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DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

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(OFFICIAL REPORT—*Unrevised*)

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DÁIL ÉIREANN

Dé hAoine, 9 Bealtaine 2014

Friday, 9 May 2014

Chuaigh an Ceann Comhairle i gceannas ar 10 a.m.

Paidir.

Prayer.

Open Adoption Bill 2014: Second Stage [Private Members]

Deputy Anne Ferris: I move: “That the Bill be now read a Second Time.”

I welcome the opportunity to bring this legislation before the House and congratulate the Minister, Deputy Charles Flanagan, on his appointment. I hope this is the first Bill he will see safely through the Houses of the Oireachtas to completion. It is a good Bill and I am pleased to see the Minister in the House.

The Bill may be short in words - it is barely over one page in length - but it comes from many lifetimes of experience of adoption, including my own. If it has a positive impact on the life of even one adopted child, it will be worthwhile. If it can change broader attitudes to adoption from a state of secrecy and control to ones that value the bond with natural family members, it has the potential to be truly reforming.

I will outline what the Bill proposes. It is an amendment to section 58 of the Adoption Act 2010, the current wording of which extinguishes all rights of the natural parents and their relatives on the making of an adoption order. This means that in circumstances where a natural mother, father, grandmother or grandfather wishes to maintain even minimal contact with the adopted child, perhaps on his or her birthday or at Christmas time, there is no opportunity under the current law to give the adopted child a right to such access. The current adoption law is like a door that slams shut after the adoption. The child is on one side of that door with his or her new adoptive parents. The natural parents, the grandparents and birth family of the child are on the other side and the door is firmly locked and sealed. There is not even room to slide a birthday note or a Christmas card under it. There is no gap for an adoptive parent to slip to the natural mother a First Holy Communion or graduation photograph. There is no right of contact. The Bill seeks to open that door. It will allow the adoptive and natural parents of a child to come together to formalise an agreement on visitation rights for the child.

Under the Bill, the child could gain contact rights with his or her natural family through one of three ways. Prior to a new adoption, the natural parents could make an agreement with the

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Adoption Authority of Ireland specifying rights of access for the child to defined members of his or her natural family. The adoptive family would then adopt the child, subject to such conditions made in the interests of his or her ongoing welfare. Alternatively, after an adoption has taken place, the legislation will allow an adoptive family to make an agreement with members of the natural family on a beneficial visitation programme for the child. Third, in circumstances where there is no agreement but where a court of law is of the opinion that access would be in the child's best interests, the legislation provides a mechanism for the court to order that the child may have access to a member of his or her natural family. Our current adoption laws are too rigidly on the side of maintaining secrecy and distance between an adopted child and members of his or her natural family. We are all aware of the long campaigns for access to even basic birth information by adopted persons. Many Deputies will have seen the Oscar nominated film "Philomena" about the long fight by Irish woman Ms Philomena Lee to make contact with her son adopted from Sean Ross Abbey in Roscrea in 1955. Like many other cases, she was denied access to her son, even though the religious organisations in question were also aware that he was searching for her. Sadly, her son died prematurely before contact could be made.

The Bill will not solve the serious and scandalous problem of the denial of access to adoption files and birth records. My hope is the long-awaited legislation being drafted by the Minister for Children and Youth Affairs will address the problem of the right of an adopted person to his or her birth identity, but I do not deny that the Bill has a connection with that objective.

We cannot ignore the scale of the damage caused by the closed door approach to adoption. I do not doubt that, in the 1940s and 1950s, many adoptive families truly believed it was in the best interests of their adopted children to sever completely the link with their blood families. Many families, including my own adoptive parents, went to the limit of hiding the fact of adoption from the children. I did not find out about my own adoption until I was 17 years of age. Even then, the information came to me in a sudden and unmanaged manner from a sibling. I cannot begin to explain the destabilising effect of suddenly discovering, on the verge of adulthood, that in many respects one is not the person one always thought one was.

I am not alone in having this experience. Between 1952 and 1973, more than 20,000 adoption orders were made by the former Adoption Board of Ireland. That is 20,000 children, 20,000 mothers and tens of thousands of other family members separated soon after birth. Somewhere lost in these statistics is not just me but also the young son of Philomena, my own first-born daughter who was taken from me in 1972 and, as I have come to realise, many of my colleagues in the House who were adopted or had children or siblings taken from them and placed in adoption. For all of them, the door between them and their natural family members was firmly shut, at least until they were 18 years of age. For many, despite years of pushing against that door, it has never opened.

I want us to start thinking about a new, open door system of adoption where, throughout childhood and beyond, it would be possible and seen to be natural for an adopted child to have access to his or her natural birth family. There is nothing unorthodox about this in today's world. I know many happy children who have two mothers, two fathers, two houses and many loving grandparents from different families. This changing dynamic is part of a growing awareness in society that however hard we try, relationships and marriages might not always last forever and children of one family may become part of a bigger one. As a society, we are starting to normalise broader family units.

In a way, this open family approach is not new to Ireland. Many of us have parents and

grandparents who were not brought up in the same household as their fathers and mothers but who, owing to economic circumstances, were cared for by grandparents, aunts or uncles. This was a common feature of Irish society not too many generations ago. The idea of open adoption utilises this exact concept - it places the child within a broad family network. It can only be healthier for a child, where a member of his or her natural family wants to maintain contact, to have the opportunity to make that contact. For a child to know who his or her natural mother is, to have met her during childhood and be able to come to terms in a natural way with the reasons for the adoption is a kinder and healthier way to reconcile an adopted child with the facts and circumstances of his or her birth than the lifelong echo of a door slammed shut.

This concept of open adoption is not new. Some 26 states in the United States have laws that allow written and enforceable visitation agreements for adopted children and their natural families. These agreements specify the type and frequency of visits and are signed by all parties prior to adoptions being finalised. In many ways, parts of the United States are quite a bit ahead of us in terms of their acceptance of non-traditional family units. Perhaps this is because American families have been adapting to the effects of divorce and remarriage for longer than we have. There is an established tradition of the broader family network of step-sisters, half-brothers, two mothers and four sets of grandparents in American society and the sky has not fallen down.

Social workers realise that a child can be happy within a non-traditional family so long as the adults involved behave in a mature and sensible manner. The basic assumption behind the Bill is that it provides for mature adults from both the adoptive and natural families to make a sensible access agreement in the interests of the well being of the adopted child. I recognise the reality that the Bill may not at first affect the lives of many children in Ireland today. In 1955, when Philomena Lee's son was adopted, a total of 787 official adoption orders were signed. By 1972 when my daughter was placed in the adoption process, that annual figure had increased to almost 1,400 children. Few Irish children today are adopted in comparison and the majority of adopted children come from families in far-away countries. Applying visitation rights may be logistically and financially difficult for many in these circumstances, but the important change made by the Bill is that our laws, in terms of new adoptions, would no longer act like a firmly shut and tightly sealed door. Even where long-distance travel may make routine contact prohibitive, there is nothing to say an open adoption agreement could not, at the very least, include the exchange of contact details for birthday cards and other special events. These small aspects that seem incidental to so many of us can make a significant difference to the mother who has lost a child to adoption or the adopted child who has become separated from his or her birth family.

My main objective with the Bill is to begin a legislative change in the manner in which adoption is viewed. I want the Statute Book to contain the term "open adoption". The Bill can make a real difference to a small number of children. It takes away the complete and utter hopelessness for the child and natural parent separated by the firmly closed door that is current adoption legislation. However, it can also offer hope to the thousands of adopted Irish people and their parents who are still searching for one another. It can tell them that Irish legislators are awakening to the reality that the closed door adoption regime was mostly not a success. Mine was one of the lucky stories. I was reunited with my first-born daughter after 23 years. However, many people have been in touch with me, mothers and adult children who are desperate to make contact, yet they are prohibited from doing so by a closed adoption system that will not grant them access to their records. I have heard from adult adoptees who urgently need to make contact with a member of their birth families for medical reasons. I have heard several

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stories, including Philomena's, of adult children and a natural parent who only managed to find one another after one had died still searching for the other.

The Bill can have a positive impact for children today, but much more needs to be done for those adopted children who are now adults and the natural mothers who lost them to adoption many years ago. We can start by embracing the term "open adoption". I would like that term to start altering our collective thinking in reuniting adoptees with their birth families. There are ways of facilitating contact for adults by strengthening and enhancing the contact register system. I would love to see a modern adoption contact website on which, at the click of a button, adopted adult persons could register online their details and search for matching parents. However, natural mothers and adopted persons need far more than a modern adoption contact register. Many do not even have access to the basic information needed for such a register. We need to find a way of getting beyond the barriers currently blocking adult adoptees and their natural mothers from accessing their adoption files. The main excuse used for preventing access to this fundamental and personal information is that it would compromise the constitutional right to privacy of the natural mother if this information was made available to an adult adopted child. As one of these natural mothers of an adopted child, I firmly believe the important child-mother bond and the welfare of the child outweigh any suggested right to privacy of the mother. The mothers of Ireland have never been asked if they want the church and the State to protect their privacy in this way.

The Bill is concerned with protecting the adopted children of today. It is an attempt to safeguard them against a future of uncertainty and the feeling of hopelessness that was illustrated so clearly by Philomena Lee in the film of her name. This Bill offers the beginning of a new, open approach to adoption in Ireland. I ask the Minister and all my colleagues in the House to support the Open Adoption Bill 2014.

An Ceann Comhairle: I welcome Deputy Charles Flanagan on his first appearance as Minister in the Chamber. I am sure I speak on behalf of everybody when I wish him every success in his post.

Minister for Children and Youth Affairs (Deputy Charles Flanagan): Thank you, a Cheann Comhairle.

I thank the House for the opportunity to debate this legislation. I thank Deputy Anne Ferris, in particular, for the time and effort she has put into developing this Private Members' Bill. I acknowledge the work of my predecessor, Deputy Frances Fitzgerald, in this Department up to this week and wish her well with her responsibilities in the Department of Justice and Equality. I wish to continue and build on her programme as set out under the programme for Government.

It is something of a coincidence that my first ministerial speech is on a Private Members' adoption Bill, as my maiden speech as a Member of this House in April 1987 was, I recall, on a Private Members' adoption motion. I mention that merely to record the coincidence and my interest in this issue.

Deputy Anne Ferris and Members will be aware that the current position in Ireland is that the Adoption Act 2010 provides for closed adoptions - that is, once an adoption is finalised, all links between the child and its natural parent or parents are legally severed. In other jurisdictions open adoptions, where some measure of agreed access is legally maintained, are the norm. Recent research from the United States highlights the benefits of open adoption for the

birth mother, the adopted person and the adoptive parents. A recent US Government publication entitled *Working with Birth and Adoptive Families to Support Open Adoption* outlines the positive benefits for all those involved in open adoptions. These benefits are seen not just to relate to the legal openness of the adoption itself but also to the level of emotional and psychological openness and transparency that it provides in the adoption environment. However, it is acknowledged that research on open adoptions is at a relatively early stage and a more long-term analysis would be beneficial.

