



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**DÁIL ÉIREANN**

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

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# DÁIL ÉIREANN

*Dé Céadaoin, 21 Deireadh Fómhair 2015*

*Wednesday, 21 October 2015*

Chuaigh an Ceann Comhairle i gceannas ar 9.30 a.m.

***Paidir.***

***Prayer.***

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## **Ceisteanna - Questions**

### **Priority Questions**

#### **Early Childhood Care Education**

1. **Deputy Robert Troy** asked the Minister for Children and Youth Affairs for details of the changes to the early childhood care and education scheme announced as part of budget 2016; a breakdown of the number of children his Department estimates will benefit from a full second free preschool year of an additional 38 weeks; and the level of consultation he has had with preschool providers regarding extending the contract of the scheme. [36663/15]

**Deputy Robert Troy:** As someone who has campaigned in recent years for additional funding for the early years sector, I welcome the increase in funding for this area as announced in the 2016 budget. Will the Minister give a breakdown of how many children his Department estimates will benefit from a full second free preschool year, that is, an additional 38 weeks? Will he outline the level of consultation he has had with the preschool service providers about the ECCE contracts?

**Minister for Children and Youth Affairs (Deputy James Reilly):** I thank the Deputy for the question. I was very pleased to announce a package of €85 million extra investment in child care, including important improvements to the early childhood care and education, ECCE, preschool programme.

At present, the ECCE programme covers children who have reached the age of three years and two months by 1 September of the relevant year. From September 2016, I am expanding the ECCE programme to allow children to access free preschool from the time they are three years of age until they start primary school. There will be three intakes of eligible children during the preschool year. Children who reach the age of three between April and August can access the programme from September, children who reach the age of three between September

and December can access the programme from January, and children who reach the age of three between January and March can access the programme from April.

The number of weeks of free preschool a child will benefit from will depend on their birth date and the age at which they start primary school. This number ranges from 38 weeks for children born between April and August, who start school at the age of four, to 88 weeks for children born between January and March who start school at the age of five. This equates to an estimated 23 additional weeks on average.

The number of children benefiting from the ECCE programme will increase from 67,000 to more than 127,000 in a given year. This extended free preschool provision was first recommended by the expert advisory group on the early years strategy in 2013. It was also one of a series of recommendations of the recent interdepartmental group on future investment in child care which I established in January last. The group consulted widely with a range of stakeholders, including the early years sector, during the course of its work. The recommendation was included in the report of the interdepartmental group which I published in July to facilitate a further debate on how best to meet the needs of parents and children.

I have recently met senior representatives from the early years sector to discuss this and other improvements that were announced as part of the €85 million investment package in budget 2016. The meeting was positive and constructive, with all parties expressing commitment to work together on the issues of capacity and high-quality preschool provision. My Department will be working closely with the early years sector to build capacity in time for the first intake in September 2016 and for subsequent increased availability in January and April 2017.

**Deputy Robert Troy:** While it is welcome that additional resources are being allocated to this sector, there was widespread common ground on the need for issues of quality to be addressed across the sector. I hope that will still be a priority before the introduction of these additional weeks. From the Minister's reply, it is obvious this is not, in fact, a full second free preschool year, given the existing preschool year is 38 weeks and the Minister said that, on average, this second year will be an additional 23 weeks.

Has funding been set aside for the full 67,000 children who currently avail of the existing free preschool year or does the Minister expect fewer children to participate? What is the cost for a full second free preschool year extension?

**An Ceann Comhairle:** Thank you, Deputy.

**Deputy Robert Troy:** I ask this given that, in reply to a parliamentary question I asked earlier in the year, the Minister said a full second preschool year would cost in the region of €180 million. However, for next year, the Minister has allocated only an additional €47 million, of which €11 million will be taken up with the restoration of the capitation grant. Therefore, as I understand it, there is only an additional €36 million for the introduction of this scheme in 2016.

**An Ceann Comhairle:** Thank you, Deputy. I call the Minister.

**Deputy Robert Troy:** Does the Minister believe this will suffice? In regard to the capacity issue-----

**An Ceann Comhairle:** I ask the Deputy to stick to the time limits. We are over time and this means we do not then have time for the ordinary backbenchers to ask their questions.

**Deputy James Reilly:** I can understand that the Deputy would want to spend some time on this because it is a very important area. I am very pleased we have a solid framework for the future investment in child care, following the interdepartmental group report which consulted widely with the sector, including by having an open day for the sector and online consultations for both the sector and for parents. This was widely consulted on and is all the better for that.

Of course, choices have to be made and there has to be a balance. Therefore, on the one hand, there were concerns in the sector about having sufficient capacity for a full second year and, on the other, some people would want it to start sooner. Starting in September of next year allows for capacity to build up. I remind the House that, even today, in the region of 10,000 places are not availed of within the scheme. I believe there will be greater uptake as the economy continues to recover and more people wish to return to work.

**Deputy Robert Troy:** Will the Minister confirm that he has allocated enough money? As I said, in his reply to me earlier in the year, the Minister said the cost of a full second preschool year would be €180 million but he has only allocated €36 million for 2016, which is 20% of the cost. How does the Minister expect to be able to fund the scheme adequately if he has not put by adequate resources?

The Minister claims there are 10,000 unoccupied places in preschools throughout the country. However, there are also huge waiting lists and, in fact, there are 4,396 children on waiting lists for child care places in other locations. Although I agree there is capacity in certain areas, how will the Minister address the capacity issues in other areas? Will he consider introducing a new capital grant scheme to ensure the service providers will be able to provide the necessary capacity in areas where currently there is not the required capacity?

**Deputy James Reilly:** If I run over a little in my reply, I hope the Ceann Comhairle will indulge me because a couple of very important points have been raised.

**An Ceann Comhairle:** I am sorry but I cannot allow that. It affects everybody else, which is what people do not realise.

**Deputy James Reilly:** That is fair enough. The issue of quality, which was mentioned by the Deputy, is very important. Additional money has been put into the learner fund and many other initiatives around *Síolta* have been put in place. Quality is very important to us because we know that a poor quality school or preschool service can have an adverse effect on children, so it has to be of high quality to give better outcomes and better futures. I am perfectly satisfied that there is adequate funding for next year. That is the way the scheme is designed. There would not be the full drawdown of the €180 million to which Deputy Troy alluded, which in fact is €175 million. The one figure I would dispute with the Deputy is the restored capitation cost of €11 million because as far as I know that is more in the region of €5 million to €6 million. However, given that the funding will not be available until September there is not a full year cost. In both instances there is ample funding for next year and the Estimates for the following year will have to pick it up and as the economy continues to recover that is a commitment the Government has made in terms of having a five-year plan, if re-elected. I hope any subsequent Government would honour the commitment because this is a critically important area.

The final point is on disability. It is intended that those with special needs can avail of the fund this year because that is a concern I have.

**Deputy Robert Troy:** The Minister did not address capacity.

## Children in Care

2. **Deputy Sandra McLellan** asked the Minister for Children and Youth Affairs how he plans, to accommodate the 60% of persons who leave care who currently have not been assigned aftercare workers; to reduce the 68% of young persons who experience homelessness within two years of leaving care. [36232/15]

**Deputy Sandra McLellan:** I wish to ask the Minister for Children and Youth Affairs how he plans to accommodate the 60% of people who leave care without being assigned aftercare workers, and how he plans to reduce the 68% of young persons who experience homelessness within two years of leaving care.

**Deputy James Reilly:** I strongly refute the figures quoted by the Deputy. I believe they are the ones contained in a study that was published some 15 years ago and are based on a very small sample size. I am pleased to inform the House that of those leaving care this year, approximately 80% were reported as having an allocated aftercare worker. In addition, Tusla has advised that almost 90% of young adults currently receiving an aftercare service are in some form of stable accommodation, including 45% who remain living with their former foster families. The figures of 80% and 90% are important.

Every year, between 450 and 500 young adults leave the care of the State. The majority of those are eligible for an aftercare plan. The Government has decided to amend the legislative provisions regarding aftercare. The aim is to create a clear statement of Tusla's duty to satisfy itself as to the young person's need for assistance by preparing a plan that identifies those needs for aftercare supports. I published the new Aftercare Bill yesterday.

I am concerned about the one in ten young people who have left care and are reported by Tusla to be in unstable accommodation. The purpose of the legislation is to ensure that an aftercare plan, developed before the young person leaves care, identifies his or her care needs and that appropriate supports are put in place. Some young people may not engage with the supports offered or, in some instances, appropriate services such as accommodation may prove difficult to source.

Funding is made available to support a young person leaving care who is to remain on with his or her foster family as part of his or her aftercare plan. In other cases, funding supports are available to facilitate independent living or supported lodgings. Supports are also provided by other State bodies. For example, an exception is made to the jobseeker's allowance payment in favour of young adults leaving care, in that those aged 18 to 24 receive a higher rate than other jobseekers of the same age.

Tusla has continued to develop its aftercare service since the introduction of its national leaving and aftercare policy of 2011. The implementation of the policy has seen the introduction of new practices, including the establishment of steering groups and the standardisation of the aftercare allowance. I am happy to report that the additional funding I have secured for Tusla will drive forward this essential service for children and families into 2016 and beyond.

**Deputy Sandra McLellan:** As the Minister is aware, HIQA released findings of reports on the recent inspections of the foster care systems in both the Galway-Roscommon and Cavan-Monaghan regions, respectively. The reports pointed out: "There were delays in receiving some specialists services and difficulties planning aftercare for children. Furthermore, not all

children had an allocated social worker, and while there were some systems in place to mitigate risks, not all statutory obligations were met.” The reports shine a light again on what appears to be a somewhat dysfunctional system. The welfare of those children is once again being questioned and it is the children who are exiting the system who seem to suffer disproportionately.

What provisions are in place to ensure interaction with aftercare workers, and that such workers are being properly monitored and given sufficient resources to do the level of work required? How will the Minister tackle the lack of other requirements for aftercare services to fulfil their statutory obligation?

**Deputy James Reilly:** It is worth reiterating that the reference to 68% of young persons experiencing homelessness within two years directly after leaving care is from a Focus Ireland study, *Left Out on Their Own - Young People Leaving Care in Ireland*, which was published in 2000, which is 15 years ago. This study followed just 56 young people who had left the care of a health board. A total of 87% or 49 young people, were tracked for six months after leaving care and 79% or 44 young people were tracked for two years. First, that is clearly a long time ago and, second, such small numbers make it very difficult to draw conclusions on how the wider group of care leavers have been affected. I do not believe that to draw conclusions and apply them to all children leaving care is particularly helpful to the debate.

At the end of March 2015, a total of 1,783 young people of all ages were in receipt of aftercare support. Of those, 1,338 who were aged 18 to 20 years, inclusive, were in full-time education and in receipt of aftercare support.

**Deputy Sandra McLellan:** I have received representations from the Irish Network of Foster Carers regarding the Aftercare Bill. A number of questions were posed to me which I will pose to the Minister. I will respectfully take his answers on board. First, why were the people taking care of 93% of children not involved in scrutinising the provisions of the general scheme of the Bill? How can the Child and Family Agency implement its new aftercare policy before the concerns of foster carers have been addressed? The network pointed out that there are not enough staff members to provide an assigned link worker to support foster families, as per the national standards. It stated that the front-line staff who are available are dealing with unrealistic case loads which are impeding the service they provide.

The network is concerned about the morale of staff in the Child and Family Agency who are under pressure. The members of the network said there is a serious lack of professional supports needed by the children in their care. Does the Minister agree with the concerns expressed by foster carers that the Child and Family Agency aftercare policy will lead to children they have cared for being put in positions of danger?

**Deputy James Reilly:** In response to the issues raised by the foster carers organisation, there has been an increase in the Tusla budget-----

**Deputy Sandra McLellan:** Yes.

**Deputy James Reilly:** -----of approximately €38 million for next year, plus another €20.7 million was made available to clear any legacy debt. Tusla has a realistic plan to deal with all unallocated cases. The plan was put to us and we met its ask in full in terms of the resources required to implement it. Tusla was due to recruit in the region of 218 social workers. The number has risen to 256 for this year. A total of 100 social workers have already been recruited and others are in the process. Additional funding has been provided for next year for the re-



cruitment of an additional 174 social workers, which will mean that in practice more than 200 social workers will be recruited during the course of next year. That will be a challenge but it will allow Tusla to address the issues raised.

As regards foster carers who do such wonderful work, and who are deeply appreciated by the State, we will continue to consult with them on how matters are progressed from here.

### **Domestic Violence Refuges Provision**

3. **Deputy Joan Collins** asked the Minister for Children and Youth Affairs his views on the Cuan Álainn women's refuge centre in Tallaght in Dublin 24; that since 2012 it has housed 71 women and 96 children fleeing domestic violence; if he has met with Respond housing association, as stated by him on 7 October 2015; his plans to prevent this crucial refuge for women from closure; and if he will make a statement on the matter. [36231/15]

**Deputy Joan Collins:** I tabled this question because Deputy Seán Crowe raised the matter as a Topical Issue on 7 October and in his reply the Minister replied that Respond! is in good financial health and that he would go to the Department of the Environment, Community and Local Government to see what could be done. The Minister said he hoped a meeting with Respond! could be arranged shortly. Has the meeting been arranged and has the Minister met with Respond!? What was the outcome? If the resources are not made available to fund it, the Cuan Álainn refuge will be closed in only seven weeks.

**Deputy James Reilly:** The Cuan Álainn centre was established independently of the State. It opened in 2012 and is funded by Respond!. The Cuan Álainn centre provides accommodation for a range of clients, some of whom may have been in emergency accommodation provided by domestic violence refuges.

Tusla, the Child and Family Agency, allocates available funding for domestic violence to emergency refuge accommodation services and community-based domestic violence supports. The Cuan Álainn facility does not operate as a front-line emergency domestic violence service. It provides step-down or transitional accommodation to support the transition to a permanent, settled home. This can include survivors of domestic violence who are making the transition from emergency services to a new, permanent home.

Officials from my Department and Tusla recently met Respond! at its request to discuss the situation in Cuan Álainn centre. The Department sought additional information from Respond!, including information relating to its overall financial position. The most recent information provided indicates that Respond!, which comprises two companies, is in good overall financial health.

I hope that the matter can be satisfactorily resolved by allowing sufficient time for all avenues to be explored by the relevant parties. This will need to include discussion with other parties, including the Department of the Environment, Community and Local Government, as it would appear that these families have pressing housing needs.

Cuan Álainn provides important services, and I am anxious to do what I can to resolve the issue that has arisen. With this in mind, I have agreed to meet Respond! and I am hopeful that this meeting can be arranged shortly. My private office is seeking to arrange such a meeting and

I will check progress. A few days ago, officials were in the process of dealing with this. Tusla will continue to work closely with service providers to ensure that women and children fleeing domestic violence receive all necessary emergency support.

**Deputy Joan Collins:** This was first brought to the attention of Tusla in September 2014 when Respond! had a meeting with the agency about this issue. Its representatives flagged the fact that they would be unable to provide the €350,000 in funding to Cuan Álainn refuge centre after this year. No commitments were given by Tusla officials or anybody else but they requested that Respond! keep the centre open for at least a year while they examined the issue.

The Minister referred to finances. There are two companies, Respond! Housing Association and Respond Support Limited. The association looks after the maintenance of Respond! housing. Their funding has been cut big time over the past number of years. They do not have the resources to provide the €350,000 needed. Respond Support Limited comprises youth services, family resources, child care and travelling programmes, and any money it gets goes directly into these services and must be accounted for. It is not a question of these companies having money to maintain services. There are only seven weeks left. I urge the Minister to make sure the refuge stays open. It is absolutely crucial for the women and children involved.

**Deputy James Reilly:** I believe that this refuge should stay open and I believe it does valuable work in supporting women and children who have had to leave a violent domestic situation. I am happy to facilitate a meeting with Respond! officials and to explore with the Department of the Environment, Community and Local Government how we can have an orderly transfer of responsibility for this. The first meeting took place in early August. Providing only three months to deal with such a complex issue in terms of how the Government will address the provision of continuing support and having the refuge close the week before Christmas seems a little unfair on the people who occupy it. I do not want them left worrying about this over Christmas. I appeal to Respond!, which is in good financial order, to come to the table with an open mind with regard to timing. I am well aware that its representatives would like to put the money somewhere else and I fully respect their decision to do that, but equally I ask that we be given time to organise an orderly transfer of funding and responsibility.

**Deputy Joan Collins:** I welcome the Minister's recognition of Cuan Álainn refuge as a valuable resource, which is badly needed. Representatives of SAFE Ireland will appear before the Joint Committee on Justice, Defence and Equality later to talk about the need to properly resource domestic violence services. They say that at least €30 million needs to be put into services, and various agencies, including the Garda, need to provide resources to assist women and men in domestic violence situations. It is a serious issue, which has not been taken seriously to date, according to this organisation.

I beg to differ with the Minister. The problems in respect of the funding of services at the Cuan Álainn refuge were flagged with Tusla in September 2014; it was not just in the past few weeks. This should have been dealt with over time. It has been more than a year since it was flagged, and I urge the Minister to make sure the refuge stays open. It is absolutely crucial. If it does not remain open, that will have a serious knock-on effect on how the country addresses domestic violence and refuge provision.

**Deputy James Reilly:** At my request, representatives of my Department and the Child and Family Agency met Respond! representatives on 5 August 2015, and at that meeting, Respond indicated that due to a lack of resources it would be unable to continue to run the Cuan Álainn



centre and that its board had made a decision to close the service by the end of the year unless funding was obtained. I will leave it up to people to judge the necessity to have this happen just before Christmas when, clearly, Respond's financial situation does not dictate-----

**Deputy Joan Collins:** It was flagged a year ago.

**Deputy James Reilly:** -----that it needs to take such pre-emptive action. I want this service to be maintained. I am more than happy to meet Mr. Brennan, and that is being organised. I want to arrange for officials from the Department of the Environment, Community and Local Government to be present as well. Let us resolve this issue and not have women and children who have been distressed and traumatised by domestic violence worried about what will happen over Christmas. I certainly will not allow that to happen.

### **Family Resource Centres**

4. **Deputy Robert Troy** asked the Minister for Children and Youth Affairs if he will commit to providing adequate resources to put family resource centres, FRCs, on a sustainable financial footing to protect their essential services; and if he will make a statement on the matter. [36664/15]

**Deputy Robert Troy:** A total of 109 FRCs provide invaluable services in their communities throughout the country, ranging from early intervention and prevention to enhancing families and helping to rebuild communities. Despite this, they have suffered a 5% cut year-on-year to their funding since 2011. What measures will the Minister and the Government introduce in light of the increased funding to Tusla in the 2016 budget to ensure these valuable resources in our communities are put on a sustainable footing for the future?

**Deputy James Reilly:** On its establishment on 1 January 2014, Tusla, the Child and Family Agency, took over responsibility for the family resource centre programme, which was previously operated by the then Family Support Agency. Tusla is spending €13.09 million in 2015 supporting 109 FRCs around the country. Funding has been maintained this year at 2014 levels. Tusla very much values the work of the centres and recognises the positive impact of their work in supporting families and local communities around the country. FRCs provide a holistic service of child, family and community support and advocacy to children and families in their communities. I welcome Tusla's intent to improve and build on the strengths of the FRC programme in meeting its mandate for community-based early intervention and family support.

I announced a significant increase in the funding allocation to Tusla for next year. Tusla will have available to it some €676 million in funding, representing an increase of €38 million over 2015 on top of an increase of €20 million in 2014. We have therefore increased Tusla funding by approximately 10%. The precise funding to be provided to FRCs will now be considered by Tusla in developing its business plan for 2016, which will be sent to me for consideration.

The Government, since its establishment, has attached particular priority to supporting vulnerable children and families, and the significant increase in funding being made available to Tusla next year represents further evidence of our delivery on this ambition.

**Deputy Robert Troy:** I am glad the Minister values the work of FRCs. He confirmed that funding has been maintained at 2014 level, but I alluded to a 15% cut in funding since 2011.

FRCs are primarily located in disadvantaged areas. They have versatile and responsive staff who respond to the needs of their community, and they often intervene before problems manifest. During the summer, I met representatives of FRCs in my constituency - Ballynacarrigy, Granard, Ballymahon and Athlone - and one of the directors said they feel like they were sitting with a hatchet over their heads, never knowing when it will fall.

*10 o'clock*

Funding has been provided for rent and staff - they are not even fully staffed - but funding is still not in place for the services they provide. What is being stated is that while the service is being provided, people will be obliged to pay for it. In light of the additional funding, will money be ring-fenced for the family resource centres in the future? Will the Minister restore what was lost in the cuts suffered over the past four years? Will he put in place a firm commitment in order that these much-needed services are put on a sustainable footing into the future?

**Deputy James Reilly:** I remind the Deputy that from 2011 to 2014, this country started on a recovery from the greatest financial crisis it had ever endured, and for Ireland to regain its financial sovereignty, it was necessary to reduce funding for virtually all services. Consequently, in 2014 it was a reflection of the Government's commitment to this area that it was able to maintain the funding for 2014 into 2015. As I stated, Tusla will draw up its own business plan which it will forward to me. However, I have pointed out that it values this service highly and the programmes delivered by it are myriad. They include child contact centres, family conferencing, patient support groups, child care providers, after-school clubs, homework clubs, study clubs, literacy programmes, preschools, playschools, breakfast clubs, lunch clubs, out-of-school initiatives including summer camps and transition programmes, Rainbows programmes, counselling, family fun days, lone parents groups, parent and toddler groups, youth groups including no-name clubs and youth cafés, intergenerational groups, fathers groups including father and son groups and supervised access initiatives, library and book-lending services, substance abuse support groups and school uniform exchanges, to mention just some programmes. This is an important programme and resource. There are 109 such centres nationwide and Tusla values them highly, as do I.

**Deputy Robert Troy:** I am glad the Minister values them and I remind him politics is all about choices. Even though we were in difficult economic times, the Government chose to cut funding to an agency that provides much-needed services and which works in the most disadvantaged parts of the community to support and help those communities and the families concerned. I again ask the Minister whether he will acknowledge that a small investment in this area provides significant returns for the money invested. In light of the significant returns it has given, will the Minister give a commitment that the funding cuts these centres have endured in recent years will be restored? Will there be a commitment to put this resource on a sustainable footing and that Tusla officials will meet representatives from the family resource centres to consider this in the future? Can the Minister confirm it is not the Government's plan to rationalise services like this, as it is doing at present in respect of the domestic abuse services?

**Deputy James Reilly:** First, I am not quite sure what the Deputy means by stating the Government is rationalising domestic abuse services.

**Deputy Robert Troy:** The Government is cutting them and telling the services they are being rationalised.

**Deputy James Reilly:** There will be ongoing consultation between Tusla and the services it funds. As the Deputy is aware, there is a huge amount of volunteerism within this sector and I take every opportunity I can to congratulate and thank sincerely those who give so freely of their time in this regard. Approximately 40,000 volunteers work in the youth sector alone and then the family resource centres are in addition to that. I have visited many of them and the work they do is invaluable. Funding is always an issue and in respect of value for money, one will not beat it anywhere, but more than that, the value they add in what they do within their communities is priceless.

### **Family Resource Centres**

5. **Deputy Sandra McLellan** asked the Minister for Children and Youth Affairs if the retention of the family resource centre national programme is an issue he believes to be of paramount importance to his Department; and if extra funding will be provided to ensure this is maintained. [35509/15]

**Deputy Sandra McLellan:** Is the retention of the family resource centre national programme an issue the Minister believes to be of paramount importance to his Department and will additional funding be provided to ensure it is maintained?

**Deputy James Reilly:** As stated previously, on its establishment on 1 January 2014, Tusla, the Child and Family Agency, took over responsibility for the family resource centre programme which was operated by the then Family Support Agency. Tusla is spending €13.09 million in 2015 in supporting 109 family resource centres nationwide, and as I stated earlier, funding has been maintained this year at 2014 levels. Tusla very much values the work of the resource centres and recognises the positive impact of their work in supporting families and local communities. Family resource centres provide an holistic service of child, family and community support as well as advocacy to children and families in their communities. I welcome Tusla's intent to improve and build on the strengths of the family resource centre programme in meeting its mandate for community-based early intervention and family support.

As the Deputy will be aware, I announced a significant increase in the funding allocation for Tusla for next year. Tusla will have available to it approximately €676 million in funding, representing an increase of €38 million over 2015. The precise level of funding to be provided for family resource centres now will be considered by Tusla in developing its business plan for 2016, which will be sent to me for consideration. Since its establishment, the Government has attached particular priority to supporting vulnerable children and families and the significant increase in funding being made available to Tusla next year represents further evidence of its delivery of this intention.

**Deputy Sandra McLellan:** I thank the Minister for his reply. While I welcome the increase in Tusla's budget, one must recognise it had been underfunded, and when one dishes out that money across all the various Departments, it does not account for an awful lot. Family resource centres are an integral hub of communities and are engaging with increasing numbers of people each month. Family resource centres provide an excellent service for vulnerable children. The average cost of dealing with a child in its services is extremely low, at approximately €2,200, and when one compares that with the prison system, it provides very good value for money. However, its core funding since 2011 has been cut by approximately 17%. How will the Minister ensure the operational funding for the family resource centre national programme is ex-

cluded from the commissioning process? How will he prioritise the reduction in child poverty in Ireland with regard to the family resource centres?

**Deputy James Reilly:** In respect of the funding for Tusla, I believe its request pertaining to unallocated cases and its business plan to deal with that was met fully. As for its overall request for funding, the agency had concerns about some incoming legislation and its possible cost, but if one reads the statement on Tusla's website, and I will paraphrase the last line because I cannot remember it precisely, it more or less acknowledges the additional resources will put Tusla on a solid footing in delivering its core services. There always is a need for more money. Tusla could always spend more money but one thing about recent years has been the decisions of the Government about various areas to ensure the recovery. It is all very well to pick a single area and one could consider health, child care, policing or education as all these areas suffered as a consequence of the recession that Members are aware was caused by the previous Government, albeit not in its entirety as there were international effects as well. This is what is at the core of the debate in the Chamber today because ultimately, if the economy is delivering the income to the Exchequer, the Government can then invest in these services in education, health and, most important from my perspective, child care and family resource centres. However, to pretend one has a bottomless pit of money or the pot was full when the Government took office when in fact it is known Ireland was bereft of any money and its international reputation was in tatters is to be a little fantastical. I do not direct those comments at Deputy McLellan.

**Deputy Joan Collins:** Choices were made over the past five years.

**Deputy Sandra McLellan:** As I pointed out, the family resource centres have had their core funding cut by 17%. I have been informed morale is at an all-time low because 60% of the agency's funding comes through fund-raising. That time spent on fund-raising would be far better spent on providing an excellent service to vulnerable children. Does the Minister agree prevention and early intervention are far better than fire-fighting in the long run? Will he agree that no business can exist without the ability to plan ahead for at least the following year and that core funding for the services needs to be ring-fenced within Tusla to enable it to do that?

**Deputy James Reilly:** Tusla engages regularly with the Family Resource Centre National Forum. Earlier this year, the forum highlighted its wish to discuss various issues, including recent changes by Tusla to structures and funding, among other matters. Tusla had a productive meeting with the forum on 7 July last in which the following items were discussed: closer local liaisons between the family resource centres and area managers; more recognition of family resource centres in Tusla's corporate plan; the classification of the family resource centre programme as a national structure supporting child and family services; family resource centre representation on local child and young person services committees; the addition of two new family resource centres to the programme; staffing and budgetary issues within the family resource centres; and the possible impact of Tusla's commissioning strategy on the family resource centres. Several other issues were discussed as well.

Tusla is in close contact with the Family Resource Centre National Forum and appreciates the work it does. I await Tusla's business plan to see how it will apportion spending this year to the centres. I agree with the Deputy that early intervention is critically important, whether it be in the area of health or child care. That is why I am keen that we invest money in the early childhood care and education, ECCE, programme and why I also welcome the planned introduction of paternity leave. The first year of a child's life is critically important in terms of bonding. Anything that interferes with that should be addressed.

## Other Questions

### School Completion Programme

6. **Deputy Maureen O'Sullivan** asked the Minister for Children and Youth Affairs if he will engage with the Department of Education and Skills regarding moving the school completion programme back to that Department; and his views that the programme is much better suited to the education portfolio rather than to that of his own Department. [35517/15]

**Deputy Maureen O'Sullivan:** This question is on the school completion programme, which is now under the remit of the Minister for Children and Youth Affairs, whereas it had always been under the remit of the Minister for Education and Skills. Has there been any discussion between the Ministers on moving it back to the Department of Education and Skills?

**Deputy James Reilly:** The school completion programme aims to improve the school attendance, participation and retention of young people who are at risk of educational disadvantage. The programme provides targeted supports to approximately 36,000 children and young people. Since 1 January 2014, Tusla, the Child and Family Agency, under the remit of my Department, has had operational responsibility for the programme. The establishment of the agency brought together the educational welfare programmes, which had previously been under the remit of the former National Educational Welfare Board, as part of a new integrated response to meet the needs of children at risk of educational disadvantage.

The establishment of Tusla, encompassing key educational welfare programmes, along with its broader focus on child and family welfare, presents an opportunity to shape more effective policy and practice that will help to address educational disadvantage. In its recently published review of the school completion programme, the Economic and Social Research Institute, ESRI, indicated the programme is a key measure to deliver policy goals to secure good education outcomes for children at risk of early school leaving.

My Department will continue to work closely with Tusla to strengthen the operation of the programme and to realise its potential for these children. My Department will also participate in the interdepartmental group which the Minister for Education and Skills proposes to establish to consider the roles of different Departments in delivering the delivering equality of opportunity in schools, DEIS, programme in a joined-up way.

Tusla, with its commitment to a whole-family approach to addressing childhood disadvantage and its statutory responsibility for key educational welfare services, has a key role to play as part of a cross-departmental effort to develop a more integrated and effective response to the issue of educational disadvantage. Given the integrated approach we are now taking, I believe the school completion programme is most appropriate to the remit of my Department and of Tusla.

**Deputy Maureen O'Sullivan:** I thank the Minister for his reply but the teachers involved with the school completion programme would not agree with his view. Early school leaving and underachievement, particularly in disadvantaged areas, are key. Everything being done to address those issues has to be supported. The school completion programme is doing that. Its success in that regard was acknowledged in the ESRI report by Professor Emer Smyth. It was also noted in the report, however, that it was a cause of concern and uncertainty that it came



under the remit of the Department of Children and Youth Affairs rather than the Department of Education and Skills.

The school completion programme is rolled out in schools with after-school clubs, holiday programmes and so forth. The teachers who roll it out are in the schools on the ground and are able to address issues as they arise. We know the problems there have been with guidance and counselling. It is the school completion teachers who have been picking that up that work. This is not a criticism of Tusla but an acknowledgement of the severe caseload the agency has. It does not make sense to give it additional work with children who, at certain points, do not need social workers but need teachers in the school completion programme.

Will the Minister consider moving it back to the Department of Education and Skills?

**Deputy James Reilly:** As I pointed out, the issue around school completion is far more complex than the school itself. It also involves parents and their influence on the children, as well as having other activities going on in the school. I have visited some of the schools involved and they have wonderful initiatives around cooking, art, sculpture and other pragmatic programmes involving hands. For those children who have given up on the reading, writing and arithmetic side of education, this entices them back with other subjects that interest them and reintroduces other educational skills. It shows that one needs arithmetic if one wants to be good at certain elements around cooking, such as adding and subtracting ingredients. Similarly, having good literacy skills is important if one is interested in woodwork. It is about understanding these additional skills are helpful to pursue the other subjects in which the children are interested. I have heard the Deputy's points before, but I believe this programme is best placed in an agency which has a remit over a much broader area than just education itself.

**Deputy Maureen O'Sullivan:** It is teachers who are responsible for rolling out the school completion programme. Teachers are under the remit of the Minister for Education and Skills. It is the view of teachers that it would be better for the programme to be back with the Department of Education and Skills where it was when it was set up in 2002 until 2014.

Teachers are in a great position to refer those children who need the programme to Tusla. We know the increasing load on the scheme completion programme in working with children in homeless accommodation, refugee children and Traveller children because the Traveller teacher numbers have also been cut. There is a logistical aspect to this. Are we creating another level of bureaucracy for schools already overloaded with bureaucracy, policies and plans by having the school completion programme under the Department of Children and Youth Affairs? Logic and reason dictate that if teachers are rolling out a programme, then it should be with the Department of Education and Skills.

**Deputy James Reilly:** Tusla is comfortable to be engaged with this programme and anxious to continue to be so. It has already taken several actions to strengthen the operation of the programme on foot of the ESRI review. There have been improvements to the annual school retention plans to focus on outcomes to be achieved for children and young people in the locality. Focused discussions have commenced with all those involved in the delivery of the programme on the review findings and how to strengthen the core functions of the programme. A new governance structure has been put in place at national level to support local projects in the development of the programme and to improve integration with the related home-school community-liaison and statutory education welfare officers. There will be new school attendance guidelines to advise schools on the practical supports needed to enable children to maximise



their participation in education.

We are in close contact with the Department of Education and Skills on this programme. We are mutually concerned with outcomes for children. We know if they stay in school they achieve higher educational outcomes. They are more employable and therefore have better prospects of higher incomes later in life. We are very much committed at all stages of a child's development to ensure we get the best outcomes for them.

### **Child and Family Agency Funding**

7. **Deputy Thomas Pringle** asked the Minister for Children and Youth Affairs the steps he will take in response to the funding pressures to child and family services, as highlighted by Tusla, the Child and Family Agency; if he will respond to the agency's need for increased funding over a period of three years to fund cases where children and families are not allocated a social worker; and if he will make a statement on the matter. [35511/15]

**Deputy Thomas Pringle:** The question relates to the need for a programme over the next three years at least to ensure that Tusla has the required funding to carry out its remit.

**Deputy James Reilly:** The Tusla 2016 Estimates business case identified a requirement of €137 million over a three-year period. This included a request for additional capital funding of €11.5 million. I was pleased to be able to allocate significant extra resources to Tusla for 2016. The overall level of funding that I have provided will significantly strengthen Tusla's base funding level and will give the agency greater capacity to respond to current risk and anticipated demand, addressing areas of currently unmet need during 2016. The 2016 gross funding allocation under budget 2016 includes an allocation of €676 million for Tusla, representing an increase of €38 million over the 2015 allocation. This includes €662.4 million in current expenditure and €13.6 million in capital expenditure.

The additional resources are intended to alleviate service pressures in child welfare and protection services, in particular pressures being faced in the areas of unallocated cases, private residential and foster care, and domestic sexual and gender-based violence strategy. In addition, my Department expects to provide supplementary funding of approximately €20.7 million to Tusla in 2015. That is in addition to the €38 million.

This level of provision addresses all of the key priorities identified by Tusla and considered to be achievable in 2016. The funding provision will give rise to a substantial recruitment programme involving up to 400 additional staff next year.

In accordance with the agency's establishing legislation, my Department will be issuing a detailed performance statement to inform the preparation of Tusla's business plan for 2016. This statement will set out the key priorities that I will require of Tusla in the coming year. I am very pleased that having asked Tusla for a detailed business case setting out the basis for seeking additional resources in 2016, I have been able to provide significant extra funding that will strengthen its funding base and secure the delivery of quality services.

**Deputy Thomas Pringle:** I thank the Minister for his response. While there has been a €38 million increase for 2016 and a Supplementary Estimate of €20 million for this year, by all accounts the three-card trick of Supplementary Estimates will not be available next year to

the Government because of the pressures under the fiscal treaty. This should not be a once-off increase in funding to make it appear that Tusla's issues were being addressed. Is this a programme that will continue over the coming years? The €38 million represents less than a third of what Tusla claims it needs just to stand still and meet its statutory requirements.

It is startling that Tusla admits it is in default of its statutory obligations, with 8,800 children without an allocated social worker. Of those, 1,730 are classified as very high priority. There is a crisis that needs to be addressed. While what is proposed for 2016 is acceptable, what is the plan for 2017 and 2018?

**Deputy James Reilly:** I remind the Deputy that many Departments have had Supplementary Estimates over the years; they are not new. What is different about this year is that we have been able to predict much earlier what that supplementary budget would be and therefore accommodated it in a much more transparent way than in other years where it came in at the last minute before Christmas. Allegations of three-card tricks do not stand up.

On the broader issue, Tusla has a three-year plan. We have met the requirement as outlined by it for 2016. It also has to gear up which is quite a challenge for it. It will need to employ a significant number of additional social workers. It is well advanced in doing that, as I said in response to an earlier question. More than 100 have been recruited with the recruitment of approximately another 100 in process. We have arranged the funding for this year's recruitment going from 218 social workers to 256 or 254 and there is funding for another 174 next year. It will need to recruit many people over the next year. While that will be a challenge, I believe it is one it will be able to meet in order to address this issue, which has been with us for a long time.

**Deputy Thomas Pringle:** While the increase in funding now is welcome, Tusla has identified a deficit of €132 million required over the next three years just basically to meet what it states are its statutory requirements. That is not to talk about early intervention programmes.

Other Deputies earlier spoke about the family resource centres. Those centres' work has the potential to prevent children coming into contact with Tusla, thereby saving money in the long run. Those are the matters it needs to address.

By all accounts, the Supplementary Estimate granted this year will not be available next year in such a way. It is a bit of fancy accounting that has made it happen this year. What are the programme and plan to allow Tusla to meet its needs and do the vital work of protecting children?

**Deputy James Reilly:** Tusla's plan will become very clear once it has submitted its business plan to me. We will consider it and it will be published. It will be very clear to every Deputy then.

I wish to reassure people that when we talk about high-priority cases, these are not children in any immediate risk. Anybody in immediate risk is looked after immediately. In other words - I have given this example previously - if a teacher is concerned about a child being abused that morning, before that child leaves school that day a social worker will be involved. We take this issue very seriously.

Where Tusla is in breach of its statutory obligations is with regard to children in care who are not considered to be at risk but do not have an allocated social worker, which is just not good enough. I and Tusla would love to be able to address all this in a year, but that is not possible.

It has outlined a very practical three-year plan to address an issue that has been with society for decades. Until Deputy Shatter raised this matter in opposition, we were not even counting the number of children who were dying in care.

### **Inter-Country Adoptions**

8. **Deputy Robert Troy** asked the Minister for Children and Youth Affairs his views on the announcement that his Department is no longer pursuing an adoption agreement with Russia; the reason for this; and if he will make a statement on the matter. [35534/15]

**Deputy Robert Troy:** Many families were left devastated recently by the Department's announcement that it is no longer pursuing an adoption agreement with Russia, despite being strung along for many years. In response to questions from me before the summer recess, the Minister said that efforts were still progressing. Why has the Minister taken the political decision not to progress this bilateral agreement further?

**Deputy James Reilly:** Work on a bilateral agreement with the Russian Federation has not ceased. It remains the aim of my Department to achieve a bilateral agreement, but I do not believe this will be possible to finalise it in the short term because of a number of difficult issues outstanding.

I recently met representatives of the Russian Irish Adoption Group. I am conscious that members of the group have adopted Russian children in the past, prior to the current arrangements, and many, very understandably, seek to adopt another child from Russia. The Russian Irish Adoption Group gave a powerful presentation of the sensitivities involved. I am of the view that it is essential to give clear, frank information about the likely timescale potentially involved in trying to secure an agreement with the Russian Federation in order to allow fully informed decision-making. I advised the group of the current position regarding a bilateral agreement and I outlined to it the issues that still remain despite our continuing efforts.

The Adoption Act 2010 provides for adoption of children into Ireland from countries that have signed and ratified the Hague Convention and from countries where a bilateral agreement on adoption is in place. The Hague Convention is a landmark in regard to inter-country adoption and provides an international architecture that prioritises the best interests of the child.

While it has signed the convention, the Russian Federation has not ratified the treaty, and this has prevented recent adoptions from Russia into Ireland. We have been trying to reach a bilateral agreement with the Russian Federation on inter-country adoption for a number of years, but significant issues remain in the way of an agreement. For example, the Irish Constitution is very clear on the integrity of the family unit and the Russian requirement for post-placement reports on adopted children poses a real difficulty in this regard. Other practical issues include the accreditation of adoption mediation agencies to facilitate inter-country adoption between Ireland and Russia, the fees to be charged by agencies for facilitating adoptions, and matters relating to re-adoption in cases in which an earlier placement has broken down. We will continue to pursue the matter and try to resolve the difficulties outstanding.

In the meantime, I will seek to progress very important improvements in Irish adoption services, including the draft legislation for adoption information and tracing, which is currently undergoing pre-legislative scrutiny by the Joint Committee on Health and Children. This is im-

portant legislation affecting all adoptions, past and future. We are also working on the adoption (amendment) Bill which incorporates amendments required to the Adoption Act 2010 arising from recent referendums, including the children's referendum. The Bill will include other important changes, including provision for step-parent adoption.

**An Ceann Comhairle:** I remind the House that we have only 14 minutes remaining in this slot and two Deputies are waiting to ask questions. I ask all Members to stick to the time allocated.

**Deputy Robert Troy:** Everyone agrees that the best interests of the child are paramount. There are still hundreds of thousands of Russian children in state care who could be adopted by an Irish family and given a second chance. We would not need a bilateral agreement but for the fact that Russia has not signed up to the Hague Convention. While I welcome the fact that the Minister is being clear and frank now, for the past four years families were given hope and led to believe that matters were progressing well. The Minister is now saying that it still is the aim of his Department to progress the issue, which is welcome, but has the Department set a target date for completion? My understanding, having spoken to representatives of the families, is that the Department received correspondence from Russia in October 2014, but that correspondence has not been responded to and nothing has happened for over 12 months.

**Deputy James Reilly:** I am very pleased that the Deputy acknowledges, as do all parents, that the best interests of the child must be paramount. Our problem is that the Russian State has not ratified the Hague Convention. If it had done so, we would not have this issue. The difficulties that are presenting as a consequence of our attempt to arrange a bilateral agreement are very complicated and affect our Constitution. That said, we will continue to work to seek to resolve them. Knowing that parents are keen to adopt, I do not want to leave people with the impression that this matter can be resolved in the shorter term. I have given a realistic timeframe in case anyone would be disadvantaged in adopting by waiting for this issue to be resolved, because that would have been grossly unfair.

**Deputy Robert Troy:** I thank the Minister. To be fair to the parents' representatives, they acknowledged that the Minister was very frank during their meeting with him. That frankness is welcome, but the Minister still has not told me his target date for completion. There are complex issues outstanding, but it is up to officials within the Department and the Adoption Authority of Ireland to work with their Russian counterparts. The Department will not be able to iron out the difficulties if it does not engage. In that context, is it true that correspondence received in the Department from Russian officials has yet to be dealt with? If this issue is still a priority, the Minister must set down a clear target date and insist that we will have this resolved in 12 months. It will not be resolved if the Department does not engage on the issue and if the Minister does not visit Russia. As I understand it, a proposed visit to Russia was cancelled in January of last year. We must up the ante, engage with the relevant people and give these families and the children of Russia hope.

**Deputy James Reilly:** I hear what the Deputy is saying. Mine is a small Department and we have a number of people who are skilled in this area who are engaged in a myriad of other tasks related to adoption. That is not to say that they are ignoring this issue, but they have the information and tracing Bill to deal with, which is currently in progress. Communication is taking place, as should be the case, but I will double check on that to make sure there is communication with the Russian Federation. The Deputy suggests setting timelines, but that is an impossibility when one is dealing with other people who have their own timelines. I am not

saying what the Russian timelines are because I do not know, but I cannot with any degree of credibility give a timeline for resolution of this issue. We need the agreement of the Russian Federation before we can make any commitment in that regard.

### **School Completion Programme**

9. **Deputy David Stanton** asked the Minister for Children and Youth Affairs further to Parliamentary Question No. 34 of 8 July 2015, if the Economic and Social Research Institute review of the School Completion Programme has concluded; if he plans to publish the report; the changes he plans to make to the Programme, as a result of the report's findings; and if he will make a statement on the matter. [36214/15]

**Deputy David Stanton:** This question relates to the ESRI's recent review of the school completion programme. I know a question was asked about this earlier, but unfortunately I missed the response because I was attending a committee meeting. I understand that the review has now been published. What actions have been initiated by Tusla? The agency has advised that it has initiated a set of actions on foot of this review to address its findings. I also ask the Minister to give an undertaking with respect to the funding for the programme and to outline its effectiveness.

**Deputy James Reilly:** I thank Deputy Stanton for his question. Since he tabled the question, the ESRI has published the report on its website. It presents the findings of an examination of the operation of the school completion programme and makes recommendations for the future operation of the programme. The review is now being considered by my Department, and a range of actions have already been taken by the Child and Family Agency, Tusla, aimed at strengthening the operation of the programme. Improvements have been introduced in the annual school retention plans so that there is a stronger focus on the outcomes to be achieved for children and young people in the locality. Focused discussions have commenced with all those involved in the delivery of the programme on the review findings and how to strengthen the core functions of the programme. In addition, a new governance structure is being put in place at national level to support local projects in the development of the programme and to improve integration with the related home-school community liaison and the educational welfare officers.

My Department will work closely with the agency to draw together the output from the ESRI review along with the perspectives of stakeholders, including the children and families who participate in the programme, to improve its effectiveness in responding to the needs of children at risk of educational disadvantage.

**Deputy David Stanton:** I thank the Minister for his response. Perhaps the Minister does not have the statistics to hand this morning, but I would appreciate if he could let me know how effective the programme is in achieving its school retention objectives. What are the Department's plans with regard to the recommendation to review cluster boundaries in line with the review of DEIS and to encourage principals to treat the programme as an integral part of DEIS planning? How does the Minister intend to improve reporting mechanisms for the programme, as recommended by the ESRI?

**Deputy James Reilly:** In overall terms, the ESRI report indicates that this programme is perceived as being extremely valuable by those who operate it. The programme has added



value in terms of being successful in retaining young people in education. I have already pointed to some of the actions to be taken on foot of the review. Improvements will be made to the annual school retention plans to focus on the outcomes to be achieved for children and young people in the locality. Focused discussions have commenced with all those involved in the delivery of the programme on the review findings and how to strengthen the core functions of the programme. A new governance structure is being put in place and new school attendance guidelines will be drawn up to advise schools on the practical supports needed to enable children to maximise their participation in education. In line with the Department's recently published national strategy on children and young people's participation in decision-making, it is important that children at risk of educational disadvantage and their families are consulted in order that their perspective is heard on the supports available and the way in which these can be enhanced. This is critical to the success of the programme as those who have completed it know best how it can be improved. For this reason, they must be listened to. A number of other issues are also covered.

The establishment of Tusla with its educational welfare programmes, alongside its broader focus on child and family welfare, presents an opportunity to shape more effective policy and practice to address educational disadvantage.

**Deputy David Stanton:** I thank the Minister for his response, on which I have three brief questions. Does he agree that flexibility is needed in resource allocation for the various projects or clusters? Will he indicate the scope of the review of existing provision for younger students given the importance of early years intervention? Will he commit to maintaining or perhaps increasing funding for this important programme?

**Deputy James Reilly:** Obviously, we want flexibility as different things work in different areas, not only in educational disadvantage but many other areas of Government policy. What will work in Dún Laoghaire-Rathdown will not necessarily work in Lusk and certainly will not work in Leitir Móir, County Galway. For this reason, flexibility is required and will be part of the future programme. I apologise as I did not hear the Deputy's second question. He referred to the scope of something.

**Deputy David Stanton:** I asked about the review of existing provision for younger students which was recommended given the importance of early years intervention. Younger students are part of early years intervention at that level. I also asked a question about funding.

**Deputy James Reilly:** I will revert to the Deputy on his question concerning a review. On funding, I made my commitment to the school completion programme very clear last year when we protected the funding available for it. All Departments are continually asked to ring-fence funding for one programme or another. However, ring-fencing funds reduces the scope for other areas of activity which may be just as important. While I attach great importance to the school completion programme, I will shy away from making any commitments until I see Tusla's business plan. The school completion programme is critical because it is very difficult for children who have fallen out of the educational system to take advantage of education later in life. As a result, they lose years in terms of being able to progress, making themselves more employable and enjoying better opportunities in life, which is what we want.



## National Carers Strategy

10. **Deputy Terence Flanagan** asked the Minister for Children and Youth Affairs his assessment of the level of support that is currently available to young carers; and if he will make a statement on the matter. [35325/15]

**An Ceann Comhairle:** If Deputy Flanagan does not mind, we will proceed directly to the reply because there are only two minutes remaining. The Deputy will have an opportunity to ask a supplementary question.

**Deputy James Reilly:** The national carers strategy is led by the Department of Health. Many Departments, including my Department, have a role to play in its implementation. Better Outcomes, Brighter Futures, the national policy framework for children and young people for 2014 to 2020, was launched in April 2014. One of the key policy priorities under outcome 5 - connected, respected and contributing to their world - is to ensure positive networks of family, friends and communities. Children and young people may experience difficulties maintaining friendships, education and employment due to the need for them to take on caring responsibilities within their families. This was recognised in the national youth strategy, which I launched on 8 October 2015 for all young people aged between ten and 24 years. I am pleased that representatives of the Carers Association participated in the consultation process in the development of this strategy.

The Child and Family Agency Act 2013 brings together a range of existing services for children and families in one agency. Tusla's functions include maintaining and developing services to support and promote the development, welfare and protection of children and support effective functioning of families. Tusla's child protection and welfare practice handbook provides guidance to social workers in working with young carers.

In terms of developing referral pathways to supports, the Meitheal methodology for early identification of need is a valuable aid. Tusla is working with the HSE to implement its actions under the national carers strategy implementation plan.

In addition, Tusla's educational welfare service has completed national guidelines as a practical support for schools in the preparation of school attendance strategies. The guidelines will assist schools to implement effective measures to support children at risk of poor attendance and participation, including those with caring responsibilities. They are being published and it is intended that they will be circulated to schools very shortly.

To learn more about children who undertake caring roles, my Department requested the Central Statistics Office to help to identify the extent to which children have caring responsibilities. Under the national strategy for research and data on children's lives, analysis of figures in the 2011 census will help to inform future policy as to how best to address the support needs of children and young people who undertake caring roles. This analysis will be published in early 2016.

**An Ceann Comhairle:** I ask Deputy Terence Flanagan to put all supplementary questions now.

**Deputy Terence Flanagan:** I thank the Minister for his response. According to the census, 8,500 vulnerable children are dealing with caring responsibilities while attending school. What plans are in place to increase supports to this group of children, especially those who are highly

vulnerable? How does Ireland compare with other jurisdictions regarding supports?

The Minister referred to the Children and Family Agency's national guidelines which will be published shortly in respect of the 2015-16 academic year. Will they be published before Christmas?

The Minister met representatives of the Carers Association in 2014. Does he have plans to meet the association again to discuss this specific issue?

I welcome the changes made in the recent budget to help and support carers generally. However, as the Minister will no doubt agree, carers, especially vulnerable young carers, require greater attention.

**Deputy James Reilly:** For the purposes of clarity, the analysis will be published in early 2016 and, as such, not before Christmas. I reiterate that the national carers strategy is led by the Department of Health, although my Department has a role in it, as it does in many different Departments. The issue of supports is one that would be more appropriate to the Department of Health.

*Written Answers follow Adjournment.*

#### **Assisted Decision-Making (Capacity) Bill 2013: Order for Report Stage**

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** I move: "That Report Stage be taken now."

Question put and agreed to.

#### **Assisted Decision-Making (Capacity) Bill 2013: Report Stage**

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 1, 5, 81 to 87, inclusive, 121 and 148 form a composite proposal and may be discussed together by agreement.

**Minister of State at the Department of Justice and Equality (Deputy Kathleen Lynch):** I move amendment No. 1:

In page 9, lines 13 to 16, to delete all words from and including "to" in line 13 down to and including "persons;" in line 16.

The amendments in this group propose the deletion from the Bill of the informal decision-making provisions about which Deputy Mac Lochlainn expressed concerns. Amendment No. 1 arises from amendments Nos. 81 and 84 which delete Part 8 which provides for informal decision-making. Amendment No. 1 removes reference to informal decision-making from the Long Title. Amendment No. 5 is consequential and arises from amendments Nos. 81 and 84. It removes references to informal decision-making from the definition of "intervention" in section 2.

Amendments Nos. 81 and 84 propose the removal of the provisions on informal decision-making. I proposed a series of amendments on Committee Stage which were intended to

strengthen the safeguards governing informal decision-making and to limit the circumstances in which decisions could be made formally. However, concerns were raised during the committee's deliberations which pointed to the continuing risk posed by these provisions. Following careful consideration by the Department of Justice and Equality, the Department of Health and the Office of the Attorney General, it is considered prudent to remove these provisions entirely from the Bill. Their original purpose was to protect health care workers from liability for health care related actions taken on behalf of a person lacking capacity. I have been advised that the existing provisions on civil liberty, including those which protect good samaritans, are sufficient for this purpose and that sections 61 and 62 can be removed safely from the Bill. As my amendments respond to Deputy Mac Lochlainn's concerns, I ask him not to press amendments Nos. 82, 83 and 85 to 87, inclusive. Amendment No. 121 is intended to remove a reference which is obsolete if amendments Nos. 81 and 82, which propose the abolition of informal decision-making, are accepted. If informal decision-making is removed from the Bill, it will no longer be necessary for a code of practice to be prepared to guide persons making decisions on an informal basis. Amendment No. 148 is a consequential amendment arising from amendments Nos. 81 and 82 which propose to remove sections 61 and 62 on informal decision-making. If the amendments are agreed, the provisions on offences in section 127 do not need to provide for offences by informal decision-makers.

**Deputy Pádraig Mac Lochlainn:** This is a welcome initiative by the Minister of State and appears to address one of the key concerns we had and in respect of which I resubmitted amendments. While I think the Minister of State has addressed the concerns, I will reflect on the wording and intent of the amendments notwithstanding that I will be mindful to withdraw them when we come to them later. There are some concerns and, in fairness to her, the Minister of State continues to engage with a number of NGOs around them. I will revisit those later as we go through the amendments. I appreciate that the Minister of State has submitted a substantial number of amendments on Committee and Report Stages and is clearly engaging with the concerns people have. That said, concerns remain. The Bill will also go through the Seanad and I ask that the Minister of State consider again in the Seanad whatever emerges on Report Stage here. I welcome the Minister of State's assessment this morning and will have a look at it as I engage with the process this morning.

