue to suffer like this and to allow them to be tortured, which is what is happening to them. This is why they have called their document, *A Family's Journey of Torture*. I appeal to the Minister on behalf of the thousands of women in Ireland to whom this has happened and the thousands to whom it will happen to deal with this serious issue in the near future and not to treat them in such a barbaric fashion. We should have compassion for them in this State. We should say to them that this is wrong and we think they should not have to go through this, not that we cannot help them and they must go to England.

*4 o'clock*

**Deputy Thomas Pringle:** I refer to the amendments on fatal foetal abnormalities. In the past year or so I have heard the testimony of women who have travelled to Liverpool to have terminations because they had a diagnosis of fatal foetal abnormality. It was very difficult to listen to that testimony and, for me, very difficult to accept that in 2013 Irish society would force women to make those journeys with a baby they had been looking forward to having, knowing that baby had no chance of survival outside the womb and they had to make a very difficult decision. Our society and our community would not accept that they should make that decision here, in the comfort of their family and familiar surroundings. We forced them to travel to Liverpool to have terminations. Thankfully, they were treated very well there and received the compassion they should be getting at home.

In the past year I have also listened to the testimony of women who were given a diagnosis

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of fatal foetal abnormality but decided to continue with the pregnancy and have their babies who subsequently died, some within minutes, some within hours, some within days. That was a choice they could make, however, one we have denied to other families. Thankfully, I have three healthy children and have never been in that situation. I do not believe any family or couple, or any Irish woman should be put in that situation and be forced to travel to England to have a termination in Liverpool. We should be able to deal with this, as I believe we can. The Supreme Court in 1992 did not test this definition or argument; no evidence has been heard in its regard then or since. Are we going to wait for a woman to take a case in the High Court, appeal it to the Supreme Court and have the definition changed in that court, and then wait another 20 years before we can bring forward legislation to implement the court's decision - if it makes that decision? I do not believe we should. We can accept these amendments and, if necessary, have them tested in the Supreme Court. As I understand it - the Minister of State, Deputy White, will correct me if I am wrong - this amendment could be accepted and the President could ask the Supreme Court to adjudicate on it. If the court ruled against it, that section would fall from the Bill but the actual Bill would stand. That would be a very quick solution to this problem. I do not believe the Attorney General is infallible or that the legal advice we have in support of these amendments is infallible but I believe the Supreme Court should be in a position to test it. By doing that, putting it to the test, we would be doing a service to everybody in our society. It is vitally important to show that compassion. We should not continue to force women into making that extremely difficult decision.

**Deputy Caoimhghín Ó Caoláin:** Deputy Healy-Rae referred to terminations on grounds of disability. There is no proposal before us, in these or any other amendments, that would allow for a termination on such grounds. The issue is viability - the prospect of viable life beyond the womb.

The issue of fatal foetal abnormalities cries out for address as, I believe, all of us have recognised. We in Sinn Féin have been guided in our approach to this Bill by our democratically arrived at policy decisions relevant to these matters. The last reworking was in 2008, with a reaffirmation in each of the years since, but we have not catered for fatal foetal abnormalities. Addressing such issues was not on our radar at that time or since so we, too, have a job of work to face up to.

It is very important we understand that what is being spoken of is a foetus which has no prospect of life beyond the womb. For women who learn that the unborn they are carrying have no prospect of life after reaching full term the news is absolutely devastating, as it is for their husbands or partners. The stories that have been shared, not only in terms of the presentation in the audio-visual room of this House but in private engagement with many of us in recent weeks, are harrowing. Without question, our hearts go out to women in these circumstances. We have a responsibility to address these matters. The issue of inevitable miscarriage is another issue that was highlighted.

In this grouping of amendments we can make a distinction in respect of amendments Nos. 10, 11, 81 and 83, in that we do not have a fully fledged policy position that caters for these particular matters. If one or more of these amendments are pressed, because of our party position and in the absence of a clear, defined policy statement, we will have to abstain. However, I am indicating that we understand and accept these are matters that require address. I join other colleagues who have made a strong case to the Minister and his colleagues, the Ministers of State, to indicate positively the means that can be employed to address these matters within a reasonable timeframe.