While acknowledging that the current legal position in Ireland is that adoptions are closed, practice in domestic adoptions in this country sometimes results in informally agreed arrangements regarding ongoing contact between the child and its natural parent or parents. This is especially true in familiar and step-parent adoptions where the stability and regularisation of the child's living arrangements have to be balanced against the circumstances of its relationship with its birth parent.

I recognise the need for legislation to be updated to reflect both international and domestic developments. As is often the case with social policy, norms move and change and we, as legislators, must respond.

The influence of social media and the Internet also has implications for adoption. The majority of children and teenagers have immediate access to the Internet and know how to use it, and if one knows where to look, there is a great deal of information available on the Internet. This phenomenon is changing the face of privacy and confidentiality, including with regard to adoption. Therefore, the influence of technology on adoption is also an issue that has resulted in a need to reform adoption legislation.

The programme for Government contains a commitment to enact legislation to consolidate and reform the law on adoption. It is within this overall context that it was intended that the provision for open adoption would be taken forward. Two priority issues were identified for address in advance of this wider and comprehensive reform of our adoption law. The constitutional referendum on children incorporated an important provision proposing to amend the Irish Constitution so as to allow for the adoption of children of marriage in Ireland. To coincide with this referendum, the general scheme of a draft adoption (amendment) Bill 2012 was published which showed, using the format of a detailed Bill, the Government's proposals in legislative form in the event that the amendment to change the Constitution was successful. Deputies will be aware that there are outstanding proceedings in the courts currently that prevent the finalisation of the constitutional amendment. It is my intention to introduce the Adoption (Amendment) Bill to provide for the adoption of children of marriage as soon as these constitutional matters are completed. They are currently before the High Court and it could be the case that the Supreme Court passes judgment on them before we are in a position to introduce the appropriate legislative measures.

The other priority in the area of adoption being addressed by my Department relates to adoption information and tracing. The former Minister, Deputy Frances Fitzgerald, is on record as saying she wished that as much information as possible about their identity would be available to persons affected by adoption. I too acknowledge that there is a need to provide those involved in adoption with as much information as possible about their identity, medical issues and the circumstances of their birth. Recent focus on this matter has been heightened by the efforts of Philomena Lee and the life story she recounted about the search for her son.

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Proposals in the form of legislation are being finalised in my Department with regard to adoption information and tracing in conjunction with the Office of the Attorney General. As soon as this work is concluded I intend to seek the approval of Government for the referral of the general scheme of the adoption (information and tracing) Bill to the Oireachtas Joint Committee on Health and Children for the purpose of its consideration. I am conscious that this Bill in the name of Deputy Anne Ferris seeks to legislate for some of the matters I intend to address in some way by way of this adoption (information and tracing) Bill.

The enactment of adoption legislation consequent on the children's referendum and provision for information and tracing is a priority in my Department. However, in line with the commitment in the programme for Government, it is timely that a review of adoption law in more general terms would take place with a view to updating and modernising it. I hope this review, my own consideration of the Act, submissions received from stakeholders and the contents of the Bill proposed by Deputy Anne Ferris can all inform the reform process for adoption legislation in our jurisdiction. Consideration of Deputy Anne Ferris's Bill by the Joint Committee on Health and Children will greatly facilitate debate on progress on this very important component of the modernisation of our adoption law.

While I acknowledge the benefits of open adoptions, and strongly support open adoption in principle, it should be noted that all of the implications of the Bill must be given full and detailed consideration. Review to date has identified areas that may require fuller and detailed consideration. These include issues related to its retrospective application, having regard to the legal basis of existing adoptions and the constitutional and legal rights of those involved; the possible implications for inter-country adoption; and greater consideration of sensitive situations where it may not be in the best interests of the child to be the subject of an open adoption. I have no doubt that the work and deliberations of the Oireachtas Committee on Health and Children and liaison between my Department and the Deputy will assist in this matter.

I express my gratitude to Deputy Anne Ferris for the way in which she has approached this issue. I said open adoptions promoted transparency in the adoption process. I believe the personal experience recounted by the Deputy will add to the positive and constructive debate on this matter, because, as she rightly said, behind every statistic is a real person, of whom she is one.

As Minister for Children and Youth Affairs, I want to ensure the best outcomes for children and that the laws governing their welfare are framed in their best interests. I would be very pleased to work constructively with Deputy Anne Ferris and other Deputies on her proposals for the introduction of open adoption. I, therefore, ask that the Joint Committee on Health and Children examine the Bill on open adoption proposed by the Deputy and that my Department, the Deputy and all Deputies have the benefit of this consideration.

Deputy Robert Troy: Before speaking to the Bill, I congratulate the Minister, Deputy Charles Flanagan, on his appointment and look forward to constructive and robust engagement with him in the time ahead on the many important issues relevant to his portfolio. I also wish his predecessor, Deputy Frances Fitzgerald, all the best in her new responsibilities. She played a significant role in the area of child welfare in the past three years. While we were not always in agreement, I always enjoyed our exchanges in this House.

I welcome the opportunity to debate this issue and compliment Deputy Anne Ferris on the introduction of this Bill. I welcome the Minister's statement that the Bill is to be sent to the

Joint Committee on Health and Children for examination in terms of the merits of what is proposed.

The Bill seeks to allow adoptive parents and close blood relatives of an adopted child to agree access arrangements. It also proposes that the existing law be changed to allow the natural parent or relatives to agree measures to facilitate ongoing access to the child with the Adoption Authority in advance of an adoption or the adopters afterwards. Currently, once a child is adopted, no such entitlement exists for natural parents and their relatives, such as grandparents. That existing law provides that all contact be severed must be examined.

In bringing forward this legislation the Deputy cites her own experiences and makes clear that this is about the needs of the adopted child. It is welcome that in this legislation, as in much other children-related legislation that we discuss, the best interests of the child are paramount. The Deputy's point regarding modern Irish family life having changed so much is particularly valid. She contends that an adopted child growing up knowing about his or her two mothers should become as normal as the childhood of a classmate who has parents and step-parents. It is difficult to disagree with such an assertion.

The Bill also seeks to amend the Adoption Act 2010, brought through the Oireachtas by former Minister of State, Barry Andrews, which did not provide for open adoptions. As rightly pointed out earlier by the Minister, as society changes legislation dealing with social issues must also change and continue to evolve. The concept of open adoption has garnered much support in recent times. It is worth looking at the concept as we seek to update and review our adoption laws. Open or semi-open adoption or adoption with contact has become ever more popular. In each case, the fundamental principle of adoption remains, namely, the adopting parents are responsible for the child.

Open adoption enables the birth mother and other family members to choose from a number of prospective adopters. In some cases, the birth mother may meet the prospective adopting parents before an adoption order is made. With a semi-open adoption, there is no direct contact and the birth mother may be informed in such a way that does not identify would-be adopters, and consequently does not impinge on the anonymity or privacy of those involved. Various models of open adoption in place in other jurisdictions - Oregon in the United States being an example - permit an arranged level of contact between the child and its birth parents and other family members to be maintained. The level of contact can vary on the basis of the wishes and priorities of the various parties but may include occasional visits, phone calls and e-mails.

As pointed out by Dr. Geoffrey Shannon, the independent child rapporteur and expert in child law, the key advantage of open adoption is that, without compromising the legal integrity of the adoption process, the adopted child is aware of his or her origins, can have preplanned and controlled access to his or her birth parents and the pain of permanent separation of birth parent and child can be tempered. Open adoption is permitted in a number of jurisdictions in the United States, including, as already mentioned, Oregon and Minnesota, Washington and New Mexico. It is also permitted in some Canadian and Australian provinces.

A key contention made by those in favour of open adoption is that it would provide a greater incentive for more birth parents to place a child for adoption where this would be in the best interests of the child. There is no doubt but that open adoption has had encouraging results in places such as New Zealand and Canada, with much better adjustment on the part of older children. This is further supported by statistics from The Hague Permanent Bureau and the

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Adoption Authority of Ireland. It would also be in keeping with Article 11.4 of the 2008 EU convention on adoption.

Research conducted in Ireland in 2005 by the Crisis Pregnancy Agency and the Adoption Board on domestic adoption found that legal provisions should be put in place to secure open adoption agreements within adoption orders. The research involved women who had placed their babies for adoption in 2002. The report found that adoption as a solution to crisis pregnancy is now rarely the choice of single mothers and the number of babies available for traditional non-family adoption has fallen dramatically. Of the 266 adoption orders made by the Adoption Board in 2002, some 76 were non-family adoptions of Irish children placed by registered adoption agencies. The availability of open adoptions where the birth parents have some continuing contact with the child was an important consideration of the birth mothers who participated in the research. Current arrangements in Ireland for open adoption are voluntary and unenforceable. The study called for legal provisions to be put in place to ensure that where a birth parent wishes to have continued contact with his or her child following the making of an adoption order, such contact should be made a condition of the adoption order and be legally enforceable. However, the long-term consequences of open adoption arrangements need to be monitored and evaluated. This should include consideration of what services need to be in place to keep the channels of communication open between the adopters and the natural parents. The need for ongoing supports for all parties should be assessed and a designated service should be provided.

As stated by Ms Olive Braiden, former chairperson of the Crisis Pregnancy Agency, open adoption agreements, where a woman can still have some level of contact with her child, can be a real solution for a woman considering adoption. However, without the legal provision for these agreements, the woman is left uncertain as to her entitlements to have contact with her child. Dr. Shannon also made the point that the success of an open adoption scheme depends largely on the goodwill of the adoptive parents, who, in many cases, may be anxious to foreclose the prospect of being perceived as something other than the child's primary caregivers.

It is critical that any open adoption scheme provides for a thorough discussion of the proper boundaries for access arrangements prior to the adoption order being made. Any agreement made would be the basis of a legally binding contract. Today, we are discussing open adoption. For many people adoption remains a closed issue. One of the key criticisms of the Adoption Act 2010 was that it did not adequately address the issue of information and tracing, in respect of which this Government pledged to act. Former Minister for Children and Youth Affairs, Deputy Frances Fitzgerald, said more than three years ago that a priority issue for her was the introduction of the adoption tracing and information Bill. However, that Bill has yet to come before the House. I believe introduction of that legislation is a priority and ask the Minister, Deputy Charles Flanagan, to ensure that it gets the attention it deserves. Approximately 45,000 to 50,000 people are being denied their fundamental right to their identity because information in this regard is being withheld. In my view, the State is not doing enough to ensure their rights are vindicated. The Adoption Rights Alliance is rightly frustrated at the pace of this legislation and has repeatedly called for a sense of urgency in this regard.

I was recently approached by a lady who put a child up for adoption many years ago and has since made contact with her child. While both parties are agreeable to their records being released, they are not available. Although the natural mother and adopted child are willing to have their records made available, there is no facility for this. Even with both parties consenting, we do not have a mechanism in place to facilitate them.

