



DÍOSPÓIREACHTAÍ PARLAIMINTE  
PARLIAMENTARY DEBATES

**DÁIL ÉIREANN**

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

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# DÁIL ÉIREANN

*Dé Máirt, 28 Feabhra 2017*

*Tuesday, 28 February 2017*

Chuaigh an Leas-Cheann Comhairle i gceannas ar 2 p.m.

*Paidir.*  
*Prayer.*

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## Visit of British Delegation

**An Leas-Cheann Comhairle:** Before calling on Deputy Micheál Martin, I welcome the delegation from the House of Lords and the House of Commons to Dáil Éireann. Fáilte romhaibh.

## Leaders' Questions

**An Leas-Cheann Comhairle:** I call Deputy Micheál Martin, who has three minutes. I would appreciate it if leaders and the Taoiseach observed their three minutes.

**Deputy Micheál Martin:** On behalf of my party, I also welcome our colleagues from the House of Lords and the House of Commons to Leinster House.

Those in my party are saddened at the loss of the former Deputy, Peter Mathews. I take it that we may have an opportunity to comment later in light of Peter's recent membership of the House. He was a person with whom I and many Deputies got on well. He brought a freshness and a vigour of intellectual thought to the House that were valued. I was saddened to hear of his loss this morning. I wish to extend our fullest sympathies to his family. I hope that we will get an opportunity later to pay a longer tribute to him.

There are many issues of the day. As predicted, we are rushing headlong into a major industrial dispute with the State bus company, Bus Éireann. The more than 110,000 regular passengers face chaos next Monday. The staff of 2,600 face very worrying times. They are concerned not only about their terms and conditions but the future of the company itself. It seems to them that in one fell swoop an attempt is being made to dramatically and fundamentally alter the nature of the company and the terms and conditions of its workers who perform a very valuable community and social service, in addition to its commercial activities. I put it to the Taoiseach some time ago as to whether the Government is committed to the maintenance of a State transport company, in particular one that provides a very significant service to regional and rural areas. If it does, then a lot of policy implications stem from that.

There have been warnings to the effect that the company is facing insolvency. If it is, that

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very much comes into the political domain because the Government is the shareholder and the matter would have to come before the Dáil in terms of any actions that would flow from a declaration of insolvency. The stance of the Minister for Transport, Tourism and Sport is not acceptable. He should have intervened much earlier. For the entirety of 2015 plans were submitted to the Department of Transport, Tourism and Sport but were left on the shelf because a general election was due at some stage in the following 12 months. In essence, that is the reason an intervention was not made, one that could have eased the situation somewhat, well in advance of the current crisis, but for political reasons the Government of the day decided not to act on plans that were submitted to it concerning the difficulties facing Bus Éireann. That inaction over a long period contributed to the current situation. The idea that one can do everything in one fell swoop and, essentially, accelerate a race to the bottom with regard to terms and conditions is a bridge too far and is one of the reasons we are now heading towards a major industrial conflict, one that could spread to Irish Rail, Dublin Bus and other companies, which would create chaos in people's everyday lives in terms of getting to work and accessing services. We all want to avoid that.

I put it to the Taoiseach time and again that at a minimum the Minister has a responsibility to set the mood music. One gets the sense that he is silently, on the margins, acquiescing to the demise of a State company - a bus transport company - as his own ideological position is one that does not lend itself to the continuation of Bus Éireann. I hope I am wrong. At the very least the Minister should have engaged on the policy issues such as the application of the free travel scheme and the public service obligation routes and facilitated meetings between his Department, the National Transport Authority, Bus Éireann management and unions to tease out the policy dimension to this issue. There are policy dimensions to it. It is not just simply an industrial relations issue that can be put into its box. I put it to the Taoiseach that that type of initiative is now urgently required. Will he discuss with the Minister the initiatives he can take to ensure a contribution is made by him and the Government to the resolution of this issue?

**The Taoiseach:** I too welcome our visitors from across the water here today to the Dáil. I hope they enjoy their visit. They may have issues to talk about in respect of Brexit and other matters.

I assure Deputy Micheál Martin that there will be an opportunity to pay tribute to our late colleague, Peter Mathews. I extend our deepest sympathy to his wife Susan and family. He was always a different personality with a particular view in respect of financial circumstances as they applied to the country.

I agree with the Deputy in respect of his question on Bus Éireann that no one wants a strike to happen. It is a matter of grave concern to the Government and to commuters who travel on Bus Éireann that a strike might happen. I assure Deputy Micheál Martin that the Government is committed to a State transport company. A total of 81% of passengers who travel with Bus Éireann use the PSO-subsidised service. As he is aware, it is not possible to subsidise the commercial arm of the company, namely, the Expressway service in the context of Europe and where we are. I do not agree with the Deputy or accept his comment that the Minister is on the margins silently acquiescing in the demise of a State company. The Minister is but one member of a Cabinet that acts with collective responsibility here. The Cabinet is fully committed to the retention of the State company. In respect of the statements made yesterday by the board, company and trade unions, there is a willingness to engage in the kind of serious discussions that we all understand need to happen to solve this particularly difficult situation. As I pointed out on several occasions, the WRC is ready, as ever, to assist.

There are some in the House who repeatedly claim that the Government and the Minister should do something. When asked what the focus of that particular attention is, it is always about increasing subvention and assessing the free travel scheme. I have already pointed that the subvention has increased to €40 million and that there is no danger to the free travel scheme. The PSO subvention increased by 11% this year and 13% last year and Bus Éireann has benefited from a 21% increase in its subvention in 2016. The subvention applies to PSO services only and cannot under law be provided for commercial services. If Expressway is losing €50,000 per day, it is a matter that needs to be addressed. The WRC stands ready to negotiate and discuss with the union and the board.

The Ministers for Transport, Tourism and Sport and Social Protection have already made it perfectly clear and have advised their officials to report back very quickly on the funding of the free travel scheme, to which there is no danger. There is no amount of ministerial action that will resolve the issues internal to Bus Éireann. These issues can only be resolved through direct and realistic negotiations between employer and employees. In respect of rural Ireland, it has already been made perfectly clear that any changes to the Expressway services will be taken up by the National Transport Authority, which will step in and assist in cases where connectivity is threatened. Some Deputies alleged last week that this was an attack on rural Ireland. The public bus service in rural Ireland is expanding through increasing the amount of PSO funding to Bus Éireann and providing a 24% increase in funding for the rural transport scheme. I hope everybody will assess this seriously and take the WRC-----

**An Leas-Cheann Comhairle:** I know it is important issue but we are constrained by time.

**Deputy Micheál Martin:** The Grant Thornton report was submitted to the then Minister for Transport, Tourism and Sport, Deputy Donohoe, and others in January 2016 and the Government sat on it. Why? It was because of the general election. The Government did not want to deal with it. It went on for a full year and a bit and then in one fell swoop, the Government has stated the workers will take the brunt for the entirety of the issues facing Bus Éireann. That is what is happening here. When the Minister for Transport, Tourism and Sport, Deputy Ross, announced his Estimates for Bus Éireann, he never once alerted anybody to the crisis facing Bus Éireann. Read the press release he issued on the day. It is full of self praise - "I'm doing this, I'm doing that." Did he once alert anybody that there was a crisis coming down the tracks that his predecessor and the Government knew about? In essence, regardless of whether it likes it or is transparent about it or will tell the truth, the Government is presiding over the demise of Bus Éireann as a public transport company. Many within Fine Gael probably agree with that, which is probably at the root of the inertia on the Government side. It is acquiescence in the undermining of the company and the reduction in workers' terms and conditions in one fell swoop to levels that are not fair or acceptable. I find it extraordinary that the Independent Alliance is presiding over and standing by that and is not insisting on a proper policy perspective on this issue. If a State company is going to become insolvent, it de facto becomes an issue for this House and the Government.

**The Taoiseach:** A total of 81% of passengers who travel on Bus Éireann travel on a PSO-subsidised route and that subsidy has increased. Rural transport throughout Ireland is increasing and there is an increase in the subvention every year. The problem here, as the Deputy is well aware, is that the Expressway service is losing €50,000 per day. That needs to be addressed. Who can address that? The WRC stands prepared to take unions and management in there now and discuss this question as to how one might make adjustments and changes to bring about a better situation than one has now. The National Transport Authority, as I have already stated,

will assist and assess any changes that occur that arise from changes to the Expressway service. Has the Deputy not heard the people on the national airwaves talking about 45 or 50-seater buses down narrow country lanes? There needs to be a change of assessment as to whether that is valuable or whether it is not.

**Deputy Danny Healy-Rae:** That is not happening in my area.

**Deputy Mattie McGrath:** Hedge-cutting.

**Deputy Marc MacSharry:** Clonmel to Dublin, narrow country lanes.

**The Taoiseach:** If the issue here is the Expressway service and it is losing money on a daily basis, that needs to be addressed.

**Deputy Micheál Martin:** The Taoiseach is proud of it. There are 55 actions. It goes much more beyond the Expressway service.

**Deputy Marc MacSharry:** Westport to Athlone, narrow country lanes.

**The Taoiseach:** The drivers and those who service Bus Éireann throughout the rest of the country carry 81% of the passengers who travel on Bus Éireann and they do so in a professional, diligent and competent fashion. The nub of the issue needs to be addressed and the WRC stands ready to accommodate both sides to see can we avoid a major strike next week which nobody wants.

**Deputy Mary Lou McDonald:** Can I also say how sorry I was to hear of the passing of our former colleague, Peter Mathews? Peter was a gentleman to his fingertips. We extend our condolences to his wife, Susan, and to his family. Ar dheis Dé go raibh a anam dílis.

Earlier this morning the HSE published two reports into failures at a foster home in Waterford over the course of almost three decades. During that time the foster home in question housed 47 children, one of whom we know as Grace, a young woman with profound intellectual disabilities. She was left in that home for nearly 20 years despite a litany of sexual abuse allegations and neglect. Grace was forgotten, abandoned by those in the health service charged with ensuring her care.

The findings of the reports published today are shocking. For long periods of time, there was no intervention or interactions with Grace and the various persons who were directly involved in her case failed to discharge their duty of care to her. Both reports published today stress the cases of four other service users relating to allegations of sexual molestation and physical abuse and an allegation from one man that he was locked in a cupboard. All the while, serious breaches of all reasonable practices took place and nothing was done.

These details were brought to the Taoiseach's attention at Cabinet this morning and he will be well aware of them. No doubt he, like everybody else, is deeply shocked by the contents of the two reports.

A commission of investigation has been long promised by Government and I welcome that it is to be set up in the coming weeks. However, what we need here is accountability. Reports and commissions are necessary and fine, but there are clear-cut instances of abuse of the gravest kind here, both in the treatment of Grace and others in foster care and of the failure of health officials to ensure her care and safety. Who is responsible?

We also have what is alleged to have been a cover-up. Last year's Dignam report stated of the two reports published this morning that there were shortcomings in them and that there was an allegation that crucial files may have been deliberately destroyed by persons unknown. That is a disturbing and damning allegation.

The five-year delay in the publication of these reports is, we are advised, as a result of Garda concerns that they may impact on criminal investigations. Can the Taoiseach tell us today where are those criminal investigations at? Have arrests been made? Do they concern the abuse, the cover-up or both? Who in either the HSE or any other State agency has been held responsible? It is not enough for us to produce shocking reports. God knows, we have had enough of them. We need to know who is accountable and that he or she is, in fact, held accountable.

**The Taoiseach:** First, the least this House can do is apologise to Grace and her family. Her treatment is a disgrace to us, as a country.

The Minister of State at the Department of Health, Deputy Finian McGrath, requested the HSE to publish the Devine and Resilience Ireland reports following his receipt of the Dignam report in early November last and following discussions with the Garda Síochána, the HSE has been able to publish the redacted reports today, 28 February. The Government is committed to the establishment of the commission, which we agreed to set up on 2 February 2016. Following the disclosure and the seriousness of the matter, the Government agreed to set up that commission of investigation. The Minister of State, Deputy Finian McGrath, will bring those terms of reference to Cabinet next Tuesday. The HSE apologised today to anyone who experienced serious failings in the care received and for the significant failures of the former South Eastern Health Board.

The Oireachtas has passed a number of items of legislation dealing with issues about this area including the Criminal Justice (Withholding of Information on Offences against Children or Vulnerable Persons) Act 2012, which makes it an offence to withhold information on serious offences committed against a child or a vulnerable adult; the National Vetting Bureau (Children and Vulnerable Persons) Act 2012; the Criminal Law (Sexual Offences) Act 2017, which includes stronger sanctions aimed at protecting children from sexual exploitation, child abuse material and online grooming, was passed by the House at Christmas and signed into law by the President last week; and the Children First Act 2015, which placed key elements of the Children First national guidelines on a statutory basis, has been enacted. When fully commenced at the end of this year, the latter Act will provide for a number of key child protection measures. The Government also established the Child and Family Agency and children have been recognised as individuals in their own right under the Constitution for the first time.

The policy in respect of intellectual disability, Safeguarding Vulnerable Persons at Risk of Abuse, launched in December 2014 provides one overarching policy to which all social care services, including those provided directly or indirectly by the HSE, have subscribed and implemented in their places of work. This has ensured that there is now a consistent approach to protecting vulnerable people - it is a no-tolerance approach to any form of abuse or neglect - and a culture which supports this ethos.

The national guidance on host families in community settings recommendations were made in 2011 and updated in 2012. Ms Leigh Gath is the confidential recipient who will examine concerns and offer help and advice to vulnerable adults or anyone concerned about a vulnerable adult in a HSE service or a service funded by the HSE. The HSE is also establishing a national

implementation review panel.

Deputy McDonald asked if arrests have been made in respect of any criminal activities. That is a matter for the Garda Commissioner and the Tánaiste and Minister for Justice and Equality to report on. I do not have information in respect of arrests following criminal activity or any case that was being pursued.

The two reports speak for themselves, and they are shocking. As the Deputy is aware, when Mr. Dignam reported back in September 2016, there were a number of legal procedural issues to be dealt with. The Minister updated the Government. They are now published, admittedly in redacted form, and next week the Minister of State, Deputy Finian McGrath, will bring the terms of reference for the commission to Cabinet for approval and before the House subsequently.

**Deputy Mary Lou McDonald:** I thank the Taoiseach for that answer. I acknowledge, and let it be acknowledged, that the standards and the law protecting our children has become ever more robust over the years. I acknowledge also that the Taoiseach is establishing the commission of investigation and that the Minister of State, Deputy Finian McGrath, will bring forward the terms of reference for it, but there is the rub. The question for people who woke this morning to read again about Grace and the 20 year ordeal she faced and that was faced by other vulnerable children in the care of the State is who is accountable. The worry for many people is that we enter into another process of a commission that comes out at the far end with zero in terms of accountability. That is why I asked the Taoiseach about the Garda investigation. We need to know the status of those investigations. We do not need every detail but we need to know why the Garda Síochána deems it appropriate now for these reports to be published. The citizenry need a sense of assurance that when offences of the gravest kind such as these come forward that the full force of the law is not just stated but is actually enforced. Is there some mechanism by means of which the House can be informed as to the status of these investigations?

**The Taoiseach:** I expect that the Tánaiste and Minister for Justice and Equality, on receipt of information from the Garda, will reply to any questions in the House about this. It is true to say the reports into the Grace situation were delayed because of an understanding to the effect that they might interfere with criminal investigations being conducted by the Garda. That matter was pursued by the Minister of State, Deputy Finian McGrath, and ourselves on number of occasions. Advice was then made available which indicated that it was not necessary to wait and that the reports could be published - in redacted form, admittedly - and the Dignam report and the Resilience Ireland report speak for this. The answer to the question is that I cannot say what is the nature of the criminal activities being pursued. I cannot advise the Deputy as to whether people were arrested, but I am sure the information will be made available in its general form to the Tánaiste and Minister for Justice and Equality.

**Deputy Michael Harty:** I wish to address the topic of governance in the HSE. There are serious governance malfunctions and, in many areas, an absence of good governance in the health service in general. The OECD has found that Ireland has one of the highest spends on health services, yet it has some of the worst outcomes when it comes to accident and emergency treatment times, delayed admissions - with patients left waiting on trolleys - waiting lists for consultations and waiting lists for planned elective admissions. The latter was starkly illustrated two weeks ago by the delay identified in scoliosis surgery for children. Many other patients suffer in silence.

There is lack of clarity in the governance structures between the Minister, the HSE and the Department of Health. The HSE board has been abolished but the HSE continues to operate, seemingly at arm's length from and independent of the Department. There is no certainty in the HSE and its future existence is unclear. The HSE was set up to centralise decision-making and to have consistency in the delivery of services throughout the country. This has failed because our services are as fragmented as ever. Many HSE officials work in an interim or acting capacity and are unclear about their roles and functions. This leads to a lack of trust and undermines any governance consistency. It leads to a lack of trust by patients and by front-line staff.

Hospital groups have been created but most do not have fully functioning boards. It is unclear whether they will become trusts. Community health organisations do not coincide with hospital groups in geographic settings, thus blurring areas of responsibility. The interaction of individual hospitals within groups is poorly defined and model 2 hospitals can be starved of funds and resources while services in larger hospitals are given priority. Hospital services and primary care services seem to work from different budgets and there is no integration. This poor governance leads to substantial inefficiencies in the system and accounts for poor value for money, as identified by the OECD, and leads to much poorer outcomes for patients.

Poor governance decision-making costs money but there is no transparency or accountability in the governance structures of the HSE to account for inefficient spending. Cost-benefit assessment applies to the provision of drugs such as Orkambi and Respreeza, but no such cost-benefit analysis applies to governance decisions. If we demand clinical excellence, we should also demand governance excellence.

**Deputy Mattie McGrath:** Hear, hear.

**Deputy Michael Harty:** We cannot expect this to be provided on a voluntary basis and it must be underpinned by legislation to ensure that good governance is rewarded and bad governance is eliminated. When does the Taoiseach intend to put in place legislative structures for the governance of the HSE?

**The Taoiseach:** Deputy Harty, as a medical practitioner, speaks from a position of knowledge in respect of many of the issues he raised. We will put €14.5 billion into the health system this year, more than ever before. In some cases, the response is not what we might expect in terms of the excellence in governance and other areas to which the Deputy referred. The work that he spoke of is part of an ongoing process. This morning the Cabinet approved legislation dealing with a reduction in prescription charges for those over 70, and we approved the inclusion in that Bill of 10,000 medical cards for children in receipt of domiciliary care allowance. There are reports showing a dramatic reduction in cancer rates among children compared to a few years ago. If we were to start with a greenfield situation we might organise the structure of health services around the country in a very different way but many hospital facilities are now state-of-the-art. A major infrastructure programme is to be carried out in the future and we are building a range of primary health care facilities around the country, which are expected to operate on a full-time basis so that people do not have to go to hospital in the first place.

Nobody could disagree with the Deputy's principle of clinical excellence matched by excellence of governance. There has to be an administrative capacity to back up clinical excellence and there is always a demand for this capacity but for many years this country has been behind in its digitisation capacity, whereby we could save time, create efficiencies and make people aware of the scale of what we do. Those at the front line provide a service beyond criticism



and those who have moved through centres of excellence will point that out. With an ageing population there are always difficulties and that is what an effective, high-standard health care system is about. The Minister for Health, Deputy Simon Harris, and his Ministers of State are working diligently on this so that we can have a healthy, active and understanding Ireland and can have medical facilities and services as close to people as possible. It is not perfect, by any means, but it is the source of the allocation of €14.5 billion in 2017, an extraordinary amount of money for a small country.

**Deputy Michael Harty:** The legislation to which the Taoiseach referred underpins decisions made by the Dáil. I am referring to legislation underpinning decisions made by the HSE and concerning how it administers its funds. There are many examples of where funds are not delivering services, such as in respect of emergency department overcrowding, bed capacity issues, recruitment and retention of staff and the lack of diagnostics. In the mid west the HSE, by closing GP access to medical assessment units in Ennis and Nenagh, is making decisions which compound overcrowding at the regional hospital in Limerick. It makes no sense and ambulances are rushing up and down the road delivering patients to hospitals which are inappropriate to their care.

**Deputy Mattie McGrath:** Hear, hear.

**Deputy Michael Harty:** The children's hospital development is another case in point because a cost-benefit analysis was not done on the question of building on a brownfield rather than a greenfield site, and a huge amount of money is now going to be spent on building a hospital which could have been more cost-effectively built on a greenfield site.

The Grace case is the most recent illustration of a lack of governance in the HSE. The problems were identified but there were ignored and hidden and, ten years on, we have investigations and commissions which are costing huge amounts of money and which could have been avoided if there was proper governance within the HSE. I ask the Taoiseach to introduce legislation to underpin HSE decisions.

**The Taoiseach:** Accountability rests with the Minister for Health of the day, because the Vote is now back under his responsibility, not that of the HSE.

**Deputy Mattie McGrath:** Hear, hear.

**The Taoiseach:** This means questions can be answered in the House and the trend of spending in the relevant services is determined by the Department, which is also answerable for that spend.

**Deputy Mattie McGrath:** That is not true.

**The Taoiseach:** Twenty years ago we were negotiating the provision of a new national maternity hospital which has now been agreed and will go ahead with a state-of-the-art, world-class facility for expectant mothers and their babies for many years to come. There were discussions for many years on the national children's hospital and this will cater for the children of the island for the next 50 years. That represents an investment in 25% of the population to have world-class standards for them. We have not built a new hospital since 1998. Additions are necessary and fine, but it is important to have governance to back up the clinical excellence about which Deputy Michael Harty spoke.

## **Visit of Estonian Delegation**

**An Leas-Cheann Comhairle:** Before we move to the Social Democrats and Green Party group, on my own behalf and that of Members of the House, I offer a céad míle fáilte, a most sincere welcome, to His Excellency Eiki Nestor, President of the Riigikogu, the Parliament of Estonia. He is accompanied by Mr. Kalvi Kova and Ms Monika Haukanomm, Members of the Riigikogu. I express my hope they will find their visit enjoyable, successful and to our mutual benefit. *Tere Lirimaa.*

## **Leaders' Questions (Resumed)**

**Deputy Róisín Shortall:** On behalf of the Social Democrats, I extend our deepest sympathy to the family of the late former Deputy Peter Mathews. He was a popular and committed figure in the last Dáil. We all miss his presence in this Dáil and extend our heartfelt sympathy to his wife, Susan, and family on his tragic passing after a short illness.

We find ourselves yet again discussing in the Dáil another scandal. This time it involves the most horrific treatment of one vulnerable person but possibly more. It involves, at best, negligence and utter incompetence on the part of State agencies. It involves inexplicable actions and delays on the part of An Garda Síochána. It involves the shocking treatment of one whistleblower and a lack of attention shown to two others. Of most concern, however, is the official obfuscation and that there has been little evidence of political determination to get to the truth and bring those responsible to account. Once more the response from the Government is the establishment of a commission of inquiry when what we need are answers and accountability now. At the heart of the case are criminal matters which should have been, and need to be, dealt with by the criminal justice system.

I have questions for the Taoiseach. Why did the HSE not disclose to Tusla the names of the people involved in key decisions in Grace's case? Did the Minister for Health direct the HSE to hand over this information to Tusla? Is it not entirely possible that some of the people who were involved in decisions concerning the care of Grace are still involved in child protection services? Can the Taoiseach give a guarantee that none of them is involved in child protection services?

Will the Taoiseach clarify the role of the Garda? What criminal cases are under way involving sexual abuse? Will the Taoiseach also clarify if there is a current criminal investigation of reckless endangerment involving the people responsible for taking key decisions concerning the care of Grace? Have the two expert reports been made available to the Garda and, if so, when was that done?

**The Taoiseach:** That is the reason we are having a commission of investigation. The questions the Deputy asked are very pertinent.

**Deputy Róisín Shortall:** Will the Taoiseach answer them now?

**The Taoiseach:** No, I cannot.

**Deputy Róisín Shortall:** The Taoiseach needs to answer them.

**The Taoiseach:** I cannot answer for the Garda as to whether there is a criminal investigation

still ongoing, nor do I have information on whether personnel who were working at the time are still working in the child care area.

I have outlined all of the changes that have been made in terms of legislation. The Deputy says there is little evidence of political action. The political system responded on 2 February 2016 by agreeing because of the seriousness of the issues involved to set up a commission of investigation into Grace's case. The terms of reference to be brought before the Cabinet and the Dáil by the Minister of State, Deputy Finian McGrath, will possibly deal with the option of dealing with other cases that have been mentioned, but the first issue here is the Grace case. The Government does not take setting up such a facility lightly. That is the political response. I mentioned to Deputy McDonald that, because of the understanding that there were criminal investigations going on, the opportunity to publish both the Dignam report and the Resilience Ireland report was somewhat delayed. When legal advice was received that their publication should not be prevented, they were published promptly. These reports speak for themselves. The questions that Deputy Shortall asks are very pertinent, germane and central to the commission of investigation set up for that very purpose.

**Deputy Róisín Shortall:** These questions are central and germane and they could be answered now, if the Taoiseach's Ministers took the trouble to ask the questions and had the legal power to insist on getting answers. As leader of this Government, the Taoiseach has a clear responsibility to find out what the current situation is. I asked him if he could give us a guarantee that none of the people involved in decision making around the Grace case are currently involved in child protection services. The Taoiseach can find that out today if he has a will to do so. He has a responsibility to give that guarantee to ensure that other children are not being put in danger.

The other question is in respect of the gardaí. The Taoiseach can find out today if the gardaí are involved in investigating a criminal case in respect of sexual abuse and, secondly, in respect of reckless endangerment by State staff. We need those answers now. The Taoiseach should stop kicking these issues down the road into a commission of investigation. He should do his duty, take his responsibility seriously and provide those answers to us now.

**The Taoiseach:** I take my responsibility seriously and that is why Cabinet decided collectively back in 2016 to set up a commission of investigation. If I were to say "yes" or "no" to the Deputy's question about criminal investigations-----

**Deputy Róisín Shortall:** That is what the Taoiseach has been doing for the last year.

**The Taoiseach:** -----that would not solve any issue as to what happened here-----

**Deputy Róisín Shortall:** The Taoiseach is not so special in Cabinet.

**An Leas-Cheann Comhairle:** Deputy Shortall, please.

**The Taoiseach:** -----who was responsible or who is accountable to make sure that this cannot ever happen again. I do not accept the Deputy's premise that we are neither interested nor have we taken any action.

**Deputy Róisín Shortall:** The Taoiseach has no credibility on this. He can find out-----

**An Leas-Cheann Comhairle:** Deputy Shortall, please.

**The Taoiseach:** That is why we set up a commission of investigation to investigate these things and to get the answers to the questions that are raised. As I said earlier on in response to another Deputy, I am quite sure the gardaí will supply the Minister for Justice and Equality with the answer as to whether there is a criminal investigation currently going on.

**Deputy Róisín Shortall:** Has the Taoiseach not asked for that?

**An Leas-Cheann Comhairle:** Deputy Shortall.

**The Taoiseach:** The other question the Deputy asked was in respect of sexual abuse or endangerment. These are all questions that are going to be answered in full by the commission of investigation.

**Deputy Róisín Shortall:** They could be answered today if the Taoiseach asked the question.

**The Taoiseach:** There would not be a need for it if I could answer that question now. This has gone on for years as the Deputy is aware.

**Deputy Róisín Shortall:** The Taoiseach should stop long-fingering it.

**The Taoiseach:** It is a very serious issue-----

**Deputy Róisín Shortall:** The Taoiseach is long-fingering all important decisions.

**An Leas-Cheann Comhairle:** Deputy Shortall, please.

**The Taoiseach:** -----and that is why Government takes its response seriously, by setting up the commission of investigation.

### **Order of Business**

**An Leas-Cheann Comhairle:** I call Deputy Mattie McGrath.

**Deputy Mattie McGrath:** The arrangements for the business schedule for Tuesday to Thursday, 28 February to 2 March 2017, as agreed by the Business Committee on 23 February, are as follows. Today's business shall be No. 7, motion re extended take back date for report of services by the Defence Forces with the United Nations, without debate; No. 8, motion re reasoned opinion, without debate; No. 9, motion re capital carryover, without debate; No. 1, Knowledge Development Box (Certification of Inventions) Bill 2016 [Seanad] - Second Stage; and No. 4, Criminal Justice (Victims of Crime) Bill 2016 - Order for Second Stage and Second Stage. Private Members' business shall be No. 2, Competition (Amendment) Bill 2016 [Seanad] - Second Stage, selected by the Labour Party.

Wednesday's business shall be No. 1, Knowledge Development Box (Certification of Inventions) Bill 2016 [Seanad] - Second Stage; No. 4, Criminal Justice (Victims of Crime) Bill 2016 - Order for Second Stage and Second Stage; and No. 5, Mediation Bill 2017 - Order for Second Stage and Second Stage. Private Members' business shall be No. 88, motion re Insurance Industry, selected by Fianna Fáil.

Thursday's business shall be No. 4, Criminal Justice (Victims of Crime) Bill 2016 - Order for Second Stage and Second Stage; and No. 5, Mediation Bill 2017 - Order for Second Stage

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and Second Stage. No. 24, Residential Institutions Statutory Fund (Amendment) Bill 2016, will be debated in the evening slot.

I refer Members to the Business Committee dated 23 February 2017. In relation to today's business, it is proposed that motions re Extended Take Back Date for Report of Services by the Defence Forces with the United Nations, Reasoned Opinion, and Capital Carryover shall be taken without debate; and the proceedings on Second Stage of the Competition (Amendment) Bill 2016 [*Seanad*] shall be brought to a conclusion at 10 p.m., if not previously concluded.

**An Leas-Cheann Comhairle:** There is one proposal to be put to the House today. Is the proposal for dealing with Tuesday's Business agreed? Agreed.

### Questions on Promised Legislation

**An Leas-Cheann Comhairle:** I remind Members that questions should relate to promised legislation or the programme for Government. Apart from party leaders, 20 Deputies have offered and I ask all to please observe the one minute rule. If we do not get to all speakers today, I will past the list on to whoever occupies the Chair tomorrow.

**Deputy Micheál Martin:** The two reports published at 11 a.m. today on the failures in a foster home in Waterford, where 47 children were placed over two decades until 2013, are utterly shocking, as has been said. They have been correctly described by the *Irish Examiner* as 20 years of horror for one of the children, Grace, a young woman with profound special needs who was left in a foster home for almost 20 years. It is an extraordinary and appalling situation. There was no intervention or interaction with Grace in her foster placement and various people who were directly involved in her case failed to discharge their duty of care to her.

There are many commitments to child protection in the programme for Government. It is important that the House takes time to debate the two reports in the most meaningful and fullest way possible. The HSE has already offered an unreserved and heartfelt apology to all of those affected by the significant failures of the former south eastern health board. There is an issue of culture regarding the protection of children, who does what and when and protecting people despite reports. There is a governance issue.

Fundamental issues that go to the heart of protecting children in our society should be debated by the House. I ask that time be put aside next week to facilitate such a debate, taking on board the commitments in the programme for Government around the protection of children and improvements to our child care protection system.

In preparing for that debate, adequate time should be provided to all Deputies, in particular those from larger parties, who want to make a contribution to such a debate. I welcome the establishment of a commission of investigation, which was a good decision, but it should not preclude the fullest debate possible taking place in the House.

**The Taoiseach:** The reason the commission of investigation was established was due to the gravity and seriousness of the allegations, issues and incidents that arose. It might be very appropriate to have a debate next week because I expect that the Minister of State, Deputy Finian McGrath, will bring the terms of reference for approval by Cabinet. If they are approved, they could be rolled in for discussion here because they would have to be passed by the House.

It would also be appropriate to have an opportunity to discuss the two reports in a meaningful way, and with a degree of preparation by those who want to contribute. The Whip will consider that and the Business Committee will make its arrangements. I do not object to such a debate.

**Deputy Caoimhghín Ó Caoláin:** The programme for Government claims that the Government is committed to sustaining the progress to date on waiting lists. That beggars the question of what progress. The number of children on the scoliosis waiting list is growing. December was the worst month on record for citizens waiting on trolleys and 2016 was the worst year on record.