**Deputy Kathleen Lynch:** We have been working on the Bill for a considerable time and have been listening very intently to the Opposition and NGOs. The Office of the Attorney General has been centrally involved also. This addresses the issue and it was a point well made. I understand that it is difficult to get back into the swing of the debate around this complex area. That is why we have to get it right. Sometimes, it is only when one meets the obstacle in an area as complex as this that one realises that it actually exists. I appreciate as does the Deputy that we have addressed that concern.

**Deputy Colm Keaveney:** It is important to have the debate and to use our parliamentary time to address any of the confusion that exists. This is a very complex area, as the Minister of State has said, and it is important that we wholesomely engage. Clearly, there is confusion in the process when one has Government backbenchers seeking to amend the Bill. The spirit in which we want to see the Bill progress is shared and the Minister of State should not leave here today having left a doubt that this is a component of us fulfilling an incremental target in respect of the UN convention for people with disabilities. That is what we are trying to do. For some people it is as clear as mud while for others it is complex. As such, we should use parliamentary time, "*parler*" being French for talking it out. We need to talk this out so that we are

clear for everybody about the spirit of the legislation and, if need be, the Minister of State must be open in the Seanad where aspects of the Bill are found not to fulfil the spirit in which she set out. I do not dispute that the Minister of State does that here today. Indeed, I have the highest expectation that she will do everything possible to ensure the legislation supports and is in the interests of the people who have grave concerns in this area.

**Deputy Kathleen Lynch:** I accept fully everything that has been said. Those who have an interest have a very deep and committed interest in the area. Given that the Deputies opposite have engaged with people who have a particular interest in the area, they will know that those people want the Bill passed quickly. We must keep that in mind. We must also make it very clear that this is not just about people with disabilities. It is about each and every one of us as we age and about people who acquire a brain injury or develop dementia. It is about those who lack capacity in certain other areas. As such, it is about each and every one of us. I would not like the Bill to be pigeon-holed as an issue for people with disabilities. That is not what it is. It is comprehensive legislation which will affect each and every one of us. I assume the signing and ratification of the convention is very important, but far more important is us getting our legislation right.

**Deputy Pádraig Mac Lochlainn:** The key issue NGOs and the Centre for Disability Law and Policy at NUIG have raised is that the legislation must comply with the Convention on the Rights of Persons with Disabilities. That is the key concern they have and, obviously, it is an important one. I ask that the Minister of State continues to engage with these civil society partners who work at the frontline. In fairness to the Minister of State, I acknowledge that she very much respects that. It is notable that on Committee and Report Stages, there have been significant numbers of amendments from the Minister of State and, as such, the legislation is a work in progress. The Minister of State is right that we need to get the Bill over the line now. I would like to see that happen too. Before we go to the Seanad, I ask the Minister of State to engage to ensure that the NGOs and the centre at NUIG are satisfied that the legislation complies with the UN convention. If they are, I would be very much satisfied from an Opposition perspective. I acknowledge the progress that has been made and hope we can make the legislation as strong as possible by the time it comes through the Seanad.

**Deputy Kathleen Lynch:** The considerable number of amendments are the result of having listened to and spoken not only to NUIG but with everyone else too. What I was hearing up to yesterday was that this was never going to happen. It is important that it does. I could talk for Ireland on this issue as could everyone else, but we are at the point now where we need to do the business.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 2 in the name of the Minister of State arises out of Committee Stage proceedings. Amendments Nos. 2, 3, 8, 21, 22, 24, 37, 44 to 50, inclusive, 60, 62, 88, 129 and 134 to 140, inclusive, are related drafting amendments, amendments Nos. 60 and 62 form a composite proposal and the amendments will be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 2:

In page 10, between lines 32 and 33, to insert the following:

“ “child” includes a step-child;”.

*11 o'clock*

The purpose of these amendments is to clarify the intent of certain provisions, simplify text and provide additional definitions where required. Amendments Nos. 2, 3 and 8 insert additional definitions in section 2. Amendments Nos. 21, 22 and 24 amend section 13 and are technical in nature. Section 13, which defines the primary terms referred to in Part 4, has been tidied. Unnecessary text and definitions have been removed and the definition of “authenticated” has been moved from section 19 to section 13.

Amendment No. 37 amends section 21 to clarify that the director must keep a record of any body or person that receives an authenticated copy of a part of a co-decision making agreement as well as those who receive a copy of the full agreement.

Amendments Nos. 44 to 50, inclusive, are technical amendments to section 27, which provides for the Minister to make regulations in respect of co-decision making agreements. The amendments insert the relevant section references into the various paragraphs in subsection (1) and section 27.

Amendment No. 60 is a technical amendment to clarify that the person appointed as a decision-making representative must be suitable for the role, which was an issue raised on Committee Stage. It inserts the word “suitable” in section 32(2)(b), thus making section 33(1) redundant. Accordingly, amendment No. 62 proposes the deletion of section 33(1).

Amendment No. 88 is a technical amendment to section 63. It tightens the text and clarifies the intent of the provision.

Amendments Nos. 129 and 134 are technical amendments to make clearer the intent of the provisions concerning the Hague Convention on the International Protection of Adults. The first amendment removes an unnecessary provision while the second clarifies that the person to whom section 101(2) applies is the donor of an enduring power. Amendments Nos. 135, 137 and 138 are intended to clarify that the references are to convention countries other than the Irish State. Amendments Nos. 136 and 139 are intended to clarify for us all that the references to “Article 33” are to Article 33 of the convention. Amendment No. 140 is intended to clarify the references to a central authority or similar competent authority in another country that is a party to the convention. No substantive changes are intended as a result of these amendments.

**Deputy Colm Keaveney:** It is clear that the Minister of State has listened during this process, given the scale of the amendments. The spirit of what we are trying to achieve concerns the interests of the people. The Minister of State mentioned that this Bill is not strictly about the perception of a sector within the mental health field. That is well noted.

We will support this legislation as best we can where possible. No legislation is perfect. Any legislator who believes that he or she can walk out of this Chamber having enacted perfect legislation is fooling himself or herself. We need to accelerate this aspect of our work as quickly as possible. The Bill will act as a point of reference for us. If it is not perfect, we can fix the imperfections later. That is what legislating involves.

I support the Minister of State’s comments in the context of the amendments. We should accelerate to the next Stage as quickly as possible in the same spirit in which we are engaging today.



Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 3:

In page 11, between lines 7 and 8, to insert the following:

“ “debt settlement arrangement” has the meaning assigned to it by section 2 of the Personal Insolvency Act 2012;”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 4 arises out of committee proceedings. Amendments Nos. 4, 9 to 12, inclusive, 14, 15, 17, 23, 25, 34 to 36, inclusive, 43, 56, 65, 70, 73, 110, 111, 113, 115, 120, 130 to 133, inclusive, and 147 are related drafting amendments and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 4:

In page 11, line 15, to delete “representative” and substitute “representation”.

The purpose of these amendments is to correct typographical errors and remove superfluous text. Amendments Nos. 4 and 9 correct typographical errors. Amendment No. 10 deletes paragraph (l) in the definition of “property and affairs” in section 2. That paragraph makes the definition overtly broad, widening it to include other matters relating to the relevant person’s property and affairs. The definition should be as precise as possible. This is a safeguard to avoid a person using a catch-all provision to take control of the property of a person with capacity decisions that goes beyond the authority vested in him or her.

Amendments Nos. 11, 12, 14, 15, 17, 23 and 34 remove superfluous text. Amendment No. 25 removes the superfluous definition of “register” from section 13, as section 21 already provides that definition in Part 4.

Amendments Nos. 35 and 36 are technical amendments to section 21. They refine the language in the section in order to clarify the intention of the provision.

Amendment No. 43 is a technical amendment to section 27, refining the section’s language in order to clarify the intention of the provision. We must keep in mind those for whom this legislation is intended.

Amendments Nos. 56, 65, 115 and 120 are technical amendments to correct typographical errors.

Amendment No. 70 is intended to remove the possibility for a court to vary or discharge a co-decision making order. As a co-decision making agreement is made directly between the relevant person and the co-decision maker, the decision to vary or discharge the agreement is a matter for them subject to the safeguards set out in Part 4.

Amendment No. 73 removes superfluous text from section 43(4).

Amendment No. 110 is intended to clarify that the director may consult with any person who has functions in respect of the care or treatment of a relevant person when the director is carrying out any of his or her functions rather than simply his or her function under section 76. The amendment would enable the director to consult a person when carrying out investigations,



for example.

Amendment No. 111 proposes to delete the phrase “to the office”, as it is not necessary for the meaning of the provision. The amendments agreed on Committee Stage provide that the Circuit Court may have jurisdiction as well as the High Court, where appropriate, in proceedings concerning cases arising under the Hague Convention.

Amendments Nos. 130 to 133, inclusive, are technical in nature and reflect that more than one court may exercise functions under these provisions. No change of substance is envisaged by these amendments.

Amendment No. 147 is a technical amendment to insert more correctly the proposed amendment into the Courts (Supplemental Provisions) Act 1961.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 5:

In page 12, to delete lines 2 and 3 and substitute “attorney or designated healthcare representative,”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 6 arises out of committee proceedings. Amendment No. 6 is consequential on amendment No. 7, so these may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 6:

In page 12, line 5, to delete “general visitor,” and substitute “general visitor, or”.

Amendments Nos. 6 and 7 remove references to “wards” and “wardship” from the definition of “intervention”.

Wardship is regulated by the President of the High Court and the Lunacy Regulation (Ireland) Act 1871. It is not possible or appropriate that the committee of a ward would be subject to the provisions of the Bill. The Bill provides for the phasing out of adult wardship and committees and all new interveners will have to abide by the provisions of the Bill.

**Deputy Colm Keaveney:** I welcome the amendment. We agree with the spirit of what the Minister of State is trying to achieve. We have come from an evolving society in which many dark things happened historically. I welcome the amendment of the cold language in many parts of the historical legislation. I welcome the technical amendments, the humanisation of the legislation and the removal of cold language that has dominated many aspects of our institutional history, be it in respect of mother and baby homes or other institutions. We must break down the barrier and humanise the provisions to acknowledge that the institutions are home to real citizens or real people. I welcome the fact that we have ruthlessly amended the legislation. I acknowledge the Minister of State’s commitment in that regard.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 7:

In page 12, lines 6 to 8, to delete all words from and including “professional, or” in line 6 down to and including line 8 and substitute “professional;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 8:

In page 12, between lines 26 and 27, to insert the following:

“ “personal insolvency arrangement” has the meaning assigned to it by section 2 of the Personal Insolvency Act 2012;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 9:

In page 13, line 17, to delete “decision-making representative,” and substitute “decision-making representative”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 10:

In page 13, to delete line 24.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 11:

In page 13, lines 34 and 35, to delete “as a decision on which that decision-making assistant may assist the appointer”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 12:

In page 13, lines 39 and 40, to delete “as a decision to be made jointly by the appointer and the co-decision-maker”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 13 and 16 are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 13:

In page 13, after line 40, to insert the following:

“(c) in relation to a decision made, or to be made, by a court on behalf of a relevant person, means a decision on a matter the subject of the decision-making order and which falls within the scope of that order;”.

Amendment No. 13 inserts a new paragraph in the definition of “relevant decision” to include decisions made by the court on behalf of the relevant person. This was omitted in error from the Bill as published.

Amendment No. 16 substitutes amended text into the definition of “relevant decision”. The amended text clarifies that a relevant decision includes decisions made under an advanced health care directive irrespective of whether there is a designated health care representative.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 14:

In page 14, lines 4 and 5, to delete “as a decision to be made by the decision-making representative on behalf of the relevant person”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 15:

In page 14, line 9, to delete “as a decision to be made by the attorney on behalf of the relevant person”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 16:

In page 14, to delete lines 11 to 14 and substitute the following:

“(e) in relation to a decision made, or to be made, under an advance healthcare directive (and whether or not there is a designated healthcare representative under the directive), means a decision which falls within the scope of that directive;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 17:

In page 14, lines 19 to 21, to delete all words from and including “and” in line 19 down to and including line 21.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 18, 19, 57, 59, 61, 64, 74, 75, 103, 104, 114, 116, and 122 to 125, inclusive, are related technical amendments and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 18:

In page 14, line 36, to delete “*section 32(3)*” and substitute “*section 32(4)*”.

Amendments Nos. 18, 19, 57, 59, 64, 74, 75, 103, 104, 114, and 122 to 125, inclusive, are technical amendments to correct incorrect cross-references. Amendment No. 18 is a technical amendment to correct an incorrect cross-reference. Amendment No. 19 is a technical amendment to correct an incorrect cross-reference. The reference to section 110 was carried over in error from the amendment on Committee Stage to the Bill, as initiated. Section 110 referred to the Lunacy Regulation (Ireland) Act 1871, which is now proposed to be repealed.

Amendment No. 61 is a technical amendment to clarify that the provisions of section 82 as a whole apply to this provision. Section 82 provides for the director to maintain panels of

decision-making representatives, special visitors, general visitors and court friends. This is in the spirit of the Bill more than anything else. Amendment No. 116 is a technical amendment to correct an incorrect cross-reference and to make the intent of the provision clearer.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 19:

In page 16, line 9, to delete “, 70(2) and 110” and substitute “and 70(2)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 20:

In page 16, to delete lines 26 to 31 and substitute the following:

“(3) Notwithstanding any other provision of this Act—

(a) any decision regarding the donation of an organ from a living donor shall, where the donor is a relevant person who lacks capacity, be determined by the High Court, and

(b) where an application in connection with the withdrawal of life-sustaining treatment from a relevant person who lacks capacity comes before the courts for adjudication, that application shall be heard by the High Court.

(4) Nothing in this Act shall be construed as authorising any person to give consent for a non-therapeutic sterilisation procedure to be carried out on a person who lacks capacity.”.

Amendment No. 20 has been proposed to clarify more precisely the Bill’s intention with regard to organ donation and the withdrawal of life-sustaining treatment and non-therapeutic sterilisation.

On the issue of organ donation, the existing provision is that the High Court would have jurisdiction in every matter concerning organ donation. The proposed amendment clarifies that the decision on the donation of organs from living donors who lack capacity will have to be determined by the High Court. The jurisdiction will remain that of the High Court, which reflects the seriousness of decisions that might need to be taken on this issue. The proposed amendment relates only to organ donation from living donors and will not have any impact on current or planned policies of the Department of Health on cadaveric organ donations.

An amendment is necessary to the Bill’s provisions with regard to the withdrawal of life-sustaining treatment. Medical personnel have alerted us to the risk that the provision as currently drafted would cut across existing clinical practice and would make it impossible for clinicians to take the decisions they take every day to determine when treatment should cease, for example, where further treatment would be considered futile or would create unnecessary suffering for the patient at the end of life. The provisions as drafted would require hospitals to have recourse daily to the courts to decide when life-sustaining treatment might be withdrawn from patients in terminal cases. This would create circumstances of great trauma for families at a time when a loved one is at the end of life. The amendment I propose is intended to rectify the situation where an application is made to the courts in the context of the dispute or where legal

clarity is required on a decision to withdraw life-sustaining treatment. This application will be reserved to the High Court. Reserving such cases to the High Court reflects the seriousness of such decisions where they have to be determined by the courts. This means that if a family member disagrees with a clinical decision, she or he will have the option to apply to the High Court for a determination on the matter. Similarly, if a hospital is unclear as to the decision that needs to be taken, it can apply to the High Court for adjudication.

On the issue of non-therapeutic sterilisation, my amendment seeks to strengthen the legislative protection in this area. The amendment would bring the Bill into compliance with a series of international human rights conventions that reject forced sterilisation of a person without his or her consent. Forced sterilisation of girls or women with disabilities is a breach of Article 10 of the International Covenant on Economic, Social and Cultural Rights. The Committee on the Rights of the Child has identified forced sterilisation of girls with disabilities as a form of violence, while the Committee on the Elimination of Discrimination against Women regards forced sterilisation of women as contrary to the woman's right to informed consent. Similarly, Article 23(1)(c) of the UN Convention on the Rights of Persons with Disabilities requires state parties to ensure persons with disabilities retain their fertility on an equal basis with others. The amendment, therefore, would strengthen the legislative protection for persons with capacity difficulties by preventing anyone from using the Bill as authorisation to take a decision on the non-therapeutic sterilisation of a person lacking capacity. The effect of the amendment would be to reinforce the right to bodily integrity of a person with capacity difficulties. I consider this amendment to be a significant step forward in protecting persons with capacity difficulties against non-therapeutic sterilisation.

**Deputy Colm Keaveney:** I agree with the Minister of State that this is a significant amendment and we will support it. I would anticipate that there is nowhere in this legislation that the Minister of State would expressly provide for the effecting of consent around marriage, civil partnership, civil relationships, placing children for adoption, any sexual relations, or voting on election days. We had the Electoral (Amendment) Bill for people who had visual disability. We hope and anticipate that over the course of the next week we will see some movement on that, in that the Electoral (Amendment) (No. 2) Bill is scheduled to be discussed either this week or next week; I stand to be corrected on that.

We welcome and support the amendment. The Minister's language shows us how barbaric our past was in this respect. I would say to people who have concerns about the legislation that although it may not be perfect, it is a giant step away from where we have been in our past in terms of our dark history, so it is important that we progress the legislation in its entirety. In particular, I welcome the fact that the Minister has made a significant step in helping to close a dark chapter around language, which could only indicate a darkness around actions. It is important that we progress the Bill and fundamentally support the spirit in which the Minister has amended the legislation.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 21:

In page 23, between lines 16 and 17, to insert the following:

““authenticated”, in relation to a co-decision-making agreement which is registered, means bearing the signature of the Director, the date on which his or her signature was

applied and the date of registration of the co-decision-making agreement;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 22:

In page 23, between lines 20 and 21, to insert the following:

“ “co-decision-maker appointer” means a person who appoints a co-decision-maker under *section 14*;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 23:

In page 23, line 22, to delete “as such agreement is in force from time to time”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 24:

In page 23, to delete lines 23 to 26.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 25:

In page 23, to delete lines 27 and 28.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 26:

In page 23, to delete lines 31 to 37, to delete page 24, and in page 25, to delete lines 1 to 9 and substitute the following:

“**14.** (1) Subject to the provisions of this section, a person who has attained the age of 18 years and who considers that his or her capacity is in question or may shortly be in question may appoint a suitable person who has also attained that age to jointly make with the first-mentioned person one or more than one decision on the first-mentioned person’s personal welfare or property and affairs, or both, in compliance with this Part and regulations made under *section 27*.

(2) A person is suitable for appointment as a co-decision-maker if he or she—

(a) is a relative or friend of the appointer who has had such personal contact with the appointer over such period of time that a relationship of trust exists between them, and

(b) is capable of effectively performing the functions under *section 16*.

(3) An appointment as a co-decision-maker shall be made in writing in a co-decision-making agreement that is in compliance with this section and regulations made under *section 27*.



(4) Notwithstanding the definition of “property and affairs” in *section 2* an appointer shall not include in a co-decision-making agreement provision for the disposal of his or her property by way of gift.

(5) A co-decision-making agreement shall contain the following:

(a) the name, date of birth and contact details of the appointer;

(b) subject to *subsection (6)*, the signature of the appointer and the date that he or she signed the agreement;

(c) the name, date of birth and contact details of the co-decision-maker;

(d) the signature of the co-decision-maker and the date that he or she signed the agreement;

(e) the signatures of the 2 witnesses referred to in *subsection (7)*.

(6) A co-decision-making agreement may be signed on behalf of the appointer by a person who has attained the age of 18 years and who is not the co-decision-maker or one of the witnesses referred to in *subsection (7)* if—

(a) the appointer is unable to sign the agreement,

(b) the appointer is present and directs that the agreement be signed on his or her behalf by that person, and

(c) the signature of the person is witnessed in accordance with *subsection (7)*.

(7) (a) The appointer, or the person signing on his or her behalf in accordance with *subsection (6)*, and the co-decision-maker shall sign the co-decision-making agreement in the presence of each other and in the presence of 2 witnesses—

(i) each of whom has attained the age of 18 years,

(ii) of whom at least one is not an immediate family member of the appointer or the co-decision-maker, and

(iii) neither of whom is an employee of or agent of the co-decision-maker.

(b) Each of the witnesses referred to in *paragraph (a)* shall witness the signature of the appointer (or the person signing on his or her behalf) and the signature of the co-decision-maker by applying his or her own signature to the co-decision-making agreement.

(8) An appointer may appoint more than one person as a co-decision-maker but may not—

(a) appoint in the same co-decision-making agreement more than one person as a co-decision-maker, or

(b) appoint in a co-decision-making agreement a co-decision-maker in respect of a relevant decision which is the subject of another co-decision-making agreement.

(9) The Director shall, on a request being made of him or her by a person who intends

to appoint a co-decision-maker or a person who is proposed as a co-decision-maker, or both, provide information to the person requesting with regard to making and entering into the co-decision-making agreement.

(10) In this section, “immediate family member” means—

- (a) a spouse, civil partner, or cohabitant,
- (b) a child, step-child, son-in-law or daughter-in-law,
- (c) a parent, step-parent, mother-in-law or father-in-law,
- (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
- (e) a grandparent or grandchild,
- (f) an aunt or uncle, or
- (g) a nephew or niece of the relevant person.”.

Amendment No. 26 is one of a number of proposed amendments, mainly technical in nature, to the co-decision-making provisions of the Bill. Substantial amendments were agreed to on the provisions of co-decision-making on Committee Stage in the Dáil. However, further review of the co-decision-making provisions indicated that additional amendments are needed to clarify the intent of the policy and to provide further safeguards regarding co-decision-making appointers. The majority of the amendments are technical in nature and have no policy implications. The technical amendments were advised by the drafter to provide clarity and coherence within the Bill. Where several amendments are being proposed to a section, whether on technical or policy grounds, it was decided substitute the entire section in order to provide a clear picture of how the section would read with all amendments included.

Amendment No. 26 proposes to delete the current section 14 and replace it with amended text. The majority of the proposed amendments to the text of section 14 are technical in nature. The main substantive proposed amendments to the text are as follows: the provisions in regard to the interaction of the various other instruments, such as enduring powers of attorney, with co-decision-making agreements have been removed and will be moved to the new nullity section, as provided for by amendment No. 29; subsection 8 has been amended in order to clarify that, although a person may appoint multiple co-decision-makers in regard to different relevant decisions, he or she may only appoint one co-decision-maker per agreement, which is reasonable and rational; and the provisions regarding the witnessing of a co-decision-making agreement have been tightened. A further safeguard has been inserted that provides that an employee or agent of the co-decision-maker may not be a witness to a co-decision-making agreement. The Bill already provides that at least one of the witnesses is not an immediate family member of the appointer or the co-decision-maker. For clarity, I propose to insert a definition of “immediate family member” to include a spouse, civil partner, cohabitant, child, stepchild, parent, step-parent, grandparent, aunt, uncle, nephew, niece or immediate in-law of the appointer or co-decision-maker. Amendment No. 93 will insert the same definition into section 65 of the Bill in regard to the witnessing of an advance health care directive. This amendment to the definition of “immediate family member” is to provide an additional safeguard so that an independent person must be involved as a witness. This is to reduce the risk of a relevant person being pushed by family members into a co-decision-making agreement against his or her wishes.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 27:

In page 25, to delete lines 10 to 41, and in page 26, to delete lines 1 to 31 and substitute the following:

**“Persons who are not eligible to be co-decision-makers**

**15.** (1) Subject to *subsection (2)*, a person shall not be eligible for appointment as a co-decision-maker if he or she—

(a) has been convicted of an offence in relation to the person or property of the person who intends to appoint a co-decision-maker, or the person or property of a child of that person,

(b) has been the subject of a safety or barring order in relation to the person who intends to appoint a co-decision-maker or a child of that person,

(c) is an undischarged bankrupt or currently in a debt settlement arrangement or personal insolvency arrangement or has been convicted of an offence involving fraud or dishonesty,

(d) is a person in respect of whom a declaration under section 819 of the Act of 2014 has been made or is deemed to be subject to such a declaration by virtue of Chapter 5 of Part 14 of that Act,

(e) is a person who is subject or is deemed to be subject to a disqualification order, within the meaning of Chapter 4 of Part 14 of the Act of 2014, by virtue of that Chapter or any other provisions of that Act,

(f) is the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, in which the person who intends to appoint a co-decision-maker resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the person who intends to appoint a co-decision-maker,

(g) has been convicted of an offence under *section 127*, or

(h) previously acted as co-decision-maker for the person who intends to appoint a co-decision-maker and there was a finding by the court that he or she should no longer act as co-decision-maker for that person.

(2) *Paragraphs (1)(c), (d) and (e) shall not apply where the co-decision-making agreement contains only relevant decisions concerning personal welfare.”.*

Amendment No. 27 proposes to delete the current section 15 and replace it with amended text. The amendments to the text are technical in nature and bring clarity to the section. They provide for a change of title to the section to “Persons who are not eligible to be co-decision-makers” and the removal of subsections 2, 3 and 4, which deal with circumstances subsequent to the appointment of the co-decision-maker and the validity of the agreement. The provisions

in subsections 2, 3 and 4 are to be moved to a new section 17 entitled “Nullity,” which pulls together all the provisions relating to the invalidation of a co-decision-making agreement.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 28:

In page 26, to delete lines 33 to 40, and in page 27, to delete lines 1 to 33 and substitute the following:

“16. (1) A co-decision-maker shall advise the appointer as regards matters the subject of, or to be the subject of, relevant decisions, and shall share with the appointer the authority to make relevant decisions and may do all things necessary to give effect to the authority vested in him or her.

(2) In exercising his or her functions, a co-decision-maker shall—

(a) advise the appointer by explaining relevant information and considerations relating to a relevant decision,

(b) ascertain the will and preferences of the appointer on a matter the subject of, or to be the subject of, a relevant decision and assist the appointer with communicating them,

(c) assist the appointer to obtain any information or personal records (in this section referred to as “relevant information”) that the appointer is entitled to and that are required to assist in the making of a relevant decision,

(d) assist the appointer to make a relevant decision and to express that decision,

(e) make a relevant decision jointly with the appointer, and

(f) make reasonable efforts to ensure that a relevant decision is implemented as far as practicable.

(3) A co-decision-maker shall not—

(a) attempt to obtain information that is not reasonably required for making a relevant decision, or

(b) use relevant information for a purpose other than in relation to making a relevant decision.

(4) A co-decision-maker shall take reasonable steps to ensure that relevant information—

(a) is kept secure from unauthorised access, use or disclosure, and

(b) is safely disposed of when he or she believes it is no longer required.

(5) A co-decision-maker shall be entitled to be reimbursed out of the assets of the appointer in respect of his or her fair and reasonable costs and expenses which are—

(a) reasonably incurred in performing his or her functions as co-decision-maker,

(b) vouched for in a manner acceptable to the Director, and

(c) included in a report submitted by the co-decision-maker under *section 23*.

(6) A co-decision-maker shall not be entitled to remuneration for performing his or her functions as co-decision-maker.

(7) A co-decision-maker and any person specified in *section 18(3)* shall, whether or not the co-decision-making agreement has been registered, notify the Director if, to his or her knowledge, the appointer's capacity—

(a) improves to the extent that he or she has capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker, or

(b) deteriorates to the extent that he or she lacks capacity in relation to the relevant decisions which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker.

(8) A co-decision-maker—

(a) shall acquiesce in a relevant decision made by the appointer, and

(b) shall not refuse to sign a document referred to in *section 20(3)*, unless it is reasonably foreseeable that the relevant decision will result in harm to the appointer or to another person.

(9) A co-decision-maker shall not have authority to make decisions jointly with a relevant person other than in relation to those specified in respect of him or her in the co-decision-making agreement.

(10) Where an appointer has more than one co-decision-maker, each of the co-decision-makers shall exercise his or her functions in a manner which is not inconsistent with the functions exercisable by another co-decision-maker.”.

Amendment No. 28 proposes to delete the current section 16 and replace it with amended text. The amendments to the text are mainly technical in nature and provide clarity as to the functions of a co-decision-maker. In particular, the new subsection (9) limits the authority of the co-decision-maker to decisions falling within the scope of the co-decision-making agreement.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 29 and 52 are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 29:

In page 27, to delete lines 34 to 36, and in page 28, to delete lines 1 to 40 and substitute the following:

**“Nullity**

**17. (1)** Where an event specified in *paragraphs (a) to (c)* occurs, a co-decision-



making agreement shall, with effect from the date on which the event occurs, be null and void to the extent that it relates to a relevant decision where there is, in respect of the relevant decision—

(a) a decision-making order or a decision-making representation order in relation to the appointer,

(b) an advance healthcare directive made by the appointer and the appointer lacks capacity, or

(c) an enduring power of attorney made by the appointer that has entered into force.

(2) A co-decision-making agreement shall, with effect from the date on which an event specified in *paragraphs (a) to (c)* occurs or, in the case of an event specified in *paragraph (d)*, at the expiry of the period referred to in that paragraph, and unless it provides otherwise, be null and void where the co-decision-maker is the spouse of the appointer and subsequently—

(a) the marriage is annulled or dissolved either—

(i) under the law of the State, or

(ii) under the law of another state and is, by reason of that annulment or dissolution, not or no longer a subsisting valid marriage under the law of the State,

(b) either a decree of judicial separation is granted to either spouse by a court in the State or any decree is so granted by a court outside the State and is recognised in the State as having like effect,

(c) a written agreement to separate is entered into between the spouses, or

(d) subject to *section 2(2)*, the spouses separate and cease to cohabit for a continuous period of 12 months.

(3) A co-decision-making agreement shall, with effect from the date on which an event specified in *paragraph (a) or (b)* occurs or, in the case of an event specified in *paragraph (c)*, at the expiry of the period referred to in that paragraph, and unless it provides otherwise, be null and void where the co-decision-maker is the civil partner of the appointer and subsequently—

(a) the civil partnership is dissolved (other than where the dissolution occurs by virtue of the parties to that civil partnership marrying each other),

(b) a written agreement to separate is entered into between the civil partners, or

(c) subject to *section 2(2)*, the civil partners separate and cease to cohabit for a continuous period of 12 months.

(4) Subject to *section 2(2)*, a co-decision-making agreement shall, at the expiry of the period referred to in this subsection, and unless it provides otherwise, be null and void where the co-decision-maker is the cohabitant of the appointer and subsequently the cohabitants separate and cease to cohabit for a continuous period of 12 months.

(5) To the extent that a co-decision-making agreement includes a matter referred to in *section 14(4)*, it shall be null and void.

(6) Subject to *subsection (7)*, where, subsequent to the appointment of a co-decision-maker—

(a) the co-decision-maker is convicted of an offence in relation to the person or property of the appointer or the person or property of a child of the appointer,

(b) a safety or barring order is made against the co-decision-maker in relation to the appointer or a child of the appointer,

(c) the co-decision-maker becomes an undischarged bankrupt or subject to a debt settlement arrangement or personal insolvency arrangement which is current or is convicted of an offence involving fraud or dishonesty,

(d) the co-decision-maker becomes a person in respect of whom a declaration has been made under section 819 of the Act of 2014,

(e) the co-decision-maker becomes a person who is subject or is deemed to be subject to a disqualification order within the meaning of Chapter 4 of Part 14 of the Act of 2014 by virtue of that Chapter,

(f) the co-decision-maker becomes the owner, or the registered provider, of a nursing home (whether or not it is a nursing home registered under the Health Act 2007), a mental health facility, or residential facility for persons with disabilities, in which the appointer resides, or a person residing with, or an employee or agent of, such owner or registered provider, as the case may be, unless the person is a spouse or civil partner, parent, child or sibling of the appointer,

(g) the co-decision-maker is convicted of an offence under *section 127*,

(h) the co-decision-maker—

(i) enters into a decision-making assistance agreement as a relevant person,

(ii) enters into a co-decision-making agreement as a relevant person,

(iii) has an enduring power of attorney registered in respect of himself or herself,

or

(iv) becomes the subject of an order under *Part 5*,

or

(i) the court finds that the co-decision-maker shall no longer act as co-decision-maker for the appointer, the co-decision-making agreement concerned shall be null and void with effect from the date on which the co-decision-maker falls within any of *paragraphs (a) to (i)*.

(7) A co-decision-making agreement shall not be null and void pursuant to *paragraphs (6)(c), (d) and (e)* to the extent that it contains relevant decisions on personal

welfare.

(8) Where a co-decision-making agreement which stands registered becomes null and void, the appointer or the co-decision-maker under that agreement shall notify the Director of same.

(9) Where a co-decision-making agreement which stands registered becomes null and void, or a relevant decision which is the subject of a co-decision-making agreement becomes null and void, and a person, without knowledge of the nullity, deals with the appointer and the co-decision-maker, the transaction between them shall, in favour of that person, be as valid as if the co-decision-making agreement had been in force.

(10) A co-decision-maker or appointer who, without knowledge of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement, as the case may be, acts in accordance with or pursuant to that relevant decision, shall not incur liability as a result of so acting.”.

Amendments Nos. 29 and 52 pull together the provisions dealing with the circumstances in which a co-decision-making agreement may become null and void. Amendment No. 29 proposes the deletion of the current section 17 and the insertion of amended text. The amended section 17, which is now to be entitled “Nullity,” pulls together into one coherent section the various provisions relating to nullity and invalidation of a co-decision-making agreement that are currently dotted throughout Part 4 of the Bill. It also reinstates the provisions of subsections 18(8) to (10) of the original Bill in regard to invalidation due to divorce, separation, etc., of the relevant person and the co-decision-maker that were inadvertently omitted in the revised text inserted on Committee Stage.

Amendment No. 52 inserts a new section entitled “Role of the Director where nullity occurs.” It sets out the procedures the director must follow once he or she receives notice of the nullity of a co-decision-making agreement or a relevant decision.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 30 to 33, inclusive, are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 30:

In page 29, to delete lines 2 to 38, and in page 30, to delete lines 1 to 20 and substitute the following:

“**18.** (1) A co-decision-making agreement shall not enter into force until it has been registered in accordance with *section 19*.

(2) An application to register a co-decision-making agreement shall be made not later than 5 weeks from the date the agreement was signed, in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27* and, subject to *section 14(6)*, shall be signed by both the appointer and the co-decision-maker (in this section referred to as “the applicants”).

(3) The applicants shall, at the same time as making an application to register a co-decision-making agreement under this section, jointly give notice, in such form as shall

be prescribed by regulations made under *section 27*, of the application and give a copy of the co-decision-making agreement to the following persons:

- (a) the spouse or civil partner (if any) of the appointer;
- (b) the cohabitant (if any) of the appointer;
- (c) any children of the appointer who have attained the age of 18 years;
- (d) any decision-making assistant for the appointer;
- (e) any decision-making representative for the appointer;
- (f) any attorney for the appointer;
- (g) any designated healthcare representative for the appointer;
- (h) any co-decision-maker of the appointer under another co-decision-making agreement.

(4) An application under *subsection (2)* shall be accompanied by the following:

- (a) the co-decision-making agreement;
- (b) a statement by the appointer that he or she—
  - (i) understands the implications of entering into the co-decision-making agreement and has read and understands the information contained therein, or has had such information explained to him or her,
  - (ii) wishes to enter into the co-decision-making agreement with the co-decision-maker,
  - (iii) is aware that he or she may, with the consent of the co-decision-maker, vary the co-decision-making agreement, and
  - (iv) is aware that he or she may revoke the co-decision-making agreement;
- (c) a statement by the co-decision-maker that he or she—
  - (i) understands the implications of entering into the co-decision-making agreement and has read and understands the information contained therein,
  - (ii) understands and undertakes to act in accordance with the functions of a co-decision-maker,
  - (iii) understands and undertakes to act in accordance with the guiding principles,
  - (iv) understands and undertakes to comply with the reporting obligations under *section 23*, and
  - (v) understands the provisions of this Part relating to variation, revocation and nullity of co-decision-making agreements;

(d) a statement as to why the less intrusive measure of a decision-making assistance agreement was not chosen;

(e) details of any existing decision-making assistance agreement, co-decision-making agreement, decision-making order, decision-making representation order, power of attorney (whether an enduring power or otherwise and whether registered or not) or advance healthcare directive in respect of the appointer;

(f) a statement by a registered medical practitioner and a statement by such other healthcare professional of a class as shall be prescribed by regulations made under *section 27* that in his or her opinion—

(i) the appointer has capacity to make a decision to enter into the co-decision-making agreement,

(ii) the appointer requires assistance in exercising his or her decision-making in respect of the relevant decisions contained in the co-decision-making agreement, and

(iii) the appointer has capacity to make the relevant decisions specified in the co-decision-making agreement with the assistance of the co-decision-maker;

(g) references, in such form as shall be prescribed by regulations made under *section 27*, by 2 persons as to the personal character of the co-decision-maker;

(h) details of the notice given pursuant to *subsection (3)*; and (i) the appropriate fee, as prescribed by regulations under *section 27*.”.

I propose to discuss amendments Nos. 30 to 33, inclusive, together. The proposed amendments are to sections 18 to 21, inclusive, which deal with the various procedures set out for the registration of a co-decision-making agreement.

Amendment No. 30 proposes to delete section 18, “Application to register,” and replace it with amended text. Once again, the amendments are technical in nature, with only one significant amendment to subsection 2, which provides for a time limit of five weeks between the date a co-decision-making agreement is signed and the date on which an application is made the director to register the agreement. This is to ensure that all the relevant details in the agreement are current and that the capacity assessments by a registered medical practitioner and another health care professional are still valid.

Amendment No. 31 proposes the deletion of section 19, “Registration of a co-decision-making agreement,” and the insertion of amended text. The substantial amendment to this section is the insertion of new subsections 4 and 5, which set out the procedure that will apply where the director refuses to register a co-decision-making agreement. Subsection 4 allows an appointer or co-decision-maker, or both, to appeal to the court the decision of the director not to register a co-decision-making agreement. Subsection 5 sets out the determinations that the court may make in regard to an appeal under subsection 4, including requiring the director to register an agreement. The provisions of subsections 6 to 8, inclusive, have been moved into a new section 20, “Effect and proof of registration,” which is provided for by amendment No. 32. This is a technical drafting amendment that pulls together into one section the existing provisions in subsections 19(6), (7) and (8) which relate to the effect of registration.



Amendment No. 33 proposes the deletion of section 20, “Objections to registration”, and its substitution with amended text. The amended text provides for technical amendments to the provisions. It also provides for an appeal mechanism to the director’s finding that an objection to the registration of a co-decision-making agreement is not well-founded. The new subsection 5 allows a person whose objection has been found by the director not to be well-founded to appeal the registration of the co-decision-making agreement to the court. The new subsection 6 sets out the determinations that the court may make relating to an appeal under subsection 5, including requiring the director to remove the agreement from the register.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 31:

In page 30, to delete lines 22 to 39, and in page 31, to delete lines 1 to 30 and substitute the following:

“19. (1) On receipt of an application under *section 18*, the Director shall review the application and any objections received under *section 21* and shall carry out such reasonable enquiries as he or she considers necessary in order to establish whether—

(a) the co-decision-making agreement is in accordance with *section 14*,

(b) the co-decision-maker is a suitable person within the meaning of *section 14(2)*,

(c) the co-decision-maker is not a person who falls under *paragraphs (a) to (h) of section 15(1)*,

(d) the application is in accordance with *section 18* (or *section 24* in the case of an application to register a varied co-decision-making agreement),

(e) the co-decision-making agreement is in accordance with the will and preferences of the appointer, and

(f) the appointer understands the implications of having entered into the co-decision-making agreement.

(2) Following the review under *subsection (1)* and subject to *section 21*, the Director shall—

(a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (f) of subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or

(b) where he or she is of the view that one or more of the criteria set out in *paragraphs (a) to (f) of subsection (1)* are not satisfied, notify the applicants of that view, provide reasons for that view and give the applicants an opportunity, within a reasonable timeframe specified by the Director, to respond.

(3) Following a review of any response submitted by the applicants pursuant to *subsection (2)(b)* and subject to *section 21*, the Director shall—

(a) where he or she is satisfied that the criteria set out in *paragraphs (a) to (f) of*

*subsection (1)* are satisfied, register the co-decision-making agreement and notify the applicants of the date on which it was registered, or

(b) where he or she remains of the view that one or more of the criteria set out in *paragraphs (a) to (f)* of *subsection (1)* are not satisfied, refuse to register the co-decision-making agreement concerned and notify the applicants of that fact.

(4) One or both of the applicants whose application to register a co-decision-making agreement is refused may, not later than 21 days after the date of issue of the notification of refusal by the Director, appeal the refusal to the court.

(5) Upon an appeal under *subsection (4)*, the court may—

(a) require the Director to register the co-decision-making agreement concerned,

(b) affirm the decision of the Director, or

(c) make such other order as it considers appropriate.

(6) Following the registration of a co-decision-making agreement, the Director shall send an authenticated copy of the agreement to the applicants.

(7) A document purporting to be a copy of a co-decision-making agreement that has been authenticated by the Director shall be evidence of the contents of the agreement and the date upon which it was registered.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 32:

In page 31, between lines 30 and 31, to insert the following:

**“Effect and proof of registration**

**20.** (1) A relevant decision which is made within the scope of a registered co-decision-making agreement shall not be challenged on the grounds that the appointer did not have the capacity to make the decision.

(2) Where a co-decision-making agreement stands registered, a relevant decision made otherwise than jointly by the appointer and the co-decision-maker is null and void.

(3) (a) Subject to *paragraph (b)*, where a relevant decision requires the signing of any document, the relevant decision is null and void unless both the appointer and the co-decision-maker sign the document.

(b) Where the appointer is unable to make his or her signature, a document may be signed on the appointer’s behalf by a person who has attained the age of 18 years and who is not the co-decision-maker if the appointer is present and directs that the document be signed on his or her behalf by that person.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 33:

In page 31, to delete lines 32 to 41, and in page 32, to delete lines 1 to 23 and substitute the following:

“**21.** (1) Any of the persons referred to in *section 18(3)* may, not later than 5 weeks from the date on which notice is given in accordance with that provision, notify the Director that he or she objects to the proposed registration.

(2) An objection shall be in such form and shall be accompanied by such fee as shall be prescribed by regulations made under *section 27* and may be made on one or more of the following grounds:

(a) that the co-decision-making agreement was not signed or witnessed in accordance with *section 14*;

(b) that the appointer lacks capacity to make a decision to enter into the co-decision-making agreement;

(c) that the appointer has capacity in respect of the relevant decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;

(d) that the appointer lacks capacity in respect of the relevant decisions which are the subject of the co-decision-making agreement even with the assistance of a co-decision-maker;

(e) that entry into the co-decision-making agreement is not in accordance with the will and preferences of the appointer;

(f) that the co-decision-maker is not a suitable person within the meaning of *section 14(2)* or falls under *paragraphs (a) to (h) of section 15(1)*;

(g) that fraud, coercion or undue influence was employed to induce the appointer to enter into the co-decision-making agreement.

(3) Where the Director receives an objection in accordance with *subsection (2)*, he or she shall—

(a) review the objection,

(b) consult with the appointer and co-decision-maker and give them a reasonable opportunity to respond to the objection, and

(c) consult with such other persons as he or she considers relevant,

and shall—

(i) where he or she is of the view that the objection is not well founded, notify the person who made the objection of his or her view, provide reasons for that view and proceed, subject to *section 19(1)*, to register the co-decision-making agreement concerned, or

(ii) where he or she is of the view that the objection is well founded, notify the person who made the objection of his or her view and make an application to the

court for a determination as to whether or not the co-decision-making agreement concerned should be registered.

(4) The court, pursuant to an application made to it under *subsection (3)(ii)*, may—

(a) require the Director to register the co-decision-making agreement,

(b) declare that the co-decision-making agreement concerned should not be registered, or

(c) make such other declaration or order as it considers appropriate.

(5) A person who makes an objection under *subsection (1)* may, not later than 21 days after the date of issue of the notification by the Director under *subsection (3)(i)*, appeal a decision to register the co-decision-making agreement concerned to the court.

(6) Upon appeal under *subsection (5)*, the court may—

(a) require the Director to remove the co-decision-making agreement concerned from the Register,

(b) affirm the decision of the Director, or

(c) make such other declaration or order as it considers appropriate.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 34:

In page 32, lines 25 and 26, to delete all words from and including “(1) The” in line 25 down to and including line 26 and substitute the following:

“(1) The Director shall establish and maintain a Register (in this Part referred to as “the Register”) of co-decision-making agreements.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 35:

In page 32, line 27, to delete “deems” and substitute “considers”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 36:

In page 32, line 31, to delete “a person” and substitute “any person”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 37:

In page 33, to delete lines 1 and 2 and substitute the following:

“(5) The Director shall keep a record of any body or person that has inspected the Register or received an authenticated copy of a co-decision-making agreement, or part

thereof, from him or her.”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 38 and 39 are related and may be discussed together by agreement.

**Deputy Kathleen Lynch:** I move amendment No. 38:

In page 33, to delete lines 4 to 40 and substitute the following:

“**22.** (1) The Director shall conduct a review of each co-decision-making agreement on the Register not earlier than 3 months before and not later than 3 months after the first anniversary of the date of registration of the agreement and thereafter at intervals not exceeding 3 years.

(2) In conducting a review under this section, the Director shall carry out such reasonable enquiries, including, in particular, consulting with the appointer and co-decision-maker as well as any special visitor or general visitor who has had contact with the appointer or co-decision-maker, as he or she considers necessary to determine whether—

(a) *paragraphs (e) and (f) of section 19(1)* continue to apply,

(b) the co-decision-making agreement falls within *section 17*,

(c) the co-decision-maker has effectively performed and continues to be likely to effectively perform his or her functions as co-decision-maker,

(d) the co-decision-maker has complied with the requirements under this Act that are relevant to him or her, and

(e) the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)* continue to apply.

(3) In order to determine whether the matters provided for in *subparagraphs (ii) and (iii) of section 18(4)(f)* continue to apply, the Director shall require statements to that effect to be submitted to him or her by—

(a) the same registered medical practitioner who provided the original statement under *section 18(4)(f)* or, where that practitioner is not reasonably available, another registered medical practitioner, and

(b) the same healthcare professional who provided the original statement under *section 18(4)(f)* or, where that professional is not reasonably available, another healthcare professional of the class prescribed by regulations made under *section 27*.

(4) Where, following a review under *subsection (1)*, the Director is of the view that one or more of the matters in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, he or she shall notify the co-decision-maker and the appointer of that view, provide reasons for same and give the appointer and the co-decision-maker an opportunity to respond within a time period specified by the Director.

(5) Where, at the expiry of the period for response specified under *subsection (4)* and



following a review of any response submitted by the appointer or the co-decision-maker or both pursuant to that subsection, the Director remains of the view that one or more of the matters in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, he or she shall notify the appointer and the co-decision-maker of that view and make an application to the court for a determination on the matter.

(6) Where, pursuant to an application to it under *subsection (5)*, the court determines that one or more of the criteria in *paragraphs (a) to (e) of subsection (2)* does not, or no longer continues to, apply, it may determine that the co-decision-maker shall no longer act as co-decision-maker for the appointer concerned.”.

The proposed amendments to sections 22 and 23 set out the review and reporting procedures for co-decision-making agreements. Amendment No. 38 proposes the deletion of section 22, “Review of co-decision-making agreements,” and the substitution of amended text. Section 22 provides for the director to review co-decision-making agreements at regular intervals. The majority of the amendments to the text are technical in nature to provide clarity.

Two substantive changes are contained in the amended text. The first substantive change increases the interval at which the director must review a co-decision-making agreement from 12 months to three years. The review will now take place every three years because an annual review would be onerous for a relevant person and for a co-decision-maker. It would introduce unnecessary uncertainty for the many people involved in such agreements that are currently working well. I am aware that there will be problems with some co-decision-making agreements and for some co-decision-makers. I have chosen to address problem situations not by imposing additional requirements on all but rather by proposing to strengthen the provisions that will operate when problems arise. Where an agreement is not working well for either the appointer or the co-decision-maker, other provisions allow the agreement to be varied or revoked. The director will continue to review reports from co-decision-makers relating to the performance of their functions annually. The reporting provisions and the proposed strengthening of the complaints system, as proposed in amendment No. 42, provide adequate safeguards to alert the director to problems with an agreement. The director will still have the discretion to review an agreement at intervals of less than three years if he or she believes it necessary. Amendment No. 53 will also provide for offences that can be incurred by the co-decision-maker if he or she subjects the relevant person to fraud, coercion or undue influence.

The second substantive change to the text of section 22 provides for the insertion of a new subsection 6. Subsection 5 allows the director to apply to the court if, following a review of a co-decision-making agreement, he or she is of the view that certain criteria that applied at registration of the agreement no longer apply. The new subsection 6 allows the court, if it is satisfied that the given criteria no longer apply, such as that the co-decision-maker has not effectively performed the functions of a co-decision-maker, to determine that the co-decision-maker may no longer act as a co-decision-maker for the appointer.

Amendment No. 39 proposes the deletion of section 23 and its substitution with amended text. The amendments to the text are mainly technical and clarify the intent of the policy underpinning this section. Section 23 deals with the reports that a co-decision-maker has to submit to the director. The amended text provides for the director to notify the appointer as well as the co-decision-maker if a report is incomplete or if it has not been submitted at all. A new subsection 5 clarifies that the court, on application to it by the director, may determine that the co-decision-maker who has not fulfilled his or her reporting obligations may no longer act as a

co-decision-maker for the appointer concerned.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 39:

In page 34, to delete lines 2 to 24 and substitute the following:

**“23.** (1) A co-decision-maker shall, within 12 months after registration of the co-decision-making agreement appointing him or her, and thereafter at intervals of not more than 12 months, prepare and submit to the Director a report in writing as to the performance of his or her functions as such co-decision-maker during the relevant period.

(2) Every report submitted to the Director pursuant to this section shall be approved by the appointer and shall be in such form as shall be prescribed by regulations made under *section 27* and shall include details of all transactions relating to the appointer’s finances which are within the scope of the co-decision-making agreement and details of all costs and expenses paid to and claimed by the co-decision-maker in the relevant period together with such other matters as are prescribed.

(3) Where a co-decision-maker fails to submit a report in accordance with this section or submits an incomplete report, the Director shall notify the appointer and the co-decision-maker concerned of that failure or incompleteness and give the co-decision-maker such period of time as is specified in the notice to comply or submit a complete report.

(4) Where a co-decision-maker fails to comply with a notification under *subsection (3)*, the Director may make an application to the court for a determination as to whether the co-decision-maker should continue as co-decision-maker for the appointer.

(5) Pursuant to an application to it under *subsection (4)*, the court may determine that a co-decision-maker who has not complied with this section shall no longer act as co-decision-maker for the appointer concerned.

(6) In this section “relevant period” means the period of time to which the report relates which shall be the period of time between the date of registration of the co-decision-making agreement or the date of submission of the previous report, as the case may be, and the date immediately preceding the date of submission of the report concerned.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 40:

In page 34, to delete lines 26 to 41, and in page 35, to delete lines 1 to 24 and substitute the following:

**“24.** (1) The terms of a registered co-decision-making agreement may be varied by agreement between the appointer and the co-decision-maker.

(2) Subject to *section 14(6)*, a varied co-decision-making agreement shall include the signature of the appointer and the co-decision-maker (in this section referred to as “the applicants”) and shall be witnessed in accordance with *section 14(7)*.

(3) An application to register a varied co-decision-making agreement shall be made in such form and accompanied by such fee as shall be prescribed by regulations made under *section 27* and shall be signed by both the appointer and the co-decision-maker.

(4) The applicants shall, at the same time as making an application to register a varied co-decision-making agreement, give notice, in such form as shall be prescribed by regulations made under *section 27*, to the persons specified in *section 18(3)* and the application shall be accompanied by the following:

(a) the varied co-decision-making agreement;

(b) a statement by the applicants outlining the variation and why it is considered necessary;

(c) a statement by a registered medical practitioner and a statement by such other healthcare professional as shall be prescribed by regulations made under *section 27* that in his or her opinion—

(i) the appointer has capacity to vary the co-decision-making agreement,

(ii) the appointer requires assistance in exercising his or her decision-making in respect of the relevant decisions contained in the varied co-decision-making agreement, and

(iii) the appointer has capacity to make the decision or decisions specified in the varied co-decision-making agreement with the assistance of the co-decision-maker concerned;

(d) details of the notice given pursuant to this subsection;

(e) any change to the information provided pursuant to *section 18(4)(e)* in the application to register the co-decision-making agreement;

(f) the appropriate fee, as prescribed by regulations made under *section 27*.

(5) *Sections 19 to 23* and *sections 25 to 30* shall apply to a varied co-decision-making agreement as they apply to a co-decision-making agreement with the modification that a reference to “co-decision-making agreement” in those sections shall be read as if “varied co-decision-making agreement” were substituted for “co-decision-making agreement” and any other necessary modifications.

(6) An application to register a varied co-decision-making agreement may not be made less than 6 months from the date of registration of the co-decision-making agreement which it varies, and thereafter at intervals of not less than 12 months, unless a shorter period is agreed by the Director.

(7) Upon registration of a varied co-decision-making agreement, the Director shall remove from the Register the co-decision-making agreement which the varied co-decision-making agreement replaces.

(8) A varied co-decision-making agreement shall not enter into force until it has been registered.”.

Amendment No. 40 proposes the deletion of section 24 and its substitution with amended text. Again, the amendments to the text are mainly technical in nature and add clarity to the provisions. An amendment to subsection 6 restricts the number of times a co-decision-making agreement can be amended in a 12-month period to one. This is deemed prudent from an administrative and operational prospective. The director has the discretion to allow further variation of an agreement within a 12-month period if deemed necessary.

**Deputy Colm Keaveney:** I am agreeing on the basis that we can disagree in future. The Minister of State is making an administrative decision to provide for the most beneficial administrative way to administer the agreement without it being tampered with on a daily or weekly basis. We are going to have to observe this in practice to ensure all stakeholders can tie in to reviewing it in future. I suppose all legislation is for review on a daily level. We will support the amendment, but with some caution. I imagine the Minister of State understands where I am coming from in that respect.

**Deputy Kathleen Lynch:** There are certain outcomes we do not want. When an agreement is reached, we must assume that it is with someone who is trusted on both sides and that the person involved has capacity in respect of the person who is assisting. We do not want a scenario whereby different obligations or circumstances arise on a weekly basis. I believe this will focus the minds of both parties on the essentials. This is about the essentials more than anything else, including property, money, health care and so on. These are the essential elements of how people live. We all change our minds on the other aspects on a regular basis. It is a question of focusing the mind and ensuring that we do not have someone who is constantly changing his or her mind. That would be unfair on both parties.