**Deputy Róisín Shortall:** I support these amendments, in particular those that relate to fatal foetal abnormality. I must admit that until recently I did not appreciate the extent of this issue nor that so many women and couples were affected by it. In recent months, however, I and many others have learned a great deal about this condition. We have heard the stories of couples who received these awful diagnoses for the children they were expecting, who were very much wanted. We are not talking about a situation where the unborn is ill but rather where the unborn has a condition that is not compatible with life outside the womb. It is a very definite and clear diagnosis. I understand that the numbers of people affected are close to 1,500 per year. A heartrending presentation was made to Members of the Houses some weeks ago, at which there was a very good attendance. Everybody in the room was very much struck by the stories we heard from the dozen or so women and some of their partners who were present. They told those harrowing stories, about which others have spoken, of hearing the awful news and how that affected them. They then had to make a decision about how to proceed in view of the fact that if they chose an early delivery of a child they knew would not survive outside the womb, the only way to do that was to travel to the UK. They told of all the heartbreak that entailed and the awful stories of smuggling back the remains or, as Deputy Daly said, waiting for delivery of the ashes. It really is quite scandalous that we treat Irish women and their partners like that in those very difficult circumstances.

If Deputy Healy-Rae is free some time he might actually find out something about this condition. It is a pity he was not in attendance when the rest of us heard the stories. If he had been, he would have realised that his depiction was quite inaccurate and that maybe he should learn something about the condition. Obviously it is an awful decision for the woman and her partner to have to make and it is devastating, life-altering news for them. It is particularly difficult where there are other children in the family. That is another major consideration: how could one possibly go ahead with a pregnancy, with all that entails for the other young children in the family, only for the child to be born and then die more or less immediately? There are many issues to weigh up in making that difficult decision. It is a matter of shame that the exercise of choice is not available for couples in those circumstances. That needs to be dealt with. There is very strong support on both sides of the House for doing so. Several proposals have been put forward tonight for ways to address the issue. I note the legal advice that is being relayed to us, but where we are talking about the right to life of the unborn, the situation is entirely different when the unborn is not capable of life outside the womb. Does the right to life exist in those circumstances? It strikes me as a definitional issue. I appeal to the Ministers to try to exhaust all possibilities under the Constitution. It is not good enough to come back and say that it is not possible under the Constitution. That is a matter of particular concern, given the recent statements of the Minister for Health and the Tánaiste to the effect that the Government will not revisit the issue of termination. I do not think that is good enough. The Minister needs to come forward with a response that addresses the problem faced by approximately 1,500 people every year. I appeal strongly to him to do that. Whatever the Government parties may wish for in terms of closing off this issue, it is quite clear that is not going to happen. It is not going to be possible because there are too many outstanding issues, including the situation we are talking about now and the issues I raised earlier, the need to revisit the constitutional provision with regard to gestational limits, and other issues that arise. There is a very strong possibility of a legal challenge.

While for political reasons people may wish to put this issue to bed and be done with it, as it were - at least, those are very much the vibes coming from Government - I do not think that is going to be possible. The Government needs to respond to these very real people who are faced

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with very real and traumatic situations that do occur. I strongly urge the Government to support or accept the amendments before us or, at the very least, to hold out a prospect of resolving this issue within a reasonable time.

**Deputy Alex White:** We had a good discussion on this issue on Committee Stage. I pointed out then that one of the things this Government or any Government needs when introducing any legislation - not just this legislation, or this type of legislation - is to be sure it can tell the Oireachtas that it is constitutionally sound. On the face of it that sounds a bit harsh and legalistic, but it is still the case that no Government can come before the House and present legislation that it cannot advise the House is constitutionally sound. One of the proposals that the Deputies have set out in this group of amendments is a different definition of “unborn”. Amendment No. 21 proposes to substitute for the definition of “unborn” in the Bill the following: ““unborn”, means a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb;”. If we reflect for a minute on that proposed definition, we will see that the Constitution refers to the protection of unborn life. We cannot reduce that protection. The Deputies who tabled this amendment are proposing a different definition of “unborn”. The term “unborn” is in the Constitution.

**Deputy Richard Boyd Barrett:** It is not defined.

**Deputy Alex White:** I did not suggest it was defined. It is not defined, but I can see philosophically a case for the Deputies’ proposal. I can understand where they are coming from in this regard. The necessary implication of the definition they propose, “a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb” seems to me, unless somebody can correct me or tell me I am wrong in my assumption, to render lawful any abortion below 22 or 23 weeks. If that were the statutory definition of the unborn that we would now put into legislation, we know that any foetus whose gestational development is below 22, 23 or 24 weeks would not be capable of life outside the womb, which would render lawful any abortion before 22, 23 or 24 weeks. Can anybody seriously say, irrespective of what we believe ourselves, that that was the intention of the people in 1983?