The Government's inadequate response to all this is to build prefabs. The Minister for Health, Deputy Simon Harris, grandiosely described these as temporary modular buildings but, regardless of how it is dressed up, a prefab is a prefab. It is already clear that the Minister will not have the nurses to staff them and the failure to retain and recruit nurses is one of the factors for the nurses' strike next week. Prefabs were to be a temporary measure in schools in our education system, yet over my years of public service I have noted that some of them have been *in situ* for up to 40 years. Is it not self-evident that the crisis in our health system is clear evidence of the failure of Fine Gael and its partners in government in Fianna Fáil to deal with the crisis in our health service and that the Government has failed in terms of the commitment in the programme for Government?

**The Taoiseach:** I disagree with Deputy Ó Caoláin. At 8 a.m. today the HSE TrolleyGAR system indicated that nationally 355 patients were waiting on trolleys in acute hospitals, which admittedly is too many, but it is down from 411 last week and 463 on this day last year. There is no doubt that the number is too high and the HSE's special delivery unit continues to work with all hospitals to identify what can be made to improve patient flow. Emergency departments under pressure this morning included University Hospital Galway and Cork University Hospital, which have both been identified as particular priority sites under the Department's winter initiative. Each site has a specific plan in place and is undertaking mitigating actions that can improve the situation. The Minister visited Galway last week.

Everyone in the country has this vision of prefabricated buildings as being what were supplied in schools 40 years ago and which rotted after a particular time. The Minister for Health visited Mayo General Hospital and saw the structure of the existing emergency department. In consultation with the staff, a modular building in close proximity to the existing emergency department presents the opportunity to relieve all the pressure and stress experienced and the staff will be very happy with that. The terms "prefabricated building" and "modular building" hark back to a time when prefabricated houses were provided throughout the country and prefabricated buildings were in schools. The world has changed and so has the quality of the accommodation.

**Deputy Brendan Howlin:** This is my first opportunity to join with colleagues in expressing my own and my party's sympathy and sadness on the passing of our dear and much loved colleague, Peter Mathews. We send our sympathy to his family.

I want to raise an issue raised in this House before and which refers to a motion that was passed in the House on 7 July last year on Ibrahim Halawa. As a result of that motion, an all-party delegation travelled to Egypt and met a number of influential people, including the Egyptian President, and came back with some degree of hope that the case would be resolved.

Unfortunately, that has not proven to be the case. Ibrahim's trial has now been adjourned 19 times and last week we saw a statement from his family indicating that he is now on hunger strike and has been moved to the prison hospital. Like others, I gave a commitment to continue to press this case and I think that is the view of all Members in the House. Will the Taoiseach raise this issue directly with the Egyptian President? It has gone on far too long and Ibrahim's health is suffering. He is an Irish citizen who has been detained in an Egyptian prison since he was 17 years of age. Can we take another initiative to ensure that what was hoped for, which is the release and return home of Ibrahim, will happen?

**The Taoiseach:** I am concerned about this matter. The Ceann Comhairle led an all-party delegation to Egypt. I have spoken to the Egyptian President on two occasions, personally face-to-face and by telephone. There have been 55 consular visits to Ibrahim in the prison. He is the only European in this situation and the President made it perfectly clear that he is quite willing to use his power of presidential pardon but that there has to be a conclusion to the case, which is where the difficulty lies. The Government is obviously concerned about this case. The Irish ambassador in Cairo attended the most recent hearing on 14 February. Deputy Brendan Howlin is correct that the case has been postponed on many occasions for different reasons.

**Deputy Brendan Howlin:** It has been postponed 19 times.

**The Taoiseach:** The Minister for Foreign Affairs and Trade, Deputy Charles Flanagan, has been in touch with the Egyptian ambassador on many occasions. As I pointed out, our consular services in Cairo are in frequent contact with Mr. Halawa. I met Mr. Halawa's brothers, sisters and father and will be happy to raise the matter again with the Egyptian President and I am sure his response will be the same as that given to the Ceann Comhairle and his delegation to Egypt, namely, that he is prepared to use his presidential powers but there must be a conclusion to the case. The Government supports the legal action being taken by the Halawa family and will continue to make every effort to see to it that this young man can be brought home as soon as possible.

**An Leas-Cheann Comhairle:** I call Deputy Richard Boyd Barrett who I know will conform.

**Deputy Richard Boyd Barrett:** I pass on my condolences and sympathy to the family of the late former Deputy Peter Mathews. I was shocked to learn of his passing, which is a terrible loss for his family. He was a very decent and genuine man.

The Taoiseach will be familiar with the case of Ava Barry who suffers from the debilitating and traumatic condition of Dravet syndrome which causes regular traumatic seizures. Ava's mother, Vera Twomey, believes she has been forced to commence a 250 km walk from Cork to Leinster House as a result of a decision by the Health Service Executive to refuse to license medicinal cannabis based products for her daughter, despite the fact that an Irish registered doctor made the application on behalf of the family. This underlines the need for Deputy Gino Kenny's Cannabis for Medicinal Use Regulation Bill to be passed as a matter of urgency. It appears a legal chill factor is preventing the licensing of products that would make a major difference to young children such as Eva and many others who are suffering from chronic pain and severe medical conditions. I want to know about the process regarding the legislation because we are in uncharted territory with this Opposition Bill and whether it will proceed to Committee Stage. We need a commitment that it will proceed to Committee Stage-----

**An Leas-Cheann Comhairle:** On promised legislation.

**Deputy Richard Boyd Barrett:** I am referring to a Bill and asking whether it will proceed to Committee Stage. I ask the Government not to seek in any way to restrict access to these products for Ava Barry and others with chronic health conditions who urgently need products to which they are being denied access.

**An Leas-Cheann Comhairle:** A number of Deputies wish to ask questions on the same issue. I ask them to confine their remarks to one sentence. Deputy Michael Collins will speak as the leader of his group.

**Deputy Richard Boyd Barrett:** I would like a response to my question.

**An Leas-Cheann Comhairle:** Deputy Michael Collins wishes to raise the same issue.

**Deputy Michael Collins:** In the past couple of years the State has blocked a mother's efforts to keep her daughter alive and free from suffering. Vera Twomey will reach the border between counties Cork and Tipperary today. She is highlighting this issue at a critical time. I ask the Taoiseach to personally intervene in the matter.

**Deputy Aindrias Moynihan:** I raise the same issue which could be addressed by either of two Bills. The Bill discussed in the House before Christmas could be advanced quickly if it were to be allowed to proceed to Committee Stage. Will the Government allow it to proceed? The Minister for Health also gave a commitment to introduce legislation on the issue. Will one or other Bill be advanced to ease the current difficulty?

**An Leas-Cheann Comhairle:** I will allow Deputy Michael Moynihan to ask a brief question before we move on.

**Deputy Michael Moynihan:** We need a short roadmap for advancing on this critical issue which is being raised in the House for genuine reasons. We do not want a lengthy timeframe.

*3 o'clock*

A commitment was given before Christmas in regard to this legislation. We are now approaching St. Patrick's Day and there is still no commitment from the other side of the House as to how these issues are going to be advanced.

**Deputy Micheál Martin:** May I ask a question on the same issue?

**An Leas-Cheann Comhairle:** Everybody wants to know when this legislation might be--

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**Deputy Micheál Martin:** I am not asking about the legislation, rather I would just like to make a short point.

**An Leas-Cheann Comhairle:** It will need to be very short.

**Deputy Micheál Martin:** I have been involved with others in this case for about a year. As a Parliament, we must be honest. I do not think the legislative issue is going to resolve this situation.

**Deputy Richard Boyd Barrett:** That is not true.



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**An Leas-Cheann Comhairle:** Deputy Boyd Barrett cannot speak twice.

**Deputy Micheál Martin:** I am only interested in the child getting access to the best treatment.

**An Leas-Cheann Comhairle:** Deputy Martin, I agreed to a short question.

**Deputy Micheál Martin:** We need paediatric neurology in this country to come to grips with this issue and to make some presentation on a pathway towards medical people dealing with the evidence in relation to it. We also need a response to the recently produced report which suggests a pathway to the application of medicinal cannabis for Dravet syndrome.

**Deputy Richard Boyd Barrett:** Accept the GP's recommendation.

**An Leas-Cheann Comhairle:** I call Deputy Sherlock on the same question.

**Deputy Sean Sherlock:** I thank the Leas-Cheann Comhairle for his latitude. The question that arises is whether a pathway can be provided within existing legislation. We need an answer to the question of whether or not it is the case that a medical practitioner can apply for a licence to administer the specific medication that is deemed to be required in this case. It would be very helpful to the family in question - the Twomey family - if the Taoiseach could clarify the position.

**The Taoiseach:** The change in the way that we do business in this House-----

**An Leas-Cheann Comhairle:** It is more efficient.

**The Taoiseach:** -----resulted in Deputies being able to bring forward pieces of legislation, as in the case of Deputy Gino Kenny. It also means that these are not, in the main, objected to and they form part of the line of legislation to be prioritised by the group that puts them forward. The Business Committee has a role in that regard. The Government cannot choose what Bill will be dealt with. There are a number of Bills that are backed-up and people now have to make a decision on which ones they want to progress to Committee Stage.

On the question raised, the Minister for Health is not the prescribing Minister for medicinal cannabis. The Minister can only act on the basis of a prescription written by, in this case, as pointed out by Deputy Micheál Martin, a paediatric neurologist.

**Deputy Richard Boyd Barrett:** Where is that written down?

**The Taoiseach:** The application has been lodged.

**Deputy Richard Boyd Barrett:** Where is it written down?

**An Leas-Cheann Comhairle:** The Taoiseach without interruption please.

**The Taoiseach:** The Minister has already approved medicinal drugs on the basis of a prescription. I met with the child's mother in Cork recently to discuss this matter. The Minister will introduce a compassionate formula for the delivery of drugs of this nature but whether he does or does not, he still requires a prescription to be issued by a clinical expert.

**Deputy Richard Boyd Barrett:** A application was made by a registered doctor.

**An Leas-Cheann Comhairle:** Deputy Boyd Barrett, please. There can be no bilaterals

here.

**Deputy Richard Boyd Barrett:** There was an application made by a registered doctor.

**The Taoiseach:** The Deputy may not want to hear it but the Minister for Health does not write prescriptions for the allocation of drugs.

**Deputy Richard Boyd Barrett:** There was an application by a registered doctor.

**The Taoiseach:** Within existing law, if the clinical person-----

**An Leas-Cheann Comhairle:** I will ask the Taoiseach to bring his remarks to a conclusion if Deputies do not listen.

**The Taoiseach:** -----writes a prescription for the drug to be allocated to the child in question the Minister can then act.

**An Leas-Cheann Comhairle:** I now call the leader of the Rural Independents Group, Deputy Danny Healy-Rae, whom I ask to lead by example and ask a question about promised legislation or the programme for Government.

**Deputy Danny Healy-Rae:** My question is on promised legislation. The previous Government, led by the Taoiseach, closed many Garda stations around the country. People are suffering because of that. Many homes in Glenflesk and other rural parts of Kerry were plundered and had valuable items taken from them in recent times. There is hardly any Garda presence in the entire Kenmare Estuary to defend communities against criminals coming on-shore along the southern side Kenmare River.

**An Leas-Cheann Comhairle:** A question on promised legislation please, Deputy.

**Deputy Danny Healy-Rae:** On promised legislation, the Government has committed to the opening of six Garda stations. Has the Taoiseach met the Garda Commissioner, Nóirín O'Sullivan, to agree the six Garda stations to be opened? Will some of these be in south Kerry, especially since the whole 55 mile stretch from Kenmare to Caherciveen is left without a Garda station? Will some of them be restored? Will Kilgarvan station be reopened?

**An Leas-Cheann Comhairle:** On promised legislation.

**Deputy Danny Healy-Rae:** The Taoiseach promised he would open six Garda stations. Where are they being opened?

**An Leas-Cheann Comhairle:** I believe that concerns the programme for Government.

**The Taoiseach:** I hope you are not doing after hours down there when the gardaí are not around.

**Deputy Danny Healy-Rae:** If there is room for a late one, I-----

**An Leas-Cheann Comhairle:** Please. The Deputy got his opportunity.

**The Taoiseach:** In any event, the Garda Commissioner recommended that particular stations be closed. The Government did not pick from a list and say it was closing certain stations. Obviously, what happened in many areas where a station was closed was that the superintendent or chief superintendent in the area used the time the gardaí would have been in the station

in question to travel around the community to make himself or herself known and engage with the community and give it a contact number if ever it needed assistance, day or night. That has been a useful addition in many areas of the country. I am not sure what the recommendations of the Garda Commissioner will be. It is in the programme for Government that six stations, urban and rural, will be opened. Obviously, the Garda Commissioner will form a view on that in consultation with her people.

I am not sure about what the Deputy says about the north side of the river in Kenmare. That seems to be all right but the south side seems to be in difficulty, according to the Deputy's question. He is aware that we provided serious money to the gardaí to deal with Operation Thor, which put a lot of the gangs involved in burglaries out of business. That action continues to keep people safe in their homes. We hope communities will stay alert in notifying gardaí if incidents happen.

**An Leas-Cheann Comhairle:** I want to make it very clear that I wrote down the names of those who indicated they wished to contribute after Leaders' Questions. They are Deputies McConalogue, Breathnach, Munster, Ó Cuív, Curran, MacSharry, Brady, Rabbitte, O'Loughlin, Michael Healy-Rae, Chambers, Troy, McLoughlin, Pearse Doherty, and Nolan.

**Deputy Eugene Murphy:** I indicated.

**An Leas-Cheann Comhairle:** Deputy Eugene Murphy was the first, actually. He will soon be allowed to contribute.

**Deputy Michael Healy-Rae:** We want it now.

**An Leas-Cheann Comhairle:** That may be but it will have to be a matter for the reform committee.

**Deputy Pearse Doherty:** Was the Leas-Cheann Comhairle reading out a list of the Fianna Fáil Parliamentary Party?

**An Leas-Cheann Comhairle:** I cannot even be partial when it comes to my favourite constituency colleagues. We are starting with Deputy McConalogue. I will pass on the list to the Chair tomorrow.

**Deputy Joan Burton:** Deputy McConalogue is from the same constituency.

**Deputy Charlie McConalogue:** My question is for the Taoiseach and Minister for Education and Skills. There is a commitment in the programme for Government that the Government supports an annual application process for the summer works scheme. As the Minister for Education and Skills and Taoiseach know, there are many schools across the country that are eagerly awaiting a decision on that scheme. When will the announcement be made considering that tomorrow is 1 March? The work will be commencing in many of the schools at the end of June. Given the specific nature of the commitment to support an annual application process for the summer works scheme, will the Minister allow new schools to apply this year? A number of schools have had new projects arise that were not in the ether last year. Will the Minister allow them to apply given the specific commitment in the programme for Government to allow for an annual application process?

**The Taoiseach:** I ask the Minister for Education and Skills, Deputy Richard Bruton, to respond to that.

**Minister for Education and Skills (Deputy Richard Bruton):** The summer works scheme has been a valuable part of the support to schools to maintain the fabric of schools. As the Deputy knows, the last application process was for a two-year period and the applications were received in November 2015. We are continuing to work on that programme. It has ten items under which applications were made. A number of those have been fulfilled. This year, some of the balance will be considered on the basis of urgency. Obviously, the programme for Government envisages what we hope will be an annual scheme. At present, however, the application covers two years. A number of priorities were dealt with last year and we will move on to the other cases. Nearly half the schools in the country have applied under the scheme.

**Deputy Charlie McConalogue:** On what date will an announcement be made?

**Minister for Education and Skills Deputy Richard Bruton:** We obviously have to review the applications and make a decision based on priority.

**Deputy Declan Breathnach:** We were promised the heads of a commercial rates Bill were being prepared. Many of us are celebrating 12 months in this House and many of us were members of a local authority for many years. Therefore, we are aware commercial rates payers are absolutely crippled with an archaic and outdated method of commercial rate setting. It is time that a fair assessment system, based on ability to pay and business turnover, were introduced.

My county has the worst commercial rate in the country, yet the Valuation Office continues to value property county by county using a system that needs to be changed urgently. The Taoiseach referred to prioritising Bills. This is a priority Bill, and I am fed up listening to words such as “preparation”, “into the future” and “shortly”. What are the timelines and when can we expect the Bill to be before the House?

**The Taoiseach:** I think it is fair to say that ratepayers were always a target of local authorities over very many years, and that is why the Government introduced the devolution of authority to local authority members to have an opportunity to reduce rates by up to 15% if they so desired. Second, that is why property taxes were introduced, not only to bring in income to government, but also to reduce the burden on commercial ratepayers who always took the brunt of an attack every year.

I expect that the heads of that Bill will come to the Government during the month of March. It is deemed to be a priority and we expect to have it put through the process in the House then.

**Deputy Imelda Munster:** I wish to raise the issue of social and health care provision under the programme for Government, particularly in respect of respite services at St. John of God, Drumcar, County Louth, which now only accepts one wheelchair user at any given time. The reason given is that the service only has one hoist. This respite and residential service provider is in receipt of €130 million of State funding per year, yet it will not give wheelchair users access that is equal to what it gives non-wheelchair users.

Does the Taoiseach believe that wheelchair users and their families are not entitled to equality of access? Is it satisfactory that €130 million per annum is paid to this service provider?

**An Leas-Cheann Comhairle:** On what legislation?

**Deputy Imelda Munster:** Wheelchair users do not have equality of access. What does the Taoiseach plan to do to rectify this situation?

**The Taoiseach:** With respect, this is a period for asking questions about legislation-----

**An Leas-Cheann Comhairle:** Yes.

**Deputy Imelda Munster:** And the programme for Government.

**The Taoiseach:** -----or matters from the programme for Government. The Deputy is asking a very detailed question. In principle, of course everybody supports the right of access for disabled people to all public buildings, and that is a matter for the company that is receiving State money to provide for equal access for those who are disabled and those who are not. Obviously, the Minister for Health will reply to the Deputy, but I would say that it is not a legislative question and it is not a factor that is in the programme for Government except as a general principle.

**Deputy Éamon Ó Cuív:** Ceadaíodh cinn an Bhille do Bhille na dTeangacha Oifigiúla (Leasú) sa mbliain 2014. Sin beagnach trí bliana ó shin. Cén uair atá i gceist an Bille féin a fhoilsiú agus a chur faoi bhráid na Dála?

**The Taoiseach:** Ní raibh aontas ann faoin mBille a cuireadh tríd an Rialtas agus a tháinig sé os comhair an Tí. Tarraingíodh é sin siar arís. Tá obair ar siúl ar Bhille nua. Cuirfidh mé scéal chuig an Teachta Ó Cuív-----

**Deputy Éamon Ó Cuív:** Má tá sé curtha siar, cén fáth go bhfuil sé ar an liosta?

**The Taoiseach:** -----faoin am a bheidh an Bille nua tagtha os mo chomhair.

**An Leas-Cheann Comhairle:** Legislation is promised.

**Deputy John Curran:** The programme for Government on page 124 commits to facilitating the development of social energy projects. Recently, I asked the Minister for Communications, Climate Action and Environment, who passed the question on to the Minister for Housing, Planning, Community and Local Government, whether there were intentions to introduce guidelines for the development of solar farms. In his reply, the latter stated that there were no specific guidelines in place and he was satisfied that the planning code was sufficiently robust to facilitate the assessment of individual planning applications for solar farms.

At the end of January, An Bord Pleanála made a majority ruling of five to three refusing a development. Its reasons for and considerations in doing this were specifically the lack of guidance at national, regional and local level in respect of the appropriate location, scale and distribution of future proposals for solar power. Solar power has the potential to deliver, but we want that done in an organised way in order that it does not become a blight on the landscape.

**An Leas-Cheann Comhairle:** Is legislation promised?

**Deputy John Curran:** Will the Government commit to introducing meaningful proposals and guidelines to allow for the development of solar power?

**The Taoiseach:** The local authorities themselves, in terms of their statutory responsibility in putting forward their five-year programmes, set out their individual projects. It is important to note, as Deputy Curran raised, that An Bord Pleanála, which is completely independent in the way it gives its adjudications, has pointed out that, from its perspective, there is not a sufficient wealth of information available for it to make a judgment. The Minister will study that decision by An Bord Pleanála and be in communication with local authorities in respect of their plans.

It is a valid point to raise. I thank the Deputy.

**Deputy Marc MacSharry:** Pages 59 and 64 of the programme for Government refer to cystic fibrosis patients and the provision of breakthrough drugs, respectively. Unfortunately, some weeks ago the Taoiseach was poorly briefed when he responded about the provision of Orkambi and referred to the National Centre for Pharmacoeconomics. He was obviously behind the curve. Is the Minister, Deputy Harris, is also behind the curve? I ask because yesterday he stated he needed more time and space to conclude these issues. I cannot help thinking that this reflects the fact there will be a national protest on this matter tomorrow.

How much time does the Government need? On 15 January, Vertex renewed a proposal with a substantially lower price tag than the one the Taoiseach applied two weeks ago. Under the proposal, drugs that were in the development pipeline would also be provided in the long term. There has been no contact between Vertex and the HSE since 3 February. Yesterday, the Minister falsely gave the impression that substantial negotiations were ongoing. What space do we need? Is it to consider the Fine Gael leadership-----

**An Leas-Cheann Comhairle:** Deputy, I want to allow other colleagues to contribute.

**Deputy Marc MacSharry:** -----or to provide Orkambi to the people? As I pointed out to the Taoiseach two weeks ago, children grow sicker and some will die while we procrastinate.

**An Leas-Cheann Comhairle:** I thank the Deputy, but some of his colleagues wish to contribute.

**Deputy Marc MacSharry:** Will the Taoiseach be specific and accurate regarding the timeline for a decision on this issue?

**The Taoiseach:** I think that Pat Rabbitte referred to Deputy MacSharry one day regarding the Deputy's comments. I will not go down there, as they say.

**Deputy Micheál Martin:** Do not.

**Deputy Michael Moynihan:** No.

**The Taoiseach:** I was not behind the curve when we made the-----

**Deputy Marc MacSharry:** "When you're in a hole, stop digging" might be a message for the Taoiseach.

**An Leas-Cheann Comhairle:** Deputy, allow an answer from the Taoiseach.

**The Taoiseach:** I was not behind the curve when we briefed the Deputy on the previous occasion, nor was the Minister, Deputy Harris. I am well aware of the protest that is scheduled for Wednesday, and the Minister, Deputy Harris, has been in touch with the organisers of that. He stressed today that he expects that this process can be concluded in a matter of weeks, but his overriding priority is to make sure that any agreement that is reached is not just for now, that it would provide certainty for Irish cystic fibrosis patients on the provision of Orkambi and on the provision of Kalydeco and other drugs now and in the future, and not just the instant decision that we would need for the moment.

**Deputy Marc MacSharry:** Which Vertex has been offering since 15 January.

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**An Leas-Cheann Comhairle:** Deputy MacSharry-----

**The Taoiseach:** What he is looking for is the longer term, Deputy MacSharry, that all of the drugs-----

**Deputy Marc MacSharry:** The Government has had this information since 15 January.

**Deputy Micheál Martin:** That is there.

**An Leas-Cheann Comhairle:** I am moving on. I want to accommodate the-----

**Deputy Marc MacSharry:** Lift the phone. Take the decision.

**An Leas-Cheann Comhairle:** Deputies, there are more Members in the House. I am moving on.

**The Taoiseach:** -----that are involved - Orkambi, Kalydeco and any new drug-----

**Deputy Marc MacSharry:** Which are included in that offer.

**The Taoiseach:** -----that comes on stream-----

**An Leas-Cheann Comhairle:** I call Deputy Eugene Murphy.

**Deputy Marc MacSharry:** New drugs are included in that offer.

**The Taoiseach:** Yes, but Deputy MacSharry thought that I did not know that.

**Deputy Marc MacSharry:** I know that-----

**An Leas-Cheann Comhairle:** I might be able to accommodate other contributors if all Members have respect for the-----

**Deputy Micheál Martin:** The Taoiseach did not know last week.

**The Taoiseach:** What I am trying to do is do a deal on a package for the future for-----

**Deputy Marc MacSharry:** -----but the Taoiseach is misleading the people.

**An Leas-Cheann Comhairle:** Have respect for colleagues.

**The Taoiseach:** -----all cystic fibrosis sufferers.

**Deputy Marc MacSharry:** Take the decision.

**The Taoiseach:** The Minister expects that it is now entering a critical phase finally.

**Deputy Marc MacSharry:** “Critical phase”? Lift the phone to Vertex-----

**An Leas-Cheann Comhairle:** I call Deputy Eugene Murphy.

**The Taoiseach:** He is focused now-----

**Deputy Marc MacSharry:** -----and tell it-----

**An Leas-Cheann Comhairle:** Deputy MacSharry-----

**The Taoiseach:** -----on concluding the process in the interests of all the cystic fibrosis sufferers, not just for now, but for the future, with-----

**An Leas-Cheann Comhairle:** Taoiseach, please. I can accommodate others if the Taoiseach and other Members respect the time.

**The Taoiseach:** -----Orkambi, Kalydeco and any new drug that comes along.

**An Leas-Cheann Comhairle:** I call Deputy Eugene Murphy. There will be short, snappy answers. The Deputy can accommodate those who have been waiting here all day.

**Deputy Eugene Murphy:** Page 151 of the programme for Government refers to the reform of appointments to State boards and the Government's intention to put the system of appointments introduced in November 2014 on a statutory footing by the end of 2016. Time and again, the Minister for Transport, Tourism and Sport, Deputy Ross, has failed to deal with this issue. The Taoiseach can smile all he likes, but it is a fact.

**An Leas-Cheann Comhairle:** A question, please.

**Deputy Eugene Murphy:** People have told me it is important that these appointments be made. How many positions have been filled on such boards and how many vacancies are there? I want clear answers.

**The Taoiseach:** I cannot answer that question for the Deputy. The fact is that, under the Public Appointments Service, PAS, people apply online for positions that may become vacant in any of these. They are assessed and identified independently as to the conditions, the experience and the competence to do a job. Recommendations are then sent to the Minister of the day in order that he or she can pick from those. I will find out for the Deputy how many of these positions need to be filled and whether they are being applied for and responded to under the PAS system.

**Deputy John Brady:** The programme for Government commits to tackling the most pressing challenges facing us in health. A number of weeks ago during statements on waiting lists I urged the Minister for Health, Deputy Harris, to reinstate the simple scoliosis checks for children. He said it was a logical thing to do and that he would have a look at it in tandem with the HSE's action plan on scoliosis, which he committed to publishing before the end of the month. We have yet to see an action plan for scoliosis. What is the status of the action plan and will checks for scoliosis by primary health care nurses be reinstated? It is a very simple check and it was previously carried out.

**The Taoiseach:** Three paediatric hospitals provide scoliosis services, with the most complex cases being dealt with in Crumlin, as Deputy Brady is aware. As of 31 January 193 patients were awaiting spinal procedures in Crumlin, of which 143 are for new spinal fusions. I am not sure whether the simple test to which the Deputy referred has been reinstated but I will ask the Minister for Health, Deputy Harris, to confirm the position to Deputy Brady.

**Deputy John Brady:** No, they have not been reinstated.

**Deputy Anne Rabbitte:** My question comes under promised legislation. Over the weekend it was reported in the newspapers that €15.2 million was spent on the guardian *ad litem* service, and in 2015 the sum of €8.9 million was also spent on the same service, an increase of 90%. When will the child care (amendment) Bill be brought forward under the spring-summer



programme for 2017? The Minister for Children and Youth Affairs, Deputy Zappone, specifically said she would address the guardian *ad litem* issue.

**The Taoiseach:** The heads of the Bill were cleared in January and the Bill will go for scrutiny in March.

**Deputy Fiona O'Loughlin:** My question is also about promised legislation. It is 39 years since Louise Brown, the first test-tube baby was born. Since then, more than 5 million babies have been born through IVF and have given much joy and delight to their parents. It is more than a year since the then Minister for Health said legislation would be introduced to help support the many women in this country who suffer from fertility issues. The condition can cause physical, mental and emotional problems. The cost of IVF in this country is very expensive. It is almost €6,000 for every cycle. In the Czech Republic the cost is as low as €2,500. Ireland is one of only two countries in Europe, along with Lithuania, that does not give any support to those seeking support and help with fertility issues. It is vitally important that we do something to help. Many other EU countries provide between one and six cycles of IVF. What are we doing in this country in that regard?

**The Taoiseach:** The Minister has referred to the issue on a number of occasions. It is a source of great stress to couples who find themselves in that position. I understand the heads of the Bill will come before the Government in the coming month of March.

**Deputy Michael Healy-Rae:** The Minister for Education and Skills, Deputy Richard Bruton, has referred the Technological Universities Bill to the Joint Oireachtas Committee on Education and Skills. Could the Taoiseach confirm when the Bill will come back to this House for a vote? I support the Bill, which is very important, especially for places such as the Tralee Institute of Technology that is seeking to complete its merger with Cork Institute of Technology to ensure its future viability.

**The Taoiseach:** As Deputy Michael Healy-Rae is aware, it would not do for us to try to short-circuit the committee's deliberations on the Bill. I will ask the Minister to provide more detail on the issue.

**Deputy Richard Bruton:** The work on the Bill is ongoing. As Deputy Michael Healy-Rae is aware, the Bill reached Committee Stage previously and it ran into a number of difficulties both in terms of industrial relations and also issues relating to the colleges, although not in the case of the colleges to which the Deputy referred. Work is going on with the colleges to define the spectrum of colleges that will proceed to technological university status and there are also some other issues to iron out before we come back to committee. I am anxious that those issues would be fully worked through so the Dáil and Seanad can be in a position to pass the legislation, which is an important statement for the future.

**An Leas-Cheann Comhairle:** Before I call on Deputy Jack Chambers I wish to indicate to Deputies Troy, Tony McLoughlin, Pearse Doherty, Carol Nolan and Éoin Ó Broin that I will ask the Ceann Comhairle to give them priority tomorrow because they have waited in vain to be called.

**Deputy Brendan Howlin:** If they are here.

**Deputy Jack Chambers:** I note the Minister for Education and Skills is about to leave. He made a recent announcement about DEIS schools. My query relates to whether there is an

appeals mechanism. Surprisingly, a number of schools were excluded from the list in spite of their extreme sociodemographic profile. Will the number of designated schools be increased in the future? Could the Minister outline his plans in that regard?

**Deputy Richard Bruton:** I assure the Deputy that the recommendation of the schools that are included on this occasion was based on independent analysis. Issues that were considered included the unemployment rates, the educational achievement of parents, the socioeconomic class, the occupancy of the houses in terms of overcrowding and population decline. It was a very fair and objective set of criteria.

**Deputy Brendan Howlin:** Could the Minister circulate the list of criteria?

**Deputy Richard Bruton:** It was only the schools with the very highest levels of disadvantage that were agreed at this stage and they represent 2% of all the schools in the country.

Deputy Jack Chambers is correct; this is a first step and we plan to refine the process and we will consider other schools because there are undoubtedly schools that have a high level of disadvantage that could not be included on this occasion. It is a big improvement on the process of identification that previously existed. Schools can seek a review but it will be based on the model I outlined. Political considerations will not be brought into play.

#### **Defence Forces Service in United Nations in 2015 Report: Referral to Select Committee**

**Minister of State at the Department of the Taoiseach (Deputy Regina Doherty):** I move:

That the Order of Dáil Éireann of 14th February, 2017 referring the proposal that Dáil Éireann approves the report by the Taoiseach and Minister for Defence, regarding service by the Defence Forces with the United Nations in 2015, to the Select Committee on Foreign Affairs and Trade, and Defence, be amended by the deletion of '28th February, 2017' and the substitution therefor of '23rd March, 2017'.

Question put and agreed to.