**Deputy Colm Keaveney:** It is an unusual discussion because the spirit of the Bill relates to a human rights ethos. The administration of human rights with an administrative function is somewhat complex. It could pose some challenges for us in the future. Anyway, no legislation is perfect.

We will support what the Minister of State is proposing. However, it is on the basis that we would be prepared to learn as we proceed. We must ensure we do not deny a human right that is superior to an administrative understanding in the legislation. That understanding may limit certain rights to one per year or two per year and so forth on the basis that bureaucratically it makes more sense and it is preferable to changing the arrangements from week to week or from day to day if there is a dispute somewhere. At the end of the day, it is about legislation that is focused on the service user, the patient and the citizen. I have a concern that we could be limiting the discretion around human rights by imposing an administrative understanding. Anyway, we will support the legislation, because this is new for us. I hope that the spirit in which we approach the legislation will be reciprocated in future if it does not work. That is why I have remarked on that.

**Deputy Kathleen Lynch:** This is a Bill that has been widely discussed. The number of amendments tabled shows that remarks were listened to. That is the spirit of the Bill. Unfortunately, none of us has a crystal ball, and we cannot be certain what will happen in the future, but I am sure if difficulties arise there will no reluctance to intervene in terms of legislation.

**Deputy Colm Keaveney:** I welcome the comments of the Minister of State. It is an important signal to send out. There is a degree of anxiety around this area of the Bill.

**Acting Chairman (Deputy Jerry Buttimer):** The Deputy has spoken twice already.

**Deputy Colm Keaveney:** In the spirit in which we are all having a big love-in today, I am sure the Minister of State does not-----

**Acting Chairman (Deputy Jerry Buttimer):** The rules are the rules.

**Deputy Colm Keaveney:** I will observe the rules.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 41:

In page 35, to delete lines 26 to 36 and substitute the following:

“**25.** (1) A co-decision-making agreement, whether registered or not, may be revoked in whole or in part at any time by the appointer or the co-decision-maker, or both.

(2) A revocation or revocation in part of a co-decision-making agreement shall be in writing and shall be in such form as shall be prescribed by regulations made under section 27.

(3) Subject to section 14(6)

, a revocation or a revocation in part of a co-decision-making agreement shall be signed by the person or persons making the revocation and, in the case of a revocation by the appointer, his or her signature shall be acknowledged by 2 witnesses and section 14(7)

shall apply with the necessary modifications.

(4) Where a revocation or revocation in part is made after the co-decision-making agreement concerned has been registered, the person making the revocation shall notify the Director of the revocation or revocation in part, as the case may be.

(5) Upon receipt of a notification under subsection (4) the Director shall—

(a) where the revocation concerns the whole of the co-decision-making agreement concerned, remove the co-decision-making agreement to which the revocation relates from the Register, and

(b) where the revocation is a revocation in part, identify on the Register the extent of the revocation, and in either case notify the persons specified in section 18(3)

of the fact of the revocation or revocation in part, as the case may be.

(6) In this section a “revocation in part” means a revocation (whether by the co-decision-maker or the appointer or both), whereby the co-decision-maker continues to act as co-decision-maker for the appointer in respect of one or more relevant decisions which are the subject of the co-decision-making agreement.”.

This amendment proposes to delete section 25 and substitute it with amended text. The amended text clarifies that a co-decision-making agreement may be revoked whether it is registered. It also allows an agreement to be revoked in part. Where a registered agreement is being



revoked in part a director must identify on the register the extent of the revocation. The new subsection (6) clarifies that “revocation in part” means a revocation whereby the co-decision-maker continues to act as a co-decision-maker for the appointer for more than one relevant decision. Again, it provides the type of flexibility that is required.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 42:

In page 35, to delete lines 38 and 39, and in page 36, to delete lines 1 to 27 and substitute the following:

“**26.** (1) A person may make a complaint in writing to the Director concerning one or more of the following matters:

(a) the conduct or proposed conduct of a co-decision-maker, including whether he or she has acted, is acting, or is proposing to act outside the scope of his or her functions;

(b) the suitability of a co-decision-maker in relation to an appointer;

(c) a co-decision-making agreement not being in accordance with the will and preferences of an appointer;

(d) that the appointer did not, at the time of entry into the co-decision-making agreement, have capacity to make a decision to enter the agreement;

(e) that fraud, coercion or undue pressure was used to induce the appointer to enter into the co-decision-making agreement;

(f) that the appointer has capacity in respect of one or more of the decisions which are the subject of the co-decision-making agreement without the assistance of a co-decision-maker;

(g) that the appointer no longer has capacity in respect of one or more than one of the decisions which are the subject of the co-decision-making agreement even with the assistance of the co-decision-maker.

(2) Following the receipt of a complaint under subsection (1), the Director shall carry out an investigation and—

(a) where he or she is of the view that the complaint is well founded, make an application to the court for a determination in relation to any matter specified in the complaint, or

(b) where he or she is of the view that the complaint is not well founded, notify the person who made the complaint of that view and provide reasons for same.

(3) The Director may, notwithstanding that no complaint has been received, on his or her own initiative carry out an investigation and make an application to court for a determination in relation to any matter specified in subsection (1).

(4) The court may—

(a) pursuant to an application to it under subsection (2) or (3), or

(b) pursuant to an application by an interested party whose complaint under this section has been rejected by the Director, make a determination in relation to a matter specified in subsection (1) which was the subject of a complaint to the Director and may, if it considers it appropriate, determine that a co-decision-maker shall no longer act as such in relation to the appointer concerned.”.

The amendment proposes the deletion of section 26 and the substitution of amended text. The amended text sets out what a director has to do if he or she, after carrying out an investigation into a complaint, is of the view that the complaint is not well founded. The person whose complaint the director has found to be unfounded may apply to the court to make a determination in regard to the complaint.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 43:

In page 36, lines 29 and 30, to delete all words from and including “The” in line 29 down to and including line 30 and substitute the following:

“The Minister, having regard to the requirements of this Part, shall make regulations regarding co-decision-making agreements, including—”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 44:

In page 36, line 32, after “application” to insert “under sections 18(2)and 24(3)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 45:

In page 36, line 34, after “notice” to insert “under sections 18(3)and 24(4)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 46:

In page 36, line 36, after “objection” to insert “under section 21”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 47:

In page 36, line 38, after “report” to insert “under section 23”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 48:

In page 37, line 1, after “revocation” to insert “under section 25”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 49:

In page 37, line 2, after “references” to insert “under section 18(4)(g)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 50:

In page 37, line 4, after “persons” to insert “under section 21(3)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 51:

In page 37, to delete lines 15 to 23 and substitute the following:

“28. Where the court is determining whether a co-decision-maker should continue to act as co-decision-maker for an appointer, it shall have regard to all of the circumstances of the case, including in particular—

- (a) the capacity of the appointer,
- (b) the appointer’s willingness to continue to participate in the co-decision-making agreement concerned,
- (c) the suitability of the co-decision-maker,
- (d) the performance by the co-decision-maker of his or her functions, and
- (e) the views of the Director.”.

The amendment proposes the substitution of section 51 with amended text. The amendments to the text are purely technical and simplify the text to provide clarity. The amendments have no policy implications.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 52:

In page 37, between lines 23 and 24, to insert the following:

**“Role of Director where nullity occurs**

**29.** On receipt of notice of the nullity of a co-decision-making agreement or of a relevant decision which is the subject of a co-decision-making agreement, the Director shall—

- (a) remove the co-decision-making agreement from the Register, or note on the Register the extent of the nullity, as the case may be, and
- (b) notify the persons referred to in section 18(3) of the nullity and any removal of the agreement from the Register.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 53:

In page 37, between lines 23 and 24, to insert the following:

**“Offences**

**30.** (1) A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke a co-decision-making agreement shall be guilty of an offence and shall be liable—

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

(b) on conviction on indictment, to a fine not exceeding €50,000 or imprisonment for a term not exceeding 5 years, or both.

(2) A person who, in an application for registration of a co-decision-making agreement, or in connection with such an application, makes a statement which he or she knows to

be false in a material particular commits an offence and shall be liable —

(a) on summary conviction, to a class A fine or imprisonment for a term not exceeding 6 months, or both, or

(b) on conviction on indictment, to a fine not exceeding €15,000 or imprisonment for a term not exceeding 2 years, or both.

(3) The reference in subsection (1) to coercion or undue influence includes any case where a person’s access to, or continued stay in, a nursing home (whether or not it is a

nursing home registered under the Health Act 2007), a mental health facility, or a residential facility for persons with disabilities, is contingent (whether in whole or in part) on the person having to, or being led to believe that he or she has to, make, vary or revoke a co-decision-making agreement.”.

The amendment inserts a necessary new section dealing with offences. This section mirrors section 71 in Part 9 in regard to advance health care directives. A person who uses fraud, coercion or undue influence to force another person to make, vary or revoke a co-decision-making agreement will be guilty of an offence. A person who makes a statement in connection with the registration of a co-decision-making agreement which he or she knows to be false will also be guilty of an offence. This is an important protection for a relevant person. It will help to ensure that co-decision-makers are dissuaded from defrauding or exploiting vulnerable people with capacity difficulties.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments No. 54 and 55 have been ruled out of order because they involve a potential charge on the Exchequer.

Amendments Nos. 54 and 55 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 56:

In page 41, line 10, to delete “property or affairs” and substitute “property and affairs”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 57:

In page 41, line 18, to delete “Part 5” and substitute “Part 4”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 58 has been ruled out of order because it involves a potential charge on the Exchequer.

Amendment No. 58 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 59:

In page 42, line 3, to delete “Part 5” and substitute “Part 4”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 60:

In page 42, line 12, after “a” where it firstly occurs to insert “suitable”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 61:

In page 43, line 4, to delete “section 82(1)” and substitute “section 82”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 62:

In page 44, lines 19 to 22, to delete all words from and including “(1) The” in line 19 down to and including line 22.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 63 is in the name of Deputy Mac Lochlainn, who is not here.

Amendment No. 63 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 64:

In page 45, line 41, to delete “paragraphs (a) to (f)” and substitute “paragraphs (a) to (h)”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 65:

In page 48, lines 9 and 10, to delete “might be reasonably be expected” and substitute “might reasonably be expected”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendments Nos. 66 to 69, inclusive, 78, 79 and 142 are related and may be discussed together. Deputy Mac Lochlainn is not present.

Amendment No. 66 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 67:

In page 50, line 9, to delete “or” where it secondly occurs.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 68:

In page 50, to delete lines 10 and 11 and substitute the following:

“(c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the relevant person’s behaviour or ensuring that he or she is compliant or not capable of resistance, or

(d) authorises another person to do any of the things referred to in *paragraphs (a) to (c)*.”.

Amendment agreed to.

Amendment No. 69 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 70:

In page 51, to delete lines 24 to 28 and substitute the following:

“(ii) make an order varying or discharging, as appropriate, a decision-making order or decision-making representation order of which the relevant person is the subject,”.

Amendment agreed to.

**Acting Chairman (Deputy Jerry Buttimer):** Amendment No. 71 is out of order as it involves a potential cost on the Exchequer.

Amendment No. 71 not moved.

**Deputy Fergus O’Dowd:** Sorry, Acting Chairman, perhaps I have the wrong list of amendment groupings. I want to speak on amendment No. 142, if that is in order.

**Acting Chairman (Deputy Jerry Buttimer):** Deputy Mac Lochlainn did not move amendment No. 66 and amendment No. 142 is in that group.

**Deputy Fergus O’Dowd:** Amendment No. 142 is particularly important. It deals with the question of outlawing chemical restraint. The amendment states:

Nothing in this Act shall be construed as authorising any person to administer to a relevant person any medication for the purpose of controlling or modifying the relevant person’s behaviour or to ensure that a relevant person is compliant and not capable of resistance when no medically identified condition is being treated; where the treatment is not



necessary for the condition; or the intended effect of the medication is to sedate the relevant person for convenience or for disciplinary purposes ... Notwithstanding [the above], the appropriate use of drugs to reduce symptoms in the treatment of a medical condition does not constitute chemical restraint but the administration of such medication should be clearly documented on the relevant person's file and the reasons for the administration of such medication specified.

Article 3 of the European Convention on Human Rights applies specifically to chemical restraint, and I will repeat it. It states: "No one shall be subjected to torture or to inhuman or degrading treatment." This right is an absolute right, with no exceptions, as distinct from the exceptions present in article 7. Chemical restraint is inhuman and degrading, and should be prohibited. Medication should only be used if there is a medical or therapeutic necessity and not for any other purpose. I understand the Law Society submits that this definition should be set out in the Bill.

I draw the attention of the Minister of State to the Department of Health policy document, *Towards a Restraint Free Environment in Nursing*. It states:

Chemical restraint is the intentional use of medication to control or modify a person's behaviour to ensure a person is compliant or not capable of resistance, where no medically identified condition is being treated; where the treatment is not necessary for that condition; or the intended effect of the drug is to sedate the person or for convenience or for disciplinary purposes.

I understand that when the Minister of State replied to Deputy Mac Lochlainn on an earlier amendment, she said she was prepared to introduce amendments.

I welcome what she has done and I support the legislation, and obviously as a Government Deputy I will vote for it, but this amendment is critical because it goes to the heart of abuse of elderly people particularly, and people with dementia or other medical conditions, who are unable to speak for themselves and who may display very challenging behaviour. The use of chemical restraints solely for the purposes of the convenience of the staff or other non-medical reasons should be outlawed by the legislation, where chemical restraint is used as a first resort, including where people with dementia are admitted to acute hospitals, and is not confined to situations where there must be a clear medical reason where medication must be required. The distinction between the administration of medication for therapeutic reasons and the administration of medication simply to control behaviour must be clearly understood and provided for. I appreciate this is Report Stage and the Minister of State will bring the Bill through the Seanad.

I note the draft guide to professional conduct and ethics for registered medical practitioners at paragraph 18.2 provides, "If patients lack capacity to make a decision about treatment or examination, you may use appropriate physical or chemical restraint". I find this absolutely shocking and unacceptable. This applies to people who lack capacity, and it states a medical practitioner can use physical and chemical restraint. Chemical restraint is inhumane and degrading treatment and should never be used. The drafters of the guide to professional conduct and ethics for registered medical practitioners do not seem to understand the issue.

There is clear evidence, internationally, on the abuse of patients by using chemical restraint and behaviour-calming drugs and I direct the Minister of State to a recent article in the *British Medical Journal* by the University of Michigan medical school and Johns Hopkins Univer-

sity, which reviewed two decades worth of research to reach conclusions on antipsychotic and antidepressant drugs and on non-drug approaches which help care givers address behavioural issues in dementia cases.

I am aware of and acknowledge the interest and concerns of the Minister of State in this area. I urge her in her reply to give serious consideration to the amendment. I accept she may not be in a position to accept the amendment today, but I ask her to look at it again seriously for the Seanad. At the end of the day, it is about training staff and caregivers and recognising the fundamental human rights of people who can never speak for themselves because of the medical condition from which they suffer, because of advanced dementia or other medical problems. It is never acceptable that they would be drugged to facilitate understaffed nursing homes, which happens regularly. This goes to the very heart of the quality of care for people in institutions who cannot speak for themselves. Now is the time and this is the opportunity for us to fundamentally state the abuse of elderly people or citizens by using antipsychotic drugs for the sole purpose of facilitating staff, and there is understaffing in many of these institutions, is entirely and absolutely unacceptable and is an appalling abuse of the human rights of the people concerned.

**Deputy Pádraig Mac Lochlainn:** I apologise as I understand I missed amendment No. 63. I had to take an urgent call and I ask the Minister of State to consider the principle of the amendment in the Seanad.

I am speaking on amendments Nos. 66 and 69. Amendment No. 66 relates to what Deputy O'Dowd said. The issue of restraint of relevant persons is addressed by a reference to restrictions on decision-making representatives in previous sections of the Bill. We consider it imperative that the provisions permitting restraint of a person by a decision-making representative should be strictly construed and should explicitly require that the decision-making representative acts in a manner consistent with the principles of the Bill. The provisions should only allow restraint where this is the least restrictive measure to prevent harm. We consider that the definition of restraint as provided in previous sections should be extended and we consider it necessary that a specific provision be included in the section dealing with informal decision-making. We have dealt with this, and amendment No. 69 is similar.

**Acting Chairman (Deputy Jerry Buttimer):** I remind Members we must adjourn the debate at 12 noon and if we could get this part finished by then, it would be appreciated.

**Deputy Denis Naughten:** I will be brief. I support Deputy O'Dowd, who articulated the concerns many of us in the House have, and I know the Minister of State has them also. We should not accept chemical restraint, or make provision or accommodation for chemical restraint. Deputy O'Dowd raised the issue of nursing homes. The Minister of State has been in a facility, which I visited recently, which provides long-term care for people with a learning disability. We were given the example of one individual who was literally sedated for all of the time spent in a previous institution and now receives absolutely no medication whatsoever all because resources, staffing and training have been put in place. My big fear is that making provision for chemical restraint will allow facilities to wallpaper over massive cracks in staffing resources, the capacity and training of staff and the general resources available. In the vast majority of cases these issues can be quite easily addressed by putting in place the proper supports, and because of this I ask the Minister of State to take note of the amendment tabled by Deputy O'Dowd. If it cannot be accepted today, I ask the Minister of State to accept it in the Seanad.

**Deputy Colm Keaveney:** I welcome the spirit of the amendment. I understand the motivation is well-meaning because week after week we see publication after publication from HIQA about the warehousing of people with profound intellectual disabilities. The use of chemical intervention as a consequence of the collapse in supports and budgets in this area is something about which we have grave concerns. We have only one minute left and I want-----

**Acting Chairman (Deputy Jerry Buttimer):** No, we will continue this later.

**Deputy Colm Keaveney:** I appreciate the intention of the legislation is an incremental step to get to a location where we are in a position to ratify the United Nations Convention. When we reconvene, I will read into the record of the Dáil, and it may provide the Minister of State an opportunity to work on this issue, a statement made by the United Nations with respect to how dignity must prevail in this area. As the Minister of State is aware, on Saturday, 10 October, the United Nations special rapporteur on the rights of persons with disabilities made a comprehensive statement specifically on this area, and I hope and anticipate that if the spirit of what we are trying to achieve is to be compatible with the United Nations Convention, we may find a way of working around the language without having to force this to a vote. It is my intention to read into the record of the Dáil a statement on the issue of treatment of people who are institutionalised and chemically restrained and who are part of the closed convention.

This is important legislation and I acknowledge the dedication, commitment and actions of HIQA.

**Deputy Fergus O'Dowd:** Hear, hear.

**Deputy Colm Keaveney:** It has shone a light and forced transparency in this area, and both sides of the House should agree its work in this area to protect the most vulnerable people in society should not be hampered and should be supported.

**Deputy Kathleen Lynch:** If we had time now I would reply, but Leaders' Questions is about to start and it might be more beneficial if the reply came when we resume, but it is entirely up to the Acting Chairman.

Debate adjourned.

*12 o'clock*

### **Topical Issue Matters**

**An Ceann Comhairle:** Before commencing Leaders' Questions, I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 27A and the name of the Member in each case: (1) Deputy Brendan Smith - the need to address the implications of the PSNI and MI5 assessment of paramilitary groups in Northern Ireland report and An Garda Síochána's assessment of Provisional IRA activity in this jurisdiction;

(2) Deputy Frank Feighan - the need for an update on the opening of the endoscopy unit at Roscommon County Hospital;

(3) Deputy Noel Coonan - the need to fund a closed-circuit television surveillance pro-

gramme in County Tipperary to tackle high crime rates;

(4) Deputy Brian Stanley - the need to increase Garda numbers to address the increase in rural crime;

(5) Deputy Bernard J. Durkan - the need to amend the law on bail;

(6) Deputy Seamus Kirk - the need to address claims that 10,000 children were hospitalised with dental issues;

(7) Deputy Michelle Mulherin - the need to amend the student grant scheme and the student support regulations to accommodate those working abroad as charitable volunteers;

(8) Deputies Joan Collins and Thomas Pringle - the need for the Irish League of Credit Unions to be part of the financial solution to the housing crisis; (9) Deputy Ruth Coppinger - the need to implement building programmes for primary schools in the Dublin West area;

(10) Deputy Noel Harrington - the need to consider regulations for the fitting of location tracking devices in all vehicles here to address theft;

(11) Deputy Joe Costello - the need to address concerns about the future of post offices in the Cabra area, Dublin 7;

(12) Deputy Tony McLoughlin - the need to clarify the proposed reduction in capital gains tax from 33% to 20% in the context of farmers set to lose land holdings under a compulsory purchase order;

(13) Deputy Clare Daly - the need to address the regular movements of US military refuelling planes through Shannon in the context of the Saudi-led bombing campaign in Yemen;

(14) Deputy Sean Fleming - the need for new building projects for primary and secondary schools in Monasterevin, County Kildare;

(15) Deputy Mattie McGrath - the need to address concerns raised in the Irish College of General Practitioners' report on health inequality;

(16) Deputy John Browne - the need to maintain existing services and staff numbers at the Maryville mental health centre, New Ross, County Wexford;

(17) Deputy Robert Troy - the need for the Minister to Justice and Equality to discuss the issue of the increase in crimes being perpetuated against elderly people in rural areas throughout the country;

(18) Deputy Mick Wallace - the need to discuss the circumstances leading to the resignation of Billy Walsh from the Irish Amateur Boxing Association;

(19) Deputy Billy Kelleher - the need to address concerns regarding the recall of a number of batches of chemotherapy drugs; and (20) Deputy Thomas P. Broughan - the urgent need for the Minister for Transport, Tourism and Sport to bring forward a consolidated road traffic Act before the end of the Government's term, given the recent revelations about the low rate of prosecutions for drink-driving offences, along with earlier information provided by the Minister for Justice and Equality, Deputy Frances Fitzgerald, relating to penalty point offences.

The matters raised by Deputies Brendan Smith; Frank Feighan; Joan Collins and Thomas Pringle; and Joe Costello have been selected for discussion.

### **Leaders' Questions**

**Deputy Micheál Martin:** The report on paramilitary groups in Northern Ireland comes to a very stark conclusion that the IRA army council still exists and the report endorses PSNI Chief Constable George Hamilton's assessment that the IRA exists, that some of its members were implicated in the murder of Kevin McGuigan and that the Provisional IRA, PIRA, members believe the Provisional IRA army council oversees both PIRA and Sinn Féin with an overarching strategy. The fundamental question for our republic that we must answer and which the report does not ask is the threat to democracy from an organisation that is involved with politics but which retains a military structure, with an active intelligence gathering department and access to weaponry. Those fundamental questions leap from this report, no matter how uncomfortable and unpalatable they may be, and we need to respond to them. We need full honesty and transparency in that regard.

Additionally, the report indicates that individual PIRA members remain involved with criminal activity, such as large-scale smuggling, and there have been isolated incidents of violence, including murders. We know from the report of the Commissioner of An Garda Síochána that the Criminal Assets Bureau, since its establishment in 1996, has raised approximately €28 million from the proceeds of crimes, actions and tax assessment with respect to over 50 individuals with connections or associations with the Provisional IRA in the past. Other investigations are proceeding.

I put the fundamental question to the Taoiseach yesterday. This illustrates the absolute need for the British and Irish Governments to establish a strong, well-resourced joint agency to tackle, once and for all, the organised crime being undertaken by paramilitaries. In the context of the Provisional IRA and its members, we must ask whether people are absolutely certain that any of the proceeds from the organised crime being committed by alleged individual provo republicans is not finding its way to the political project. I do not say that lightly.

**Deputy Gerry Adams:** The Galway tent, the Deputy means.

**Deputy Pádraig Mac Lochlainn:** That is shameful. The Deputy is a gurrier, a political gurrier.

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

**Deputy Micheál Martin:** I have been labelled certain things now by people who do not like what I am saying.

**An Ceann Comhairle:** We are way over time.

**Deputy Micheál Martin:** I refer the Taoiseach to the proceeds of the Northern Bank robbery. I indicate to the Members on my right to check court records from 2010, which show that three members were prosecuted and found guilty of handling proceeds from the Northern Bank robbery. One was an unsuccessful candidate for Sinn Féin and the other was a fund-raiser for



the party. The third member in the courts pleaded guilty and described himself as a republican and Sinn Féin member. My point is there is form in this respect. People may not like what I am saying but it happened.

**Deputy Sandra McLellan:** Sure everyone is talking.

**Deputy Micheál Martin:** We cannot turn a blind eye to this. There is a fundamental question. I have described this as a “twilight zone”, with people being individuals one day and “good republicans” the next day. It is very difficult for people in our position to work out which is which.

**An Ceann Comhairle:** The Deputy should respect the Chair. He is almost two minutes over his time.

**The Taoiseach:** I thank Deputy Martin for his question. I remind him of what I said at Cambridge some time ago about this matter that 21 years after the IRA ceasefire, it is past time that it should have any capacity for any threat.

**Deputy Mattie McGrath:** Cambridge two.

**The Taoiseach:** Statements to the effect that the IRA has gone away or left the stage are simply not credible. The reports speak for themselves. I spoke with British Prime Minister, David Cameron, last evening about this. The return of the DUP and First Minister Robinson to the talks currently under way and including the leader of the Ulster Unionist Party is a positive sign, given the two reports from the PSNI and the Garda.

I pointed out yesterday that the Criminal Assets Bureau had brought 99 individuals before the Special Criminal Court and, as the Deputy noted, €28 million was confiscated as a result. The impact of the report presented by the three members yesterday, to the effect that the members of the Provisional IRA believe that an army council now controls the Sinn Féin Party, both in political and electioneering terms, is certainly a matter that must be responded to by the president of Sinn Féin. I have said to Deputy Adams on many occasions that I have never accepted that he was not a member of the IRA over those years or a member of the army council. He has denied that on umpteen occasions.

Suffice it to say that the Deputy’s question is about a particularly well-resourced cross-Border unit-----

**Deputy Brian Stanley:** It is about an election.

**The Taoiseach:** -----involving both governments, dealing with the Garda and PSNI. I am not opposed to this and the suggestion is valid. I pointed out yesterday that we have two cross-Border task forces currently that are proving to be very successful, both in tackling diesel and fuel laundering and tobacco smuggling. I gave the evidence of this. I suggest that this is part of the process of talks now under way and it is partly the reason talks are under way. There is no place for the kind of activity referred to in the PSNI report in this society and democracy and on this island. The Garda Commissioner has pointed out that there will be no truck with this kind of carry-on from the remnants or divergent groups of the Provisional IRA, which has poisoned so many people in society over the past 35 or 40 years.

I accept that the Deputy’s question is valid, given that operations are currently ongoing with the two task forces operating across the Border to deal with drug and tobacco smuggling, fuel



laundering and so on. If emerging from the process there is acceptance that there should be a further development in having an agreed joint cross-Border unit or agency, I would not be opposed to it. I would like that to be considered in the talks, as if it comes from that, it would have an enhanced status.

I am happy to report to the House that the work of the two joint task forces is currently very successful. The Minister for Foreign Affairs and Trade, Deputy Flanagan, is representing us at the talks. If representatives of the people feel it would be appropriate for both governments to have a different agency, well resourced with all the facilities to deal with this once and for all, I would have an open mind on it and be supportive if it came from there.

**Deputy Micheál Martin:** I appreciate the Taoiseach's positive response to the basic question I have asked, and I am obviously quite prepared for the talks to consider that and for a proposal of that kind to emanate from the talks process. The peace process belongs to us all. It does not belong to one political party, as has been asserted from time to time. We have all invested heavily in the peace process, none more so than the people of Ireland themselves, who voted on an all-island basis for it, but no one expected that 17 years after the Good Friday Agreement we would essentially have an organisation whose strategy is overseen by an army council, according to this report, and that retains access to weaponry and has a military structure and an active intelligence-gathering department. That is what we are up against in the Republic.

**Deputy Michael Creed:** "They haven't gone away, you know."

**An Ceann Comhairle:** A question, please.

**Deputy Micheál Martin:** That is what we are up against in the Republic. The situation has always been one of denial, denial, attack, attack. I have just been called a gurrier by Deputy Mac Lochlainn.

**Deputy Pádraig Mac Lochlainn:** That is because he is. He is the prime gurrier in these Houses.

**Deputy Jonathan O'Brien:** He is.

**Deputy Micheál Martin:** That is the type of intimidation-----

**Deputy Colm Keaveney:** Plausible deniability.

**Deputy Micheál Martin:** -----that people engage in when they are challenged, and remember-----

**Deputy Pádraig Mac Lochlainn:** Deputy Martin is more hardline than MI5 and the DUP. He is worse than the DUP.

**An Ceann Comhairle:** Deputy Martin should put his question. Deputy Mac Lochlainn should stay quiet.

**Deputy Micheál Martin:** If I could put it to the Taoiseach, would he not agree-----

**Deputy Pádraig Mac Lochlainn:** Fianna Fáil is the republican party.

**An Ceann Comhairle:** Would Deputy Mac Lochlainn please stay quiet?

**Deputy Micheál Martin:** It is the Chief Constable's assertion, which has been endorsed by this report, that Provisional IRA members were implicated in the murder of Kevin McGuigan, which has created this crisis in the peace process.

**An Ceann Comhairle:** I thank the Deputy.

**Deputy Micheál Martin:** It was not anything I have said or anything anybody else has said.

**An Ceann Comhairle:** We are over time.

**Deputy Micheál Martin:** The final question I want to put to the Taoiseach is about the 50 individual members of the IRA who have had tax assessments against them arising out of criminal proceeds and so on. I understand the need for *in camera* rules in terms of tax and so on. However, given the extraordinary nature of this issue and its importance for both jurisdictions-----

**An Ceann Comhairle:** Please put the question.

**Deputy Micheál Martin:** -----is there a need to review, in this specific context, how the *in camera* procedure is being used to protect or hide the identities of many of these individuals whom CAB has assessed as having major issues regarding the proceeds of crime and who are making tax settlements with CAB, but under cover and in a way that is not transparent, so we do not get a picture-----

**Deputy Jonathan O'Brien:** Fianna Fáil set up the legislation.

**Deputy Micheál Martin:** We do not get a complete picture of what is actually happening.

**The Taoiseach:** There is always the issue of natural justice. In respect of the CAB, which has proven to be very successful in following the money trail over the years, I am quite sure Deputy Martin is not implying that because an individual might be named, they might be guilty. The issue here, as I am sure he will appreciate, is probably worthy of consideration, but CAB has proven to be extraordinarily successful in following the money trail.

I have differences of opinion with Deputy Martin on many matters, but I have never descended to the level of what he has just been called from the far side.

**Deputy Joe McHugh:** Hear, hear.

**Deputy Pádraig Mac Lochlainn:** Laugh it off.

**The Taoiseach:** While we might differ and argue in our politics-----

**Deputy Jonathan O'Brien:** Two peas in a pod.

**Deputy Pádraig Mac Lochlainn:** Two Mother Teresas.

**An Ceann Comhairle:** Please, please.

**The Taoiseach:** -----we do not have to descend to that level. It is fair to say that the culture of intimidation and fear-----

**Deputy Michael Healy-Rae:** Two knees in a pants.

**The Taoiseach:** -----that has been generated in many cases speaks for itself.

**Deputy Finian McGrath:** Did you hear the Blueshirts?

**The Taoiseach:** It is worth saying that talks are going on. The First Minister is back in there, the Ministers are reconstituted and the UUP and all parties are engaged as we speak, and that is the place where these things have to happen. There are questions arising from the Northern report, which states that based on intelligence the provisional army council is deemed to be overseeing both the Provisional IRA and Sinn Féin. This is based on reports from Provisional IRA members. It is an issue that needs to be addressed by the Sinn Féin president.

**Deputy Pádraig Mac Lochlainn:** Very good. MI5 would love that.

**The Taoiseach:** Whatever way we are here - Deputy Martin as leader of his party, I as leader of mine, and the Tánaiste as leader of the Labour Party - we are not subject to direction from any army council.

**Deputy Jonathan O'Brien:** They are only subject to bankers and developers.

**The Taoiseach:** I hope those at the talks will discuss these matters and both reports in a rational way and that the talks can conclude reasonably quickly.

**Deputy Gerry Adams:** For the record, Sinn Féin has advocated the type of cross-Border grouping approach that is now being proposed, and we very much support that. For the last few years, the political institutions in the North have been on the verge of collapse. Let us remember that the heart of the current contrived crisis is the murder of two men, Jock Davison and Kevin McGuigan. The Fianna Fáil leader's contribution to this crisis was an idiotic call for the suspension of the political institutions.

The basis of the very welcome recommencement of the talks today is the publication of a report by the British and another by the Garda Commissioner. Some elements of these reports have been seized upon by opponents of Sinn Féin, not least the Taoiseach and the leader of Fianna Fáil. I want to deal with two aspects of this. One is that Sinn Féin is totally and absolutely opposed to criminality of all kinds, and we stand with communities across this island and with the police services against criminality. We have paid a price for that: my home has regularly been targeted with bomb alerts, and I and other Sinn Féin representatives are under active death threats. That is a matter of fact. We have had property attacks. We have had one young man, Frank McCabe junior, blinded in one eye because of our party's and his family's stand against criminality.

This is not an academic exercise for us and it is not electorally driven point-scoring. We put our lives on the line against those who are engaging, in the name of republicanism and otherwise, in criminality. Second, like all other Members, Sinn Féin Members are accountable to one grouping - that is, the electorate. They are the people who give us our mandate. Our leadership is the Ard Chomhairle. It is elected democratically annually at our Ard-Fheis.

**An Ceann Comhairle:** A question, please.

**Deputy Gerry Adams:** We are not accountable to any other group or organisation. The business of making peace is challenging and the business of societal change is challenging, but that is our priority as a party, consistently and constantly, alongside our effort to build genuine republican alternatives to austerity and building support for a united Ireland. Led by Martin

McGuinness, we will engage positively in these talks. We will deal with all issues, including those cited by the Taoiseach and the Fianna Fáil leader, to build a real future-----

**An Ceann Comhairle:** Please put the question.

**Deputy Gerry Adams:** What I am asking the Taoiseach, as I have done many times, is whether he will prioritise his engagement with the British Prime Minister with the objective of stabilising and sustaining the political institutions set up under the Good Friday Agreement.

**The Taoiseach:** The answer to that question is yes, of course, at every opportunity. I spoke to him last night about this matter. I accept that Deputy Adams has been the target of intimidation and attempted assault and I have condemned that unreservedly. I expect that the Deputy First Minister, Martin McGuinness, will deal with questions in respect of the report. There are matters there that need to be dealt with and the talks that are currently going on are the forum for that. All the representatives are there now.

Peace is always challenging. That is why this Government has made a point of making the resources and facilities available to the Garda to do its job. We had the murders of Adrian Donohoe and Tony Golden. The Government decided quite some time ago to reopen the Garda training college in Templemore. We have 600 recruits coming through that next year. Government has put up €27 million or €30 million for new vehicles, with more to follow. Today the Minister for Justice and Equality is announcing an extensive Garda programme in terms of proper facilities, buildings and infrastructure for the Garda to do its job. The Commissioner has made changes in terms of extra personnel in the Border area following the murder of Garda Golden. I take the evidence of CAB and the two joint task forces which have been working very effectively over the past number of years on the extent of fuel laundering, cigarette smuggling and other acts of criminality, and I am glad to hear Deputy Adams say that he supports these efforts completely. As I said to Deputy Martin, if it comes from these talks that there is a request, agreement or proposal that there be a revamped or different joint agency resourced and financed by both Governments to deal with criminality in all its forms, I will have an open mind on that.

Deputy Adams's party has come under some scrutiny in respect of claims of illegality and illegal activity either in respect of safe houses and sexual abuse or property-based programmes indicating access to extraordinary levels of finance. Deputy Adams is his party's president and that is for him to answer.

In that sense, the answer to Deputy Adams's question is "Yes". I am happy to engage with the British Government and with the Prime Minister directly as often as needs be in respect of the issues that need to be sorted out here.

**Deputy Gerry Adams:** With respect, a 15-minute phone call every so often with the British Prime Minister is not enough. I have said to the Taoiseach that it needs a consistent strategic involvement on an ongoing basis. I deplore, as I have here and in the constituency, the killings of Detective Garda Adrian Donohoe and Garda Tony Golden - one could not do otherwise - but let us not blame republicans for the failure of the State to tackle the type of crime that is being visited in urban and rural areas, not least in the Border counties. My constituency has been starved of gardaí. Garda numbers have been cut by this Government and I welcome the fact that that has to some degree been rectified.

I repeat the point that the Sinn Féin Party, and no other organisation, is the only party which

is engaged in republican activism and in the republican struggle-----

**Deputy Robert Dowds:** That is rubbish.

**Deputy Noel Harrington:** Incubating terror.

**An Ceann Comhairle:** A question please.

**Deputy Gerry Adams:** -----and we are wedded to peaceful and democratic means. By the way, it was us who forged out a peaceful and democratic way to achieve republican and democratic objectives.

**Deputy Arthur Spring:** How many people were killed in the meantime?

**An Ceann Comhairle:** I ask Deputy Adams for his question,

**Deputy Gerry Adams:** I am finishing, a Cheann Comhairle. All parties have a responsibility to tackle criminality and I will not take weasel words from the Taoiseach stating he welcomes that I am against criminality.

**An Ceann Comhairle:** Could Deputy Adams please put his question?

**Deputy Gerry Adams:** The Taoiseach knows I am against criminality. He knows this party is against criminality. He knows that. What we need to do is to-----

**A Deputy:** Deputy Adams can pass it on. He is a hypocrite.

**Deputy Gerry Adams:** -----ensure that those who commit crimes against the community or against the state, irrespective of whatever part of the island it happens in, are brought before the courts and let the courts, not this Dáil Chamber, make their judgment on all of this.

There are pressing issues, such as Tory cuts. Did the Taoiseach raise that with the British Prime Minister?

**An Ceann Comhairle:** Would Deputy Adams please put his question?

**Deputy Gerry Adams:** There are the attacks on working families and on welfare and dealing with the legacy of the past. The very people who produced this report also brought in a veto to stop the families of victims of British terrorism from looking and finding out what happened to their loved ones.

**An Ceann Comhairle:** This is Leaders' Questions.

**Deputy Michael Creed:** What about the victims of the IRA terrorism such as the late Mrs. Jean McConville and her family?

**Deputy Gerry Adams:** We will work positively with all the political parties and with the two Governments but, as I have asked the Taoiseach on many occasions, will he, as co-equal guarantor of the Good Friday and other agreements, engage with the British Prime Minister with the required and constant focus and consistency?

**The Taoiseach:** I will talk to the British Prime Minister as often as is necessary. I have said to him, and we both agreed, that responsibility is devolved to the elected representatives of Northern Ireland. That was their request and this is what has been granted. This is their

responsibility. These talks have dragged on since after Christmas of last year and they have had difficulties, up and down, in respect of welfare reform and other issues. Now we have the talks arising from the comments of the PSNI Chief Constable, that report and the report from the Garda Commissioner.

Is Mr. Paudie McGahon wrong? Is Máiríá Cahill wrong? When Deputy Adams says that anybody out there who has information about these matters should bring them to the notice of the Garda or the PSNI, he, as the president of his party, knows many of the people who live in the Border area. It is a close-knit community. It is so close-----

**Deputy Gerry Adams:** Is the Taoiseach going to demonise the whole community?

**The Taoiseach:** It is actually so close-----

**Deputy Gerry Adams:** Is the Taoiseach going to look for votes off those people-----

**The Taoiseach:** It is actually so close-----

**Deputy Gerry Adams:** -----he demonises?

**An Ceann Comhairle:** Sorry, please.

**The Taoiseach:** It is actually so close that nobody speaks out. Nobody will speak out because-----

**Deputy Mary Lou McDonald:** That is rubbish.

**Deputy Gerry Adams:** That is ridiculous.

**Deputy Robert Dowds:** That is it.

**Deputy Ray Butler:** Fear.

**Deputy Mary Lou McDonald:** The Taoiseach does not know the communities.

**The Taoiseach:** -----the message is out: "If you speak out, we will deal with you." When Deputy Adams states his party is against criminality in all its forms, there are a range of issues there that he needs to deal with as president of his party, and I hope he does.

I hope that the talks in Belfast today will bear fruit. As I said, if there is a request for a different form of joint force or joint action group to deal with cross-Border criminality in all its forms, I will not be opposed to it. I would like to see that it would come from the representatives of all the people, North and South, who are now involved in those discussions.

**Deputy Stephen S. Donnelly:** On budget day, the Minister for Public Expenditure and Reform, Deputy Howlin, stated that education is the engine of economic growth, and I agree. When it comes to Ireland's future stability and prosperity, our education system is our single greatest asset. The Minister went on to state that this Government over the past five years has supported education but, of course, that is not the reality. The Government has effectively abolished the career guidance counsellor role and it has increased class sizes. It has imposed wide-ranging cuts to resource teachers. Higher education has seen cuts of one third and capital investment in higher education has been cut by over three quarters. What is the result of this support from Labour-Fine Gael?



Only five days ago, a mother chained herself to the gates of the Department of Education and Skills protesting at the closure of her son's autism unit. In 2011, when the Taoiseach came into power, Ireland had two universities in the top 100 ranked globally. Today, we do not have one in the top 150 ranking globally. One university president described what this Government has done to the university sector as "asset stripping", and the same can be said for what has happened to the primary and secondary education systems.

Then came the budget last week. Up until now, Labour-Fine Gael has been following a Fianna Fáil troika programme but last week's budget was the Government's opportunity to set a vision for Ireland for the future. When it came to education, big claims were made in the form of 2,200 new teachers and smaller class sizes, but when one follows the money none of that stacks up. In last week's budget, of the €1.5 billion available to the Government, it invested €24 million in the entire education sector, that is, less than 2% of the budget available and less than one fifth of 1% of the education budget.

**Deputy Arthur Spring:** How much is the capital programme?

**Deputy Stephen S. Donnelly:** This Government, in last week's budget-----

**An Ceann Comhairle:** A question, please.

**Deputy Stephen S. Donnelly:** -----did not put a single euro into higher education. By contrast, the Government allocated €561 million to the universal social charge. My question is this: when the Republic's future is dependent on us having some of the best educated school leavers and college graduates, and when the Government acknowledges that education is the engine of economic growth, why did it invest 25 times less in the entire education system than it did in one tax cut?

**The Taoiseach:** I disagree with Deputy Donnelly. The vision for Ireland has been set out not only this year, but for quite some time. He will appreciate the extraordinary economic mess that this Government inherited.

I have just left CHQ on the docks where a company, Pivotal, is investing €100 million in the creation of jobs, both here in Dublin and in Cork. The company's central point was that the reason for it choosing Ireland to invest an extra €100 million was not based on the question of the 12.5% corporate tax rate but on talent. It was based on talent coming through an educational system that, despite all the challenges, has measured up to the range and the kind of quality that companies look for, be they in the financial services, pharmaceutical or ICT sectors. Their words are far more powerful than those of the politicians because they are the ones who make the decisions to invest in this country. They find it a place to be, given the range of our talent pool. Although there were recessionary times in education, the moratorium has been lifted and the Minister for Education and Skills will, in the coming weeks, announce the capital programme for the building of primary, secondary and third level education institutes. I do not share the Deputy's view of a depression in the education system.

**Deputy Bernard J. Durkan:** Hear, hear.

**Deputy Mattie McGrath:** I do not know where the Taoiseach is living.

**The Taoiseach:** It is a challenge. The Deputy mentioned the allocation of one fifth of the budget. The other four fifths of the budget goes to look after the teachers and those who pro-

vide education for our children and young people. The Deputy knows the extent of information available over the Internet. The job of teaching and the qualities of teachers have had to change. They are now directors, counsellors and guides. They must consider how to identify the flair in young people and how to put them in the direction of where the challenge is going to be met and where they can have a career and ambition. I do not share the Deputy's disillusion.

The other day, I was in a school with 28 nationalities and a €6 million extension. The Deputy should hear those young people talking about living in this country, their ambitions to have a career here and what they want to do. Best of all was that the 28 nationalities, with their music, dress and traditions, were all talking about Ireland. Two of the most animated talks were those shared between the young people from Iran and the United States. I do not share the Deputy's view at all. There are challenges and we would like to have more to invest. We cannot have it until we have an engine to drive it. At last, the Government, working with the people, has brought our country to a different spot.

**Deputy Mattie McGrath:** Where is the interest in Castlebar?

**The Taoiseach:** By the time we reach 2017, with the deficit eliminated, the country will have far more to resource such social challenges. The criteria set for top global universities change all the time. The Deputy should go to the universities and talk to the young people, technologists and institutes. They are meeting these challenges every day. I do not share the Deputy's disillusion.

**Deputy Bernard J. Durkan:** Hear, hear.

**Deputy Stephen S. Donnelly:** While the Taoiseach may not share my disillusion, the numbers do not lie. I talk to teachers. I have three young children. I talk to lecturers, parents and students. It is great that the Taoiseach met a multinational class. It is fantastic. However, did the Taoiseach tell them the Government cares about them so much that it has invested practically nothing in their education out of the €1.5 billion?

**Deputy Ray Butler:** That is not true. It is nonsense.

*(Interruptions).*

**Deputy Stephen S. Donnelly:** Would the Taoiseach tell them the Government has increased the education budget by less than one fifth of 1%? Go and talk to the lecturers in our universities about their growing class sizes. Talk to the woman who chained herself to the gates of the Department of Education and Skills.

**Deputy Mattie McGrath:** She was waiting for the sheriff.

**Deputy Stephen S. Donnelly:** The numbers do not lie. The Taoiseach talks about innovation and entrepreneurship.

**An Ceann Comhairle:** A question, please.

**Deputy Stephen S. Donnelly:** The Taoiseach let the Web Summit go to Portugal and has invested nothing extra in education.

**Deputy Bernard J. Durkan:** More rubbish.

**Deputy Stephen S. Donnelly:** The Social Democrats proposed a budget using exactly the

same fiscal space.

**An Ceann Comhairle:** Could you put your question, please?

**Deputy Stephen S. Donnelly:** Rather than investing €24 million, we were able to propose a €200 million investment. That is investment in education, our children and higher education. I will ask the Taoiseach again, given that he ignored the question.

**An Ceann Comhairle:** Do not ignore the Chair.

**Deputy Stephen S. Donnelly:** The Taoiseach had a choice. Although he said the resources were not available, €1.5 billion was available.

**An Ceann Comhairle:** I ask the Deputy again not to ignore the Chair. Could you put your question?

**Deputy Stephen S. Donnelly:** Of the available resources of €1.5 billion, why did the Taoiseach allocate 25 times more out of the available resources to a tax cut aimed at the election than he invested in the entire education system?

**The Taoiseach:** It is Government policy. Governments make decisions. The universal social charge was a brutal instrument introduced by a Fianna Fáil Government. We have agreed that, if re-elected, we will abolish it over the coming four or five years.

**Deputy Micheál Martin:** Like universal health insurance five years ago.

**The Taoiseach:** Last year, when the Government made a decision to reduce the tax burden on people, the spend began to increase out through the community. We broadened the tax base by having property charges and water contributions. The more people are working, the less tax they pay and the greater the opportunity to deal with the social challenges we have. The figures do not lie. This is why interest rates have fallen from 15% to less than 2%. This is why unemployment has decreased from 15.2% to 9.4%.

**Deputy Michael Healy-Rae:** What about forced emigration?

**The Taoiseach:** This is why we have beaten the deficit targets every year since the Government was elected and our national debt is approaching European norms and will continue to do so in the time ahead. This is why more than 125,000 new jobs have been created. This is why the Government made its decision. The tax level was too high. It is the first time since 2009 that the tax burden is less than 50%. If the people want a continuation of this, they can vote for it in due course.

I discussed the Web Summit. The organisers made their choice. It was a commercial decision. We are disappointed and we hope they return. The Deputy mentioned growing class sizes. It is why the Government decided to reduce the pupil-teacher ratio at both primary and secondary level. The Minister will announce a capital programme to abolish prefabs and construct new buildings in order that teachers can do their best to meet the demands of so many firms and opportunities that lie ahead.

**Deputy Bernard J. Durkan:** Hear, hear.

*Dáil Éireann*  
**Order of Business**

**The Taoiseach:** It is proposed to take No. 41, Assisted Decision Making (Capacity) Bill 2013 - Report Stage (resumed) and Final Stage; No. 7, Financial Emergency Measures in the Public Interest Bill 2015 - Second Stage (resumed); and No. 8, Electoral (Amendment) (No. 2) Bill 2015 - Order for Second Stage and Second Stage.

It is proposed, notwithstanding anything in Standing Orders, that in the event a division is in progress at the time fixed for taking Private Members' business, the Dáil shall sit later than 9 p.m. and shall adjourn on the conclusion of Private Members' business, which shall be No. 210, motion re sale of Project Eagle (resumed), and shall, if not previously concluded, be brought to a conclusion after 90 minutes.

Tomorrow's business after Oral Questions shall be No. 9, Finance (Miscellaneous Provisions) Bill 2015 - Order for Second Stage and Second Stage; No. 7, Financial Emergency Measures in the Public Interest Bill 2015 - Second Stage (resumed); No. 8, Electoral (Amendment) (No. 2) Bill 2015 - Second Stage; and No. 42, Criminal Justice (Burglary of Dwellings) Bill 2015 - Second Stage (resumed).

**An Ceann Comhairle:** There is one proposal to be put to the House. Is the proposal for dealing with the late sitting agreed to? Agreed.

**Deputy Micheál Martin:** The Dáil sat for only five days in September and is due to sit for ten days in October. On yesterday's Order of Business, the Taoiseach listed a raft of legislation that is required. Maybe he was contemplating a run to the country in November, and hence the diary might have been cleared.

**Deputy Bernard J. Durkan:** Somebody on the Deputy's side might have been contemplating it.

**An Ceann Comhairle:** A large number of Deputies want to speak. Would you please put your point on promised legislation?

**Deputy Micheál Martin:** Of course. This relates to the order of the House. Will the Taoiseach allow time for a debate on the report on paramilitary activity in Northern Ireland? I accept the report of the PSNI and MI5. I am not clear whether Sinn Féin has accepted it or whether there is complete denial.

**Deputy Dessie Ellis:** Does the Deputy accept everything MI5 says? That is his problem.

**Deputy Micheál Martin:** The Deputy's organisation would know much more about MI5 than I would. Many of his party members had a lot of collusion with them. I will take none of that nonsense.

**An Ceann Comhairle:** Nearly three minutes are gone and it is very unfair to other Deputies who want to ask a question on the Order of Business.

**Deputy Micheál Martin:** It is important to have a debate to allow all political parties to put on the record their position on the report and the report of the Garda Commissioner. Within days of the budget, the Minister, Deputy Reilly, clarified that not all children will receive a second year of free preschool education as a result of budget 2016. Deputies will recall that the Minister, Deputy Howlin, had said he would provide a second year of free preschool education,

in effect. All that is being provided is an additional 23 weeks, on average. The budget increase is just €40 million, or 24% of the current provision.

**An Ceann Comhairle:** We are not talking about the budget. I ask the Deputy to recognise the other Members here.

**Deputy Micheál Martin:** I want to know when the child care (amendment) Bill will be brought before the House. It seems that we have to decode the budget statements of the Minister, Deputy Howlin, in order to get any clarity.

My third point relates to the care of older people in community care. Five years ago, the programme for Government contained a clear commitment that “additional funding will be provided each year for the care of older people”. When one examines this Government’s budgets, one finds that it has not fulfilled that promise. Funding for older people’s services was reduced in 2011, 2012, 2013 and 2014.

**An Ceann Comhairle:** The Deputy has spoken for four minutes without asking about legislation.

**Deputy Micheál Martin:** I have asked about legislation. There were social care plan reductions in 2014. Contrary to the commitment made in the programme for Government, additional funding has not been provided each year for older people’s services. In fact, there have been reductions. When will the programme for Government be implemented?

**The Taoiseach:** The answer to the Deputy’s first question is “Yes”. I have already given an instruction to the Whip. We will have a debate on both reports the week after next when the Dáil comes back. The child care Bill mentioned by the Deputy was published yesterday as a Seanad Bill. The Minister will be in the Seanad today or tomorrow to deal with that. Obviously, a range of opportunities in respect of older people was referred to in the budget. I will come back to Deputy Martin on the specific question he raised.

**Deputy Jonathan O’Brien:** Can I ask the Taoiseach about two Bills that are proposed? I am aware that the heads of a Bill that would require the publication on menus of details of calories were agreed last February. Obviously, this legislation will have profound effects on health and on obesity. When will it be published? We have consistently raised the second Bill, which will reform and consolidate our domestic violence legislation. As the Taoiseach is aware, some 39 states have signed up to the Istanbul Convention to date. We have to pass legislation so that Ireland can sign up to it. There has been an ongoing delay in bringing that Bill before the House. Can the Taoiseach give us a timeframe for when we might get it?

**The Taoiseach:** The heads of the domestic violence Bill were cleared in July. It is scheduled for publication in early 2016. Work is ongoing on the Bill in respect of calorie quantities on menus. I will advise Deputy O’Brien of the progress that is being made in that regard. It is not due for publication in this session.

**Deputy Denis Naughten:** People who are out on bail are committing 33 burglaries a week. In 2006, the current Taoiseach called for the electronic tagging of people who are on bail and this was provided for in section 11 of the Criminal Justice Act 2007. There are 50 electronic tags gathering dust in a cardboard box at the moment.

**An Ceann Comhairle:** That is grand, but the Deputy should ask a question.



**Deputy Denis Naughten:** This is costing the taxpayer €140,000 a year. A ministerial order from the Minister for Justice and Equality is required to bring section 11 of the 2007 Act into force. When will that be forthcoming? When will we start to tag criminals who are out on bail to prevent them from trying to burglarise and terrorise the country?

**Deputy Thomas P. Broughan:** Hear, hear.

**The Taoiseach:** The Criminal Justice (Burglary of Dwellings) Bill 2015 is due to be debated on Second Stage tomorrow. The Minister has referred to this on a number of occasions. There are conditions and circumstances that apply in respect of electronic tagging, as the Deputy is well aware. He will have an opportunity to articulate what he has just said when the Bill is introduced by the Minister tomorrow. It is more than likely that the Minister will deal with the question of section 11 when she responds to the debate.

**Deputy Denis Naughten:** I asked about the 2007 Act.

**Deputy Thomas P. Broughan:** Can we expect a decision on rent certainty, which has been the subject of long-standing discussions, to be made as a matter of urgency? Will legislation be introduced? When will an announcement be made? Is the Taoiseach aware that the vast bulk of the 79 families who became homeless the month before last were evicted by landlords after massive rent increases were imposed? Can we expect urgent action and legislation on rent certainty in the coming days?