**Deputy Róisín Shortall:** It is Article 40.3.3°.

**Deputy Alex White:** It simply is not sustainable to suggest that. What we think ourselves is one matter but we have to act within the limits of the Constitution. Are people claiming that it was the intention of the people in Article 40.3.3° to confine the protection given to the unborn to the foetus above 23 or 24 weeks? One cannot say that in the teeth of what the people decided in 1983, much as one would like to. The Oireachtas cannot do that because it would be flying in the face of what the people decided.

Deputy Halligan and others have given accounts of the dreadful experiences sustained by women who found they had a fatal foetal abnormality during the course of a pregnancy. No one disagrees with any of the points made. The strength of the case cannot be denied and it is a point I made on Committee Stage. I am as familiar with it as any man can be and as it has been related to me. I was not at the meeting to which Deputy Shortall referred but I have met a number of women who have experienced this, some of them quite close to me. It is not a case of Members on this side of the House not understanding the human experience people have had. We all feel moved by it.

However, can it be dealt with in this legislation? I have to say, hand on heart, that it cannot

be done in this legislation. Deputy Shortall said if it is not possible, then it is not good enough. What does that mean?

**Deputy Róisín Shortall:** It means have a referendum on it.

**Deputy Joan Collins:** It is about the commitment to having a referendum.

**Deputy Alex White:** Some Members advocated that but I did not hear Deputy Shortall advocate it. I heard her advocating for a referendum on another aspect.

**Deputy Róisín Shortall:** The Minister of State did.

**Deputy Alex White:** The only way it can be addressed is by referendum.

**Deputy Joan Collins:** Will the Government commit to it?

**Deputy Alex White:** I apologise for interrupting Deputy Clare Daly earlier because it is not fair to interrupt Members in full flow. It was late at night but I was not reproaching her for not putting it into her Bill. I was doing the opposite. If it were possible to do this, then she would have done it in her two Bills. I was simply making the point that it demonstrates that she went to the trouble of introducing two Bills but did not include provisions for this matter. Deputy Joan Collins claims it was because they did not have a full appreciation of the problem. Deputy Clare Daly claims they did not have access to the Attorney General.

If they did, they would get the same advice we got which we related on Committee Stage. The advice states that in the case of a foetus with a condition that is incompatible with life but which is capable of being born alive, such a foetus is likely to attract the protection of Article 40.3.3°. I know of a recent letter to *The Irish Times* from a number of lawyers, some of whom I know, that challenged this. However, I respectfully disagree with them as they are clearly wrong. The absolute preponderance of legal opinion, reflected by the preface of the experts' report, is that providing for this condition in this legislation would be inconsistent with the Constitution. I say that with great regret.

I accept the Opposition must press the Government as far as it can. I would love to say we could achieve this provision in this legislation but I cannot because it is not the case. Deputy Clare Daly claims - I do not know whether she was reacting to my interruption or whether it was otherwise - that my view on this is disrespectful to the families affected by this issue. That is not fair. It is not disrespectful. It is simply stating the true legal position on this, whether we like it or not.

Deputy Boyd Barrett was irritated by the Minister's accusation of political opportunism. I would take some convincing that there is not an element of political opportunism on the Deputy's part. I very much regret saying that but the circumstances are that it cannot be dealt with. In the teeth of that clarity, I cannot understand why some Members still take the view the Government is shirking on the matter or is insensitive to it, unless they are motivated to take some political advantage from the situation.

**Deputy Richard Boyd Barrett:** It is extremely disappointing for the Minister of State to make that charge. The simple reason we brought it up is because families affected by this question asked us to. We chose not to say "No" because we believe they have an unanswerable case for the issue that has affected them to be dealt with. It is as simple as that. I also have personal experience of it and so I understood and sympathised with what they went through.

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I understand Deputy Healy Rae's ignorance of this issue, as many people do not fully understand what these conditions are. It is not about illness, disease or an infection but about the genetic building blocks of life not being constituted properly such that life can be sustained. It is a hard concept to get one's head around when that diagnosis is delivered. One cannot believe that the baby that one wants will not live. It takes quite a while to understand that. When one does, one understands how terrible it is and that no one should be made suffer unnecessarily more as a result. I do not fully accept what the Minister of State said but I accept he believes it. There are other people with legal expertise who dispute what he has said. That needs to be debated properly and the argument needs to be taken seriously.