I again compliment Deputy Anne Ferris on her Bill and sincerely look forward to a Committee Stage debate on it. There were just 39 domestic adoptions in Ireland in 2011 and there are many prospective parents who want to give a child a happy home. As long as we continue to put the best interests of the child first, we should look to explore all options in adoption. In doing so, however, it is vital that we reassure those who may have concerns about open adoption. Perhaps we should proceed gradually towards open adoption and examine semi-open adoption as a stepping stone on the way.

Deputy Seán Crowe: Gabhaim comhghairdeas leis an Aire as a phost nua. I welcome the Bill and commend Deputy Anne Ferris for its introduction. It responds to the real needs of families and individuals in Ireland. We all accept that the current law is rigid and has many flaws. It is not sufficient and has a number of loopholes. I welcome the fact that the Bill will proceed to Committee Stage and that this process will ensure speedy progress for those affected.

There have been many advances in social attitudes, family law and children's rights recently. We have advanced from an era in which children born outside marriage were stigmatised with the label of so-called illegitimacy. We have moved on from the time when women were imprisoned and enslaved in institutions such as Magdalen laundries and mother and baby homes. Mothers had their infants taken away for adoption. We all accept in this House that these women were treated as less than second-class citizens. I am thankful that the widespread separation of birth mothers from their children owing to deeply conservative and social pressures and the oppression of women are no longer a feature of Irish society.

Many of the issues arising today concern the adoption of children from outside Ireland, the rights of adopted children and parents who have given up their children for adoption, and access to adopted children by their biological parents and relatives. There are also other issues to be considered and I will comment on these towards the end of my contribution.

Consider the full implications of section 58 of the Adoption Act 2010. They received relatively little attention during the passage of that legislation in the Oireachtas. The section states:

Upon an adoption order being made, or the recognition under this Act of an intercountry adoption effected outside the State—

(a) the child concerned shall be considered, with regard to the rights and duties of parents and children in relation to each other, as the child of the adopters born to them in lawful wedlock,

(b) with respect to the child, the mother or guardian of the child, and the child's father, shall, subject to *section 57*, lose all parental rights and be freed from all parental duties.

This section extinguishes all the rights of natural parents and their relatives, such as grandparents. The Bill proposes to change section 58 of the Act to allow the natural parent or relatives to agree measures to facilitate ongoing access to the child. This would be done either with the adoption authority in advance of an adoption or the adopter afterwards. The Bill would also allow a natural parent to apply to the courts to seek access. There is a valid argument that the Act, as it stands, is too inflexible. It should allow scope for access by agreement. It is very important that the arrangement respects the rights of all concerned, especially the adopted child.

I was watching a television programme last night that referred to adoption, the rights of the

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family and the rights of the child. Our primary consideration should be the child. It should be emphasised that adoptive parents are real parents of the adopted child. It is recognised that emotional damage can be caused to children and adults by the severing of natural family ties. People now wish to address this problem. The legislation, as it stands, is seen as an obstacle in this regard.

We support the passage of this Bill. I would like to see its provisions teased out on Committee Stage, as the Minister stated, and I would like all its possible implications, both positive and negative, considered, bearing in mind the perspectives of the adopted child, adoptive parents and the natural parents and relatives.

There are other outstanding legal issues in respect of adoption that are not covered in this Bill but that need to be addressed. Perhaps this could be considered on Committee Stage. Some of the issues have been brought to the attention of Members. Let me give the Minister an example that was given to the former Minister, Deputy Frances Fitzgerald. The problem was made known to me by one family but it affects a number of families across the State. When the husband of a young woman with a number of children died, she moved on, met someone else, fell in love and remarried. Owing to this experience and her desire for a stable family, she and her new husband considered the possibility of his adopting her children. Difficulties arose straightaway in this regard because of the inter-country adoption provisions. The lady was told she had to let go of her children and get her husband to adopt them. She had to formally adopt her own children afterwards. This is one of the anomalies in the law. The former Minister for Children and Youth Affairs said she was aware of the anomaly and that it might take a number of years to address it. That is not good enough. One should consider how the children involved are affected. They have to get their birth certificates changed to state they are adopted by their own mother. This is crazy. The law shows no sense of feeling for affected families. The mother in question said she went to a number of meetings attended by large groups. Therefore, it is not just a matter of one or two individuals affected in Ireland. This needs to be examined.

The current regime, apart from requiring a mother to adopt her own child, wastes resources. Families must be vetted by the Garda, and social workers must call out. The child has to be shown a photograph of his or her own parents to prove their identity. If this is how we enact legislation, we must reconsider it. We need flexibility rather than rigidity. The mother in question said that while it is great to receive sympathy, empathy and kind words, these are not enough. She said she wanted to see action and to know that no other family would have to experience what she experienced.

If we are really sincere about having an inclusive society, we should not be narrowing the confines of our laws to force people down paths down which they do not want to go. People want to move on with their lives. I have given a perfect example of a family that desired a new beginning. We should be making it easier for such families but, unfortunately, this is not what has been happening.

I welcome the Bill. The House needs to consider this area. While I acknowledge the difficulties that arise and the considerable demand to adopt children and while I realise the law needs to be very strict regarding new adoptive parents, we must consider what is best for the child and prospective families under the new structures. I thank Deputy Anne Ferris for introducing the Bill. There have been significant changes in social attitudes. I hope her story will prevent other families or individuals having to endure the same experience in the years ahead. The Bill is about responding to the needs of society and, as such, I welcome the decision to

allow it to proceed. I hope, however, it does not get stuck in committee for two, three or four years. The Minister is new to the portfolio and could do a great deal of good by progressing the legislation.

Deputy Clare Daly: I, too, welcome the Bill and was delighted when it was selected. It is great that the House is discussing a positive and proactive proposition on adoption. The Minister noted that he spoke about adoption in his maiden speech several decades ago. That the House is still discussing the issue demonstrates that it has not been taken seriously. We have unnecessarily complicated the issue of adoption. Our approach to the matter is, in many cases, a serious abuse of human rights because it does not reflect the rights of the child or the fundamental principle that everyone has a right to his or her identity.

I appreciate that the Minister's predecessor, the new Minister for Justice and Equality, Deputy Frances Fitzgerald, discussed this matter on many occasions. Nevertheless, the adoption (tracing and information) Bill, which the Government promised three years ago on taking office, has been repeatedly delayed. I will return to the legislation in a few moments.

This discussion is welcome. It is ironic that the film, "Philomena", has had such a public impact in shining a light on adoption and the practice in the past of separating thousands of young Irish women from their children. These separations were forced, illegal and, according to the Adoption Rights Now group, a form of torture. Everyone who watched "Philomena" will have been struck by the realisation that the mother and son characters were searching for each other and spoke to the same people but were lied to and deceived to prevent their reunion. Even speaking about the case is sickening. It is even more upsetting that this story is representative of thousands of other similar stories.

Last year, I spoke about a letter I received from a woman who had a baby in the mother and baby home in Castlepollard in 1966. Her daughter was taken from her without her permission and she spent 30 years searching for her. When she sought information from the Sacred Heart Sisters, she was given misinformation and sent in different directions. At one point, she urgently needed to meet her daughter for medical reasons. However, she did not get anywhere for decades. As I pointed out in the House, within ten days of my office contacting the Adoption Rights Now group, we were able to bring mother and daughter together and it transpired that the daughter had also been searching for her mother. When I told this story Deputies from all sides informed me that they had been contacted in their clinics over the years by people with similar stories. Unfortunately, however, they could not obtain information when they tried to help the individuals in question. That is simply not good enough. If Deputies from all sides cannot change the position, what is the point of Parliament? The issue can be resolved if we show much greater urgency than has been shown to date. The reason information has been held back in many of these cases is that the adoptions were illegal and the placements were organised in mother and baby homes. The 1952 Act and the Adoption Board in many ways facilitated separation and the severance of the link between unmarried mothers and their children. We must also make clear that the practice was based solely on marital status.

Deputy Anne Ferris's Bill is necessary because the 2010 legislation did not address the issue. In 1976, the British Government passed legislation to allow access to birth records to all adopted persons aged 18 years and over and limited access to those aged under 18 years. Why is it taking this State so long to catch up? The reason must be rooted in the illegal nature of the activities that took place in the mother and baby homes. We have only reluctantly come to terms with issues such as the Magdalen laundries, although I do not claim that matter has

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been fully resolved, and those who were the victims of abuse in residential institutions. The activities that took place in the mother and baby homes form part of that process. At one point 97% of children born to unmarried women were placed for adoption. The number of adoptions subsequently declined to a handful as a result of the introduction of allowances and payments for lone parents, which allowed women to keep their children. Similarly, many women in other countries who currently give up their children for adoption would prefer to keep them.

A couple of weeks ago, the Minister's predecessor informed the House that the adoption (information and tracing) Bill was imminent and the heads of Bill would go to committee. While she was not sure exactly when this would occur, it was hoped it would be this side of the summer recess. Will the Minister advise the House of the current position? His predecessor also hinted that some vague legal complications could delay the process. I do not accept that and would like to see the evidence. The previous Minister stated that Deputies would understand the position better when we saw this evidence. I do not understand the reason we cannot be informed of the nature of these complications. Much of the problem seems to be related to arguments concerning privacy and the *I O'T v. B* case. Deputies should be cognisant of the fact that this was a highly disputed judgment which related to a fostering case, rather than an adoption case, and that the 1952 Act is open to question in this regard.

Births are a public record and to deny adopted persons access to such records amounts to blatant discrimination. Serious problems persist in the operation of the Adoption Authority of Ireland. The Adoption Rights Alliance claims that the Health Service Executive and private adoption agencies are in possession of up to 60,000 files. The Adoption Authority of Ireland claims that only 11,000 people seeking to trace their loved ones have registered with it. It is not good enough that only 660 cases of reunification have taken place since 2005. This figure is nowhere near as high as the number of people seeking information. An independent investigation is needed into how to improve access to these files. While the former Minister referred to this issue, in practical terms we have not seen much evidence of improvement.

I welcome the decision to allow the Bill to proceed to Committee Stage. It is also positive that Deputies are discussing these issues in the Chamber. I agree with the President's recent statement that it is horrific to deny people basic information about their identity. The Australian Government has gone further and officially apologised to all those in Australia who were illegally adopted. The former British Prime Minister, Gordon Brown, also apologised for the state's role in illegal adoptions. Similarly, the Irish Government must acknowledge the wrongs that were done to women and their children here and face up to the illegality it facilitated and operated for decades. While this would not undo the damage, it would assist reconciliation and help correct matters for the future. Openness and transparency are important elements of any such resolution.

Deputy Bernard J. Durkan: I am pleased to have an opportunity speak to the Bill and congratulate Deputy Anne Ferris on introducing it. There is nothing like the experience of direct involvement to be in a position to promote legislation in the way she is doing. Deputy Ferris is to be congratulated on that. It reminds us all of the necessity to listen to what others have to say and put oneself in their shoes if we are to reach conclusions in respect of any matter, particularly one as sensitive as adoption.