**The Taoiseach:** I dealt at length with the question of rent yesterday and the day before. We do not want to do something that is going to make the situation worse.

**Deputy Thomas P. Broughan:** Eighty families have been evicted.

**The Taoiseach:** I can confirm that the Ministers for the Environment, Community and Local Government and Finance, and their respective Departments, are working on a package of measures that we hope will deal with a number of these problems. The shortage of supply of houses in the first place is central to the problems in question.

**Deputy Ciara Conway:** There was a very historic occasion last night when the Marriage Bill 2015 was passed by the Seanad. The Equality (Miscellaneous Provisions) Bill 2013 has passed all Stages in the Seanad. When will it be taken in the Dáil? Section 37 of the Employment Equality Act 1998 needs to be amended as soon as possible because it is having major implications for teachers and nurses, in particular.

**The Taoiseach:** As the Deputy has pointed out, it has gone through the Seanad and is awaiting Second Stage here in the Dáil. It is a matter for the Whips to agree on the schedule of business. There is no objection to it being taken, obviously.

**Deputy Dessie Ellis:** Following the recent tragic deaths in Carrickmines and the subsequent reaction of residents in blocking the resettlement of displaced families, could the Taoiseach organise a debate on discrimination against the Traveller community so that we can speak about the rights and ethnicity of that community and the blatant bigotry that exists in our society?

**An Ceann Comhairle:** It might be a matter for a Whips' meeting.

**The Taoiseach:** When Deputy Adams raised this matter the other day, I made the point that arrangements have already been made for the responsible Ministers to meet and discuss this



matter as an agenda item at a future meeting of the joint North-South ministerial bodies. On the specific question raised by Deputy Ellis, clearly there is a question of trust here between the residents and the council. Trust needs to be demonstrated and achieved inside a specific timeframe. It is a case of discussion and negotiation so that trust can be built between both communities.

**Deputy Peter Fitzpatrick:** We need to educate our citizens if we are to combat obesity, which is a serious problem in our country.

**An Ceann Comhairle:** I ask the Deputy to cut out the speeches and get to the legislation.

**Deputy Peter Fitzpatrick:** We could provide some assistance in this regard by providing for mandatory calorie labelling in restaurants, takeaways and premises selling foods that are not pre-packaged. When can we expect the health and well-being (workplace well-being) Bill to be published?

**The Taoiseach:** Deputy O'Brien has raised this question already. The Bill in question is being worked on. I will give Deputy Fitzpatrick an update on the work that is under way to determine when the number of calories will be mentioned on menus so that those who have an opportunity to go into such facilities can know all about it.

**Deputy Michael Healy-Rae:** People are waiting three years for cataract operations and two to three years for hip operations. People are afraid to go into accident and emergency departments because of the dreadful length of time they have to wait.

**Deputy Jerry Buttimer:** People are not afraid to go into accident and emergency departments.

**Deputy Michael Healy-Rae:** CAT scans are taking between six and 12 months.

**An Ceann Comhairle:** The Deputy should hang on a second.

**Deputy Michael Healy-Rae:** I am asking about the health reform Bill. I wish to inform the Taoiseach that his new Minister for Health is failing dismally in his role.

**The Taoiseach:** What is the question?

**An Ceann Comhairle:** When is the health reform Bill due?

**The Taoiseach:** I do not have a date for that. I will advise the Deputy on the stage of progress being made with it.

**Deputy Mattie McGrath:** The Irish tyre wholesalers and retailers have to attend the Dáil today to brief Members of the Oireachtas-----

**An Ceann Comhairle:** That is very interesting. Maybe the Deputy can have a chat with them afterwards.

**Deputy Mattie McGrath:** -----because the Minister, Deputy Kelly, is setting up another quango - a monopoly - at a cost of €75 million.

**An Ceann Comhairle:** The Deputy does not seem to have heard me. This is about promised legislation.

**Deputy Mattie McGrath:** The Ceann Comhairle will know about this when he goes to get his tyres changed.

**An Ceann Comhairle:** The Deputy does not need to worry about my tyres

**Deputy Mattie McGrath:** When he goes in for a set of tyres, it will add at least €14 to the cost.

**An Ceann Comhairle:** Will the Deputy stop messing or I will not call him again?

**Deputy Mattie McGrath:** I am not messing.

**An Ceann Comhairle:** Many other Deputies are waiting to speak.

**Deputy Martin Heydon:** Put him out.

**An Ceann Comhairle:** Deputy Mattie McGrath should be fair.

**Deputy Mattie McGrath:** I am saying that the Taoiseach should stand up to the Minister, Deputy Kelly, regarding this quango.

**An Ceann Comhairle:** I ask the Deputy to sit down.

**Deputy Mattie McGrath:** The Minister, Deputy Noonan, has stood up to him already. Maybe the Taoiseach should do likewise.

**Deputy Jerry Buttimer:** Deputy Mattie McGrath ran away when he was in government.

**Deputy Mattie McGrath:** I did not run away.

**An Ceann Comhairle:** I call Deputy Mathews.

**Deputy Mattie McGrath:** Can I get an answer?

**An Ceann Comhairle:** No. I suggest the Deputy should put down a parliamentary question. This is about promised legislation.

**Deputy Jerry Buttimer:** Deputy Mattie McGrath could not take the heat at all.

**Deputy Mattie McGrath:** Deputy Buttimer is wrong.

**Deputy Peter Mathews:** When the Minister for Justice and Equality replied to a question asked by Senator Bacik in March of this year, she said she would have the Criminal Justice (Spent Convictions) Bill 2012 enacted before the summer of 2015. It has been on Committee Stage since March 2013. When can we expect Report and Final Stages to be taken?

**The Taoiseach:** That is expected very shortly. I will advise the Deputy on the matter.

**Deputy Robert Troy:** Last week, I asked the Taoiseach about a new statutory instrument that has to be introduced by the Department of Justice and Equality to enable local authorities to deal with tenants who engage in anti-social behaviour. I was to be advised of when this statutory instrument might be introduced. I would also like to ask about the legislation that has been mooted or promised to reduce the bankruptcy term from three years to one year. Will that legislation be published before the Taoiseach takes a trip to the park?

**The Taoiseach:** Deputy Troy raised this issue on a previous occasion and we have communicated with the Department of Justice and Equality but have not received a definite reply regarding the date for the statutory instrument. However, I will follow the matter up for the Deputy. I believe the legislation relating to a reduction of the insolvency period from three years to one year is due very soon, but I will advise Deputy Troy on it.

**Deputy Michael Creed:** In light of the previous debate on the publication of the Garda and PSNI and MI5 reports, which have profound implications for the rule of law and for democracy, I ask the Taoiseach to make substantial time available for a debate in this House on these matters.

**The Taoiseach:** Yes. I have already answered this question. The debate will take place on Tuesday, 3 November.

**Deputy Pat Deering:** Just over a year ago, a very important Bill, the Competition and Consumer Protection Bill, passed all Stages in the Houses. We have been waiting for quite a while for the relevant regulations to be introduced. Can the Taoiseach indicate when we can expect those regulations?

**The Taoiseach:** I cannot advise Deputy Deering of the current state of play on that, but I will revert to him on it.

**Deputy Arthur Spring:** Deputy Penrose introduced a Bill relating to bankruptcy, which proposes to reduce the term from three years to 12 months. There are families all over the country who are currently negotiating with banks, as well as many individuals and small businesses who are trying to deal with creditors and banks. I urge the Taoiseach to ensure that this Bill comes before the House before Christmas if at all possible. We need to have a debate in the House on the Bill and to make amendments to it to improve it for everyone concerned. I ask the Taoiseach to indicate when we can expect to deal with this legislation.

**The Taoiseach:** It is an important consideration for some people, but not for everyone. We must enact the FEMPI legislation, the Finance Bill and the Social Welfare Bill. We also want to deal with the Garda Síochána (Policing Authority and Miscellaneous Provisions) Bill, the Legal Services Regulation Bill and other Bills that have been mentioned, which are working their way through the system. There is a finite amount of time available before the House rises for the Christmas recess, but I will see if we can fit that legislation into the schedule too.

**Deputy Jerry Buttimer:** Deputy Conway raised the issue of section 37 of the Employment Equality Act, and it is important that we set a date for dealing with that matter. This House has already passed the Marriage Equality Bill following a vote of the people, as well as the Gender Recognition Bill. However, one of the pieces that is still missing is amending the Employment Equality Act to give certainty to people who are employed in the public service, particularly in education. Before the Taoiseach dissolves this Dáil, we should deal with this legislation.

**The Taoiseach:** It is for the Whips to agree on when this can be dealt with in the House. The legislation is awaiting Second Stage.

**Deputy Bernard J. Durkan:** There has been much discussion recently on the issue of criminality and how to deal with it. I note that there is a growing reliance on the tagging of criminals while they are on bail, but the best way to deal with such criminals is not to grant them bail in the first place. There would be no need to tag them if they were not out on bail. I ask the Tao-

iseach to bear this in mind in the preparation of legislation in the remaining six months of the life of this Dáil. This should be a priority and I would strongly urge that it be taken on board.

What is the current position of both the mediation Bill and the apprenticeship Bill, and what is the likelihood of their emerging in the shortest possible time and coming before the House before the end of this Dáil?

**The Taoiseach:** The mediation Bill is due early next year. Discussions are ongoing about certain elements of the apprenticeship Bill and have not yet concluded. As I have said already, the Second Stage debate on the Criminal Justice (Burglary of Dwellings) Bill is scheduled to begin tomorrow. Work is well under way on the broader issue of bail, but Deputy Durkan is free to make the point he has just made in his own articulate way when he gets a chance to speak during the debate tomorrow.

**Deputy Tony McLoughlin:** What is the position regarding the disability/equality (miscellaneous provisions) Bill?

**The Taoiseach:** That is due next year.

**Deputy Billy Timmins:** I ask the Taoiseach to advise whether the details of the promised tenant purchase scheme have been published or agreed yet.

**The Taoiseach:** That is due at the end of this month. I will advise the Deputy more accurately in due course.

**Deputy Seán Ó Fearghail:** In 2014, the Department of the Environment, Community and Local Government engaged in public consultation on draft revisions to the wind energy development guidelines, to which there were a large number of submissions from the public. We have been given to believe in recent times that there is a dispute between the Minister for the Environment, Community and Local Government, Deputy Kelly, and the Minister for Communications, Energy and Natural Resources, Deputy White, about the finalisation of those guidelines. Their finalisation is eagerly awaited in many communities, particularly those where there are current planning applications for the development of wind farms. When will the issue between the two Ministers be resolved, and can communities look forward to the Government coming out on their side in terms of the guidelines that will be published?

**The Taoiseach:** I can confirm that there is no dispute, merely a bit of energy in the conversation. The guidelines are not concluded yet. I know this is a matter of serious interest to companies and ordinary people in particular areas of the country. The process is not yet concluded.

**Deputy Martin Heydon:** When can we expect the landlord and tenant law reform Bill, given the need to reform and consolidate the laws governing the relationships between landlords and tenants? Will it be possible to make some improvements to the Private Residential Tenancies Board, PRTB, as part of that legislation? It is not working as effectively as it could.

Do we have a date for the start of the Horse Racing Ireland (Amendment) Bill, which proposes to change the structures of Horse Racing Ireland and its board, as well as some other much-needed changes?

**The Taoiseach:** Second Stage of the Horse Racing Ireland (Amendment) Bill will be taken in the next couple of weeks. The landlord and tenant law reform Bill will be taken early next year.

**Deputy Frank Feighan:** It is agreed that there is a need for a family court structure around the country. In that context, when is the family court Bill due before the House?

**The Taoiseach:** That will be dealt with next year.

**Deputy Marcella Corcoran Kennedy:** When will the gambling control Bill be published? Concern is growing about the need to reform the existing legislation to address the proliferation of opportunities for online gambling.

**The Taoiseach:** I do not have any great news on that legislation other than that it is due next year. It is complicated.

**Deputy Peter Mathews:** I am sorry for the delay-----

**An Ceann Comhairle:** The Deputy must get to his feet.

**Deputy Peter Mathews:** I am sorry. I am also sorry for the mistiming of this question, but I wish to underscore the questions posed by Deputies Spring and Troy earlier. I received a letter from a firm of solicitors-----

**An Ceann Comhairle:** Hold on a second. We are not going down that road. We are discussing promised legislation now.

**Deputy Peter Mathews:** Indeed, on the one-year bankruptcy issue, a suicide could have been avoided if that had been in place. I am just letting the Taoiseach know that I received a letter to that effect from a firm of solicitors in Westport, which is not even in my constituency.

### **Electoral (Amendment) (Moriarty Tribunal) Bill 2015: First Stage**

**Deputy Lucinda Creighton:** I move:

That leave be granted to introduce a Bill entitled an Act to provide for the implementation of the findings of the Moriarty tribunal, to provide for an increased level of transparency in respect of the funding of political parties and independent candidates, for that purpose to amend the Electoral Act 1997 and other enactments, and to provide for related matters.

I am delighted, on behalf of Renua Ireland, to introduce and publish the Electoral (Amendment) (Moriarty Tribunal) Bill today. This Bill, if accepted, would implement all of the recommendations of the Moriarty tribunal which, unfortunately and despite promises to the contrary, have not been implemented by this Government. Is it any wonder that there is so little trust in the Government and the political system generally? It is almost five years since Mr. Justice Moriarty, in his tribunal report on payments to politicians, found that it is beyond doubt that Deputy Michael Lowry imparted substantive information to Denis O'Brien which was of "significant value and assistance to him in securing the licence". It has since emerged that there has been, for over three years, a Garda investigation following the Moriarty tribunal's findings of suspected criminality in payments to politicians. Extraordinarily, this has not yet led to an investigation file being sent to the Director of Public Prosecutions, DPP. No one has yet been charged and there have been zero consequences for two of the key individuals against whom adverse findings were made. Denis O'Brien, whose massive wealth was accumulated in the aftermath of the granting of the mobile phone licence, now has ownership stakes in most of our

media, in water, gas and even in sport in this country. His accumulation of wealth has brought him enormous access and influence. He has stood shoulder to shoulder with the Taoiseach, the Tánaiste and other members of the Government at international events.

*1 o'clock* He has been invited by the Government to contribute to national policy think-ins. No agency of the State nor any State bank has shied away from dealing with a man whom the Moriarty tribunal found had transferred cash and benefits worth more than €1 million to the then Minister, Deputy Michael Lowry, who it is said helped Mr. O'Brien to secure the mobile telephone licence.

**An Ceann Comhairle:** The Deputy has been asked to move a Bill, not to make a statement.

**Deputy Lucinda Creighton:** Yes, these matters are material to both the Moriarty tribunal and the substance of the Bill I am moving.

**An Ceann Comhairle:** I do not know about that.

**Deputy Lucinda Creighton:** Equally, there have been virtually no consequences for the Deputy who was named in the Moriarty tribunal report. A motion of censure was passed in the House but no further action was taken. On 12 July 2015, it was reported that Topaz, which is now owned by Denis O'Brien who purchased it from the carcass of Anglo Irish Bank last year, awarded Deputy Lowry's company its refrigeration maintenance contract.

**An Ceann Comhairle:** Deputies may not make allegations of that nature in the House.

**Deputy Lucinda Creighton:** These are not allegations but facts. This contract is reported to be worth more than €1 million per annum to Deputy Lowry and his business. I have no doubt it has helped substantially towards the recent reporting of profit growth of €250,000 and accumulated profits of €1.5 million for the business.

**An Ceann Comhairle:** I will not allow the Deputy to use the introduction of a Private Members' Bill to have a cut off individuals who are not able to answer and where we do not know the full facts.

**Deputy Lucinda Creighton:** This is material to-----

**An Ceann Comhairle:** It is my job to be fair to everybody.

**Deputy Lucinda Creighton:** I will stick to the facts.

**An Ceann Comhairle:** If the same was being said about Deputy Creighton, I hope I would protect her to the same degree.

**Deputy Lucinda Creighton:** I appreciate the Ceann Comhairle's impartiality but this is material to the issue.

**An Ceann Comhairle:** It is not appropriate to use the floor of the Chamber to make allegations against people.

**Deputy Lucinda Creighton:** Mr. Justice Moriarty described the behaviour of Mr. O'Brien as "disgraceful" and "insidious". Those are the words of Mr. Justice Moriarty and they are the findings of the Moriarty tribunal. The purpose of the Bill is to implement the concrete recommendations of the tribunal's 2011 report. Unfortunately, however, there have been no conse-



quences. A file has rested with the Director of Public Prosecutions for three years. The individual named in the Moriarty tribunal report has threatened and is proceeding to try to silence Parliament through the courts system. That the Taoiseach has left the Chamber is telling. We have not had a response either from the Taoiseach or the Government to defend the interests of this House, the Chamber of Deputies, which is being sued by the individual in question.

The Taoiseach may have left the Chamber but I have no doubt the Chief Whip will convey the following message to him. Given that there have not yet been any concrete, tangible consequences in the criminal sense for any of the individuals named in the Moriarty tribunal report, I hope the Taoiseach will make a clear commitment that no individual named in the report will be invited to make up the numbers to put a Government in office after the next election. That very clear statement of intent could be offered by the Taoiseach to show some degree of leadership. It would also go some way towards rebuilding trust in the political system and creating confidence that corrupt payments to politicians will never again be tolerated in this country. That is what the Bill is about.

I am pleased to recommend the Bill to the House. I look forward to it being debated in this Chamber and seeing the Government parties, which expressed outrage in 2011, supporting us in trying to ensure all the recommendations of the Moriarty tribunal report of 2011 are implemented. That would be a real sign of intent by the Government parties and Opposition.

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

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

Question put and agreed to.

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

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

Question put and agreed to.

### **Education (Amendment) Bill 2015: First Stage**

**Deputy Jim Daly:** I move:

That leave be granted to introduce a Bill entitled an Act to establish an Ombudsman for Education, to provide an appeal mechanism for decisions of boards of education concerning decisions of teachers and grievances against schools, to provide for the investigation and reporting by the ombudsman for education of various matters pertaining to this act, to amend the Education Act, 1998, and to provide for related matters.

I welcome the opportunity to introduce this Bill. The most recent annual report of the Ombudsman for Children outlines the appalling vista created by the refusal of a public, State-funded school to enrol a teenage girl because she was pregnant and to refuse again to enrol her after she had her baby because she was a single mother. The school in question is funded by the taxpayer. Modern Ireland is supposed to be a pluralist, inclusive society. The Office of the Ombudsman for Children investigated the case at the request of the girl's parents. When it

sought notes and records of the school's decisions in the matter, it found that no records were held. In addition, it emerged that the school did not have a board of management or patron but was run by one individual.

That parents or teachers who have a grievance arising from decisions taken by school boards or authorities do not have an avenue of appeal is an appalling vista in this day and age. The Office of the Ombudsman for Children dutifully carried out an investigation into the case to which I referred but found it was powerless to compel the school to act and could only recommend to the Department that such decisions cease. The Department responded that it does not have any control, power, role or function in the actions taken by the management of schools. I cannot understand how such circumstances are allowed to prevail in 2015.

The education sector was described earlier as the cornerstone of society and engine of economic growth. Notwithstanding the wonderful terminology used to describe it, the system is not accountable or transparent when people with a grievance arising from decisions taken by school management have no avenue of appeal. People who receive a parking ticket are entitled to appeal the decision to a superior independent authority, yet no such avenue is available in the education system. It is to our eternal shame that this continues to be the case.

The purpose of the Bill is to establish an office of ombudsman for education which would allow for independent, professional adjudication of grievances of all partners and stakeholders in the education system, whether parents or school staff who are also victims in many cases. Unlike the Office of the Ombudsman for Children which deals with thousands of such complaints every year but has no power of compulsion or direction, the new office would have the power to compel and direct school boards and authorities to act under its direction. Its decisions would also be enforceable in the District Court.

This is not populist legislation. If anything, it will be difficult to implement because many of the vested interests in the education system, which is funded to the tune of €8.2 billion per annum, do not want an office of ombudsman for education with real powers of compellability to be established. However, this is the right thing to do and we as legislators owe it to the nation's children to right this wrong. I commend the Bill to the House.

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

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

Question put and agreed to.

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

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

Question put and agreed to.

*Sitting suspended at 1.08 p.m. and resumed at 2.08 p.m.*

## Topical Issue Debate

### Northern Ireland Issues

**Deputy Brendan Smith:** I thank the Ceann Comhairle for selecting this very important matter for discussion. Yesterday's report by the PSNI and MI5 on paramilitary activity in Northern Ireland contained serious findings that have profound repercussions for the island. Its basic conclusion that the Provisional IRA army council directs both the IRA and Sinn Féin strategy and that its members are engaged in serious criminality, particularly around the Border, is a direct threat to democracy on this island. The IRA has not gone away and it has not left the stage. Instead, the report states, it is writing the entire script. I refer also to the report's findings on other paramilitary groups. It states "All the main paramilitary groups operating during the period of the Troubles remain in existence: this includes the Ulster Volunteer Force (UVF), Red Hand Commando (RHC), Ulster Defence Association (UDA), Provisional Irish Republican Army (PIRA) and Irish National Liberation Army (INLA)". It is absolutely horrendous that these paramilitary groups remain in existence on our island 17 years after the endorsement of the Good Friday Agreement by the overwhelming majority of the people on all of this island. North and South, we are left with a party that is actively controlled and directed by an armed criminal group. The nexus of money, intelligence gathering and community control is part of a poisonous political project. I understand that the Criminal Assets Bureau, CAB, has extracted more than €28 million in ill-gotten gains from more than 50 IRA members since the ceasefire, as mentioned in the House today. A number of court cases are ongoing as CAB delves into a dark financial empire worth an estimated €500 million that generates €70 million per annum. This is a criminal conspiracy founded on racketeering, fuel laundering, cigarette smuggling and other illicit activities. Its direction and objective are political control. Its legacy is murder and fear stalking the Border. We know its calling cards, for example, the brutal murder of Paul Quinn, who had every bone in his body smashed by the IRA before a twisted code of *omerta* and community intimidation silenced his screams from ever being heard in the justice system. That bloody violence and grim control is the conspiracy's hallmark. Paramilitarism in any community and from whatever source can no longer be ignored or indulged. Paramilitarism manipulating and controlling a political party is nothing short of a direct threat to our democracy and the hard-earned and tested institutions of this State.

It is imperative that we renew and revitalise the hope and energy of the Good Friday Agreement. We are all aware of the major effort made by various Governments, organisations and parties to bring the Agreement about. The Minister for Foreign Affairs and Trade should consider whether a fresh mandate for the Independent Monitoring Commission, IMC, is needed to keep paramilitarism under check until it withers away from the communities that it is sucking dry. We need fresh resources for the Garda to confront the rampant criminality in the Border region. In particular, I reiterate my calls for a cross-Border agency to get to grips with the challenge. Last March, I introduced legislation in the House regarding the establishment of a cross-Border agency, the remit of which would be to deal with this criminality.

Fianna Fáil believes in the Good Friday Agreement and its great potential for all of the island. We believe that we can work peacefully and openly towards reunifying this historic island. The spectre of armed gangs calling the shots in political parties and orchestrating a criminal empire is a fundamental threat to that ideal.

**Minister of State at the Department of Foreign Affairs and Trade (Deputy Jimmy Deenihan):** On behalf of the Minister for Foreign Affairs and Trade, I thank the Deputy for raising this important and pressing issue. The Minister regrets that he cannot be present for this debate but, as the House will understand, he is in Belfast attending the roundtable talks that are addressing the challenges posed by the continuing impact and legacy of paramilitarism.

The Minister agrees with the Deputy that the assessment of various paramilitary groups in Northern Ireland by the British Government, as well as the Garda Commissioner's assessment of the status and profile of the Provisional IRA, both of which were published yesterday, make for sobering reading. The assessments raise issues that are of grave concern, issues such as the existence of illegal organisations and command structures, access to weaponry and widespread criminality. Every Deputy would agree that these have no place in our democracy. They never did.

The Taoiseach made the Government's position clear when he spoke in Cambridge last month. He stated that we needed clear lines, not blurred lines, between constitutional politics and criminality and that there could be no shared platforms or strategies, no shady grey areas between right and wrong. He made it clear that, 21 years after the IRA and loyalist ceasefires and ten years after decommissioning and the IRA announcement of a cessation of paramilitary activity, it was past time that paramilitarism should carry any capacity for threat.

It is important to note that the assessments conclude that these paramilitary organisations no longer represent a terrorist threat and that a threat is only posed by dissident groups that are the enemies of peace in Northern Ireland. The assessments none the less present a complex and challenging profile of the unacceptable residual activities of various groups in Northern Ireland that are damaging to communities and must be addressed. The issue of associated criminality and the involvement of those linked with paramilitary groups in organised crime is highlighted by the assessments. The Garda and the PSNI will continue working closely together to combat criminality in all its forms on both sides of the Border.

The British assessment and that of the Garda Commissioner underscore the critical importance of the ongoing talks process in Northern Ireland. A key element of these talks, in addition to the full implementation of the Stormont House Agreement, is to address the impact and legacy of paramilitarism. It is hoped that complementary assessments will provide fresh momentum to the talks process.

The political reaction to the assessments has been calm and measured. The Northern Ireland parties have maturely acknowledged the challenges and seem intent on addressing them. The stance taken by the First Minister and the fact that the DUP has resumed its seats in the Northern Ireland Executive are to be particularly welcomed.

Twenty-one years after the first paramilitary ceasefires, the transition to a fully normalised society in Northern Ireland must be progressed. Therefore, the Government continues to encourage all parties to seize the opportunity of the talks and to redouble their efforts to bring an end to the remaining blight of paramilitarism in communities and agree outcomes that provide a lasting peace and political stability in Northern Ireland. This is nothing more than what the people of this island deserve. For his part, the Minister for Foreign Affairs and Trade will continue to engage with all of the parties in Northern Ireland in order to address these issues and preserve the peace and stability that has been so hard won.

**Deputy Brendan Smith:** I thank the Minister of State for his reply. I wish the Minister, Deputy Charles Flanagan, and all participants in the Belfast talks every success in dealing with difficult issues that must be addressed.

I will cite parts of the Garda Síochána report to the Minister for Justice and Equality. It states: “It was never the position of the IMC - nor has it been the position of An Garda Síochána - that PIRA had disbanded and, accordingly, ceased to exist.” It also states:

However, separately from the activities of dissident groups, there is clear evidence that a significant number of persons who have been associated with PIRA remain criminally active, particularly in organised crime, and continue to associate together.

Elsewhere, it reads: “Like other persons involved in organised crime, some have access to weaponry.” These statements in the Garda’s report must be a source of concern for us all.

Many people on this island put a major effort into bringing about the Good Friday Agreement. Those of us who were privileged to campaign for its acceptance by the people in May 1998 were overjoyed that, in this State alone, more than 94% of those who voted endorsed it. That was a significant figure. Similarly, well in excess of 70% of those who voted in Northern Ireland endorsed the Agreement. We all recall the major block of Unionist opinion that campaigned against the Agreement and the lukewarm campaign, if it could be called that, on the part of some people who deemed themselves republicans. The people spoke, and the mandate that everyone on this island has is to work the Good Friday Agreement.

Major risks are posed when paramilitary organisations exist and weaponry is available to some paramilitaries, thugs, murderers and other criminals. People must face up to these questions. Smuggling, counterfeiting and cross-Border crime must be tackled in a determined and comprehensive manner. I welcomed the Taoiseach’s indication to my party leader, Deputy Martin, this morning that he would give consideration to my proposal on a cross-Border agency that had a focus on tackling these issues. I hope the Minister of State, Deputy Jimmy Deenihan, can bring that issue to the attention of his colleague, the Minister for Foreign Affairs and Trade, Deputy Charles Flanagan, to raise in the talks also.

As a next step to be taken urgently, we need politicians from all sides of the political divide in Northern Ireland to start being honest about the ongoing presence and role of paramilitaries. Paramilitaries from both traditions continue to exist. They must not be tolerated. Illegal groups must be gone for good on this island. Illegal activity must be faced down. The political system must face down paramilitarism and criminality. We have to see the potential of the Good Friday Agreement being realised for the benefit of all the people on this island.

**Deputy Jimmy Deenihan:** On behalf of the Minister for Foreign Affairs and Trade, I thank the Deputy for what I believe has been a very useful debate. It has served to highlight the very worrying issue of the continuing impact and legacy of paramilitarism and to underscore the continuing efforts of this Government, as co-guarantor of the Good Friday Agreement, to address this issue as part of the ongoing round-table talks in Northern Ireland.

The Minister for Foreign Affairs and Trade, together with the Minister of State, Deputy Sherlock, is in Belfast today and tomorrow to continue working with the Secretary of State for Northern Ireland and the parties to reach a successful outcome to the current talks. This should include not only agreement on a way forward to tackle the impact and legacy of paramilitarism, but also agreement on the full implementation of the Stormont House Agreement.



It is hoped that the British assessment, together with the Garda assessment, will provide fresh momentum to the current talks. The focus of the Minister for Foreign Affairs and Trade will continue to be on ensuing an outcome to the talks that protects the Good Friday Agreement and the power-sharing institutions. He remains hopeful that with committed collective engagement by the parties and the support of both Governments, there can be a successful outcome to the talks in the next few weeks that agrees a way forward on the full implementation of the Stormont House Agreement and tackles, once and for all, the legacy of paramilitarism.

### **Hospital Services**

**Deputy Frank Feighan:** In 2011, promises were made by other politicians that the accident and emergency unit in Roscommon would remain open. Certain events happened and the Mallow report stated accident and emergency units such as those in Mallow and in Roscommon were unsafe. There was a junior hospital doctor crisis, and the consultants in Roscommon hospital wrote a letter stating they could not stand over the safety of the patients in that hospital. There was a vote on a motion tabled by the Sinn Féin party. The motion stated all accident and emergency units in the country should be retained and allowed to remain open. There were 3,000 people outside, mostly from my county. There was very heated, emotive commentary and people wanted me to resign. At the time, I did not stand by the vested interests and the ill-informed political pressure groups but by the people of Roscommon and Leitrim. I gave a strong commitment to secure significant investment for Roscommon hospital. The €8 million investment in the endoscopy unit is part of the €20 million investment earmarked for the hospital. The other flagships are a rehabilitation unit and a hospice care centre.

The 14,000 sq. ft. endoscopy unit is set to become a diagnostic centre for the whole western region. It will facilitate a range of scope procedures for patients, including colonoscopy. It is also hoped the service will be widened to offer bronchoscopy, cystoscopy and range of other scope services. This investment ensures the number of patients being treated in Roscommon will continue to increase. When the unit is open, the hospital will be able to perform three times as many endoscopy procedures. The construction of this major development endorses my public commitment to securing the long-term future of Roscommon County Hospital.

As the only Government Deputy in the constituency, I have exercised my influence at the highest level of government to ensure significant investment in the hospital. Since 2011, I have attended more than 100 meetings, at every level, to ensure the hospital's long-term future. Evidence shows clearly that the Government and I have worked and will continue to work hard to make Roscommon hospital a leading example for all small hospitals around the country. Along with the endoscopy development, the €8 million rehabilitation unit is a very exciting development for the hospital. We will see the construction of a 20-bed, single-room inpatient ward, with integrated therapy spaces, on a greenfield site adjacent to the hospital.

Geographically, Roscommon hospital is ideally located for capital developments. I warmly welcome the development of the 12,000 sq. ft. palliative care centre, which will have not only an eight-bed inpatient centre but also a palliative day-care service, a family support service and a bereavement service. It will serve as a base from which the existing community palliative home care team will operate.

We must not forget that the air ambulance has played a key role in providing critical air support options. It has saved dozens of lives in my county and many hundreds in the past two



years. I am delighted it has been made permanent. I was the politician who set up that initiative and the one who helped deliver it with the two Ministers at the time. Any other politicians or vested interests who claimed an interest in this are simply not telling the truth.

With endoscopy services and other services, Roscommon hospital is safer and busier. This is because a high volume of lower-complexity cases have moved to it. People said four years ago that lives would be lost. Not one life has been lost because of the downgrading of Roscommon accident and emergency unit. The only casualty of this has been my political career as a Deputy for Roscommon and Leitrim. If that is a sacrifice that must be made, I am very happy to make it.

The endoscopy unit is ready. It has been passed on from the builders to the HSE or the hospital group. I want to know when the staff will be allocated for this much-needed facility. The people of Roscommon and the hospital management team are waiting on the staff allocation.

**Minister of State at the Department of Health (Deputy Kathleen Lynch):** The Deputy can be justifiably proud of the contribution he has made in terms of what Roscommon hospital now provides. It is quite incredible. I refer to the transition from what was perceived to be an acute hospital to a different type of service, which sometimes serves communities better.

I thank the Deputy for the opportunity to address the House on this important issue. An allocation of €5.5 million was provided for the building of a new endoscopy unit at Roscommon hospital. The new facility will increase the capacity of the hospital from 16 endoscopy procedures per day to 30 procedures per day, or 6,000 per annum. This new endoscopy unit will provide a significant addition to what is already an impressive range of services at the hospital, including extended day surgery, selected acute medicine, a large range of diagnostic services, specialist rehabilitation medicine and palliative care. More important, it will support the work of the hospital as an approved centre for colorectal screening under the governance of the National Cancer Screening Service.

The endoscopy service at Roscommon hospital is accredited by the joint accreditation group and maintains the highest possible standards of care for its patients. These patient-centred goals are best described by the endoscopy global rating scale, which endeavours to maintain standards in clinical quality, patient experience, workforce and training. These standards contribute significantly to the comfort and dignity afforded to the patient, the timeliness of the procedure, the quality of the procedure and the speed and accuracy of communication with the patient and the referring doctor. Work commenced on the new endoscopy unit at Roscommon hospital last year and I am assured that the construction has progressed well and is on target for completion and commissioning. Funding and staff requirements, including additional nurses and health care assistants, for the new facility have been considered in the context of the 2016 Estimates process and will be addressed as part of the 2016 HSE service plan discussions, which are currently under way.

It is anticipated that the new endoscopy unit at Roscommon hospital will open on a phased basis in 2016, marking a new chapter in the hospital's proud history of providing high-quality care to the people of Roscommon. The development of this new facility is proof that, despite the pressures and challenges facing our health system - no one would know them better than Deputy Feighan, who raised the issue - this Government is determined to move forward, improve what we are doing and deliver the best possible outcomes for patients.

**Deputy Frank Feighan:** I thank the Minister for her reply. I am very anxious that we will find some way to allocate these staff immediately. I know that takes time, but this issue must be addressed. The Save Roscommon Hospital group needs to consider allocating the staff immediately, because that will indicate clear recognition of what is happening.

I did not know whether to laugh or smile when some of my political colleagues started to complain that because the hospital is so busy, there is not enough parking and they want something done about it. This is the hospital that was supposed to be closed, and now, before this €20 million investment and so on, the hospital is busier than ever.

The consultants and management in the hospital are also supportive of the changes and the delivery of the types of service the Minister mentioned. Two of the consultants have gone on public record to confirm that the hospital is safer and busier. Where are the members of the national media who parked outside our hospital for three or four years interviewing everybody who said that people would die and the proposed closure was awful? I have not seen anyone from RTE come down to my hospital. I have invited them down but they said they would call in when the Minister comes to open the endoscopy unit. I am looking forward to seeing them come down with their cameras, because I am sick and tired listening to the nonsense that the national and local media have spoken in Roscommon for the past four years.

I want to put on the record now that Roscommon hospital is safer, bigger and busier than it was in 2011. Over the past four years it has been said that people will die, but not one person has died. Fifty or 100 lives have been saved, and the only casualty has been Frank Feighan's political career, because the public service and the national media did not do a service to the people of our county. They did not tell the truth when it should have been told. I ask them again to please go back on what they said over the past four years and correct people in terms of whether they were right or wrong. That is all I ask.

**Deputy Kathleen Lynch:** I reaffirm not just what the Deputy said but the fact that the staffing requirements for the Roscommon endoscopy unit are being considered as we speak. Twelve nurses, three administrative staff and four health care assistants will be needed. The revenue cost will be €998,000 - almost €1,000,000 - and the costs to facilitate the opening of the unit in 2016 will be an additional €500,000. The Deputy was right in his original figure.

The situation is becoming easier with regard to recruitment. We do not have a surplus yet, but the situation is improving in terms of our ability to recruit. This time last year it would have been a different story because it would have been much more difficult, but this year it is becoming easier. We are still short, but nevertheless we have managed, in Roscommon in particular. I salute Deputy Feighan's tenacity. We have made significant progress.

### **Social and Affordable Housing Provision**

**Deputy Joan Collins:** This is a proposition from the Irish League of Credit Unions that has been with the Minister, Deputy Kelly, since before the budget on 29 September. It proposes to invest in a State-owned financial vehicle which would on-lend to approved housing bodies to fund the development of social housing. The key benefit arising for the credit union movement from this proposition is that it would enable the movement to put a significant portion of the members' funds of €8.5 billion into social housing. If I were the Minister and I had heard that on 29 September, I would have been on to the Irish League of Credit Unions immediately to

invite its members to my Department to discuss how we would do this. One billion euro would build nearly 7,000 homes. Seven billion euro would build 45,000 homes in a short period if that money were invested immediately. We are supposed to be in a housing crisis. The Minister has called it a humanitarian crisis, yet for over three weeks, and with no announcement in the budget, there has been the possibility that credit unions would fund or in some way assist the Government in regard to social housing.

The credit unions said they got an acknowledgement from the Minister, Deputy Kelly, on 2 October. They sent the proposition to the Minister of State present, Deputy Coffey, on 2 October, who said he would review it and would like to meet with them. It is phenomenal to think that this proposition from the credit union movement, which has the funds - particularly in view of the Minister's statement that this was part of his housing policy, when he said he would be looking for private funding, including from the credit unions - has been sitting on his desk for the past three and a half weeks, and that the credit unions have not even been contacted.

**Deputy Thomas Pringle:** I thank the Ceann Comhairle for selecting this Topical Issue because it is very important. The credit unions have been established since the 1960s and there are more than 354 credit unions across the country. Fewer credit unions were bailed out during the financial crisis than banks. Currently, the credit unions have €8.5 billion on deposit with the banks, which they are not allowed to lend out under Government policy. That is providing liquidity for the banks but giving a very low return to the credit unions and their members.

When the housing strategy was launched, the Minister, Deputy Kelly, stated that the funding of the housing programme would require the development of innovative funding mechanisms that do not increase the general Government debt. On his desk is an innovative funding mechanism from the credit union movement representing millions of people across the country with funds that they are ready, willing and able to invest in order to achieve a return for their members.

The credit unions have said they could invest up to €2 billion in a special purpose vehicle that could lend money on to local authorities or approved housing bodies, whichever the State would require. That would go a long way towards helping to solve the housing crisis. It would also provide the credit unions and their members with a better return on their investments, and would ultimately assist people who are already members of credit unions and ordinary citizens across the country. That would lead to an easing of the crisis, which I believe has developed through a lack of Government policy. It is a deliberate crisis rather than a crisis that happened because of something over which we have no control.

This proposition is part of the solution. It is a matter that should be addressed urgently in the Department. I urge the Minister to get back in contact with the Irish League of Credit Unions, engage in that dialogue and make this happen very quickly.

**Minister of State at the Department of the Environment, Community and Local Government (Deputy Paudie Coffey):** I welcome the opportunity to discuss this important matter in the Dáil, and I thank both Deputies for raising it. I am happy to make a statement to the Dáil. I agree that we need to look at how the credit union movement can be facilitated in providing financial investment into social housing. I particularly acknowledge the willingness and eagerness of credit unions to do so. As we all know, credit unions play a vital role in the social and economic infrastructure of this State. The credit union movement has 2.89 million members and over €13 billion in assets.

The Deputies are right. Recently, I received a detailed proposal from the Irish League of Credit Unions setting out a means by which funding could be provided to approved housing bodies by credit unions for the development of social housing. The proposal is comprehensive and contains some progressive and imaginative ideas. It is currently being examined in my Department, and I look forward to further engagement with the Irish League of Credit Unions on the issues addressed in its submission.

When the Government launched the Social Housing Strategy 2020 less than a year ago, we made clear that the State should have a central and significant role in the provision of social housing. We also made clear that we need to look at new ways of funding social housing. While we are currently witnessing significantly increased levels of State investment in social housing, the scale of the challenge we face is also substantial.

As the strategy acknowledges, the Government is committed to putting in place mechanisms that are capable of raising additional finance in a sustainable manner and which can be used to drive, plan and co-ordinate the provision of new social housing projects. The strategy includes a commitment to commence work on a financial vehicle to be known as the strategic housing fund whose purpose is to raise funding for the social housing sector. Work on the development of this new funding model is under way in my Department. This work is being progressed under the oversight of a group known as the finance work stream. This comprises of a range of key stakeholders, including the Housing Finance Agency, the National Development Finance Agency and the Departments of Finance and Public Expenditure and Reform. The aim of this work is to deliver a new funding source for social housing. The intention is that this new source of funding will enable approved housing bodies to deliver more housing from scarce Exchequer resources. In simple terms we are looking to facilitate investment in social housing that does not impact on the general government balance.

Arising from the opportunity offered by the strategy, a range of developers, investors, financiers and others expressed interest in being involved in the provision of social housing. A protocol was put in place in March of this year under the auspices of the finance work stream to facilitate individuals and entities seeking to engage with the State to provide investment for the delivery of social housing. A single point of contact for submitting proposals was established. The social housing proposals clearing house group operates through my Department under the oversight of the finance work stream. To date, 24 different proposals have been received and 20 of the proposers have presented their ideas to the group. The clearing house group is in the process of concluding its work and bringing forward further recommendations.

The submission from the Irish League of Credit Unions is in addition to these other proposals. It is a timely intervention that sets out how the Irish credit union movement could create a dedicated funding vehicle to provide finance for social housing in line with the aims set out in the social housing strategy. Two possible models are proposed. The first would provide for investment to be made in a State-owned financial vehicle which would then lend to approved housing bodies to fund the development of social housing. The second model sets out a scheme whereby credit unions would invest and then lend directly to the approved housing bodies. It is envisaged that the investment provided in this way would not impact on the general Government balance. This point needs to be tested and examined in greater detail, a process currently being led by my Department.

From the Government's point of view, the fact the credit union movement is willing actively to seek a role in financing the delivery of social housing is welcome. We need to use every

available resource and funding mechanism to provide housing in areas that require it most and we need to do so as quickly as possible. I therefore welcome the opportunity to debate the matter publicly and I look forward to further engagement with the Irish League of Credit Unions on its submission.

**Deputy Joan Collins:** I thank the Minister of State for his reply. This is the first time we have seen these proposals and strategies and reference to the clearing house group. We are open to a real and genuine discussion rather than simply eight minutes during Topical Issue matters today. I would welcome it if the Minister of State brought all these proposals to the Dáil and contacted the Irish League of Credit Unions quickly. Changes will have to be made in respect of registering, and the credit union guidance notes would have to be amended to allow this to happen. We need to move quickly on the matter.

I meet one or two families every week who face eviction through no fault of their own and subsequently find themselves homeless. If they thought we were sitting on money like this rather than urgently using it to build social housing, we would have to be ashamed of ourselves and those in the Government would have to be ashamed of themselves too. I would welcome a proper debate on all the proposals the Minister of State has put forward. That should include exactly how much social housing we can build and how quickly we can build the units in all the areas where they are needed.

**Deputy Thomas Pringle:** On first reading, the response of the Minister of State looks rather promising in respect of the proposal from the credit unions. When we examine it a little more closely, however, it is somewhat concerning, in particular in the use of language. The social housing clearing house group smacks to me of the banks and the clearing house work that banks undertake. There is a concerning sentence in the reply of the Minister of State, “The clearing house group is in the process of concluding its work and bringing forward further recommendations.” The Minister of State goes on to say that the credit union proposals are outside any of the proposals that have gone to the clearing house group. To me, that does not augur well for the future of the proposals. Will the credit unions get to present to the clearing house group before the group concludes its work? Will their proposals be given serious consideration?

**Deputy Paudie Coffey:** Deputies need not be so cynical. I assure the Deputies that the Government is treating this as a matter of major priority in terms of finding all the resources and finance we can make available to invest in social housing. We have put on the public record our strong commitment. We have underpinned it by budgetary commitments and the rolling out of an ambitious social housing strategy. In fact, local authorities and approved housing bodies are struggling to keep up with it, such is the demand that exists and such are the resources being provided. We have provided more than 300 staff for local authorities to assist in the provision. The challenge lies in the delivery of social housing. The finance, ambition, strategy and objectives are very clear.

The clearing house group has nothing to do with the banks. It is made up of officials in the Department of the Environment, Community and Local Government supported by officials from the Housing Finance Agency, as well as the Department of Public Expenditure and Reform and other Departments. Its function is to stress test the proposals to ensure the taxpayer gets the best value for money in respect of the submissions. Some of these submissions will not fly at all, as it were. They will not represent good value for money for the taxpayer, but others possibly will. The job of the clearing house group is to analyse and stress test them, after which the proposals with potential will be progressed as soon as possible.



I note some of the specific points raised by the Deputies. The Irish League of Credit Unions in its submission has made a specific request for regulatory change. It has requested that the Central Bank amend its 2006 guidance note for investments to allow credit unions to loan money to approved housing bodies for property schemes. I am mindful of the independence of the Central Bank and Deputies should be as well. Officials in my Department are in contact with their colleagues in the Department of Finance to consider the potential regulatory and legislation changes that are needed as well as the implications. This is not something that can be done overnight.

**Deputy Joan Collins:** It can be.

**Deputy Paudie Coffey:** However, it is something we are willing to engage with to try to progress as soon as possible.

I welcome that the Irish League of Credit Unions recently made a substantial proposal to my Department. We will work with the league to try to advance this as soon as possible. For the sake of the taxpayer, however, any proposals must be correctly analysed, stress tested and proofed to ensure good and practical delivery in respect of what they set out to do.

### **Post Office Network**

**Deputy Joe Costello:** I welcome the Minister for Communications, Energy and Natural Resources, Deputy White, to the Chamber. It is good have the opportunity to discuss in the short term the question of the closure of a post office in a particular area and, in the macro sense, to look at the broad policy issues relating to the future of our post office service.

As we all know, post offices have played a vital role in the quality of life in urban and rural areas. They are an integral part of the community. Thankfully, they are still in operation throughout Ireland.

The programme for Government includes a clear statement to the effect that the post office network will be maintained and the Government would seek to enhance the service and add new uses and new areas of business. Of course, as a semi-State company An Post can conduct its own business and look for contracts from the public and private sectors. All this, along with State support, has resulted in only a relatively small number of closures since the Government came to office compared with the large number closed under the previous Administration - at least seven or eight times the figure under the current Administration. I would be delighted if the Minister would provide me with the up-to-date figures on what has been closed during the four and half years we have been in government as well as what was closed in a similar period under the previous Administration.

The particular issue we are addressing is the Cabra post office on Fassauga Road, Dublin. Tonight, the postmaster will hold a public meeting. He has put up posters throughout the Cabra area calling on people to come along and campaign against the closure of his post office. I am not aware that the post office will be closed or whether there are any plans to close it, but I would like to hear from the Minister its exact status and whether people have any cause for concern, given that the postmaster, in the public notices he has put up the length and breadth of Cabra, has clearly indicated there is such cause. What proposals, if any, are in place for the closure of post offices between now and spring 2016 when the election is due?



**Minister for Communications, Energy and Natural Resources (Deputy Alex White):** I welcome the opportunity to clarify for the Deputy the position regarding post offices in the Cabra area of Dublin 7. The operation of the post office network, including the opening or closing of post offices, is a day-to-day operational matter for the board and management of An Post and not one in which I have a function. I had inquiries made with An Post and I have been informed that the company does not have plans to close any post office in the Cabra area. I hope that addresses and allays the Deputy's concerns.

It is clear from the interest shown by the Deputy, and indeed by all sides of the House on previous occasions, that the post office network and its future is one that resonates with us all. It is true to say that the postal sector is undergoing systemic change, with migration towards electronic communications resulting in significant core mail volume decline year on year. Undoubtedly, this trend places pressures on An Post and its staff. However, it is Government policy that An Post remains a strong and viable company which is in a position to provide a high-quality postal service.

In January of this year, I appointed Bobby Kerr to chair the post office network business development group to ensure the continued viability of the nationwide network of customer-focused post offices. The post office network plays an important role in serving the needs of business and domestic customers alike, and the Government is committed to its retention and wants to see it thrive.

A public consultation on the initial report of the post office network business development group took place over the summer. A total of 16 responses were received. These responses, along with the initial report, were published on my Department's website. The consultation responses are assisting the business development group in identifying opportunities that can benefit the post office network and will inform the final report of the group which I expect to receive shortly.

To maintain the relevance of the post office network for future generations, it is inevitable that changes will need to be made to continue to attract customers to use the services provided by post offices in the face of increasing change in consumer behaviour and trends. It is clear that there is a strong public desire to maintain the nationwide network of post offices and I look forward to the findings of the final report of the business development group to assist in this regard.

**Deputy Joe Costello:** I thank the Minister for his assurances on the Cabra post offices. I am delighted to hear that neither is threatened with closure. I will convey that information to the people concerned.

I also asked the Minister whether he had any information on the number of post offices closed during the current Administration compared with the numbers closed during the previous Administration. My information is that there have been 24 closures between 2011 and 2015 and in the four-year period of the previous Administration there were 198 closures, which is a large number. Funnily enough, I do not recollect any complaints or campaign by postmasters and postmistresses during the previous Administration. All of a sudden, they seem to have a new wind in their sails and have begun to campaign, even though hardly any post offices were closed. I imagine those that closed did so as a result of what one could call natural wastage, whereby postmasters or postmistresses retired. There have been virtually no closures during this Administration.

I am delighted we have a strong post office service for the future. It is very important to our country. I am delighted that new business is forthcoming and that there is a commitment by Departments to continue their business with post offices. Unfortunately, the mail service is changing very rapidly and the volume of that particular service is declining, but I understand strong alternative services are coming on board and an increase in business is taking place as a result.

I am delighted with what the Minister had to say about the future of post offices in Cabra. Perhaps he would clarify the overall picture on post office closures over recent years.

**Deputy Alex White:** I do not have the detailed figures in front of me, but from memory the figures the Deputy quoted sound correct. We can clarify the specifics and confirm that for the Dáil record at some point, if the Deputy would like me to do so.

I listened carefully to the points he raised and, as I mentioned, the closure or opening of post offices is a matter for An Post and not the Minister. I do not make those decisions; rather, they are made by An Post. Notwithstanding that, I hope, on the basis of the inquiries I have undertaken for the Deputy, that he has been reassured regarding post offices in the Cabra area.

I look forward with great interest to the final report of Bobby Kerr, which I expect to receive in the coming weeks. It will point the way towards a future for the post office network, but one that is aligned with the realities of modern life and the manner in which people conduct their communications, in which business life is carried out and the fact that people's patterns, including retail behaviour, have changed. From that point of view, Bobby Kerr is doing us all a great service in terms of this report. He has consulted very widely and it is a great opportunity for us all to point to a positive future for the post office network.

### **Assisted Decision-Making (Capacity) Bill 2013: Report Stage (Resumed) and Final Stage**

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 66:

In page 49, to delete lines 34 to 41, and in page 50, to delete lines 1 to 3 and substitute the following:

“(8) A decision-making representative for a relevant person shall not do an act that is intended to restrain the relevant person unless—

(a) the relevant person lacks capacity in relation to the matter in question or the decision-making representative reasonably believes that the relevant person lacks such capacity,

(b) the decision-making representative reasonably believes that it is necessary to do the act in order to prevent harm to the relevant person or to another person,

(c) the decision-making representative reasonably believes that the act is the least restrictive measure that may be taken in order to prevent harm to the relevant person or to another person, and

(d) the act is a proportionate response to the likelihood of the harm referred to in *paragraphs (b) and (c)* and to the seriousness of such harm.”.

**Minister of State at the Department of Health (Deputy Kathleen Lynch):** Before we ad-

journeyed, Deputies Colm Keaveney, Pádraig Mac Lochlainn, Fergus O'Dowd and Denis Naughten spoke on their amendments. Amendment No. 66 concerns the circumstances in which restraint can be used or authorised by a decision-making representative. We are in agreement that restraint should be tightly regulated and only used where absolutely necessary. I proposed amendments on Committee Stage which limit the circumstances in which restraint can be used. The situation has to be an exceptional emergency in which there is an imminent risk of serious harm to the relevant person or to another person.

*3 o'clock o'clock* Deputy Mac Lochlainn's proposal would remove the concept of exceptional emergency circumstances. In the spirit of what we are doing, we all want to get to the same goal, and sometimes ensuring one does not reflect on another can be quite difficult. It would also remove the concept of imminent risk of serious harm. Instead, it proposes a lesser test – the test in the Bill as published – that restraint could be used at any time when there was a risk of harm to the person or to another. The time-limited nature of the amendments that I proposed would be lost. Similarly, the safeguard that restraint could be used only in exceptional emergency circumstances would also be lost.

While the Deputy's amendment specifies that restraint could be used only if it were the least restrictive measure, this addition is already encompassed in the guiding principles of section 8, which requires an intervention to be in a manner that minimises the restriction on the person's rights and freedom of action. That covers this element of the amendment. As the Deputy's amendment would, I believe, dilute the safeguards now in the Bill and allow for restraint to be used more widely than is permitted under my formulation, I cannot accept his amendment, although I fully understand from where the argument comes.

Deputy Mac Lochlainn proposed an amendment on Committee Stage whereby the concept of chemical restraint would be added to the categories of restraint which can be used only with tight safeguards by a decision-making representative or by an attorney. I have considered Deputy Mac Lochlainn's proposal carefully. Following legal advice and consultation with the Department of Health, amendments Nos. 68 and 79 that I propose will address the Deputy's concern. I propose a definition of restraint that would apply when a person is administered a medication with the intention of modifying or controlling the relevant person's behaviour so that the person would become compliant. The definition of chemical restraint would also apply in circumstances where someone authorised another person to administer the medication. It is not just the immediate administration but second-hand administration also. I thank the Deputy for bringing this issue to my attention. I ask him not to press amendment No. 69 and to accept instead the amendment that I propose. Of course, it is entirely up to him but I believe we have managed a reasonable compromise.

I ask Deputy O'Dowd, in similar fashion, not to press amendment No. 142, which proposes to insert a new section 119. I consider that the amendments that I propose will address his concerns and will ensure that chemical restraint is subject to the same tight safeguards that will govern the limited use of restraint possible under the Bill.