**An Ceann Comhairle:** The Deputy's time is up.

**Deputy Richard Boyd Barrett:** Even if the Minister is correct, will he give a commitment or an assurance that he will do something?

**Deputy Joe Higgins:** In respect of the refrain by the Minister of State, Deputy Alex White, on the previous Bills put, the fact is that in one year the position has changed considerably in the State. First, there has been major education regarding fatal foetal abnormalities, as Deputies have just indicated. Second, the tragedy of Savita Halappanavar happened and educated everybody on the question of inevitable miscarriage. That has changed the level of consciousness in society and the Government should respond to it in its legislative programme. That is the issue.

The Minister for Health has given a definition of "unborn". What are the implications of this for medical treatments to procure an abortion in the very early weeks of implantation? What are the implications in respect of *in vitro* fertilisation? There are some implications and the Minister should spell them out now.

**Deputy Seamus Healy:** The Minister of State, Deputy Alex White, seems to take the view that the meaning of the term "unborn" would specifically change the position, that the amendment tabled by some Deputies in respect of the "unborn" is one which would affect this particular amendment on fatal foetal abnormalities. I have some sympathy for his view of the term "unborn". I do not have that amendment tabled. The case of *D v. Ireland* was taken under the current constitutional provision of Article 40.3.3°. The Government and the Attorney General of the day were of the view that it was possible or that, at least, an arguable case could be made that it would be legal in this country to have a termination on the grounds of fatal foetal abnormality and the Government invited the European court to accept that if that case was put to the Irish courts, there was, at least, an arguable case that it would be accepted. If the Minister does not accept this and tells us that he has sympathy for the case we are making, let him commit to holding a referendum to change the position. That is the simple alternative for him.

**Deputy James Reilly:** I thank all contributors to this part of the debate. Amendment No. 21 states:

In page 7, to delete lines 10 to 12 and substitute the following:

“ “unborn”, means a foetus which has reached that stage of development at which, if born, it would be capable of life outside the womb;”.

What would that mean for a perfectly normal 16 week old foetus with no anomalies? It would have no protection. I will not accept that and the Government will not accept it.

These amendments are attempting to provide for lawful termination of pregnancy following a diagnosis of a fatal foetal anomaly or in the case of inevitable miscarriage. They were discussed on Committee Stage. I know that several of our colleagues in the Dáil would have liked to see these grounds and others being included in the proposed legislation. However, again for reasons clearly outlined by the Minister of State, Deputy Alex White, these provisions cannot be included. I have received legal advice to the effect that inclusion of this issue as a separate consideration in the Bill would go beyond the scope of the *A, B and C v. Ireland* case. The purpose of the Bill, as the Taoiseach and I have stated on many occasions, is not to confer new rights or to take away any right to a termination of pregnancy but to clarify existing rights.

I would like to ask a question in a completely non-confrontational way because I am a little perplexed and my Chief Medical Officer is also having difficulty with it. I do not understand from where these figures of 1,400 to 1,600 cases per year come. We know that in somewhere between 2% and 3% of births there are anomalies, but only a very small number would be fatal foetal anomalies. If it is 2%, it is 1,400 and if it is 3%, it is 2,100, of which a very small percentage are fatal. That is in no way to diminish the hurt and the pain it causes an expectant mother. I have compassion and great sympathy in this situation, but the issue is beyond the scope of this legislation.

I would like to raise another point that will create real difficulties for us. How do we define “fatal foetal anomaly”? If we are saying a foetus is incapable of independent life outside the womb, does that mean for five minutes, half an hour, one day, two days, one week, or ten weeks? I see real issues that must be addressed. I am not saying they should not be addressed, but they will certainly provide a real challenge in defining what we mean by it and in terms of how we can be certain about this before we give advice. We know there have been cases where advice was given and found to be wrong. That is not to denigrate the fact or deny in any way that advice has also been given that has been absolutely correct.

I regret that I cannot accept the amendments as they are beyond the scope of the Bill. As one of the Deputies across from me argued, there is a question about their constitutionality. There is a difference of opinion. As legislators, we need to have greater certainty when we pass legislation that we know will be challenged in the courts. The purpose of the Bill is not to confer new rights. Therefore, the amendments are beyond the scope of the Bill.