11 o'clock

It also focuses attention on the manner in which mothers, particularly young mothers, were

treated over the years not only in this country, but in a number of other countries also. A closed, shadowy, furtive and uneasy attitude prevailed. Society seemed to be ashamed of something it should not have been ashamed of in the first place. There is a need for openness, which is the crucial word in the legislation. Anything that becomes secretive and shadowy obviously leads to trouble, trauma and stress. There was nothing so poignant and heart-rending as reading about, seeing and listening to situations whereby children were forcibly separated from their mothers. They were not always forcibly separated but in most cases, they were. It was expected that it was the natural thing to do when it was anything but natural. There is no stronger bond than the maternal bond and this goes right across our society and civilisation. The recognition in this country even at this late stage that such situations need a more sympathetic and understanding approach is very welcome.

The questions raised in respect of the legal position are fairly well known. There is a bit of difficulty, but I am sure the previous Minister and the new Minister will find ways and means of addressing them. I congratulate the new Minister, Deputy Charles Flanagan, on his new position and his predecessor on having forged ahead in an innovative fashion in respect of the new Department that was formed and in which the new Minister will no doubt excel. When it comes to the legal situation, we know there will be individual circumstances where the mother may have not have felt confident for one reason or another that she could look after a child. We can well understand how, at the vulnerable and uncertain time after a birth, a mother might have doubts. Notwithstanding all that, with the passage of time, it naturally follows that the mother and the child will want to have some communication out of curiosity and a natural wish to be part of and acknowledge a family they know or feel exists out there for them. As a society, we must be accommodating in those situations. We recognise that there are individual situations where it has not always been smooth and easy and where it has not always worked out. Generally speaking, it works when the meetings have eventually been arranged and reconciliation has taken place. That is human nature, the way it has always been and the way it should be.

It is good to see the natural order taking its place in society. The natural order was set aside for many years and, to say the least, we were uncaring in many ways, not least in this situation. It is good to see that we are recognising this and that we have people in the House bravely setting out the circumstances, as Deputy Anne Ferris has done, and doing so having regard to their own personal experience and what is likely to be the experience of others yet to come.

Deputy Frank Feighan: I am delighted to be able to speak on this Bill which effectively will allow adopted children access to blood relatives. I thank Deputy Anne Ferris for bringing this Bill before the House. This is a lady who has been through the mill of the adoption process. It is great to see that Deputies who experience some issues in their private lives can bring them to the floor of the Dáil in a Bill like this and ensure families, parents and children can benefit from good legislation. Therefore, I thank the Deputy for bringing the Bill before the Dáil.

When I was growing up, the church was very involved with the State and *vice versa*. I believe this had a very corrosive effect not just on the State, but on the church also. I am delighted that we are much more open and liberal because it is good for the State and the church. We grew up at a time when the small town or village mentality prevailed. Most families were nuclear or elementary families. I will not say that this was dictated by the church but this was the way it was in western Europe. There was no great flexibility. We are now talking about flexibility. We must be flexible and realise that one size does not fit all. People are different. We must recognise the different situations and that is what the Bill is doing.

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Society was very cruel then. I know of many young women who wanted to keep their children but their families, even in later times, put such pressure on them that they had to give up their children. This was because their families worried about what the neighbours would think and because we did not want to be different. There is a great willingness now to look at all aspects.

The legal position was and is closed. Parents and families are sitting down together and working closely together, and have come up with innovative solutions in many cases, but it has not been so in many other cases. The Bill proposes to change the situation to allow the natural parent or relatives to agree measures to facilitate ongoing access to the child. That involves working with the Adoption Authority in advance of an adoption or afterwards. I welcome this.

We saw the film “Philomena”, which told the harrowing story of Philomena Lee. Coming in the wake of the Magdalen laundries, it was horrific and there was a huge public outcry. Since the foundation of the State, over 100,000 children were either adopted or passed through the various agencies. This was an issue that we do not fully understand. There are 100,000 families or many more around the world affected because this country had too close a link with the church. On many occasions, this was very positive but on many other occasions, it was very corrosive and unnecessary. I was horrified by the story of Philomena Lee which involved a lady searching for her son. For some reason or another, the information was never passed on, which is unforgivable. Much good work has been done by the nuns over the years. They took responsibility for education and many other things that the State simply could not and would not provide. I sometimes think that there is a herd mentality and that it is an attack on the church, the nuns or the Sisters of Mercy. I acknowledge that there were many great nuns who were compassionate and provided a service to this country. I read an article dated 9 November 2013 in the *Irish Independent* which contained a voice that was not heard. She said that even though this film was not a documentary, it was very misleading in many ways and did not tell the whole truth. There are two sides to every story and it is our job as politicians and legislators to see that a story is not just black and white but has grey areas.

Adoptions from other countries have been a source of great joy and love on all sides. The former Minister, Deputy Frances Fitzgerald, has done great work in this area. I welcome the new Minister, Deputy Charles Flanagan, here today and thank him for his interest in this Bill. I understand his maiden speech was on this issue. We must now work to ensure that adoption from Haiti, Vietnam, Russia, Ethiopia and many other countries is a smooth process. Many families are anxious to see this improved.

I thank Deputy Anne Ferris for bringing the Bill before the House. It must be supported. I was delighted to speak on it today. I wish the new Minister every success in the coming years and congratulate him on his appointment.

Minister for Children and Youth Affairs (Deputy Charles Flanagan): I thank Deputy Anne Ferris and all the other Deputies for their contributions and comments. It is a given that adoption is a sensitive, personal issue. It is important that at all times we learn from real experience. I warmly congratulate Deputy Anne Ferris on the manner in which she has approached this issue and on the content and format of her Bill. Deputies Anne Ferris, Robert Troy, Seán Crowe, Clare Daly, Bernard J. Durkan and Frank Feighan have all made positive contributions and outlined their support for the legislation, which is presented on a cross-party basis.

Access to records and greater access to birth information will meet some of the needs of ad-

opted persons who wish to know their identity, particularly those who will not benefit from any future changes in the law which might permit open adoptions. In March 2014, my predecessor, Deputy Frances Fitzgerald, made the Government aware of her intentions in a memorandum for information, including the provision, through the adoption (information and tracing) Bill, of a greater level of access to records and birth information in so far as possible. This was in line with legal advice received. This would apply to persons previously involved in adoptions, notwithstanding the significant operational and legal complexities which arise in giving effect to this objective. The second intention is to introduce in the same Bill provision to ensure access to adoption records and birth information for persons adopted in the future, and, third, to have the general scheme and heads of the adoption (information and tracing) Bill finalised on this basis as soon as possible. It will then be submitted for the Government's consideration in advance of referral to the Oireachtas Joint Committee on Health and Children for pre-legislative hearings. It is also intended in parallel to examine and implement further operational improvements to arrangements for the preservation of and access to records.

I am conscious of what Deputies Robert Troy and Clare Daly said about the timeframe. I am anxious that matters be advanced. I ask them, however, to be conscious of the fact that there are real and substantial legal issues to be dealt with. It would be futile to bring forward legislation or provisions if they were to fall foul of a constitutional challenge. The Office of the Attorney General has provided comprehensive legal advice to the Department and has assisted in identifying the constitutional parameters within which the heads of the Bill must be drafted. On the basis of that advice, we are indicating the need to take into consideration the birth mother's constitutional right to privacy. I am anxious to ensure that as much information as possible can be facilitated. I firmly believe open adoption is the way forward. I want the legislation to provide for birth information to be available to adopted persons.

In the case of historical adoptions, it is essential to examine the legislation and resolve - on an all-party basis, led by the Government - to allow this to go as far forward as possible. These are difficult issues. I intend to finalise proposals and bring them to the Government as soon as possible. They will then go for further consideration by the Joint Committee on Health and Children.

I thank Deputy Anne Ferris for a very important service in the process of bringing forward this legislation, having it approved on Second Stage and sending it to Committee Stage. I will ensure we can proceed to have firm Government backing for the legislation and proceed along the lines I have outlined.

Deputy Anne Ferris: I thank the Minister for his support. It is uncannily coincidental that his maiden speech was on this issue. It is a happy coincidence. I thank all the Members who were here today to support me and supported the Bill. Many good points were made. The issue Deputy Seán Crowe raised about the family he spoke to needs to be addressed.

Deputy Clare Daly mentioned the Magdalen laundries and mother and baby homes. We have all heard stories that would make one's hair stand on end. I thank the former Minister, Deputy Frances Fitzgerald, and wish her well in the future in her new role. She had a great commitment to this area and did a lot of work on it. I also thank the Adoption Rights Alliance, which has been advocating for change in the legislation for a long time.

I am delighted to hear that the adoption (information and tracing) Bill will come forward. While there are constitutional problems with regard to people's right to privacy, I say let some-

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one challenge it. I know the Minister cannot agree with that. It is very important to have a right to information about one's identity, to know who one is.

I was adopted into a very loving family; I did not go down the mother and baby route. I have discovered that I have half-sisters and brothers. Only last month I received an e-mail from someone living in London who appears to be a half-sister. She hopes to come over in July and I will meet her then. My journey as an adopted person continues.

That same loving family that adopted me took the decision, when I was a foolish teenager and became pregnant, that I would not be able and mature enough to raise a child on my own, rightly or wrongly, and for 23 years I lived with the pain in my heart that I had lost my own baby. Many say and I know all too well that one loses a baby to adoption even if one is lucky enough to be reunited, as I was with my daughter. I came face to face with an adult woman whereas for years I had hankered for the baby I had lost. There is still a sense of loss. It is a great privilege to find the person one lost so many years ago, but the dynamic is different. As Deputy Frank Feighan said, all those years ago it was church, State and neighbours. We worried about what the neighbours would think and had to hide these things, as we could not have the neighbours talking about us.

Again, I am delighted. I suggest that before the Bill is taken on Committee Stage, the committee consider holding hearings on the issue. I am not a member of the committee and do not know if it has held hearings to date, but it would be no harm to have public hearings with interested bodies. The Oireachtas Joint Committee on Justice, Defence and Equality holds many hearings, on the various pieces of legislation we are hoping to draw up and those which are before the Houses.

I again thank the Minister and I am delighted that my Bill, Open Adoption Bill 2014, is before the House on his first day. There are many thousands like me. Had there been open adoption legislation in place when we lost our babies, we would not have endured that grief for many years because we would have been part of our children's lives when they were growing up. I thank every Deputy for his or her contribution and the cross-party support for the Bill.

Deputy Peter Mathews: With the Chair's permission, I apologise that I could not be present for all of the debate. I commend Deputy Anne Ferris for wonderful legislation.

Question put and agreed to.

Acting Chairman (Deputy John Lyons): As this is a Private Members' Bill, it must, under Standing Orders 82A and 118, be referred to a select or special committee. The relevant committee is the Select Sub-Committee on Children and Youth Affairs.

Open Adoption Bill 2014: Referral to Select Committee

Deputy Anne Ferris: I move:

That the Bill be referred to the Select Sub-Committee on Children and Youth Affairs, pursuant to Standing Orders 82A(3)(a) and (6)(a) and 118 of the Standing Orders relevant to Public Business.