Amendments Nos. 67 and 78 are consequential amendments that follow from amendments Nos. 68 and 79.

**Deputy Pádraig Mac Lochlainn:** I thank the Minister of State for her response. In good faith, I agree to withdraw amendment No. 69, and obviously I will have a look at what the Minister of State tables in the Seanad. I also take on board what the Minister of State said about

amendment No. 66. The Minister of State said she wishes to strengthen-----

**Deputy Kathleen Lynch:** What we propose is a greater test.

**Deputy Pádraig Mac Lochlainn:** In good faith, I will withdraw amendments Nos. 66 and 69.

**Deputy Fergus O'Dowd:** I welcome the change the Minister of State has accepted in the law. I am not exactly clear on the details, but I absolutely accept her integrity and commitment to ensuring that chemical restraint for control and purposes other than medical purposes will no longer be evident in any of our homes or institutions of care throughout the country. I support the views expressed by Deputies opposite on the use of chemical restraint in places where people with disabilities are resident. There is an appalling situation in dozens of our institutions of care in this country and it has to stop. I welcome the significant reports HIQA puts in the public domain and the demand for change they now create for service providers. I particularly welcome the Minister of State's commitment on chemical restraint. I presume it will appear when the Bill goes through the Seanad.

**Deputy Colm Keaveney:** To repeat what I understand, the compatibility of what we are trying to achieve is to take giant steps towards signing the UN Convention on the Rights of Persons with Disabilities. The spirit in which the amendment is tabled is provided for in this charter. I hope the Minister of State agrees this is how we see it. We should not get lost in translation on the amendment or the spirit in which the Minister of State is trying to achieve it. I refer the Minister of State to a pretty comprehensive statement from the United Nations special rapporteur on the rights of persons with disabilities, which clearly sets out concerns about locked institutions, people being tied up with restraints, solitary confinement, the forcible injection of drugs and over medication. We could go on and on. In terms of the incremental step we need to take here today, this is one piece of legislation we need to pass as promptly as possible.

**Deputy Fergus O'Dowd:** Hear, hear.

**Deputy Colm Keaveney:** This means we must move on, trusting the legislation and, if needs be, coming back to it and amending it. It should be organic and open to add on. I strongly suggest we follow the spirit of what the Minister of State set out to do. If it ensures we as an Oireachtas comply with the UN convention, then we will have significant safeguards in the spirit of the legislation.

**Deputy Kathleen Lynch:** To be helpful, because chemical and physical restraint is a very complex area with regard to where it can be used, its duration and the safeguards surrounding it, the officials from the Department of Justice and Equality are willing to meet any interested Deputy to go into it in greater detail before the Bill goes to the Seanad. This might be helpful to everyone.

**Deputy Fergus O'Dowd:** That is extremely helpful. I thank the Minister of State.

Amendment, by leave, withdrawn.

**Acting Chairman (Deputy Joe O'Reilly):** Amendments Nos. 72 and 126 to 128, inclusive, are related and may be discussed together.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 72:

In page 53, line 21, to delete “3 years” and substitute “6 months”.

The basis for this amendment is fairly self-explanatory. We feel a three year review for those under the old ward of court system is too long. The review should be carried out within six months to allow these people benefit from the new legislation. Amendment No. 126 argues that persons subject to detention pursuant to an order of the wardship court should expect a review as soon as possible, but ultimately within six months of the commencement of the legislation. Amendment No. 127 makes the same argument. The amendments are fairly self-explanatory.

**Deputy Kathleen Lynch:** I can give the Deputy the lengthy response to amendment No. 72 if that is what he wishes, but I am not certain it is necessary. Basically, the difficulty we have with the amendment is there are 2,000 people in wardship, and if we were to stipulate a six-month period, there would be a logjam in court. I am also very fearful that there are people in wardship who may not be ready to move to a new system and who may not have the decision-makers in place to look after property or such required mechanisms. I worry that such people could be forced into a less favourable position because the time would be too short. Those who are ready to come out of wardship and who have those mechanisms in place have nothing to stop them from applying to the court. It is not that we are saying people must wait for three years. We need the courts to do this within a three-year timeframe, but the six-month timeframe is way too short and may not be favourable to the people involved, even if we forget the mechanisms we would have to put in place for the court. Our focus will always be on the person, and that is our major concern. I hope the Deputy understands that.

If all reviews had to be done in a six-month period, as proposed by the Deputy, many wards would be rushed into a position in which potentially more favourable options might not be feasible, as the time needed to plan for them would not be available. Reviews would have to be shortened to meet this pressurised deadline. I hope I am clear in stating that this is not related to resourcing or anything else, but rather being very careful about ensuring that people who find themselves in this new process will be comfortable about it and have enough time. Those who are ready can apply to the court and there should be no difficulty in that regard. For these reasons, I cannot accept the Deputy’s amendment.

Deputy Mac Lochlainn proposes in amendments Nos. 126 and 127 that reviews of detention orders of persons detained in an approved centre or in an unapproved centre on the order of a wardship court would be undertaken within a minimum period of six months from the Act’s commencement. It is the intention that reviews of persons detained on the orders of a wardship court will be undertaken soon after the Act’s commencement. I need to take legal advice to assess whether that would be legally possible and whether such amendments could have unintended consequences. I ask the Deputy not to press these amendments but to accept my assurances that I will examine them and, if they are feasible, will bring forward amendments along these lines on Committee Stage in the Seanad.

Deputy O’Dowd’s amendment No. 128 proposes to insert provisions on deprivation of liberty into the Bill. Deprivation of liberty is a very serious issue. The Department of Justice and Equality and the Department of Health have been working intensively on this issue to consider how it should best be approached. This is a very complex issue. Persons who have capacity but who have serious health issues may also be affected. Further work is needed to develop a suitable approach. This work needs some more time, but it will be undertaken in the context of the disability/equality (miscellaneous provisions) Bill, and we have been advised that that is the best place to deal with the issue. It is included in the current legislation programme and



is required to enable us to ratify the UN Convention on the Rights of People with Disabilities. We need to recognise also that the problem can potentially affect people who have physical disabilities as well as those who lack capacity.

I assure the Deputy that I am taking this issue very seriously, because it is one of the major issues relating to our ratification process. I cannot agree to this amendment, as detailed policy and legal consideration is needed to ensure that the approach enshrined in legislation is appropriate and feasible. However, work is currently being undertaken as part of the overall process of preparing for Ireland's ratification of the UN Convention on the Rights of Persons with Disabilities. I ask the Deputy not to press the amendment.

**Deputy Denis Naughten:** The Minister of State made the point in her contribution that nobody should be rushed into the process, and in some instances the ward of court system may be beneficial to the individual, which is the case. My question is the opposite of that posed by Deputy Mac Lochlainn: may people remain in the ward of court system longer than the three-year period if it is more beneficial for them to remain there instead of transitioning to the new system?

**Deputy Ruth Coppinger:** I support the amendments and I will speak on the general issue of wards of court and the legislation as a whole. It is not good enough to reject an amendment because it might create a backlog in the courts.

**Deputy Kathleen Lynch:** That is not what I said.

**Deputy Ruth Coppinger:** It is what the Minister said. We must look at putting resources in place to protect people's civil liberties. We know the wards of court system was widely abused in the past in order to deny people the right to make decisions because they simply did not fit with the social milieu of the time. I am not saying that is the case today, as society has moved on, but there could well be cases in which people are unjustly detained. Surely the Minister could admit that a six-month review is something basic to be put in place, rather than saying that we could not handle it and we will have to retain what is a potential block on civil liberties. We will have to put resources in place, and the Minister should not argue on those grounds.

I want to speak generally on the amendments. This is long-awaited legislation and I welcome many of its provisions. It is an effort by the Government to make the State compliant with the United Nations Convention on the Rights of People with Disabilities. It is replacing archaic legislation such as the Lunacy Regulation (Ireland) Act 1871 and the ward of court system. It is incredible that it is only now that we are replacing those outdated and archaic laws. Many amendments have been made, reflecting pressure from disability rights organisations, and it is good that a system of co-decision-making and decision-making is being put in place. I welcome the Government's deletion of the category of informal decision-makers, as this was potentially open to abuse. I am also glad that a decision support service and advance health care directives, for example, are being included.

The issue of resources is critical. We can give people all the rights we want on paper, but unless resources are provided, particularly in the Minister of State's own area of mental health, we will see people suffering. We must give support to individuals in making their own decisions, and that would require substantial investment in health care and more training for staff. It is shameful that we are still not ready to ratify the UN Convention on the Rights of People with Disabilities. The Government should accept amendments in the Seanad. We must end



austerity, which has hit the health sector in particular and mental health and old age services within that. We must end cuts to the carer's allowance, and we have also seen how the respite care grant was cut. We have witnessed long waiting lists for people seeking autism assessments and the Government has taken legal cases against those attempting to access services for their children. Irish Sign Language has not been recognised, and people with disabilities in the mental health area have been particularly hit by austerity. We saw shameful scenes over the summer when people with disabilities picketed Government Buildings and stayed overnight. Unless there is a commitment to end austerity, the rights being put in place in this legislation will not be fulfilled.

**Deputy Fergus O'Dowd:** I welcome the clarity that the Minister of State intends to bring to the issue, particularly with respect to amendment No. 128. I also welcome her commitment, which I do not doubt, to have it included in the legislation that is about to be published. I acknowledge that absolutely, but there are issues that need to be ventilated at this stage. The first point is that the European Convention on Human Rights states that "[n]o one shall be subject to torture or to inhuman or degrading treatment" and that every single citizen "has the right to liberty and security of person". No one can be deprived of their liberty, except "in the following cases and in accordance with a procedure prescribed by law" as the European Convention on Human Rights states. They include "the lawful detention of a person after conviction of a competent court" and the lawful detention of a person who is suffering from a mental disorder, as defined under the mental health Acts. In addition, "Everyone who has been the victim of arrest or detention [...] shall have an enforceable right to compensation" and "[e]veryone has the right to respect for his privacy and family life" and "there shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law". In fact, there is no clear law for the deprivation of rights of an individual that does not fall into category 5. The Law Society has been concerned about this issue. To enjoy the rights to liberty and security of a person, nobody can be deprived of their liberty unlawfully or arbitrarily, and any deprivation of liberty must be in conformity with the law. There is a duty on us as a State that if persons with disabilities are deprived of their liberty through any process, they are, on an equal basis with others, entitled to guarantees in accordance with international human rights principles.

Again, older persons who are placed in institutional care have the right to freedom of movement. Any restrictions must be lawful, necessary and proportionate in accordance with international law. Older people, in principle, should only be placed in a residential institution or in psychiatric care with their free and informed consent. Any exception must fulfil the requirements of the European Convention on Human Rights. This amendment defines deprivation of liberty and states that "[a] relevant person or any person having an interest in the well-being of a relevant person or any person who is concerned that the relevant person may be deprived of his or her liberty or where there is an interference with private and family life which is not in accordance with the European Convention on Human Rights, may make a complaint to the Director of the Decision Support Service". There is a clear vehicle where somebody who is concerned and has a right to be concerned can exercise that right by referring it to a very important officer, which is at the core of this legislation and the director, on receipt of such a complaint, can investigate it immediately and, if necessary, refer it to the courts.

The Council of Europe recommends that older persons, in principle, should only be placed in residential, institutional or psychiatric care with their free and informed consent. Any exception to this principle must fulfil the requirements of the convention on human rights. There are issues, clearly, where people with an intellectual disability and people who suffer from dement-

tia are placed in institutional care. The question of whether they are there with their consent has to be properly and fully decided with respect to the deprivation of their liberty. It is not tenable that vulnerable persons can be deprived of their liberty when there is no clear guidance as to what constitutes deprivation of liberty or any indication of the limitations or procedures. It is absolutely vital, and I accept the Minister will take steps on this, that where a relevant person has been deprived of his or her liberty or where there is interference in article 8, the legislation will relate to that. It is right and proper that the Minister of State offered consultation with the responsible officials. I am happy to withdraw this amendment on the basis of what she said, but I would like her assurance that we will have recognition of the policy issue to be addressed with those officials and any other parties outside who should be concerned.

Finally, we all come across in our work as public representatives people who suffer from dementia and whose family reach a stage where they cannot look after them anymore. We all know that and we all acknowledge it. We also acknowledge the care, love, attention, and commitment that leads whole families to exhaust all the members of those families in looking after people with dementia and people who suffer from intellectual and other disabilities. That is not always the case. It is to protect the people who may be placed in care when there are other alternatives for them. That is a very important point. I know the role of the State is not a matter for debate today but we spend hundreds of millions on the care of people under the fair deal scheme and in nursing and institutional care, and yet we do not spend one fifth of the funding we should spend on keeping those people in their homes for as long as possible. One of the key challenges facing the next Government is to make sure that people in our community who are in the area we are talking about are looked after for as long as possible in their homes. I welcome the return of the respite care grant. Supports to families and to carers to look after people in their home are absolutely essential and need to be fast-tracked. The money must be put into supporting families who are looking after their loved ones in the community. The best possible place for people to be is in their homes and in family care, but to avoid having exhausted family members and people who are on the brink of serious medical problems themselves because of the stress they face, we need much more support from the State for home help and care at home.

Another issue that needs to be addressed is the question of technology to help people stay in their homes for longer. I know the Minister of State has been to Dundalk, where she has looked at the Great Northern Haven, a place for people who are mobile and able to look after themselves but which ensures that as they get older, they will be able to stay in their homes. Technology is used to turn on the light when they get out of bed, to interrogate them in a friendly way about whether they took their pills or not that day or to know whether they have fallen on the ground. There are all sorts of other issues that need to be addressed, which are absolutely critical for the future of our society and for the care of older people in our community. When somebody is of advanced years, the last place to put them is into care. The first place must always be to keep them in their homes but it is necessary to increase significantly the State help to those families and to be generous in that. No longer do I want to be called to a house to speak to a lady who is in her late 70s and whose husband in his 80s, where she cannot look after him because he is doubly incontinent and the house is upside down because the woman is at her wits' end. She cannot look after her husband, whom she has loved and cared for all her life and he has always cared for her. It is not good enough to have a woman in that position having to face the vista of four and a half hours of home help for the week to look after her husband. It is not good enough and it is not acceptable. I hope, as things improve financially, that Members will make significant commitments. All political parties and none, whoever they are and whoever they are not, when they stand for the election in the next few months should put on the record where

they stand on these issues. They are the most important basic issues of care into the future for our society as it gets older.

Finally, on the question of dementia care and the Alzheimer's Society, I find it difficult to defend situations where people who offer respite and help to people in their homes are being challenged by the budgetary situation they are in. There is significant human suffering going on. There are families bearing major burdens of care and we are not doing enough to help them. I hope that every party, including my own, will step up to the mark on this in the next general election.

I welcome the Minister of State's commitments. Perhaps she would give the reassurance of consultation at the appropriate stage. Accordingly, I will withdraw my amendment.

**Deputy Pádraig Mac Lochlainn:** I note the Minister of State's comment. Obviously, there is a big gap between three years and six months and we need to close that gap when the Bill is taken in the Seanad.

The Minister of State made a generous offer that her officials - she is busy - who are working on the legislation can meet the parliamentarians and perhaps they would meet the following NGOs which are working on this: Tallaght Trialogue, Recovery Experts by Experience, Mental Health Reform, Inclusion Ireland and the Centre for Disability Law and Policy at NUI Galway. The Members of the Houses rely on civic society to give their input as part of the legislative process, and all my amendments were framed based on their advice. I appreciate that the Minister of State is engaging well. If she could agree that her officials could meet, perhaps next week when the Houses are not sitting, those named civic society groups to take on board their advice ahead of the Bill being taken in the Seanad, I will withdraw the amendments.

**Deputy Kathleen Lynch:** I assume all Deputies will be aware that we have been in close consultation with those groups. NUI Galway has been of particular help to us. Professor Gerard Quinn and his associates have worked closely with us. We all are agreed no legislation is perfect but we must do as much as we can and push the envelope as much as we can when we have the opportunity to do so.

We have no difficulty in re-engaging on these issues. Deputy Mac Lochlainn will understand that I could not give him a guarantee that it will be next week. Nevertheless, a list is being drawn up and that will happen.

In response to Deputy O'Dowd-----

**Deputy Pádraig Mac Lochlainn:** I apologise for interrupting the Minister of State but for the purposes of clarification, will it happen before the Bill comes before the Seanad?

**Deputy Kathleen Lynch:** Yes.

**Deputy Pádraig Mac Lochlainn:** I appreciate that.

**Deputy Kathleen Lynch:** We have very close contacts.

**Deputy Pádraig Mac Lochlainn:** I know that.

**Deputy Kathleen Lynch:** We are in regular contact. That will not be a difficulty. The deprivation of liberty is a particular difficulty for us. I would hope to get the capacity legislation

in place before Christmas but the deprivation of liberty is an issue. As Deputy O'Dowd correctly pointed out, it is not only about persons with mental health difficulties because they are dealt with under the mental health legislation more than any other legislation. It is not about prisoners because they are dealt with under justice legislation. The issue of persons with intellectual disability and older persons with dementia is a particularly challenging difficulty. We are advised, because we have been asking for a considerable period, that the best legislation in which to include it is the disability equality (miscellaneous provisions) Bill which is being worked on as we speak. We probably have greater scope in that to do something comprehensive. It will be one of the pieces of work that will be out of the way in terms of ratification.

In response to Deputy Naughten, it will not be possible to stay in wardship. I understand the Deputy's point. It is one of the struggles we have had in terms of questions about a person's will and preference and if he or she wants to stay. The difficulty, as all the experts, especially Professor Gerard Quinn and his team, will tell the Deputy, is that wardship is too paternalistic and we must move away from it. However, we must move away from it in a way that we have safeguards in place to ensure those involved are not left floundering and that a structure is in place to protect them as they move away from wardship. It will not be possible to stay, however.

I say to Deputy Coppinger that it is a terrible pity she entered in the middle of the debate because I am sure what I stated to Deputy Mac Lochlainn, who has been centrally involved in all this, is that it is not an issue of resources. It is about the individual's ability to be ready to be released from wardship. That is what I said and that is what I mean.

The debate so far has been an interesting one. Deputy Coppinger did not hear much of it.

**Deputy Ruth Coppinger:** The Minister of State said "court backlog". That is what I was referring to.

**Deputy Kathleen Lynch:** I said it has the possibility of creating a logjam-----

**Deputy Ruth Coppinger:** Exactly, that is what I said.

**Deputy Kathleen Lynch:** -----but it is not centrally about that. It is about ensuring those involved are ready to exit wardship. We have had a fruitful debate about the central issues in this complex legislation and I understand that some do not understand that. In not understanding what the legislation is about, I hope they will not revert to rhetoric because that is not what this debate is about.

**Deputy Ruth Coppinger:** The Minister of State need not be patronising when answering. Often she herself has not been here for entire debates. I am sure she will understand that the debate resumed and I came down as soon it did.

I was taking up the point about a court backlog which would require resources being put into the courts. We are all aware that there are considerable backlogs in the courts. That is what I was referring to.

The other point, to which a Government party Deputy referred, is the attacks that have taken place under the austerity agenda of the past eight years on persons with disabilities. Resources are relevant to this debate because persons with disabilities cannot access their rights if they do not have the resources.

Amendment, by leave, withdrawn.

**Deputy Kathleen Lynch:** I move amendment No. 73:

In page 54, line 17, to delete “pursuant to *paragraph (b)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 74:

In page 54, line 18, to delete “*section 43(1)(b)(ii)*” and substitute “*subsection (1)(b)(ii)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 75:

In page 54, line 24, to delete “*section 43(1)(c)*” and substitute “*subsection (1)(b)(ii)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 76:

In page 54, to delete lines 29 to 33.

Amendments Nos. 76 and 77 propose that the provisions proposing the repeal of the Lunacy Regulation (Ireland) Act 1871 would be moved to a separate section in view of the significance of the provisions and because their effect extends beyond the scope of section 43 which deals with declarations following review and discharge from wardship. No change of substance is proposed by this amendment.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 77:

In page 54, between lines 33 and 34, to insert the following:

**“Repeal of Lunacy Regulation (Ireland) Act 1871**

**44.** (1) Subject to *subsection (2)* and this Part, the Lunacy Regulation (Ireland) Act 1871 is repealed.

(2) Subject to this Part, *subsection (1)* shall not affect the validity of any order—

(a) made by the wardship court within its jurisdiction, and

(b) which was in force immediately before the commencement of this Part.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 78:

In page 61, line 18, to delete “or” where it secondly occurs.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 79:

In page 61, to delete lines 19 and 20 and substitute the following:



“(c) administers a medication, which is not necessary for a medically identified condition, with the intention of controlling or modifying the relevant person’s behaviour or ensuring that he or she is compliant or not capable of resistance, or

(d) authorises another person to do any of the things referred to in *paragraphs (a) to (c)*.”.

Amendment agreed to.

**Acting Chairman (Deputy Derek Keating):** Amendments Nos. 80, 105 to 109, inclusive, 112 and 117 to 119, inclusive, are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 80:

In page 66, line 5, to delete “Public Guardian” and substitute “Director”.

Amendment No. 80 is a technical amendment to change a reference from “Public Guardian” to “Director”. This is something that came out of our engagement not only with the Deputies present who have an interest in this but also with the NGOs. As agreed by the Dáil on Committee Stage, the person appointed to head the decisions support service will be titled the director.

Deputy O’Dowd’s amendments Nos. 105 and 106 propose that the director of the decision support service would be appointed by the Minister for Justice and Equality rather than by the Courts Service. However, it would not be appropriate for the Minister for Justice and Equality to make this appointment if the decision support service is to be located in the Courts Service. As the Deputy is aware, the Government decided in June 2013 that the body responsible for undertaking the functions foreseen under this Bill would be located in the Courts Service. As a consequence, I cannot accept the Deputy’s amendments. Similarly, I cannot accept the Deputy’s amendments Nos. 117 to 119, inclusive, which propose that the director of the decision support service would make an annual report to the Minister for Justice and Equality rather than to the board of the Courts Service. The director’s reports will have to be made to the body to which he or she is answerable. The Bill provides, in line with the Government’s decision of June 2013, that this should be the Courts Service. For this reason, I cannot accept the Deputy’s amendments.

Amendments Nos. 107 to 109, inclusive, propose that the functions of the director of the decision support service would be amended to remove the requirement for him or her to give guidance to persons such as decision-making representatives, attorneys, designated health care representatives, co-decision-makers, decision-making assistants or other persons exercising decision-making roles under the Act. The reason for the amendment is that the director will have the role of supervising persons with decision-making functions under the Act. It could compromise the director’s supervisory role if he or she also gave guidance to those persons under the Act. If the director were to advise a person to enter a co-decision-making agreement, for example, and a complaint was subsequently lodged by a third party against the co-decision-maker, the director’s ability to investigate the complaint might be affected because of the advice previously given. In view of the director’s regulatory functions, it is more appropriate, therefore, to limit his or her role to that of providing information on the provisions of the Act. The director will continue to have the role of offering guidance to specific sectors, such as the health care sector, given that they will not come under his or her supervisory functions.

**Deputy Fergus O’Dowd:** While I hear what the Minister is saying, I want to make it very



clear that at the very heart of the Bill is a very important person, namely, the director of the decision support service. The functions under the Bill have been greatly expanded, which I welcome. There are very positive and important aspects of the legislation which everybody wants to pass and I very much welcome it. However, many of the issues which need to be addressed are multidisciplinary and administrative and do not require or are not appropriate for a court hearing.

The director has been given powers to investigate complaints formally, by calling witnesses, or informally. The director will have a supervisory function including the establishment and maintenance of a number of registers and will have responsibilities to formulate codes of practice, identify and make recommendations for changes of practices and so on. The view of the Law Society is that given the wider context in which the director must operate, it should not constitute an element of the administration of justice. The legislation should provide that the decision support service would be an agency directly within the Department of Justice and Equality and not be an agency within an existing agency. This is critical and would mean the service would not be under the thumb of the Courts Service but would be independent in its function, which is broader than the Courts Service, separate from it and under the jurisdiction of the Minister and Department.

The Bill provides that the director be appointed by the Courts Service, that the staff should be members of the staff of the Courts Service and that the Courts Service shall be the appropriate authority regarding members of staff. This will give rise to perceptions on the part of vulnerable people who in many cases, with their families, require information, assistance and direction in coping with capacity issues and who do not see themselves as looking to a legalistic Courts Service for such assistance. It does not take account of the wider context of the decision support services operation and is a mismatch between the statutory function of two services. There is no synergy between the legal function of the director and that of the Courts Service. This is very important.

The provision in the legislation is not the best place for this power to reside. It should be independent of the Courts Service. The Minister said it would not be appropriate for the Minister to appoint the director, and I agree it should not be a political decision. Like the Garda assistant Commissioner posts, which were filled by open competition yesterday morning, the job should be advertised under the proper independent procedures and appointed by the accountable Minister. It would give greater separation of powers from the functions of the Courts Service which is entirely different in every respect from the function of this office.

**Deputy Kathleen Lynch:** I understand perfectly where the Deputy is coming from and we have agonised over it. Even if the job is filled as a result of public advertisement and open competition, perception is reality in politics. Once it is considered to be a decision ultimately made by the Minister, even if drawn from a list into which the Minister had no input, it will be perceived as a political appointment. The service is very clearly embedded in law. The person who heads the service will be essential and important. His or her attitude will be determined not just by the legislation but by the guiding principles behind the legislation. The director should be not too formal yet very conscious of the legal framework behind the office. We have discussed the issue in great detail and our recommendation is that it be within the Courts Service. Therefore, I cannot accept the amendment.

Having spoken to people who are experts in this area, I am not certain we want to establish a whole new apparatus around the service. We want to get away from the paternalistic attitude

we had and still have. We are at the discussion stage on the legislation and as of now it will be in the Courts Service. It is essential we get the right person as director and that he or she has the right to assemble his or her own staff. The staff's attitude and the guiding principles behind the legislation will be fundamentally important as to how it is administered. While the legislation will not change, the administration of it will be key.

**Deputy Fergus O'Dowd:** While I respect what the Minister of State has said, I profoundly disagree with her statement that there would be a perception of a political decision if the Minister of the day accepted a recommendation from the Public Appointments Service of a person for appointment to the post of director. It would not be, given that it would come from the Public Appointments Service. This is how it should be and how the Minister of State would want it. If it is under the Courts Service, it is part of an existing bureaucracy. One could argue about whether it is an enlightened or unenlightened bureaucracy. I cannot comment on it. It should be separate from the Courts Service, which has a separate statutory role. It must be independent of the Courts Service and I see no reason to change my mind. I accept the importance of the legislation and this is a key part of it. I will not press my amendment, notwithstanding my disagreement with the Department on it. I disagree with the Minister of State and the advice she has received.

**Deputy Kathleen Lynch:** I appreciate the Deputy's co-operation.

**Acting Chairman (Deputy Derek Keating):** We will deal with the amendments in his name in due course.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 81:

In page 70, to delete lines 18 to 37.

Amendment agreed to.

**Acting Chairman (Deputy Derek Keating):** Amendment No. 82, in the name of Deputy Mac Lochlainn, cannot be moved.

**Deputy Pádraig Mac Lochlainn:** It can be moved. I have not withdrawn it yet.

**Acting Chairman (Deputy Derek Keating):** I ask the Deputy to give me a moment.

**Deputy Pádraig Mac Lochlainn:** It has not been ruled out of order.

**Acting Chairman (Deputy Derek Keating):** I need to get some clarification.

**Deputy Pádraig Mac Lochlainn:** I am trying to establish and assert my right to move it. In fairness, the Minister of State asked me earlier if I would withdraw a number of amendments and I indicated after some consideration that I would do so in good faith.

**Acting Chairman (Deputy Derek Keating):** I apologise for the uncertainty here but I am informed that amendment No. 82 cannot be moved.

**Deputy Pádraig Mac Lochlainn:** On what basis?

**Acting Chairman (Deputy Derek Keating):** It cannot be moved because amendment No.

81 has been agreed.

**Deputy Pádraig Mac Lochlainn:** All right so. The acceptance of amendment No. 81 has invalidated all the other amendments in my name in this group. I was willing to withdraw them in good faith and in acknowledgment of what the Minister of State has said.

Amendment No. 82 not moved.

**Acting Chairman (Deputy Derek Keating):** Amendment No. 83 cannot be moved for the same reason.

**Deputy Pádraig Mac Lochlainn:** That is okay.

Amendment No. 83 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 84:

In page 70, to delete lines 38 and 39, and in page 71, to delete lines 1 to 25.

Amendment agreed to.

**Acting Chairman (Deputy Derek Keating):** Amendments Nos. 85 to 87, inclusive, cannot be moved.

Amendments Nos. 85 to 87, inclusive, not moved.

**Deputy Kathleen Lynch:** I move amendment No. 88:

In page 72, to delete lines 16 and 17 and substitute the following:

“(b) the powers (if any) conferred on the representative in accordance with *section 69(1)(b)*;”.

Amendment agreed to.

**Acting Chairman (Deputy Derek Keating):** As amendments Nos. 89 to 102, inclusive, are related, they may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 89:

In page 72, line 27, to delete “important”.

These amendments, which relate to provisions in Part 9 dealing with advanced health care directives, do not involve any substantive changes to the underlying policy of those provisions. They are minor technical amendments to refine the language in the sections in question to clarify more precisely the intention of the relevant provisions on advanced health care directives.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 90:

In page 72, line 30, to delete “within the meaning of *section 63*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 91:

In page 73, lines 1 to 3, to delete all words from and including “which” in line 1 down to and including “*subsection (12)*” in line 3.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 92:

In page 73, to delete lines 33 to 35 and substitute the following:

“(iv) the signature of the designated healthcare representative (if any) and the date that the representative signed the directive;”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 93:

In page 75, between lines 4 and 5, to insert the following:

“(13) In this section, “immediate family member” means—

- (a) a spouse, civil partner, or cohabitant,
- (b) a child, step-child, son-in-law or daughter-in-law,
- (c) a parent, step-parent, mother-in-law or father-in-law,
- (d) a brother, sister, step-brother, step-sister, brother-in-law or sister-in-law,
- (e) a grandparent or grandchild,
- (f) an aunt or uncle, or
- (g) a nephew or niece of the relevant person.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 94:

In page 75, lines 8 and 9, to delete “inconsistent with the directive remaining as his or her fixed decision” and substitute “inconsistent with the relevant decisions outlined in the directive”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 95:

In page 75, line 13, to delete “broadly recognisable” and substitute “materially the same”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 96:

In page 75, to delete lines 15 to 18 and substitute the following:

“(c) at the time in question the circumstances set out in the directive as to when the specific treatment is to be requested or refused, as the case may be, are absent or not materially the same.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 97:

In page 75, lines 29 and 30, to delete “address the ambiguity” and substitute “resolve the ambiguity”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 98:

In page 75, line 37, to delete “addressed” and substitute “resolved”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 99:

In page 75, lines 37 and 38, to delete “address the ambiguity” and substitute “resolve the ambiguity”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 100:

In page 78, line 25, to delete “for a directive-maker”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 101:

In page 79, line 19, to delete “following 2 powers” and substitute “following powers”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 102:

In page 81, line 32, after “to” to insert “, or being led to believe that he or she has to,”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 103:

In page 82, line 36, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 104:

In page 82, line 40, to delete “*section 76(2)(p)*, of the Act” and substitute “*section 76(1)(i)*”.

Amendment agreed to.

Amendments Nos. 105 and 106 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 107:

In page 86, line 24, to delete “and guidance”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 108:

In page 86, line 26, to delete “and guidance”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 109:

In page 86, line 32, to delete “and guidance”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 110:

In page 87, line 9, to delete “under this section”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 111:

In page 88, line 9, to delete “to the office”.

Amendment agreed to.

Amendment No. 112 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 113:

In page 88, line 22, to delete “a function under this Act of the Director to a” and substitute “any of his or her functions to a specified”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 114:

In page 89, lines 21 and 22, to delete “*section 76(2)(a)*” and substitute “*section 76(1)(e)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 115:

In page 89, line 32, to delete “attorney” and substitute “attorney,”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 116:

In page 91, line 15, to delete “to whom *section 32(3)*” and substitute “in the circum-



stances to which *section 32(6)*”.

Amendment agreed to.

Amendments Nos. 117 to 119, inclusive, not moved.

**Deputy Kathleen Lynch:** I move amendment No. 120:

In page 92, line 21, to delete “as in force” and substitute “as may be in force”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 121:

In page 92, to delete lines 33 and 34.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 122:

In page 94, line 11, after “website” to insert “of the Director established under *section 76(1)(i)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 123:

In page 94, line 12, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 124:

In page 94, line 16, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 125:

In page 94, line 28, to delete “*section 76(2)(p)*” and substitute “*section 76(1)(i)*”.

Amendment agreed to.

4 o'clock o'clock Amendments Nos. 126 to 128, inclusive, not moved. **Deputy Kathleen Lynch:** I move amendment No. 129:

In page 98, to delete line 9.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 130:

In page 99, line 12, to delete “its” and substitute “their”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 131:

In page 99, line 12, to delete “it” and substitute “they”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 132:

In page 99, line 29, to delete “its” and substitute “their”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 133:

In page 99, line 30, to delete “it” and substitute “they”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 134:

In page 100, line 27, to delete “he or she” and substitute “the donor of an enduring power”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 135:

In page 102, line 28, after “country” to insert “other than the State”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 136:

In page 102, line 28, after “Article 33” to insert “of the Convention”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 137:

In page 103, line 3, to delete “another Convention country” and substitute “a Convention country other than the State”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 138:

In page 103, lines 21 and 22, to delete “outside the State” and substitute “in a Convention country other than the State”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 139:

In page 104, line 6, after “Article 33” to insert “of the Convention”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 140:

In page 104, lines 29 and 30, to delete “a Central Authority or other competent authority in a Convention country” and substitute “a central authority in another Convention country or other competent authority in that Convention country”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 141:

In page 105, to delete lines 3 to 5.

This amendment proposes to remove section 118, concerning clinical trials, from the Bill. Decisions on clinical trials involving persons who lack capacity should more appropriately be addressed in legislation under the remit of the Department of Health. Having reviewed the matter, I have concluded that it would not be desirable to prevent persons who lack capacity from participating in clinical trials. If we did so, it might prevent a treatment from being developed which could be to their benefit, such as a drug for Alzheimer’s disease. The key issue is not to prevent people who lack capacity from participating in clinical trials but rather to ensure that if they do so, there will be robust safeguards in place. There is already an extensive framework in place to protect subjects participating in clinical trials, including incapacitated subjects, in the EU (Clinical Trials on Medicinal Products for Human Use) Regulations 2004, SI 190/2004, as amended. In addition, the clinical trials regulation, EU No. 536/2014, which is due to come into force in 2016, also contains extensive provisions relating to the protection of subjects. For this reason, I propose amendment No. 141, which will delete section 118 from the Bill.

Amendment agreed to.

Amendment No. 142 not moved.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 143:

In page 105, between lines 13 and 14, to insert the following:

“(3) Save as provided in *subsections (1) and (2)* or otherwise expressly provided by any other provision of this Act, this Act applies to patients receiving treatment in an approved centre.”.

This amendment addresses the position of patients whose treatment is regulated by Part 4 of the Mental Health Act. The relevant section in the Bill provides that nothing in the Bill authorises a person to give a patient treatment for mental disorder or to consent to a patient being given treatment for a mental disorder if, at the time when it is proposed to treat the patient, his or her treatment is regulated by Part 4 of the Mental Health Act. However, there is nothing in the current Bill that specifically enables patients in approved centres to avail of the assisted decision-making provisions of the Bill. We consider that patients in approved centres should have the same rights as others to avail of assisted decision-making in respect of day-to-day decisions. We consider that the Bill should contain a clear statement that it applies in full to all patients in approved centres, save in so far as section 104 applies to any such patient. The inclusion of an express statement to this effect will ensure that the benefits of the legislation are available to people in approved centres. This amendment is not intended to be taken as an endorsement of the current provisions in Part 4 of the Mental Health Act, and previous submissions to the Department of Health regarding the review of the Mental Health Act should be borne in mind in this context. This amendment addresses specific concerns by ensuring that this Act will apply

to all patients in approved centres.

**Deputy Kathleen Lynch:** Before I read out the official response, with which I agree, I must say that when we put in place a group to review the Mental Health Act, we continuously stressed that its members had to take cognisance of the fact that we were also developing capacity legislation. The group's recommendations around this issue are quite interesting. We are currently devising the general scheme of a Bill to amend the Mental Health Act of 2001, which dovetails with this legislation. That is important, and it is what Deputy Mac Lochlainn is seeking to achieve with his amendment.

Section 119 of the Bill seeks to ensure that there is no conflict between the Bill and the Mental Health Act 2001 with respect to the treatment of a patient with a mental disorder in an approved centre. It is clear from this section that a person with a mental disorder receiving treatment in an approved centre is governed by Part 4 of the Mental Health Act 2001. Under that Act, one of the conditions that a patient must fulfil in order to be involuntarily admitted to an approved centre is that he or she must have a mental disorder as defined in section 3 of the Act. Section 8 of the Act provides that a person may be involuntarily admitted to an approved centre pursuant to an application under section 9 or 12 and detained there on the grounds that he or she is suffering from a mental disorder. Therefore, all persons referred to in section 119 would have to be involuntary patients in an approved centre admitted under the Mental Health Act 2001.

Deputy Mac Lochlainn's amendment seeks to ensure that the Assisted Decision-Making (Capacity) Bill applies to all persons receiving treatment in an approved centre, with the exception of those referred to in subsections (1) and (2) of section 119 or otherwise expressly provided by any other provision of the Act - that is, involuntary patients. Therefore, it would appear that the persons to which this amendment could apply are voluntary patients receiving treatment in an approved centre. Sometimes a perverse logic appears in legislation.

It is contested that section 119 already provides for the amendment that the Deputy is seeking by expressly not authorising a person to give treatment for mental disorder or to consent to a patient being given treatment for mental disorder if his or her treatment is regulated by Part 4 of the 2001 Act - that is, involuntary patients - and the implication is that the Assisted Decision-Making (Capacity) Bill applies to all other persons, including those voluntarily admitted to an approved centre, once they fulfil the definition of a relevant person in the Assisted Decision-Making (Capacity) Bill.

I recently received Government approval to proceed with a general scheme of a Bill to amend the Mental Health Act 2001 based on the recommendations of an expert group report published in March this year. The expert group report contains 165 recommendations, a number of which relate to the assessment of capacity. It is interesting to look at what the group is recommending and what is already contained in the Bill. The expert group acknowledged in its report that when revised mental health legislation is being framed a further look at the final proposals in this Bill will be required. The group was not certain how this Bill would finally shake out and had to make certain assumptions.

The expert group has recommended that it will be necessary to develop simultaneously recommendations and guidelines for the assessment of capacity of persons who require admission to an approved centre for mental health treatment. In other words, the group fully accepts this position. Before the Bill was drawn up, it expressed the view that capacity must also be

assessed when a person is being admitted or assessed for admission. The expert group was very clear on the need for the admitting mental health professional to establish if the person has the capacity to understand and give his or her consent to the proposed admission to an approved centre. If the admitting mental health professional forms the view that the person may lack capacity to understand and give his or her informed consent to the proposed admission, he or she must refer the person for formal capacity assessment. If, following assessment, it is deemed that a person has capacity to admit himself or herself, a voluntary admission may proceed. If it is deemed that the person needs support to understand, make or convey this decision, such support must be provided and the exact detail of how this support will be provided will be examined in further detail during the preparation of the general scheme of the revision to the Mental Health Act.

As outlined, the revision of the Mental Health Act 2001 will put procedures in place to ensure the capacity of persons being admitted to approved centres is assessed and, where necessary, supports are put in place. The exact detail of how this will work and how it will interact with the legislation before us will be explored and examined in greater detail during the preparation of the general scheme of a Bill, a process that is under way in the Department of Health.

There may be a danger that the proposed amendment will be interpreted as meaning that all patients receiving treatment in an approved centre will need to avail of the provisions of the Act, which cannot possibly be the case. While a large number of patients will lack capacity or need assistance making decisions, there will be patients with full capacity who will be able to decide on all issues by themselves. The issue of whether a person needs the assistance of the Act should be determined by whether he or she is a “relevant person”, as outlined in the definitions, not by the fact that he or she is receiving treatment as a voluntary patient in an approved centre.

That was a long-winded way of informing Deputy Mac Lochlainn that I will not accept his amendment. I hope he now understands the reasons for my decision.

**Deputy Pádraig Mac Lochlainn:** I thank the Minister of State for her response. She indicated earlier that her officials will meet a number of groups, including Mental Health Reform. I will withdraw the amendment pending the outcome of those meetings. Mental Health Reform and the other relevant groups can raise the specific concerns that led to me tabling this amendment and tease out various matters with the Minister of State or her officials at that point. I hope they can then be addressed ahead of the Bill being introduced in the Seanad.

**Deputy Kathleen Lynch:** If we had not received the recommendations from the expert group on the Mental Health Act, I would share the concerns expressed by the Deputy. However, having considered the legislation in the context of the expert group’s recommendations on admission and capacity, including the continuous assessment of capacity while in treatment, which were made without knowledge of the contents of the Bill, I am confident that we have a full protection procedure in place.

Amendment, by leave, withdrawn.

**Acting Chairman (Deputy Derek Keating):** Amendments Nos. 144 to 146, inclusive, are related and may be discussed together.

**Deputy Kathleen Lynch:** I move amendment No. 144:

In page 106, line 20, to delete “Subject to *subsection (2)*, nothing” and substitute “Noth-

ing”.

This is a technical amendment to remove an incorrect cross-reference. The cross-reference remained in the Bill incorrectly following the agreement on Committee Stage to my amendment proposing to delete the provisions that would have allowed an application to be made to the High Court to alter a will when a person has lost testamentary capacity.

Amendment No. 145 proposed by Deputy O’Dowd seeks to re-insert a provision that was removed on Committee Stage. The principle that a person’s will should be respected goes to the heart of our system of succession. A will is made when a person has capacity and reflects the will and preferences of the person in terms of how his or her property and assets are to be disposed of after death. As I indicated when I sought the Committee Stage amendment, the court has traditionally been very reluctant to interfere with a will as the expression of a person’s will and preferences.

I appreciate that there may be changes in circumstances between the point at which a will is drawn up and the death of the person. Such changes may make it impossible to carry out the person’s intentions at the time the will was drawn up. At the same time, if the principle is conceded that a will can be changed when a person has lost capacity, we run the risk that a beneficiary may falsely claim to the court that he or she can correctly interpret what the person’s wishes were at the time the will was drawn up. We have no way of verifying the person’s intentions with the person as that person will have lost capacity. The provision could lead to a circumstance in which a will might be altered against the intentions of the person. I am not satisfied that the provisions allowing for this facility to be used only in exceptional circumstances and where the interests of justice so demand are sufficient safeguards.

The more appropriate way to approach this issue is for solicitors to advise clients at the time of drawing up a will to ensure they are clear as to the way in which their intentions can be expressed most appropriately in a will, as well as the factors that may prevent their intentions from ultimately being implemented. This will enable a person, while still retaining capacity, to have the choice as to how to address the problem. For this reason, I cannot accept the Deputy’s amendment.

Deputy O’Dowd proposes, in amendment No. 146, to provide for a trust to be presumed in favour of the transferor in a voluntary transfer of property. This amendment does not seem to be specifically focused on persons with capacity difficulties and, as such, appears to be beyond the scope of the Bill. In any case, it will require further analysis and legal advice. While I cannot accept the amendment for these reasons, we will consider the matter further.

**Deputy Fergus O’Dowd:** I thank the Minister of State for her response. As she indicated, the Bill, as initially published, included a provision similar to that proposed in amendment No. 146. However, the proposed measure was subsequently deleted. She is correct that making changes to wills is a serious matter, which must only be permitted in extremely important circumstances. The Law Reform Commission recommended permitting the High Court to make changes to a will in exceptional circumstances. This recommendation is reflected in my amendment. Why would the Law Reform Commission argue in favour of such a provision and why has the Department not accepted its recommendation?

Given how far we have gone on these issues, it is clear that there are serious and significant arguments in favour of my proposal. The Minister of State has outlined that, on balance, she



accepts the arguments against the measure. The proposal should be implemented in the legislation because it is based on the experience of legal practitioners who can cite many examples to support it. In many cases, a person provides in a will for equal treatment to each and all of his or her children and gives specific assets to each of them. However, during a subsequent lack of capacity, liquid assets bequeathed to a particular beneficiary may be used for the benefit of the testator, thereby leaving one of the children out of benefit. If the testator had the capacity to do so and in line with the overarching intention to benefit all and each of his or her children equally, he or she would alter the will to ensure equal benefit. The Law Reform Commission recommended allowing the High Court to alter a will if justice demands and in exceptional circumstances. The commission was careful to point out that it would not be appropriate to intervene in circumstances where no will had been drawn up as to do so would be to impose a view on the testator. I reiterate that the recommendation of the Law Reform Commission should stand and apply only in exceptional circumstances.

The manipulation of assets by members of the legal profession, attorneys and family members through joint accounts and other means sometimes, though rarely, results in individuals, primarily family members, being able to arrange inheritance to suit themselves and ensure other family members do not inherit or are disinherited. In practice, this is an area that is wide open to abuse. The Law Reform Commission consulted practitioners before making its recommendations. As such, the proposed amendment has the authority and experience of the legal profession behind it. The amendment is before the House to deal with such exceptional circumstances. The second amendment deals with financial abuse. Financial abuse is clearly a very serious issue. There are increased levels of financial abuse, particularly of older people, and various HSE reports, including Open Your Eyes, clearly state that legislation must be put in place to provide safeguards and meet our obligations under the UN Convention on the Rights of Persons with Disabilities. The convention states that states party shall ensure that all measures relating to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. HIQA and HSE reports into nursing homes show that there have been significant allegations of financial abuse. I am aware of a case in County Meath in which the owner of a nursing home was the beneficiary of a will, which was entirely inappropriate. There was litigation about that. It is very important to protect our people from financial abuse. What is recommended here is only one element. Joint accounts can often be abused and this may be facilitated by financial institutions which do not raise the appropriate red flags when these issues arise. Research from the National Centre for the Protection of Older People at UCD and the annual report of the HSE show that there is a large element of financial abuse, particularly of older people. The abuse is there and my amendments are reasonable and proper. While they will not be accepted by the Minister of State, I accept in the good faith in which she offers it her commitment to look at this issue again.

The recommendation of the Council of Europe on the promotion of the human rights of older people sets out that member states shall provide for appropriate awareness-raising and other measures to protect older people from financial abuse, including deception and fraud. I welcome the Minister of State's response to my second amendment, although I do not agree with what she said about the first. I am happy to hear her comments.

**Deputy Kathleen Lynch:** I appreciate what the Deputy has said. Clearly, he is very committed to the whole area. When I look at legislation that is in development or being brought before the House, I always ask how I would like to be treated if I were in the relevant circumstances. Each and every one of us expects that no matter to whom we leave what little we

have as we depart this world, our wishes and preferences will be respected. It would have to be extraordinary or exceptional circumstances for it to be otherwise. When these cases arrive in court, it usually ends up that there is nothing left to be distributed. It is unseemly. We must always look at it from the point of view of the individual and his or her will and preference. We may not always agree with it. People in our own families with complete capacity may make decisions we do not agree with, and we have to accept them as their decisions. That is it.

I accept fully what the Deputy says. We all have experience of that kind of financial abuse occurring from time to time, sometimes with the compliance of those who do not know any better. I cannot accept the amendment because our advice is that it would have consequences down the road. Nevertheless, I accept fully what the Deputy says and I commit to looking at the matter again.

**Deputy Fergus O'Dowd:** After reading the Minister of State's statement, I acknowledge her points. I will not be pressing the amendment. I accept that this is an extremely difficult thing to have to do and, as the Minister of State rightly says, it would have to involve extremely exceptional circumstances for a matter to go the High Court. It would be where the person had lost his or her testamentary capacity, and the High Court, on application by the director of decision support services, could or should be able to alter the will where it is satisfied that exceptional circumstances have arisen since the loss of that capacity and the interests of justice so demand. There would have to be exceptionally clear evidence that somebody who was a party to a will and had an equal right to an equal share had been deprived of that by the actions of another party. I accept the Minister of State's point that this is what is going to be in the legislation.

Amendment agreed to.

Amendments Nos. 145 and 146 not moved.

**Deputy Kathleen Lynch:** I move amendment No. 147:

In page 107, to delete lines 4 and 5 and substitute the following:

“(b) in subsection (5), by deleting “subsections (2) and (3)” and substituting “subsections (2), (2A) and (3)”.”.

Amendment agreed to.

**Deputy Kathleen Lynch:** I move amendment No. 148:

In page 108, lines 41 and 42, to delete “designated healthcare representative or person referred to in *section 61(1)*” and substitute “or designated healthcare representative”.

Amendment agreed to.

**Deputy Pádraig Mac Lochlainn:** I move amendment No. 149:

In page 109, line 8, to delete “5th anniversary” and substitute “2nd anniversary”.

This is a self-explanatory amendment. We feel that five years is too long a period and ask for two years to be the period after which the legislation will be revisited, given the very serious matters the Bill addresses.

**Deputy Kathleen Lynch:** This is a mammoth Bill, as everyone involved knows. It will change how people who are close to others will have to think. Changing how people think is a major task. My preference would be to introduce the legislation on an incremental basis because the people it affects are people with whom time will have to be spent to explain exactly what its impact is and what it makes possible for their own circumstances. On that basis, two years is far too short a period after which to review the legislation. The Bill will have an impact on everyone's life, whether as a carer or as someone being cared for. It will have a significant impact. Five years will be seen in hindsight to be a very short period in which to allow the legislation to become embedded and part of the institutional structures which will take us into the future. I consider two years to be too short and I do not say so to be awkward; I believe it. I am still fascinated by the fact that the Mental Health Act 2001 is already being reviewed even though it was due to be reviewed much earlier. Clearly, all of the elements had not been put in place. Now that it is being reviewed, we can look back and ask what we would do differently. We will be doing the same with the legislation before us and determining how it has dovetailed with other Acts.

I can understand the Deputy's desire to have a review more quickly because we are always worried that something may just be something else for the shelf. Clearly, when it is legislation, it cannot be something else for the shelf. As such, we must be careful about how we proceed. There will be certain groups in society whom we can move more quickly with, but there will also be those on whom this will have an impact and with whom we will have to be very careful and tread very softly. I am not saying "No" to the Deputy's amendment for the sake of saying "No." I believe genuinely that it needs more time, just as the wards of court matter that we dealt with earlier needs more than six months. I accept fully that the Deputy's job is to ensure that it happens as quickly as possible, but five years is a reasonable timeframe. If it happens more quickly, happy days, but five years is a decent timeframe in terms of the type of legislation this is.

Amendment put and declared lost.

Bill, as amended, received for final consideration.

Question proposed: "That the Bill do now pass."

**Minister of State at the Department of Health (Deputy Kathleen Lynch):** Since this is significant legislation, we can all be justifiably proud when it concludes. There has been interaction in this Chamber and outside and everyone has had engagement with NGOs and people with an interest. It is important that this be acknowledged. Everyone has made an input into the Bill and there will be further changes because we will continue to listen. Members' further engagement with NGOs before 10 November, when the Bill is scheduled for the Seanad, will prove important, as it will provide us with a greater understanding. Apart from one or two officials and the people in Galway and the NGO sector, the rest of us are still only learning about this important matter. We are doing what many countries have not done and they are looking to us. One country in particular is waiting for us to move, as it intends to take what we have done and implement it.

I thank the Deputies for their involvement. This is not a sexy Bill and it did not move quickly but that pace contributed to what we have achieved. This legislation is something to which people will refer. It will have an impact on everyone in terms of birth injuries, acquired injuries, dementia, Alzheimer's and so on as we move through life and if we are lucky enough

to reach old age. I appreciate everyone's contribution to the debate. I also appreciate people's patience with the Bill. We could have concluded this two years ago but Professor Gerard Quinn told me that we could do a better job if we slowed the process down and talked to those who had greater levels of expertise. That advice has served us well.

The officials who usually sit quietly next to me in the Chamber have been incredible. They are now the experts in this area, having learned much as the legislation progressed. They have been the ones to say that we should change the Bill, that it is not person-centric enough and that we could do better. Whole groups of people have approached us. Some are in the public gallery. They brought their expertise, advice and knowledge to bear on this legislation.

Deputy Keaveney stated that, in the event that there were changes in our thinking, circumstances, the evidence or what we acknowledged, there was nothing preventing us from reverting to this legislation and adding to or deleting from it. Good legislation should not be static. It should be fluid, particularly when it is legislation such as this that impacts on everyone's life. We must be prepared to be flexible in this regard.

I thank all of the Deputies for their participation. This is not the end of the process and they will continue having an interest in one way or another. That is as it should be, as we are servants of the people and, more than other legislation, this Bill is about how we live.

**Deputy Pádraig Mac Lochlainn:** I thank the Minister of State and her officials for their hard work and their agreement to engage with civic society partners, those who work on the front line and are experts in these issues, in order to address any remaining concern around the Bill ahead of the Seanad debate. As was the case on Committee Stage, today's engagement has seen a significant number of amendments, which reflects the fact that the Minister of State and her officials have been listening. Let us continue in that spirit in the Seanad and make the Bill the best that we can because many people are counting on it to be what it needs to be.

**Deputy Colm Keaveney:** I acknowledge the work of the Minister of State and her officials. As she stated, this is complex and unattractive legislation. Getting one's head around it is difficult but something good has happened today and we have taken a giant step in protecting vulnerable people who cannot protect themselves. In this legislation, we have done human rights a great justice. While the Bill is not perfect, the spirit shown in reaching this juncture has led to a giant leap. If needs be, let us learn from this law's application and how it blends in and let us consider what changes can be made. It is milestone legislation, in that it is a significant component in the marker we must lay down in terms of the UN convention on human rights and the rights of people with disabilities. The sooner we progress legislation in this regard, the sooner we can sign off on our charter and obligations towards people with disabilities.

Question put and agreed to.

## **Financial Emergency Measures in the Public Interest Bill 2015: Second Stage (Resumed)**

Question again proposed: "That the Bill be now read a Second Time."

**Acting Chairman (Deputy Derek Keating):** Deputy McDonald has 15 minutes remaining.

**Deputy Mary Lou McDonald:** I believed I would have more, as I had 30 minutes yesterday and only used five. Anyway, I shall do my best to impart my wisdom in 15 minutes.