#### **Preventive Restructuring Frameworks: Motion**

**Minister of State at the Department of the Taoiseach (Deputy Regina Doherty):** I move:

That Dáil Éireann:

(1) notes the agreed Report of the Joint Committee on Justice and Equality under Standing Order 114 on the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks, second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU – COM(2016)723 which was laid before Dáil Éireann on 16th February, 2017, in accordance with Standing Order 114(3)(b);

(2) having regard to the aforementioned Report, and in exercise of its functions under section 7(3) of the European Union Act 2009, is of the opinion that the Proposal for a Directive of the European Parliament and of the Council on preventive restructuring frameworks,

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second chance and measures to increase the efficiency of restructuring, insolvency and discharge procedures and amending Directive 2012/30/EU – COM(2016)723 do not comply with the principle of subsidiarity for the reasons set out in paragraph 3 of the Report; and

(3) notes that, pursuant to Standing Order 114(4), a copy of this Resolution together with the reasoned opinion and the aforementioned Report shall be sent to the Presidents of the European Parliament, the Council and the Commission.”

Question put and agreed to.

### **Finance Act 2004 (Section 91) (Deferred Surrender to the Central Fund) Order 2017: Motion**

**Minister for Public Expenditure and Reform (Deputy Paschal Donohoe):** I move:

That Dáil Éireann approves the following Order in draft:

Finance Act 2004 (Section 91) (Deferred Surrender to the Central Fund) Order 2017  
copies of which have been laid in draft form before Dáil Éireann on 21st February, 2017.”

Question put and agreed to.

### **Ceisteanna - Questions**

#### **Brexit Issues**

1. **Deputy Brendan Howlin** asked the Taoiseach if he will report on the progress made and outcomes from the all-island civil dialogue on Brexit. [8420/17]

2. **Deputy Micheál Martin** asked the Taoiseach his latest update on Brexit following the Dublin Castle event on 18 February 2017. [8466/17]

3. **Deputy Gerry Adams** asked the Taoiseach if he will report on the plenary session of the all-island civic dialogue held in Dublin Castle on 17 February 2017. [9987/17]

4. **Deputy Richard Boyd Barrett** asked the Taoiseach if he will report on the outcomes of the all-island civic dialogue on Brexit. [10044/17]

**The Taoiseach:** I propose to take Questions Nos. 1 to 4, inclusive, together.

I hosted the second plenary meeting of the all-island civic dialogue on Brexit with the Minister for Foreign Affairs and Trade, Deputy Charles Flanagan, in Dublin Castle on Friday 17 February. The event built on the 14 all-island sectoral dialogue events, which were hosted by Ministers across the country, that have taken place since the first plenary in November.

More than 1,100 delegates have participated in the sectoral dialogues, enabling the Government to have one of the widest possible conversations on the implications of Brexit for

this island, North and South. The sectoral dialogues covered the following issues: education; agrifood; transport and logistics; tourism and hospitality; children and young people; jobs, enterprise and innovation; energy; heritage, culture and rural Ireland; pensions, social welfare rights and social insurance; human rights and the Good Friday Agreement; and seafood and agriculture and forestry.

We have captured the key issues raised at all of these events and they are providing an important input to the Government's preparations for the Article 50 negotiations which will commence after the UK has triggered Article 50. The second plenary meeting attended by over 400 representatives from across the political spectrum, industry, civic society and the public sector North and South allowed us to further develop the dialogue and to pull together the many strands that it has explored to date. It was also an opportunity to share some detail on our overall preparations for the Brexit negotiations and how we are organising and structuring ourselves around that. The plenary meeting was live streamed on the day and is available on *MerrionStreet.ie*.

**Deputy Brendan Howlin:** There is a general welcome for the all-island civic dialogue, which has been a very useful initiative that is appreciated North and South. I would like to see what has come of it. It is important to hear the views of everybody but what action are we taking on foot of it? I have addressed both dialogues and put forward a number of simple measures we could seek from Europe to mitigate the impact in advance on our business, in particular. Among them is allowing expenditure under the European Globalisation Fund to support upskilling and reskilling in areas we know are under pressure. The Taoiseach said that the Government will request EU backing for measures to support business along with particular EU financial measures. Another issue will be the utilisation of structural and cohesion funding, which we have not received up to now but which should be specifically targeted at areas that will be impacted by the UK's withdrawal. The Taoiseach met the Vice-President of the European Commission, Frans Timmermans, when he was here. His message to me was very simple, namely, that Ireland should have specific "asks" that should be made early. What specific asks has the Government made of the European Commission to this point to mitigate the impact we know is happening now or will happen imminently to industry and employment as a result of Brexit?

**The Taoiseach:** What we have tried to do here is to take all the issues that were raised and put them in the different sectors to which they apply. There were some very interesting observations made at the two all-island fora. I thank Deputy Howlin for his attendance and contribution. It is important to note that based on a pretty detailed analysis of the impact of Brexit to date on SMEs, on which we had a presentation yesterday, 49% of participants said it had no impact on their business, 13% said that it had a significant impact, 24% said it had some impact and 15% said it had a minimal impact. However, the analysis of what would happen in 18 months time revealed that 17% said it would have a significant impact, 26% said it would have no impact, 13% said it would have a minimal impact and 44% said it would have some impact. In respect of the package of measures being put together by Government, including access to lower interest and longer term funding, it is not a case of having a quantity of money to give to firms. What is needed is a package of measures that will deal with the various sectors, the nature of the industry and the issue that will arise in terms of what they are exporting and selling. Clearly, none of us yet knows what the British Government will say in its letter of intent to leave. It concerns the issue about trade and potential tariffs because therein lies the analysis that Ireland must carry out and the options we must take. We have done a vast amount of work.

The Deputy received his own briefing recently. We are still unclear as to the nature of the relationship the UK will have with the EU. We understand the Government wants to be as close as possible to the existing relationship but if one drops the Single Market and has a different association with the customs union, one is in a very different position. We need clarity on that.

**Deputy Micheál Martin:** One of the strongest messages participants in the dialogue conveyed is that there is an enormous amount of concern, fear and anxiety and that there have been many questions but not too many answers to those questions. The Taoiseach is aware that the statement from London yesterday that restrictions will be applied to all arriving in Great Britain after a certain date next month shows that the British are much further advanced in detailing new barriers than they are in proposing ways of limiting their impact. It appears that assurances concerning the common travel area are secondary to the eurosceptic-driven agenda to limit EU immigration. Have we requested any clarification from the British about how this new policy will impact on the common travel area commitment? Is it now the case that we must negotiate an exemption from a restriction rather than having the restriction based on accepting the common travel area?

Another consistent problem, which was raised in the dialogue, is that the lack of some sort of special economic zone or free trade zone status for Northern Ireland and at least a number of Border counties will cause a dramatic disruption to supply chains and supply lines North and South. This is distinct from the much broader concept of special status for Northern Ireland, which the British Government has not supported. It has refused to seek it for Northern Ireland and Scotland. Has the Taoiseach raised the issue of a special economic zone with the negotiating team in Brussels? I agree with Deputy Howlin that there is a sense of a lack of what our agenda is and what our statement of objectives are. We have the broad principles but what about the specifics?

What was clear from the Northern Ireland panel, particularly those representing civil dialogue in Northern Ireland, was the complete absence of a coherent voice from Northern Ireland at the table. The recent calling of an election and the collapsing of the institutions starkly illustrated the void in terms of someone speaking up with a coherent voice on behalf of Northern Ireland in the ensuing discussions that are to take place. That was very evident coming out of the dialogue last Friday.

**The Taoiseach:** The Deputy asked a valid question. What is the result we want for our citizens? What we want is the best result for our citizens in terms of our economy, their jobs, their prospects in terms of the common travel area, the peace process and our place in Europe. It is the central issue. When unemployment is down to 6.6% today, which is the best in nine years and quite astonishing in a two-year period, we want to be able to maintain that and keep it moving in the right direction. I have put forward the proposition to the President of the European Commission, who I met last week, and the Belgian Prime Minister. This week, I hope to meet Donald Tusk, President of the European Council, and Michel Barnier in respect of his task force. There was a meeting with Italian officials yesterday. We put forward the proposition that until we know what it is that the British Government is looking for in terms of its trading situation, we are not having a return to the Border of the past. I listened to Lord Hain putting down amendments to the Bill in the House of Lords yesterday. He said that a return to that kind of Border would have serious consequences North and South. The British and Irish Governments are both agreed on that. The Deputy rightly highlights restrictions on other European nationals coming to Great Britain after a certain date. That is where the advantage lies with Ireland in terms of the Single Market and the opportunity to have that churn of talent coming

here. Europe has made it perfectly clear that there will be no cherry-picking of issues that arise here. Europe has not been in a position to respond yet until the trigger is pulled in respect of Article 50. This is a letter from the British Government stating that it is now withdrawing and setting out its position. We have all our options covered here. The Deputy can obtain the most up-to-date briefing any time he wants.

**Deputy Caoimhghín Ó Caoláin:** The civic dialogue at Dublin Castle was clearly very successful. I believe that reflects the significant concern within communities, business and politics about the likely damage to the entire island that Brexit will cause. In that regard, in relation to the INTERREG and PEACE programmes, I ask can the Taoiseach advise the Dáil on the Government's approach to these EU funding programmes, in particular those that have a cross-Border remit. What impact will the triggering of Article 50 have on these programmes and have any decisions been taken about funding deadlines? What contingency plans has the Government put in place and what agreements, if any, have been made with the EU to protect cross-Border funding? Finally, can we have clarity from the Taoiseach - it is an issue I have already raised here on the floor in the past week - on the contingency plans for future customs posts and checkpoints in the context of the worst case scenario presenting? Are sites being identified, as has been reported? Is there a plan for the numbers and locations of such posts, and what of the hundreds of roads that crisscross the Border, so many of which, as I knew only too well as a Border resident, were closed and cratered by the British not that many years ago?

**Acting Chairman (Deputy Eugene Murphy):** I am conscious that we have only two and a half minutes left. Is it agreed that we take two minutes off the next set of questions to allow Deputy Boyd Barrett contribute? Agreed.

**The Taoiseach:** We do not want to go back there. Deputy Ó Caoláin will know about it only too well. While the independent Revenue Commissioners and customs officials who know how to operate borders have been writing and talking about this, the political challenge here is not to return to that kind of Border. We will not return to that kind of Border. I have made that perfectly clear to the British Government. We are not having those customs posts along the Border at different locations. There is no direction from Government for officials to go looking at sites for the possibility that one will have need of large car parks or sites for lorries etc. We are not going back there because it brings with it sectarian violence, as Deputy Ó Caoláin will know only too well. This is not a technological issue. It is a political issue. This has arisen because of the vote of people of the United Kingdom, even though Northern Ireland voted to stay. We are not going to have that kind of Border and that is my starting point. I will not stand or sign for anything to do with a return to that kind of Border of the past.

In respect of the funds Deputy Ó Caoláin mentions, we have got a particular set of circumstances here where there are INTERREG funds and PEACE funds, which are very necessary in respect of the peace walls that still apply in areas in Northern Ireland, and we want that to continue. I put to the taskforce already that one might be able to have an all-island solution in a number of areas such as animal health, including foot and mouth disease and BSE, water and energy, but these are issues on which nobody can yet answer the question of what is it that we will have until such time as we have clarity from the UK as to the trading relationship that it will have. That is the key to all of this. We are ready with a range of options here but we are not going back to that kind of Border of the past.

**Acting Chairman (Deputy Eugene Murphy):** The Taoiseach will have an opportunity to come in after.

**Deputy Richard Boyd Barrett:** First, I agree with the Taoiseach on one matter. We need to maintain a robust stance that there should be no return to the Border between North and South. I might underline that point for our colleagues in Sinn Féin, who seem to dispute People Before Profit's absolute commitment to that. We believe there should be absolutely resistance at any attempt to reimpose a border between North and South.

Is it not the case that the Brexit phenomena and Donald Trump's ascension to power and the policies associated with it highlight the need for an existential choice for this country, and indeed for many other countries, in terms of whether we join in the turbo-charged race to the bottom that Trump and the right wing of the Tory party are leading in terms of reducing corporation tax which so far both the Government and Fianna Fáil, and now even Sinn Féin in the North, supports; that it is a disastrous model the most extreme expression of which is President Trump which will have a disastrous consequence for the economy; and that we need to reject that model and set out clearly that we are in favour of a more sustainable and fairer economy where the multinational corporations pay their fair share of tax so we have enough to create jobs and provide public services and strategic investment? Do Brexit and Trump not highlight the need to break from that race to the bottom, if we are to have a sustainable economy?

**Acting Chairman (Deputy Eugene Murphy):** The Taoiseach, in a minute and a half, if he can.

**The Taoiseach:** We are not changing our corporation tax rate. We have had this as the cornerstone of foreign direct investment policy in Ireland for many years. It has never moved up or down, or across any region or sector. It is 12.5%. We abolished the double Irish because of reputational perception of damage, we abolished the stateless concept and we have introduced the first OECD fully compliant knowledge box at 6.25%. President Trump is to address a joint sitting of the Houses of Congress this evening and the indications are that his speech will be quite positive.

In every country in the European Union, as Deputy Boyd Barrett will be aware, taxation is a matter of national competence. As an island, we set our corporate tax rate many years ago. I am glad to see that the line of investment continues to be strong. Only the week before last, 1,100 jobs with multinational companies, both here in Dublin and just outside, were announced and we want that to continue. The level of interest being expressed from Great Britain in Ireland, among other countries that are competing for business, is strong. We have connectivity here which is the second busiest route in the world. Ours is an English-speaking, common law system. It is the same kind of environment but there is also access to the Single Market and an opportunity for businesses that wants to be in the European Union to be located here in Ireland, either in or outside Dublin.

I take Deputy Boyd Barrett's point but we are not in a race to the bottom. We have set our standard. Everybody knows it, and that is why they are here. When I asked a chief executive last week situated in Cork, his answer was geography, culture and personality, in terms of the fit for that industry, and it had nothing to do with tax.

### **Cabinet Committee Meetings**

5. **Deputy Ruth Coppinger** asked the Taoiseach further to Parliamentary Question No. 1 of 24 January 2017, when the next meeting of the Cabinet Committee on Justice Reform will

take place. [8460/17]

6. **Deputy Gerry Adams** asked the Taoiseach when the next meeting of the Cabinet Committee on Justice Reform will take place. [9986/17]

7. **Deputy Brendan Howlin** asked the Taoiseach when the Cabinet Committee on Justice Reform will next meet. [10034/17]

**The Taoiseach:** I propose to take Questions Nos. 5 to 7, inclusive, together. The next meeting of the Cabinet Committee on Justice Reform will take place on Tuesday next, 7 March.

**Acting Chairman (Deputy Eugene Murphy):** As Deputy Coppinger is not here, I call Deputy Ó Caoláin.

**Deputy Caoimhghín Ó Caoláin:** That is what the Taoiseach calls sharing information.

I welcome the commencement of the Charleton tribunal and echo Mr. Justice Charleton's appeal for anyone with information to bring it forward to the tribunal.

On Friday last, the chairperson of the Policing Authority, Ms Josephine Feehily, told RTE that the authority has, "a degree of confidence, but we are concerned", in relation to the ability of the Garda Commissioner to carry out her duties for the duration of the Charleton tribunal. That would hardly be a ringing endorsement of the Commissioner. When asked if the authority was concerned about the ability of senior Garda management to fulfil their duties when the tribunal gets under way, Ms Feehily said, "Yes, of course we are." The Policing Authority chairperson also said that the authority had found some deficiencies in the policy of An Garda Síochána on the issue of protected disclosures. The authority's chairperson revealed that the Garda had accepted some, but not all, of its recommendations to deal with this. Is the Taoiseach concerned by the approach of An Garda Síochána to the Policing Authority and to its recommendations? Does the Taoiseach accept - is it not obvious to him and to his colleagues in government and his partners in Fianna Fáil - that there is widespread public acceptance that the Commissioner should step aside, I emphasise without prejudice, while the Charleton tribunal to which her actions are central carries out its investigation?

**The Taoiseach:** I am very glad that the disclosures tribunal has been set up and I welcome wholeheartedly the statements made by Mr. Justice Charleton in his opening comments yesterday. He is a first-class choice for this disclosures tribunal, and given his experience over many years in dealing with the Morris tribunal and his position as a Supreme Court judge, I believe he will do a first-class job. It will be complex and difficult, and he set out the parameters of that yesterday, including his reflection on the issues that might come before the tribunal.

It is important to note also that the first element of the disclosures tribunal will deal with the Garda Commissioner. I do not speak for the independent Policing Authority, nor should I, but I note the comment of the chairperson that she had absolute confidence in the Commissioner's ability to do the job in so far as the Garda is concerned. She did express some concern about keeping the accelerator to the floor at the same time as being able to deal with the issues before the tribunal. The Commissioner will respond to that and I have absolute confidence in her to be able to do that. This tribunal is now up and running. The sole member is a person of exceptional competence and I expect he will start hearings in a very short time. The Deputy mentioned-----



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**Acting Chairman (Deputy Eugene Murphy):** Briefly, Taoiseach.

**The Taoiseach:** Can I say something about protected disclosures?

**Deputy Caoimhghín Ó Caoláin:** Yes.

**Acting Chairman (Deputy Eugene Murphy):** Briefly.

**The Taoiseach:** These are quite complex. I believe many of these will come in before different Ministers in the time ahead. I know the legislation was drafted by Deputy Howlin but it may be appropriate that the House would consider how it will deal with these in the future. If an array of Ministers get protected disclosures from individuals throughout the country, it may be important to have a structure to deal with protected disclosures. That is an issue the House should examine for the time ahead.

**Deputy Brendan Howlin:** I agree. We are committed to having a review of protected disclosures in any event. We are all getting not formal protected disclosures under the Act but many submissions. I am sure other Deputies in the House are getting them, as I am, from people who have been motivated to tell us something on foot of what has emerged in the Maurice McCabe affair.

Has the justice reform Cabinet sub-committee, of which I have fond memories, had time to consider the agreement of Government that an outside expert be provided, as demanded by the members of the Independent Alliance as their ask in terms of supporting the Government position last week? Who is to deal with that because I understand it is to review issues of culture and ethos. Would the Taoiseach not agree that that runs parallel to the work currently being done by an independent body headed by an international expert, namely, the Garda Inspectorate? It has a very fine body of work, with two reports already published. What we do not want is a series of parallel reviews. The Garda is under enough stress. The Garda Inspectorate has done a sterling job. The issue will be the implementation of its recommendations and having a process to ensure that happens rather than having another cultural and ethos overview by some international expert. I am interested in hearing the Taoiseach's reply.

Regarding the Policing Authority, the Taoiseach will recall that our original plan was to give more authority to the Policing Authority than actually manifested itself in the 2015 Act. Significant additional powers were retained by the Minister that we had envisaged should divest to the Policing Authority. Is that matter being looked at again?

**The Taoiseach:** In the first case, what is envisaged here is not a separate parallel entity. There will be an international advertising campaign for somebody to complement and build on the work-----

**Deputy Joan Burton:** What a waste of our taxpayers' money. We have done all that.

**Acting Chairman (Deputy Eugene Murphy):** The Taoiseach, without interruption.

**The Taoiseach:** I thank Deputy Burton. That will build on and complement the work of the inspectorate and the Policing Authority. I believe the chairperson referred to that also. That will be an internationally advertised position.

With regard to the Policing Authority, the chairperson referred last week to the extensive powers she already has. The authority can hold the Garda Síochána to account. Senior Garda

management report to the authority, including via public meetings which are already under way.

**Deputy Brendan Howlin:** Reporting to but not accountable in this Chamber.

**The Taoiseach:** The authority can determine Garda priorities regarding policing services, nominate persons for appointment by the Government to the posts of Garda Commissioner and deputy Garda commissioner, appoint persons to the rank of Garda superintendent, chief superintendent and assistant commissioner and remove them for reasons related to policing services, as Deputy Howlin is well aware, and appoint persons to senior positions within the Garda civilian staff. A great deal of work has gone on already with the Policing Authority.

The Cabinet sub-committee has not had an occasion yet to consider the work that will be done to complement and build on the foundations of the inspectorate and the Policing Authority, but it will at its meeting on 7 March.

**Deputy Micheál Martin:** I would make the point that my position has always been very clear in terms of commissions of investigation and tribunals. The principle of innocent until proven guilty is an important one that we cannot jettison too easily in the House. It also affects future commissions. For example, we could have a commission of investigation into Project Eagle. Does that mean that the directors or the CEO of NAMA have to stand aside while that is under way? Of course it does not. When the Bill was enacted in 2004, nobody ever envisaged that the mere establishment of a commission of investigation would trigger people standing aside. It is nothing to do with the individual concerned or protecting anybody. It is an important principle that should be acknowledged across the House.

**The Taoiseach:** Agreed.

**Deputy Micheál Martin:** Things are particularly intense at the moment so people will bring up different issues. I accept that there are challenges.

The Policing Authority was established to depoliticise the-----

**The Taoiseach:** Appointments.

**Deputy Micheál Martin:** -----appointments but also the administration of justice and policing, so to a certain extent politicians are contradicting themselves. If there is a call to be made, it should be left to the Policing Authority to determine the issue pertaining to the Commissioner. The Policing Authority has already made a comment, which some Deputies have pointed out is perhaps of a qualified nature in terms of saying it had a degree of confidence but, nonetheless, the authority is keeping a watching brief on that.

**Deputy Brendan Howlin:** Deputy Martin's own comments were qualified too.

**Deputy Micheál Martin:** They were qualified because there was a deliberate political attempt made to suggest we were protecting somebody, which we are not. Does Deputy Howlin understand? The issue was the principle that one is innocent until found guilty.

**The Taoiseach:** Yes.

**Deputy Micheál Martin:** That is the principle I would have always observed in the conduct of public affairs-----

**Deputy Brendan Howlin:** Absolutely.

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**Deputy Micheál Martin:** -----and particularly in the context of commissions of investigation because what could quickly follow is that when future ones are established, before we even have an investigation, everybody in a position of authority would have to step aside if that precedent is established. That is the point I am making in the calmer environment of this Question Time but I put it to the Taoiseach that it is a point on which we need to reflect.

**Acting Chairman (Deputy Eugene Murphy):** We are way over time.

**Deputy Micheál Martin:** Finally, the Garda Inspectorate is that international overview body. I know the members of the Independent Alliance have to find some way out of whatever but we have to give up that kind of politics. It is the idea that they need to have a hook to hang or whatever acquiescence so therefore someone magics up an international review. We have already had that. It is ongoing and it is very good. Some of these reports have been very hard hitting. If only they were acted on with a degree of energy. For God's sake, the Taoiseach should tell the members of the Independent Alliance to back off. Let us not waste more resources on something that is already in position.

**Acting Chairman (Deputy Eugene Murphy):** We are almost out of time, but if the Taoiseach does not mind, I will call Deputy Burton who indicated that she wants to ask a brief question.

**Deputy Joan Burton:** This is a disgraceful waste of taxpayers' money. We are paying for the Policing Authority. It has produced a very detailed report which we had debated in Cabinet. Mr. Olson, who has done many briefings, came in and briefed us.

*4 o'clock*

I have a lot of respect for the Taoiseach but this is a fig leaf to cover the embarrassment of the Minister, Deputy Ross, and his group. Could the Taoiseach not have given him an extra police station in Stepaside? Even Deputy Healy-Rae made a case this morning following the burglaries at the weekend in Kerry and west Cork that perhaps there is a need for a review. This is a total waste. The man who will do the review will be trundling his case somewhere along the quays, checking into a hotel for a number of weeks, and we will be paying for it.

**Acting Chairman (Deputy Eugene Murphy):** Deputy, please.

**Deputy Joan Burton:** What type of indulgence is this?

**Acting Chairman (Deputy Eugene Murphy):** The Deputy is eating into the time for the next question in which she is involved.

**Deputy Joan Burton:** It damages much of the Taoiseach's very good record on good governance.

**Acting Chairman (Deputy Eugene Murphy):** Thank you, Deputy.

**Deputy Joan Burton:** This is just a fig leaf to patch over a political row.

**Acting Chairman (Deputy Eugene Murphy):** I must ask the Deputy to conclude.

**Deputy Joan Burton:** It is a disgrace for the taxpayers.

**Acting Chairman (Deputy Eugene Murphy):** I wish to point out to the Deputy she is tak-

ing up her own time on the next question.

**Deputy Brendan Howlin:** I doubt that.

**Acting Chairman (Deputy Eugene Murphy):** We are down 12 minutes. I call on the Taoiseach for a very short answer.

**The Taoiseach:** That was supposed to be a short comment by Deputy Burton which it was not. The strength of the Garda force will go to 15,000 and this is part and parcel of providing a strong police force which is well-equipped to keep our people safe. I am in full agreement with Deputy Martin on this, on the basis of innocence until proven guilty. The fact of the matter is the Garda Commissioner has not had any charge against her and has not been convicted of anything. Other people who might have stepped aside were the subject of criminal investigations and we know one was exonerated by the DPP, had the charge removed and was then reinstated. This is not the case with the Garda Commissioner. People who say she should just stand aside remove the principle mentioned by Deputy Martin of innocence until proven guilty and it is an important distinction. If one is exonerated by the DPP or a court it is an entirely different matter. Where people are the subject of criminal investigations it places them in a different position to someone who has no charge brought against them.

**Deputy Caoimhghín Ó Caoláin:** Very briefly-----

**Acting Chairman (Deputy Eugene Murphy):** I apologise, but I cannot allow the Deputy in. I am moving on to the next set of questions.

### **EU Meetings**

8. **Deputy Micheál Martin** asked the Taoiseach if he has spoken to President Juncker regarding Brexit. [8461/17]

9. **Deputy Joan Burton** asked the Taoiseach the contact he has had with the Italian Prime Minister, Paolo Gentiloni, regarding his publicly stated support for the concept of a two speed EU in advance of the EU summit to commemorate the 60th anniversary of the Treaty of Rome. [8525/17]

10. **Deputy Gerry Adams** asked the Taoiseach if he will report on his Department's engagements with the EU's negotiating team, led by Mr Michel Barnier. [8550/17]

11. **Deputy Micheál Martin** asked the Taoiseach his views on future reform of the EU. [8775/17]

12. **Deputy Gerry Adams** asked the Taoiseach if he has had contact since 1 January 2017 with the President of the European Commission, Mr. Jean-Claude Juncker, regarding Brexit. [9988/17]

13. **Deputy Micheál Martin** asked the Taoiseach if he will report on any communication he has had with the Italian Prime Minister regarding the 60th anniversary of the Treaty of Rome. [9997/17]

14. **Deputy Micheál Martin** asked the Taoiseach if he will report on his meetings in Brussels on 23 February 2017 with various EU leaders and with President Juncker; the issues that

were discussed; and the responses that were made. [10420/17]

15. **Deputy Joan Burton** asked the Taoiseach if he will report on his meeting with Belgian Prime Minister Charles Michel in Brussels on 23 January 2017. [10458/17]

16. **Deputy Joan Burton** asked the Taoiseach if he will report on his meeting with European Commission President Jean-Claude Juncker on 23 January 2017. [10459/17]

17. **Deputy Micheál Martin** asked the Taoiseach if he will report on all of the meetings he attended in Brussels on 23 February 2017. [10424/17]

**The Taoiseach:** I propose to take Questions Nos. 8 to 17, inclusive, together.

On 23 February, I travelled to Brussels to meet Prime Minister Charles Michel of Belgium; to participate in a business event organised by the Ireland Belgium Business Association, supported by Enterprise Ireland and the embassy of Ireland; and then to meet European Commission President Jean-Claude Juncker.

My discussions with Charles Michel focussed on Brexit and the future direction of the EU. I explained Ireland's particular concerns arising from Brexit for our trade and economy; Northern Ireland and the peace process; the common travel area; and Border and citizenship issues. The Belgian economy, like Ireland's, will be seriously affected by the UK's exit. We agreed on the need for the EU to retain a united, values-based approach in the period ahead, and to deliver effectively for our citizens. At the Enterprise Ireland event, I met key representatives of Irish and Belgian businesses. I delivered a positive message of support for their activities and for Ireland's role as a committed member of the European Union and a leading promoter of free trade. My discussions with President Juncker focused on Brexit and the future direction of the EU. I set out in detail our particular concerns and outlined our approach, and we exchanged views on the negotiations ahead. Michel Barnier, head of the Commission's task force, joined us for part of our meeting. I was very clear the unique circumstances relating to Northern Ireland and the Good Friday Agreement must be recognised from the start and reflected in the final agreement. I am satisfied the Commission, which has been very open to hearing our views, has understood this message very clearly. Deputies will recall I met Michel Barnier in Dublin last year. There has also been ongoing engagement with Michel Barnier's task force at official level, involving officials from my Department, the Department of Foreign Affairs and Trade, other relevant Departments and, of course, our permanent representation in Brussels. This engagement has aimed at setting out the details of Ireland's concerns about Brexit, including Northern Ireland and the other issues I mentioned.

I plan to travel to Brussels again on Thursday for a further series of meetings. As part of this visit I will have further more detailed discussions with Mr. Barnier.

Since the UK referendum last June, I have had a series of bilateral meetings with my counterparts in EU member states and with the heads of the EU institutions. I have also attended all meetings of the European Council, formal and informal. At the recent informal summit in Malta, as at all meetings of the European Council, I engaged with my European counterparts, including President Juncker and Prime Ministers Michel and Gentiloni, during the course of the event and in the margins of the meetings. We agreed on the need for unity and on the importance of our core values, which are central to our future peace and prosperity. We also agreed on the importance of delivery for our citizens and, in that context, the need to press ahead in areas of particular relevance, including jobs and growth and investment as well as migration

and security. The exchanges at Valletta will feed into preparations for a meeting in Rome on 25 March to mark the 60th anniversary of the Treaty of Rome, at which it is expected that the EU will set out plans for its future direction.

I have stressed the EU must remain united if we are to effectively confront the many challenges we face. While there may be a difference of emphasis, this view is shared by other leaders, and I expect this will be reflected in our discussions in Rome.

**Acting Chairman (Deputy Eugene Murphy):** I want to ensure the three Deputies get in on this. Seven minutes and 38 seconds remain. I ask the Deputies to stick to the time.

**Deputy Micheál Martin:** The three of us could ask our questions collectively.

**Acting Chairman (Deputy Eugene Murphy):** Is that agreed? Agreed. I also ask the Taoiseach to stick to the one and a half minute time limit.

**Deputy Micheál Martin:** The Minister for Finance appears to have given a very aggressive statement at a private dinner, and I note he often seems to be more aggressive in private than in public, concerning the Commission's agenda on corporation tax. The report states he said the Commission would undermine agreed OECD anti-evasion rules and was failing to keep to previous agreements respecting tax sovereignty. Did the Taoiseach raise these matters with President Juncker or are the comments intended to make us appear tough without there being any follow-up? In other words, was it a co-ordinated approach between the Taoiseach and the Minister, Deputy Noonan, with the Commission in terms of its strategy on tax sovereignty and tax issues in general?

The repeated assurances of Mr. Barnier concerning Ireland are very welcome, particularly in Northern Ireland, but, as we have said earlier, we need to go from generalities to specifics. Some items clearly require the British to present their position first and I acknowledge this, but others are purely between Ireland and the European Union. Whatever is agreed, there will be a need to support communities and businesses hit by Brexit. I heard the Taoiseach state earlier it is not a question of giving support to companies, but there is no scenario where all negative impacts can be avoided. There will be negative impacts and in some cases we are already being hit. Has the Taoiseach raised the need for special funds, perhaps a relaxation of certain state aid rules, to help companies diversify markets and products during a transitional phase? If Britain is not in the customs union it will be trouble for domestic companies, particularly in the agrifood sector. All of the warning signs are there and we need to do something about it.