Question put and agreed to.

Sitting suspended at 11.25 a.m. and resumed at 11.45 a.m.

Report on the General Scheme of the Gender Recognition Bill 2013: Motion

Deputy Joanna Tuffy: I move:

That Dáil Éireann shall consider the report of the Joint Committee on Education and Social Protection entitled, Report on the General Scheme of a Gender Recognition Bill 2013, copies of which were laid before Dáil Éireann on 16 January 2014.

I thank the Minister for Social Protection, Deputy Joan Burton, and her officials for attending. I also thank everyone involved in drawing up the report of the Joint Committee on Education and Social Protection. This includes not only the members but all those who participated in the process, including the stakeholders who made submissions and attended the oral hearings.

Forwarding the heads of a Bill to a joint committee to allow it to make reports and recommendations on proposed legislation is a relatively recent phenomenon. At this stage my committee has considered the general schemes of three Bills. It is a work-intensive process which, unfortunately, does not get the publicity it should. I was out canvassing yesterday when someone told me that the only committee that did any work was the Committee of Public Accounts. I had to put the alternative point of view. We do not necessarily go for headlines, but we undertake constructive work on policy. The report is part of that work.

The joint committee issued a call for submissions at the outset of the process. As a result, we received written submissions from eight groups and three individuals writing in a personal capacity. Two days of hearings followed. Of the groups which had made submissions, all but one attended the oral hearings. We received submissions from Transgender Equality Network Ireland, TENI; TransParenCI; BeLonG To Youth Services; LGBT Noise; FLAC; Amnesty International, and the Equality Authority. The Ombudsman for Children also made a submission. Departmental officials attended to update the committee on the Department's point of view, the advice it had received and its work in preparing the heads of the Bill. All of the submissions received are online, as are the transcripts of the debate. The report includes appendices and some details of the submissions.

The main aspect of the report about which I want to inform the Dáil is the set of recommendations made by the joint committee. A number of stakeholders raised issues about the terminology used in the legislation. Having regard to practices in other jurisdictions and legislative constraints, we recommended that consideration be given to whether the term "preferred gender" should replace the term "acquired gender" in the Bill. We also made a recommendation on the age criterion included in the Bill. The heads of the Bill currently provide that a person must be at least 18 years on the date of application. A separate requirement is that an applicant must not be in an existing marriage or civil partnership.

On the age criterion, we recommended that the age at which a person might apply for a gender recognition certificate be reduced from 18 years to 16. Measures should also be put in place to address the day-to-day concerns of transgender people under the age of 16 years. There

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was not absolute consensus in the committee on this issue, but the recommendation represents the view of the majority of the committee. However, there was consensus that there be some provision and that at the very least the welfare of persons under 18 should be taken into account when drafting the legislation.

Regarding the requirement that the person should not be in an existing marriage or civil partnership, the committee acknowledges that there is a difference of opinion between the Attorney General and others on the legal issues regarding gender recognition for persons who are married or in a civil partnership. However, the committee believes that a person being in an existing marriage or a civil partnership should not prevent him or her from qualifying for a gender recognition certificate, and urges the Minister to revisit this issue. We are asking the Minister to consider the matter further, taking into account the two different legal opinions put forward at committee hearings and in submissions. The committee also believes in principle that an existing marriage or a civil partnership should not prevent a person from qualifying for a gender recognition certificate. However, we recognise there is legal opinion that this might not be possible. Our recommendation recognises that there are two sets of opposing legal points of view on the issue.

The committee recommends that the current wording in the Bill with respect to evidence of transition should be reconsidered to address the concerns raised at the hearings that people not be stigmatised as a result of the requirements in this regard. This matter was raised in written submissions by the stakeholders.

We made a recommendation that guidelines for schools on supporting the inclusion of transgender young people in schools should be developed in consultation with relevant stakeholders.

Regarding participation in sport, we recommended that the provisions in head 26 should be reconsidered in consultation with stakeholders. Irish sporting regulatory bodies receiving public funding should develop comprehensive policies on the participation of transgender people.

Under the Equality Acts, we suggested that consideration should be given to amending the legislation to add “gender identity” to the existing nine grounds under which discrimination is illegal.

The two most discussed and most controversial areas the committee debated related to the age criterion and the requirement that a person not be in an existing marriage or civil partnership. The general scheme does not meet all of the wishes of the groups and individuals advocating change in this area. During the hearings, I asked if the witnesses felt the proposals on the table at the moment were progressive. There was general consensus that the proposals were progressive even though some people felt they did not go far enough. On the other hand, some of the issues raised by the general scheme were of particular concern to certain members of the committee and there was a divergence of views, especially over making provision for transgender persons under the age of 18 years, and for persons who are married or in a civil partnership. We believe that on balance the legislation will represent very significant progress in this difficult area.

I believe the committee had a very good debate on the matter. There was great engagement from the stakeholders and there was considerable interest in the process. This is not a straightforward issue, but it is important that the Minister acts so that we make progress. I hope the process has been helpful for the Minister and her Department. I look forward to the legislation

in the area.

Minister for Social Protection (Deputy Joan Burton): I start by thanking the Chairman and all the members of the Oireachtas Joint Committee on Education and Social Protection for the report the committee prepared on the general scheme of the gender recognition Bill. The contents of the report of 14 January and the contributions made at the hearings the committee held on 23 and 24 October 2013 have made an important and valuable contribution to the overall understanding of the complex issues that are being addressed in this legislation.

The lack of legal recognition for transgender persons is a significant and long-standing issue. The High Court declared in 2008 that the State was in breach of its obligations under the European Convention on Human Rights because it did not have a process to legally recognise the acquired gender of transgender persons.

The interdepartmental gender recognition advisory group, GRAG, was established in 2010 to advise on the legislation required to give legal recognition to the acquired gender of transgender persons. There was a commitment in the current programme for Government that transgender persons would be provided with legal recognition. In July 2011, the report of the GRAG was published and the Government decided at that time that legislation would be drafted in line with its recommendations. However, subsequent to the publication of the GRAG report, my departmental officials and I engaged in a significant amount of additional consultation and research during the preparation of the legislation. The views of a range of organisations and individuals, who have experience and expertise in this evolving and complex area, including transgender persons and their representative organisations, were sought and considered.

On 16 July 2013, I secured Government approval for the publication of the general scheme of the gender recognition Bill. The Bill provides for the recognition of the acquired gender of transgender people aged 18 and over, and who are not married or in a civil partnership. The legislation will also facilitate persons with intersex conditions. Once enacted, the main effects of the legislation for those wishing to have their gender recognised will be as follows. The person will be officially legally recognised by the State as being of the acquired or preferred gender from the date of the decision to issue the gender recognition certificate. The recognition will be for all purposes, including dealings with the State, public bodies, and civil and commercial society. The person whose acquired gender is recognised will be entitled to marry a person of the opposite gender or enter a civil partnership with a person of the same gender.

The decision will entitle persons whose births are registered in Ireland to a new birth certificate that shows the acquired gender and new names, if names are also changed. Similarly, for those whose births are registered in the foreign birth register maintained by the Department of Foreign Affairs and Trade, the decision will entitle them to a new foreign birth registration certificate that shows the new gender and new names, if names are also changed. All rights, responsibilities and consequences of actions by the person in their original gender prior to the date of recognition will remain unaffected.

The provisions in the Bill contain some very significant advances on previous proposals and compare very favourably with equivalent legislation in many other countries in Europe.

12 o'clock

Following its publication, the general scheme of the Bill was referred for pre-legislative scrutiny to the Oireachtas Joint Committee on Education and Social Protection in July 2013.

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Officials from the Department of Social Protection, representative groups and legal and medical experts participated in hearings held by the committee in October and the committee's report was published in January 2014. Since its publication, I have given careful consideration to the report and have again consulted with a range of persons and organisations with particular experience and interest in this matter.

The Government agreed when discussing the general scheme of the Bill last year that if significant changes to the legislation were recommended by the committee, I would bring the matter back to Cabinet for the committee's recommendations to be considered. The report's recommendations cover a range of issues, including elements of the application process for gender recognition, the minimum age for recognition, the requirement for the applicant to be single, aspects of equality legislation and matters relating to participation in sport. As these issues will shortly be the subject of Cabinet discussion, I cannot provide a definitive response on the various recommendations in the report. However, I can comment on two issues, the application or validation process and the committee's recommendation regarding the development of guidelines on supporting the inclusion of transgender young people in schools.

In regard to the application or validation process, the committee has recommended that the current wording in the Bill with respect to evidence of transition should be reconsidered to address the concerns raised at the hearings that people should not be stigmatised as a result of the requirements in this regard. In July 2013, I secured Government agreement for a less intrusive and more streamlined approach which combines self-declaration with a supporting letter of validation from the person's primary physician, but does not require any details of the care pathway, surgical procedures, etc., that would have been explicit in the expert panel approach. The approach we have taken represents what is done in European countries that have recently advanced legislation. The revised approach is administrative. It involves an application to the Department of Social Protection rather than to an expert panel. The application is to include a statutory declaration by the applicant that he or she has a clear and settled intention of living in the acquired gender for the rest of his or her life, that he or she understands the implications of the application and that he or she makes it of his or her own free will. This new approach comes closer to the self-declaration model that many NGOs in the area advocate and dispenses with the need for a medical diagnosis to accompany the application.

An intersex person has a variation in their sex characteristics which does not allow them to be distinctly identified as male or female. Unlike the process proposed by the gender recognition advisory group, the new model in the general scheme of the Bill facilitates intersex persons in being included under the scope of the legislation and allows them to apply to be recognised in their acquired or preferred gender, if they wish. The aim is a more progressive and dignified process which protects all concerned and ensures that the registration process will be robust. The application process will be based on a statutory declaration to the Department by the person that they intend to live permanently in the acquired gender, and this must be accompanied by a supporting letter of validation from a medical practitioner who is treating the person.

The legislation will specify the type of medical practitioner providing the supporting letter, including endocrinologists, psychiatrists and surgeons, and will also require that the person is practising in the field of care and treatment of transgender and intersex persons. The application process will not require details of care, including medical history or confirmation of a diagnosis, nor will it require that the person has lived in the acquired gender for a specific period of time after their transition. These are both significant changes from the original recommendations made by the gender recognition advisory group.

I strongly feel that the application and validation process proposed in the general scheme of the Bill is progressive and does not in any way stigmatise persons who wish to apply for a gender recognition certificate. I know this was a concern for a number of members of the committee who contributed to the debate. The provisions in regard to the application process seek to be respectful to all concerned, to be prudent, practical and to preserve the integrity of State records.

The committee's recommendations and the guidelines on supporting transgender young people in schools are significant issues that have been raised often. The recommendation regarding the development of guidelines on supporting the inclusion of transgender young people in schools is within the remit of my colleague, the Minister for Education and Skills. When I recently met a number of parents of transgender children, the Minister also met them and expressed his strong support on this issue.