The Minister has extolled the virtues of the unwinding of the financial emergency legislation. The dark days are over and we are on the road to recovery, he says. That is what he would have us believe. The FEMPI legislation came about because of the catastrophic situation that the country found itself in as a result of the failed and disastrous policies of a Fianna Fáil Government, policies that were compounded by the current Government's response to the crisis. The current Government championed policies that led to further severe austerity measures that left those on lower incomes and the less fortunate reeling. While the catastrophe required a response, the cuts and policies were felt most acutely by those whom this Government specifically targeted. That was certainly the case for low-paid public sector workers. Starting with Fianna Fáil and continuing with the current Administration, emergency legislation has been put in place that has left the public service with staff cuts, moratoriums on recruitment, cuts in pay, pension reductions, increment freezes and increased working hours. The legislation before the Dáil today aims to unwind aspects of the emergency Bills. As explained last night, it sets out the terms for a partial restoration of pension reductions and a restoration of some pay to public servants or, as the memorandum accompanying the Bill helpfully tells us, it will "reduce the reductions".

Sinn Féin has been very clear throughout this whole process. When agreements were negotiated and legislation was debated on where we stand in regard to these and other cuts, we were very consistent in arguing in the Dáil, the Seanad, the media and the public domain that we did not and do not support any measures that cut the pay of low- and middle-income public sector workers. We argued very strongly that any new deal must prioritise pay restoration for low-paid public servants. We have been consistent in the analysis that targeting low- and middle-income workers' pay is economically and socially unsound. In addition, Sinn Féin has consistently argued for a living wage. In its recent pre-budget submission to the Government, it provided for a living wage to be introduced across the public sector.

The truth is that long before there was ever a recession in this State, there was an enormous pay gap between the highest and lowest paid in the public service. If one examines wage inflation between 1997 and 2009 and compares the accumulation in income of a Secretary General by comparison with a clerical officer in that period, the yawning, enormous and indefensible pay gap becomes all the more evident. It is clear to us that lower-paid public servants not only were left behind by the Celtic tiger but, like other low-paid workers, took the brunt of the Government's austerity measures while the higher-paid public servants forged ahead and were cosseted, resulting in an ever-increasing pay gap. In negotiating the agreements and implementing the various emergency Bills at all the various stages, the Government had a golden opportunity to tackle once and for all the considerable pay inequity across the public service and Civil Service, yet it failed to do so. I must emphasise again for the purpose of clarity that those who are overpaid and over-pensioned in the public service and Civil Service comprise a tiny minority of the workforce.

At the conclusion of the talks that led to the Lansdowne Road agreement, we examined its measures in detail. We did not take the agreement in isolation. We met the trade unions and talked to various stakeholders. It became obvious that, while the Government wished to sell the agreement on the basis that it primarily or wholly targeted low- and middle-income workers, this was not the totality of the story. I wish to challenge directly the claim of the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, last night in respect of this legislation. He said it was important to stress that the legislation is progressive and measured, with lower-paid public servants standing to gain most. That is not the truth, yet it has been the



substance of the rhetoric on this legislation and the Lansdowne Road deal since it was struck. However, as with most things in life, the devil becomes evident in the detail. Section 5.2 of the Lansdowne Road agreement makes a commitment “to commence the process to reduce the pay reductions applied under the FEMPI Act 2013”. In other words, it refers to the Haddington Road agreement. If the Minister for Public Expenditure and Reform were here, I am sure he would recall that we have had conversations on this before. I put it to him before that it is not possible to consider both agreements separately or in isolation. To understand the impact on public pay and public sector workers, one needs to consider the agreements in the round. Both must be viewed as one complete whole.

Far from representing a measured and prudent unwinding of the FEMPI legislation, as the Minister claims, the provision before us is such that, although lower-paid public servants do receive some relief, the reliefs are proportionately far greater for those further up the scale. The Minister is aware of where our concerns lie. I believe this should be of concern to him. I will say more on this subject in a few moments.

If the Government is serious about the reform of the public sector, it should use every opportunity presented to it to eliminate runaway pay at the top, ensure greater pay parity and eradicate gold-plated pensions. Such opportunities presented themselves in the midst of the greatest financial catastrophe the State had faced, yet the Government wimped out of dealing with those issues. I have submitted amendments to FEMPI legislation that would have specifically and unapologetically targeted high-income earners and protected low- and middle-income workers and their increments. The amendments would have removed the ability of the Government to increase working hours at a whim, but all to no avail. Time and again, the legislation went through without amendment.

Not unlike others in society, public and civil servants at lower grades and on low pay struggle badly. The real question for them is whether there will be some relief in their pay packets and households. We have brought to the attention of the Minister previously the fact that many public sector workers rely on the family income supplement to make ends meet. It is a disgrace that anybody employed by the State would be reliant on that supplement.

While we welcome some amendments, such as the small provision that puts extra money in workers’ pockets, we believe that no matter how much one tries to spin the legislation, it shows once again that the Government does not have in mind a fair recovery or restoration. Recovery and restoration are in mind for those on higher wages, admittedly, but if there were a fair recovery there would be greater pay parity. Low-income workers, who need full pay restoration the most, would receive it. Why are the only real beneficiaries of the two agreements, in substantive terms, those who need to benefit least? If it is the case that the focus is on those earning incomes of under €65,000, who will, let it be said, have an additional €1,000 per annum in their pockets, why is there such a sharp contrast with those earning over €65,000 and up to €110,000, who will see the full unwinding of the FEMPI cuts in respect of the higher portion of their wages? How could the Government argue that this represents a focus on the lower paid? Higher-income earners will have the cuts to their pay fully restored in two tranches. If one earns between €65,000 and €110,000, the first restoration is envisaged to apply in April 2017 and the second is to apply in January 2018. The real high rollers, on wages over €110,000, will receive a full restoration in respect of the income above €110,000 in three stages, beginning in April 2017 and ending in April 2019. Where we see the full row-back on the cuts is for the higher proportion of income that higher income earners have. Full unwinding, therefore, only applies to a select few. This is a partial unwinding of the Financial Emergency Measures in the



Public Interest, FEMPI, Act for those earning under €65,000 and a comprehensive and complete unwinding for high earnings thereafter. Where is the fairness in that?

When the Lansdowne Road agreement was reached, I was struck that trade union members and workers initially took the Minister on his word that the focus was on those on lower wages, certainly up to the €65,000 bracket. It was only after the fact that the full picture and consequences came to the attention of those workers and perhaps their trade unions. This is a matter we will return to on Committee Stage when we will submit amendments in that regard.

Can the Minister claim that this is a proportionate response? Can he tell those public sector workers that while the cuts hit those public sector workers on the lowest incomes hardest, they will have to stomach the prospect that restoration is unequally applied and favours high earnings and high earners? It is disingenuous for anyone to suggest that the Lansdowne Road agreement focuses entirely on the low paid. That is manifestly not the case in this legislation.

It is also a fact that front-line workers have been disproportionately hit. I refer to our nurses, gardaí, firefighters and doctors who are expected to deliver a 24 hours a day, seven days a week service to keep us safe and to look after our well-being. We must bear in mind that these are not just public sector workers. They are husbands, wives, mothers and fathers who have mortgages to pay, children to feed and rent to meet, and all from a very depleted pay packet. These workers, who have had their pay significantly reduced over the years, simply could give no more. They were squeezed until the very pips squeaked, and what is their reward for their pain? It is certainly not full restoration of pay or pension deductions. There may be the promise of that but that has not become clear.

Both the Lansdowne Road and Haddington Road agreements were implemented by a Government that saw no other strategy or option but to punish public services rather than invest in them and enhance them and there is no doubt that the standard of living of public sector workers has been damaged. I note in his contribution last night the Minister paid tribute to workers across the public and Civil Service. That is as it should be, but the actions of this Government would not lead any of those workers to believe they are valued. The truth is that within the sector we still do not have appropriate decent pay and working conditions for all of the workers, and we have the desperate spectacle of the chosen few and the rest. That is not a tolerable situation.

The Minister is also aware from previous debates that when benchmarked with other jurisdictions, the pay gap between those on low pay and those on very high pay within the Irish system is at odds with what would be considered to be normal, healthy, acceptable and equitable in an international context.

I want to comment on the requirement for the additional working hours. The Minister stated, almost as a boast, these additional hours that have accrued to the system because of the cuts. These additional hours have had a very detrimental impact on many workers. In particular, in my experience they have had a great impact on women or anyone who has a child care responsibility. All of us here know that the cost of child care is literally crippling for many families. It is a major issue facing any working parent but for those within the public and Civil Service who find themselves in the position of working additional hours, even if it is only a small parcel of time measured out over a working week, that additional time incurs often a disproportionate and very high cost in terms of additional child care. I know it was very disappointing for many that when the talk about unwinding FEMPI and giving back to public servants was being trum-

peted by Government, the issue around these additional hours was not examined nor a cost-benefit analysis done in terms of productivity. What are we getting for these additional hours?

I understand that within the health service there may be a particular case in respect of the hours. I am open to hearing that. I hope we will discuss that on Committee Stage but I know that in many other scenarios - in the Civil Service, for instance - I would question the value of the additional time in productivity terms. I know from speaking directly to people that it has had a major cost.

Public sector workers are the backbone of social provision in this State. We all depend on them at critical moments so it is not appropriate that schemes like JobBridge are used to fill the gaps in creaking services. It is all very well to expect productivity but how are public sector workers expected to do more with fewer resources? The recruitment embargo must be lifted. That is one measure that will help rebuild confidence in our public services.

The Minister said last night that he is proud of the considerable improvements in terms of public service provision that have been delivered since 2011. I am not sure where the Minister is mixing or the services to which he was referring but from talking to public sector workers, and in general conversation with people in the real world, it is apparent that our services are stretched and sometimes that is the best case scenario. In other scenarios, they are literally fit to collapse.

We just had a very informative briefing from the ISPCC, which raised a range of issues that are directly attributable to lack of staff, lack of money, lack of investment and lack of understanding in terms of the services that vulnerable children require. I refer to social workers, for instance, and weekend and out of hours cover. We have a crisis in that particular service provision and something that goes to the heart of the safety, well-being and future of children. I cite that as only one example; I could cite many more. Let no Minister come in here and pretend that they are presiding over a golden era of building, modernising and revitalising public services. Far from it. They have presided over cutbacks, austerity, staff shortages and crises across multiple services.

It could be said that the public services in this State, taken in their totality, might be described as broken, at times ineffectual and certainly frustrating for all those dedicated individuals who are at the coal-face delivering services. It will take much more than an election-orientated budget to repair the years of neglect that are attributable not only to Fianna Fáil and the previous Administration but directly attributable to this Government.

### *5 o'clock*

We have to address the problems in our public services, repair the damage and invest and build them up. The scandal of the trolley crisis is probably the most immediate crisis that jumps into the minds of citizens. It is the clearest illustration of what can happen when we do not protect our services and implement the cuts and other measures that have occurred in recent years. There has been an ongoing failure on the part of this Government to deal in any meaningful way with the housing crisis and the homeless crisis or to address realistically the deterioration in our health service. While these crises exist we are not on the road to recovery, contrary to what the Minister for Public Expenditure and Reform, Deputy Howlin, claimed last evening.

The money going out on excessive wages, for instance, could be better spent improving services and contributing to the investment we need. An Taoiseach earns a salary of €185,000.

Under this legislation, he will see reinstatement of his previous salary. Is that not correct? I see no argument for paying the Taoiseach €185,000 and I certainly see no argument for paying the Taoiseach more than €185,000. It is a matter of equity and democratic credibility for senior Ministers, Government officials and senior politicians, who insist, to use the old L'Oréal cliché, that they are worth it and, moreover, that some are more equal and more deserving than others.

When taken in the round and considering the struggle that public sector workers have endured and continue to endure to this day, the question of the treatment by the State of its low and middle-income employees arises. What does it say about the State as an employer? I imagine any impartial observer would suggest that it reflects the State as not being a good or fair employer. If there is to be a fair recovery and equitable restoration of pay and pension cuts, and if the Government is really serious about doing something, especially for low-income public sector workers, then those in government must cast their gaze to the bottom rung, where they reside, as well as cast their eyes upwards. The Government should cut the excessive pay of the tiny minority of the overpaid. The Government should act to restore fully the cuts to low-income workers. They deserve more than what is offered in this package.

I believe the Government's commitment to the investment in public sector services generally will also be reflected in the commitment - if the Government has any - to investing in the pockets and pay packets of those on low and middle incomes, those who essentially and by virtue of their numbers drive, run and produce all the positivity that public services can bring to bear in our society.

**Acting Chairman (Deputy Frank Feighan):** I understand Deputy Richard Boyd Barrett is sharing time with Deputy Clare Daly and Deputy Ruth Coppinger. Is that correct?

**Deputy Richard Boyd Barrett:** I am. We will take ten minutes each. The financial emergency measures legislation was used to cut the pay of public servants. It was an instance of the utterly savage and unjust gouging of the incomes of those who are, for the most part, low-paid or middle-earning public servants. They were asked to pay a cruel price for the crimes of others. This was accompanied, of course, with a horrendous wave of hysteria and demonisation directed at civil and public servants. They were scapegoated for the crimes of others. At the time, it was a rather Orwellian turn in the political narrative because public and civil servants were vilified as somehow responsible for the unprecedented economic crash when, with the exception of a few of the mandarins at the top, the vast majority had no responsibility whatsoever for the crash. In fact, that crash resulted from the naked greed of bankers, developers and bondholders, ably accompanied by the mandarins at the top of the Civil Service and facilitated by the political establishment in this country and throughout Europe.

The scale of the assault on pay and conditions was really rather savage. It is important to emphasise that it was pay and conditions and this point will be relevant when we try to assess the value of this legislation. Before looking at the facts of that assault and the extent to which this legislation does or does not move towards the restoration of pay and conditions for the majority of public and civil servants in any meaningful way, it is worth giving an illustrative example of what it has meant. It also serves to make the point to the Minister that this legislation does not do half enough and does not go anywhere near restoring pay and conditions for the majority of civil and public servants. In fact, it is another instance of the pathetic pre-election crumbs being thrown back to people who have been savaged when, in fact, the bakery has been taken off them. The Government steals the bakery and then throws back some crumbs and expects people to be grateful.

Anyway, the human reality of the situation was summed up for me in recent weeks by a case that came to my constituency office. It involves a low-paid civil servant who is facing eviction because his landlord has jacked the rent up from €1,000, which was already a difficult matter for this worker to manage, to €1,300. He is now facing eviction. He is married, he has two children and he is in receipt of the family income supplement. With the family income supplement, his total monthly income is €2,054 before tax. He and his family are now faced with a rent of €1,300. How can he do that? How can he pay €1,300 in monthly rent when his income, including the family income supplement, is €2,000? It simply cannot be done, especially given all the other bills and looking after the children and so on. They are going to be homeless. Then, he will go down to the community welfare officer to see if there is any chance he can get rent allowance, but he will be told that he cannot, because he is working and therefore he is not entitled to rent allowance. This is now widespread.

I offer another example of civil servants caught in this sort of trap. Let us suppose a man happens to be a low-paid civil or public servant who is married and owns a house. Then, he becomes separated. Usually, in separation proceedings the mother and child will get to keep the house, and rightly so. However, the man has nowhere to live but he cannot get rent allowance because he owns a house, although he cannot live in that house. This is happening to large numbers of low-paid civil servants.

I remind the Minister of State and the Government that these people were in no way responsible for the economic crisis. Indeed, they were low-paid even before the crash and the assault on their wages and conditions. Is it not extraordinary that the group who were vilified to this extent are actually suffering in this way? They have nowhere to turn. Aside from this legislation, the Minister and the Government might think about what I am supposed to tell this man and his family or others like him when it comes to how they are supposed to pay the rent. These are the low-paid civil and public servants who keep the State functioning. Perhaps the Minister of State could riddle me that one.

The situation such people find themselves in is as a result of the extent of the assault on their wages and conditions. People earning €30,000 in 2009, before the attacks started, had €16,500 taken off them between 2009 and 2015. At the end of the period covered by the Bill and so-called pay restoration, they will receive €4,351 back. Let us not forget that these figures do not include the universal social charge, which is a further attack on income.

People earning €40,000 in 2009 lost up to €27,400 by 2015. Their annual income was reduced from €40,000 to €35,000. Having had €27,400 gouged from them over those years, they will get €4,000 back by 2018. People earning €50,000 had €38,000 gouged from them up until this year and will only get €4,000 back by 2018 when the programme is completed, which is a tiny fraction of what was gouged from them. The overwhelming majority of the extra hours agreed, the flexitime that was taken away, the new sick leave scheme and so on have made it more difficult for families, along with all the other conditions which have been attacked and will not be unwound at all.

Let us sum it up in very simple terms. At the end of the period covered by this Bill, which is supposed to be about pay restoration, low-paid public servants will still be earning less than they did in 2009 when the assault took place. What sort of pay restoration is that? In 2018 low-paid civil servants will be earning less than they did in 2009. It is an absolute shocker.

For the Government and the troika, this Bill was always about what Naomi Klein called the

shock doctrine, that is, never to waste the opportunity of a crisis by assaulting the share that goes to wages and workers and boosting the share that goes to profits. I do not have time to go through the details, but a fantastic paper produced by economist Paul Sweeney demonstrates this point. I do not know if the Minister of State can see the graph but it shows the collapse in wage share across Europe since the 1970s. Ireland is the worst in Europe. In 1970, wage share was 67% as a proportion of GDP in this country; it is now 50%. The European average wage share is currently 58%. We are way below the average share that goes to wages. Profits during that period have rocketed, in a direct transfer from the working people to the rich. That is what the Government has done, and it has used the opportunity of the economic crisis to accelerate it.

Why do we need this emergency Bill and to unwind it in phases? There is no emergency any more, as the Government tells us. Everything is getting better. There is an emergency in housing but the Government will not declare that to be so. However, it wants to retain emergency legislation to make sure workers do not get back what the Government stole and gouged from them over recent years. Why does the Government not focus on the real emergencies and give workers back what it stole from them?

**Deputy Clare Daly:** It obviously goes without saying that some restoration of public service pay is undoubtedly better than none. I would imagine that public sector workers have experienced a certain degree of relief that after five years of the Government being in office, during which time it has consistently pilfered large sums of money from their pockets, this year it has thrown a partial amount of that back. The reality is that what we should be discussing is the abolition of the FEMPI Acts. They should no longer be in place.

The Bill may partially restore some elements of pay in the public sector but the number of hours public servants will have to work with still be longer and they will have fewer holidays and far fewer conditions than they had before we bailed out the banks. That is the reality of the Bill. In fact, the small pay increases in the Bill negotiated as part of the Lansdowne Road agreement are even smaller than the headline rates flagged by the Government.

The TUI - fair play to it - has been incredibly vocal about the Bill and the agreement. It has labelled them as unfair and heavy-handed, and I agree. They give the Government the power to withhold about €1,600 for supervision and substitution duties by teachers due to be paid in two tranches, starting in September next year, and the power to refuse to pay incremental pay rises for members of unions which are seen to have repudiated the Lansdowne Road agreement.

This gun to the head, mob movie-type union busting extremism gives the lie to the Government's propaganda that it is confident that the people believe the lies it is peddling about a recovery and its brilliant economic stewardship. If it were so confident, why would it need to have such vicious tactics in the Bill? It is because it has lost the hearts and minds of public sector workers and knows the only way it can get an agreement is by viciously attempting to ram it through. The TUI correctly pointed out that the pay increases from 2016 will have little if any impact on part-time workers, the most vulnerable sector of in the public sector as it is. I am so annoyed about this Bill I am almost struck dumb.

We are talking about FEMPI remaining in place until 2016. In other words, the Government is retaining the right to cut public service pay unilaterally for at least another three years. That in effect is what it is saying. It makes a mockery of the recovery and the ending of the emergency. It exposes its propaganda. The real agenda is precisely as Deputy Boyd Barrett pointed out, namely, why waste a good crisis.



What this is about is a race to the bottom dressed up as reform. For neoliberalism that means an all-out assault on the terms and conditions and pay of workers which were fought for by the trade union movement over decades. It has resulted in longer hours, shorter holidays and poorer working conditions, to name but a few. Precarious and casual labour is now part and parcel of the public service. There are now JobBridge jobs in the public service. It is a disgrace and stands on its head what was once something which was not an unreasonable expectation for citizens, namely, that we might aspire to the idea of a secure, permanent, pensionable job that would allow us to put a roof over our heads for our families, give us access to health care when we were sick, access to education for children to achieve their full potential and so on. All these things have been under attack.

I do not have time to discuss all the points, but the casualisation of labour, which once it sets its stall in the public sector is repeated in the private sector, is being further entrenched as part of this Bill. The TUI stated that one third of its members at second level and up to half of those aged under 35 years are in temporary or part-time employment. How in God's name can they buy or rent a house in our economy given those conditions?

Many university lecturers, the people one might think are the elite of academia, are on hourly contracts with very limited hours. Some 66% of university staff are now casual workers. We know about the figures on the overall shrinking of the public sector and the massive reduction in numbers. The consequences of that can be seen in front-line services such as the closure of Garda stations, the people on hospital trolleys and the largest class sizes in the euro-zone even after so-called reform in that area. Members of the Defence Forces are surviving on subsistence, supplementary payments from family income supplement and so on.

It should be pointed out that there are two categories of workers. The first of these consists of women. The public sector was one area where women held their own, and there was more of a chance of getting equal pay in the public sector than in the private sector. Not only this, it was an environment which marketed itself on the idea of being family-friendly and encouraging women in this regard. Women in the public sector earned 5% more than their private-sector counterparts, and at the lower end of the scale, in the most vulnerable sectors, public sector wages for women were 15% higher. This is an attack because what happens in the public sector is followed by the private sector. We know many of the family-friendly working arrangements have been stood on their head in the name of austerity, and none of these things will be protected after the passage of the Bill. In this sense I see it as a specific attack on women workers because of their prevalence in the public sector.

The second group of workers being particularly targeted and not having their needs addressed is pensioners. It is great that there is some restoration of public sector State pensions. This is brilliant, given the butchery the Government carried out on the livelihoods of pensioners. However, it is doing nothing in the legislation to deal with occupational pension schemes such as the Irish airlines superannuation scheme, IASS. IASS pensioners will find themselves in exactly the same position after the Bill is passed as they did before, despite the fact that these workers spent most decades of their working lives building up pensionable service in a State-owned company. It is a pretty big kick in the teeth, to be honest.

By next week, when the cuts from their pockets are taken for October, €5 million will have been robbed from the people on a pension in this scheme, who are in their 70s, 80s and 90s, to pay off a section 50 debt they did not even know they had. This section 50 debt was unilaterally passed over to Aer Lingus and DAA pensioners, who had it deducted at source from



their monthly income without their agreement, without consultation, without compensation and without being party to any debt resolution process. It is a debt they did not even know they had. Absolutely no compensation or relief has been provided to these workers, who worked in State employment all their lives. There has been no recognition either for deferred pensioners, whose long service leaves them less well off. A cut in retirement pension of up to 58% for long-service deferred pensioners with decades of work behind them, 42 years in one instance, is absolutely and utterly disgraceful. The Government had an opportunity to use some of the money from the sale of Aer Lingus to address the shortfall. It has another opportunity with this legislation. Given that the Bill allows for variation of the amount payable or rate of payment out of money provided by the Oireachtas, the Central Fund or the growing produce of that fund to certain persons for certain services to or on behalf of the State, and the Central Fund being one into which the IASS pensioners have paid €35 million to date via the stamp duty pension levy, could this not be diverted to restore some of the savage cutbacks in their living standards which were imposed on them in the same name of austerity? The Government has not done nearly enough for public sector workers, but it has absolutely ignored pensioners who gave their full working lives in this regard. The Government is due to face court cases which will ensure it will have to foot the bill by trampling on the rights of these people and taking their pensionable retirement from them. The Bill is not even too little, too late. We should be discussing the abolition of this repressive emergency legislation, and the Government should not be attempting to pat itself on the back because it has thrown back a few crumbs.

**Deputy Ruth Coppinger:** The Financial Emergency Measures in the Public Interest Act was misnamed, because the financial emergency measures were not in the public interest but in the bondholders' interest. With undue haste, the legislation was rammed through the Dáil in 2013 in a particular effort to pressure and blackmail public sector workers who were gearing up to resist the attacks from the Government. It was also in the interest of Fine Gael, the Labour Party and the billionaire-owned media to try to pretend that public servants were somehow responsible for the recession and for the economic collapse. If one had to choose a single group that paid extremely dearly in the recession, it would have to be public sector workers, who had imposed on them pay cuts, a so-called pension levy, which was punishing, longer hours and more work.

What we see in the Bill is not pay restoration; it is partial and it is phased. It was disgraceful, particularly if we consider the presence of the Labour Party in the Government, that the FEMPI legislation was rushed through the Dáil. It gave the public sector employer more powers than even private bosses have in this country to cut pay and pensions and change working conditions unilaterally without any reference to or agreement from the workers involved. It is absolutely disgraceful legislation that should have been met with a general strike, but unfortunately we have a trade union leadership that is in collaboration with sections of the Government and that accepted the idea that there was no alternative to austerity or to the market or capitalism itself, and have capitulated completely to this idea. Of course, many of them have very close connections with the leadership of the Labour Party. No resistance was put up by the trade union leadership to the legislation at the time.

Why is FEMPI not being removed? If we are in recovery, why are the punitive measures taken against public sector workers being left in place? The point has been made that the cost of living has increased dramatically, particularly the cost of renting. In Dublin, rents have increased by approximately €150 per month over the past two years, and a survey shows that rents in my constituency increased by €241 per month. However, public sector workers and

all workers have had their incomes dramatically cut despite the fact that rents have returned to 2007 levels in cities. If the restoration continued at the pace of this Bill, it would take six to nine years for public sector workers to regain what they lost at the time of the recession. There is a recovery all right for the rich; the top 300 have seen their wealth increase by €34 billion while the rest of us have been going through these swingeing cuts.

We have continued tax evasion by corporations. The Government has decided to create another lucrative loophole with the knowledge development box, and it is taking a case to prevent Apple, the biggest corporation on the planet, from paying tax back to this country, which is incredible. This level of tax evasion dwarfs the pay restoration taking place in the Bill. The conditions imposed on workers are being left in place, including the longer hours and many other conditions that the Government forced workers to undertake, including a lack of resources. The FEMPI legislation has done the damage and the resources are not being restored.

We will continue to see a two-tiered public service, whereby new teachers and nurses will earn 14% less than those in existing jobs. This is completely disgraceful. What a legacy to hand young people who have studied and worked hard to attain the qualifications. Will this be restored or will it be left in place? We have also seen casualisation and part-time work throughout the public service. In my sector, approximately one quarter to one third of teachers do not have full-time or permanent jobs. Many of them work in Aldi and Lidl and do babysitting and other part-time jobs at the weekend to supplement their incomes. This will do nothing for them. They will still be left doing this. I totally welcome and understand the rejection by teachers of this. Essentially, they see it for what it is because they know the reality. They are still expected to give extra productivity, drive-by inspections are taking place and there are the new curriculums and syllabi. There are larger classes and special needs assistants and resource hours have been lost. Large amounts of money have been taken out of schools, etc. There is a similar story with nurses and other public servants, who have all seen their workloads increase dramatically.

It is no surprise that nurses and train drivers are balloting and discussing industrial action for the next few weeks as they have been listening to the guff from the Government about a recovery and correctly stating that if there is a recovery, they should have a piece of it; 63% of people have said they do not feel any recovery, although they may see or hear about it. The Labour Party, in particular, is trying to save the public sector worker vote that it got in 2011, when many public servants looked to the party to protect them from the Tories of Fine Gael. Instead, Labour put people into the Department that would implement the cuts, including the Minister, Deputy Brendan Howlin, which was incredible. In many other Departments, Labour was swinging the axe against workers, having bought their votes on the basis that the workers would be protected.

This Bill will not in any way save the Labour Party and the budget will not do so either. Public sector workers have long memories because for the past seven or eight years, they have been apportioned the blame. They were the victims, in many cases, of a very divisive media campaign, which they had to listen to on a daily basis as they got up to do their jobs. The insinuation was they were somehow to blame for the recession, when it was the bondholders who were repaid, the speculators and the private sector which largely caused the problem. I wonder why the Minister of State expects public servants to be happy that some of their pay is being restored but the Government is leaving in all the savage conditions it imposed, using the recession and crisis to dramatically drive down the conditions and numbers in the workforce. The numbers in the public service were dramatically reduced, leaving much strain on those who worked in hospitals and key services in the country.

It is time to stop the war on public sector workers. The pension levy should be completely removed, as it and the universal social charge was meant to be a temporary measure. It should be taken out and all public servants should be restored to the same rates of pay. We should not have a two-tier position, which is extremely insulting for everybody working with a similar qualification. Young people are being expected to work for less but they will not and should not put up with that.

**Deputy Joe O'Reilly:** I firmly believe that when the history of this and the last decade comes to be written by social and economic historians, perhaps with postgraduate students applying their minds to it, the fascinating element to which they will commit most writing and thinking is how we maintained social cohesion throughout this period and how society kept its solidarity. They will consider how we did not have civil disobedience or, effectively, have trouble on our streets. In so far as we had a revolution, it was at the ballot box in 2011. It was a revolution of the people with their pencils in the quiet of the ballot box.

**Deputy Ruth Coppinger:** The Deputy must not have seen the water charge demonstrations.

**Deputy Joe O'Reilly:** The conclusion can only be that we have a very deep-rooted democracy, with fundamental solidarity among citizens.

The Government of the day managed the issue in a very fair and reasonable way and I suspect that great tribute will also have to be paid to our public servants and trade unionists, who put the good of the society and the country, along with potential job creation, ahead of their immediate self-interest. That was illustrated in the number of agreements made with the trade union movement in this period, culminating in the Lansdowne Road agreement. The public servants who exercised such restraint and the workers who maintained social solidarity in our country are true patriots who should be celebrated in this country. All of these people should be remembered and held up as heroes for what they did. As we rebuild a proper and normal society in reconstructing the country, it is important that they feel the benefits and get recognition for the sacrifices they made.

The Financial Emergency Measures in the Public Interest Bill 2015 is an attempt to start that process, effectively implementing the terms of the Lansdowne Road agreement, which was a very patriotic, selfless agreement on the part of the public service workers who were inspired by a Government that knew what it was about. The legislation involves partial and phased restoration of cuts to public servant salaries and pensions put in place between 2009 and 2013. As I stated, the legislation arises from the Lansdowne Road agreement, which recognised the contribution of public servants and gave expression to their contribution to the recovery. It was accepted by the majority of unions. Part 2 of the Bill proposes the partial and phased restoration of public servants' remuneration. It is well laid out but I will make reference to the text because there were attempts to misconstrue how this will operate.

A salary of up to €24,000 will see an increase of 2.5%, with effect from 1 January 2016, or immediately, one could say. A salary of between €24,000 and €31,000 will see an increase of 1% on 1 January 2016, with a salary of up to €65,000 seeing an increase of €1,000 on 1 September 2017. One can see the logic and fairness in an incremental process, despite the earlier attempts by Opposition speakers to distort the message. They would love to create the erroneous impression that in some way there is an unfairness in the process; there is an absence of unfairness but there is patriotism, fairness and a democratic buy-in by everybody. People with annual remuneration of between €65,000 and €110,000 will see a 50% restoration of the 2013

reduction on 1 April 2017. It goes on in a similar vein. I read this into the record so people will accept it. It is terrible and sad that in the absence of positive proposals, people have attempted to distort the message.

Section 3 of the Bill deals with increasing salaries as I outlined. During the fiscal consolidation and the restoration of public finances, the amount deducted for pensions from salaries increased and the amount paid in pensions decreased. This is being rectified. The exemption threshold for pension-related deductions in 2015 will increase from €15,000 to €17,500. This is at the bottom end of the scale. From 1 January 2016, the exemption threshold for the pension-related deduction will increase to €26,083 and so on. The point is the process is designed to favour those in the more difficult position. The Bill seeks to restore the *status quo* of pay and pensions.

The Bill is effectively restoring the fortunes of our public servants, who so patriotically took those cuts. The effect of our public servants taking those cuts was to restore public finances to order. That might sound abstract. To a person with their back against the wall, living in quite difficult circumstances, talk about restoring public finances is very abstract. In fact, it makes us competitive, so that we can bring in jobs. It reduces costs in the country and it attracts inward investment. In fact, it gives jobs to our children and brings home our emigrants. That is what this Government is about. It is not abstract economics; it is about getting jobless people work. Every time somebody gets work, €20,000 goes back to the Exchequer. However, there is far more at stake. There is the dignity of the person, their full participation in society and all that goes with it.

I am extraordinarily proud that as a result of all the sacrifices by our people, some of which have been so satisfactorily and fairly redressed and restored in this legislation, we are now creating 1,300 new jobs a week. Great credit must go to the Government and, in particular, to the Minister, Deputy Richard Bruton, for the extraordinary achievement that we are now creating 1,300 jobs a week and that we have created 125,000 jobs since the beginning of the Action Plan for Jobs. It is a phenomenal achievement against a backdrop of the sickening spectacle of lengthening dole queues and emigration. That is the backdrop and that is what has been reversed. I am so proud of that; this is what politics is about. We are all in politics because we want our people to have the dignity of work; to have quality of life; to raise families, if they wish, in good circumstances; and to live in dignity.

Some emigrants left by choice and with a particular ambition to travel, and that is fair game, but many, tragically, left because they were forced out of this country and we want those economic migrants to have the option to come home. Thankfully, the statistics would suggest that they are coming home and that the trend is now reversing itself. Thank God we are seeing the day, and what a wonderful day it is, that somebody who was unhappily exiled in Melbourne, Sydney, New York, London, or wherever, will now be back in their own parish for Christmas. Many people who come home this Christmas to their families will not be returning abroad. We can be collectively proud of that. That is the backdrop and that is what has been achieved by the public servants and by our people. That is what is being restored and sorted out in this legislation.

It is horrific to hear the harping on from Opposition spokespeople earlier, erroneously suggesting an unfairness. What is unfair about putting 50 cent on the minimum wage, as per the recommended rate? What is unfair about a €5 increase in the family income supplement? What is unfair about a phased, graduated and lower income-oriented reduction in the universal social

charge? What is unfair about a 75% restoration of the Christmas bonus? What is unfair about giving children preschool education until they go into primary school? What is unfair about a €5 increase in child benefit, which is the most socially equalising and fairest way of distributing income, as is supported by all empirical findings? What is unfair about all of that? What is fair about it is that it creates more jobs, because the budget measures that have been taken stimulate the domestic economy.

Lower paid people who have been affected and social welfare recipients, the people who get the Christmas bonuses, spend that money immediately on domestic products. They spend that money on products locally. A multiplier effect takes hold in the local economy. They go into the shops to buy gifts for their grandchildren or to buy food, the necessary things, in the local shops. They buy goods; they do not spend it on exotic imported materials. It goes into the economy the next morning or the next hour. It goes into the economy the minute they get it. It has a multiplier effect. More money is generated, more jobs are created, more savings are effected in the social protection budget, and there are more implications for the good of our society. More socially reforming measures can be taken in the subsequent budget as less is paid out in jobseeker's allowance. Those are the implications of this budget. That is the strategy on which it is predicated. That is the whole thinking behind the budget.

In the words of one columnist and commentator, the criticism of the budget is a selfish kind of a proposition. There are people saying that the economy has reached a point where it is all right and it needs no further stimulus. They say we should let well enough alone and make no further investment in it, that we should selfishly keep the *status quo* for those of us who have jobs, who have a stake in society and have ownership of something. That selfish view, sadly, permeates fairly well and it is contributed to by some significant commentators in our country who should know better. The truth is that while we have made mammoth, massive, unprecedented, unexpected and unheralded successes in bringing jobs to our people, while we have created thousands of jobs - 125,000 - while our emigrants are starting to come home, and while all that is true, tragically, over 9% of our people remain unemployed. While that tragic reality remains, we need to continue to stimulate our economy. It is wrong and terribly selfish of people to say: "Let's sit on the eggs now. Let's forget about the unemployed." We cannot forget about the unemployed.

The Minister, Deputy Noonan, constructed an outstanding, socially progressive budget - the public is very well aware of that and the reaction substantiates it - which will stimulate the domestic economy further, create jobs in retail, create jobs in services, and create jobs for our returning emigrants. As well as the various measures he took in regard to taxation for our farmers, a wonderful measure in this budget, and one I am particularly proud of, relates to hauliers. We do not have railways in the part of the country that I and the Minister of State, Deputy McHugh, represent. The part of Ireland that we represent and that the Acting Chairman represents is not well served in transport terms and the small local haulier is central to the domestic and local economy there. The local haulier is needed to transport goods from A to B. It is the lifeblood of society there and now, as a consequence of this budget, a haulier with ten lorries - a very small haulier, as most of them have in excess of that - will have an effective saving of €40,000 a year in road tax. The maximum tax per vehicle will be €900 when it was in excess of €5,000. This is the social and economic engineering in this budget to get our people back to work. That haulier is not going to put that in the Cayman Islands or buy a yacht with it. He is going to buy another lorry or employ another worker. It will reduce costs for local businesses and the effect of that provision in the budget, which will be implemented by the Finance Act, will be more



jobs in the haulage sector and in every sector, as the cost of moving goods around reduces. It is a wonderful idea and well done to the Minister and the Government. I am so proud to stand here as a Government Deputy and to reference that achievement and its implications.

Just as that will mean job creation, so too will the taxation measures for farmers. There are many important and implicit changes here. For example, it will now become financially attractive for a farmer to form a partnership with his son or his favourite nephew or niece - thank God we have reached that point - or with his favourite relative, to hand over the farm. We have a wrong age structure in agriculture in Ireland. We have too old a sector still farming, in many instances, out of economic necessity. This will make it a financially attractive option to hand over the farm and that will stimulate production and on-farm and off-farm employment. That is another job-creating measure of the budget and it tallies nicely with this Bill, which is giving back and is the reconstruction of a normal society.

The Bill gives back in a graduated way the income that public servants lost. It is only right. It is their own income returned. They made the big patriotic selfless step and they will be rewarded for it, or rather given back what is just. Those public servants, because of what they did, will now have two years' preschool for their children up to the age of five. Those public servants may have youngsters working in initial employment where the minimum wage is all they can get, and that minimum wage will increase. Public servants at the lower end of the public service in terms of salary may be recipients of the family income supplement and they will get a €5 increase. Public servants who have children will get a €5 increase in child benefit. In essence, the leap of faith that those public servants made in the Haddington Road agreement, in the Lansdowne Road agreement and in previous agreements was justified and they are now being rewarded for it. That income is going back into their pocket. Their society has been reconstructed and they are now the beneficiaries of their own act of patriotism, their investment in their future and their investment in their children's future.

The alternative was to allow the country to go into the abyss and down a serious road. As a result of the public servants who wrote the Haddington Road and Lansdowne Road agreements, because of the various social welfare recipients who exercised restraint and because of the general patriotism, selflessness and democratic-rootedness of our people, we will not have the kind of sad and tragic circumstances that apply in other countries. In Ireland, there will not be a Syriza that will lead the people to the top of the mountain and back down again. That is the kind of situation we avoided here.

This legislation is fair and equitable. It targets the lower paid initially. It is graduated and it restores the income of our public servants. It restores the previous rate of deduction of pension and, ultimately, it brings up pension rates. It also brings back collective bargaining and within the legislation is the potential for increased incomes as society normalises. It is a good day's work and we should be happy to ungrudgingly and unanimously adopt it in this House.

**Deputy Colm Keaveney:** Deputy Joe O'Reilly is somebody for whom I have great respect. He was one of the first Deputies who extended a hand of friendship to me and he has continued to do so since 2011. I do not want to single out Deputy O'Reilly's speech, but a significant emphasis has been placed here today on fairness. I do not hear about fairness, however, for the cancer patient who is receiving chemotherapy in an accident and emergency unit in a public area. I do not hear about fairness for the 2,000 families who turned up for food parcels at the Capuchin centre this morning. I do not hear about fairness for the 1,500 children who regard their hotel rooms as their home and are ashamed to say at school that their address is a hotel. I



do not hear about fairness for the 431 patients who languish as we speak in accident and emergency units and on trolleys. I do not hear about those with profound disability who were waiting to see the adaption and mobility grant restored in the budget, and it simply did not happen.

I am aware of emigrants who want to return to Ireland but refuse to do so because of the chaotic existing public services, particularly the health service. I write to the Minister on a weekly basis about an 18 month old baby who is the daughter of Irish citizens working in Melbourne who are highly qualified, technically superior and required in this economy. They want to return home but cannot do so because the HSE system will not provide support to keep their daughter on necessary drugs. We can cherry-pick about the type of recovery we are having.

Before the last election Deputy Ruairí Quinn boasted that only the Labour Party could be trusted with the public service because he claimed that it was the only party that would protect the public service's interests in government. With the benefit of hindsight, we now know that Deputy Quinn's utterances on this matter should be placed alongside his commitment with respect to the introduction of the registration charge that was committed to publicly in Trinity. I suppose all we have to do is look at all the other claims that were made in a so-called Tesco advertisement. When we look at the 40 cuts that took place under the stewardship of the Tánaiste and Minister for Social Protection, Deputy Joan Burton, only two of them have been restored, yet there is a perception, as we heard today from Government backbenchers, that this is a fair budget. Let us look at the fairness.

Under this Bill, newly recruited public servants are being left at a disadvantage relative to staff who were hired before 2011. The ladder has been firmly pulled up on a generation of young people in this country. An essential feature of a republic is that there should be equality before the law. Unjust differentials should not remain, and there is little sign of any future intent to remove them, particularly in the context of improving economic outlooks.

From time to time, Fine Gael, when not suffering from the strange cultural cringe that lurks in its subconscious, likes to remember that it passed the Republic of Ireland Act 1948. That might be so, but they have little idea of what a republic looks like because it does not mean that a country attacks its young people, it does not mean that the State tolerates tens of thousands of citizens being caught up in a housing or homeless crisis, and it does not mean that a country continues to fail to secure the rights of persons with a disability in the participation of the broader society.

All of this is part of a pattern that was initiated by the Minister, Deputy Joan Burton, who specifically targeted young people for special treatment. Their welfare payments were slashed, from €188 per week to €100 per week. It was as if the Minister thought that young people require less money to feed themselves, clothe themselves and pay the rent. It was a bizarre decision that young people who were homeless could survive on €100 a week.

During the recent referendum on marriage, many of the Deputies on the Fine Gael and Labour benches preened themselves under the banner, "Yes to Equality", but what they meant was, "Equality for some". As ever, they will grant equality where there is no cost involved but once any form of economic inequality is challenged, something that actually costs the Exchequer, the Government runs away. I regard this type of equality or argument around it as hypocrisy. Frankly, it is nauseating. Nobody would expect anything better from the Fine Gael Party - in fairness, at least it is honest about its position - but the Labour Party has promoted itself on the basis of social democracy values. Alas, all of that was too easily compromised in Labour's

wish to be part of a right-wing Government. As ever, the consequences of that inequality are many and its effects run beyond the individuals directly impacted by those odious and horrific decisions.

In terms of inequality, there are now longer waiting times for public services, changes to duration of employment, slashes to pensions and yellow-pack nurses. In the past three years graduate nurses and midwives have had a starting salary that was slashed from €28,000 to €20,000. I do not hear too many of the backbenchers looking at the fairness of that. The Ministers, Deputies Brendan Howlin and James Reilly, were accused by graduate nurses at the time of instigating the disparagement of the nursing profession and seeking to create yellow-pack nursing. The Minister for Health, Deputy Varadkar, has done nothing to challenge that view. The attack on nursing is suggestive of an attitude of a mind that disparages professions dominated by women.

*6 o'clock*

Would any of the three Ministers involved have countenanced such an attack on a male-dominated profession? The undermining of the pay and working conditions of nurses and the effects beyond young graduate nurses has driven thousands of these young graduates to foreign employers. With so many young nurses leaving our shores, the health service is struggling to fill vacant posts. Taken alongside the continuing obstinate refusal to lift the moratorium on public service recruitment, it has led to a continuing degradation of the quality of outcome of our services for the most vulnerable people.

We have diminished our expectations of public services. It is now okay to deliver chemotherapy to an immuno-compromised patient in a public accident and emergency unit and nobody lifts an eyebrow. Nobody is concerned about the delivery of a social wage. When we discuss fairness, let us remember fairness for the 1,500 children whose address is a hotel somewhere in Dublin and the 431 vulnerable people who are lying on trolleys as we speak. When I returned home last week, I met a senior citizen who said he did not want €3 extra in his pension but wanted to know whether his wife would get the orthopaedic appointment for which she had been waiting three years. I want to know if there will be a restoration of the millions of home help hours that were cut. This is the type of fairness and social wage I want.

Taken alongside the continuing refusal to recognise the situation in the economy, particularly for younger employees such as nurses, agency staff are being used to fill the gaps. This practice has been identified as more expensive than hiring staff and contrary to the welfare of the patient consistently having somebody who understands the location and specialty. Why would the Government continue to adopt a strategy of hiring agency staff at a greater cost to the Exchequer? It does so because it does not want to have a permanent relationship with people. The constant churning of personnel undermines the consistency of care, love and attention delivered by front-line staff in the public health service.

Education has also suffered from the moratorium on recruitment and an increase in the pupil-teacher ratio. The Government seems to take the view that education is solely an instrument for preparing children to be workers. The broader view of education that includes character development, social and emotional well-being and the formation of what it means to be a citizen has been completely abandoned in our education system. Nowhere is that more evident than in the decision to remove guidance counsellors. Some 500 citizens die by suicide every year and we cut €60 million from a €700 million budget for mental health last year. Then we at-

tacked children by taking away their guidance counsellors. If we are to repair the damage done to our society by the economic crisis, which has been magnified by the Government's choices, concentrated and committed action is required to rebuild a broken society and it must begin with public services. Public services, alongside social protection payments, form the main part of the social wage which we discuss within the community as a key element in challenging economic inequality.

The debate on the future of public services, the division that underpins them and the ambition we have for their role in society should be the centre of this discussion in the context of a forthcoming general election. However, we continue to narrow the debate to the economy, taxation and growth. Last Sunday, a tweet from Fine Gael headquarters stated that if Ireland's economy were a rugby team, it would be accelerating fast in terms of 6.5% to 9% growth. The significant majority of people I speak to want core issues, such as supports for children, to be addressed. Some 20,000 children have been waiting more than two years for speech and language therapy, audiology services and occupational therapy. This is a core part of what we talk about in terms of protecting the most vulnerable people.

While there are aspects of the Bill that I welcome, there is a significant volume missing from it. There is little evidence in the Bill of any conviction apart from a self-serving objective of ticking a box coming into the forthcoming general election. In many of my early speeches to the House, I cautioned that we should not buy an economic recovery at the cost of damaging the social fabric, and I very much fear that this is what has happened. While I appreciate that it would be the ethos of one political party in government, the absent party has let it happen. The continued attack on public services and the contraction of public services has gone some way to subsidising what is considered to be an election budget. The challenge for the next Dáil should not be primarily around a language of taxation and the economy. We do not live in an economy; we are citizens of a society. There must be a discussion about the fabric of our social structures.

Let us have a substantive debate about the reality of people's circumstances, such as the 140,000 people on waiting lists for public housing, the hundreds of thousands of people in chronic pain awaiting an appointment in the public health system, the millions of hours that have been cut from home help services, the most vulnerable people in society, and the homeless people sleeping in turf sheds, even in my constituency. We need to start talking about delivering the social wage. We live in a society, not an economy. We can have the debate side by side. The Government is intent on driving society and the equality and fairness it delivers further down the agenda. During the past four to five years, it has diminished public expectation about entitlements, rights and equality in public services.

**Deputy John Paul Phelan:** I welcome the legislation, as did most of the previous speakers. The FEMPI Acts were introduced during a time of economic crisis to try to deal with some of the crises as they emerged. It is right and fitting that this Bill, the first piece of rowing back on some of those harsh adjustments, would take place now. There have been five or six FEMPI Acts during the emergency period. As a result of the public service pay talks which concluded earlier this year, a series of proposals were put forward which led to the Lansdowne Road agreement, which is the main reason we are discussing the Bill. I welcome the pay restoration proposals for reducing the pension levy on former public servants, which was an especially draconian measure. Some people who had been retired for many years and had an expectation of an income into the future were severely adversely affected. This was the situation in which the country found itself.

I was alarmed by the comments of the previous speaker, Deputy Keaveney, who has left. He said the primary debate in the next Dáil should not be on the economy and taxation. Fianna Fáil has learned nothing if it believes the primary debate in the next Dáil should not be about the economy and taxation. The economy should always be part of the primary discussion that takes place here and everywhere else. The improvement in public services about which he spoke is contingent on having an economy that works and not one that has been driven over the cliff, as it was by his new party.

I have not spoken previously about his position, but I find it interesting that he seems to come in here whenever he contributes to a debate to lash the Labour Party. I am no particular lover of the Labour Party, but it took an extraordinary neck for the Deputy in question to spend 15 minutes speaking in the Chamber in condemnation of the FEMPI legislation given that virtually all of it was introduced by the party to which he now belongs. It took an extreme degree of ignorance for him to have a go at the reduction in the pupil-teacher ratio. Obviously, he does not know the difference between a reduction and an increase in the ratio. The pupil-teacher ratio was increased some years ago by his friends in Fianna Fáil, but it was reduced in the recent budget. Perhaps Deputy Keaveney could go back to school to learn that this was a positive move. Rather incongruously, the Deputy had the cheek to speak about the public service recruitment moratorium. He might have missed the life of the last Oireachtas - maybe he was having debates about things other than taxation and the economy at the time - so I will remind him that the moratorium was introduced by his colleagues in the party of which he is now a member. Who knows for how long he will be a member of that party? He is entitled to join whatever party will have him. They are welcome to him, particularly in light of his contribution this evening and on previous occasions.

My primary reason for speaking on this legislation was not to get annoyed with Deputy Keaveney; it was to welcome the fact that the Government is in a position to start rectifying some of the draconian measures that were necessary in recent years. The measures in question imposed a great deal of hardship on serving and retired public servants and people who might have found themselves in public service positions if the economy had not gone off the cliff. Of course Deputy Keaveney does not want to talk about the economy. Obviously, I am a public servant. In a previous life, I was a maths teacher. A great deal of younger teachers, in particular, find themselves in temporary and part-time positions. I refer to people who are younger than me. I am getting old. I am positively middle-aged at this stage.

Many younger teachers, like their colleagues in other walks of life, are not in the country any more precisely because Fianna Fáil and its friends decided not to talk about the economy during the Celtic tiger period. They did not reflect on the fact that the economy was built on sand. I suppose I agree with Deputy Keaveney in one respect, which is that debates on public services should be held in conjunction with debates on the economy. It seems to me, in light of what has happened in this country over the past decade, that the suggestion by a Member of this House that we should not be having debates on the economy and on taxation is living proof that the party to which the Member in question now belongs has not learned one thing from the hardship it has caused for public servants and private sector workers here and for thousands of people who live in all parts of the world as a result of the mess that party made of our economy.

**Deputy Peter Fitzpatrick:** I welcome the opportunity to take part in this evening's debate. When this Government took office in 2011, this country was in dire straits. The previous Government, which was led by Fianna Fáil, had run the country into the ground to such a degree that we had to rely on bailouts to pay our bills, including the public sector wages of nurses, teachers

and gardaí. It should not be forgotten that this was just four and a half years ago. Fine Gael in government had to take many difficult and unpopular decisions to restore the public finances and rid the country of the troika. For example, the public sector suffered average pay cuts of 14% and was reduced by 10% at a time of growing demand for public services. As the economy is now growing as a result of Government policies and the sacrifices of the people, it is right that we should provide for a sustainable system of pay recovery for public servants that is linked to continuing reforms that help to make the public sector more efficient and effective. I am particularly pleased that the new deal will target lower-income and middle-income public servants.

Although austerity is now over, we must be mindful of how we got into this financial mess in the first place. We can never go back to the Fianna Fáil approach of making unsustainable and populist pay awards. These awards, which were not linked to productivity and competitiveness, had to be reversed at great cost to the taxpayer. The approach pursued by Fianna Fáil in the past to buy votes is now being pursued by Sinn Féin to buy votes in the future. Budget 2016 benefits public and private sector workers. It provides for a marginal rate of tax of less than 50% for anyone earning under €70,000. These tax cuts will help to sustain affordable pay growth and secure economic recovery. The sensible budget that has been announced for next year is designed to keep the recovery going, to reduce the deficit to 2.1% of GDP in 2015 and to 1.2% of GDP in 2016 and to eliminate all Government borrowing by 2018. Tax revenues will increase by 15%, whereas spending will increase by just 4%. I acknowledge that the Government is continuing to borrow money, but I suggest that this borrowing is manageable because it is at historically low interest rates. If this Government is re-elected, it will be able to avail of the situation it has created to implement moderate expansionary budgets every year until 2020. I suggest this should be compared to the situation we faced when we took office in 2011. Does anyone really want to go back to this? A vote for Sinn Féin or Fianna Fáil will make this nightmare a reality.

Our €27 billion capital investment plan is affordable and responsible. In my own constituency of Louth, we are seeing the benefits of the growing economy and the increased investment in services. In Dundalk, the Marist secondary school is being completely rebuilt, St. Joseph's national school is getting a major new extension and Coláiste Rís has recently opened a new extension. Elsewhere, the new extension to the CBS primary school, the new Educate Together primary school in Ardee and the new extension at Scoil Uí Mhuirí in Dunleer are all projects that have benefited from the capital programme being implemented by the Government. We are making real progress in job creation in the region. Unemployment in the north east has fallen by almost 30%, as evidenced by the many new jobs announced over the recent past, including hundreds of jobs in the likes of PayPal, eBay, National Pen and SalesSense. As I have said previously in this House, the economic recovery did not happen by chance; it came from the policies implemented by the Fine Gael-led Government and the sacrifices of the people. Even though we now have the fastest growing economy in western Europe, we cannot take it for granted. It is still a fragile recovery. In my opinion, unemployment is still too high. The choice for the people at the next general election is simple. They must choose between stability and economic progress, and between chaos and uncertainty. It will be as simple as that. I welcome the Government's decision to restore the pay and services of many public servants. After four and a half very difficult years, I am pleased that we are now seeing the benefits of the Government's policies and that the sacrifices made by the people are now being rewarded.

**Deputy Catherine Murphy:** I wish to share time with Deputies Tom Fleming and Michael Fitzmaurice. I will keep going until they arrive.