**Deputy Joan Burton:** When the Taoiseach met the Prime Minister of Italy, Paolo Gentiloni, did he discuss the proposals by Italy and others in the original European group that they want to return to a form of federalism and that they will not dilute their federalist plans to keep reluctant members on board? The Taoiseach spoke to me briefly about this previously, and he feels it is part of the normal chat down the decades in the EU, but it is not. It is members of a core group stating they will do it their way. We also have the members of the Visegrad group of eastern European states saying if this happens they will do it their way. Whatever will happen, we all know that in the years to come the EU will not be the same EU as it is today. The Taoiseach's EU strategy is an enigma wrapped in a mystery because we cannot get any details from him. He has bits of chat about various sectors but we lack a sense of strategy. The sense of strategy the Taoiseach must outline, because we are a democracy, is what are his proposals on Ireland and the forthcoming Brexit. We are still in the dark and while we have had a lot of

conversations with the Taoiseach we have had almost no clarity on strategy. We know what his concerns are but we want the strategy.

**Deputy Caoimhghín Ó Caoláin:** Brexit presents the greatest challenge to the people of this island for many decades. The British Prime Minister will trigger Article 50 within the next fortnight and I welcome the Taoiseach's declared objective that there must be a clause in any Brexit deal to allow the North to rejoin the European Union in the context of a united Ireland. However, the Irish Government's rejection of a special designated status for the North within the EU is deeply disappointing and is at odds with his own stated position in this Chamber. Last week, when asked about this by Teachta Adams, the Taoiseach said we had special circumstances, a special arrangement, a special peace process, special peace funds and special INTERREG funds, about some of which we spoke earlier. He stressed the importance of all-island solutions to water, electricity and animal health so does it not make sense to have a special designated status for the North within the EU? In my opinion, and that of many others, we need a special status for the Six Counties within the European Union, not outside of it.

Did the Taoiseach raise the case for a special designated status with Mr. Juncker and his chief negotiator, Mr. Michel Barnier? Last Tuesday, the Taoiseach said the Government would publish a white paper on Brexit. Can he indicate when we can expect it to be published and when does he expect the negotiations to commence? Will he be leader of his party and Taoiseach when that point is reached?

**The Taoiseach:** Deputy Martin asked about the comments by the Minister for Finance, Deputy Noonan. He was pointing out the difference between the approaches of the European Commission and the OECD. We have been to the fore in dealing with base erosion and profit shifting and we have been up front about it. We abolished the stateless concept and the double Irish and this is why the Minister made his comment about the common consolidated corporate tax base. We are holding onto our corporation tax rate of 12.5%. I did not raise this with the President, Mr. Juncker, the other day because we were focused on the commencement of negotiations and how to maintain our priorities. I raised the question of special funds because there may need to be a transition period and the country will need them, though we cannot define the scale just yet.

Deputy Burton has gone completely native. Our priorities are for our economy, our citizens and our jobs. Our priorities are Ireland's place as a future member of the European Union and to maintain the common travel area.

**Deputy Joan Burton:** I asked about the strategy, not priorities. What is the strategy?

**The Taoiseach:** Our priority is to maintain the peace process and to build on it, and to continue the good work which has meant that unemployment has fallen from 15.2% to 6.6%, our deficit will be eliminated next year and there is a very strong line of investment in this country, with it being seen as an attractive cauldron of enthusiasm with young people from all over the world working here.

I deliberately made the point that we want to see the wording of the Good Friday Agreement put into the negotiated settlement so that, at some time in the future, if the people decide to have a united Ireland the current entity of Northern Ireland can rejoin the Republic as a member of the European Union in a seamless fashion and without having to wait 20 years in an application process. I am glad the Deputy supported that. I noted Lord Hain's comments in the House of

Lords the other day to the effect that provision should be made for this if the people, at some point in the future, give their consent to a united Ireland.

We have a special status and the way the European Council works is by building on foundations, which we have with the peace process and the INTERREG funds. We are the only place in Europe to have such a peace process and we have a unique set of circumstances. I want to build on that in the future by making a case for a common island within the European Union, with co-operation in the areas of water, disease eradication, animal health, energy, electricity etc. When the British Prime Minister writes to the European Commission, we will be able to respond in full because we will then have heard the statement of intent for the future relationship, which is really important.

**Deputy Caoimhghín Ó Caoláin:** In the short term also, it must be recognised within the EU.

**Deputy Micheál Martin:** You collapsed the institutions in the North.

**Deputy Caoimhghín Ó Caoláin:** That will be sorted out by Friday.

### **Topical Issue Matters**

**Acting Chairman (Deputy Eugene Murphy):** I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 21 and the name of the Member in each case: (1) Deputies Mick Barry, Ruth Coppinger, Paul Murphy, Mattie McGrath, Louise O'Reilly, Richard Boyd Barrett, Bríd Smith, Gino Kenny, Brendan Ryan, Joan Collins, Niall Collins, Thomas P. Broughan, Dessie Ellis, Róisín Shortall, Robert Troy, James Lawless, Frank O'Rourke, John Brady, Fiona O'Loughlin, Seán Haughey and Dara Calleary - the ongoing industrial dispute at Tesco; (2) Deputy Brendan Griffin - the need for progress on CF drugs Orkambi and Kalydco; (3) Deputy Bernard J. Durkan - funding to The Moat Club, Naas, County Kildare; (4) Deputy Joan Burton - the implementation of the Cush report's recommendations; (5) Deputy Pearse Doherty - appointment of a second consultant breast surgeon at Letterkenny University Hospital; (6) Deputy Aengus Ó Snodaigh - delays for orthopaedic operation patients in Dublin south central; (7) Deputy Carol Nolan - the *ex gratia* scheme of compensation for school sex abuse survivors; (8) Deputy Clare Daly - industrial action by Dublin Fire Brigade; (9) Deputy Tom Neville - the littering of rural Ireland; (10) Deputy Thomas Pringle - the south Donegal CAMHS consultant psychiatrist post; (11) Deputy Pat Buckley - ambulance cover in east Cork; (12) Deputy Eoin Ó Broin - the need for HSE occupational therapists in the CHO area 7; (13) Deputy John Brassil - the NCPE decision on the Respreeza medication; (14) Deputy Michael Moynihan - plans to introduce medicinal cannabis; (15) Deputy Margaret Murphy O'Mahony - the Grace foster care case; (16) Deputy Imelda Munster - respite care wheelchair access at St. John of God's in Drumcar, County Louth; (17) Deputy Donnchadh Ó Laoghaire - the site of the last Magdalen laundry on Sean McDermott Street; and (18) Deputy Declan Breathnach - the services provided at the St. John of God's facility in Drumcar, County Louth.

The matter raised by Deputies Mick Barry, Ruth Coppinger, Paul Murphy, Mattie McGrath, Louise O'Reilly, Richard Boyd Barrett, Bríd Smith, Gino Kenny, Brendan Ryan, Joan Collins, Niall Collins, Thomas P. Broughan, Dessie Ellis, Róisín Shortall, Robert Troy, James Lawless, Frank O'Rourke, John Brady, Fiona O'Loughlin, Seán Haughey and Dara Calleary has been selected for discussion.



## Ceisteanna - Questions (Resumed)

### Priority Questions

#### Brexit Issues

36. **Deputy Michael McGrath** asked the Minister for Finance the customs arrangements that he and his Department expect to apply between the Republic of Ireland and Northern Ireland in the event that the United Kingdom leaves the customs union as part of its exit from the European Union; the impact he expects these customs arrangements will have on trade and the day-to-day movement of persons across the Border; and if he will make a statement on the matter. [10409/17]

**Deputy Michael McGrath:** This question follows an exchange we had at the Oireachtas finance committee recently about the nature of the customs border that may emerge, or be agreed, in the context of Brexit. There is a lot of concern on the island, and particularly around the Border counties, about the nature of the Border that will emerge over the course of these discussions if the UK leaves the customs union to which it is currently party. The Minister put some helpful information on the record in the committee in recent weeks following discussions he had with Revenue and I hope he can elaborate on that today and put on the record of the House how he envisages this developing over the months ahead.

**Minister for Finance (Deputy Michael Noonan):** The Government's headline priorities in response to Brexit are well known: minimising the impact on trade and the economy, protecting the Northern Ireland peace process, maintaining the common travel area and influencing the future of the European Union. It is quite clear that there are major challenges ahead for the EU, the UK and for Ireland.

The position in relation to the Border with Northern Ireland in the context of Brexit is very clear and has been articulated by the Taoiseach on several occasions. Continued freedom of movement, absence of a hard Border and minimal impact on business and trade are key objectives. The Government is clear that any manifestation of a hard Border would have very negative consequences. A key priority is to ensure the continued free flow of trade on the island and the need to avoid a hard Border. Clearly, in this regard the closer the trading relationship between the UK and EU is more generally, the better.

My Department has been preparing for the impact of Brexit since well before the referendum on 23 June 2016, with this work now intensified. The primary areas for the Department of Finance relate to the economic and financial sector implications stemming from Brexit. This work is being undertaken within the whole-of-Government framework established by the Department of the Taoiseach and will be an important input role to ensuring Ireland's interests are protected in the upcoming negotiations at EU level and in terms of minimising any adverse impacts on our economy.

The precise arrangements that will apply after Brexit will depend on the outcome of negotiations between the EU and UK after formal notification under Article 50.

**Deputy Michael McGrath:** I thank the Minister very much for his reply. A number of weeks ago, he spoke about a traffic light-type system, whereby the vast majority of goods going over the Border could be dealt with by way of electronic scanning. He also said that a small percentage of goods going over the Border might be subject to random physical checks. Given that the EU is already trading with third-party countries that are outside the customs union, there must be a precedent as to how this might work in practice. Whether we like it or not, the Border between the Republic and Northern Ireland is likely to become the border between the EU and a third-party country that will be outside the customs union. That has serious potential implications for the conduct of trade, cross-Border shopping and the day-to-day life of tens of thousands of people crossing the Border.

Can the Minister give his assessment of what are the options? We know that Revenue has been looking at different scenarios and contingencies. Where would the Government like to take this debate about the nature of a customs border on the island of Ireland?

**Deputy Michael Noonan:** The Government's policy position is clear. We want to continue with the invisible Border as it is now or to put it another way, we do not want any hard Border reimposed between ourselves and Northern Ireland. What I described in committee was not anything that would happen or is happening on the Border. I described how goods from third countries under WTO rules are now treated at the point of import into Ireland. I particularly referenced Dublin Port because many of the goods come in through there. I noted that with advances in technology, all the necessary documentary clearance is done electronically.

The Deputy referred to the traffic-light system. Some 92% of imported goods from third countries are now cleared electronically before they come to the port of import in Ireland. They pass through without further examination.

A further 6% of imported goods are in the orange category. In those cases, if the method of transport is by container the Revenue will expect a manifest of the contents to be supplied. Revenue checks the manifest but there is no physical inspection of the goods in that respect. Less than 2% of goods are physically examined at the port of import.

**Deputy Michael McGrath:** I thank the Minister for his reply. If the UK leaves the customs union and if there is no agreement on the conduct of trade, then the default position is World Trade Organization terms. That means there will have to be some control in place. It cannot mean there will be nothing in terms of the oversight and regulation of goods going over and back across the Border. We need to know what is the Government position on the use of technology, including electronic scanning. The Minister referred to imported goods coming through Dublin Port from third-party countries, some of which would be under WTO terms. Can that have practical effect across a land Border of up to 500 km with several hundred major and minor crossing points? Tens of thousands of people cross the Border every single day of the week. Can technology be deployed in such complex circumstances? I appreciate that this negotiation is only about to commence, but it would be useful for people to hear what is the Government's objective, recognising that the UK is likely to leave the customs union. That must mean something in terms of controlling the cross-Border movement of goods.

**Deputy Michael Noonan:** The Government's policy position on its approach to the negotiation has been expressed in our contacts with the UK authorities both at the political and Civil Service levels. It is that people, goods and services should pass without let or hindrance from North to South and *vice versa* and there will be no change in the present position. We know that

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the British negotiation position is to have a free trade agreement between the United Kingdom and the European Union. We suppose that they will make some progress in that negotiation and that if there is not a full free trade agreement, at least there will be something that would be significantly better than the default position of a World Trade Organization arrangement with the UK, treating them as absolute outsiders in a third-country category.

Effectively, therefore, we will have to wait to see what the results of the negotiations are. In the meantime, various Departments and State agencies are looking at the implications both of the free travel area and the invisible Border policy objective which we have. In that context, various options are being examined but it is not possible to make decisions until we see the outcome of the negotiations between the EU and the UK or until they are well advanced.

**Acting Chairman (Deputy Eugene Murphy):** We are grouping Questions Nos. 37 and 40 in the names of Deputy Pearse Doherty and Deputy Michael McGrath. Can Deputy Doherty do the introduction? He has 30 seconds.

**Deputy Pearse Doherty:** I was not notified that there was a grouping. Were we notified earlier on?

**Acting Chairman (Deputy Eugene Murphy):** I am acting here as temporary Chairman and I am going by what has been given to me. I presume it was agreed.

**Deputy Pearse Doherty:** It is not agreed by the Opposition. It is imposed on us.

**Acting Chairman (Deputy Eugene Murphy):** I can only do what I have here, so I would ask the Deputy to introduce his question.

**Deputy Pearse Doherty:** I did not see it. For the record, my priority question has been disallowed. The Minister will not answer questions on Project Eagle and a commission of investigation.

**Acting Chairman (Deputy Eugene Murphy):** I cannot allow that.

**Deputy Michael Noonan:** Everybody, including the Deputy, knows that the disqualification request is not a matter for the Minister. It is a matter for the Chair.

**Acting Chairman (Deputy Eugene Murphy):** It is the Ceann Comhairle who decides on that issue, so I do not think it is fair for the Deputy to bring it up here in the Chamber when we are dealing with questions to the Minister for Finance.

**Deputy Pearse Doherty:** I think it is perfectly fair.

**Acting Chairman (Deputy Eugene Murphy):** The Deputy is wasting the time of the House. Will he please take it up with the Ceann Comhairle and not with me? I ask the Deputy to proceed and introduce his question please.

**Deputy Pearse Doherty:** I am going to introduce my question.

**Acting Chairman (Deputy Eugene Murphy):** Well please introduce it, thank you.

**Deputy Pearse Doherty:** I will make reference to the fact that my priority question this month has been disallowed.

**Acting Chairman (Deputy Eugene Murphy):** That is not an issue for me.

**Deputy Pearse Doherty:** I am not satisfied because it is supposed to be hypothetical, as if customs control in terms of Brexit is not hypothetical also.

**Acting Chairman (Deputy Eugene Murphy):** I see the Deputy is agitated about that issue, which is fair enough. I am asking him to take it up with the Ceann Comhairle, not here. Will he please proceed and introduce his question?

**Deputy Pearse Doherty:** I will proceed if the Acting Chairman stops interrupting me. I have made my point.

**Acting Chairman (Deputy Eugene Murphy):** You are continuing to make it. The Deputy has 30 seconds to introduce his question.

**Deputy Michael Noonan:** I would like the Deputy to withdraw the false allegation against me that I refused to answer his question.

**Acting Chairman (Deputy Eugene Murphy):** I think he should because this is a matter for the Ceann Comhairle.

**Deputy Pearse Doherty:** I did not say he refused.

**Deputy Michael Noonan:** The Deputy did.

**Deputy Pearse Doherty:** I said the Minister will not answer because-----

**Deputy Michael Noonan:** The Deputy did what he always does - make false accusations.

**Deputy Pearse Doherty:** Nobody claimed that. I said the Minister will not answer because the issue has been disallowed.

**Acting Chairman (Deputy Eugene Murphy):** Can Deputy Doherty please resume his seat for a moment? The reality is that the Ceann Comhairle makes the rules. I have had questions disallowed by the Ceann Comhairle and I accept that. The Deputy should accept it now and move ahead. It is not for discussion here. I appeal to the Deputy to use his 30 seconds to introduce his question. He can take the issue up with the Ceann Comhairle.

**Deputy Pearse Doherty:** I will do that at your invitation. I will also correct the record of the House that you asked me to do.

**Acting Chairman (Deputy Eugene Murphy):** Thank you.

**Deputy Pearse Doherty:** For the record, what I have said is that my priority question in relation to Project Eagle has been disallowed. The Minister will therefore not answer questions on that. I am not asserting that it is the Minister who disallowed the question. Indeed, the Minister did answer questions at the committee before, so nobody should jump to conclusions, but I am not satisfied that this has happened. We will bring that up with the Ceann Comhairle.

**Acting Chairman (Deputy Eugene Murphy):** That is fine. Please proceed with Question No. 37.

## Tracker Mortgage Data

37. **Deputy Pearse Doherty** asked the Minister for Finance if he will work with the Central Bank to ensure a deadline is set for all customers affected by the tracker rate mortgage scandal to receive full closure of their case along with redress and compensation; and if he will make a statement on the matter. [10016/17]

40. **Deputy Michael McGrath** asked the Minister for Finance if he has had discussions with the Central Bank regarding their tracker examination; the status of the reinstatement of the correct tracker rate for the affected customers; if the Central Bank probe will involve examining the way this issue arose across the banks in the first place including, for example, the minutes of meetings; and if he will make a statement on the matter. [10411/17]

**Deputy Pearse Doherty:** The question before us concerns the Central Bank and the absolute scandal that 15,000 customers have found themselves in whereby they have been denied tracker mortgages. Some weeks ago, Sinn Féin used our Private Members' business time to bring this matter to the floor of the House. The motion, as amended, has been passed. Part of that motion was that the Central Bank would have a deadline in place to resolve this issue. People need to see light at the end of the tunnel. They need to know whether they will be part of the redress programme. They also need to know the compensation they will have. It is incredible that, as we speak, people are still expected to pay over the amount they should be paying to their financial institution.

**Deputy Michael Noonan:** I propose to take Questions Nos. 37 and 40 together.

The tracker mortgage examination is the most significant supervisory review undertaken in the context of the Central Bank's consumer protection remit. It is a key priority for the bank and it is working to ensure that the examination is completed as soon as possible. However, it is critical that each lender carries out a comprehensive and robust review, which achieves a fair outcome for all customers. While significant progress has been made, the Central Bank advises that due to the scale and complexity of the review, it will take some further time to complete.

Specific timelines have been set for all lenders to complete their internal reviews, and some lenders will have their internal reviews completed sooner than others depending on the size of their mortgage books and the complexities associated with them completing the examination. Based on current progress, the Central Bank expects that all relevant lenders will have identified affected customers by mid year and that they will progressively implement measures to address their situations with payment of redress and compensation. The processing and consideration of any customer appeals and the Central Bank's own assurance work is a process that may continue beyond that point for some lenders.

The Central Bank has set down a robust framework whereby lenders' internal reviews will be overseen by independent third parties. As part of the examination, the Central Bank has made clear what it expects of lenders in terms of redress and compensation to impacted customers, namely, lenders will ensure that harm is stopped at the earliest possible time once a group of impacted customers is identified, interest rates applied to impacted customers' accounts are to revert to the appropriate tracker interest rate or impacted customers are to be given the opportunity to revert to such a rate where relevant, redress should ensure that impacted customers are returned to the position they would have been in had lenders' failure not occurred, compensation that reflects the detriment suffered by the individual customer is to be provided by lenders

and an additional payment is to be provided to the impacted customers to enable them to take independent professional advice regarding the redress and compensation offers made to them.

The framework of the examination has been designed to ensure that as and when groups of impacted customers are identified, in the first instance, the lender must stop charging the incorrect rate of interest on the customer's account to prevent any further detriment. The framework also requires lenders to establish an independent appeals process to deal with customers who are dissatisfied with any aspect of the redress package that they receive from lenders in respect of these matters.

The Central Bank has also advised that it will consider appropriate supervisory action, up to and including enforcement action, where necessary. All angles, including individual culpability, will be thoroughly investigated in the context of the legal framework. Enforcement measures will be deployed as appropriate, including investigating issues and taking cases under the Central Bank's administrative sanctions procedure together with the use of fitness and probity powers. Enforcement investigations of this type are detailed and forensic, routinely involving the scrutiny of thousands of documents and the conduct of interviews as part of the investigative process. To date the bank has concluded an enforcement investigation in respect of tracker mortgage failures identified at Springboard Mortgages Limited and imposed a monetary penalty of €4.5 million.

The Central Bank is also aware of the motion passed by Dáil Éireann on 26 January 2017 and it is noted that the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach will invite the Bank to attend before it on a quarterly basis regarding the examination.

**Deputy Pearse Doherty:** I thank the Minister for his response. He mentioned that the Central Bank has noted our motion. In his correspondence or dealings with the Central Bank, has it indicated that it will do as this House has asked of it? It was asked to set a deadline for each financial institution so that there is clarity as to when individuals will be restored to the correct rate, when arrears, which should not have built up, will be rectified and when payments will be made to those individuals in respect of the redress.

One of the big problems here is that these banks have been caught out robbing their customers. I have used that word again and again and sometimes I use it to be provocative, but that is what they did. The big concern here is that 15,000 individuals have been robbed by the banks. They attempted to take approximately €800 million from these individuals but did not get away with it. What are we going to do? Will it be just a slap on the wrist, a case of putting the money back and a fine for the institutions? Where is the individual responsibility here? Even though the Minister mentioned that individual culpability will be looked at I am not convinced that the Central Bank has carried out an investigation robust enough to actually look in those directions.

**Deputy Michael McGrath:** A real wrong was perpetrated on people here and that is why Deputies in this House continue to raise the issue. It is not a Mickey Mouse issue. I will bring the Minister's attention to an e-mail we received during the week from a customer of KBC who said that he is paying €600 extra per month above what he should be paying and has been doing so for the last seven years. He has paid, over that period, €50,000 more than he should have. That is the scale of this for some people. It is absolutely enormous and it is life changing.

What really frustrates me is that we cannot get access to very basic information. In the case

of each bank, how many customers have they reinstated to the correct rate? There is no deadline on the banks to do that. There was a deadline to complete the assessment of their customers, to identify the accounts and so on, but there is no deadline on the reinstatement of the correct rate for customers. Even where customers are being reinstated we now have the new phenomenon of tracker rates of 3.67% in the case of AIB and 3.25% in the case of Permanent TSB, which is a farce. It is still going on. That is the problem. It will continue to be raised here until we can get answers to some very basic questions, which are not being answered by parliamentary question or whatever other means. I assume the Minister is frustrated too because he is not dealing with it directly; it is the Central Bank. Will the Minister share his thoughts with us?

**Deputy Michael Noonan:** I thought my answer was pretty full. To answer Deputy Doherty's question, specific timelines have been set for all lenders to complete their internal reviews. It is the most significant supervisory review undertaken in the context of the Central Bank's consumer protection remit. I assume, from the various answers I have given here, that when the Central Bank probed the matter, it found it was of a greater magnitude than had been expected and that it would have liked to have completed its work at an earlier date.

Since we talked about it here last, the Central Bank has assured me that it will be in direct contact with the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach. I do not know whether it has done that. It also assured me that it would communicate some of the information that was sought by Deputies here directly, by way of letter. It was also informed by my officials of the committee's request for the Central Bank to attend before it on a quarterly basis to review the situation.

I agree with the Deputies. This was a scandalous situation. The Central Bank is addressing it in a very forthright way now. It has no intention of hiding anything and it wants to co-operate fully with the Deputies in this House who so ably raised this issue. The best forum to deal directly with the bank, rather than through me as the Minister with ultimate responsibility for the bank, is through the Joint Oireachtas Committee on Finance, Public Expenditure and Reform, and Taoiseach.

**Deputy Pearse Doherty:** The Minister mentioned that there are deadlines for each of the individual banks. None of that is public. If it is, perhaps the Minister will direct me to it. None of the customers knows that because they are ringing up to ask when they will be told what the redress scheme is, how they will be affected and when they will be back on the proper rates or proper payments. None of that is there so there has to be more forthright engagement from the Central Bank and the lenders with the customers. The reason we are questioning this here is because customers are being left short changed.

There is another question here and we really need to deal with it. I know it is sensitive, but we need to ask how the Central Bank missed this. We need to ask ourselves, as a country, is it expected that the Central Bank would have enough resources, enough power and enough personnel to make sure that this issue would not arise? The assumption out there is that there is a consumer protection role. The Central Bank investigated this in 2011. It found one bank which had to restore more than 2,000 individual to tracker rates, yet five or six years later we have another 13,000 individuals. There are genuine questions we need to ask about the Central Bank, not just about its role in overseeing what is an internal bank-led review, which is wrong in itself.

**Deputy Michael McGrath:** Just to clarify, there is no deadline on putting customers back on the correct rate. There is a deadline for the banks to complete their assessment of their mort-

gage books, but we have it in writing from Bank of Ireland that no deadline has been imposed by the Central Bank on putting customers back on the correct rate. The priority now has to be ensuring that customers who were contractually entitled to a tracker rate are not on a made up tracker rate of 3.67% but, rather, a tracker rate that is relevant to the contract into which they entered initially.

Beyond all of that, we need to know how this issue was handled within the banks when they became aware of the problem. Not a single bank put up its hands, said it had found a problem and that it would address it. In each case, it was forced upon them by way of customers taking cases to the ombudsman or to court and the Central Bank eventually becoming involved. How is it that when this issue was first brought to the attention of banks or they identified it they did not put up their hands and deal with it?

I hope the Central Bank will go back to the minutes of meetings when the issue was discussed and examine the decisions that were made by banks not to confront and deal with the matter at that time. If the Central Bank is to carry out a proper probe, that is the level of detail into which it needs to go because the investigation has to be a watershed moment for the Central Bank and our banking system. If we cannot take issues at trust, we need to use the full powers that are at the disposal of the Central Bank.

**Deputy Michael Noonan:** There are four questions. In response to Deputy Doherty, the Central Bank, unlike Government Departments, decides on its staff complement and can increase it if it feels it is necessary to do so in order to fulfil its legal requirements. Given that it is a bank, it is very well funded. Each year it transfers a lot of excess profits to the Exchequer. Funding extra staff is not a problem.

Deputies Doherty and McGrath asked about the process. I have a note with information from the Central Bank. Once a customer who has been affected has been identified in the first instance, the lender must stop charging the incorrect rate of interest on the customer's account and then communicate this to the customer to ensure that any further customer detriment is stopped as early as possible. Once a full review of the customer's account is complete, and following external independent third-party assurance, the lender will then issue a letter to the customer explaining the nature of the error, the correct rate to apply to the customer's account and information on the next steps in the examination, including the redress and compensation process.

In response to Deputy McGrath's last point, the Central Bank has also advised that it will consider appropriate supervisory action, up to and including enforcement action, where necessary. All angles, including individual culpability, will be thoroughly investigated in the context of the legal framework. Enforcement measures will be deployed, as appropriate etc. as I stated in my original reply.

## **Credit Unions**

38. **Deputy Michael McGrath** asked the Minister for Finance his views on the possibility of larger credit unions becoming involved in mortgage lending in a significant way; if his attention has been drawn to the fact that the current restrictions on long term lending are preventing this; and if he will make a statement on the matter. [10410/17]



**Deputy Michael McGrath:** This question relates to the future of credit unions, in particular the views of the Minister on whether larger credit unions should be given the opportunity to enter the mortgage market in a significant way and provide much needed competition for our banking sector in the provision of residential mortgages.

**Deputy Michael Noonan:** My role as Minister for Finance is to ensure that the legal framework for credit unions is appropriate for the effective operation and supervision of credit unions. The Registrar of Credit Unions at the Central Bank is the independent regulator for credit unions. Within her independent regulatory discretion, the registrar acts to support the prudential soundness of individual credit unions, to maintain sector stability and to protect members' savings.

Credit unions can provide mortgages to members, within certain maturity limits contained in the Credit Union Act 1997 (Regulatory Requirements) Regulations 2016, known as the regulations. The regulations set out the percentage of a credit union's loan book that can be outstanding for periods exceeding five and ten years, as well as limits on the maximum outstanding liability to an individual member.

Under the regulations issued by the Central Bank in January 2016, credit unions continue to be allowed to lend up to 30% of their loan book over five years and up to 10% over ten years, subject to a maximum maturity of 25 years. In addition, credit unions are able to apply to the Central Bank for an extension to their longer-term lending limits of up to 40% of their loan book over five years and up to 15% of their loan book over ten years. Approval is subject to conditions set by the Central Bank. There are 11 credit unions approved to avail of increased longer-term lending limits.

The Central Bank informs me that the December 2016 prudential return indicates that, for the sector overall, total gross loans over ten years amount to approximately 2.7% of total loans in the credit union sector compared to the limit of 10%, and 15% in some cases. The Central Bank has indicated that while it can see longer-term lending, including mortgages, as part of a balanced portfolio of total lending, in its analyses credit unions need to consider the impact of longer-term lending on interest margins, return on assets and on balance sheet structure as the issue of funding longer-term lending with short-term funding is a challenge for the credit union business model.

*Additional information not given on the floor of the House:*

The Central Bank further informs me that consumer mortgage lending is an activity that has its own unique risk profile, and proposals to become involved in mortgage lending in a significant way must be supported by an evidence based business case.

**Deputy Michael McGrath:** The Central Bank has no interest in assisting credit unions in getting into the mortgage market in any significant way. The Minister mentioned an overall figure of 2.7% of the loan book across the sector being out for a period greater than ten years. The figure is somewhat higher for a number of credit unions, but all it would take is a small number of mortgages for each individual credit union to get them over the 10% limit, which would mean that they would then be in breach of the rules. That is the reality. A small number of credit unions have had an increase of 15% in the limit regarding their loan book over a ten year period.

The reality is that for credit unions to get into the mortgage business in a significant way

requires investment in underwriting and expertise. A certain amount can be done on a shared basis across the sector, but the current restrictions, which are a matter for the Minister and not just the Central Bank, are preventing them from doing that. We need competition in the mortgage market, and credit unions offer the potential for that.

We should not be under any illusions, however, given the current restrictions of 10% of lending over ten years. It is not possible for credit unions to get involved in the mortgage market in any serious way under the current rules.

**Deputy Michael Noonan:** The absolute priority for me with regard to the credit union movement is that members' deposits are safe and the risk of lending does not undermine members' deposits. I also believe that as the work of credit unions progresses and they move away from the threat of impairment in many cases to being active in the market again, the possibility of more extensive mortgage lending is not contrary to Government policy.

For example, the recent report of the Credit Union Advisory Committee, CUAC, provides a number of recommendations, one of which is to conduct a full review of lending limits. I have established an implementation group which is currently looking at those recommendations with a view to implementation, as appropriate. The implementation group consists of representatives from the Irish League of Credit Unions, the Credit Union Development Association, the Credit Union Managers' Association, the National Supervisors Forum, the Central Bank and a CUAC member. The implementation group is headed up by a Department official. One area which the implementation group is focusing on is an examination of lending and concentration limits. I look forward to progress reports from it.

I am not against it as a matter of principle. I need assurances that individual credit unions are capable of long-term lending funded by short-term deposits and that the savings of members are always secure.

**Deputy Michael McGrath:** The Minister will have to go beyond not being against it and instead proactively assist credit unions to become involved in the mortgage market. The business model of credit unions is under very significant pressure. They have very poor investment returns and their loan to asset ratio is in the region of 27%. They are feeling the burden of regulation quite severely.

The CUAC report acknowledged that one of the key recommendations of the commission on credit unions for tiered regulation has not been implemented. There is a one size fits all approach to the regulation of the credit union sector which, in my view, is fundamentally inappropriate. I am glad that the Minister has finally moved to set up an implementation group to deal with the recommendations from the credit union advisory committee report. However, when it comes to mortgages, there will have to be a change in policy. Otherwise they will not be able to get into that market in a significant way. There is a number of large progressive credit unions that have dipped their toes in the mortgage market and it has worked well for them, but all it would take for them to go beyond their 10% or 15% limit is a very small number of mortgages. I hope the Minister takes an interest in the issue because we need to ensure that the business model of credit unions is developed and that there is a genuine strategy for the support and development of the sector which is not just focused on regulation.

**Deputy Michael Noonan:** I do not disagree with the Deputy's policy position in principle, but there is a risk and it must be ensured that it does not affect deposits. Over the past number

of years, we can count on the fingers of both hands the number of credit unions that went under. Supposing that the credit union movement was mortgage lending from, say, 2008 on, how would it be fixed now given all the impaired loans that have occurred? How would depositors' savings be secure if there was a high level of impaired loans in the credit unions that was analogous to that in building societies and banks? It is not simple, but as a matter of principle I want the implementation group to advise on it and to see if we can move to a situation where our credit unions are involved in a wider profitable portfolio of activities which would include, if possible, longer term lending such as mortgages.