Amendment put:

<i>The Dáil divided: Tá, 19; Níl, 124.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Boyd Barrett, Richard.</i>	<i>Bannon, James.</i>
<i>Broughan, Thomas P.</i>	<i>Barry, Tom.</i>
<i>Collins, Joan.</i>	<i>Breen, Pat.</i>
<i>Daly, Clare.</i>	<i>Browne, John.</i>
<i>Donnelly, Stephen S.</i>	<i>Bruton, Richard.</i>
<i>Flanagan, Luke ‘Ming’.</i>	<i>Burton, Joan.</i>
<i>Halligan, John.</i>	<i>Butler, Ray.</i>
<i>Healy, Seamus.</i>	<i>Buttimer, Jerry.</i>
<i>Higgins, Joe.</i>	<i>Byrne, Catherine.</i>
<i>Keaveney, Colm.</i>	<i>Byrne, Eric.</i>

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<i>McGrath, Finian.</i>	<i>Calleary, Dara.</i>
<i>McNamara, Michael.</i>	<i>Cannon, Ciarán.</i>
<i>Murphy, Catherine.</i>	<i>Carey, Joe.</i>
<i>Nulty, Patrick.</i>	<i>Coffey, Paudie.</i>
<i>O'Sullivan, Maureen.</i>	<i>Collins, Áine.</i>
<i>Pringle, Thomas.</i>	<i>Collins, Niall.</i>
<i>Ross, Shane.</i>	<i>Conaghan, Michael.</i>
<i>Shortall, Róisín.</i>	<i>Conlan, Seán.</i>
<i>Wallace, Mick.</i>	<i>Connaughton, Paul J.</i>
	<i>Conway, Ciara.</i>
	<i>Coonan, Noel.</i>
	<i>Corcoran Kennedy, Marcella.</i>
	<i>Costello, Joe.</i>
	<i>Coveney, Simon.</i>
	<i>Cowen, Barry.</i>
	<i>Creed, Michael.</i>
	<i>Creighton, Lucinda.</i>
	<i>Daly, Jim.</i>
	<i>Deasy, John.</i>
	<i>Deenihan, Jimmy.</i>
	<i>Deering, Pat.</i>
	<i>Doherty, Regina.</i>
	<i>Donohoe, Paschal.</i>
	<i>Dooley, Timmy.</i>
	<i>Dowds, Robert.</i>
	<i>Doyle, Andrew.</i>
	<i>Durkan, Bernard J.</i>
	<i>English, Damien.</i>
	<i>Farrell, Alan.</i>
	<i>Feighan, Frank.</i>
	<i>Ferris, Anne.</i>
	<i>Fitzgerald, Frances.</i>
	<i>Fitzpatrick, Peter.</i>
	<i>Flanagan, Charles.</i>
	<i>Flanagan, Terence.</i>
	<i>Griffin, Brendan.</i>
	<i>Hannigan, Dominic.</i>
	<i>Harrington, Noel.</i>
	<i>Harris, Simon.</i>
	<i>Hayes, Brian.</i>
	<i>Hayes, Tom.</i>
	<i>Healy-Rae, Michael.</i>
	<i>Heydon, Martin.</i>

	<i>Hogan, Phil.</i>
	<i>Howlin, Brendan.</i>
	<i>Humphreys, Heather.</i>
	<i>Humphreys, Kevin.</i>
	<i>Keating, Derek.</i>
	<i>Kehoe, Paul.</i>
	<i>Kelleher, Billy.</i>
	<i>Kelly, Alan.</i>
	<i>Kenny, Enda.</i>
	<i>Kenny, Seán.</i>
	<i>Kirk, Seamus.</i>
	<i>Kitt, Michael P.</i>
	<i>Kyne, Seán.</i>
	<i>Lawlor, Anthony.</i>
	<i>Lowry, Michael.</i>
	<i>Lynch, Ciarán.</i>
	<i>Lyons, John.</i>
	<i>McCarthy, Michael.</i>
	<i>McConalogue, Charlie.</i>
	<i>McEntee, Helen.</i>
	<i>McGinley, Dinny.</i>
	<i>McGrath, Mattie.</i>
	<i>McGuinness, John.</i>
	<i>McHugh, Joe.</i>
	<i>McLoughlin, Tony.</i>
	<i>Maloney, Eamonn.</i>
	<i>Martin, Micheál.</i>
	<i>Mathews, Peter.</i>
	<i>Mitchell, Olivia.</i>
	<i>Mitchell O'Connor, Mary.</i>
	<i>Moynihan, Michael.</i>
	<i>Mulherin, Michelle.</i>
	<i>Murphy, Dara.</i>
	<i>Murphy, Eoghan.</i>
	<i>Nash, Gerald.</i>
	<i>Naughten, Denis.</i>
	<i>Neville, Dan.</i>
	<i>Nolan, Derek.</i>
	<i>Noonan, Michael.</i>
	<i>Ó Cuív, Éamon.</i>
	<i>Ó Fearghail, Seán.</i>
	<i>Ó Ríordáin, Aodhán.</i>
	<i>O'Donnell, Kieran.</i>