I would like to thank the Oireachtas committee again for all the work it has done in preparing the report. I expect the legislation and the committee's report will be considered at Cabinet shortly. Following Government consideration, the general scheme of the Bill, with any agreed revisions, will be referred to the Office of the Parliamentary Counsel for drafting, with a view to being published this year. My aim is to have this important and ground-breaking legislation enacted as soon as possible after that.

Deputy Willie O'Dea: Broadly speaking, I support the recommendations of the committee, as they make a great deal of sense, and I appreciate the approach taken by the Department in handing this issue over to the committee for debate. The committee debated the issues at length, interviewed various people and came up with recommendations, and I welcome that. However, that exercise will be meaningless unless the recommendations of the committee are substantially reflected in the final legislation presented to the House.

On the question of age, this seems to be a matter that has yet to be discussed by the Cabinet. As the proposal stands currently, people are excluded from applying for a gender identity certificate until they reach the age of 18. This flies in face of the evidence. Significant research shows that for most people, gender identity is formed between the ages of three and five.

A study compiled in the United Kingdom recently indicates that only 4% of people who changed gender arrived at the realisation that their birth certificates reflected the wrong gender at the age of 18 or over. The study also highlights the fact that 76% of respondents were aware that they were transgender before they had left primary school. That means that there is going to be a huge gap in people realising that their birth gender does not reflect reality. We are all aware of the difficulties individuals can encounter as a result of this and the fact that they live in a legal limbo. There is ample evidence to show that if one's outward manifestation of a particular gender does not coincide with the gender registered on one's birth certificate, problems can arise. The time constraints do not allow me to outline the nature of these problems, but they are well rehearsed in the representations received from the representative organisation. The transcript of the High Court case of *S. v. the Adoption Board* in 2009 provides a clear indication of the difficulties people such as those to whom I refer can encounter.

Deputy Aengus Ó Snodaigh drafted legislation which stated the parents or guardians of people under the age of 18 years should be able to apply on their behalf to have their registered genders changed. The difficulty I foresee in this regard is that if, in the case of a minor, a parent or guardian does the wrong thing for some reason, problems will arise. Surely it is not beyond

the wit of the Parliamentary Counsel to include the appropriate protections in the proposed legislation. There is international precedent in respect of situations of this nature. The committee's recommendation to the effect that the age at which a person can make his or her own application should be reduced from 18 years to 16 is worthy of serious consideration by both the Department and the Cabinet, particularly in view of the evidence.

I welcome the changes announced by the Minister in respect of evidence of identity. She stated the self-declaration must be accompanied by a letter of validation from a person's primary physician. She also stated the legislation would specify the type of medical practitioner who was required to supply the supporting letter. My concern in this regard is that physicians and family doctors vary in their approach to these matters. Some family doctors take quite a conservative view and might, as a result of their own beliefs, refuse to provide the requisite letter. The Minister seemed to suggest that in such instances people could consult psychiatrists, etc., but she also referred to their consulting their primary physician. Will she clarify whether this will be the family doctor if he or she is the primary physician? I still object to the notion that medical intervention is necessary. What is contained in the proposed legislation represents great progress from the requirement to obtain a diagnosis to the effect that a person seeking to change gender has a mental defect. The approach seems to be to make matters as simple as possible by ensuring the medical letter will be something of a formality. I welcome this development, but I wonder what will be the value of the letter in the wider scheme of things. Will the Minister indicate whether someone who has a problem with his or her family doctor will be able to go elsewhere?

On the requirement to divorce or separate, the relevant head, as drafted, states that if a person who is married and changes gender seeks to acquire a gender identity certificate, he or she will be obliged to divorce in order to obtain it. The head also states those in civil partnerships will be obliged to take the appropriate steps to dissolve them in order to obtain such certificates. The Minister earlier stated a person who acquired a gender identity certificate would be able to enter into a civil partnership with a person of the same sex. Does that mean that the relevant head will be amended? In other words, will it now be the case that those who are in civil partnerships and change gender and want to acquire gender identity certificates will not be obliged to dissolve these partnerships? Their being made to dissolve them is illogical, particularly in view of what the Minister has proposed.

Deputy Joan Burton: I will come back to the Deputy on that point.

Deputy Willie O'Dea: On the question of divorce, I recognise the legal difficulties involved and the fact that successive Attorneys General have taken the view that a constitutional referendum will be required to allow for same-sex marriage. If one member of a married couple changes gender and he or she becomes of the same sex, from the point of view of the law, his or her union could be described as a same-sex marriage. It is rather bizarre that the Constitution protects the institution of marriage and that we are going to introduce legislation which is going to force happily married people - some of whom will want to remain married - to divorce or separate in order that one member of the couple can obtain a certificate which bestows on him or her a legal identity. Having such an identity is a fundamental right.

It must be borne in mind that the divorce regime is extremely restrictive. People are obliged to live apart for four out of the past five years before they can divorce. Therefore, a person who is happily married, changes gender and seeks a gender identity certificate will be obliged to leave his or her spouse and live alone for five full years before he or she can obtain it. I am

not an expert on divorce law, but I understand one must prove that there are irreconcilable differences before a divorce can be granted. This means that two married people who want to stay together but who will be forced to obtain a divorce simply for the purpose of obtaining a gender identity certificate will be obliged to lie. It is obvious the marriage of two people who want to remain together has not broken down irrevocably.

On the question of preferred as opposed to acquired gender, I understand what TENI has stated. I also understand the arguments on both sides. I am broadly in favour of the committee's recommendation in this regard, but the only caveat I would add is that there is a rich harvest of European case law and international human rights law which, particularly in recent times, has come down very much in favour of extending the rights of transgender people. The judgments handed down in the various cases involved are based on the concept of acquired, as opposed to preferred, gender. There could be a difficulty if someone seeks to use the case law and human rights law to which I refer before the Irish courts which he or she would be perfectly entitled to do because the precedents set are based on the concept of acquired gender. Obviously, those on the opposite side of the court would be able to argue that the latter was different from the concept of preferred gender.

I welcome the Minister's announcement on discrimination against people who want to engage in sports. Frankly, I cannot understand the relevant head and time does not permit me to dissect it. However, I look forward to dealing with the matter when the Bill is brought before the House.

I am disappointed that the Minister did not make an announcement on a particular issue. The joint committee made a very simple recommendation to the effect that the equality legislation should be changed in order that gender identify might be added to the existing nine grounds on which discrimination is prohibited. It would be quite easy to make the relevant amendment to the equality legislation. Perhaps the Minister might provide a commitment in this matter. I do not believe she would have great difficulty in persuading the Cabinet on the import of this matter. In addition, I do not believe the discussion on it would be particularly long.

Every day that passes is one which takes us further away from the Foy judgment. We have been waiting a long time for the proposed legislation and the people to whom it relates have been obliged to suffer both discrimination and a lack of legal identity for long enough. There is a need for us to get on with it, but it is important to ensure we get matters right. The Minister should advocate to her Cabinet colleagues the approach suggested by the joint committee and bring the final Bill before the House as soon as possible.

Deputy Seán Crowe: Some of the contributions we have heard this morning have been welcome, and I will probably repeat some of the points that have already been made. Sinn Féin has long recognised the need for a legal framework for transgender people to have their birth certificates amended to reflect their preferred gender identity. It was for this reason, as has already been said, that we published a gender recognition Bill over a year ago. I have attended meetings in the House with other Deputies and Senators to examine this area as well as the best associated international experiences and how this is rolling out in other countries. When developing the Bill, we worked closely with transgender advocacy organisations to ensure it was reflective of their needs, and I urge the Minister to follow this approach.

We are elected to represent communities and constituencies, but that does not mean we can speak for every cohort. Therefore, when legislation is being introduced which affects a spe-

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cific group of people it is essential that the group is not only consulted but also included in the process. The consultation should not be confined to a group of cis-gendered men in a room, including myself, who have never had to beg or fight for recognition of our status. I imagine people listening at home will be asking what cis-gendered means. The dictionary states that it relates to a person whose self-identity conforms to a gender that corresponds to his or her biological sex. I doubt any person in the Chamber has ever had to tell someone what his or her preferred pronoun was.

We welcomed that groups were invited in during the committee hearings on the scheme of the Bill, but I urge the Minister to take into account the concerns of transgender individuals who have been vocal on the Bill as it proceeds. The scheme of the Bill is long overdue. As far as we are concerned, progress on transgender rights should not be hampered by any bureaucratic hurdles.

Our Bill was based on the Argentinian legal framework, which is perceived internationally as the best in the world. Had it passed, it would have positioned Ireland as a leader on the world stage in terms of progressing transgender rights. It would have ensured that everyone had a right to legal recognition of their self-identified gender and could be issued with official documentation, including birth certificates, to recognise this fact.

It is singularly important that people are not forced to undergo any kind of surgery or be diagnosed with a mental health condition to have their preferred gender recognised. Furthermore, no person should be forced to divorce a life partner to have his or her gender recognised. It is an insult to expect transgender people to divorce a spouse and be diagnosed with a mental health condition to access such a basic human right. Discrimination should be done away with, not institutionalised.

While we welcome the general scheme as a step in the right direction, it is important that the Minister for Social Protection take on board the recommendations of the Oireachtas Joint Committee on Education and Social Protection. These include replacing the term “acquired gender” with “preferred gender” - I listened to Deputy O’Dea’s comments in this regard; reducing the age at which a person can apply for gender recognition from 18 to 16 years of age; providing that a person who is already married is not prevented from qualifying for a gender recognition certificate; reconsidering the current wording with respect to evidence of transition to address concerns raised and ensure that people are not stigmatised as a result of the requirements in this regard; and the amendment of equality legislation to include gender identity.

Transgender and intersex people do not live in a vacuum and we know this. They have families and friends and they are part of our communities, schools, colleges and workplaces. They vote for us: some of them vote us out and some of them vote us in, but, regardless, we are elected to represent them in the House. They are entitled to the same rights as everyone else in Ireland and they should be treated with dignity and respect rather than as objects of fun or derision.

I commend Dr. Lydia Foy on the bravery she has displayed in fighting the State for recognition through successive legal challenges. This is about human rights. People should not have to fight for legal recognition of who they are as people. However, for as long as there remains no mechanism for transgender or intersex people to get new birth certificates in their gender the State remains in breach of the European Convention on Human Rights. The failure to ensure legal recognition has ensured that transgender and intersex people are without legal status and

therefore negatively affected in respect of their ability to access the most basic of services, including social welfare benefits, education and transport.

Transgender Equality Network Ireland, TENI, which carries out great work supporting transgender people, has raised cases in the past in which transgender boys attending schools have been forced to wear skirts every day as part of their uniform because the school management does not recognise their gender. The Minister, Deputy Bruton, indicated that the Minister for Education and Skills met the parents of transgender pupils and that he was very supportive, but what does that mean? Will we see changes in schools? I am keen to hear the Minister's reply and what exactly will happen. It is not fair that the State should stand over the infliction of this type of torment on young people every day, but this is what is happening because of the absence of a mechanism for legal recognition.