### **Mortgage Resolution Processes**

39. **Deputy Joan Burton** asked the Minister for Finance the progress made in supporting families in mortgage distress; his plans to further assist persons and families in mortgage difficulty and ensure they stay in the family home; if his attention has been drawn to the banks' failure to cut deals with mortgage holders in distress, including writing down loans; and if he will make a statement on the matter. [10337/17]

**Deputy Joan Burton:** My question relates to the continuing refusal of banks to do deals with people who are in mortgage difficulties and the level of stress and pressure on relationships it is causing. Personal insolvency practitioners have drawn attention to a number of cases and I am personally aware of quite a number of cases. It seems as though the banks are simply not willing to engage, whether at the beginning of the process or after people have been involved in the mortgage arrears resolution process, MARP.

**Deputy Michael Noonan:** The Deputy will be aware that A Programme for a Partnership Government and the Action Plan for Housing and Homelessness set out the Government's priorities in relation to dealing with mortgage arrears. The Deputy will also be aware of concerted efforts by the previous Government to resolve the mortgage arrears issue over a number of years, including revision of the Central Bank's code of conduct on mortgage arrears in the interests of fairness for consumers, overhaul of bankruptcy rules, introduction of personal insolvency legislation, establishment of a mortgage-to-rent scheme, and making available free access to up-to-date information about mortgage resolution options. These options provide borrowers with the ability to restructure their debt in an orderly and sustainable manner.

Following a request from me, the Central Bank completed its assessment of mortgage arrears and its report was published on the Department of Finance website last December. The report noted that progress is well established in dealing with mortgage arrears and is clearly moving in the right direction. The assessment finds a comprehensive range of available restructuring solutions being offered and delivered by both bank and non-bank entities. The Central Bank considers the range of restructures offered by banks to be broadly appropriate in balancing consumer protections imperatives and maintaining a mortgage market for all borrowers and a functioning banking system. The assessment also found that overall there is strong evidence that banks and non-banks are looking to exhaust available options before moving into the legal process.

Mortgage arrears and repossessions data released by the Central Bank to the end of the third quarter of 2016 provide evidence that consistent progress is being made in addressing mortgage arrears, with the number of private dwelling house mortgage accounts in arrears continuing to fall for the 13th consecutive quarter. In addition, over 121,000 private dwelling house mort-

gage accounts were classified as restructured, of which 88% were deemed to be meeting the terms of their restructure. This shows that where borrowers actively engage with their lender with a view to agreeing a sustainable arrangement to address their mortgage arrears it is more likely that an equitable arrangement will be found.

*Additional information not given on the floor of the House*

The Deputy may also be aware of other initiatives being rolled out across Government such as the Abhaile mortgage arrears resolution service and amendments to the mortgage-to-rent scheme which will make the mortgage-to-rent process quicker, more transparent, easier to navigate for borrowers and ultimately more accessible to more households in mortgage distress. Pilot projects to explore potential mechanisms that would facilitate investment into the residential market by private equity firms using the mortgage-to-rent model will be undertaken with a view to facilitating greater numbers of indebted borrowers to remain in their own homes as tenants.

Finally, I would encourage all borrowers in arrears to make contact with their bank or to seek assistance from their local Money Advice & Budgeting Service, MABS.

**Deputy Joan Burton:** I wish to tell the Minister a little story of a family with three children, one of whom has special needs, that I have dealt with over a number of years. The parents found themselves in difficulty with their mortgage despite the fact that both of them are working. One of them became ill due to the stress associated with trying to deal with the bank. When I was Minister for Social Protection I set up a scheme called Abhaile so that mortgage holders in distress would be helped by the Money Advice & Budgeting Service, MABS, which was authorised on a regional basis and a local basis to accompany people to court. As the Minister knows, because we discussed this in government over many a long month, it took a long time to set it up, but it is operating now as is the personal insolvency practitioner structure. However, despite all that, we hear back that, no matter what happens, banks are still reluctant to engage. In the particular case to which I referred, the family went through the full year of the mortgage arrears resolution process and paid everything that was required. Not only that, when the parents got a small increase in their income, they increased their payment. Nonetheless, and this is not atypical, the day the MARP period finished, during which, notwithstanding the difficulties they were in, they had agreed to everything and done everything that was required, the bank issued them with a notification stating that it would seek to repossess the house. In the Government that the Minister and I were members of, it was a primary principle that we would seek to protect people in their family homes. In this particular case, the bank included-----

**Acting Chairman (Deputy Eugene Murphy):** Thank you, Deputy. You are way over time.

**Deputy Joan Burton:** -----the €208 or so that the family was receiving in respect of domiciliary care allowance as income in the family's means assessment.

**Acting Chairman (Deputy Eugene Murphy):** I must ask the Deputy to-----

**Deputy Joan Burton:** I know the Minister does not get involved in individual cases.

**Deputy Mick Wallace:** This is a joke.

**Acting Chairman (Deputy Eugene Murphy):** The Deputy is way over.

**Deputy Joan Burton:** I will finish on this point.

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**Acting Chairman (Deputy Eugene Murphy):** The Deputy is more than a minute over time and has actually taken two minutes. Will she put her question very quickly, please?

**Deputy Joan Burton:** Will the Minister examine some cases to see what banks are doing to people?

**Deputy Michael Noonan:** I have great sympathy for anyone in the circumstances outlined by the Deputy but I do not have the information she has so I cannot comment in detail on the case. What I know from the general principle is that the banks engage and that they have re-structured 121,000 mortgages, which is proof of their engagement. They are making significant progress and for 13 consecutive quarters the number of mortgages in difficulty has gone down. Some of that is because of restructuring by the banks and some of it is because the economy is moving strongly and when people go back to work they re-engage and make their own arrangements because they have an income again to service the mortgage.

The Abhaile scheme to which the Deputy refers and for which she was largely responsible is very important. The amendments to the mortgage-to-rent scheme will make the mortgage-to-rent process quicker, more transparent, easier to navigate for borrowers and ultimately more accessible to more households in mortgage distress. Mortgage distress is also important. A variation on that of which the Deputy is probably aware is that the Department of Housing, Planning Community and Local Government is now examining the possibility of putting a fund together to purchase houses where there are mortgage difficulties and renting them back to the mortgage holder so that the local authority would no longer be the intermediary and that there would be a more efficient way of implementing the mortgage-to-rent scheme.

**Acting Chairman (Deputy Eugene Murphy):** I ask Deputy Burton to be brief. She used up her time so I ask her to keep her comments very short.

**Deputy Joan Burton:** I understand the Minister's appreciation of the issue. He did not mention one aspect which is that with a recovery in property prices, the level of distress in many mortgages is now automatically going down as the underlying security for the mortgage increases in value. Therefore, things are certainly improving. However, if we examine the reports from the personal insolvency practitioners throughout the country-----

**Acting Chairman (Deputy Eugene Murphy):** Very briefly, Deputy.

**Deputy Joan Burton:** -----they are indicating that it is extremely difficult to get banks to cut a deal. Further, arrangements that were reached with the banks in earlier years, where part of the loan was frozen or parked, are now coming up for review.

*5 o'clock*

We need to know what will happen in these cases.

**Deputy Michael Noonan:** It is untrue to state the banks will not write off part of the money owed. They will do so but only on a case by case basis as opposed to a universal or across the line basis. People who are in difficulty should engage with their bank with the help of the best advice available or an insolvency practitioner. As I indicated, 121,000 mortgages have been restructured, of which 88% are standing up to the conditions. The test is that restructured mortgages must stand for at least 12 months before they are rated as successful restructuring. The Deputy could help out by bringing individual cases to lenders' attention. I understand banks are

open to speaking to Deputies who are acting as intermediaries for borrowers.

**Acting Chairman (Deputy Eugene Murphy):** We must move on to the next question.

**Deputy Joan Burton:** May I make a point?

**Acting Chairman (Deputy Eugene Murphy):** No, we are over time.

*Question No. 40 taken with Question No. 37.*

## **Other Questions**

### **State Banking Sector Regulation**

41. **Deputy Pearse Doherty** asked the Minister for Finance if he will instruct the State backed banks including NAMA not to sell loan books to vulture funds; and if he will make a statement on the matter. [10017/17]

**Deputy Pearse Doherty:** This is a straightforward question on the sale of loan portfolios by banks and the National Asset Management Agency, NAMA, to vulture funds. On my question on Project Eagle which was overruled, for the record, the Department flagged the question for disqualification before the Ceann Comhairle ruled on it.

This question asks the Minister to instruct banks and NAMA not to sell loan books to vulture funds, which are unregulated entities. In addition, none of the intermediate companies or middle persons, as they could be described, which service loans on behalf of the vulture funds, has been authorised by the Central Bank. In recent years, customers have been thrown to the wolves while vulture funds have been reaping major tax benefits from the purchase of loan books.

**Deputy Michael Noonan:** As the Deputy is aware, non-performing loans remain at an elevated level across the European banking system and addressing this issue is one of the key priorities for the Single Supervisory Mechanism, SSM. In Ireland, significant progress has been made across the banking sector in reducing the level of non-performing loans since the financial crisis. Despite this progress, the level of such loans in the banking sector remains well above the European average. Hence, the SSM has tasked the management and board of each institution with developing and implementing a strategy to address this challenge. This challenge will have to be met irrespective of whether the State has a shareholding in the bank concerned.

As the Deputy knows, the relationship between the Minister for Finance and banks in which the State is a shareholder is governed by relationship frameworks, which can be found on my Department's website. In accordance with these relationship frameworks, the Minister for Finance has no direct function in commercial decisions made by the banks and these decisions are the responsibility of the board and management of the relevant institution. Notwithstanding the State's shareholdings in the banks, I must ensure the banks are run on a commercial, cost-effective and independent basis to protect their value as an asset to the State.

Similarly, I do not have a role in the National Asset Management Agency's commercial decisions. Under the National Asset Management Agency Act 2009, the agency has a well-estab-

lished mandate to achieve the best possible return to the State by protecting, enhancing where possible, and ultimately realising the value of assets it has acquired. To achieve the maximum return to the taxpayer, NAMA was established as an independent commercial body under the direction of an independent board. I highlight for the Deputy that NAMA is operating within its mandate and progressing its objectives.

I should also highlight that there are substantial protections in place for customers in the event that a loan is sold to a third party. The Consumer Protection Act 2015 was designed to protect borrowers in this circumstance. Under the Act, purchasers of loan books must either be regulated by the Central Bank or the loans must be serviced by a credit servicing firm which is regulated by the Central Bank.

*Additional information not given on the floor of the House*

Under the Consumer Protection Act 2015, relevant borrowers whose loans are sold to third parties maintain the same regulatory protections they had prior to the sale, including under the various statutory codes, such as the consumer protection code and the code of conduct on mortgage arrears, issued by the Central Bank of Ireland and the Central Bank Act 2013 Regulations 2015, which came into operation on 1 July 2016. The sale of a loan does not change the terms of the contract or the borrower's rights and obligations under the original contract.

My Department will continue to keep all relevant legislation under review to ensure borrowers whose loans have been sold are properly protected and do not lose any protections which they previously enjoyed. In addition, the Department of Finance expects that the Central Bank, as regulator of credit servicing firms, will be vigilant in this area and raise any specific instances where they have found consumers have not had their protections upheld.

**Deputy Pearse Doherty:** While the Minister's response may sound great, the reality is that the credit servicing firms are only regulated or authorised by the Central Bank because they were operating in Ireland before the relevant legislation was enacted. Not one of these firms has been authorised by the Central Bank under the new standards. This means that not only are the vulture funds not regulated, but none of the credit servicing firms has been regulated under the new standards or received approval from the Central Bank under these standards. Some 18 months after the enactment of the legislation, the reason these firms are defined as being regulated is that the so-called passporting section of the Act deemed them all to be regulated until such time as they met the new standards.

The Minister sounded like Pontius Pilate as he washed his hands of this issue. Tens of thousands of home owners' loans have been sold to vulture funds. The Minister's statement that he does not have a commercial relationship with the banks and that the relationship framework precludes him from having such a relationship is not true.

**Acting Chairman (Deputy Eugene Murphy):** The Deputy's time has concluded.

**Deputy Pearse Doherty:** According to documents we received from NAMA under freedom of information legislation, the Minister's position was that NAMA should not involve itself in housing if it meant the agency would repay its debts more slowly.

**Acting Chairman (Deputy Eugene Murphy):** Please, Deputy.

**Deputy Pearse Doherty:** The Minister also gave other directions to NAMA.

**Acting Chairman (Deputy Eugene Murphy):** I ask the Deputy to obey the Chair.

**Deputy Pearse Doherty:** We can see from the minutes of meetings between the Minister and the banks that he engaged on issues such as tracker mortgages and variable interest rates.

**Acting Chairman (Deputy Eugene Murphy):** The Deputy must listen to the Chair.

**Deputy Pearse Doherty:** Will he continue to sit back while banks continue to sell loans to vulture funds?

**Acting Chairman (Deputy Eugene Murphy):** I must point out that the rules of the House are set down by Members and implemented by the Business Committee. Every time a speaker exceeds the allotted time during questions, he or she ensures that some of his or her colleagues' questions will not be reached. This is unfair and I appeal to Members to abide by the rules. A Deputy has 30 seconds to introduce a question and the Minister two minutes to reply, after which both the Deputy and Minister may each make two further contributions of one minute. I ask all Deputies to stick to the rules the House has put in place.

**Deputy Michael Noonan:** The Deputy is incorrect in his assertion that the Consumer Protection Act is ineffective. Under the Consumer Protection Act 2015, relevant borrowers whose loans are sold to third parties maintain the same regulatory protections they had prior to the sale, including under the various statutory codes, such as the consumer protection code and the code of conduct on mortgage arrears, issued by the Central Bank of Ireland and the Central Bank Act 2013 Regulations 2015, which came into operation on 1 July 2016. The sale of a loan does not change the terms of the contract or the borrower's rights and obligations under the original contract.

To respond briefly to Deputy Burton's question as part of my response to Deputy Doherty, Deputy Burton effectively asked why the banks did not cut deals with more people with impaired loans. The investment funds that buy impaired loans are in the business of cutting deals and do so frequently. I watched an RTE programme on the purchase of loans by investment funds and speaking during a panel discussion at the end of the programme, a very well-known individual, who is highly regarded by persons with impaired mortgages, stated it was his experience that it was much easier to deal with vulture funds to secure a reduction in the amount owed than it was to deal with the banks. The obvious reason is that if one can buy at a discount, one has much more head room to cut a deal.

**Acting Chairman (Deputy Eugene Murphy):** I ask Deputy Doherty to give way to allow Deputy Mick Wallace to make a quick comment.

**Deputy Mick Wallace:** We have sold a large slice of Ireland to vulture funds for a fraction of its value. Cerberus alone has bought par value loans of more than €25 billion for a fraction of what they are worth and it has wreaked havoc. How can the Minister claim he is not responsible for anything the National Asset Management Agency does? To whom is NAMA responsible, if not the Minister for Finance? Is the Minister telling the House he does not have any influence or control over what NAMA does? It beggars belief that no one has taken the agency to task in recent years. If the truth is told and a proper investigation carried out, I reckon we will find that NAMA has cost the State approximately €20 billion as a result of the manner in which it has operated.

**Deputy Pearse Doherty:** Deputy Wallace has articulated the real point, which is one that



was clearly presented to the public in an excellent RTE documentary. Not only was Ireland for sale but it was for sale tax-free as a result of policies pursued by this Government and its predecessor. In fairness, the Minister responded to me on the section 110 issue and he outlined that it was the Fianna Fáil Government that engineered that into the NAMA agenda before NAMA was even established. However, he is still going to sit back and allow the banks to sell people's homes to vulture funds.

There is already a huge amount of damage done in this regard. It is reported that between 46,000 and 90,000 mortgages are to be sold. The idea that the Minister for Finance has no responsibility for or role in this regard is not credible. The Minister may be able to fool the people who have not studied this matter but we know the directions he has issued to NAMA. We know, for example, that he directed NAMA to hold the IBRC loan and that he has given similar directions on numerous other occasions. The Minister can have a commercial role in regard to NAMA and he can issue directions to NAMA but he refuses to do so.

**Deputy Michael Noonan:** The strength of Deputy Doherty's advocacy and the fact that he puts information that is incorrect on the record does not make his arguments correct. I have always said that I have certain responsibilities for NAMA. I have those responsibilities for NAMA which are enshrined in the NAMA Act as enacted by the Houses of the Oireachtas. That legislation provides a role for the Minister for Finance but it does not give him or her the power to interfere in commercial decisions.

Deputy Wallace has made assertions today along the lines of those he has made on several previous occasions. I think he has a problem with Cerberus and that he should declare an interest-----

**Deputy Mick Wallace:** I have a lot of problems with it.

**Deputy Michael Noonan:** I know. I think the Deputy should declare an interest rather than act here as a neutral observer commenting for the public good. Let us be fair. The Deputy is a great man to make assertions under privilege.

**Deputy Mick Wallace:** I have had plenty to say about Cerberus outside too.

**Deputy Michael Noonan:** The Deputy is a great man to make assertions under privilege but it is true that he has an interest and he should declare that interest and then we would all know where we stand.

**Deputy Mick Wallace:** There are few people around who will stand up to it.

**Deputy Clare Daly:** The Minister is fond of making points under privilege himself that he would not utter outside this House. However, the truth will out.

### **Property Tax Exemptions**

42. **Deputy Clare Daly** asked the Minister for Finance his plans to amend the relevant legislation such that homeowners with pyrite damage below the significant damage certification threshold which have not been accepted into the pyrite remediation scheme but are nonetheless worthless due to pyritic infill can avail of the LPT pyrite exemption. [9879/17]

**Deputy Clare Daly:** This question relates to the property tax exemption for homes affected by pyrite in respect of which the Minister will be aware we had to fight to get an exemption. We had to fight for two years after 2013 to get that exemption improved because under the original scheme a person was required to spend thousands of euro on a test to get an exemption of a couple of hundred euro. The amendment made in 2015 is not fit for purpose. What does the Minister propose to do to ensure homeowners of pyrite affected properties can avail of the property tax exemption?

**Deputy Louise O'Reilly:** May I ask a question on the same issue?

**Acting Chairman (Deputy Eugene Murphy):** No. I will allow the Deputy to put a question after the Minister has read his reply.

**Deputy Michael Noonan:** The local property tax, LPT, exemption is intended to apply to those properties that have a significant level of pyrite damage. While this means that not all properties that are affected by pyrite are eligible for the exemption, it is accepted that the presence of pyrite, whether it has already caused structural damage to a property or has the potential to cause such damage, will have a negative effect on the market value of the property. If the property was affected with pyrite on the valuation date then that can be reflected in the selected valuation band. If a property owner feels that the valuation band selected on the valuation date of 1 May 2013 did not take account of the existence of pyrite then he or she should make contact with Revenue to discuss the possibility of reducing the band.

The Deputy will be aware that the qualifying criteria in respect of exemption from LPT for properties with significant pyritic damage were modified by the Finance (Local Property Tax) (Amendment) Act 2015 which was signed into law on 20 December 2015. The Act modified the qualifying criteria to include properties where a certificate of damage has been completed by a competent person as set down in the relevant regulations, the property has been accepted into the pyrite remediation scheme operated by the Pyrite Resolution Board, an insurance company has remediated the property or provided sufficient funds to carry out the remediation or, the person who built the property has remediated it or provided sufficient funds to carry out the remediation.

The relaxation of the certification requirement was one of the recommendations made by Dr. Don Thornhill in his review of the operation of the local property tax on behalf of the Government in 2015. The changes are significant in that where a property has been included in the pyrite remediation scheme by the Pyrite Resolution Board, PRB, without testing, or a property has been remediated by a guarantee company or by a builder or developer or where a party is compensated in lieu of remediation, without testing, Revenue will now accept confirmation of remediation or compensation from either the PRB or the relevant party for the purposes of exemption without testing or NSAI certification.

**Deputy Clare Daly:** The Minister has addressed the area where the scheme works to give people pyrite exemptions but he has not addressed the question, which is what does he propose to do to improve the areas where the exemption cannot be gained even though the homeowner's property is pyrite affected. The Minister appears to be suggesting in his reply that people could more or less submit a zero valuation and that would be accepted. That is not accepted by Revenue. The terms of the exemption are that a property must have a damage condition rating of 2, or 1 with progression, which means that homeowners with properties affected by pyrite and a damage condition rating of 1, and clearly with pyrite, are not gaining an exemption from

the property tax. We have a ridiculous scenario whereby homeowners who suffered in homes affected by pyrite that were later remediated and sold on in perfect condition were unable to get an exemption from property tax for the years during which they lived in the pyrite affected property while the people who purchase the property can get an exemption for a house that is non-affected by pyrite. There are huge problems in terms of application of the exemption.

What does the Minister propose to do for the people who are not currently captured in the scheme even though their properties are valueless and why is there a ceiling on the exemption? Why is the exemption limited to six or eight years? If a property cannot be certified or remediated and the house is valueless then the homeowner should get an exemption.

**Deputy Louise O'Reilly:** I have raised this issue with the Minister previously, at which time he indicated he would ask the Department to examine it. The response received was to the effect that the Minister is not prepared to do anything. This is a growing problem not only in Fingal but across the country. There are people whose homes are effectively valueless yet they have to pay the property tax. I echo Deputy Daly's remarks and I also ask what is the Minister prepared to do for the people who are not currently captured by the current scheme but are in extreme distress?

**Deputy Michael Noonan:** I said that I was not prepared to introduce further legislation to change the current legislative parameters but I think progress can be made administratively. As I said in my reply to Deputy Daly, if a property owner believes that the valuation band selected on the valuation date of 1 May 2013 did not take account of the existence of pyrite then he or she should make contact with Revenue to discuss the possibility of having the band reduced. In other words, if the house is worth a lot less than was thought in 2013 then there is an opportunity, with the agreement of Revenue, to declare a new valuation at a very low level and consequently the LPT liability will be significantly reduced if not eliminated completely.

**Deputy Clare Daly:** I hear what the Minister is saying but that has not been the experience of people who have made that argument to Revenue. It is a self-assessment tax so one would assume that if the property concerned is one that the homeowner is not permitted to sell because it has pyrite the value would be nil and, therefore, there would be no liability. That is what the Minister is telling us today. We will be quoting that back to Revenue and hopefully it will not dispute what the Minister has said. If that was the interpretation that was brought in then many homeowners which have now been told by Revenue to pay up and who had money forcibly deducted would not be in this scenario. I hope that when we quote what the Minister has just said Revenue will implement it. Given that there is a lack of clarity on this issue, it might be best if the Minister would send Revenue a notice reminding it of its obligations in this regard such that any confusion, which undoubtedly does exist, can be avoided.

**Deputy Michael Noonan:** I understand the point the Deputy makes. If there is an administrative road block preventing what I expect to occur from occurring I will speak to the Chairman of the Revenue Commissioners with a view to having it remediated at an administrative level.

## **Brexit Issues**

43. **Deputy Thomas P. Broughan** asked the Minister for Finance his Department's current entitlements regarding the way Ireland's contributions to, and funding supports from, the European Union will change following Brexit; and if he will make a statement on the matter.

[9541/17]

**Deputy Thomas P. Broughan:** The United Kingdom is a few weeks away from the triggering of Article 50. I asked the Minister about this issue in the past. Obviously, the second largest net contributor to the European Union will be leaving, which will result in some residual costs and contributions. As a result of the 2015 revision of our GDP statistics, we were due to pay perhaps an additional €300 million this year. Has the position on our EU contribution become any clearer?

**Deputy Michael Noonan:** I thank the Deputy for his question. Until it formally withdraws from the European Union, the United Kingdom will remain a full EU member with all its existing rights and obligations, including in regard to the EU budget. Brexit will involve complex discussions on the multi-annual financial framework, particularly as the United Kingdom is an important net contributor to the EU budget. Therefore, Brexit will have a significant impact on EU budget funding and expenditure and may need to be mitigated by increased contributions from other member states, reductions in EU funding programmes or a combination of both.

While my Department has undertaken some broad modelling work to estimate the potential impact of Brexit on our EU budget calculations, this analysis will need to be developed in more detail in the coming period, when the parameters of the budget negotiations are better defined. In particular, a key point will be getting agreement among the EU 27 on a common approach to the future of the EU budget.

**Deputy Thomas P. Broughan:** The Committee on Budgetary Oversight has been discussing with the Governor of the Central Bank and the Economic Statistics Review Group the new concept of GDI, an attempt to measure many variables and engage in supplementary analysis in regard to GDP. Given what happened in 2015, are we not left in quite a vulnerable position? Our basic contribution this year is approaching €2.5 billion. This is a considerable amount of funding that we must provide. With regard to the revision of our statistics in 2015, are we considering very deeply the consistent impacts on the reduced EU budget given the exit of the United Kingdom?

**Deputy Michael Noonan:** Our contribution to the EU budget is calculated on our GDP, as calculated by EUROSTAT. The modifications suggested by the committee under the Governor of the Central Bank to have a more transparent domestic set of numbers which would not have built in the impact of the on-shoring of IT, which ran into the GDP figures, would not be taken into account for calculations on the EU budget. The United Kingdom is a net contributor so it stands to reason that, if it moves out, the pool will be smaller by the difference between what it gets and what it contributes. A question arises as to how the adjustment will be made. Either every member state will have to pay more or the budget will be reduced by pulling back on certain services that are now funded through the EU budget. The other variable is the amount of compensatory funds upfront for which the United Kingdom will be liable. Calculations indicate this could be from as low as €33 billion or €34 billion up to over €60 billion. That would go into the pool also. It is impossible to say except that the issues the Deputy raises in his question are real and must be resolved in the course of the negotiation over the next four, five or six years.

**Deputy Thomas P. Broughan:** When does the Minister expect to get the revised figures, the GNI analysis? How will it operate in terms of international standards? In this regard, the Minister mentioned EUROSTAT. Also to be considered are the IMF and other bodies given the

considerable impact Brexit will have on our unique economy.

Has the Minister taken any position on the long-standing liabilities the United Kingdom will have? We hear about the pension entitlements of British staff working as EU civil servants to the year 2050, etc.

**Deputy Michael Noonan:** There are estimates generated in Brussels that would be at the higher end of the range. These are rejected and refuted by the UK authorities. Where it will land, I could not even guess at this stage.

On the new methodology, as advised by the committee on Irish statistics, the intention is not to change the statistical base for our international calculations, as with the EU budget. The idea is that there will be a set of numbers with statistical aberrations taken out so foreign direct investors, the markets or colleague countries that trade with us will have a more realistic insight into the reality of the Irish economy rather than looking at GDP figures which, while they are real under the calculations required by EUROSTAT, we all agree do not reflect real economic activity in the country.

### Employment Rights

44. **Deputy Joan Burton** asked the Minister for Finance when the results of the consultation process concerning the impact of bogus self-employment arrangements will be published; and if he will make a statement on the matter. [9983/17]

211. **Deputy Joan Burton** asked the Minister for Finance when the results of the consultation process concerning the impact of bogus self-employment arrangements will be published; and if he will make a statement on the matter. [9951/17]

**Deputy Joan Burton:** I wish to raise the issue of bogus self-employment. Although employment rates continue to fall and there are very significant numbers of people at work, I am particularly concerned that rather than having many people employed in traditional employment, with the protections and rights this entails regarding income, access to trade unions and access to labour protection through legislation, there is a significant number of people on very low pay in bogus self-employment. The social welfare entitlements, including pension entitlements, of those in these circumstances will be very much diminished if they seek to exercise social protection rights or to exercise pension rights when they retire. I have raised this with the Minister before. There was a consultation on which he and I agreed quite some time ago. What has happened in terms of that process?

**Deputy Michael Noonan:** When the Deputy was Tánaiste and Minister for Social Protection, she and I, as Minister for Finance, launched a consultation process on the use of intermediary-type employment structures and self-employment arrangements, in addition to their impact on tax and PRSI. She will recall also that the consultation invited submissions from interested parties on possible measures to address the loss to the Exchequer that may arise under two sets of arrangements. The first of these is where an individual, who would otherwise be an employee, establishes a company to provide his or her services. The second is where an individual, who is dependent on and under the control of a single employer in the same manner as an employee, is classified as a self-employed individual.

Some 23 submissions were received and a report is being prepared. Indeed, we discussed the report and the wider issue of bogus self-employment generally during our Finance Bill debates in the Dáil late last year. I understand that the report on the consultation process is being finalised by a working group of officials but it has not yet reached me or my colleague, the current Minister for Social Protection. As soon as it does, we will consider its contents, and then I expect we will publish it. I am not in a position to give the Deputy an exact date for publication but I am informed by officials that the drafting and editing process is now almost complete. After that, a meeting of the working group will take place, after which I expect to receive the report.

It is important to emphasise the nature of the report that is being produced; it is a report on the consultation process. This, however, was not a consultation process into the impact of bogus self-employment arrangements. Specifically, it was a consultation process on the use of intermediary-type employment structures and self-employment arrangements, and their impact on tax and PRSI. The issues are related, but not identical. The report will reflect the views of those individuals and organisations that responded and the analysis of these responses by the working group.

**Deputy Joan Burton:** The Minister will recall - he may have the information in his briefing papers - that when we agreed to establish this, ICTU, SIPTU and various other trade unions had identified potential losses of more than €80 million to the Exchequer per annum in taxation, PRSI and other payments. That is not an inconsiderable amount of money.

Critically, people in bogus self-employment find themselves without the ordinary protections of labour law which ensure that their employment is properly regulated, they are at least paid the minimum wage and, as per the legislation that we introduced while in government, there are structured agreements in certain sectors between employers and the workers' trade union representatives.

**An Leas-Cheann Comhairle:** Deputy, please.

**Deputy Joan Burton:** I welcome the idea that there will be a publication at some stage and I urge the Minister to publish it, given that it is important to many people.

**Deputy Michael Noonan:** I do not want to confuse the issue of the tax and PRSI position of people who are genuinely self-employed. This matter relates to people who are not genuinely self-employed and are using the device for tax reduction purposes. The use of intermediary-type structures is becoming more prevalent as a means of providing labour, and legitimately so. From a tax and PRSI perspective, one of the consequences of these types of arrangements is that, rather than the end user applying the PAYE system in respect of the worker, that function becomes the responsibility of the worker. In addition to these formal intermediary-type structures, there are increasing instances of workers being classified as self-employed even though they might not possess the characteristics of entrepreneurship and risk-taking that are often perceived as features of self-employment.

The work is almost complete and will be submitted shortly to the working group. I will publish the report as soon as I have a clean copy and have put it through the Government.

**Deputy Joan Burton:** When one speaks with, for example, young men in the construction industry, it is difficult to persuade them that working in fully ensured employment is as attractive as being established in an easily constructed self-employment wherein they pay minimal

contributions but have no protection if they fall ill or have an accident. When they reach the end of their working lives, their pension entitlements may be significantly reduced. Since they are not employees, they lack fundamental protections.

Many workers in the IT and insurance sectors and so on are being offered a self-employment structure. We are moving away from the model in which people are at work. Instead of being genuine business owners involved in entrepreneurship, as the Minister described it, they are employees who have few options other than to accept the type of self-employment that is on offer, and often to their long-term detriment. This is a problem across a range of industries.

**Deputy Michael Noonan:** I acknowledge that Deputy Burton, as the former Tánaiste, was the joint sponsor of this consultation process. It is a good piece of work and I look forward to the report being available and debating it in the House. The construction and development industry, where these practices are prevalent, crashed during the recession and is emerging as a different industry, with contractors and developers only having a couple of key people and building by way of subcontractors with different skill sets. Quite a lot of the construction sector is becoming a manufacturing industry, where modular units are manufactured offsite and brought onsite to be put in place by subcontractors.

There has been a movement anyway towards increasing numbers of persons who are genuinely self-employed in the building industry. We must take that into account in our discussions. My objective is to root out tax evasion by persons falsely describing and constructing themselves as self-employed when they are actually employees.