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	<i>O'Donovan, Patrick.</i>
	<i>O'Dowd, Fergus.</i>
	<i>O'Mahony, John.</i>
	<i>O'Reilly, Joe.</i>
	<i>O'Sullivan, Jan.</i>
	<i>Penrose, Willie.</i>
	<i>Perry, John.</i>
	<i>Phelan, Ann.</i>
	<i>Phelan, John Paul.</i>
	<i>Quinn, Ruairí.</i>
	<i>Rabbitte, Pat.</i>
	<i>Reilly, James.</i>
	<i>Ring, Michael.</i>
	<i>Ryan, Brendan.</i>
	<i>Shatter, Alan.</i>
	<i>Sherlock, Sean.</i>
	<i>Smith, Brendan.</i>
	<i>Spring, Arthur.</i>
	<i>Stagg, Emmet.</i>
	<i>Stanton, David.</i>
	<i>Timmins, Billy.</i>
	<i>Troy, Robert.</i>
	<i>Tuffy, Joanna.</i>
	<i>Twomey, Liam.</i>
	<i>Varadkar, Leo.</i>
	<i>Wall, Jack.</i>
	<i>Walsh, Brian.</i>
	<i>White, Alex.</i>

Tellers: Tá, Deputies Catherine Murphy and Clare Daly; Níl, Deputies Emmet Stagg and Paul Kehoe.

Amendment declared lost.

Debate adjourned.

#### **Business of Dáil: Motion**

**Minister of State at the Department of the Taoiseach (Deputy Paul Kehoe):** I move:

That, notwithstanding anything in Standing Orders and the order of the Dáil of Wednesday, Report Stage of the Protection of Life During Pregnancy Bill 2013 shall, if not previously concluded, adjourn at 5 a.m. and the Dáil shall thereupon adjourn until 12.30 p.m. on Thursday, 11 July 2013.

**Deputy Seamus Healy:** Farce.

**Deputy Timmy Dooley:** The Government made a mess of it this morning.

**Deputy Micheál Martin:** These is a proposition before us, and I want to-----

*(Interruptions).*

**Deputy Micheál Martin:** As dawn breaks-----

**Deputy Paul Kehoe:** There is no dawn chorus.

**Deputy Micheál Martin:** -----I say to the Chief Whip that he has made an absolute shambles of this debate-----

**Deputy Paul Kehoe:** Same as you made of the country.

**Deputy Micheál Martin:** -----and he has brought the House into disrepute through the manner in which he has handled it and consulted with the Opposition. We agree to the adjournment.

**The Taoiseach:** You will be here until the end of July.

**Deputy Micheál Martin:** The Taoiseach should stop the immature schoolyard bullying.

*(Interruptions).*

**Deputy Gerry Adams:** I have no problem being here. My family is in Belfast, and it does not matter to me. However, there are staff and Members here and this is not the way to do business. I appeal to the Taoiseach to honour the commitment he gave to reform this House so it works properly.

Question put and agreed to.

### **Protection of Life During Pregnancy Bill 2013: Report Stage (Resumed)**

**Deputy Catherine Murphy:** I move amendment No. 11:

In page 6, between lines 4 and 5, to insert the following:

“ “inevitable miscarriage” means the inevitable failure of pregnancy and death of a foetus, up to that stage of pregnancy at which, if born, it would be capable of life outside the womb;”.

Amendment put and declared lost.

**An Ceann Comhairle:** Amendments Nos. 12, 16, 31 and 84 are related and may be discussed together.

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**Deputy Joe Higgins:** I move amendment No. 12:

In page 6, between lines 4 and 5, to insert the following:

“ “incest” means the crime of sexual relations taking place between a male and female who are so closely linked by blood or affinity that such activity is prohibited by law within the terms of the Punishment of Incest Act 1908 as amended by the Criminal Law (Incest Proceedings) Act 1995;”.

Debate adjourned.

The Dáil adjourned at 5 a.m. until 12.30 p.m. on Thursday, 11 July 2013.