**Acting Chairman (Deputy Marcella Corcoran Kennedy):** Is that agreed? Agreed.

**Deputy Catherine Murphy:** First and foremost, this Bill is about the partial restoration of pay. It is not about pay increases. While the Social Democrats would honour the Lansdowne Road agreement, we believe its inclusion in the budgetary arithmetic is a failure of negotiation on the part of the Government. We believe that as the agreement involves the restoration of existing public sector commitments, it constitutes existing public sector expenditure obligations and as such falls outside the parameters of the fiscal compact, including both the expenditure benchmark and the structural deficit adjustment. If we are looking at this as a partial adjustment, further pay restoration will depend on the buoyancy of future budgets. Had the other approach been taken, there would have been a greater degree of certainty around pay restoration under what is a legal agreement. That comes down to the way it was negotiated.

When the crash happened and in order to deflect blame, workers were pitched against one another - public sector versus private sector - which was very destructive. In any future scenario, we must analyse in a wider sense what we mean by reform. There was a legitimate expectation that the reforms promised would include institutional reforms so that people would see that public service provision was being done differently, was more citizen centred and was delivering the best possible services in the context of the limited money that was available. In fact, the word reform just became a code word for cuts. We need to start taking stock now, look to the future and ask what kind of public services we want. I acknowledge that there were some parts of the budget that went a small way towards improving matters.

In the context of class sizes, one sees excellent people who are totally demoralised. Teachers are standing in front of classes of up to 35 children in some cases, many of which are in my local area. Teachers say that their work is more like crowd control than teaching. The situation is worse in some parts of the country because of the historical model used for calculating the teacher needs of a school. Children have to arrive in a school before the Department will determine that the need is growing, even if it is in an area that has a pattern of growth not just over recent years, but over recent decades. There was an expectation that this would change and that there would be equality in terms of how the pain was felt, for example. People expected that there would not be disproportionate numbers of children awaiting speech and language therapy in certain parts of the country. In some parts, there are long waiting lists while in others, the lists are relatively short.

I have been highly critical of the way gardaí are deployed and have called for reform in this area. A policing plan is produced every year and is supposed to take account of demographic shifts and shifts in crime rates. We have just recently seen an initiative where Garda resources were moved to a part of the country where there is a serious problem. However, if one looks at the ratio of gardaí to the general population in County Louth and the robbery and burglary rates in that county, it is clear that it should not have taken the recent awful event, the murder of Garda Golden, for Garda resources to be increased in Louth. If one looks at the statistics for fuel laundering, robberies, theft and so forth, the numbers for County Louth jump off the page. It is one of the areas where, had there been a normal institutional response to the policing plan in terms of crime rates and demographic shifts, sufficient cover would have been provided before the situation became so acute. I am very familiar with the issue of Garda numbers because the lowest ratio of gardaí to population is in County Kildare, by quite a distance. Furthermore, there is a growing burglary rate in the same county, which should not come as a surprise. The burglary rate in Kildare is one of the highest in the country.



When the Minister for Public Expenditure and Reform, Deputy Howlin, talks about reform of the public service, he may well have a different vision to that of the public. When the public hears about reform of public services, they tend to look at it from the point of view of better outcomes. Real reform delivers better outcomes. I met a man in my office recently who applied for his pension 12 months ago. However, because he worked in different parts of the country during his 40 year long working life, some records are in Waterford, others are in Donegal and so forth. He is being sent from Billy to Jack while trying to get something to which he is entitled. He has been asked to provide information himself and to catalogue where he worked at different points in time even though he worked in the PAYE sector throughout his working life. That is not the fault of public servants but of the dysfunctional way in which the data is held, which results in a very poor outcome for those seeking a service.

We must develop a vision of the kind of public services we want, services that will put the citizen at the centre. We would make the argument that we must look to really good practice in countries like Denmark and Sweden, where a different value is placed on public services. If one does it right, one actually puts money back into peoples' pockets. For example, if we were to provide really free primary education, parents would not be asked for voluntary contributions or would not have to pay for transport if they do not live near a school. We would be factoring those costs in, which Barnardos estimate would run to €103 million. Imagine a scenario where, in June and July, parents would not be worrying about how they would get their children back to school in September. This would particularly favour people on low to middle incomes and would be as valuable to them as a few extra coins in their pockets. In fact, it would be more valuable because it would give a greater degree of certainty around family budgets.

I welcome the fact that there will be a partial restoration of pay but it is very precarious because it has not been factored into the budgetary arithmetic. The Landsdowne Road agreement is a legal agreement. I would like the Minister to explain why it was not factored in and why he has taken this particular approach. Further pay restoration can only happen if there is buoyancy in the public finances but none of us can say that there will not be another recession in one or two years' time. I hope not but the signs are not too good, in terms of the figures that have been floating around in recent weeks regarding fairly significant economies. A degree of certainty around pay restoration can only happen if it is included within the budgetary arithmetic. At the moment, there is no certainty.

**Deputy Tom Fleming:** The Financial Emergency Measures in the Public Interest Bill 2014 proposes to amend previous FEMPI legislation to restore on a partial and phased basis, the reductions made to public sector pay and pensions since 2009. This Bill gives effect to pay restoration measures agreed under the Landsdowne Road agreement on 29 May 2015.

According to its Long Title, the Financial Emergency Measures in the Public Interest Act 2013 provided for the reduction of the remuneration of certain public servants, including members of the Judiciary, a reduction of the amount of the payment of pension or other benefits, other than lump sums, payable to or in respect of certain persons who are or were in the public service under an occupational pension scheme or pension arrangement and the alteration of the operation of scales of pay for public servants, including the suspension of the awarding, for a certain period, of increments under those scales, as well as providing for related matters.

The Act placed a freeze on increments for public servants on incremental pay scales commencing in July 2013. It allowed for modification of the increment freeze, as agreed under the Haddington Road agreement, such that increments were delayed for short periods. Under

section 4 of the Bill before us, the increment freeze under the 2013 Act will be extended to July 2018 consistent with the extension of the Haddington Road agreement by the terms of that particular agreement.

As a consequence of the emergency measures, Irish people have shouldered a disproportionate amount of the burden created by a reckless financial sector and the subsequent collapse in incomes and property prices. Many public servants had their pay and conditions changed repeatedly under the terms of the financial emergency measures in the public interest legislation. One hears a plethora of stories concerning the hardship endured by public servants across the board, for example, teachers and gardaí.

New entrants to the Garda and newly qualified teachers are barely able to make ends meet. This is particularly relevant in light of spiralling rents in Dublin and elsewhere. Poor rates of pay are forcing new Garda recruits and teaching graduates out of their local communities and ever further from their places of work. The Government removed the annual rent allowance of €4,115 from gardaí graduating from Templemore who will be paid only €23,171 in their first year of service. New recruits will struggle to exist on such a basic wage and will find it difficult to secure accommodation near the station to which they have been posted, especially in cities and large urban areas. The Government should follow the lead of the authorities in London and Paris which provide central accommodation for essential workers such as police officers, firefighters and nurses. Gardaí who do a ten-hour shift may have to drive two hours each way to and from work. This will cause fatigue and could mean they are unable to perform their duties in a satisfactory manner.

The first batch of Garda recruits to be affected by the cut in the rent allowance have completed training and are being posted to stations nationwide. The approximately 200 gardaí who were recently deployed face soaring rents and a rising housing market that are pricing some of these essential workers out of their communities. If a decent and fair wage is not established soon, new gardaí will be caught in a poverty trap and key workers will be excluded from the communities they serve. While Ireland would not be the first country to encounter this problem, we should learn from other jurisdictions where it has arisen by avoiding it at all costs. It is discriminatory, to say the least, that new recruits are being treated differently from other gardaí and that different wage structures will apply to them. It is also wrong for us to expect gardaí to put their lives on the line, as they do daily, in such circumstances. Unequal pay structures make matters worse.

The rent supplement for gardaí was introduced not as a housing supplement but to ensure police officers had a living wage. A living wage is the minimum we can strive to achieve for gardaí. The current anomalies must be addressed as soon as possible.

Newly qualified teachers will be paid €1,538 less than teachers who qualified last year as a result of the review of allowances under the Financial Emergency Measures in the Public Interest Act. New entrants to teaching are also losing the qualification allowance, which is worth approximately €5,000 per annum. To provide partial compensation for this measure, they will now start at the fourth rather than the first point on the payscale, which translates to a starting salary of approximately €30,700, plus an additional €1,592 for those who sign up for supervision and substitution duties, giving a total of €32,292. To qualify for the supervision and substitution allowance, new entrants will have to provide 12 additional per hours per annum over and above the existing requirement. They will also lose the Gaeltacht, island and teaching through Irish allowances, three allowances with which the Minister of State, Deputy McHugh, will be

acquainted. These are worth €3,063, €1,842 and €1,583, respectively.

All of us are aware that people enter the public service from a sense of civic duty as opposed to the pay on offer. The cuts made under the financial emergency measures in the public interest legislation have made it very difficult to attract young graduates, many of whom are drawn to professions that provide a living wage, career prospects and job security for themselves and their families. A further side effect of the cuts has been the haemorrhaging of Irish doctors and nurses to foreign shores in search of better terms and conditions for difficult and highly skilled work.

The majority of trade unions voted to accept the Lansdowne Road agreement, which proposes the restoration of pay and pensions and the resumption of hiring to fill vacant posts. However, the agreement did not gain universal acceptance with a number of unions voting to reject it.

The financial crisis has placed a heavy burden on citizens. The number of people working in the public service has declined by 30,000 in recent years. I give credit and thanks to public servants for their hard work across the public sector in striving to keep Ireland moving through tough times. I hope the unwinding of the FEMPI measures will give them their extended families some extra money.

**Deputy Lucinda Creighton:** I am pleased to have an opportunity to speak on this Bill. I am probably in a unique position in the House in believing that the proposed measures are not the correct course of action for the Government, the State and its citizens. It is unfortunate that a Member of the Oireachtas or, for that matter, anyone else who questions the almost automatic decision of the Government to reverse the financial emergency measures in the public interest legislation and introduce so-called pay restoration, will be pilloried for being anti-public sector. I do not regard myself as being anti-public-sector in any way, shape or form. I have huge respect for the men and women who serve this country and our citizens in the line of duty, whether it is as members of An Garda Síochána, members of the Defence Forces, nurses or those who provide assistance to children with special needs, teachers, doctors or anything else. Right across the board, our departmental civil servants do very important work. I want hard-working public and civil servants to have the prospect of better pay and conditions and pay increases, but I do not believe everybody should expect a pay rise. I do not believe that, irrespective of how good or bad one is at one's job, one should be entitled to expect the same reward as a person who may be better at the job and work harder. We are taught throughout our education that hard work, enterprise and effort should be rewarded, but we introduce blanket pay deals by way of insider negotiation with certain vested interests. Many groups are not represented at the table; it is select groups or friends of the Government, if one likes, who get to sit at the table. It is not democratic or transparent and it is not right. It has resulted in a really bad culture throughout our public service. It has led to a bad culture in, for example, the HSE, because people are demotivated and demoralised. Whether they work hard or not, they can expect the same treatment under our system. That is fundamentally wrong.

When we talk about so-called "pay restoration", we should reflect on that phrase. What is pay restoration and what are we restoring? What is this restoration all about? It is ironic that today is "Back to the Future" day. It is the day Marty McFly was supposed to jump into the future. We were supposed to have shoelaces that tied themselves and all sorts of things that were predicted in the movie. I feel like it is "Back to the Future" when we are having this debate, albeit not much of one, on pay restoration. What do we want to restore? Are we going back to

the Celtic tiger era? That is certainly the direction in which we are headed. There was such a scandal and outcry after the benchmarking experience, although not during it because, as many have commented, everyone wanted to be part of it. Who is going to turn down a pay increase, particularly one that is not predicated on any particular performance but is given automatically? That is what we are returning to. We are saying that we want these blanket pay deals. There is not even a pretence at benchmarking any longer; rather, we want to start spending what is not, unfortunately, anything other than borrowed money at this point. We want to do it, coincidentally, just before an election.

The FEMPI legislation was predicated on an emergency state in the national finances, and it is very convenient for the Government to announce that the emergency is over. While we have growth in the economy and are on the road to recovery, it is premature to declare the emergency over when we still have a deficit and continue to borrow to pay for all of our public services. The decision on the part of the Minister for Public Expenditure and Reform, Deputy Brendan Howlin, to suddenly declare the emergency over is very much a subjective one, and it does not stand up to scrutiny when the State is still borrowing to pay for its day-to-day current costs. Social partnership was renounced by the larger coalition partner. It was renounced because it was a ready-up. I do not need to name the now-serving Ministers who attacked benchmarking and social partnership from the Opposition benches where I sat with them. Now in government and in a position to hand out money to curry favour with the unions and the other organisations sitting around the table, it is suddenly convenient for them to forget that rhetoric and leave it behind. Unfortunately, we have discovered that it was rhetoric rather than anything meaningful or substantive. It certainly does not appear to have been driven by any conviction. That is a real pity.

We had, and still have, an opportunity to change our attitude and approach to expenditure and the budgetary process. There is an opportunity to avoid the traps that previous Fianna Fáil Governments fell into, but the Government is, unfortunately, falling into them anyway. Last night, I was at a public meeting on the economy and the aftermath of the budget. One person pointed out that Fianna Fáil was really angry last week, kicking itself and put out by the budget because it wanted to have delivered it itself. It was a Fianna Fáil budget. It was a little bit of this and a little bit of that for everybody. That characterises the Lansdowne Road agreement, which is a little bit of something for everyone without any real strategic vision as to how the economy should be. It is a missed opportunity. We are back to election-driven spending patterns. We saw increases in spending, piecemeal tax cuts across the board and the announcement of the capital spending plan a couple of weeks before the budget, all of which was targeted at particular constituencies. It was designed to create a little offering, if not a whole lot, for everybody rather than to take tough or strategic decisions about what is best for our country.

What we should have had was a fully engaged budgetary process involving all members of the Oireachtas. We should have had a build-up to the budget and the capital programme over a period of months, with input from Ministers, of course, and their civil servants, naturally, as well as the other political parties and Opposition Deputies. That input should have been scrutinised and different options should have been teased out. Different priorities should have been suggested and there should have been a genuine and meaningful debate with expert input through the sectoral committees. Instead, we had Ministers come to the House to announce that certain groups would benefit from the lucky-bag approach with which we became so familiar under Fianna Fáil. It is a real shame.

We need to see real reform through this legislation, Government policy and the setting out

of a new vision for the country. Unfortunately, we have not seen that. In fact, putting the Minister, Deputy Brendan Howlin, into a Department entitled “Public Expenditure and Reform” was something of an ironic step. It is clear that the task of the Minister was to ensure that there would be no reform. While there have been cuts, some of them swingeing, hugely regressive and damaging, there has been no real reform. One need only look at the much-feted review of public service allowances and premium payments. That process was an absolute disgrace and a waste of time. Of 1,100 allowances across the public sector included in the review, virtually none was removed or abolished. It is a significant indictment of the Minister and his Department. It proves beyond any doubt that there was never any intention to reform public services. We must remember in the House that public services are actually about delivering high-quality services to the public. If we are serious about that, why are we intent on pumping our limited, borrowed resources into pay at the first glimmer of hope and recovery instead of into services that everyone claims he or she wants to improve? This is extraordinary when queues of older people, sick people and, often, dying people are lying on hospital trolleys. Those numbers will increase as the winter months pass, yet the Government has prioritised pumping €1 billion into pay and pensions through the Lansdowne Road agreement. That is wrong, and it divides workers in the public sector from those in the private sector.

I agree that people are taxed too much and that they do not have enough autonomy over how they spend their wages and provide for their families, but driving up wages through secretive pay deals like the Lansdowne Road agreement is not the way to solve that, rather, the way to achieve better quality of life and greater access to disposable income is through reductions in the personal tax burden. This would result in benefits for all workers, not merely public sector ones. Many of the latter have taken large hits in the past seven years, but so have private sector workers. People lost their jobs, took 40% or 50% pay cuts or had their weeks reduced to two days. Even worse, some were forced to emigrate. Increasing wages in the public sector will do nothing for these people. It will drive up wages in the private sector, which will only return us to the uncompetitive position of the mid-2000s. What sort of bananas economic agenda is that? Why is the Government intent on dividing the workforce, pitching the public sector against the private sector, when the obvious approach is to take steps that would benefit all workers?

Why has the Government refused to grasp the nettle of genuine reform of the public service? Performance reviews were much feted under the Croke Park agreement. After a few months, however, public servants pronounced that less than 1% of them needed to improve their performances. I believe the figure was 0.85%. What utter nonsense. What Deputy could claim not to need to improve his or her performance? In what workplace could one find that 99.15% of workers were performing fine? These reviews are shambolic, meaningless and a cosmetic exercise designed, as per usual, to tick a box instead of driving the sort of reforms, efficiencies and performances that we need in our public services. Why is the Government happy to go along with this charade? In particular, why is Fine Gael prepared to do this? Since the Labour Party is funded by the trade unions, we understand the incentive and the relationship on that side, but I am at a loss as to how the Fine Gael Party could go along with this.

We need independent performance reviews within our public service. We need to link pay to performance. People have been discussing this for 25 years or more. For the past seven years, the perfect opportunity has existed to do it, to recognise those outstanding public servants who do their best, come to work energised and want to contribute and see the best for their country. We could cherish their work and reward them for it while the person next to them who did not work hard or make the same commitment to the job would not be rewarded in the



same way. This is the culture that we need to drive in our public service. This is the culture that the majority of hard-working public servants want, as they would have nothing to fear from it. Rather, they would be rewarded for their efforts.

Instead, we have despicable box-ticking exercises that allow Ministers to squander taxpayers' money in attempts to buy votes at election time. We saw it with Bertie, who has had a bit of a resurrection in the media in the past 24 hours. We saw the destruction that such policies wreaked in our economy and society. I am ashamed that the Government is essentially following the same course and seems to show no interest in learning from the mistakes of the past. This is disgraceful.

On a positive note, there are obvious and simple solutions that could transform our country, economy and society. One is to get rid of our dysfunctional and deliberately Byzantine tax system. Renua Ireland has proposed the most radical tax policy of any political party of the past 100 years. We advocate a flat tax. This would transform the country by encouraging and driving innovation and entrepreneurialism and, importantly, by rewarding work for all people who want to contribute and provide for their families.

Currently, there are many anomalies, for example, the multiple USC and PRSI rates and the two income tax bands. These anomalies create a complex system that disincentivises work. We have a large range of tax breaks that are primarily availed of by the very wealthy. Disincentives and traps in social welfare and the minimum wage prevent people from taking on additional hours and earning extra money. In many cases, these are disincentives to people seeking pay rises. If someone on the minimum wage gets a rise of €10 per week, he or she will pay more tax and actually lose net pay. What a bizarre situation for a country that claims that it wants to incentivise work. It must change, and Renua Ireland has a clear plan as to how to do that. Our way would be better than a return to the good old days of throwing money at problems, which is what Fianna Fáil-led Administrations did. They increased health spending threefold in a 15-year period, yet our health system is shambolic. I have a great deal of direct experience of this, personally through family as well as through the many constituents who contact me seeking help. Every other Deputy has had similar experiences.

If we want to change this situation, we must change the culture, reform the delivery of public services, stop throwing money at problems, start innovating and treat all of our workers fairly and equally. The best way to do this is through lower taxation that does not penalise work and that values all workers equally regardless of whether they are in the public or private sector.

**Acting Chairman (Deputy Alan Farrell):** Deputy Mattie McGrath has the next speaking slot. I understand that he is sharing time with Deputy Fitzmaurice. Is that agreed? Agreed.

**Deputy Mattie McGrath:** I am glad to speak on this motion. If this were next week, it would be more appropriate, as it would be Hallowe'en.

*7 o'clock*

We could all come in wearing masks and have the phony war and phony games. One would think we were out of recession. Admittedly, the troika is gone — we banished it in time — but we are not out of recession, or anything like it. We are sick and tired of hearing about economic focus and talk of the boom in Dublin, but the recovery has not extended far beyond Newlands Cross and has not been felt by many in rural areas. The Minister of State, Deputy Joe McHugh, is keenly aware of that from his constituency in Donegal, just as the Taoiseach should be aware



of it in Castlebar. The economy is on its knees but the Taoiseach is in here in a cocoon believing that he is going to visit multinationals, schools or whatever he decides to visit. He is running from pillar to post, but he will not engage with anyone or listen to any of the people who are suffering and have suffered because of the FEMPI legislation. We have scampi one day and FEMPI the next. It is just a mixed bag; it is hit and miss. What is now going on is farcical.

The night before the budget, there were Supplementary Estimates worth €1.5 million. The health budget is to overrun by €600 million this year. The figures are totally contrived to give the impression that there is a rise in funding for health services. I heard Sara Burke going through those figures on my way home on Thursday evening and she implied there was less money in the kitty. It is a trick-o-the-loop by spin doctors. All these people are set to gain more from the FEMPI cuts reversal than anybody else because they are in the higher tax bracket. For too long there has been a cosy cartel. I have said throughout my eight years as a Member that the spin doctors and officials have their hands around the handlebars of power. They will not let go to get their hands around them. A hammer and chisel or jackhammer would not get their fingers off the handlebars such is their grip. It causes such paralysis in the country. Most of these officials could not run a shop, farm or any business. I have said time and again that many of the public officials at senior level should be asked to run a shop or business and see how hard it is to open one, pay rates, generate turnover, pay for light and heat and pay rent, staff, taxes and everything else. Self-employed people have little for themselves.

There are hundreds of thousands of low-paid workers who did not gain all along, even though SIPTU is attached to and in unison with the Labour Party. We know that, but the other unions are in cahoots also. The higher one's wage, the greater one's increase every time because of collective bargaining and everything else. We are told that what is occurring now must happen because of the Lansdowne Road agreement. I wonder whether any staff from the troika are looking in now to see what is going on. They were in a merry dance. There was a merry dance, Hallowe'en tricks and a trick-o-the-loop, and those concerned got blindfolded. I met the staff eight or nine times and I challenged them and it was a joke. They told me two and a half or three years ago at a meeting that there would be a focus on and growth in the country. I asked them who told them that but they looked at one another and would not answer. There were language barriers and everything else. I might not be the clearest always but I know what I want to say anyway and I know what is going down in the countryside because I listen to the people. I am a Teachta Dála, a messenger boy for the people, in this House and I will not forget that while I have the honour and privilege of being here. Eventually I had to get the facts out of the officials and I learned they were told what they were told by the senior civil servants. I asked them why they did not go down to any rural town outside the Pale. They did not go outside the Pale. I refer to places such as Dún Laoghaire. I hear on shows such as Joe Duffy's about the demise of villages and the heartlands of towns because of exorbitant rates and various schemes and because the authorities have been in bed with the big supermarkets and have allowed the latter to build outside all the town centres, thus killing off the towns. This is because they fund the political parties. The system stinks. The people to whom I was talking said they were told what they were told by the senior officials. These are the same senior officials who told Mr. Brian Lenihan — Lord have mercy on him — what he had to do. He told us we had to come up and vote-----

**Acting Chairman (Deputy Alan Farrell):** The Deputy should speak to the Bill.

**Deputy Mattie McGrath:** I am speaking to the FEMPI legislation.

**Acting Chairman (Deputy Alan Farrell):** Not in my opinion.

**Deputy Mattie McGrath:** That is funny. That is the Acting Chairman's opinion but in my opinion I am speaking on the Bill. I am talking about the FEMPI cuts being reversed. One would think we were in a honeymoon period again, but we are not. More important, the people do not believe we are either. The Government is in a state of indecision over when to cut and run and have the election. When people get their pay packets in January, they will know what they have and what they got.

The troika did not deal with the massive, exorbitant waste at the top, the consultants, Uisce Éireann and all the other bodies. It is as if we did not have enough experience of the monstrosity of the HSE which was created by amalgamating the health boards through centralisation. We set up Irish Water and a bonus culture was built into it. We paid consultants €90 million to design it. It is a merry game of fat cats rubbing butter into fat cats' you-know-where to make them fatter and more prosperous. Four kids from kindergarten would not have designed Irish Water any worse than what they have done. The organisation has a bonus culture. The Minister, Deputy Alan Kelly, said there would not be a penny paid in bonuses while he was in charge but he had to crawl away from this again. This is another battle he lost because the machinery of State decided the staff would have to get their bonuses, even if they were not earned.

I am not talking about ordinary public servants or front-line staff and their commitment over the years. I am not referring to HSE front-line nurses, community nurses, doctors, caterers, county council workers and ordinary people who have to deliver the services with less and less resources. Senior people get all the money. Former Minister Brian Lenihan introduced a cut for the senior civil servants. When I challenged him, he was told there were only 186 people affected. I tabled a motion at the time — I was in the Fianna Fáil Party — and the Minister thanked me for it. When he went to research it, he found out there were almost 1,000 affected. Is that not trickery and hoodwinking? The cut was reversed and those concerned got out under the wire. Everybody else had to take the medicine. This was at the beginning of the FEMPI arrangement. The staff in question got it reversed because they are in the cars and offices with the Ministers and have their hands on the handlebars of power and will not take them off them. Successive Governments have backed off from dealing with this.

I listened to Deputy Lucinda Creighton attentively. She was correct that those in the current Government were railing against these issues when I sat on the other side of the House. I was railing against them when I was a member of the Fianna Fáil parliamentary party because I knew it could not last. Now the Government is all for what is happening just to buy an election. I am surprised by the backbenchers, especially the few self-employed ones, who should understand the madness of engaging in auction politics to get back into power, especially since we are still borrowing massively to run the show every day of the week and to meet the cost of current spending.

The outdoor staff and front-line staff I mentioned, the ambulance drivers and members of An Garda Síochána were reduced to enslavement because of the cuts to their wages. Now we are recruiting gardaí, which I am delighted to see, but we are not paying them half the money - they cannot live on it. Where are we going to get the morale and the respect among low-level gardaí, low-level teachers and those at other levels? We have to have a level playing field and we must respect, honour and praise work. Any man who goes to work must be rewarded always. We must look after people who are genuinely unemployed and genuinely sick as well.

The cuts imposed on the disabled and marginalised under FEMPI have been merciless. Again, these are the people who will gain least from the budget. The higher earners will benefit from the higher tax cuts and the lower earners and unemployed will get less. The pensioners are to get €3 a week; that is a lot of good to them.

Take general practitioners: I am not a spokesperson for them but they are at the coalface. They have a contract that is 40 years old but the Government refuses to renegotiate it so it will be relevant to the work they are expected to do. The general practitioners swear the Hippocratic oath to help and save people and treat the sick. Especially in rural areas but also in urban areas, the vast majority are self-employed. They answer calls at all times of the night and day. They employ other doctors, nurses and psychiatrists, the lot. They are businesspeople and may have 20 people working for them. They have been cut. The figures, which are accurate, show general practitioners have been forced to let staff go. A spokesperson for the National Association of General Practitioners has warned that the walls are caving in on family doctors, yet the Government engages in folly in respect of children under six. It is another folly project of the last Minister. Someone else got contaminated with it this time — I do not use that word in any bad way — with regard to the provision of free general practitioner care for children of 11 and under. They are the healthiest people in our society. Day in day out, Deputy Kelleher, the Minister of State, Deputy Joe McHugh, and I encounter people who are sick and in need, awaiting operations in pain and agony and on trolleys, yet their medical cards are removed unceremoniously from them. The HSE system that I deal with is so bureaucratic. Those people have experienced savage cuts. A survey of 72% of general practitioners' practices, carried out by the National Association of General Practitioners, found that as many as 8% of general practitioners have to close up and go. They will not even be negotiated with in terms of a decent contract. It is not right. Self-employed people will drive the economy. They were driving it until the Construction Industry Federation and others got involved in collective bargaining and negotiated rates for themselves. It was all about the big people. We forgot about the little people and the small farmer, who is still struggling and who got less from the budget than anybody else. We forgot about the small and medium enterprises, SMEs, which each employ between one and 20 people. If all the SMEs employed one extra person, no one would be unemployed. We know that but we have strangled them with quango after quango. The mother of all quangos is Irish Water, whose employees cannot fix a washer in a tap. They have no employees who are capable of doing anything. It is all consultants and agents, who are good people, but anything that has to be done must be done by local authorities. Now we cannot phone the local authorities. If somebody has a problem, he or she must phone Irish Water first. We have layers of red tape to reward retired county and city managers, senior officials and some Deputies here whose wives retired from other public service jobs and were pushed into Irish Water. It is disgusting and disgraceful.

We were led a merry dance by the troika. Shame on the troika for not getting into the veins of rural Ireland - and urban Ireland also - to see what was really going on and how the people were being affected by the Financial Emergency Measures in the Public Interest, FEMPI, Act. We are now back to FEMPI. It is like Hallowe'en, when children play trick-o-the-loop or trick or treat. It is a case of "Come out Enda and give us a treat". He will get some treat when he goes back to Castlebar, where the only business park in the town closed down. The position is the same in every other town and village. Business has become too costly because we have appointed quango after quango.

The name of the National Employment Rights Authority, NERA, should be changed to the

“national employers’ supports agency”. People with briefcases are calling to self-employed people and harassing them by telling them their daughter or son should not be working in a premises after 9 p.m. on a Saturday or Sunday and so on. I am all for workers’ rights - I have been an employer for the past 32 years - but we do not need these people marching in and flashing their identification cards. We have inspectors, all of whom are on expenses, going around the country persecuting people when they should be supporting them, particularly in a time of recession, and allowing them to breathe. They should work with those to whom I refer and try to understand the problems and the issues they face and assist them in dealing with them. They should not create bureaucratic messes.

What cuts were introduced through FEMPI for senior officers in the courts and the sheriffs who act for the courts? Scandalously, they were allowed to go around and evict people and make fortunes in the process. In certain cases, the senior court clerk and the receiver were one and the same person. It is disgusting. It is corrupt, and I hate using that word. Ordinary people-----

**Acting Chairman (Deputy Alan Farrell):** The Deputy cannot make charges against an individual. He is perfectly aware of that.

**Deputy Mattie McGrath:** I have made that charge. A corrupt system has developed. A book was written-----

**Acting Chairman (Deputy Alan Farrell):** No. The Deputy was referring to individuals. He should please refrain from doing so.

**Deputy Mattie McGrath:** I did not name any individuals.

**Acting Chairman (Deputy Alan Farrell):** No, but the Deputy made inferences.

**Deputy Mattie McGrath:** I just referred to the system that has been created for them.

**Acting Chairman (Deputy Alan Farrell):** The Deputy inferred-----

**Deputy Mattie McGrath:** A book about that matter was published recently. It is entitled *Waiting for the Sheriff*. Ninety Members on the Government side of this House voted for the so-called Land and Conveyancing Law Reform Act. When Mr. Justice Dunne ruled that these homes could not be repossessed, the Government introduced legislation to reverse that and 90 Members voted for it.

I refer to the eviction Bill and people who are waiting to be evicted. The charges sheriffs and their agents impose on people are obscene and we expect gardaí to go out and protect sheriffs. It is not that anyone wanted to hurt them but people were not going to be put out of their homes. They stood up to protect their property. The Black and Tans did not do it. The Peep o’Day Boys did not do it. It did not happen under Cromwell but it has happened under this Government. The process started under the previous Government. It is ill-treatment, bullying and intimidation of citizens.

I do not see my colleague-----

**Acting Chairman (Deputy Alan Farrell):** Neither do I.

**Deputy Mattie McGrath:** -----so the Chair will have to bear with me for another five min-

utes.

**Acting Chairman (Deputy Alan Farrell):** I will survive.

**Deputy Joe McHugh:** What about a text?

**Deputy Mattie McGrath:** The Minister has the text system. Ministers have all these officials to operate their systems as Gaeilge agus as Béarla agus déanaim comhghairdeas leis an Aire Stáit mar gheall ar a chuid Gaeilge.

**Deputy Joe McHugh:** Go raibh maith agat.

**Deputy Mattie McGrath:** It is beyond belief the way people have suffered and are still suffering. That is the most annoying aspect. They are still waiting for hospital appointments for two or three years. They are waiting for brain scans, knee operations and so on. Government Members are living in a bubble if they do not realise that.

We had the charade in terms of what the banks were allowed to do in the absence of banking legislation and we know that what caused the need for FEMPI to be introduced was the collapse of the banks. The rhetoric from the Labour Party in opposition at the time was that they would burn the bondholders. Hell's fire would not be as hot as the fire for the bondholders. What did those in the Labour Party do, however? They rubbed more of the butter into the fat bankers' "you know where". It was Labour's way or Frankfurt's way. Then the Fine Gael-led Government got in the mood to implement cut after cut. However, most of those cuts affected ordinary people in the public service and their counterparts in the private sector also.

If we are ever to have an equilibrium or fair play, we will have to treat the self-employed as entrepreneurs and support them. We will have to make Enterprise Ireland help them. We had the county enterprise boards but the Minister abolished them. The Leader programmes, which were the models, were also abolished. Europa recognised the Leader programme in Ireland as a flagship for the rest of Europe but what did the former Minister, Phil Hogan, do? He attacked it and put it under the county councils.

Under Better Local Government, the Government said it would amalgamate and banish local democracy. The Government has abandoned the people. It brought forward a document, Putting People First. That was passed here but I stood up and opposed it. I brought a challenge to it in the High Court and served a summons on the former Minister, Phil Hogan, in this premises. We will go to Europe with that.

In my county, and the Government bulldozed north Tipperary and south Tipperary together, the county manager and others put all this in place before the enabling legislation was passed in this House. I have the day and dates on which it was passed. All the work was done beforehand, including the amalgamations. Processes were put in place before the legislation was passed. That is an indication of the arrogance of very senior officials in county councils and in government.

We are only rubber stamping measures in this House. It is a case of getting this legislation and being expected to vote it through. The Government has the numbers. Its Deputies will vote for it and we are cannon fodder. That is why I got speaking time tonight. I was told I would have it but then told it would be tomorrow or whenever. However, the Government speakers did not take up the slots tonight because they know they cannot talk about something



that repulses them. It repulsed them when they were in opposition. They railed against what the former taoisigh, Brian Cowen and Bertie Ahern, and their Governments did at the time, particularly in the context of public spending. However, those in this Administration have learned the tricks, as I have said many times in the past five years. It almost seems that since they came to power, they have sought to punish the people for keeping them out of office for 14 years. They have a gravy train for their friends and advisers. The Government has stuffed the Judiciary with its own appointees. Openness and transparency, how are you? The Government has allowed the receivers get richer and fatter and allowed the sheriffs plunder people's homes and terrorise them.

I said last week in the debate on the budget that all our people want to do is live. They are proud people. They go out and do an honest day's work for an honest day's pay, but they want fairness. When they see what is happening with the front-line services and at the top of their own organisations, why would they not have low morale? Why is morale so low in my own county council? Why is morale so low in many parts of the public service? It is because they see that if one is a nice boy and plays ball with the system, one might get promoted. It should be about public service and productivity but it is not. It is who one knows, what one knows and a case of "Two bags full, Sir".

The Government has been a sad failure. It got one of the finest mandates any Government ever received but it has abandoned that. It is now afraid, and it cannot make a decision on when to face the people. We had the spectacle for the past three or four weeks of the Taoiseach becoming a dummy. He would not answer anybody but was finally forced to go on an RTE programme. His handlers let him out but he said the wrong thing; he was not supposed to say what he said. They meant him to say he would have the election but he does not know what he will do now. It is a pitch-and-putt or a lucky-dip job. When Joan allows it, the election will happen.

When the Minister, Deputy Alan Kelly, came out tonight for the third time and announced that he is buying in prefab homes for the homeless, he said he will fast-track planning laws. How does he intend to do that? He never served on a county or local council. If he had, he would understand that planning legislation cannot be fast-tracked unless the intention is to bring us in here and pass enabling legislation. He cannot do it next week because the Houses are not sitting. He will have to do it before the election, but he says he has bought 500 of these premises. This is more blunder and bluster from a Government that is big on spin. It is spinning so fast that it will spin off into the abyss one of these days.

**Acting Chairman (Deputy Alan Farrell):** Please take your seat, Deputy. Your time has expired. The next speaker is Deputy Kelleher.

**Deputy Billy Kelleher:** I thank the Acting Chairman. We welcome the conclusion of the public sector pay talks known as the Lansdowne Road talks. When we discuss the matter we should do so in the context of where we were when we initially introduced the financial emergency measures in the public interest legislation and where we find ourselves today as a people. In that difficult journey extraordinarily difficult decisions had to be made in this House which had a direct and immediate impact on people's lives. We have to acknowledge that a great many people shared serious burdens to ensure a readjustment of the public finances and to ensure the economy would be able to build itself back towards a sustainable funding model. We still have a challenging situation. This is evident from the budget last week and the fact we are still borrowing large sums of money to fund current expenditure. All in all, major sacrifices were made by many people. Obviously, the public service carried its fair burden with



cuts to take-home pay, the imposition of the pension levy and increases in productivity and efficiencies. There is no doubt this made a major contribution to addressing the damaged public finances and the situation we found ourselves in between 2007 and 2012. All in all, they made a remarkable contribution.

When we refer to damage to individuals in terms of take-home pay, we should acknowledge that at one stage we had unemployment levels of between 15% and 16% and probably higher. However, due to changes in qualification criteria, particularly for the self-employed, many people found themselves without any support from the State. This included self-employed people who found themselves without business any more. In all that happened with the downturn in the economy, their plight was almost forgotten. These self-employed people found themselves without a business or any form of work. The State was miserable and underhand in dealing with them. Many of these people had worked extraordinarily hard. They had built up small businesses, made their contributions, paid their taxes and employed other people. When they found themselves gone, as it were, they were forgotten.

We often talk about the public service, the Civil Service in particular, in terms of bringing forward, defining, implementing and overseeing the development of policy. Those involved may not always understand the serious pressures on self-employed people. The self-employed must consider whether they will have enough money for themselves, enough cashflow to pay their employees' wages and all the continual pressures on self-employed people. They were another group of people who made a major contribution to the development of the economy, but when the economy went south, they were hit the hardest. Many of them still languish among the statistics without necessarily having good or reasonable supports or a floor on which they can tread when they find themselves in these difficulties. This group certainly played and continues to play its part as well.

Let us consider the stabilisation of the finances. Pay increases will be awarded under the Lansdowne Road talks. However, we need to be continually vigilant of the fact that at issue is public money. We need to ensure continual efficiencies. We need to ensure the progressive implementation of technology and new ideas. We need to ensure new thought processes are consistently brought into the Civil Service and the public service. I have found in opposition and in government that while we have the most professional and efficient Civil Service and people with remarkable integrity, at times we are reluctant and slow to embrace new ideas or look outside the capacity of the Civil Service for new ideas, innovation and technology.

One thing sprang to mind when I was reading some notes earlier. The Revenue Commissioners is definitely the most efficient organisation in this country in terms of embracing technology and doing what it is meant to do. Of course, the reason is that the Revenue is collecting money for the State. However, we are not as good in terms of efficiencies when we are trying to deliver services to citizens in areas that cost the State money. Often, we are slow and ponderous with applications for people seeking medical cards or social welfare or in cases of people who are languishing on hospital waiting lists. This also applies in general interaction between the State and the citizen. When the State is obliged to give something to the citizen, those responsible can be slow and reluctant to embrace the best ideas to ensure the services are delivered. Home care packages serve as an example. All these languish in a lethargic system of assessment to see whether people qualify and then subsequently in the awarding of the qualification. At times, we can be very efficient in one way but elsewhere we are not as good.

Let us consider the example of crime in rural Ireland. People get annoyed when they see

no gardaí available to protect citizens from criminality. At the same time, they see what they believe to be considerable resources being used to collect debt for private companies, for example. These things are important when we are discussing the FEMPI legislation, the sacrifice of the citizen, the obligation of the State and the interaction of the State and citizen through the various State agencies.

I believe that as we progress as an economy, we must progress as a society as well. One of the key obligations is to ensure the State upholds its side of the bargain. We ask our citizens to carry the major difficulties and to pay taxes, but when the State has an obligation to ensure services are provided, it can be rather slow. That system grinds slower as resources dwindle. There is an intentional slowdown of assessment of people's rights and entitlements when they are looking for something from the State. We need to be mindful of that as we progress.

Overall, this legislation is welcome. It signifies that the endurance of many people over many years has been steadfast and highlights the sacrifices they have made. Some of these sacrifices had a major impact. Some public servants on take-home pay of €700 per week lost more than €100 in take-home pay between the FEMPI cuts and tax increases. That had an extraordinary impact on individuals, their quality of life, aspirations, dreams and their hopes for themselves and their children and families. Many people have gone through serious upheaval. This point must be a key acknowledgement in terms of celebrating and applauding ourselves from time to time in this Chamber for all the great work we have done. It is the case that we did extraordinarily difficult things, but it was in the context of passing legislation to stabilise the finances. However, the extraordinarily difficult things were carried by many citizens for long periods. We owe it to those people to ensure that when we start to award pay increases, we consider those who were disproportionately affected, those who were asked to carry most and who, perhaps, were incapable of carrying most, including the low-paid, clerical officers in the public service and the Civil Service, gardaí, teachers and nurses. These groups had a major imposition on their take-home pay and quality of life.

For all these reasons this legislation is welcome. As we try to return to where we were, I hope we will return having learned the lessons of the past. I trust we will reward those who carried most for the longest period. Primarily, they include the lower-paid in the public sector and the Civil Service. Certainly, those among the higher grades took pain as well, but there is no comparison between asking a public servant on €120,000 or €130,000 to take a cut of 10% and asking a clerical officer, a nurse or a garda to take a cut of 7% in pay. The impact is disproportionate for the lower-paid. We must acknowledge that in any further roll-out. I would like to expand on the point at another time.

**Acting Chairman (Deputy Alan Farrell):** I ask the Deputy to move the adjournment of the debate. He will have ten minutes remaining when the debate commences.

**Deputy Billy Kelleher:** When will it be taken again?

**Acting Chairman (Deputy Alan Farrell):** Tomorrow.

Debate adjourned.

**National Asset Management Agency: Motion (Resumed) [Private Members]**

The following motion was moved by Deputy Michael McGrath on Tuesday, 20 October 2015:

That Dáil Éireann:

calls on the Government to establish a commission of investigation under the Commissions of Investigation Act 2004 with regard to the sale of Project Eagle by the National Asset Management Agency.

Debate resumed on amendment No. 1:

To delete all words after “Dáil Éireann” and substitute the following:

“notes that:

— the Project Eagle loan sale was executed in an entirely proper manner;

— attempts to conflate the National Asset Management Agency’s open market loan sales process with allegations of wrongdoing on the buyer side of this transaction are entirely wrong;

— despite all the confusion and conflation in the coverage of this matter, the fact is that there are no claims of wrongdoing against NAMA; and

— NAMA is already subject to a high level of public accountability compared to other commercial bodies, including commercial bodies in the State sector;

acknowledges that:

— the chairman and chief executive of NAMA are accountable to the Committee of Public Accounts and other Oireachtas committees and to give evidence to those committees whenever required to do so;

— the chairman and chief executive have appeared before the PAC and addressed the Project Eagle sale process on 9 July 2015 and 1 October 2015;

— during the most recent PAC appearance of 1 October 2015, a number of PAC members stated there were no allegations of wrongdoing being levied at NAMA;

— as part of its upcoming third section 226 review of NAMA, the Comptroller and Auditor General has confirmed he will perform a value for money review of various NAMA sales transactions; the Project Eagle sale is being evaluated as a first priority as part of this review;

— the Comptroller and Auditor General has indicated he intends to produce a draft report before year end 2015; and

— the Comptroller and Auditor General is best positioned to independently review this transaction and make such a determination; and

calls on Dáil Éireann to support the upcoming Comptroller and Auditor General sec-

tion 226 review of NAMA which will examine the Project Eagle sale as part of a broader value for money review of NAMA sales transactions.”

- (Minister for Finance)

**Acting Chairman (Deputy Alan Farrell):** I ask the Technical Group to resume. There are ten minutes remaining in the slot. Deputies Catherine Murphy, Clare Daly, Shane Ross, Thomas Pringle and Joan Collins are sharing time, with two minutes each. Is that agreed? Agreed.

**Deputy Catherine Murphy:** The aspect of Project Eagle with which I have the most difficulty is the way the assets have been bundled. A possible reason is that the Government has shortened the life span during which the assets should be disposed of. It may well be that something is driving this. Unfortunately, a self-selecting group will be the only ones free to make a bid. By treating the assets that way, it is very difficult to see how the benefit of the assets will be fully retrieved for the people who are carrying the can, namely, the citizens of the State.

There has to be an inquiry. The number of issues identified have caused a real loss of public confidence, even though there was not much confidence in the first place due to the controversies involved. Project Arrow needs to be halted, not least because on the one hand the Government said NAMA will produce a large number of houses in the next few years while at the same time the assets have been bundled in order to be sold. They can then have the advantage of driving up rents if they are sold to a small exclusive group. There are serious problems and the calls for a public inquiry or a commission of investigation are well made.

**Deputy Clare Daly:** An attempt has been made to say that this is a Northern problem; it is not. Yesterday, we read reports in the newspapers about NAMA bragging about yielding profits of €473 million when we know it realised and acquired these loans at a massive discount in the first place. It handed them over to individuals who flipped them and profited from them at the expense of Irish taxpayers.

The Government might think it has dodged this issue and will vote the motion down, but it has to ask itself what is the rationale for the sale of Project Arrow. The project has a book value of €6.3 billion, but NAMA will not get €1 billion for it although half of the portfolio comprises residential property in the South. The Government has teed up a done deal. The property portfolio will be sold to Cerberus, a US vulture fund, at less than €100,000 per residential unit at a time when the State has a housing crisis. It is treachery of the highest order and the Government has to join the dots. There is no way it can dodge the issue.

There will be a commission of investigation into NAMA. I do not have the confidence that it will be done under this Government, but it will be done. Project Arrow is not the subject of a competitive tender. Project Eagle was not either. We had the mythical Fortress remaining in the bid, but everybody knows when bundles are packaged in huge parcels which only US vulture funds can acquire that is not a competitive process. The Government's failure to deal with this issue will come back to haunt it in a very serious way. The myth that it is any different from the crowd that went before it has been truly blown.

**Deputy Thomas Pringle:** The Government line on this is that this happened across the Border, it was nothing to do with the sales process and that any of the problems lie with the buyers. PIMCO approached NAMA, said it had been asked to provide payments to third parties and had been advised by Brown Rudnick and Tughans. NAMA said it talked it out of the process but PIMCO said it left it voluntarily.

Along came Cerberus which, low and behold, had been advised by the same advisers, namely, Brown Rudnick and Tughans. We heard that £7 million was paid into an Isle of Man bank account after the sale went through. In my mind, there is a very clear conflict of interest. It is for NAMA in Dublin to answer why it did not pick up on it. Why did it not set alarm bells ringing in Dublin and the head office of NAMA that one group withdrew from the sale and along came another looking to buy, with the exact same advisers and fixers that put the process in place?

NAMA said it was nothing to do with it and that it was not involved in the process. That in itself is grounds enough for an investigation. We now hear that Cerberus is tendering for Project Arrow in the South and the same process is taking place. The Government has to insist that there is a commission of investigation into NAMA to tease out all of these issues and, at the very least, the sale of Project Arrow should be cancelled until after that investigation takes place. Something is definitely very rotten in both states.

**Deputy Joan Collins:** I support the motion tabled by Fianna Fáil. There are a series of questions regarding the sale of 850 properties in Northern Ireland and other issues to be addressed. That is why investigations are taking place by the US Department of Justice, the National Crime Agency in the UK, the PSNI and the Northern Ireland Law Society. All of the jurisdictions involved are investigating the very serious issues raised with one exception, this jurisdiction.

It is quite amazing and bizarre that this jurisdiction is not taking a much more investigative approach to Project Eagle. The Minister for Finance, Deputy Noonan, said there is no need for an investigation as there is no alleged wrongdoing by NAMA, which is a very broad statement to make. We know there are serious questions about the role of Frank Cushnahan, who was appointed to the Northern Ireland advisory committee by the then Minister of Finance, Brian Lenihan. It was a sub-committee of NAMA, its members were appointed by the then Minister for Finance and it was chaired by Frank Daly, head of NAMA.

The Northern Ireland advisory committee, while it functioned, was part of NAMA and, therefore, questions over the role of a former member in the Project Eagle sale are a matter for NAMA and should be a matter of concern to the Government. PIMCO, the US company which was interested in buying NAMA's Northern portfolio, claimed it was asked for a £15 million fee to be shared by Brown Rudnick, Tughans and Frank Cushnahan. The question is how much was Frank Cushnahan to receive from the £15 million fee and for what. Given his history with NAMA, was he being paid for insider knowledge? What was his relationship, if any, with Tughans? Who was to benefit from the £7 million in the Isle of Man bank account and to what end? They are very serious questions and they need to be answered and investigated.

The fact that we now have Project Arrow, when, as the Minister for the Environment, Community and Local Government said, we are in the middle of one of the largest humanitarian crises ever and are selling off large residential property portfolios in Ireland to vulture capitalism is crazy. It is a stark example of how capitalism works and how investors and big business are protected by states. The questions I have raised, along with what is happening with Project Arrow, are relevant for NAMA and reasons that a commission of investigation into Project Eagle is needed.

There is a large apartment block in Lansdowne Valley. The rents increased from €1,100 to €1,600 when it was bought by a vulture capital fund. Families have contacted us to ask us what



we can do because they cannot afford the rents and will be forced out of their accommodation. They cannot look for money from the State because they are working on low wages which have been cut over the period of austerity. We are allowing this to happen by fire-selling these properties to vulture capitalists. Whatever control we may have had with Irish investors and developers, we have none over these people in any shape or form.

**Acting Chairman (Deputy Alan Farrell):** The next 30-minute speaking slot will be shared by Deputies Anthony Lawlor, Áine Collins and Jerry Buttimer, and I propose seven and a half minutes for each speaker. Is that agreed? Agreed.

**Deputy Anthony Lawlor:** This is an opportunity to speak not only on the sale but on the whole of NAMA. Deputy Michael McGrath is fully aware of the reasons NAMA was established. If NAMA had not been established there would have been a fire sale of the loan books of some of the major banks, particularly Anglo Irish Bank, and they would have been sold off for whatever, whether to vulture capitalists or to individuals. We must look at where we started. At the time, a Dublin wit said we should have the inquiry first before we get going on NAMA, and this is what Deputy McGrath has called for, specifically on a particular sale, but perhaps there should be an inquiry into all of the sales if this is what he is seeking. The Dublin wit was quite correct.

As part of this sale we must look at the type of market that existed. We are always dealing with the periphery. As Deputy McGrath indicated in his speech, 50% of the portfolio consisted of Northern-Ireland-based properties. A report by PricewaterhouseCoopers in 2013 stated that property prices in Northern Ireland could take a decade to recover and a report in 2014 said the exact same thing. Did this mean NAMA was to hold on to these properties for the next ten years, given that most of them were based in Northern Ireland? What would the Irish people have said about NAMA? What would have been the role of the Government, which would be looking for funds to provide housing in the South? What would have happened? The Opposition would have been clamouring up and down asking why we were not selling the properties in the North of Ireland. As I have indicated, the market up there was in a disturbed state. The forecast growth for the North of Ireland at that period was the lowest in the UK. It had the second-highest level of unemployment in the UK, particularly long-term unemployment, and there was negative equity throughout the private property sector. I will not comment on who was, or is, in charge of Northern Ireland. These stark figures relate to the management of the economy there. Around that time, property prices continued to fall. The objective of NAMA is to make a return for the Irish taxpayer. Should it have held on, hoping that a price rise would come, or should it have sold in a falling market? Sometimes it is important to sell.

Deputy Daly mentioned that the portfolio should have been broken up and sold off individually. I am sure Deputy Wallace, who is from Wexford, has been to Enniscorthy mart, where he would have seen pens of sheep. Usually a pen of sheep is a mixed bag, with good sheep, bad sheep and middling sheep. The whole lot are sold and if they average out at €50 that is good. If they had been sold individually the top sheep would have made a lot more than this, but one would have been bringing home those at the bottom end in the trailer because one would not have a market for them. The objective of selling them all together is to gather up the good and the bad.

As has been highlighted, I would much prefer to have seen some of the assets being sold off individually. I would also like to see NAMA, in its wisdom, selling off some assets locally in certain areas, because I fear if they are sold to venture capitalists the bad sheep in the pack

will be left there to rot, waiting until something happens. As I have indicated, in the North of Ireland, according to two reports by PricewaterhouseCoopers, the market was not going to rise for ten years. Perhaps NAMA got the best deal available at the time, irrespective of whom it was going to sell to. There are additional benefits. People have commented that some of the choice properties in the portfolio were bought and rolled over within a short period of time, but the State made money on this also because there was a capital gain and, as everyone knows, capital gains are taxed at 33% and bring revenue to the State.

While I welcome the debate, we must have an overall look at NAMA. Some of it is not good. People say it has become a secretive organisation. In fairness, the Government has opened up the freedom of information legislation, not as far as some of us would like, but it certainly has done this. We must look at the conditions in which this group of assets was sold. They were sold into a falling market in a dysfunctional economy in an area in which property prices were not going to rise for ten years.

**Deputy Bernard J. Durkan:** I was one of those who was not all that enthused about NAMA when it was first set up, but the situation that prevailed at the time was an emergency. The chips were falling on a daily basis, values were depreciating at a rapid rate and instability became endemic. It was determined by the then Government, rightly or wrongly, that this was the answer. Suggestions have been made on whether NAMA is being administered as it should be. To be fair to the chairman and those who operate NAMA, they are entitled to their say. One should not presume that just because there appears to be a problem it is the problem we suspect it to be. I strongly suggest to those concerned about this, as has been said by the Taoiseach in the House, that they go through the committee with ultimate responsibility for dealing with such matters, which is the Committee of Public Accounts, and make the case there and have answers given on what is causing concern. This is the obvious way to go. The Chairman of the committee is in the House and I know he is fully capable of dealing with the situation in the course of the committee's considerations.

Everybody wants an inquiry into everything that happens, usually in the year in the run-up to an election. I remember saying in the House that there were good grounds for a permanent sitting of the High Court to ensure everything was done in accordance with the wishes of everybody in the House, and it would take a permanent sitting of the High Court to do so. This was approximately 20 years ago, and things have not changed in the meantime. With regard to the allegations of wrongdoing by NAMA - which are denied, I must emphasise - the place to start is in the Committee of Public Accounts, where it can be dealt with, the issues can be examined and there is an opportunity for both sides to make their case, and let the axe fall where it will at that stage. This is the obvious way to do it.