### **Mortgage Interest Relief Application**

45. **Deputy Eugene Murphy** asked the Minister for Finance if a person has lost their mortgage interest relief, MIR, due to falling into arrears with their mortgage, however has subsequently resumed paying their mortgage in full with an overpayment to deal with the arrears, can they claim the MIR for the years that they are paying their mortgage in full or if they have to wait until all arrears are cleared fully on the account to claim the MIR going forward; and if he will make a statement on the matter. [9542/17]

81. **Deputy Eugene Murphy** asked the Minister for Finance if a MIR payment can be reinstated on the payments that are being paid to date even though there are still arrears on the account in the case of a mortgage that has arrears attached to it but the mortgage holder has been paying over and above the amount of repayments monthly to deal with the arrears and keep up to date with the mortgage repayments going forward; and if he will make a statement on the matter. [9543/17]

**Deputy Eugene Murphy:** In the case of a mortgage in arrears where the mortgage holder has been paying over and above the monthly repayments to deal with those arrears and keep up to date with the mortgage repayments in future, can MIR be reinstated even though there are still arrears on the account?

**Deputy Michael Noonan:** I propose to take Questions Nos. 45 and 81 together.

Section 244 of the Taxes Consolidation Act 1997 provides MIR in respect of qualifying interest paid in a tax year. The level of relief allowable in any tax year in respect of the amount

of interest paid, inclusive of any arrears paid, cannot exceed the applicable rates and ceilings for that year. The applicable rate and ceiling for each qualifying person are determined by his or her personal circumstances, for example, whether he or she is a first-time buyer, single, married or in a civil partnership.

The mortgage interest ceilings that apply to first-time buyers - those within the first seven tax years of taking out their first mortgages - are €10,000 for a single individual and €20,000 for a married couple or civil partnership. For subsequent years, the ceilings reduce to €3,000 and €6,000, respectively.

Regarding the scenarios set out in the Deputy's questions, Revenue has confirmed that the persons in question are entitled to claim MIR as soon as they restart making mortgage payments. The relief entitlement may be increased to take account of the additional arrears payments being made, but the cumulative amount of relief granted cannot exceed the maximum level of the applicable rates and ceilings for the particular year in which the interest is paid. "Yes" is the answer, and if they are making arrears payments, they can add the relevant interest as long as they remain below the ceiling. Revenue has advised that the persons in question should contact its tax relief at source helpline at 1890 46 36 26 so the exact entitlement can be quantified, having due regard to the specific details of the cases.

The Deputy will be aware that there is a programme for Government commitment to retain MIR beyond the current end date on a tapered basis. Since legislation already provides for the relief to continue to the end of December 2017, it was not necessary to legislate for the extension in the Finance Bill 2016. In my Budget Statement in October, however, I confirmed my intention to extend MIR on a tapered basis to 2020, with the details of the extension to be set out in budget 2018. Deputy Michael McGrath is a strong advocate of this extension and we are fulfilling that commitment.

I am also pleased to note that, as mentioned in response to Deputy Burton's Priority Question, mortgage arrears and repossession data released by the Central Bank to the end of the third quarter of 2016 provide evidence that consistent progress is being made in addressing mortgage arrears, with the number of private dwelling home mortgage accounts in arrears continuing to fall for the 13th consecutive quarter.

**Deputy Eugene Murphy:** That is interesting. I welcome the Minister's clarification of the issue. The young man in question bought his house in 2009 and was made redundant some time later. He subsequently regained employment and began to deal with the mortgage arrears on his account. He has been paying his full mortgage as well as extra to deal with the arrears since 2014, but tax relief at source was withdrawn from the account while he was making minimum payments. He has been paying his mortgage in full, plus an additional amount to deal with the arrears. The EBS has refused to reapply mortgage interest relief to his mortgage, which would help him to get out of the current situation and to pay his arrears more quickly. What are the regulations regarding the application in this matter, and mortgage accounts in general? The Minister probably knows more about this issue than I do. In my view it is clear that the bank has deceived this man in a major way.

**Deputy Michael Noonan:** First, the mortgage interest relief only applies to interest which is paid. If somebody has an impaired mortgage and he or she is no longer paying interest he or she will not get interest relief, but one can get it back in subsequent years. The best thing to do would be for the Deputy or his constituent to ring the number I gave and to set out the case for



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the Revenue Commissioners because the advice they have given to me, which is incorporated in the reply I have outlined, would suggest that if all the facts are as the Deputy indicated, this man is entitled to the relief.

**Deputy Eugene Murphy:** I thank the Minister for supplying the number. This man has been put through hell in his dealings with the EBS. In my view the EBS has breached many codes of conduct in dealing with the case. I have sent a comprehensive file of evidence of misconduct on the part of the EBS to the Minister's office, which was provided by the man involved. I urge the Minister to have a further look at the case.

The legal fees were added on to the balance of his mortgage account by the mortgage provider, EBS. He will be paying for them more than 27 years. The building society did that without his knowledge or consent. That is factual. He has paid more than €40,000 off his mortgage since 2014. However, he now owes more money than he borrowed, plus interest. This is what Deputy Michael McGrath and Deputy Pearse Doherty were talking about earlier. Some people are going through sheer hell in situations like this and we must get such matters straightened out. I thank the Minister for his response.

**Deputy Michael Noonan:** I suggest again that the Deputy ring Revenue to straighten out the interest relief the person is entitled to receive and if he wants to pursue the matter further in terms of a complaint, it is to Central Bank that the complaint should be addressed in the first instance.

### **State Banking Sector**

46. **Deputy Paul Murphy** asked the Minister for Finance his plans to privatise the State's shares in the banking sector; and if he will make a statement on the matter. [10025/17]

**Deputy Paul Murphy:** AIB was the recipient of the second biggest bank bailout in the world - €20.7 billion – more than Morgan Stanley and Goldman Sachs combined, and second only to Anglo Irish Bank. Could the Minister report on his plans to privatise 25% of AIB at a significant loss to the taxpayer and could he give a commitment that there will be a vote in the Dáil before any such decision will be made on privatisation?

**Deputy Michael Noonan:** The position of the Government in regard to the State's shareholdings in the banking sector is very clear. These were investments the State had to make during the banking crisis, and it is the Government's intention that the State will exit these investments in a measured and careful manner. I have been clear in stating that my primary objective in the disposal of these assets will be recovering the maximum amount of money for the Irish taxpayer.

Clearly, in order for us to proceed with the sale of any of our banking assets, we would need to be satisfied that the market is prepared to put a fair and reasonable value on the relevant business, bearing in mind its current performance, its future prospects and the outlook for the Irish economy. Officials in my Department continue to monitor market conditions and the performance of banking equities with a view to planning appropriate exit strategies, consistent with what is set out in A Programme for a Partnership Government.

In regard to the individual assets, I have indicated that an IPO is the optimal route to recoup-

ing value from our investment in AIB with the earliest possible IPO window being the second quarter of 2017. Indeed, officials in my Department, along with our independent financial adviser, Rothschild, have done considerable preparatory work in this regard. In December of last year, following a competitive procurement process, three firms were appointed to act as joint global co-ordinators to lead a selling syndicate in preparation for a possible IPO. The firms have been appointed for an 18 month period and additional firms will be appointed to fill out the syndicate at an appropriate future date. The appointment of the firms as advisers does not signal any intention or obligation for us to proceed with a transaction, which will be subject to a number of factors, including favourable market conditions. AIB is due to publish its 2016 financial results on Thursday, 2 March 2017 and we will assess the market reaction. Clearly, AIB remains our immediate priority given its size, however we continue to keep disposal strategies in relation to both Bank of Ireland and Permanent TSB under review.

**Deputy Paul Murphy:** More than €20 billion of public money was put in and AIB is now valued at €11.3 billion. That is a fire sale by anyone's standards and it is a rip-off of the public in order to hand the banks back into private ownership and the disaster that was and will be. A particular result is that in advance of the privatisation, which is under way, and presumably it will continue after that, is a more aggressive approach to non-performing loans. I raised the issue with the Minister last week at the finance committee and he said not to worry because there are no owner-occupiers involved. Since then it has come out in the media that owner-occupiers are involved. However, my point is that I also have concern for people who are not owner-occupiers. Those who let, as tenants in buy-to-let properties, could find themselves under real threat of eviction from vulture funds. The media have identified Cerberus as a likely buyer of Project Cyprus, the book of buy-to-let properties, and it has a disgusting record of looking after people.

**Deputy Michael Noonan:** The position of the Government in regard to the State's shareholdings in the banking sector is very clear. These were investments the State had to make during the banking crisis, and it is the Government's intention that the State will exit these investments in a measured and careful manner. I have been clear in stating that my primary objective in the disposal of these assets will be recovering the maximum amount of money for the Irish taxpayer.

Clearly, in order for us to proceed with the sale of any of our banking assets, we would need to be satisfied that the market is prepared. I have outlined much of the detail of the preparatory work we have already done. The next date of interest from my perspective is next Thursday when AIB's annual returns will be published. That will give the Deputy a reasonable insight into whether we could proceed or not and also into values. AIB has already returned significant amounts of money to the taxpayer and I am sure the Deputy is aware of that also.

**Deputy Paul Murphy:** The consequences of the privatisation or part-privatisation of AIB are clear. There would be a loss of public funds that were invested and the money that goes back would just go straight off the debt. There would also be a loss of potential control of a bank, which instead of being an instrument for profit could be an instrument for the benefit of society. In addition, there would be a loss of service for customers. Half of the branches in the North, totalling 15, have been closed. Most important, some people could lose their homes in advance of the privatisation happening because of the likes of Cerberus getting involved. I understand the Minister's ideological commitment to private ownership of the banking system but, given those consequences, does he not agree that the Dáil should debate this matter? If the Government wants to propose the sale of AIB, the Dáil should have a right to decide on the

matter by vote.

**Deputy Michael Noonan:** First, the Deputy uses such terms as “give away” and “fire sale” very loosely. Like any asset, whether it is a bank, a house or a bicycle, it is only worth what a willing buyer is willing to give to a willing seller on any given day. When AIB was taken over by the State it was taken over because there were no willing purchasers. One would not have got €100 for it. It does not make sense to say AIB was worth €20 billion and now it is worth less. The point is that it was worth nothing when the State took it over.

**Deputy Paul Murphy:** We took it over for €20 billion.

**Deputy Michael Noonan:** No, we put a lot of money into it to recapitalise it. That was not the purchase price. That was the capital necessary to keep it going as a bank, and that is what it cost the State in terms of capital injection but it was not the market value. Nobody was going to give €20 million for it. The problem was that nobody would give €20 for it at the time. Will we debate it? I will keep the Dáil informed. No decision has yet been made as to whether or not we are going for an IPO but I will keep Members informed every step of the way and we will see where the discussion leads.

*Written Answers follow Adjournment.*

## Topical Issue Debate

### Industrial Disputes

**An Leas-Cheann Comhairle:** I require the House’s approval as the Minister of State is anxious at the outset to make a one minute statement and to update the House on the current situation but I can only do this with the House’s approval. Is that agreed? Agreed. Members have one minute each. I ask Members to observe the one minute rule as I will not allow any slippage. The Minister of State has one minute to give an initial speech and four minutes at a later stage.

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Pat Breen):** I thank the Deputies for raising the matter and wish to take the opportunity to respond. I know that when this Topical Issue was put down, the position was somewhat different. We were in the midst of an ongoing strike involving pickets and high levels of stress for workers with significant impacts on the public and the company with many other traders suffering from collateral damage. We need to be mindful of this. Today as we debate this topic, we must do so in a very calm atmosphere. Last Friday, the parties voluntarily agreed to take part in talks under the auspices of the Labour Court. They should be given time to resolve this dispute with the help of the industrial relations institutions of the State. It must be remembered that this is a difficult industrial relations dispute. The company has not changed anyone’s contract unilaterally. All sides have been attempting to resolve the differences over an extended period and have used our industrial relations machinery throughout. There is nothing to be gained by vilifying the company or the union and such approaches are very unhelpful.

**Deputy Mick Barry:** The Minister of State has appealed for calm so I will start by calmly saluting the thousands of men and women working for Tesco around the country who stood up

to intimidation and a campaign of misinformation and took strike action in pursuance of justice in their workplace. I will calmly ask the Minister of State whether he has ever seen a more outrageous campaign of union busting than was witnessed at Tesco with Project Black - threatening to rip up the contracts of the longest serving workers without consent; banning union officials from the premises, union notices from notice boards and union meetings from company premises; threatening strikers that the Department of Social Protection will be contacted to have family income supplement cut off; stopping union subscriptions at check off; and threatening workers that they would lose either their jobs or their hours should they dare to defy the company and go out on strike. Has there ever been a more outrageous campaign of union busting?

**Deputy Ruth Coppinger:** Solidarity was reborn last week and hit Tesco with a vengeance. When Tesco management announced its intention to cut workers' pay and rip up the contracts of people who had worked for it, for three decades in some cases, forcing them out on strike, it assumed it could isolate a small group of workers within the workforce but it seriously underestimated two things. The first is the workers within Tesco - the young and part-time workers who showed massive solidarity and understood that they were next in the firing line. They also underestimated ordinary people. *The Irish Times* reports that picketed stores lost sales of 80% but even non-picketed stores lost sales of 30%. This shows the balance of forces in society, that things can be turned around, that the employers and the establishment which have had it their way for a very long time should take note and that the Government should take note of where the sympathies of the public lie in respect of bus workers and the ASTI where the Government is attempting similar union busting tactics.

**Deputy Paul Murphy:** We are not neutral in this dispute. We are on the side of the Tesco workers, wish them victory and think a victory for them is a victory for all workers. There are those who would like to think that the union, solidarity, strike action and pickets being respected are things that belong in the past - in the epoch of Connolly and Larkin. It is predominantly young workers and female workers who have shown that this is not the case. What used to be called Larkinism proved very effective for the Tesco workers. There is a lesson there for everybody - the teachers, nurses and Bus Éireann workers - that standing strong and standing together will win public support and can win industrial disputes. There is also a lesson where we had an opportunity last week to strengthen trade union rights and Fianna Fáil, which went on some picket lines posing as supporters of the workers, came in here to vote against it. There is a reason for Project Black and the attacks on the unions. It is because there is a way for workers to defend their interests.

**Deputy Donnchadh Ó Laoghaire:** Ar an chéad dul síos, ba mhaith liom tréaslú leis an cheardchumann, Mandate, agus oibríthe Tesco don chur chuige atá tógtha acu agus iad ag seasamh suas dá gcuid ceart agus ag iarraidh a gcoinníolacha agus a gcuid pá a chosaint. Tá sé sin fíor-thábhachtach. Tréaslaím leo agus seasaim leo. I express my solidarity with the Tesco workers and the trade union that has organised them. There has been a false equivalence in this discussion in terms of balance in trying to compare the position of the management and company, which have put extraordinary pressure and used vindictive and sneaky tactics against the workers in trying to undermine this strike, and the situation in which the workers find themselves. It is worth repeating the point made by Deputy Paul Murphy about the legislation debated here last week. Unfortunately, the Government and Fianna Fáil seemed to cast doubt on the need for legislation to ensure that trade union officials could have access to their members. This is a company that has negotiated in the past with trade unions and yet efforts were made to keep union officials out.

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**Deputy Richard Boyd Barrett:** I pay tribute to the determination of the Tesco workers to face down what was a deliberate attempt at union busting by one of the most profitable companies in the country. Through their determined action, their willingness to escalate the dispute and moves toward escalating the dispute, they have shown that people power and workers' power work. That lesson is critically needed given the similar orchestrated attempt to attack workers and trade unions in our public transport system. Again, the public is being treated to a diet of frankly disingenuous nonsense about the viability of the company when what is happening is that subsidies for public transport are being undermined and private operators are being cosseted and promoted by the National Transport Authority with the assistance of the Government to undermine workers' pay and conditions in Bus Éireann and the public transport system generally. They should use the same tactics to win their battle as the Tesco workers used.

**Deputy Mattie McGrath:** Some 1,500 employees at 16 Tesco stores are already on strike and a further 500 based in six more stores were due to join the industrial action from Monday. The core issue here is the unilateral decision of the company to rewrite or totally undermine the validity of existing contracts. Contracts, such as those under dispute, may need to be modernised but the key question is why this updating should always result in preferential treatment for the company at the expense of the ordinary worker. There is something particularly grasping and covetous about the manner in which Tesco has approached this matter. Under the guise of reasonable engagement, it has sought to crush and frighten workers into abandoning the satisfaction of their rights. Let us not forget that last April, Tesco Ireland reported total revenue of €2.5 billion over the year to the end of February as it saw the first quarter like-for-like sales increase since 2012.

*6 o'clock*

This puts the perfectly fair and legitimate demands of the workers for contract protection in perspective.

I compliment the workers and, indeed, the management in Clonmel and in Tipperary town.

**Deputy Brendan Ryan:** The Tesco dispute, like the Bus Éireann dispute, and the Dublin Bus and Luas disputes in recent months, highlights one cast-iron fact about this Government - it does not have a clue about industrial relations. It is not only that it does not have a feel for it but it just does not understand it. The reason is that in the eyes of this Government, the worker is a dispensable player in the economic game. I believe companies are emboldened by this stance from Government. As a result, we see Tesco, a company which boasts about its market share, its growth and its profits, attack the terms and conditions of its most experienced employees, the backbone of the company. The company knows it has a Government that, at best, is benign to such behaviour and, at worst, encourages it.

We have 21 Deputies speaking on this issue today - that is, 13% of the Dáil - and yet no one from the Government back benches or the Independents support the wish to support the Tesco workers. The public certainly supports them. Turnover is down 80% in picketed stores.

**Deputy Joan Collins:** I express my solidarity with and support for the Tesco workers and the union that took up this issue and also for the thousands of customers who did not pass the picket lines and did not shop in Tesco stores. The latter was an important act of solidarity which brought it to a conclusion, or to a stage where they will go into talks on Friday.

The key point I want to make today is on the issue of access for workers to the trade union

movement. Unless legislation is brought in to allow union representatives to go on the shop floor, talk to their members and represent them on the shop floor, this will continue. Tesco has been a reasonably good shop for unions to work with. However, it is looking at all the other shops that have worse pay and conditions and saying that it could have a bite of that cherry as well. Collective bargaining and access to unions is the important outcome that has to come from this.

**Deputy Niall Collins:** Fianna Fáil finds the treatment of the Tesco workers deeply concerning. It is shocking to read that the management has signalled its intention to unilaterally change existing employment contracts without any agreement from the workers. It flies in the face of established industrial relations practice ensuring that workers in this country should have decent employment conditions.

It is my party's view that all sides should engage in the State's industrial relations machinery and come together to try to work this out. We welcome the fact that the two sides to the dispute got together on Friday evening last at the Workplace Relations Commission and that talks are to continue under the auspices of ICTU and IBEC to try to come together to find a negotiation.

It is hypocritical of Sinn Féin to come in here on an important issue to try to criticise my party when we read, Sunday after Sunday, how it treats its own employees and workers who, by the way, are not unionised.

*(Interruptions).*

**An Leas-Cheann Comhairle:** The Deputy's time has expired.

**Deputy Niall Collins:** Shame on Sinn Féin for trying to gag its own staff and coming in here and lecturing my party.

**An Leas-Cheann Comhairle:** I call Deputy Broughan.

**Deputy Niall Collins:** It is a walking, talking hypocrite when it comes to protecting workers when one sees how it treats its own. It is a disgrace.

**An Leas-Cheann Comhairle:** Deputy Broughan has one minute.

**Deputy Thomas P. Broughan:** It is sad that Deputy Niall Collins and his colleagues voted against the Industrial Relations (Right to Access) (Amendment) Bill 2016.

**Deputy Dessie Ellis:** Yes.

**An Leas-Cheann Comhairle:** Deputy Broughan, without interruption.

**Deputy Niall Collins:** It had nothing to do with the Tesco dispute.

**An Leas-Cheann Comhairle:** The Deputy, without interruption.

**Deputy Thomas P. Broughan:** This past few weeks we have seen abuse by an enormous economic power, the Tesco organisation. It was said that in Britain £1 in £8 went through its coffers. It is a massive economic entity with a sales turnover of many countries. It is despicable that the workers, who built up this company in this country before 1996 with Quinnsworth and

other companies, should now be subjected to pay cuts of 20% and to a serious loss of conditions. I commend the Mandate trade union. I salute the workers up the road in Baggot Street and in all the other branches who bravely stood up for their rights, and this House should do the same.

**An Leas-Cheann Comhairle:** I thank Deputy Broughan for observing the time.

**Deputy Dessie Ellis:** As the Minister of State will be aware, there are negotiations going on at present between union representatives and Tesco management. Hopefully, a more sensible approach will be taken by Tesco, and not the confrontational one which was previously taken which triggered almost two weeks of protests by workers.

The support shown by the public who, in significant numbers, did not pass the pickets and supported the workers over the strike is heartening and commendable. The resolve of the workers who I met at Clearwater, Finglas, and Drumcondra is one to be applauded, as is the support given by the public and the business community.

The Government has failed to stand up for workers' rights and has allow a profitable company, Tesco, attempt to bully workers and tear up hard-fought agreements and contracts. This inaction by the Government is only facilitating a race to the bottom and attempts by Sinn Féin and others to improve workers rights have been thwarted by the Government and Fianna Fáil.

**An Leas-Cheann Comhairle:** Go raibh maith agat, a Theachta.

**Deputy Dessie Ellis:** For example, Industrial Relations (Right to Access) (Amendment) Bill 2016 was opposed by both of them last week in the Dáil.

**Deputy Róisín Shortall:** It is important that this debate is happening today and that Members of the House from all parties have an opportunity to state clearly that what Tesco is doing is wrong. There are no two ways about that. It is utterly unacceptable for a multi-billion euro profitable company to be behaving in this aggressive and provocative manner.

None of us in any walk of life would stand for our contract of employment being torn up. That is exactly what Tesco is proposing to do with a very small number of its employees - 250 pre-1996 staff. It is simply not acceptable and it is important that Members come out and state that clearly. The public has made its views clearly known on this. Tesco needs to take note of what is being said here today and of what has been said. The company's profits have been affected to the tune of 80% as a result of the industrial action. This is not the progressive modern way forward for big companies. The company should listen to what the public is saying and reach an agreement through the normal channels.

**Deputy Robert Troy:** I welcome the opportunity to contribute to this debate today. It is wrong what some of my colleagues are saying. They are trying to misrepresent what the legislation last week would have delivered. The fact of the matter is that 12,500 of the 14,500 workers at the Tesco store are members of Mandate trade union.

The cuts imposed by management on a very small percentage of the workers is regrettable, considering that when these workers were changing over in 1996 from their previous employment to Tesco, they were guaranteed that their contracts would not change.

I was proud to stand with the workers at the store in Longford. What amazed me was, even though it was a single digit percentage of the workers who were affected at the store, 100% of

the workers came out, supported and stood with their colleagues in solidarity. The Government needs to address this issue going forward.

**Deputy James Lawless:** It is the first time I have seen a dispute where all people wanted was to keep their jobs. They were not looking for anything extra - any extra money or extra terms or conditions. They were merely looking to keep doing the same job they have been doing for 30 years. Many have dedicated a life service to the company.

It is also highly regrettable the approach taken by the employer, in terms of propaganda, table-top literature in canteens, posters on corridors and turning staff member against staff member, with what was misleading information. Some of the figures for redundancy packages available being circulated were way out of kilter with what was on the table. It is regrettable that such an approach was taken by the employer in such a divisive way.

On the terms and conditions, it is extremely concerning that the company sought to do it without the industrial relations machinery of the State being involved. It is important to set a precedent that no such action be taken again by Tesco or any other employment.

There is a small number of employees engaged in what is termed Project Black. Project Purple, I believe, is the next wave, which will increase it to 30,000 workers, if the particular logjam is removed at this stage.

**An Leas-Cheann Comhairle:** Go raibh maith agat.

**Deputy James Lawless:** It is regrettable that some parties in the House use this as an opportunity to table opportunistic legislation to try to exploit this situation which benefits nobody.

**Deputy Frank O'Rourke:** I hope that this dispute is resolved for the staff who have worked in Tesco for over 31 years. These are the staff who have carried out all their duties, as requested by the Tesco management, whether or not it was part of their contract. These are the staff who have worked shifts, at request, late at night and bank holidays, and all at short notice. We then had Tesco management coming out and saying that the staff were inflexible. How untrue is that when we know the flexibility the staff have shown and their commitment to the company for the past 30 years?

The issues relate to staff employed pre-1996. Those staff are losing possibly up to €200 a week which is not fair. They went on strike to protect their job and their conditions. It is very important that the staff are supported and that the management of Tesco take heed of that, engage with the staff and work out an amenable outcome for the staff.

**Deputy Fiona O'Loughlin:** The national significance of this dispute cannot be ignored. Contracts for Tesco workers or for any workers cannot be changed unilaterally. That is contrary to established industrial relations practice of ensuring full consultation and agreement before changes are made to contracts. Every Member of this House must stand in solidarity with these workers who have been loyal employees for over 20 years. Particularly striking is the fact that 70% of the Tesco workforce is female. As Fianna Fáil spokesperson on equality, I find it outrageous that hard-working women such as those are being treated in such a deeply unjust and unfair manner.

I stand in solidarity also with those in Newbridge and in nearby Naas who have voted to go out and support these workers who have been with the company for over 20 years. I have seen



letters they have received from the company and I am appalled by some of the language used, and indeed in notices that were put on notice boards in Tesco this morning. My party wants to see fair pay for decent workers for a job well done.

**Deputy Seán Haughey:** Tesco is one of the most profitable retailers in the Republic of Ireland. It employs 14,500 staff nationwide in 139 stores. It generated €1.2 billion of sales for the first six months of 2016. It is completely unacceptable for Tesco management to change the existing employment contracts of staff unilaterally without their agreement.

There are just under 300 workers on the pre-1996 contracts. They will see their wages drop by 15%. Seventy per cent of the Tesco workforce is female and, by and large, they are not particularly well paid. I visited the workers picketing outside Artane Castle last week. Those workers on pre-1996 contracts were joined by their colleagues who feared they would be targeted next if this protest failed. It was a freezing cold day and it was very regrettable that they were forced to take this action.

The attitude of Tesco management is very worrying in Ireland of 2017. This dispute has national implications in that established industrial relations practices must be adhered to and defended.

I also question the need for full page advertisements in the national press. Tesco management would have been much better off giving that money to charity.

**Deputy Dara Calleary:** In concluding the contributions, it is notable that the House is united on this issue. The workers who are being directly affected are the foundation of Tesco's business in Ireland. As Deputy Broughan said, they are the people who worked in Quinnsnorth, the company that Tesco swooped in and bought many years ago. The attempts by management to divide the pre-1996 and post-1996 workers failed, and it is a fantastic endorsement of the solidarity of the entire workforce in Tesco that it did fail.

We must send a message to Tesco by using the existing industrial relations machinery that this is not acceptable to any company. The Minister of State should send a similar message to the management of Bus Éireann, the management of Hastings Garage and to any management planning on assaulting the terms and conditions of loyal employees, many of them in middle age. The notion that only a few workers are affected by this is true but many more left Tesco under severe pressure over the course of the past 12 months because they were given no option but to leave. Effectively, they were managed out the door at a difficult stage in their lives. I welcome the fact this House is united in sending a strong message to Tesco that this will not do in Ireland in 2017.

**An Leas-Cheann Comhairle:** I thank all the Deputies for observing the one minute rule.

**Deputy Pat Breen:** I want to put on the record of the House that I have no direct role in the resolution of this dispute or similar disputes. However, I do ensure that the Labour Court and the Workplace Relations Commission, WRC, are equipped and resourced to handle industrial relations disputes that arise. I believe they continue to serve the country very well. They have settled many difficult disputes in the past, as Members of the House are aware.

As the House is well aware, this dispute at Tesco relates to proposed changes to pre-1996 employee contracts for around 230 of the 14,500 staff employed at Tesco. In situations such as this one, I would always advise and encourage parties to use the offices of the WRC and the

Labour Court. We can all welcome the fact that the parties have continued to do so on this occasion.

There was an extensive process of engagement and negotiation which culminated in August 2016 in the WRC making its own proposals for resolution of the issues at the request of the parties. Those proposals were accepted by Tesco but rejected by the union side as they were not acceptable to their members.

The matter was then referred to the Labour Court. In November, the Labour Court recommended that the parties should engage in a locally based process over a period of eight weeks in an attempt to allow settlement at local store level. The court recommended that the process should be guided generally by the content of the WRC proposals. If that did not succeed, the Labour Court recommended that the WRC proposals should then be accepted as the means of national resolution of the issues. Tesco accepted the Labour Court recommendation. The union side rejected the Labour Court recommendation and did not engage in this local process.

After balloting its members, Mandate served strike notice on Tesco and industrial action commenced on Tuesday, 14 February at eight stores. Union ballots for action continued up to Friday last, 24 February. It is reported that Mandate had balloted members in 45 stores, with 22 voting in favour and 23 voting against strike action. Tesco indicated at the time that all of its 148 stores would continue to remain open despite the industrial action going ahead.

The Labour Court, having previously issued its recommendation, which included a number of processes that still have not occurred, initiated contact last week with IBEC and ICTU and invited those parties to a general discussion relating to the dispute.

Last Friday, 24 February, the parties voluntarily agreed to take part in talks under the auspices of the Labour Court and they should be given time to resolve this dispute with the help of the industrial relations institutions of the State. I hope the Deputies can join me in encouraging all sides to make every effort to reach a resolution, by agreement, between the company management and the workers represented by their trade union.

As I said earlier, it must be remembered that this is a difficult industrial relations dispute; the company has not changed anyone's contract unilaterally. The parties in this dispute are availing of the services of the State. They both jointly agreed to engage with the Labour Court last Friday. Mandate has suspended industrial action and the company has agreed to make no changes to contracts pending the outcome of talks. That is a positive sign from both sides and this move by the parties should be respected.

Our industrial relations institutions have been heavily involved in this dispute and relevant officials are continuing their involvement to assist the parties to resolve the dispute. All sides must now be encouraged to make every effort to reach a resolution by agreement between the company management and the workers represented by their trade unions. Both sides should now be given the time to resolve this dispute with the help of the Labour Court. That is extremely important as they are now talking even as we are debating the issue in the Dáil.

**An Leas-Cheann Comhairle:** There will be another round of supplementary questions. Deputies have one minute each. I call Deputy Mick Barry.

**Deputy Mick Barry:** Tesco gambled that workers would go out on strike but that the public would not support them. They must have been shocked to find that in the stores that were being

picketed, the turnover was down by up to 80%. Even in some of the stores that did not have pickets, turnover was down by as much as 30%. They underestimated the ordinary people in this country and the spirit of solidarity.

The Government may be about to take a gamble. I refer to another group of workers who have no option but to fight, the bus workers. The Tesco workers were respected throughout the land. Bus Éireann workers are no less respected. If the Minister takes a gamble on the bus workers not getting public support, like Tesco, the reality will be that they will get support. The Government would underestimate that at its peril.

**Deputy Donnchadh Ó Laoghaire:** I do not understand what is so wrong with holding parties to account for the way they voted on legislation that is entirely relevant to this particular issue.

There are reports today about the committee on water charges and some speculation that we may see refunds to those who have paid and the end of water charges. This is a sign people power works and we will wait and see. This is another example of people power working. Earlier, I spoke about the imbalance between the company and the unions, but this can be redressed through people power. I commend the unions and the people who respected the strike and joined them in solidarity on the pickets.

The note references there have been no unilateral changes to conditions or contracts. This was certainly anticipated, which is wrong. There should be no unilateral changes to contracts at Bus Éireann, Iarnród Éireann or any of these companies and nor should there be any unilateral changes to terms and conditions there.