As the report suggests, the language used in the Bill must be changed. As legislators, we have a responsibility when dealing with this issue to ensure that an element of public education is involved. Clearly, "preferred gender" is a far better term to use and would enable people to have their true gender recognised. Such people are not acquiring anything new aside from a birth certificate. The language should be positive and reflect the objective of allowing a person to live in his or her true gender and have that recognised.

It is imperative that the age requirement be revisited. Young transgender people in many cases will have already begun the process of transition by the time they are 18 years of age. In fact, many young people have sought out pathways to transition before the onset of puberty. We know this from international studies. A blanket age restriction is not in line with international standards on the rights of teenagers or their best interests. Amnesty International has recommended a case-by-case approach.

Where a young person is afforded the ability to medically transition, the age of medical consent is generally 16 years. Where such people are not afforded legal transition they are vulnerable to an increased risk of abuse. If a young person does not outwardly match what is written on his or her official documentation, he or she runs a constant risk of being outed. We know that transphobic attacks involving verbal and physical violence have taken place not only here but abroad. Some states have introduced homophobic legislation, with the attendant danger of attacks, imprisonment and so on. The Government has a responsibility to prevent any further exposure to risk.

We know that transgender people are already at an elevated risk of suicide and depression. All the figures are available in this regard, and that risk must not be exacerbated. We must do everything within our power to change it. This is not only the view of Sinn Féin. The Ombudsman for Children has said that forthcoming legislation should remove the criterion relating to minimum age, that a parent or guardian should be enabled to make an application for a gender recognition certificate on behalf of his or her child, and that children of 16 years should be enabled to apply in their own right.

Reference has been made to medical requirements. The requirement to provide a statement by a physician to obtain a gender recognition certificate should be removed. Leaving this in serves only to further stigmatise transgender people, as does the need to undergo specific health treatments which may not be medically necessary. We know of the difficulties some countries have had in this area in respect of obtaining expertise and the difficulty of getting experts.

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People should not have to undergo any specific health treatment or be judged according to medical criteria to obtain legal recognition of gender. Ireland is way behind other countries on this issue. The current scheme is a missed opportunity to uphold people's rights. Other countries have made progress in this area and the sky has not fallen in. Other jurisdictions, including Britain, Germany and Belgium, offer early medical intervention to transgender teenagers because of the positive benefits to their mental health. In Argentina the law allows those under 18 years to change their legal gender with consent of their guardians. Denying legal recognition of a preferred gender directly contributes to the perpetuation of transphobic bullying. There are cases of the CAO system not recognising the leaving certificate results of a person who was going through a transition because the results were not received. The stress of going through exams and university applications while grappling with a transitional process should not be compounded by a legal structure that allows this kind of discrimination.

One of the major aspects of the scheme that must be revisited is the fact that only persons who are unmarried or not in civil partnerships will be entitled to recognition of their preferred gender. The implication of this is that, regardless of the opinions of those involved, a transgender person would be compelled to divorce a spouse or civil partner if the person wished to have his or her gender legally recognised. The underlying premise is that one cannot inadvertently allow the introduction of same-sex marriage under the wire by allowing two people to marry and then for one to be recognised-----

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

Deputy Seán Crowe: -----as the same gender as the person he or she married. There is also a warped idea that a person in a marriage or civil partnership could not possibly want to stay with a person who has had another preferred gender legally recognised. It is crazy stuff.

Transgender people who are married or have families are entitled to the same protection-----

Acting Chairman (Deputy Seán Kenny): The Deputy has gone way over time.

Deputy Seán Crowe: I know, and I am sorry. In conclusion, I welcome the report, as it is a useful starting point. It is not for the Minister, me or anyone else to be the arbiter of a person's gender identity. It is up to the person himself or herself. This should be fully respected and legally recognised by the State.

Deputy John Halligan: I welcome members of the Transgender Equality Network Ireland, TENI, especially Ms Vanessa Lacey, its PR officer, and members of Amnesty International.

It is worth reflecting on the fact that, right across the world, many people are being subjected to discrimination, violence, imprisonment or execution because of their sexual orientation or gender identity. Uganda's president has signed an anti-homosexual bill into law, there is repressive legislation in Russia and northern Nigeria and many people, even in Western civilisation, have distorted views. In Nigeria, the transgender group's slogan is "Living for love, dying because of hate".

We must accept that there is a rising tide of homophobia in many parts of the world. Amnesty International, of which I am a member, has accused some countries of violating the human rights of people who are trying to change their gender identity legally. In a damning report, it documented how transgender people were forced to undergo invasive surgeries, forced sterilisations, hormone therapies and forced divorces before they could change their legal status.

I welcome the committee's report before the House today, although I do have some reservations. I will go through them as quickly as I can because I do not have as much time as I would like. Amnesty International has a small problem with the establishment of a blanket age restriction, in that it is not entirely in line with international standards on the rights and best interests of children, particularly their right to express their views freely and to have same taken into account. We would prefer a case-by-case approach in which the child's views could be highlighted by the committee on the rights of the child and given due weight when the child is capable of forming her or his view. This relates to section 12(85). However, I understand the rationale for lowering the age criteria, given the fact that adolescents of between 16 and 18 years of age can consent to medical and dental treatment without the consent of their parents or guardians on the basis of section 23(1) of the Non-Fatal Offences against the Person Act 1997. I welcome this part of the report as a first step and will not oppose it in the Bill.

I have grave difficulty with the committee's recommendation that the Bill's current wording in respect of evidence of transition be reconsidered to address the concerns raised at its hearings about people potentially being stigmatised as a result of this requirement. I will seek the removal of the requirement for a physician's statement to obtain a gender recognition certificate. Such a requirement would not only result in someone being stigmatised, but also in the need to undergo specific health treatments, for example, hormone treatments and surgeries that are not necessarily a medical necessity. We should consider this issue carefully. Should the Government believe there is a need to retain some kind of supporting statement, it should not be the exclusive preserve of the medical community. A broad category of persons should be able to provide such a statement. Nor should the statement require individuals to undergo health treatments or be judged according to medical criteria in order to obtain legal gender recognition. I urge committee members to reconsider this issue.

Everyone should read TENI's recommendations, which are excellent and have been accepted by many organisations across the world, including Amnesty International. In TENI's opinion, legislation based on human and civil rights is a key to equality for all. The end of its document sums up all of my beliefs as regards rights for transgender people. It reads:

Trans and intersex people do not live in a vacuum. We have families and friends; we are part of communities and schools and colleges and workplaces. We are entitled to the same rights as everyone else living in Ireland. This issue is about basic human rights, and therefore it affects us all in Ireland.

The people best placed to advise on legislation are those who have drafted this document. I have met many of them and some are good friends of mine. I am always pleased to support their efforts, although doing so can be at a cost. There is still some homophobia in Ireland. While I was mayor of Waterford city, I was not able to take part in the gay parade because I was away at the time, but I held a reception for transgender, gay and lesbian people. Ms Lacey attended it. I received a number of obscene telephone calls - almost all of them were anonymous, of course - calling me everything under the sun.

Many of us in the Chamber are decent and honourable people. This legislation would not have been discussed ten or 15 years ago. I congratulate the Minister, who has always been a strong advocate of gay and lesbian rights. I would not take that away from her. I often congratulate her, although we disagree on some issues. If Members of Parliament cannot stand up for the civil rights of gay, lesbian and transgender people in the face of homophobia, who else will? Only we are capable of doing it, as we were elected. In fact, we were elected by many

of the people in question.

There is an interesting statistic on how many people will be affected by this legislation. The Gender Identity Research and Education Society, GIRES, estimates the prevalence of gender variance at 1% in Ireland, or approximately 48,000 people - the number of people that live in Waterford city, according to the 2011 census. GIRES advises that organisations should assume that 1% of their employees and service users may be experiencing some degree of gender variance and that 0.2% may undergo transition.

As Deputy Crowe stated, we must move away from stigmatisation, which can happen when we talk about transgenderism. These are ordinary people like the Minister, me and everybody else. If they are gay, lesbian or transsexual, so what? They are human beings and entitled to their sexual orientation.

I will not oppose the reduction in age from 18 years to 16, but I advise the joint committee, which is a very good one, to re-examine the physicians' statement and speak to TENI, the members of which have spoken to psychiatrists, psychologists, physicians, specialists and so on and come up with very good recommendations in their report. I am not sure what happens now in terms of whether a Bill will be brought before the Dáil, but that gives us time to change that aspect. However, the Minister should not change it just because I am asking her to do so. She should meet the representatives of the organisations involved and listen to what they have to say about it.

Deputy John Lyons: The International Dublin Gay Theatre Festival is being held over two weeks from 5 May and one of the plays is called "Eirebrushed". It was written by Mr. Brian Merriman of the Equality Authority and runs from 5 to 10 May, which means that Members have one more day to get to see it, if they have not seen it already. I went to see it on Monday night. It examines four heroes of the 1916 Rising. They return to a modern Ireland to see if modern society has achieved what our founding fathers and mothers set out to achieve. One of the people featured is Elizabeth O'Farrell, about whom I knew nothing, apart from every day driving by the park named after her, and the penny only dropped when I heard her story last Monday night. She was the nurse who risked her life to issue the surrender to the British outside the General Post Office, but she has been airbrushed out of many of the photographs depicting that act. That reminds me in some way of the issue we are debating. At the time we were oppressed by the British. It is safe to say, without offending anybody, that when we gained our independence, we allowed another group to oppress us, but the people who oppress us the most these days are ourselves as a society.

The play is about minority groups and three of the characters are confirmed as being gay or lesbian. The sexual orientation of the fourth is questionable, but through their writings, it is suggested they are possibly gay. I will leave it up to Members to identify the particular 1916 hero in question. My point is that they were four people from minority groups, two of whom were women and did not have a voice and were airbrushed out of society. Thankfully, they now have a voice. They were part of a minority in another way in that they were lesbian, and because they were not recognised at the time, they were able to move under the radar and continue to live their lives as lesbians in relationships with their partners. Elizabeth O'Farrell lived until 1957 with her partner in Bray.

The play tells a lovely story, but it is about minority groups. I know only too well what it is like to be part of a minority group and it is tiresome to have to continually fight for something

when one is in a minority group because in most cases we are asking the majority to make amendments. I do not know what it is like for transgender people, but I do know what it is like to be in a minority from the point of view of being gay, and it is very tiring. We ask people who do not know first-hand what it is like to be someone like me to bring forward the best possible legislation to allow me to be included in society as a full citizen. This can be frustrating and I empathise with some of the groups represented in the Visitors' Gallery - I saw some members of TENI when I was in the Chair earlier. I understand it is difficult to ask people to try to understand one's position and the Minister has been progressive on the issue. People may pick at the legislation being brought forward, but we are in a much better space in that regard, although it is not perfect. There is room for improvement and the Minister has mentioned some of the improvements she intends to make. If nothing else, the legislation being brought forward, particularly as a result of the report from the Joint Committee on Education and Social Protection, is a working document that will make profound changes for the better for those who are not recognised and have been airbrushed out of our society. Essentially, they do not exist in terms of our laws, but they are now being brought out of the shadows. That is a very positive move and has to be recognised as such.