NAMA is seen as, and can be, an answer to some of the housing problems that exist in this country, but I warn people against the supposition that the housing issues that have developed in this country have done so overnight. They are almost 20 years in the making. Houses cannot be built overnight. People get really emotionally upset when they see homelessness, and understandably so, but now is not resolution time. To resolve the housing issue one must start on time, and if one does so and addresses the issues one will not have the type of housing situation that has developed and become obvious to us all in recent years.

Incidentally, I am on record as having raised this issue consistently in the House for approximately ten years. I told the heads of certain well-known charitable institutions 15 years ago that we were coming towards a housing crisis the like of which we had never seen before,

but nobody wanted to hear about it. We had changed the system and there was no worthwhile local authority building programme. It was shifted away and major responsibility was given to voluntary organisations, which have expertise in particular types of housing. The Members opposite will know well that with sheltered housing and special needs, voluntary organisations are way ahead of anything the local authority could do and are well capable of dealing with the issues. Unfortunately, it was decided to move in a different direction and give responsibility for the entire system to voluntary agencies, to the detriment of local authorities. That was a sad mistake and we paid the price for it. That goes to explain the housing problem that now exists, which is undoubtedly an absolute emergency.

NAMA can help in some, though not all, areas. We should not forget that some housing estates throughout the country have not been built in accordance with regulations, for want of a better description. One or two of the estates, in particular, made headlines but they are not the only problem estates. There will be others, and some will undoubtedly be held by NAMA as well. There is no use in having substandard houses and pretending to hand them out as the State would have to spend more money on them for improvements. That is not something we can afford and we should not do it in any case. We would be far better off buying system-built houses to meet the needs of those who currently require homes. That can be done quickly and effectively in an urgent process.

The solution to the housing crisis is not NAMA alone, although the agency be used to defuse part of the problem and address some of the issues. There is no use in us pretending it will solve it all. With respect to NAMA's administration, in my time in this House over the years, Members usually did not make allegations about malfeasance or misfeasance in the House against people who worked in administration in the public arena. Deputies would have been very slow to do it in the past but it has now, sadly, become common practice. That is why people in the public arena have become reluctant to do anything; there seems to be a constant danger of being accused of something. The people in question may or may not be guilty but until there is incontrovertible evidence to this end, we should not presume that anybody is guilty. I hope that arising from all the confusion we have seen, there will be a clear and lucid explanation of what is required by and from NAMA so we can get some benefit in tackling the housing issue.

**Deputy Áine Collins:** I welcome the opportunity to speak on the motion. NAMA was set up under the NAMA Act 2009, which was an answer at the time to the failed boom and bust economics delivered by the previous Government. It was set up to take loans in Irish banks under much stress. We were all aware of that and we are still dealing with those effects. NAMA paid €32 billion for €74 billion in loans, with the object being to sell the loans and get a return to the State over ten years. The legislation laid down very strict codes of practice for how NAMA would behave and to whom it would answer. At the time, the agency only answered to the Minister for Finance, but as Deputy Anthony Lawlor mentioned, it is now a little more transparent, although not as much as we would like. We appreciate the sensitivity and complexity of the information it handles because of commercial reasons. The agency responds to the Committee of Public Accounts, and the Chairman of the committee is sitting opposite this evening. Representatives of NAMA were in recently to answer questions about various projects mentioned across the House. Deputy Wallace did not attend the meeting, although he was invited to participate.

From what NAMA has stated about Project Eagle, there was an open bidding process and all the data was available in a data room. Anybody interested in bidding was given access to the data room. There was a granular format and Lazard, a very well-known loan sale adviser, advised NAMA on the sale. Based on the evidence given on the day and some information I

read in the public domain, it seems that there have been issues around various “fixers” - I use the term lightly because it is not a term with which I am familiar - and people being paid different sums of money, although that is outside the NAMA remit. NAMA’s job was to sell different portfolios of assets, package them and sell them for the best price available on the market before returning the money to the State. In doing so, the agency sometimes packaged assets and portfolios of assets so it would not sell all the good options and leave the weak options behind.

There is evidence that the Project Eagle sale was only 25% of the market value. We cannot look at this on an average value because some of the portfolio was at 50% of market value and some was as low as 5%. We all know Cerberus went on to sell it to the original developer; under NAMA legislation, it was not allowed to sell a portfolio of assets to the original holder of the loan. Cerberus operates outside that legislation and can do as it wishes in selling the assets. I was very happy that representatives of NAMA came before the Committee of Public Accounts. The Chairman is sitting opposite and I am sure he will speak on this later. Those witnesses were very open and gave a very detailed description of how this was put up for sale, how people made bids, various due diligence and a final bid. It was valued by Lazard at the time at €1.24 billion and it was sold for €1.241 billion, which is what the market suggested as its worth.

I fail to see why we would go any further in setting up a commission of investigation when the Comptroller and Auditor General has stated that the sales were openly marketed. For its third special report on NAMA, published in May 2014, the Comptroller and Auditor General examined 144 individual transactions, with gross proceeds of €1.1 billion, finding evidence of open marketing in all but 26 of the 144 sales, with fully explained reasons for the other 26 cases. Some of them were sold back to the State or state bodies in Great Britain.

I am more concerned that when the NAMA representatives were before the Committee of Public Accounts a couple of weeks ago, they stated that the agency asked various local authorities in Dublin to buy back some houses to provide social housing. They offered 2,500 of these to various local authorities and only approximately 800 were taken up. There is a job to be done in investigating why some of the houses that NAMA wanted to give to local authorities in various parts of Ireland have not been taken up. Part of the remit of local authorities is to ensure they can provide adequate social housing. I know we are all very concerned about this, and we have been for a number of years. The issue came about because at a time when we needed 25,000 houses per year, we built 90,000 houses per year, and now we still need 25,000 houses per year but we have only been building 7,000 per year for the past number of years. We must examine the issue.

In County Cork alone, there are 130 ghost estates. They are not all owned by NAMA, as some are owned by various receivers, etc. We should consider why councils are not looking to buy these ghost estates, fitting them out and trying to house people when we know there is such a great need. I appreciate there is a greater need in Dublin and other urban areas but if we cannot provide for those immediately, perhaps we should look at reassigning people who might be interested in moving from urban areas to more rural areas. As somebody who lives in rural Ireland, I can vouch that it is a very nice way to live; it is not “beyond the Pale”, so to speak. There are options that should be examined and I call on NAMA to make some housing available. The local authorities should certainly look to work with the agency to the greater benefit of all of us. Local authorities should look to finish ghost estates as quickly as possible, as it would benefit all of our communities.

*8 o'clock*

I welcome the opportunity to speak on this motion but I do not agree with it. We should not be looking at an investigation into Project Eagle. Resources are available to people who have issues and they should be looked at first. There is the Committee of Public Accounts. In addition, the Minister for Finance has made his Department available for any questions from the Northern Ireland advisory committee and the Department has sent it a great deal of information.

**Deputy Jerry Buttimer:** I thank Deputy Michael McGrath for moving the motion. It is extraordinary that we have had one of the best budgets in modern times and the Opposition Members cannot table a Private Members' motion on that.

**Deputy Michael McGrath:** This was meant to be debated last Thursday. It was postponed because of the garda's funeral.

**Deputy Jerry Buttimer:** The concept of NAMA was created by the Members opposite. It is the legacy of Fianna Fáil's period in office and of the financial and property crisis this country had to endure. Many of us in this House wish we did not have NAMA at all. It is a stark reminder of a country that was in turmoil and in the midst of uncertainty. That dark period has changed, despite what some of the Opposition might say and are articulating. Thankfully, we have left that country behind us. If one speaks to developers and people in the construction industry, there are signs of recovery and that things are beginning to look up. Undoubtedly, and I made the point on local radio on Monday, we need a construction industry that is incentivised. We need land to be made available to construct both private and social housing. The example I will give is in my city of Cork where there is One Albert Quay, the development in Mahon Gate and there are people like Michael O'Flynn willing to invest, along with many others. That is what we need: people willing to become part of the recovery of our country. I am sure Deputy McGrath will join me in hoping that with the development of the events centre in Cork, we will see a vibrancy returning to Cork city.

This is about our country in terms of economic growth and how we are working as a Government to create new jobs. Equally, because of this changed economic climate, we now have NAMA selling off its loans and, one hopes, winding down. In saying that, I believe NAMA must do its work in a transparent and open way and must continue to show us, the Members of the House, that it operates in the wider interests of society and not just on behalf of a chosen few. Deputy McGuinness, the Chairman of the Committee of Public Accounts is present and NAMA must come before his committee to demonstrate this. In his contribution to the debate, the Minister for Finance confirmed that as part of the upcoming review of NAMA under section 226 of the NAMA Act, the Comptroller and Auditor General will perform a value for money review of NAMA sales. All of us in this House recognise the independence of that office and its importance in carrying out this review. It will involve an evaluation of the sale of the Northern Ireland loan portfolio as a matter of priority. I agree that the Comptroller and Auditor General is best positioned to review this transaction independently from a value for money perspective.

I have heard the contributions of others in this House on the issue before us. If Members of the House have information, I do not see anything wrong with them going to the Committee of Public Accounts and making their case there. It is the appropriate forum. I may at times disagree with the model Deputy McGuinness operates in the committee in terms of issues that are not under its remit but I respect and value his stewardship and his chairmanship of the committee. He is an independent Chairman who performs his role to the highest of standards. I



have no difficulty with any Member of the House going before him. We all look forward to the Comptroller and Auditor General's preliminary report and I hope this will be published as soon as possible. I believe this will provide certainty and clarity to what has become a very confused issue. If one speaks to people from all sides and all parts of life, it is an issue that confuses people. It appears that allegations of wrongdoing on one side of a transaction are being blamed on another party. It is in the interests of everyone involved that we get this cleared up as soon as possible, that certainty is brought to the matter and that we have an outcome that is in the best interests of wider society. I am confident and believe that an independent office such as the Comptroller and Auditor General is best placed to do this.

As a Member of Seanad Éireann and of this House, I have raised questions about NAMA, how it was set up, how it operates and the oversight of its functions. As a politician elected to this House to represent the people, I believe we have a duty, an obligation and a right to ask questions of NAMA, but we are not the ones who should be investigating wrongdoing. There are appropriate authorities for this and allegations must be referred to these groups. A number of years ago, I raised with the Minister my concerns about NAMA's guidelines regarding the sale of assets. Back then, the Minister confirmed to me that NAMA issued guidelines to be followed by its debtors and receivers when disposing of assets. As part of these guidelines it is required that, wherever feasible, their sale should be on the open market and should be publicly advertised. Since then, NAMA and the Comptroller and Auditor General have confirmed that wherever feasible this has been the case. It is very important that this reassurance about how NAMA operates is put on the public record. However, it is also important that NAMA, through its chair or chief executive, answers the questions asked of it.

There have been calls for future sales by NAMA to stop pending clarification of the issues being discussed. Given that there have been no specific allegations of wrongdoing against NAMA, this would seem a strange approach. Project Arrow has been mentioned in this House. This is a portfolio of loans that comprise approximately 300 debtor connections with par debt loans of €6.2 billion secured on a large number of regionally located assets. Its sale could significantly contribute to NAMA's debt redemption targets and its obligation to achieve the maximum return to the State. I understand from my own research that this portfolio has been openly marketed and that the NAMA board is now assessing final bids which are in line with NAMA's pricing expectations.

For most people, what I have just said might seem abstract and stopping the sale might seem to be inconsequential. Where I come from in Cork city, however, on Hawkes Road in Bishopstown just off the Curraheen Road, I have been in contact with the receivers about properties that have not been developed and are eyesores for local communities. I am aware of one property at Hawkes Road in Bishopstown that forms part of the Project Arrow portfolio. It is an absolute disgrace and an embarrassment that NAMA has not moved on the site and there has been no action on it. Neighbours have been left to look at a site that is derelict and that is ripe for development. It would enhance an area of the city that is populated with private housing and would make an ideal location for any type of activity, whether residential care or private housing development. It beggars belief that this project in this location has not yet been developed. I will use this Chamber to call on NAMA to expedite this project as a matter of urgency. It can help in the alleviation of the housing needs in the city of Cork. It can provide social or private housing. It could be an ideal location for care of the elderly in a residential setting, something we spoke about last week in the Private Members' motion. As a result of what has happened, no plan or strategy has been put in place to deal with the property. If we are not going to sell it

or do anything with it, funding is required to erect new hoardings in order that neighbours do not have to endure the eyesore and in order that we can address the issue of vermin in the site. I met neighbours and residents in that area who are unhappy, to put it mildly. It is an example of a site, like many throughout the country, that we need to see developed. We are all aware of unused projects and properties that can be put to use. I call on NAMA to look critically at how it can, as the Minister stated in the budget last week, move on sites that can be developed and look towards solving issues of housing need, particularly with regard to the care of the elderly.

The oversight by the Comptroller and Auditor General has shown that value was achieved. I look forward to his report, but in the meantime, NAMA must continue to fulfil its duty to society. Any allegations of wrongdoing should be investigated by the appropriate authority, but should not be used for political grandstanding, which is what is happening in some cases.

**Deputy John McGuinness:** I wish to share time with Deputies Calleary and Kelleher.

In response to Deputy Buttimer, I do not determine the style of the Committee of Public Accounts. The members of that committee work diligently and to their own style. They raise their own set of questions and they have worked well together as a team with the Comptroller and Auditor General. In this case, I have complete confidence in the Comptroller and Auditor General and in the members to question NAMA and get the necessary details to fill in the gaps of information that exist in the public domain regarding the sale of Project Eagle. As I stated in this House previously - and I have spoken directly to Deputy Wallace - it would be helpful if he came forward and gave evidence to the committee so that all of what he has said here can then be investigated at the Committee of Public Accounts and, indeed, can be helpful to the Comptroller and Auditor General as he sets about creating a special report into NAMA and particularly Project Eagle.

What concerns me about the work of the Committee of Public Accounts is that this issue involves another jurisdiction, and maybe the investigation being suggested tonight would lead us to a better understanding and better co-operation because of the fact that there are two different jurisdictions. It is complicated, too, by the fact that NAMA, for some reason, has decided not to send representatives to attend the hearings in Northern Ireland. That is regrettable. It has been stated directly to NAMA by some members of the Committee of Public Accounts that it should attend. There are questions to be answered and there is information it has that might be useful in co-operating with the inquiry in Northern Ireland.

Let us look at the sale of Project Eagle. Sixty-eight percent of that property was in Northern Ireland, 18% in southern Ireland, 12% in Great Britain and 2% elsewhere. Our interest is in what the taxpayer has received at the end of all of this, and some of the information that Members have put on the public record this evening is simply incorrect. The par value of those loans - that is, what the borrowers owed NAMA at one time - was €5.7 billion. NAMA paid the banks €2.2 billion, and the remaining €3.5 billion, 61% of the par value, was the discount on the price paid by NAMA. When they went on through the process and sold the assets, the loss in general, as NAMA reported to the Committee of Public Accounts, was somewhere in the region of €200 million to €250 million. In fact, the Comptroller and Auditor General has stated that the loss on the sale, even after all the haircuts on the way down to the final sale, was €783 million.

I have said to NAMA that one of its biggest problems is the arrogance that it displays when answering any question, and the fact that it appears to deliberately delay answering some of the questions until a particular date is past, at which time the answer is of no value to anyone

because the horse has bolted. That is the problem with NAMA. In this particular case, the same thing happened.

One of the questions that was raised was about the sale of the property. I hold that NAMA should not have gone ahead with the sale of the property. Once PIMCO gave it the information that questions had been raised, with NAMA's understanding of Northern Ireland politics and what was going on, it should have withdrawn from the process.

There are issues such as the memorandum of understanding, whereby the personal guarantees were to be written off and forgotten about, and that was being suggested from the Northern Ireland Assembly offices. Why was that going on? Why was there such interference that someone would feel confident enough within the political system of Northern Ireland to say to the Minister for Finance, Deputy Noonan, that that was what should happen - freeing all those who had the loans of personal guarantees? We all would like that.

Earlier it was stated here that the property market in the North was more or less on the floor and was not going anywhere. At a meeting of the Northern Ireland advisory committee held on 7 October 2013, which was attended by the chairman and other representatives from NAMA, NAMA was told that, as with Dublin, there was a demand for, and shortage of, grade A office space in Belfast city and the shortage presented a corollary need for landlords to refurbish existing stock. It was also told that rent and yield forecasts across the commercial property sector were predominantly stabilising or strengthening. That is what NAMA was told before the sale of Project Eagle. That, alongside the fixer's fee and how this money ended up in another account, was notified to them, and there were questions about NAMA's representative in Northern Ireland, Frank Cushnahan. At that stage, when all of these questions were being asked, and when it was dealing with a difficult market, politically and otherwise, NAMA should have withdrawn.

We have a situation in which accusations and allegations are being made in Northern Ireland, but the problem is that we do not have access to that. We have the Deputy First Minister, Martin McGuinness MLA, asking to attend the Committee of Public Accounts because he wants to clarify some issues that were raised by the Minister for Finance about his activities. There is a need for a single overarching body to investigate thoroughly what happened in this regard.

With regard to Project Jewel, the questions that have been raised about that particular property portfolio, dating back to a contract entered into by the local authority in Dublin in 2004, have not been answered. In fact, some of the councillors will tell you that they know nothing about this contract. If Members have any pride in our history, which they talk about in this House, and if the Members, including the Taoiseach, who have gone to visit that site in Moore Lane and Moore Street understand the case being made by the representatives of the families of those who fought in 1916, they would ensure that the site in its entirety, as a battlefield, is protected. When we were visiting that site only yesterday, the number of people on guided tours was impressive, despite the fact that the area has not much to offer except dated plaques on walls. The history they are hearing about, and in which they are interested, is turning into euros for the economy. Therefore, in terms of its future development, there is an absolute need for that sale to be halted until such time as clarification is received for those who have asked questions in relation to the submission made at the last PAC meeting, which I gave to NAMA and which it has not yet answered. These are simple questions. Does NAMA agree with the National Museum's analysis of that battlefield? Did NAMA itself have the site assessed? What has been the expenditure to date in terms of the planning application by Chartered Land on the

historic site? Has the ownership of the national monument at Nos. 14 to 17, Moore Street been transferred to the State? I understand that it has, but then there are the 1916 buildings that have been identified, and that are part of the development, which now need to be saved. Lastly, there is the question of the €5 million set aside by NAMA for that site and how it was to be spent. What is the status of that? When those simple questions are asked and when representatives of a project such as Project Jewel make a legitimate attempt to engage with NAMA and get nowhere, that is what causes suspicion. It is that inaction that causes them to ask the questions that are being asked.

The same is being applied in a much more commercial way to this property portfolio in Northern Ireland, and it is not good enough that we would just debate it here, sign it off and state that it is merely something that the Opposition is doing. It is not. These questions are being asked of all of us in the House and there is a concern and a suspicion that must be dealt with. There are questions in the public domain that deserve to be answered and if this debate does anything, it should draw attention to Project Jewel and Project Eagle. The Minister should intervene immediately, stop what is happening with Project Jewel and ensure the appropriate forum is put in place so all the questions being asked can be answered and dealt with comprehensively.

**Deputy Dara Calleary:** I thank Deputy Michael McGrath for giving us the opportunity to raise this issue and pay tribute to Deputy Wallace for having the courage to stand up and throw the ball into play on the very first occasion. The manner in which he, and anyone who raises questions around the issue, have been treated clearly demonstrates that something is afoot. The manner in which people are running for cover and declining to answer questions also demonstrates that something is afoot. All we are seeking is answers and a mechanism, a commission of inquiry, that will allow people to give evidence in a protected manner so we can find the answers.

Deputy McGuinness has put the figure for the loss on this portion alone at €783 million. It is a huge amount. It is the amount that will go into the health service between now and the end of the year. It could do so much. Even if one accepted the Government's figures, which are considerably less but still in the hundreds of millions of euro, it is taxpayers' money that the State could do with. The Oireachtas has a duty to ask questions and get answers, which we are not getting. The fact that another jurisdiction is involved is being used to muddy the process. However, a Government agency with responsibility to raise capital for the State has questions to answer. If we could establish cross-Border inquiries before, such as the Smithwick tribunal and others, surely we can do it in this case to get evidence from all sides.

There are so many questions which Deputies have gone through. Since Cerberus acquired the portfolio, it has collected €100 million in developer loans and has used the structure for its Irish-registered companies. On a combined turnover of all its various operations of €224 million last year, it paid €10,320 in tax. This is why our corporation tax regime has a bad name. Our corporate tax regime exists to support very good employment and very good employees; the best in the world. However, when companies such as this use it in this manner, it explains why we must defend our regime all over the world and why the State is getting such a bad reputation.

NAMA initially identified 6,500 properties in its portfolio that it believed would be suitable for social housing and it engaged with the various local authorities. At the end of September, the figure of 6,500 had been reduced. More than 4,000 were deemed to be no longer under



consideration, 1,500 had been sold before they had the chance to be used for social housing and 2,469 were deemed unsuitable or no tenants were found for them. NAMA has finalised only 1,600 residential properties for delivery to social housing, even though tonight 1,500 children are in emergency accommodation. A body that once prided itself on being described as the biggest property developer in Europe has a social responsibility to provide housing, given that it has a stock available to it. It has a responsibility to put roofs over the heads of people who are otherwise in hotels or who may not even have a roof over their heads but are sleeping on the streets of this city and elsewhere tonight. A body that sees fit to treat the weakest in our community in this manner needs to answer questions.

The difficulty in asking questions is the walls that go up when one tries to get information. While NAMA has fulfilled its mandate in terms of profit and return to the State, there are questions to be asked as to how it did so and whether the profit is much lower than it could have been had other avenues been adopted. This is all we need. We just need questions to be answered and we need everybody involved to ask questions. As late as last week, the other bidder, PIMCO, was still raising questions about its role and raising objections to NAMA's account that PIMCO withdrew its bid in Project Eagle. Last week, its chief legal officer wrote to the Northern Ireland Assembly saying PIMCO voluntarily told NAMA of the fee deal and left the process. He stated that the decision demonstrated "the emphasis we place on conduct of our business, the high standards we expect of counterparties and the importance we place on protecting our reputation". This is a statement of no confidence in the manner in which NAMA handled this portfolio sale. Although it is from an underbidder, it must be dealt with. This is a company of international spread and if this is the reputation NAMA has, what reputation does Ireland Inc. have?

Many Deputies have raised local issues and concerns around NAMA. Although when local concerns are brought to NAMA, it engages, it drops the bigger balls in terms of public perception of it. I have raised an issue that is very live to us, namely, Westport House. Westport House, a strategic tourism attraction and an economic part of County Mayo, is involved in a current portfolio sale. Westport House is well known to the Acting Chairman, Deputy Durkan. Some 162,000 people visited it in 2014 resulting in €1.7 million in direct expenditure back to the Exchequer, which is funding NAMA. It employs 47 full-time staff. There is a case to be made for Westport House to be returned to the ownership of the State, acknowledging the major contribution the Browne family has made in its time. If Killarney can have Muckcross House, which is in the remit of the Minister of State, Deputy Harris, surely there is an economic argument to be made for similar treatment to be given to Westport House. Mayo County Council has put forward a case for buying it out of the process. There is no sense in this national asset being allowed to go to some unknown entity that sees itself as unanswerable to this Parliament in the same way that many NAMA properties have gone to other organisations.

We cannot let this drag into the next Dáil. We must bring an end to the swirl of allegations that surround NAMA. The Government can do this by establishing a commission of inquiry. Why is the Government so reluctant to do it? Why is the Government unwilling to deal with the allegations and provide a forum to deal with them? We can only surmise that there must be something to hide and the Government does not want to shine a light on the truth. If there is nothing to hide, the Government should proceed with the investigation, give it the all clear and move on.

**Deputy Billy Kelleher:** I welcome the opportunity to speak on the issue, which has been raised a number of times in the Dáil. I congratulate Deputy Michael McGrath on consistently



pursuing it. At stake here is the integrity of the State. The integrity of the State is being called into question. We have consistently been trying to highlight the need for an independent investigation established by the Houses of the Oireachtas, which established NAMA, to ensure the integrity of NAMA and the sales process but, more importantly, the integrity of the State, is vindicated. The idea that we can sit on our hands and pretend that there is not, at least, concern regarding the disposal of Project Eagle assets in Northern Ireland is untenable. The idea that £7 million could be in a bank account in the Isle of Man as a fixer's fee and that the vendor is not overly concerned does not stack up. It does not have credibility.

If we are serious about insisting on the highest standards in the State and its agencies, a commission of investigation is essential to ensure there is a full investigation with sweeping powers of access to documentation which can ensure the sales process for Project Eagle was not compromised, to say the very least. I know no other situation in which a fixer's fee is found in a bank account destined for people who were involved at the periphery in putting together organisations that were expressing an interest in assets owned by NAMA in Northern Ireland. Some 850 properties from approximately 55 borrowers were bundled together. This bundle would have had a face value of approximately €5 billion. By the time discounts and everything flowing from them were taken into account, NAMA was able to purchase the bundle for €2 billion. It ended up selling it for approximately €1.6 billion. By any stretch of the imagination, very few people, entities or organisations would have the capacity or capability to bid for such a large portfolio. I am gravely concerned because in my view, leaving aside the discovery of £7 million in a bank account in the Isle of Man, this certainly calls into question the integrity of the process. It is not acceptable to me that we would lump the whole lot into a single portfolio and expect that bidders would come from all over to purchase it. NAMA, which has a bit of form in this regard, would applaud itself. Indeed, the Government parties would applaud it even though they initially opposed it. When we were establishing NAMA, the current Tánaiste, Deputy Burton, was apoplectic with rage. She nearly fell over the barriers in here from time to time. She said during the campaign that if she was elected and put in a position of responsibility, she would put manners on NAMA by disbanding it. I suggest that the Minister of State and his colleagues have developed Stockholm syndrome. They have been captured.

**Deputy Simon Harris:** The Deputy's party set it up.

**Deputy Billy Kelleher:** They are afraid to initiate an investigation for fear that something may be unearthed. The corollary of the point I am making is that if there is no concern, why would the Government be afraid to initiate some form of independent investigation? I ask the Minister of State to bear in mind that investigations are going on. The Stormont finance committee, the UK National Crime Agency and authorities in the United States are investigating these matters. Even though NAMA was established by the Dáil, no concern is being expressed by the Government here. There is a pretence that everything is fine, but I assure the Minister of State that everything is not fine. The Government needs to accept that it has a responsibility in this regard.

The Minister for Finance is passing this off by saying that NAMA is independent. While I accept that NAMA is independent in terms of how it conducts its affairs on a daily basis, I remind the House that section 14 of the legislation under which NAMA was established clearly and explicitly gives the Minister for Finance the power to direct NAMA in exceptional circumstances. I thought the discovery of a fixers' fee of £7 million in a bank account somewhere would qualify as an exceptional circumstance. Equally, I would have thought that the bundling of 850 properties in Northern Ireland and elsewhere as a single portfolio would surely limit the

capital value of those assets. How many people or entities were capable of bidding for this portfolio? We ended up with just three bidders. PIMCO pulled out, or was instructed to pull out. We then had two bidders and Cerberus ended up as the preferred bidder. With all due respect, having three people expressing interest in something and ending up with one of them purchasing it does not constitute a very competitive tendering process, to say the least. The bundling was too large. It should have been subdivided to include more entities that would have had the capability of raising the number of millions of euro needed to purchase part of the portfolio.

It is madness that NAMA is in such a hurry to commit hara-kiri and wind itself up in advance of the general election to show that it is creating profit. Its motivation is to be seen to finish out as quickly as possible. I am in no hurry for NAMA to wind up. Equally, I do not want it to stay around forever. I want it to capitalise the best value for taxpayers. That does not simply involve NAMA showing a profit on the loans it is disposing of, especially given that it purchased them at a huge discount. If it makes a profit, that does not mean the taxpayer is off the hook for the gaping holes that were left in balance sheets elsewhere. NAMA, in its headlong rush to wind itself up, is applauding itself and saying it has made a profit. It made a profit on something that was already discounted. I suggest that if the Project Eagle assets had been subdivided into smaller groupings, more entities would have been interested in portions of it. Any suggestion to the contrary is unacceptable to me. When we talk about value for money for the taxpayer and about NAMA disposing of assets and realising their value, we must always ensure that integrity is at the heart of the decisions that are made. Surely concern must be raised at some level on foot of the allegations made by Deputy Wallace and subsequently by others.

It seems that NAMA, which was established in this House, is not co-operating with an investigation into its sales process that is taking place elsewhere - I refer to what is happening in Northern Ireland before the Stormont finance committee and the UK National Crime Agency - because the authorities here in the Republic have decided to wash their hands of the need to see whether the sales process or the purchasing process was compromised. Either way, it is incumbent on us here to insist that we delve into the murky area that seems to have been exposed by the allegations that have been made. If the Minister of State has time, he should tell the Minister for Finance to read section 14 of the NAMA Act, which gives the Minister the power to deal with this issue rather than washing his hands of it. He can instruct NAMA to co-operate with the investigations in Northern Ireland. Mr. Daly and Mr. McDonagh could get on a train heading north and co-operate, just as they have appeared before the Committee of Public Accounts. We need to state honestly that a commission of investigation with substantial powers of inquiry and investigation is required to get to the heart of the matter. That would deal with the idea that it is acceptable to hide behind commercial sensitivity. I refer to the manner in which those who appear before the Committee of Public Accounts on behalf of NAMA start by saying they cannot discuss this issue because it is commercially sensitive. A commission of investigation could hear evidence in private to overcome the issue of commercial sensitivity and could issue findings on the question of whether this purchasing process was compromised.

The motion before the House should be taken on board and embraced. The Government should not try to hide behind the falsehood that the Minister does not have the power to instruct NAMA to co-operate with investigations in the North. More importantly from our perspective here, we should set up a commission of investigation to ensure NAMA has no option other than to co-operate with that commission and with other agencies inside and outside this State. We should be upfront about this issue. We cannot ignore the possibility that the taxpayer could be left on the hook at the end of the day because this process was not as robust as NAMA said it

was, or as the Government thinks it may have been. We simply do not know whether that is the case. A proper commission of investigation may or may not find out, but at least we will know we did our duty in this Chamber to ensure the integrity of the process was upheld. During the debate on the establishment of NAMA, those who told us that it was a bailout for builders and bankers said that if they were elected, they would put manners on NAMA. Some of them stood next to posters saying that they would get rid of NAMA. The Tánaiste was photographed next to posters suggesting that NAMA would be disbanded. What has happened subsequently? Nothing. Not one dot or comma has been removed from the NAMA Act. No effort has been made by this Government to make NAMA more accountable. It is pretending that section 14 of the NAMA Act, which is quite explicit, does not exist. The Minister for Finance waltzed into this House and said he is unable to instruct NAMA, even though it is in the Act that he can. More importantly, he should instruct NAMA. If there is not a section already in the Act, the Minister should introduce an amendment to ensure that he can instruct NAMA because this deserves scrutiny. We must ensure that when assets that are owned by the taxpayers of this country are sold, the integrity of that sales process cannot be called into question. The Government must do the honest thing and set up a commission of investigation that has the power to investigate without being inhibited by commercial sensitivities and client confidentiality. The people deserve to know that when assets are being disposed of on their behalf, the sales process is not compromised and that they are getting full value for money. I commend the motion and urge Government Members to read the Act and accept that they have the power to investigate or if they do not, that they have the moral responsibility and duty to change the law and to insist that an investigation is carried out.

**Minister of State at the Department of Finance (Deputy Simon Harris):** I thank the Deputies for their contributions. It has been helpful to have this debate because very serious allegations have been made about the activities on the purchaser side of this sale. It is unfortunate that a number of Deputies have decided to conflate the purchaser side with the NAMA side. A number of investigations are under way regarding these allegations as the Minister for Finance, Deputy Noonan, outlined last night.

This debate has also provided an opportunity to set out the factual position in relation to the sales process conducted by NAMA. Let me reiterate the comments made by the Minister, Deputy Noonan, last night regarding the role of NAMA and the oversight of the Comptroller and Auditor General and the Committee of Public Accounts. In accordance with section 10 of the NAMA Act, NAMA is obliged to operate in a commercial manner and to achieve expeditiously the best financial return for the taxpayer. It is a function of NAMA, pursuant to section 11 (1)(d)(i) to dispose of loans or portfolios of loans in the market for the best achievable price. It is by design that NAMA is held accountable to these objectives by the Oireachtas through the Committee of Public Accounts and the Comptroller and Auditor General, which oversee the work of NAMA.

I welcome that as part of its upcoming third triennial review of NAMA under section 226 of the NAMA Act, the Comptroller and Auditor General will perform a value for money review of NAMA sales and will evaluate the sale of the Northern Ireland loan portfolio as a matter of priority. The Comptroller and Auditor General is best positioned to independently review this transaction from a value for money perspective. Deputies have spoken about independence and the Comptroller and Auditor General is an independent, constitutional office. I would rather not play the role of Comptroller and Auditor General because I respect the independence of that office, which is a constitutional office, and I do not understand why others cannot do likewise.

**Deputy Billy Kelleher:** The Minister of State is being misleading.

**Deputy Simon Harris:** Deputies should let the Comptroller and Auditor General carry out his review and show their trust and faith in the independence and the competence of his office. We will all accept the outcome of his review.

**Deputy Michael McGrath:** Value for money is the only focus.

**Deputy Simon Harris:** It has been acknowledged, interestingly, by those calling for a commission of investigation that there is no allegation of wrongdoing directed against NAMA. Deputy Kelleher read out a very impressive list of investigations but I am sure that he will acknowledge that none of them is investigating NAMA - not one is investigating NAMA. I also recognise that Deputy Wallace has brought his concerns to the attention of An Garda Síochána. I incorrectly said in various media that he had not done so but I acknowledge that he has and correct myself in that regard. I welcome the fact that those allegations are with An Garda Síochána, who have a duty to investigate serious allegations, but they are allegations of wrongdoing against people on the purchaser side, yet the calls for a commission of investigation have proceeded nonetheless.

The debate focused on vague allusions to “questions hanging over the sale”, “the integrity of the transaction” and the need to “exonerate NAMA”. With no allegation against NAMA and no question of its integrity, it is not clear to me of what Deputies want to exonerate NAMA. People are coming into this House and are throwing phrases around like “fixers fee” in the hope that if they say it enough times, somehow they will link it to NAMA. There was no fixers fee linked to NAMA. It did not pay or receive fixers fees. Just because Deputies keep standing up, saying “fixers fees” and pointing their finger does not mean that NAMA had anything to do with fixers fees.

**Deputy Michael McGrath:** We never said that it did.

**Deputy John McGuinness:** That does not mean that it can wash its hands of it either.

**Deputy Simon Harris:** There are a number of allegations surrounding fixers fees but Deputies must let the investigations take their course and allow the Comptroller and Auditor General to do his job.

What exactly would this commission investigate if Deputies concede that there is no allegation of wrongdoing against NAMA?

**Deputy Michael McGrath:** It can investigate the transaction.

**Deputy Simon Harris:** Deputy Wallace was perhaps the most honest in admitting that his motivation is to halt Project Arrow. I accept his honesty in that regard but the question must be asked as to who benefits from such a move. I cannot address all the matters raised across this debate, so I will focus on the issues that relate to the motion being discussed. However, I wish to close the debate by clarifying a number of points raised as there appears to be some confusion.

Allegations of wrongdoing against individuals in Northern Ireland, such as those concerning £7 million in an Isle of Man bank account, have been brought up *ad nauseam*. Deputies in this House are fully aware that these monies did not emanate from the sales proceeds-----

**Deputy Billy Kelleher:** Nobody ever said that they had.

**Deputy Simon Harris:** -----or from any payment by NAMA and that these allegations are being investigated by the UK National Crime Agency.

**Deputy Michael McGrath:** The issue is the transaction. The money is connected to the transaction.

**Deputy Simon Harris:** Why are Deputies calling for an investigation into NAMA? I cannot see what role or jurisdiction a commission of investigation would have regarding these allegations.

**Deputy Michael McGrath:** The Minister of State is deliberately misrepresenting what we said.

**Acting Chairman (Deputy Bernard J. Durkan):** Please allow the Minister of State to continue.

**Deputy Simon Harris:** The minute of the 7 October 2013 Northern Ireland advisory committee meeting, published by NAMA, has been championed as some sort of contradiction of the fact that the committee did not have access to confidential information. I encourage Deputies to read this minute. Discussions at that meeting were of a general and strategic nature and were entirely appropriate for that forum. One of the purposes of that forum was to consider strategic market opportunities for NAMA in Northern Ireland. If a third party approach for the Northern Ireland loan portfolio from a major global investment company is not a strategic opportunity, then I do not know what is such an opportunity.

There also seems to be some serious misrepresentation or genuine misunderstanding of the principle of loan valuation versus original borrowed amounts. People are quoting the €5.7 billion figure and inferring that it was in some way recoverable. My colleagues on the Opposition benches will know that if that was recoverable then we would not have had the banking crisis and financial collapse that we had.

To sum up, I again ask that Members consider that calls for a commission of investigation cannot change the following simple facts. First, after all the confusion and conflation, there remains no allegation of wrongdoing against NAMA. Second, the serious allegations against third parties in Northern Ireland and the US are, appropriately, being investigated by authorities in those jurisdictions and we welcome that. Finally, the value for money achieved in the sale, which is of importance to the taxpayer, will be addressed by the Comptroller and Auditor General. Therefore, the proposed amendment places confidence in the Comptroller and Auditor General and will allow him to carry out his review with the full support of this House.

**Deputy Billy Kelleher:** The Minister of State should break free of the shackles and the constraints.

**Deputy Robert Troy:** I welcome the opportunity to contribute to this debate. In Ireland today, many families and citizens are facing high mortgage arrears, negative equity and paying excessive interest on their variable rate mortgages. Some struggle on while others face losing their homes, but many are looking at how NAMA disposes of land. Recently in my constituency of Longford Westmeath, NAMA disposed of 400 acres of prime agricultural land but never once was this sale advertised locally or nationally. Still, the sale managed to go through and we



do not know how many people competed for that land. Does that seem right and proper? No, it certainly does not. Many people are looking now, thanks to Deputy Wallace and my own party leader, who have pursued this in recent weeks, at how Project Eagle properties were disposed of and are absolutely amazed. A portfolio of loans with a face value of €5.4 billion, for which NAMA only paid €2 billion, as the Minister of State rightly pointed out, was subsequently sold for €1.6 billion, which is a savage write down by any stretch of the imagination. We have learned about the legal advisers who were advising PIMCO, a company which was ruled out of order because of its fee structure under which large sums of money would be paid to former NAMA advisers. We also learned that £7 million sterling was found in an offshore account which was in some way related to NAMA and Project Eagle assets. It has subsequently been revealed that commercial property prices across a large part of Project Eagle loans in Belfast soared by up to 20% since the NAMA deal was signed off. Across the broader Northern commercial property market, growth has been recorded of somewhere in the region of 11% in 2014.

The Taoiseach famously said in this Chamber that Paddy wants to know. Paddy wants to know that NAMA, which was established to acquire distressed borrowings and release the assets underpinning them to a recovering market, is obtaining the best value for taxpayers' investment. At the behest of the Minister, in excess of 800 properties are being lumped together in a single portfolio that is of such a high value that it restricts the number of potential bidders, thereby reducing competition and diminishing the value that can be achieved in the sale.

The Fianna Fáil Party has been criticised by many backbench Government party Deputies for raising this issue. It seems we should have acted instead as cheerleaders for last week's budget. Deputies have a duty and obligation to those who elected them to ensure taxpayers' money is well spent. Large numbers of senior citizens have been waiting for more than two years for knee and hip replacement operations and cataract removal procedures while others must wait for months on end to secure personal home help hours. Only this week, a woman chained herself to the gates outside the Department of Education and Skills in an effort to secure a home tuition grant for her autistic son that would enable him to avail of early education services.

It is right and proper to remove all doubt and ambiguity surrounding the Project Eagle sale. A full, independent commission of investigation that can investigate matters on both sides of the Border, North and South, is needed to determine whether everything was done above board and value for money was achieved on behalf of Paddy the taxpayer, the person who ultimately picks up the tab. A commission of investigation is the only way to achieve this.

**Deputy Charlie McConalogue:** I join my colleagues in commending Deputy Michael McGrath on tabling the motion and shining a spotlight on this matter. The allegations that have been made required a proper airing and debate in the House as they have not been adequately debated in the cold light of day since they were made. Unfortunately, taxpayers have lost a great deal as a result of the recession and the wallop taken by the banks. The State had to intervene to finance the banks and underwrite the hit that was taken when the National Asset Management Agency acquired loans from the banks. It is exceptionally unfortunate that this was followed by another mistake in terms of the manner in which NAMA has been rolling out the sale of its loans.

The Minister of State asked us all to stand back and have faith in the Comptroller and Auditor General who, according to the text of the Government amendment, has been asked to carry out a value for money review of the various NAMA sales transactions. The Project Eagle sale is to be the first of these value for money reviews. The Government has only now decided to

request the Comptroller and Auditor General to perform this task. The Minister for Finance has been pressing NAMA to proceed promptly with the sale of various tranches of its loan book with a view to completing its work. The Minister of State asked the House to have confidence in the expertise of the Office of the Comptroller and Auditor General to assess the Project Eagle portfolio and determine whether the sale constituted value for money. While the Comptroller and Auditor General has an exceptional track record in assessing the way in which public money is spent, his office does not have expertise in the area in which it is being asked to work.

With regard to the scale of the work being done by the National Asset Management Agency, the loans transferred to NAMA had a face value of €68 billion. Including rolled up interest of €9 billion, the overall figure amounted to €77 billion or more than 1.5 times the annual budget of the State in recent years. When one considers the degree of oversight, assessment and review applied to these loans of €77 billion, even if NAMA paid much less than that figure for them, it bears no resemblance to the degree of oversight the Oireachtas exercises in respect of the annual budget which is teased out in committees, this Chamber and with various oversight bodies. NAMA was established for a specific purpose and, as such, did not have a track record. It was given a task, independent of significant Oireachtas oversight, of bundling up loans and selling them on to investors. Many of these loans were sold in massive bundles, of which Project Eagle was the largest, which only very significant international investors were in a position to purchase. Given that the only reason for buying these loans would be to sell them on subsequently, it is hardly a surprise that a number of agents engaged in negotiations to identify which parties might be interested in purchasing them.

Deputy Troy noted that the value of commercial property in the Belfast region alone has increased by 20% in the past year. Despite selling on the loans in large bundles, the middle men, international investors and whoever else they may have engaged are making a killing while taxpayers here are having to pick up the tab by paying the difference between the face value and sale value of the loans.

It is long past time the Government adopted a straightforward approach and established a thorough investigation into Project Eagle. Too many question marks surround the project and the Government has been running and hiding and ducking and diving on the issue for too long. I commend the motion.

**Deputy Michael McGrath:** I thank all Deputies who spoke in this debate. Having listened very carefully to all the contributions, I am more convinced than ever that a full commission of investigation into Project Eagle is required. The Minister of State and the Minister consistently made the point that no allegations of wrongdoing have been made against the National Asset Management Agency. They also asked why my party is calling for an investigation into NAMA. We are not calling for an investigation into NAMA but into a transaction to which NAMA was a key party, namely, Project Eagle. That is the fundamental difference.

I commend the Committee of Public Accounts on the work it is doing under the leadership of Deputy John McGuinness. The committee cannot get to the bottom of this issue because it can only go so far. A full statutory commission of investigation with extensive powers is required. This issue will run and run because the underbidders in the Project Eagle sale may well take legal action. Criminal investigations are under way in Northern Ireland. If issues are identified that need to be dealt with, the House and the Government will regret not taking the opportunity to hold a full commission of investigation. The Government is hiding behind the Comptroller and Auditor General's value for money review of Project Eagle, the purpose

of which is to ascertain whether the transaction delivered value for money. That is not the full picture, however, because the questions go far beyond value for money. Questions also arise regarding the entire governance arrangements in place for the transaction, the integrity of the transaction, the appropriateness of the relationships between the people involved in it and the decision-making process. It is not only about value for money or the sale of loans for a fraction of their book value of more than €5 billion. These are not the issues. The issue is the way in which the transaction was conducted and the decision-making process involved.

*9 o'clock*I listened to the Minister, Deputy Noonan, say last night that he was determined that politicians would not be involved in decisions around and the operations of NAMA. Politicians were crawling all over this transaction and Project Eagle. There were phone calls, meetings and letters, particularly in Northern Ireland. That is very clear. The suggestion that politicians had no involvement whatsoever is utter nonsense. It is not supported by the facts. In his evidence to the Stormont finance committee, the First Minister, Peter Robinson, said that he attended a meeting with PIMCO in May 2013 which he believes was organised by either Mr. Cushnahan or Mr. Coulter. Certainly, Mr. Cushnahan attended that meeting in May 2013 while still a member of the Northern Ireland advisory board to NAMA. He remained a member of the board for a further six months. NAMA says it knew nothing about that meeting. Subsequently, it emerged from PIMCO that Mr. Cushnahan was seeking a £5 million success fee if that company was successful in purchasing Project Eagle. Does that not set the alarm bells ringing in the minds of Government Deputies and Ministers that this issue warrants much greater investigation than currently has happened? The PAC will not be able to deal with it and the remit of the Comptroller and Auditor General is too narrow in respect of the full breadth of the issue.

NAMA should attend the inquiry in Stormont if it has nothing to hide. It would be in a purely voluntary capacity and that is acknowledged. Why will it not go, take questions from the MLAs there and answer them to the best of its ability? We are talking about an all-island economy and co-operation between North and South. There is a perfect opportunity for that to be demonstrated by NAMA co-operating with the inquiry. We have a situation where we know the Stormont Executive was involved in drafting a memorandum of understanding, as Deputy John McGuinness said, which would involve releasing the debtors involved in Project Eagle from any personal guarantees. The notion that the transaction was beyond politics, entirely independent and without inappropriate involvement is something I do not accept. We will regret the day that we vote down the motion and fail to set up a commission of investigation into Project Eagle.

Amendment put:

<i>The Dáil divided: Tá, 60; Níl, 39.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Breen, Pat.</i>	<i>Adams, Gerry.</i>
<i>Bruton, Richard.</i>	<i>Broughan, Thomas P.</i>
<i>Butler, Ray.</i>	<i>Calleary, Dara.</i>
<i>Buttimer, Jerry.</i>	<i>Collins, Joan.</i>
<i>Byrne, Catherine.</i>	<i>Collins, Niall.</i>
<i>Cannon, Ciarán.</i>	<i>Colreavy, Michael.</i>
<i>Carey, Joe.</i>	<i>Cowen, Barry.</i>
<i>Coffey, Paudie.</i>	<i>Daly, Clare.</i>

<i>Collins, Áine.</i>	<i>Doherty, Pearse.</i>
<i>Connaughton, Paul J.</i>	<i>Dooley, Timmy.</i>
<i>Conway, Ciara.</i>	<i>Ellis, Dessie.</i>
<i>Coonan, Noel.</i>	<i>Ferris, Martin.</i>
<i>Corcoran Kennedy, Marcella.</i>	<i>Fitzmaurice, Michael.</i>
<i>Creed, Michael.</i>	<i>Fleming, Sean.</i>
<i>Daly, Jim.</i>	<i>Fleming, Tom.</i>
<i>Deasy, John.</i>	<i>Halligan, John.</i>
<i>Deenihan, Jimmy.</i>	<i>Healy, Seamus.</i>
<i>Deering, Pat.</i>	<i>Keaveney, Colm.</i>
<i>Doyle, Andrew.</i>	<i>Kelleher, Billy.</i>
<i>Durkan, Bernard J.</i>	<i>Lowry, Michael.</i>
<i>English, Damien.</i>	<i>Mac Lochlainn, Pádraig.</i>
<i>Farrell, Alan.</i>	<i>McConalogue, Charlie.</i>
<i>Fitzgerald, Frances.</i>	<i>McGrath, Mattie.</i>
<i>Fitzpatrick, Peter.</i>	<i>McGrath, Michael.</i>
<i>Gilmore, Eamon.</i>	<i>McGuinness, John.</i>
<i>Griffin, Brendan.</i>	<i>McLellan, Sandra.</i>
<i>Hannigan, Dominic.</i>	<i>Mathews, Peter.</i>
<i>Harrington, Noel.</i>	<i>Moynihan, Michael.</i>
<i>Harris, Simon.</i>	<i>Murphy, Catherine.</i>
<i>Hayes, Tom.</i>	<i>Ó Caoláin, Caoimhghín.</i>
<i>Heydon, Martin.</i>	<i>Ó Snodaigh, Aengus.</i>
<i>Keating, Derek.</i>	<i>O'Brien, Jonathan.</i>
<i>Kyne, Seán.</i>	<i>O'Sullivan, Maureen.</i>
<i>Lawlor, Anthony.</i>	<i>Pringle, Thomas.</i>
<i>Lynch, Ciarán.</i>	<i>Shortall, Róisín.</i>
<i>Lynch, Kathleen.</i>	<i>Smith, Brendan.</i>
<i>Lyons, John.</i>	<i>Stanley, Brian.</i>
<i>McCarthy, Michael.</i>	<i>Troy, Robert.</i>
<i>McHugh, Joe.</i>	<i>Wallace, Mick.</i>
<i>McLoughlin, Tony.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Eoghan.</i>	
<i>Neville, Dan.</i>	
<i>Nolan, Derek.</i>	
<i>Noonan, Michael.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	
<i>O'Reilly, Joe.</i>	

<i>Perry, John.</i>	
<i>Phelan, John Paul.</i>	
<i>Quinn, Ruairí.</i>	
<i>Ryan, Brendan.</i>	
<i>Spring, Arthur.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>White, Alex.</i>	

Tellers: Tá, Deputies Joe Carey and Emmet Stagg; Níl, Deputies Michael McGrath and Dara Calleary.

Amendment declared carried.

Question put: "That the motion as amended be agreed to."

<i>The Dáil divided: Tá, 60; Níl, 40.</i>	
<i>Tá</i>	<i>Níl</i>
<i>Breen, Pat.</i>	<i>Adams, Gerry.</i>
<i>Bruton, Richard.</i>	<i>Aylward, Bobby.</i>
<i>Butler, Ray.</i>	<i>Broughan, Thomas P.</i>
<i>Buttimer, Jerry.</i>	<i>Calleary, Dara.</i>
<i>Byrne, Catherine.</i>	<i>Collins, Joan.</i>
<i>Cannon, Ciarán.</i>	<i>Collins, Niall.</i>
<i>Carey, Joe.</i>	<i>Colreavy, Michael.</i>
<i>Coffey, Paudie.</i>	<i>Cowen, Barry.</i>
<i>Collins, Áine.</i>	<i>Daly, Clare.</i>
<i>Connaughton, Paul J.</i>	<i>Doherty, Pearse.</i>
<i>Conway, Ciara.</i>	<i>Dooley, Timmy.</i>
<i>Coonan, Noel.</i>	<i>Ellis, Dessie.</i>
<i>Corcoran Kennedy, Marcella.</i>	<i>Ferris, Martin.</i>
<i>Costello, Joe.</i>	<i>Fitzmaurice, Michael.</i>
<i>Creed, Michael.</i>	<i>Fleming, Sean.</i>
<i>Daly, Jim.</i>	<i>Fleming, Tom.</i>
<i>Deasy, John.</i>	<i>Halligan, John.</i>
<i>Deenihan, Jimmy.</i>	<i>Healy, Seamus.</i>
<i>Deering, Pat.</i>	<i>Keaveney, Colm.</i>
<i>Doyle, Andrew.</i>	<i>Kelleher, Billy.</i>
<i>Durkan, Bernard J.</i>	<i>Lowry, Michael.</i>
<i>English, Damien.</i>	<i>Mac Lochlainn, Pádraig.</i>
<i>Farrell, Alan.</i>	<i>McConalogue, Charlie.</i>
<i>Fitzgerald, Frances.</i>	<i>McGrath, Mattie.</i>
<i>Fitzpatrick, Peter.</i>	<i>McGrath, Michael.</i>
<i>Gilmore, Eamon.</i>	<i>McGuinness, John.</i>



<i>Griffin, Brendan.</i>	<i>McLellan, Sandra.</i>
<i>Hannigan, Dominic.</i>	<i>Mathews, Peter.</i>
<i>Harrington, Noel.</i>	<i>Moynihan, Michael.</i>
<i>Harris, Simon.</i>	<i>Murphy, Catherine.</i>
<i>Hayes, Tom.</i>	<i>Ó Caoláin, Caoimhghín.</i>
<i>Heydon, Martin.</i>	<i>Ó Snodaigh, Aengus.</i>
<i>Keating, Derek.</i>	<i>O'Brien, Jonathan.</i>
<i>Kyne, Seán.</i>	<i>O'Sullivan, Maureen.</i>
<i>Lawlor, Anthony.</i>	<i>Pringle, Thomas.</i>
<i>Lynch, Ciarán.</i>	<i>Shortall, Róisín.</i>
<i>Lynch, Kathleen.</i>	<i>Smith, Brendan.</i>
<i>Lyons, John.</i>	<i>Stanley, Brian.</i>
<i>McCarthy, Michael.</i>	<i>Troy, Robert.</i>
<i>McHugh, Joe.</i>	<i>Wallace, Mick.</i>
<i>McLoughlin, Tony.</i>	
<i>Mitchell O'Connor, Mary.</i>	
<i>Mulherin, Michelle.</i>	
<i>Murphy, Eoghan.</i>	
<i>Neville, Dan.</i>	
<i>Nolan, Derek.</i>	
<i>Noonan, Michael.</i>	
<i>O'Donnell, Kieran.</i>	
<i>O'Donovan, Patrick.</i>	
<i>O'Dowd, Fergus.</i>	
<i>O'Mahony, John.</i>	
<i>O'Reilly, Joe.</i>	
<i>Perry, John.</i>	
<i>Phelan, John Paul.</i>	
<i>Ryan, Brendan.</i>	
<i>Spring, Arthur.</i>	
<i>Stagg, Emmet.</i>	
<i>Stanton, David.</i>	
<i>Tuffy, Joanna.</i>	
<i>White, Alex.</i>	

Tellers: Tá, Deputies Joe Carey and Emmet Stagg; Níl, Deputies Michael McGrath and Dara Calleary.

Question declared carried.

The Dáil adjourned at 9.20 p.m. until 9.30 a.m. on Thursday, 22 October 2015.