**Deputy Richard Boyd Barrett:** The contagion of people power and workers' power is spreading in a very positive way. We saw this with the Tesco workers able to face down this bullying highly profitable multinational, which called the workers' bluff and have come off the worst and I am very glad of that. As Deputy Barry said, the Government should take on board this lesson for what is coming down the line with the Bus Éireann, because just like with Tesco we are getting a false picture of what is happening. Bus Éireann is effectively trying to rip up the terms and conditions of bus workers and the Government is trying to slash public service routes to benefit private for-profit bus companies, giving them more subsidies for the free travel pass than Bus Éireann receives and slashing public service subsidies year after year, so the Government should take a lesson from the Tesco workers.

**Deputy Brendan Ryan:** As I pointed out earlier, the people supported the Tesco workers in the same way they supported the Clery's workers, Dublin Bus workers and now the Bus Éireann workers. We need to stop the race to the bottom in the area of employment contracts. The one positive step the Government can make generally for workers is to implement the recommendations of the Duffy-Cahill report. It does not require a commission or a working group because the work is already done. The heavy lifting was done by the previous Government. If the Government wants to do one thing to help vulnerable workers, then please stop letting the Duffy-Cahill report gather dust and implement its recommendations. Nobody wins in a race to the bottom but the biggest losers are the workers and their families. One of our aims should be to become the best small country in the world in which to work, but we still have a long way to go. I welcome the fact talks are under way and I hope for a speedy resolution.

**Deputy Joan Collins:** In recent years, Ireland has become a leader in the developed world

for low paid work. The survey on income and living conditions, SILC, report backs this up, finding 105,000 people in Ireland are the working poor, who are in employment but unable to escape poverty. The Minister of State is standing over this. Things must change. It is no accident that Tesco at this point in time decided to tear up legally binding contracts. It is obvious it was all part of its Project Black and its plan to go after post-1996 and other workers. We must introduce legislation that is robust enough to be able to protect these workers with proper collective bargaining and access to the workplace, as contained in the Bill before the House last week. When I stood with the workers on the picket line I knew they had balloted for industrial action in hotels and pubs because their union did not have the right to access them in the workplace. This is the key issue we must examine. I do not expect this Government to do this, but I hope that future Governments will do so and introduce laws that really protect workers and stop the race to the bottom.

**Deputy Niall Collins:** In his final reply, will the Minister of State address what exactly is he and his colleagues in the Department of Jobs, Enterprise and Innovation, which looks after labour law, going to do in the next short period of time? To my mind, the lack of legislation from the Department since its took over stewardship of this area is very concerning. There are people in the workplace who are hugely vulnerable because they are in precarious employment. There is a race to the bottom, which is what we all say if we are speaking about Tesco workers and Bus Éireann workers and the move to agency staff. Running down people's standard of employment and their rates of pay is a huge concern, which all political parties, including that of the Minister of State, share. What will the Minister of State and the Department do with regard to offering legislation to try to address this, because we do not see anything coming from the Department?

**Deputy Thomas P. Broughan:** The areas with many low paid and casual workers including the retail sector. What steps, if any, has the Department, or other Departments involved, taken to insist on minimum standards and minimum conditions? During the tenure of the previous Government, we had a controversy about sectoral standards and agreements and it still seems very confusing. People speak about a race to the bottom. There is no question that cheaper food prices with the entry into the market of companies such as Lidl and Aldi have had a huge impact on the retail sector. We need urgent action. Very misleading information was placed on the Department of Social Protection's website on the entitlement of workers to the family income supplement. It is extraordinary that people who are working in this sector must rely on social welfare payments. It was a very bad mistake by the Department and the Minister, Deputy Leo Varadkar.

**Deputy Róisín Shortall:** It was notable in listening to the Minister of State's contribution this evening that at no point did he condemn Tesco's actions, even though everybody else in the House is of this view as is the public. It would have been welcome if the Minister of State had condemned Tesco's attempt to welch on its contract with its employees. It is regrettable the Minister of State did not do so because we have a climate that is now very much established in this country whereby there is a relentless attempt by some of the bigger employers to drive down pay and conditions. While there has been a growth in employment we know there has also been a growth in the amount of social support required for workers because pay levels are so low in this country. We need to be very clear. The public has a very strong view that what Tesco did was wrong. Members of the House are stating this and it would be really helpful if the Government was prepared to state its position on this type of predatory action because we need to make it very clear it is not acceptable in modern Ireland.

**Deputy Dessie Ellis:** What we have seen in recent years is a race to the bottom. Workers' rights have been and are being eroded. It is no wonder many people voted for Brexit because of the lack of workers' rights in Britain. The European Union was supposed to be a guarantor of workers' rights but it has not proved to be the great guarantor. People have had enough and they are standing up, whether Bus Éireann workers, nurses or teachers. Tesco misjudged this and it misjudged the resolve of the workers to go out and strike, make their mark and fight this multinational. I do not accept the position of the Minister of State of non-interference and that he is standing by the Labour Court and the Workplace Relations Commission. Surely the Government has an opinion on what companies do, and it should stand up for people and should state what the company is doing is wrong and that it should not be driving down wages and tearing up contracts. There is an onus on the Government or anyone to state this.

**Deputy Robert Troy:** It was remarkable that Tesco had to back down. The reason it had to do so was because of the genuine public support for the rights of the workers. The Irish people acknowledge that every worker is entitled to a fair day's pay for a fair day's work. What a multinational multi-million euro company was trying to inflict on its workers was morally wrong. Collectively, we have to stand up in the Dáil and state this and we are doing so. We need the right balance between the rights of workers and the rights of employers to generate and create jobs, but what was going on here was wrong and the Government should state it was wrong.

**Deputy James Lawless:** I reiterate the points I made earlier. There has been a campaign of misinformation about the workers. There is much information in the public domain and in the workplace which is wrong and misleading and very unfair to the workers. In many cases, these workers have given a lifetime of service to the company. As has been stated, in many cases they date back to the old Quinnsworth. They have spent their life working for the company, which now treats them in this way. Project black involves 700 workers but project purple involves 30,000 workers. The Minister has stated that the Government cannot get involved because it respects the industrial relations workplace machinery but, in the context of the Bus Éireann dispute, the Minister for Transport, Tourism and Sport, Deputy Shane Ross, is like a broken record. He keeps saying he cannot and will not get involved but what is the point if that is the approach?

**Deputy Frank O'Rourke:** There is no doubt but that the way Tesco management has treated 300 staff is inappropriate and wrong. These workers are from all over Ireland and many are from my constituency and have come to my clinics to discuss the dispute in recent months. It is unfair for a company like Tesco, which takes in such incredible profits per annum, to go after a small number of staff for €100 per week. These are the staff who built up the company and have been completely flexible with it, despite the misinformation given by the company that they have been inflexible.

What is happening is fundamentally wrong. We have to support the staff and their families, who have been isolated, given a hard time and treated unfairly. It is time they were treated appropriately and that Tesco backs away.

**Deputy Mattie McGrath:** No business, small or big, can operate without a good working relationship with staff. I spoke about the Workplace Relations Bill last week and I believe the Minister and Government have to wake up and get involved in stopping big business from crushing workers and not supporting them. I acknowledge the charity boxes Tesco has in their stores and I also acknowledge the wonderful walk organised by the manager in Clonmel recently for a sick child. The staff and people who shop there contribute towards these things but we have to have the correct balance. There once was Quinnsworth but I understand Tesco

does not even bank its money in Ireland so it has to treat workers with respect. The Competition Authority needs to do something but many other agencies are useless. These practices are creeping into the equine industry too, where there is a race to the bottom and wages are being driven down without proper supports for staff. Small businesses such as shopkeepers have to and do obey the rules and work well with their staff. They must be supported and we must put some manners on giants such as Tesco.

**Deputy Fiona O'Loughlin:** We are talking about 250 people in a workforce of 14,500. I applaud all the Tesco workforce who voted in support of their companions who work alongside them and are fighting to hold onto their current terms and conditions. Everybody sees the unfairness of what Tesco is trying to do. The power of protest has been demonstrated by the drop of 80% in sales in the picketed Tesco stores in the course of the 11-day dispute, while the drop has been more than 30% in others.

The balance between workers' rights and employers is important and it is good that the strike is not happening while talks are ongoing. We need to plead with Tesco to show fairness to the workers whom they are subjecting to this mistreatment.

**Deputy Seán Haughey:** It is clear to everybody that Tesco management has behaved in an unjust and unfair manner and I congratulate the workers and their unions for taking a stand, not just for themselves but for the future staff of this company and similar companies in the retail sector. The dispute needs to be resolved once and for all and I welcome the fact that some talks took place last Friday. I understand that IBEC and ICTU will now engage in intensive discussions through the Labour Court. This action has huge public support, something I witnessed in Artane Castle last week when shoppers refused to pass the picket and motorists honked their horns. This level of public support was underestimated by Tesco management and no amount of spinning, in the form of full-page advertisements in the national press, can change the reality of the dispute from the perspective of the public. The Government can no longer remain neutral.

**Deputy Dara Calleary:** Over the past number of years there have been a number of incidents, Clerys being one, and now there is Tesco. There are issues with Bus Éireann, Hastings Garage and elsewhere where workers and their rights are being trampled on and they are being treated as a commodity, even though they are the foundation of every business. Deputy Brendan Ryan asked a number of questions and called on the Government to proceed with the Duffy-Cahill report. The report was commissioned in light of what happened at Clerys and the Dáil said "Never again" but the report which might stop it from happening again has not been acted on. The Government needs to work on that urgently.

We also need movement on zero hours and the Labour Court process needs to send out a message that workers are important. They are people and not some sort of commodity. The biggest catastrophe to happen to Tesco in recent years happened because of the activities of management in the UK, not because of the workers in Ireland who work night and day to support their families and the company. We should stand up for them because, by standing up for them, we stand up for every worker in this Republic.

**Deputy Pat Breen:** I thank all speakers for debating this in a calm atmosphere. Last Friday the parties voluntarily agreed to take part in talks under the auspices of the Labour Court and they should be given the time to resolve the dispute with the help of the industrial relations institutions of the State.

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As I said earlier, it must be remembered that this is a difficult industrial relations dispute. The company has not changed anyone's contract unilaterally. All sides have been attempting to resolve the differences over an extended period and have used the industrial relations machinery throughout. There is nothing to be gained by vilifying either the company or the union and such approaches are unhelpful. The parties to this dispute are availing of the mechanisms of the State and they both jointly agreed to engage with the Labour Court last Friday. Mandate has suspended industrial action and the company has agreed to make no changes to contracts pending the outcome of talks. This is a positive sign from both sides and this move by the parties should be respected by all Deputies.

Our industrial relations institutions have been heavily involved in this dispute. Where employer and employee representatives come together and enter into voluntary agreements to resolve differences it creates buy-in from both sides and is a win-win situation.

Deputies Collins and Calleary talked about legislation and work is progressing in the developing of a policy response to zero-hour and low-hour contracts. The Department is currently engaged with the ICTU and IBEC to secure broad agreement to the proposals that have been finalised. The work is being progressed as quickly as possible and is nearing conclusion. We expect proposals to be brought to Government in the first quarter of 2017. Work is also ongoing in respect of the Duffy-Cahill hours.

I call on Members to join me in encouraging all sides to make every effort to reach a resolution by agreement between the company management and the workers, represented by their trade unions, with the help of the State's industrial relations machinery.

**Deputy Joan Collins:** Tell Tesco that it cannot tear up contracts.

### **Knowledge Development Box (Certification of Inventions) Bill 2016 [Seanad]: Second Stage**

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Halligan):** I move: "That the Bill be now read a Second Time."

I am pleased to present the Knowledge Development Box (Certification of Inventions) Bill 2016 to the House for consideration. The main purpose of the Bill is to establish a certification scheme to allow small and medium-sized companies to avail of the Knowledge Development Box.

When implemented, the Bill will allow companies with intellectual property assets that are non-obvious, useful and novel to qualify for the Knowledge Development Box. The Bill will establish a certification scheme to be administered by the Controller of Patents, Designs and Trade Marks. The controller will issue certificates to SME companies if applications under the certification scheme meet the criteria of being non-obvious, useful and novel.

The Knowledge Development Box, KDB, was introduced in the Finance Act 2015 as a tax incentive to encourage innovation and boost research and development. Under this initiative, a corporate tax rate of 6.25% will apply to profits on intellectual property assets that result from research and development carried out in Ireland. The Finance Act provides that three distinct categories of intellectual property qualify for the KDB. These are patents, copyrighted software

and inventions that share the characteristics of patents in that they are novel, non-obvious and useful. It is the third category of intellectual property assets that the current Bill is concerned with and for which a new certification scheme is proposed. The KDB is already operational for the first two categories, patents and copyrighted software, since 1 January 2016.

This third category of assets is targeted at small and medium-sized companies with a view to ensuring that they too can qualify for the KDB. The Finance Act imposes certain financial limitations on the definition of companies that qualify in this category. The limitations are for companies with income arising from intellectual property of less than €7.5 million and with global income of less than €50 million. The legislation will, when enacted, be of direct benefit to companies of a relatively smaller economic scale. We have almost 2,000 companies performing R&D activities in Ireland with turnover under €50 million and they will be able to access the KDB through this proposed new scheme.

A secondary purpose of the Bill is to re-introduce substantive patent examination for Irish patents. Under the Patents Act 1992, the activity of substantive patent examination was discontinued at the Irish Patents office. The Finance Act provides that in order for patents to qualify for the KDB they must be granted following a process of substantive patent examination. This is designed to ensure that only the highest quality patents qualify for the KDB.

The amendments in the Bill to the Patents Act have the effect of reintroducing substantive patent examination in Ireland. This will result in higher quality Irish patents in line with best international practice. Moreover, the intention is to ensure that Irish patents will continue to qualify for the KDB.

Evidence shows that investment in R&D increases economic productivity, competitiveness and improves health, social and environmental outcomes. Firms with a persistent R&D strategy outperform those with an irregular or no R&D investment program. R&D is crucial for creating and maintaining high value jobs and for attracting new business. However, it is the case that depending on the product or process, R&D can be very expensive and not all R&D is successful. A company may experience many failed attempts before it sees results from investment of time, money and resources. These can be considerable, particularly for SMEs. Therefore the extension of the KDB to indigenous small and medium-sized companies is expected to incentivise greater levels of innovation with a view to leading to increased job creation. Promoting innovation is a concern for me in my role as Minister of State with responsibility for innovation.

By way of background, I should say that the KDB was introduced in response to the OECD's consideration of harmful tax practices. Ireland has the first fully compliant Knowledge Development Box that meets the new OECD guidelines, developed following this consideration. The overall KDB scheme comes within the area of responsibility of the Minister for Finance.

The report on tax expenditures published with the budget in October 2015 provides an *ex ante* evaluation of the KDB scheme. This evaluation outlines the basis of the best estimate of tax forgone for the Exchequer of €50 million. This €50 million is in respect of all aspects of the KDB, including the certification scheme aimed at SMEs, which is the purpose of this Bill.

All tax expenditures are reviewed on a regular basis in line with the Department of Finance guidelines for tax expenditure evaluation published in October 2014. These rules apply to the Knowledge Development Box and an evaluation will take place within five years of the introduction of the scheme. The review of the overall KDB scheme will be a matter for the Minister



for Finance.

A certificate granted under this Bill provides the gateway for SMEs to apply the 6.25% corporate tax rate on profits arising from the invention. Grant of a KDB certificate does not, however, guarantee that the SME qualifies for this lower rate of corporation tax. Revenue will consider tax returns on the basis of the provisions applicable to the KDB scheme introduced by the Minister for Finance in the Finance Act 2015 which came into effect on 1 January 2016. Revenue will have the necessary information on the KDB to provide reliable information to Government on an ongoing basis on the use of the KDB to inform future evaluations of this initiative.

I will now turn to the specifics of the Bill and set out what each section is intended to do. As I have already mentioned, the intention in the Bill is to introduce a certification scheme for SMEs in respect of their intellectual property assets in the nature of inventions. This scheme involves the Controller of Patent, Designs and Trade Marks as the designated State authority to certify the assets as being novel, non-obvious and useful. When examining applications under the scheme, the controller will apply the same criteria used to establish novelty and inventiveness as that which currently applies to patents.

Unlike patent holders, companies granted a KDB certificate will not have to publicly disclose the nature of their invention. Nor will they have a monopoly and market exclusivity rights for that asset. The certificate will assist SMEs to qualify to apply the lower rate of corporate tax of 6.25% to profits arising from the IP asset. This is half the normal corporate tax rate of 12.5%. Let me be clear that the KDB certificate will not of itself automatically mean that a company qualifies for the lower tax rate. The Revenue Commissioners can, and will, carry out their own assessments to ensure that a valid basis exists for the company to claim the lower rate of corporate tax. This practice already exists in the context of the R&D tax credit scheme where Revenue can randomly undertake assessments or audits. The certificate is one step in the qualification process for the lower tax rate. Companies that can qualify for this certification scheme are those with less than 250 employees and income of less than €7.5 million arising from intellectual property. Global turnover from intellectual property must be less than €50 million. The profits must result from R&D activities carried out in Ireland.

The second purpose of the Bill is to amend the Patents Act 1992 by requiring that in the future all Irish patents granted will be on the basis of substantive patent examination only. Under the current system, it is possible to grant Irish patents on the strength of evidence of novelty in the form of a search report. These amendments will ensure that all Irish patents granted after this Bill is enacted will be of a high quality in line with best international practice. Moreover, it will ensure that all patents granted by the Irish Patents Office will continue to qualify for the KDB.

I propose in this Bill to introduce a substantive patent examination regime for Irish patents. These changes signal a change in the manner in which the Patents Office will examine patent applications in the future. The Irish Patents Office has a long standing arrangement with the UK Intellectual Property Office to provide evidence of novelty in the form of a search report. When the Bill is enacted, a search report alone will no longer satisfy the evidence of novelty requirements but will in addition require a written opinion. This additional service is also being acquired from the UK Patent Office. That is patentability. We will require an opinion on that.

Looking at the Bill in detail, Part 1 includes sections 1 to 3 and contains standard legislative

provisions relating to Title, commencement, citation, definitions and expenses.

Part 2 contains sections 4 to 6 and sets out the mandatory criteria that applications for inventions under the scheme must meet. This part sets out also the mandatory exceptions and these are common also to the exceptions that apply in patent law. Section 4 sets out the criteria that an invention must meet in order to qualify for a KDB certificate. Put simply, the invention must be novel, non-obvious and useful. This section also lists those inventions that are not considered to be inventions for the purposes of KDB, for example, the invention cannot be granted a certificate if it is a discovery or a scientific theory. Section 5 defines specific inventions that are excluded for reasons such as that the commercial exploitation of the invention would be contrary to public order or morality or that the invention is a plant or animal variety derived from a biological process. Section 6 provides that a KDB certificate will typically issue for one distinct invention.

Part 3 contains sections 7 to 15. It deals with the specific and detailed application requirements under the scheme to the controller including an outline of the controller's decision-making process and review process.

Section 7 sets out the qualification criteria and financial limits for companies that can apply under the KDB certificate scheme and establishes the information requirements for applications under the scheme. Essentially, the application will have to contain the title and a clear, concise, detailed description of the invention, the date on which the invention began to be used, produced or marketed, the novel features or improvements of the invention that did not previously exist, along with description of its advantageous effects, and be accompanied by an opinion from a patent agent attesting that the invention is novel, non-obvious and useful.

Section 8 deals with applications that are submitted but do not initially meet all the requirements laid out in section 7. The controller can write to the applicant identifying the requirements that were not met. The controller can defer consideration of the application until the revised application is submitted. If no response is made to the controller's notice the application is deemed withdrawn after a period of time.

Section 9 provides for the treatment of applications in respect of two or more inventions. A certificate can typically be issued in respect of a single invention only. Under section 9 the controller can invite the applicant to choose which element of the invention should be considered for certification purposes. The applicant can make a separate application or applications for the other inventive elements of the application.

Section 10 allows the applicant to withdraw an application at any time before the issue of a KDB certificate. Section 11 provides that an applicant who initially withdrew an application is not prevented from lodging the same application again at a later date. Section 12 provides the controller can issue a KDB certificate if he is satisfied the invention meets all requirements set out in Part 2. It also outlines the particulars that will be included on the KDB certificate. Section 13 outlines the procedures to be adhered to if the controller refuses to issue a KDB certificate. In this situation the controller must clearly set out the reasons in writing for the refusal. Section 14 offers the applicant a review of the original decision. This involves an internal appeals process in which the reviewer will be of a grade senior to the original deciding officer. This reviewer will confirm or cancel the original decision. Under section 15 an application containing new information may be made in respect of an invention for which a certificate has been refused.

Part 4 contains sections 16 to 19 which deal with the administration of the KDB certification scheme. Section 16 allows the controller to authorise officers of the Patents Office to carry out functions under the Bill on his behalf. This is typically to allow the patent examiners at the office to examine applications under the scheme.

Section 17 deals with the confidential nature of the KDB certification applications. The controller is required to keep records of all applications received, certificates granted, refusals to issue a certificate and reviews undertaken. As applications will contain commercially sensitive information it is essential that they be kept confidential. The controller will not disclose the invention publicly or advertise it in any way. This section also provides that anyone dealing with an application on behalf of the controller will be guilty of an offence if they disclose any information submitted in support of the application.

Section 18 provides for an annual report containing statistical information to be provided by the Controller of Patents to the Minister of Jobs, Enterprise and Innovation as part of the controller's annual report. This report will be laid before the Houses of the Oireachtas. Section 19 is a standard indemnity provision protecting the controller and his staff from legal proceedings as long as they have acted in good faith in the course of their official duties.

Part 5 of the Bill contains sections 20 to 24. Section 20 creates an offence for the forging and use of forged documentation under the Bill. Section 21 enables the Minister to make rules providing for fees and time periods referred to in the Bill. Section 22 creates an offence whereby an officer of a corporate body that commits an offence, is also guilty of the offence. Section 23 is the standard provision concerning the disposal of fees to the Exchequer. Section 24 enables the controller to specify the form of any document referred to in the Bill.

Part 6, containing sections 25 to 31, amends a small number of provisions in the Patents Act 1992. The amendments have the effect of reintroducing substantive patent examination for Irish patent applications. Substantive examination involves the detailed examination of a patent application to assess novelty and inventive step.

Section 26 is a transitional provision intended to cover the position of patent applications filed under the Patents Act 1992 but before the coming into effect of the amended provisions in this Bill. It clarifies that the new regime will apply to patent applications made after the Bill is commenced. Applications made prior to this date will continue to be processed under the provisions of the Patents Act 1992.

Section 27 amends section 29 of the Patents Act which requires that a report and a written opinion as to patentability must be filed with the office. It is against this evidence that the Patents Office will substantially examine the application. Section 28, which amends section 30 of the Patents Act, enables the submission of similar evidence of novelty from a foreign patent office. Section 29 allows the controller to consider observations from third parties on the issue of the patentability of an invention. Section 30 amends section 31 of the Patents Act. It empowers the controller to refuse a patent application that does not comply with the requirements as to novelty, inventive step and industrial application.

Section 31 of the Bill amends the annual reporting provisions in section 103 of the Patents Act. Whereas the controller currently lays his annual report before the Oireachtas, the changes introduced by the Bill will require him to make his annual report to the Minister who in turn will lay it before the Oireachtas. This is in keeping with current good corporate governance

practices applicable to offices and agencies.

I am pleased to commend this Bill to the house. I look forward with interest to the contributions of Members on this and subsequent Stages of the Bill.

*7 o'clock*

**Acting Chairman (Deputy Bernard J. Durkan):** Deputies Niall Collins and James Lawless are sharing time.

**Deputy Niall Collins:** Fianna Fáil supports the Knowledge Development Box (Certification of Inventions) Bill 2016 and looks forward to strengthening its provisions on Committee Stage. The Bill will enable SMEs, which employ around 920,000 people nationwide, to avail of the knowledge development box, KDB, taxation scheme on profits relating to research and development activities, with a reduced corporation tax rate of 6.25%.

The Bill also extends the KDB definition of intellectual property beyond patents and copyrighted software to what has been referred to as the IP equivalent to a patentable invention. This will permit Irish SMEs to include inventions that are certified as novel, non-obvious and useful. However, it has been pointed out that the certification will be decided by the Patents Office, the same entity which decides on patents. While this measure was announced in October 2014, successive Fine Gael-led Governments must be criticised for taking over two years to come forward with primary legislation to enable SMEs access this tax scheme.

The freezing of this Bill is appalling considering that there are provisions in it to reduce the regulatory and compliance burden on micro and medium-sized enterprises. Given how exposed Irish exporters are to a hard Brexit, this is yet another example of the slow response by the Government before and after the UK referendum in taking every measure at its disposal to safeguard Irish SME business and employment. In this regard, I would call on the Minister for Jobs, Enterprise and Innovation, Deputy Mary Mitchell O'Connor, to immediately complete Report Stage of the Companies (Accounting) Bill 2016 and accept amendments put forward by Fianna Fáil that will secure high value Irish jobs as a Brexit contingency measure. However, the UK's competitive edge for enterprise and attracting new businesses and jobs has seen Ireland slip further and further behind our near neighbour. Despite the Government's attempt to claim that Irish competitiveness levels are improving, the latest statistics say otherwise.

Ireland has continued to plunge on the World Bank's ratings for the ease of doing business across 190 economies, dropping to eighteenth in its 2017 report. The Taoiseach has failed to meet his 2016 target of making Ireland the best small country in the world in which to do business. Ireland has fallen behind Georgia, Latvia, Estonia and Macedonia in global rankings. Budget 2017 did not close the competitiveness deficit with the UK.

The UK will still have a more attractive capital gains tax relief which applies a 10% rate to entrepreneurial gains of up to £10 million, far in excess of the €1 million Irish limit. The current regime still puts Ireland at a competitive disadvantage as a location to conduct business in. The chief executive of the Irish Exporters Association has said that the reduced capital gains tax rate does not bring us onto the racetrack given that the UK had a ceiling that was ten times the scale of Ireland's £1 million threshold. Dublin Chamber of Commerce said that the changes will do little to stem the flow of start-up companies moving to the UK from Ireland.

Irish start-ups are also attracted to the UK enterprise investment scheme which makes early-

stage capital much more readily available in the UK. In Ireland, the employment and investment incentive scheme provides individual investors with tax relief of 30% in respect of investments of up to €150,000 per annum. However in the UK, the enterprise investment, which is similar to the enterprise investment scheme in Ireland, enables investors to receive tax relief of 30% on investments of up to £1 million.

The UK is planning to reduce its corporation tax rate to 17%, which would bring it closer to Ireland's 12.5% rate. The Government needs to use every available tool to make the current regulatory landscape a more attractive location to retain and attract new businesses and entrepreneurs to establish in Ireland. I find it extraordinary that the Minister has refused to review her Department's ten year strategic enterprise policy, Enterprise 2025, following the Brexit vote.

Fianna Fáil has called for the immediate review of all the employment and export targets in Enterprise 2025 following publication of two recent ESRI Brexit impact reports. There is no allowance in the Enterprise 2025 forecasts, published over 12 months ago, for the impact of Brexit on Ireland in regard to employment levels and export targets based on the various UK trading scenarios that might emerge in a hard Brexit scenario.

The ESRI report, Modelling the Medium to Long Term Potential Macroeconomic Impact of Brexit on Ireland, indicated a hard Brexit with Britain operating under WTO trading rules would result in Irish unemployment increasing by 2%. Another ESRI report, The Product and Sector Level Impact of a Hard Brexit across the EU, laid out a chilling picture for Irish exporters and related jobs. In a WTO tariff scenario post-Brexit, Irish exports to the UK would be the most exposed in the EU, leading to a reduction of 4% of total exports. Shockingly, Ireland would face a severe tariff exposure. While we make up 5% of the UK's total imports, we would be charged nearly 20% of the total EU tariff.

The Government needs to play a proactive role with business scenario planning, so that Irish companies impacted by Brexit can take informed strategic and commercial decisions to plan for this situation. The Minister needs to review her Enterprise 2025 strategic document. We are happy to support the Bill on Second Stage and will seek to amend it, where necessary, on Committee Stage.

**Deputy James Lawless:** As a Fianna Fáil spokesperson on science, technology and research, I am pleased to support the Bill and commend it to the House. I agree with the comments of my colleague, Deputy Collins, in terms of the Bill and its place in the wider context.

There is no doubt that the Bill is very necessary and welcome, and will make a significant difference to SMEs in terms of how they engage with research and innovation activities. It has many sensible sections, which the Minister of State and my colleague have already detailed. It is important to step back from the detail and consider the wider international context.

We are well aware that we are in an economic battle with other countries. The advent of President Trump in the United States, the march of Brexit in the UK and the wider context of the EU and efforts to introduce a common consolidated tax base and other such measures are all of concern.

We have always praised and taken pride in the many attributes we have. Our low corporation tax rate has been one such positive measure. Our English speaking vernacular, the dialects of our workforce and the fact we are in the eurozone are all very important measures in terms of

international competition when we are looking for jobs and encouraging businesses to locate, centre and start up here. However, as is often the case, our greatest asset is our people. Our highly educated, motivated and creative workforce is the real secret to our success.

I recently had a conversation with Mr. Eamonn Sinnott from Intel, who is a remarkable man in his own right. We discussed the Ireland's Edge project, with which I am sure the Minister of State and my colleagues are familiar. High-tech employers and academics set out to try to capture what makes the Irish unique in terms of creativity and innovation. We have seen those attributes across the arts, the sciences and the business world. It is very difficult to quantify, but we can all agree that there is a unique and positive attribute of the Irish people, namely, that we are a creative people and make things happen. The core of this Bill is to reward that in every sense, including in a monetary sense. The talent, education and skills bases are what give us a competitive advantage, and mean that, despite international events, we can triumph.

I understand the knowledge development box is in the context of the OECD and base erosion and profit shifting, BEPS, initiative. I understand we are the first country in the world to follow through and introduce an OECD compliant tax measure of this sort. That is very welcome and something of which we should be proud. We are a world leader in that sense. I understand the Bill will replace the double Irish, which was phased out a couple of years ago. It makes a lot of sense to introduce such a measure, and it is critical in allowing innovation to succeed and be rewarded.

The research and development tax credit is a similar measure, which allows for a 25% return on innovative activities. However, following the extension of the knowledge development box to SMEs, perhaps we could learn from the operation of the research and development tax credit already in place. It is a fine measure and helps to stimulate research and innovation. In a previous life, I worked on a project that qualified and saw this in action. However, I have spoken to SMEs that have told me very few of them have engaged on the R&D tax credit. Despite the welcome extension of the knowledge development box to SMEs, I would worry that the same pitfalls would face them.

One of the reasons the R&D tax credit is apparently not as useful to SMEs as it could or should be is the uncertainty about eligibility or the credit's application. If an SME, by definition a smaller company with limited resources, is to invest in an invention or innovative project with the view to later on claiming back an R&D tax credit or in this case a knowledge development box tax credit, it might find that it falls foul of Revenue because of a lack of Revenue guidelines. There is an uncertainty about what projects fit the bill and there is the possibility of a retrospective audit or a Revenue spot check three or more years later. Revenue can come back to the company and state that the innovative project that the company claimed an R&D tax credit for did not qualify and state why. There seems to be discrepancies and a lack of consistency in the application of the credit which is off-putting to companies that have limited resources and are trying to decide where to concentrate those resources. They are afraid that a couple of years down the line there may be a claw-back from Revenue on activity that they in good faith entered into with the intention of claiming the credit. Perhaps the Minister and those in the Department might examine that issue from the R&D tax credit point of view and with the knowledge development box in mind as well because some guidelines would be useful.

From speaking to colleagues in SMEs and bodies such as the Small Firms Association and ISME, I know that there was a successful initiative a couple of years ago which was called Job-sPlus. SMEs were encouraged to take on a worker, that is, to take someone from the unemploy-

ment queue and into the workforce, for which they received a direct credit. I think a payment was made to help them pay the cost of hiring the worker. It was a direct job activation measure that took people into the workforce but there was a very real commodity in the sense that there was an actual financial and direct support provided to the company to take on the worker. For SMEs with limited resources, a tax credit down the road versus a cash payment right now is like a bird in the bush being worth two in the hand, as they say - or is the other way around? Whatever it is, having the income now is better than having it potentially as a credit in a year's time. Something like a JobsPlus for R&D would be welcome and would make sense as it would allow companies to directly intervene because they could with good knowledge and in confidence embark on a research policy. I suggest to the Minister and the House such an initiative for research in the way that there was JobsPlus in the past.