I am delighted to be a member of a party that believes in making these changes. I will continue to push for such changes because, like no other party, the Labour Party is the one that progresses the issues of individuals in society. I stand over this. We will always lead in that respect. I understand we might not have this perfect, but voices like mine will always be a thorn in the sides of some. Those of us who advocate for minority groups will continue to demand that all citizens be brought into the light to allow them to play a full role in society.

I will not repeat the points made by previous speakers which were similar, but I have issues with some aspects of the report. There are areas in which changes could be made, but I become frustrated, possibly because I have been a Deputy for only three years - I may understand in time - when I hear something cannot be done legally or when we compare our progressive legislation to that in another country. I thought about this while driving home recently in the context of other items of legislation and it applies to this legislation also. It might be time for Ireland to be the country to bring forward the legislation to which other countries will look, rather than looking at what is the best legislation in other countries. Our legislation should supersede it, particularly in dealing with social issues, on which we have been progressive in the past three years. The Gender Recognition Bill is one such legislative measure. I become very frustrated when I hear people say there are different legal points of view. I understand this. I do not profess to be a legal person, but I know what it is like to be an advocate for members of minority groups and such a response is not good enough in addressing the problem. We must examine ways of making legislation work to bring people who have been left out back into society. We must challenge ourselves in that regard. Deputy Willie O'Dea made a similar point. I am sure the Parliamentary Counsel can examine this in a way that will make it possible to make some of the amendments recommended in the report. What are the people in question to do? They are a very small group in society who have a weak voice, but they are paying a hefty price because of a lack of understanding of how far legislation can go to improve the quality of life of some individuals.

The report is exceptionally positive, but it will not be a magic wand. We have to be honest with people, including those in the Visitors Gallery. We should try to tweak those areas that can be changed and challenge ourselves when told something cannot be done in legislation. For example, we have to challenge ourselves on the relationships issue. I do not accept that we should

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decide that the only requirement on a person wishing to undergo gender transition is that he or she must be single, and that it cannot be applied to persons who are married. We need to find a solution to this. The experts in the legalities of this world should be striving for it.

During the Constitutional Convention, a lecturer from UCD spoke about an ancient philosopher, whose name I cannot recall, who developed the concept of human flourishing - namely, that every individual is caused to flourish to be exactly who they are. If I am prevented from flourishing as an individual, other people in society cannot flourish to their totality and, as such, society does not benefit. Unless we allow every person to reach his or her capacity in terms of who they are, society ultimately loses out. It is not only the people affected by this issue who lose out, although they lose out most when we cannot make advances, but society as a whole. It is only by bringing every citizen who has been airbrushed out of our society back into society and developing legal frameworks to make this happen that we can have a better society, one of which we can be proud and with which the Elizabeth O'Farrells, Pádraig Pearses and Roger Casements and so on will be happy in terms of what the Proclamation set out to do in the first instance.

Minister for Social Protection (Deputy Joan Burton): I thank all Deputies who contributed so thoughtfully to this discussion on the proposed legislation. In the context of sensitive or ground-breaking legislation, in 1996 I brought the Refugee Bill before the Dáil and Seanad, which was passed. In that Act, which provides for people seeking protection under the Geneva Convention, I, on behalf of Ireland, as people interested in these issues will be aware, introduced ground-breaking provisions. In the context of what subsequently happened in more recent decades in countries such as Uganda, this significant step to include in the definition of the Refugee Act as a grounds for protection under the Geneva Convention gender, sexual orientation and trade union membership was important. Ireland was very much to the fore in doing this. Since then, a number of other countries have followed the example we set almost 20 years ago in this House.

Today's debate has been helpful in enhancing our understanding of what are not only complex and sensitive issues but practical issues for people in terms of how they live their lives, as stated by Deputy Lyons, be that the people depicted in Brian Merriman's play or people living now. It is important that we are aware of this. We all recognise that the lack of legal recognition for transgender people is a significant and long-standing issue. As I said earlier, there is a commitment in the current programme for Government on the part of Fine Gael and the Labour Party to provide legal recognition for transgender persons. I am happy to say this legislation is being progressed.

Formal legal recognition through the issuing of a gender recognition certificate by the Department of Social Protection will mean that a person's acquired gender will be fully recognised by the State for all purposes. This will, I hope, be a hugely significant and positive matter for the people involved. I want to emphasise that during preparation of the legislation the Department of Social Protection engaged in significant additional consultation and research. The views of a range of organisations and individuals who have experience and expertise in this evolving and complex area, including transgender persons and their representative organisations, were sought and considered. The aim of the legislation is a more progressive and dignified process which protects all concerned and ensures the registration process will be robust and constitutionally valid. An inevitable requirement when putting in place legislation is that we respect the Constitution of our State. Obviously, there are remedies with regard to changing to the Constitution, which are outside the remit of this legislation. For example, Members are

aware that a referendum on same-sex marriage and marriage equality will be held next year. Assuming the people consent to the recognition of marriage equality in the Constitution, this will contribute to addressing some of the issues raised.

The Bill contains provisions which are significant advances on previous proposals and compare favourably with equivalent legislation in many other countries in Europe. I will come back to this matter later. The provisions with regard to the application and validation process seek to be respectful to all concerned and to be prudent and practical and preserve the integrity of State records. I expect that the legislation, including the committee's report, will be considered at Cabinet shortly. I cannot provide a definitive response today on the various recommendations in the committee's reports but, following Government consideration, the general scheme of the Bill, with any agreed revisions, will be referred to the Office of the Parliamentary Council for drafting with a view to publication of the legislation later this year. I would like to see this important and ground-breaking legislation enacted as soon as possible thereafter. Reference was made to Dr. Lydia Foy. I am conscious that she has had a sustained interest in this matter over a lengthy period. I wish to see this legislation enacted.

A number of specific questions were raised, to which I will now respond. Deputy O'Dea and others raised issues around terminology and the evolution of language in this respect. To encourage debate on this issue when I became Minister, I published the report of the gender recognition advisory group. Notwithstanding all of the good work done in the context of that report, it reflects the language of a somewhat earlier era. In regard to the most appropriate term to be used in the legislation, Deputy O'Dea commented on "acquired" and "preferred". I am aware that there is ongoing development in language use. What is most appropriate in the legislation will be considered as part of the drafting process. As rightly pointed out by Deputy O'Dea, in terms of wider European legislation, it is generally necessary for draftspersons to have regard to the need for language that is effective and robust. We can come back to this issue during debate on the Bill.

On the equality issues raised, the general scheme of the Bill as approved by Government on 16 July 2013 does not include specific provisions with regard to equality for transgender people, as the prohibition of discrimination on the grounds of gender is already interpreted in accordance with EU law as also prohibiting discrimination against transgender persons. In response to Deputy Crowe's references in this regard, they are considered under gender grounds in accordance with EU and Irish law.

1 o'clock

Questions were asked about physicians and doctors. Following consultation with the HSE, the Royal College of Surgeons in Ireland and the Irish Medical Organisation, the term being considered for inclusion in the legislation is "primary treating medical practitioner". The intention is that this term will be defined in legislation which will require that the medical practitioner be registered by the Medical Council on a specialist register under section 47 of the Medical Practitioners Act 2007. Again, this is subject to advice from the Office of the Parliamentary Counsel. The idea is that the medical consultant involved in the patient's care will be the person providing the letter. This is most likely, as I said, to be an endocrinologist or a psychiatrist, or a paediatrician in the case of a younger person. The legislation will also require that the person be practising in the field of the care and treatment of transgender and intersex persons. There is no reference in the proposed legislation to any surgery or specific treatments. Anybody who has had the opportunity to talk to people involved or people from the transgender community

will know that medical practices and treatments are advancing rapidly. The legislation will relate simply to people who are practising in the field of the care and treatment of transgender and intersex persons.

On the requirement for the applicant to be single, there is no easy solution. Some Deputies acknowledged that the choice was either to risk being in breach of the Constitution, by effectively creating a same-sex marriage, or to risk breaching the European Convention on Human Rights by forcing the couple to divorce. There is no quick legal fix that could turn such a marriage into a civil partnership. Article 41.3.2° of the Constitution requires a divorcing couple to live apart for four years. I can understand people will be disappointed about this, but I understand and hope the people will be able to address this issue in a referendum later next year. I hope they will consent to the changes which will clear the way constitutionally to address these particularly sensitive issues.

Let me address the comparisons with other jurisdictions. A lot of research has been done on this matter by the Department. I understand the proposed legislation compares very favourably with legislation in other countries, particularly the United Kingdom, where the Gender Recognition Act 2004 is based on the use of an expert panel and requires evidence of diagnosis. This has been very offensive to people who are transgender or transitioning. A diagnosis of gender identity disorder is now rightly seen as being outdated. The GRAG report, based on extensive consultation, shows we have moved on from this.

The Netherlands recently updated its legislation, which will come into effect this year. The application process is very similar to that under the Irish legislation. It consists of a combination of self-declaration and validation by a medical professional who is an expert in the field of caring for and treating transgender persons.

I look forward to the legislation being brought forward as early as possible. There is a great deal of legal work to be done by the Office of the Parliamentary Counsel. After that work has been completed, I look forward to appearing in the Dáil as soon as possible. I thank the members of the joint committee and everyone who spoke in the debate.

Deputy Joanna Tuffy: I thank everyone who contributed. I also thank the members of TENI, whom I did not realise were present. I thank them for their contributions throughout the process.

The Minister and her officials have a difficult task ahead in drafting the legislation because it reflects a complex area. Considering that the issue of age has arisen frequently during the debate, I speak personally rather than on behalf of the joint committee in saying the welfare of the child must be paramount and underpin the legislation. The concept is complex and always particular to the child concerned. It is not a matter in respect of which we can provide a simple answer. It is difficult to come up with the legislation, but the important principle relates to the paramountcy of the welfare of the child. Those under 18 years are children.

My second point is on the issue of marriage. Our recommendation is obviously nuanced because we take into account the fact that there are two legal opinions. We recognise in our recommendation that it is unfair on people who are married and have acquired a new gender not to include them in the legislation. On the other hand, we have a Constitution to adhere to. In general, it is very good, but it is not always perfect. We should not have a reference to marriage in the Constitution. The reality is that the concept of the family is much broader than one

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based on marriage. Unfortunately, the Constitution posits families based on marriage as the primary type of family. That is wrong. However, the provision is in place and it presents a difficulty. As legislators, our duty is to pass laws that are constitutional. As I stated, there are two legal opinions. The task of the Minister is to pass what she believes to be the law that is most constitutional, or the one least likely to fail the test of constitutionality. I wish her well in that task. I again thank everybody who contributed to the debate.

Question put and agreed to.

The Dáil adjourned at 1.10 p.m. until 2 p.m. on Tuesday, 13 May 2014.