On a critical note that is relevant to today's debate, I am very disappointed about the programme for research in third level institutions, PRTLTI. I raised this issue a number of times in the House over the past six months and again last week under the Order of Business. If we are to develop the knowledge economy and innovation and reward research, both at academic and business levels right down to the SME sector, which compares with some of the research institutions, we have to be serious about it and serious about funding it. From the figures I received on the PRTLTI in the past couple of days, I understand it is now cut down to €14.4 million for the 2017 round. This is more than a 50% cut on the previous year which in itself was small fry compared to what it was in previous years. Since its introduction in 1998, the PRTLTI has been a successful research fund that was targeted across many different academic institutions, projects and disciplines. It was broadly based and encompassed humanities as well as the STEM area. However, it appears to have been eroded constantly to the point that its funding is now €14.4 million, which is small money compared to other research projects.

I note that the Minister for Jobs Enterprise and innovation, Deputy Mary Mitchell O'Connor, from whose reply to the parliamentary question the figures emerged, referred to funding for Science Foundation Ireland, SFI, which is extremely welcome. It is a fantastic agency which does fantastic work and I praised it in this House only last week in the context of another debate, but there cannot be a one size fits all approach. Funding for SFI and other institutions is no excuse for robbing Peter to pay Paul and cutting back the PRTLTI which has a broader appeal, is available to draw down by other institutions and universities and can be matched with, for instance, European research council funding. There were Supplementary Estimates in both 2015 and 2016 for the PRTLTI and I appeal to the Minister and the Department to examine whether the €14.34 million could be bumped up. The programme is very deserving and the research institutions and universities will need it.

To put in context how it can be used, I visited a number of universities over the past number of months. They showed me, for instance, where a new building was commissioned, a new lab was designed or new measuring equipment was put in place using PRTLTI funding. Five or ten years on, the equipment is being to fail. It is the equivalent of having a brand new school where in the classroom the children have no schoolbooks or outdated ones. The PRTLTI funded the bread and butter machinery, buildings, equipment and resources. It is a much needed fund as opposed to other funds that may be more particular to research teams and high potential individuals. Those are also necessary but they are two different things and both need to be resourced equally because they are both extremely important.

We welcome the Bill and will support it. Its extension to SMEs is needed. SMEs are agile, versatile and up for a challenge. Many of them would love to invest in R&D and perform more

innovative activities but, as I have outlined, there are practical obstacles to them doing so. I commend the Bill. As I stated, we will support it but I hope that some of the obstacles will be addressed during the passage of the Bill or through other measures. I rest my contribution there.

**Acting Chairman (Deputy Bernard J. Durkan):** I call Deputy Maurice Quinlivan who has 20 minutes.

**Deputy Maurice Quinlivan:** I do not think I will need that much time but we will see what we can do. I welcome the broad thrust of the Bill but Sinn Féin has a few issues that it will raise on Committee Stage although we will raise most of them before then. As the Minister of State is aware, the Bill is technical in nature. Its primary aim is to amend sections of the Patents Act 1992 to allow for the introduction of a substantive examination of patent applications and facilitate the issuing of long-term patents, with a certification scheme for the knowledge development box which will allow small companies to qualify. Once certified, SMEs involved in research activities will be able to avail of a reduced corporation tax rate of 6.25%. As explained in the Bill, an SME is a company with no more than 250 employees, intellectual property assets of less than €7.5 million and global turnover of less than €50 million. We have to measure this description against that of very small community businesses that are crippled by rates, rents and various taxes, practically none of which they can avoid or on none of which they get deals.

My party believes it is well past time for an honest debate on corporation tax. Just this week the European Commission again attacked the reckless tax-cutting agenda of the Government and its use of volatile corporation tax receipts to underpin spending. In the past my party's finance spokesperson, Deputy Pearse Doherty, dared to mention the name of a particular company, Apple, but he was shouted down by Fine Gael Deputies, including the Minister of State at the Department of Foreign Affairs and Trade, Deputy Dara Murphy. This is the level of maturity that this and previous Governments have shown when it comes to a discussion about corporation tax. That this remains the position, even in the face of recent EU ruling against Apple, is simply not good enough.

Sinn Féin supports having an open, transparent and competitive all-Ireland corporation tax rate which does not allow large multinationals off the hook in respect of their tax responsibilities. It is said that the knowledge development box is the first such scheme in the world to comply with the terms of the OECD project on base erosion and profit shifting, BEPS, to minimise corporations' efforts to minimise their tax liabilities. It is also said it is to encourage investment specifically in research and development activities by reducing the tax companies pay on earnings. My party is all for indigenous Irish companies that can grow and employ significant numbers. One hopes these companies will be much more loyal to the country than those which up and leave overnight once economic conditions deteriorate, as we have seen happen on too many occasions. We need to focus on supporting small SMEs that will have a loyalty to their communities, their staff and their country. That said, the measures in today's Bill needs to be seen for what they are - a further tax avoidance measure that the ordinary Joe Public simply cannot avail of. Companies with a turnover of up to €50 million will be allowed to pay half the tax they are due to pay, which is wrong. These are not abstract figures but resources that in many cases are desperately needed to fund our schools, hospitals and infrastructure and to invest in both job creation and retention and to protect Ireland from the negatives impacts of Brexit.

There is also uncertainty about how the scheme will be monitored in obtaining a knowledge development box, KDB, certificate. The invention by the company will have to be novel, non-obvious and useful. The terminology is extremely ambiguous. Therefore, who will determine



which companies will meet the conditions laid down? Will it be the Patents Office alone? It is also unclear how much tax will be forgone following the introduction of the KDB certificate. How does the Minister expect Members to support the legislation when we do not know what liability the State will assume once it has been introduced? This is being done during the worst housing and health crisis ever in the State when most public services have been squeezed to the bone.

It is also unclear how many small and medium enterprises will make investments in research and development activities to avail of the proposed measure. As we are all well aware, it is the large corporations rather than SMEs that like to use these types of loopholes and which, in many cases, have the resources and ability to access them. It is stated in the roadmap for Ireland's tax competitiveness that we must place ourselves in the best possible position to become the country of choice for mobile foreign direct investment in a post-BEPS - base erosion and profit shifting - environment. Do we really want to introduce further loopholes to attract companies because of a cheap tax regime, while we hammer citizens with a litany of unfair taxes?

The Bill and the implementation of the knowledge development box, KDB, scheme will also require changes to the current patent process. It is unclear if the KDB certificate process will be cheaper than the patent process. I ask the Minister to address that issue.

The changes in the patent process will allow third parties to make written observations on a patent application to the controller before a patent is granted. Who are these third parties? It is startling and unbelievable that the Irish Patents Office relies on the UK patents office to provide a patent search report in deciding if an Irish patent should be granted. Will the Minister explain exactly why this is still the case? This scenario will surely have to be reviewed in the light of Brexit. When the Bill was drafted and the concept of a knowledge box introduced, the Brexit referendum had not yet taken place. Where does the decision on Brexit leave us and what specific action is the Minister taking to address the issue? It is also unclear whether the changes proposed in the Bill will have implications for the cost of a new patent. When will this be made clear?

Sinn Féin is sceptical about introducing further tax avoidance schemes. In the roadmap to which I referred reputation is regarded as a key pillar. Ireland's reputation was damaged considerably by the aptly named double Irish arrangement. In 2013, the Minister for Finance announced that we did not operate a tax haven, yet one year later he closed down the double Irish mechanism. I do not want our reputation to be damaged further by the introduction of a replacement scheme. Political parties and elected officials from across the political spectrum should, in the interests of the people they represent, ensure highly profitable companies will be tax responsible and pay tax in a transparent manner at the appropriate rate of 12.5%.

There are two pillars, rates and regimes. As I indicated, Sinn Féin supports the 12.5% corporation tax rate provided tax is paid at this rate. As part of our all-Ireland strategy, we would welcome this rate even more if it applied on an all-Ireland basis. Brexit will be a game changer and we need to be ready for it. In the past, our tax regime has been probed in the United States, Australia, Britain and, most recently, by the European Commission. It is important to note that knowledge development box-type schemes introduced in other jurisdictions are being examined, questioned and probed by other authorities.

A mature debate on Ireland's corporation tax regime and reputation is required. Sinn Féin wants Ireland to be a responsible member of the international community, with no clouds hang-

ing over our tax reputation. The right of the Government to set its own tax rates, including the corporation tax rate, is one Sinn Féin has always defended, particularly in Brussels. However, the introduction of a research and development loophole and knowledge development box, with tax rates of as low as 6% and 6.5%, will leave another cloud hanging over us.

The evidence to date is that knowledge development boxes have been used internationally as a tax avoidance tool in many cases. This legislation will only entrench such a negative perception. There are fairer ways of encouraging investment in research and development than introducing a measure that will undoubtedly be used by some corporations to avoid paying taxes.

As the Minister will be aware, Sinn Féin introduced amendments to the legislation in the Seanad, some of which we will resubmit on Committee Stage and, if necessary, Report Stage because the Government has not addressed our concerns. I ask the Minister to address the points I have raised in the interests of restoring our reputation and ensuring we create a fair and equal society, particularly for businesses.

**Deputy Richard Boyd Barrett:** We are very strongly opposed to this Bill. The so-called knowledge development box is being sold as a reasonable incentive to small and medium enterprise to develop our innovative edge. The implication is that the scheme will have a positive benefit on the domestic economy. This is the view expressed by the Government and the Fianna Fáil Party. I do not know what the Labour Party's position is as it is not represented in the Chamber. We will see what its Deputies have to say on how the knowledge development box will benefit small and medium enterprises.

The most recent figures available on the level of tax the corporate sector pays on gross profits refer to 2014, although I understand figures for 2015 will be available soon. The figures show the corporate tax code is full of loopholes that are being used to rob taxpayers of vital tax revenues which could be used to develop infrastructure and fund our universities, the most important locations for the types of innovation and technological developments that would benefit the entire economy. They are also being used to rob the State generally of the revenues it needs for investment in strategic enterprise and industry, infrastructure, public services, technological development and upgrading the education system to make it the real driving force of innovation.

What is being sold as something that is good for the economy and innovation is in reality a massive tax break for profit interests and members of the public need to know the scale involved. The 2014 figures show the corporate sector benefits from tax loopholes worth €35 billion. Gross pre-tax profits for corporations stood at €95 billion in 2014. However, after what are described as deductions and charges, the figure decreases to €65 billion, with further deductions of €4 billion made through another series of loopholes. This means the taxable figure is reduced by €35 billion through loopholes or tax breaks that do not benefit the economy or society. Before considering the introduction of further tax breaks, we must address the current loopholes that have created a gaping hole in the potential tax revenue of the State. Incidentally, the figures I have cited were provided by the Revenue Commissioners.

Large multinational corporations are engaging in aggressive tax evasion or avoidance, whichever term one wishes to use, and some major domestic interests are also benefitting from tax loopholes. It is now proposed to introduce another loophole. The idea that the purpose of the knowledge development box is primarily to benefit small and medium enterprise must be set against the definition of a small and medium enterprise. According to the legislation, a small

and medium enterprise is a company with an income arising from intellectual property of less than €7.5 million and global income of less than €50 million. These are not figures we associate with small and medium enterprises. The companies involved will not be corner shops or start-up companies in the local enterprise centre. To set income thresholds of €7.5 million domestically and €50 million globally is to stretch the definition of a small and medium enterprise. Many large companies will benefit from this measure. However, the bulk of small and medium enterprise in this country will not gain from it. The same old crowd will benefit. What is not clear is how the big multinationals who exceed the thresholds in terms of their global incomes will be prevented from benefitting. We are well aware that they can massage their incomes, and have done so, such that they pay no tax at all or pay less than 1% in tax. They are well capable, through the internal allocation and movement of profits, of reducing their incomes in order to avoid paying tax.

Leaving that aside, in terms of the thresholds, where are the safeguards to ensure big companies such as Apple, Google, Facebook and so on do not set up a number of small companies, or put in place arrangements with small companies that they help to set up, and channel innovations through them? It seems there is nothing to stop that. I suspect that is exactly what they will do. The one thing these companies are very innovative at doing is avoiding tax. They have shown a remarkable ability to navigate around tax codes, usually with the active collusion of the political establishment, as happened here, and possibly, on the part of Revenue, in terms of what happened in the Apple case, although that is not yet clear but certainly has to be examined. We will learn more about that from the investigation into the Apple case but that there was political collusion in terms of tax avoidance of that I have no doubt. That there was collusion in some form or another with Revenue in terms of these tax rulings is a possibility, at least. This is what we are dealing with. Against that background, we are introducing another tax avoidance loophole-incentive based around the notion of intellectual property.

In regard to “intellectual property”, it was stated that we are in the world of intellectual property now because of technological invention. This is a very old idea. The Minister of State, Deputy Halligan, as somebody who comes from the left should understand this point. The idea that the entrepreneur’s idea is the generator of wealth is not a new idea, rather it is an old idea, and a very right wing idea. The workers making the products do not matter and neither do the people in the call centres selling them. They are irrelevant. There is little value put on them but a lot of value on the person with the brilliant idea yet the person with the brilliant idea gets away with paying no tax while the poor workers producing or selling the products pay taxes at levels that are a multiple of that paid by these brilliant entrepreneurs. Where do most of these innovations come from? When one traces them back one finds that some of the biggest most profitable companies in the world have effectively stolen the ideas for which they hold patents and generate huge profits from public institutions, such as, in the case of America, the military, or in our case, the universities. That is an important point. In Ireland much of the innovation comes not from the military but from our universities. When one traces back the origins of these intellectual properties which have made huge profits for private companies one finds that many of them were developed in universities rather than by the brilliant entrepreneurs who end up with profits that are incomprehensible and on which they pay no tax.

As a student of literature I must point out that up until the poet Wordsworth there was no notion of copyright. Wordsworth was one of the people who championed the notion of individual ownership of ideas.

**Deputy Eamon Ryan:** It dates back to Brehon law.

**Deputy Richard Boyd Barrett:** Yes but in a lot of societies and, to my mind, the more progressive societies, the idea that anybody individually owned an idea was considered nonsensical, and it is nonsensical because ideas are generated by society. People often claim the credit for them or they have the machinery to take out patents on them before anybody else and so they claim they own the idea. Now, we are proposing that such people will not have to pay any tax on the enormous profits they generate from supposedly their ideas. As I said, ideas are generated out of societies collectively.

I am against this proposal. I reiterate that every tax break given to for-profit entities reduces the amount of revenue the State has to put into the universities. I am for innovation, very much for it. Our universities are starved of money. That is where the money needs to go. All we are doing is making things more difficult for our universities. Grants for postgraduates were cut and have still not been restored. These are the people who come up with ideas but we cut their grants and increased their fees. Funding for many of our third level institutions has been cut over the last eight or nine years. If we continue to give away billions of euro every year via tax loopholes to these companies we will have less money to put into the universities that could actually champion real innovation and socially useful innovation. What is a socially useful innovation? For a private company the criteria in terms of an innovation is will it make money and not will it benefit society?

This is our money that is being used to provide tax breaks. Do we want these resources to be given primarily to people who are pursuing profit or we would rather them go into public institutions that have some semblance of what is in the best interests of society as a whole, be that in relation to the development of renewable energies, new technologies or strategic industries that will benefit society? It should be the latter yet they are being starved.

We are joining in the race to the bottom. It makes me weep. We have been warning - the Minister of State, Deputy Halligan, was with us on this for many years - that Ireland is leading the race to the bottom in terms of corporate taxation, not in terms of the 12.5% rate but the average 6% rate that companies actually pay. Interestingly, the same percentage is chosen for the beneficiaries of the knowledge development box. As we know, a combination of small and medium enterprise are paying 12.5% as against the big profitable corporations who are paying 2%, 1% or even less than that. In some cases, they are paying less than 1%. We led and continue to lead that race to the bottom, but we are now being out-flanked by the maniac Trump who wants to reduce it even further and by Prime Minister, Theresa May. In the North, Sinn Féin and the DUP have jumped into this space, with Sinn Féin calling for a 12.5% rate in the North and the DUP calling for a 10% rate.

Where does it end? Every time we give away money like this there is less investment available for the universities, public infrastructure, public services and so on. It is madness. We are handing over control of science, innovation and the economy and, increasingly society, to a tiny group of multinational corporations who are ingenuous at making money and avoiding tax. They are robbing other people's ideas and making money out of them. Moreover, they want to take over our universities and hold them hostage. Increasingly, they can because underfunded universities that do not get enough funding from the public have to go cap in hand to the private corporations begging for some money for research. The companies say they can give it as long as the research benefits them. That is what is going on. There is a creeping corporate takeover of our third level institutions. Some buildings in the third level institutions are named after billionaires in this country who in many cases became billionaires through aggressive tax avoidance. There are buildings named after Michael Smurfit, Anthony O'Reilly, Denis O'Brien

and so on. Is this really what we want? It is certainly not what I want. I do not believe it is the basis of a sustainable economy. Responsibility for the sort of technological advancement and investment in science that we want is being handed over to people who see only dollar signs or euro signs. I absolutely believe we should reject this.

We oppose this, full stop. It is part of the race to the bottom. Even in its own terms, which I have said we reject, how can the Government stop the big companies setting up small front companies and exploiting the system? I do not believe it will be able to.

What does the Government mean when it says €7 million and €50 million are small sums? I could count on one hand — or probably on one finger in my constituency — the number of small enterprises that have an income of €7 million or €50 million in global profits. That is not small. Therefore, there is a sleight of hand. It will benefit the same old gang, who are already ripping us off to an astronomical level.

I do my best to ring the alarm bells about this stuff. This is an important debate. It will probably be ignored in the media narrative. These are very serious issues that need to be discussed. I do my best to ring a few alarm bells. We will see how that pans out.

**Deputy James Lawless:** The Deputy might get credit for inventing the alarm bells.

**Deputy John Halligan:** The Deputy's orations are always brilliant.

**Deputy Mattie McGrath:** I do not know what kind of a bell or dong I can wave after that. Deputy Richard Boyd Barrett is used to rattling the big bell that he has and throwing the toys out of the pram but he is entitled to his views. More power to him.

**Deputy Richard Boyd Barrett:** I apologise to Deputy Mattie McGrath as I must leave.

**Deputy Mattie McGrath:** No problem. Beidh lá eile againn. We can continue the debate elsewhere. We had many a good debate over five years when we were in the Technical Group together. It is very important that all views be heard.

It is very timely that we have this debate on the Knowledge Development Box (Certification of Inventions) Bill 2016. The Finance Act 2015 introduced a knowledge development box, KDB. One would think it was the KGB when listening to Deputy Boyd Barrett. He is not listening now. Tá sé ag caint leis an Acting Chairman. The Bill brings in an effective reduced rate of corporation tax of 6.25% for qualifying income derived from qualifying expenditure in the European Union by an Irish tax resident company. The KDB has been described as the first OECD-compliant KDB in the world, which means it is in line with international guidelines, the OECD Action 5 report, published on 5 October 2015, and specifically the OECD's modified nexus approach. As I understand it, the KDB is a way for national governments to encourage the commercial exploitation of intellectual property by offering generous tax breaks on the profits derived from that intellectual property. That is vital.

While we have had the saga and mess of the Apple tax, in respect of which a judgment is awaited, I, as a Deputy representing Tipperary, acknowledge the amount of foreign direct investment in Clonmel and in Dungarvan and Waterford city in the neighbouring county, the constituency of the Minister of State, Deputy Halligan. We value this. The companies have provided considerable employment. They provide reasonably good and very good jobs but also have a spin-off effect on the services industry. We have to nurture them and encourage

them. There is little point in having the ideologies of the hard left and harder left. It is so hard now that kneecaps are nearly freezing. This is in the belief that we are going to encourage the big companies to nurture smaller companies. Deputy Boyd Barrett is hung up over the bigger companies setting up smaller companies to avail of the supports. It is fine if they do. From little acorns major trees grow. We must support that.

I agree with Deputy Boyd Barrett on one area. The €7 million limit is very high for small indigenous companies or community enterprises we may like to or want to nurture. In this regard, a turnover of €7 is huge. As I understand it, the KDB is a way for national governments to encourage the commercial exploitation of intellectual property by offering generous tax breaks on the profits derived from that intellectual property. While it might not be perfect, this legislation is necessary and timely, as is the debate on it. Intellectual property might be very limited and scarce at the outset. We must remember the investment that must be made in any new patent, design or research and development. Considerable work, time and energy goes into it also. Therefore, we have to have a level playing field and a carrot-and-stick approach to encourage it.

The patent box regime was first introduced in Ireland, in 2000, and has since been introduced in many EU member states, including the United Kingdom, France, Belgium, Hungary, Luxembourg, the Netherlands, Spain, and Italy. Is it not nice to think in these troubled times in our European Union, albeit with Great Britain threatening to exit, that we led the way in this regard? Perhaps when the Minister of State Deputy Halligan and many other Ministers are lobbying their sister or brother Ministers throughout Europe, this might be one thing they will point to. We have had innovative ideas that have replenished our own economy. We have given ideas to other European states so they might nurture growth and take the baton or torch and run with it.

Together with the existing 12.5% corporation tax rate, research and development tax credit and depreciation allowances for capital expenditure on intangibles, Ireland provides a hugely competitive offering to international business. They would not be here otherwise. We have to be competitive. We cannot be so inward-looking and introverted that we bring down the barriers, especially with the onset of Brexit. We must expand, explore, encourage, initiate and beg, steal or borrow in asking the companies to come here to avail of the supports available. We must give the same kinds of supports to small indigenous businesses, SMEs and sole traders. They will have difficulty getting funding because, as I have said, the limit is too high. We cannot lose sight of this in these dark times as we try to come out of this recession. We are being hit now with what is happening across the water and the associated reverberations throughout Europe and the world.

Deputy Boyd Barrett referred to US President Donald Trump as a maniac. That language should not be used in any parliament. Mr. Trump was elected as leader of the people of the most modern democracy in the world. They elected him and they deal with him. We should react only if he starts firing salvos at our people here or starts threatening to bring home companies that have been nurtured here, including with IDA grants. I have used an analogy before about walking into a yard. The Minister of State, Deputy Halligan, my colleague from Corcaigh who is present, Teachta Aindrias Ó Muineacháin, and mé féin go into a lot of houses and yards and meet dogs lying down. We look to see whether they are cross or will bite. I have been bitten three times during election campaigns. One does not go over and kick the dog. One slips in nicely and rings the bell. The dog may be asleep or lazy, or he could be an old, tired dog, but you do not kick him until he bites you. That silly narrative has grown in this Chamber, especially on the left. People keep attacking because something does not suit their ideologies,

liberal agendas and so on.

Despite the obvious incentives, we should be clear - I mean this, regardless of my welcome - on at least some of the ethical issues surrounding intellectual property rights. Discussing this issue is not the preserve of the AAA-PBP and the hard left. We all have that right. The ethical issues involved are evolving on an hourly basis. We must be ever ready to examine, explore and engage on them.

Professor Jørn Sønderholm has noted that intellectual property rights are a socioeconomic tool that create a temporary monopoly for inventor firms and enable them to charge prices for their innovations that are many times higher than the marginal cost of production. Deputy Boyd Barrett mentioned this matter frequently, although I did not hear other Deputies because I was at a meeting. We all have those concerns. Last night, I watched a video on Facebook of eight year old children who were working in mines. Thank God for the power of Facebook and other such tools that allow us to see the exploitation of young people, the abuses, greed and naked slavery inflicted on people just to source and extract minerals out of the ground. The same applies in sweat shops. It is wholly unacceptable. We all need to be educated on this situation, given that we all shop in the same places and buy the wares produced in those sweat shops. We are all guilty, not only the Government and regulators, of turning a blind eye. Hear no evil, see no evil, speak no evil.

The prices charged raise broader ethical issues surrounding intellectual property rights. I was delighted that Deputy Eamon Ryan was able to remind Deputy Boyd Barrett that the models in question, despite not being in law, existed in Brehon times. They are not new creations. They were there fadó fadó.

In line with much contemporary literature on the ethical dimensions of intellectual property rights, the product type in question that would give rise to most concern is life-saving medicine. Indeed, I have just come from a Rural Independent Group meeting with a group of relatives of cystic fibrosis sufferers. I also met them last week in the AV room. I saw and listened to the horror and torture on their faces and in their voices as they read out letters from loved ones who had been dying. One lady had the drug Orkambi with her. She had a 14 year old. She sent a picture around the room showing him playing sports, running and doing everything else that he inevitably would not be able to do. Others had guilt about being alive when their siblings had passed away. Those families have been living through mental torture, so to leave that meeting and then have to try to balance it with the intellectual property rights of drug companies is difficult. How many companies did I mention were in Ireland? Maybe the one making this drug is not. How to balance its rights with the social good, life and death? How could any Government delay and procrastinate? People were given promises and we were all lobbied in the AV room last year. They were told that it would be January, then early February.

Not only the Government is involved, though. The out-of-control HSE has also been procrastinating for a long time. We met a group prior to that one regarding life-saving equipment on helicopters for rural areas. The Irish Community Air Ambulance, comprising volunteer doctors and paramedics, found €3.5 million from a donor to run the service for one year. Hey presto, the HSE did not trust the group's bona fides. This is the same HSE that will not perform due diligence or show enough compassion to consider these requests.

These are the ethical issues that we must try to address. They apply in the cases of life-saving medicines as well as other production types, but there is no comparison with a young child

who is dying when drugs could save him or her. The drug in question cost €159,000 per year, but that is now down to €129,000. That murky big business has to continue after this debate, but the HSE has procrastinated so. My colleague, Deputy Harty, spoke about the lack of governance and the desperate need for same. The Taoiseach told us that the governance was fine, but it is not. There is no governance. The people who need these drugs are trying to survive. Parents have needed to come to Leinster House tonight, last week and regularly when they should be at home with their sick loved ones. It puts our passion and engagement in perspective when we debate these ethical concerns.

Will the Minister of State give us any guarantee that, if the State offers generous terms to the development of intellectual property, issues such as this one will be addressed and form part of the broader conversation on the Knowledge Box Development (Certification of Inventions) Bill 2016? They must be. The Minister of State has an important role, given his dealings with schools and wider education. He has travelled half the world in recent times. Deputy Boyd Barrett was critical of him - the Deputy had looked on the Minister of State as a bedfellow on the hard left for many years - and said that he would not be open to change. The Minister of State will be open to change, though. He has to be. When one goes from this side of the House to that side, change occurs. That change is difficult to handle. I have never been on that side of the House, nor do I want to be, but the Minister of State must deal with the system, the Cabinet and the administration of the State, warts and all. I have some appreciation of how difficult it is from our briefings with the Minister of State and the Ministers, Deputies Ross, Naughten and Zappone.

The Bill and this debate are necessary. The knowledge development box was introduced in the Finance Act 2015 as a tax incentive to encourage innovation and research and development. Under the initiative, a corporate tax rate of 6.25% will apply to profits from intellectual property and assets that result from research and development carried out in Ireland. Research and development work has never been more vital. We must send out the message that we want more research and development and will give more grant aid to support the companies involved. I know some young innovators who are finding it difficult to access that funding.

The Finance Act provides that a number of distinct categories of intellectual property qualify for the knowledge development box - copyrighted software and patented inventions that share the characteristics of patents, in that they are novel, non-obvious and useful. Everything designed is novel to the person designing it and beauty is in the eye of the beholder. The people involved might be intellectually able. They have to be the thinkers, creators and thought provokers who can get their ideas out there, perhaps with others in companies. This is why some of the larger companies might invest. Deputy Boyd Barrett claimed that this would be bad, but it would not be. People will have ideas and research them for years, but they are not bankers. They do not have the accountants, design artists, specialties or qualifications necessary to bring their ideas that bit further. We must encourage linkages and be available to help the person with the idea. The man or woman who never made a mistake never made anything. It is important that people, including young people, be encouraged. I missed the BT Young Scientist and Technology Exhibition this year, although I have attended it every other year. I have seen the innovation in our schools. *Mar focal scoir*, it is very timely that we are having this discussion. We must have more debate on the issue and fully educate ourselves on it.

Debate adjourned.



*8 o'clock*

**Competition (Amendment) Bill 2016 [Seanad]: Second Stage [Private Members]**

**Deputy Alan Kelly:** I move: “That the Bill be now read a Second Time.”

I wish to share time with Deputy Joan Burton.

**Acting Chairman (Deputy Bernard J. Durkan):** Is that agreed? Agreed.

**Deputy Alan Kelly:** The Bill stems from a long-standing commitment my party made to ensure protection of the right to bargain collectively for freelance workers, including but not exclusively, freelance journalists, actors and musicians - anyone who performs work on a self-employed or contract-for-service basis in a freelance way. Under competition law, currently every self-employed person is considered to be a separate, independent economic undertaking. If one self-employed person combines with others to set prices for his or her services, they can be accused of an illegal, anti-competitive practice. However, the purpose of the Competition Act is not only to encourage competition between entities but to make such competition mandatory. Any agreement or concerted practice that has the object or effect of distorting competition is null and void, a civil wrong and also a criminal act. That would include any agreement as to terms and conditions on which work or services are to be provided. However, both statute law, the Constitution and international human rights conventions recognise the right to form trade unions. Collective bargaining by trade unions on behalf of their members is actively encouraged as a bedrock of social partnership.

The issue for legislators is that trade union activity is at its heart an anti-competitive activity. Workers do not underbid each other to compete for jobs. Instead, they organise and bargain collectively so as to obtain the best outcome for all their members. At present, the litmus test for exemption from the Competition Act is whether an individual is an employee or is self-employed. However, atypical employment, involving those who are not obviously employed or self-employed, is a growing phenomenon. That is partly due to a desire on both sides to reclassify employees as self-employed, in which case there are differences in taxation of expenses, PRSI and pension obligations and rights. Most employment protection legislation applies only to employees. In addition, different health and safety rules may apply. The employer’s vicarious liability and, therefore, its insurance premiums, will also be different.

A variety of tests is applied in order to decide a person’s employment status but the basic question is whether the person engaged to perform services is performing them as a person “in business on his own account”. The issue was highlighted in a case where the Competition Authority decided that competition law applies to Equity, a section within SIPTU for actors and others in the entertainment industry. Traditionally, artists, actors and other self-employed individuals have acted collectively to reach agreements with powerful organised groups such as broadcasters and advertisers. However, from a competition law point of view, where entertainment trade unions enter into agreements recommending minimum prices for the hiring of services of their members, that is no more than a price-fixing agreement to which the competition legislation applies. Accordingly, in real terms, actors, musicians and journalists are barred from bargaining collectively with their common employer about their pay rates and conditions. That has surprised many people, but that is the understanding currently in Irish law under the

Competition Act 2002 and that is what my party's Bill aims to change. The Bill will allow self-employed workers such as actors, journalists and musicians and in future others who personally provide work or perform services to bargain collectively with their employers.

Our colleagues in the trade union movement in SIPTU, Equity and the NUJ, among many others, have sought the change in the law that this Bill will achieve and have welcomed its introduction. A variation of the Bill was first launched by the former Labour Party president, the current Uachtarán na hÉireann, Michael D. Higgins, in 2006. It was then taken up by our former colleague, Emmet Stagg, and then our colleagues in the Seanad, Senators Ivana Bacik and Gerald Nash, who have progressed it through the Upper House to where it is before us today - they, in particular, deserve great credit for doing so. They worked with the Government to improve the legislation. I thank the Minister, Deputy Mary Mitchell O'Connor, for her cooperation on the Bill to date.

The Bill is a critical move for actors, freelance journalists and session musicians, but it is not just about those workers, it is also important because it creates a pathway for many other groups of workers to allow them to organise and to be fully covered by employment protection law and to be, correctly, represented by trade unions. It will also help to deal with something that has been a phenomenon in Ireland for some time, namely, bogus self-employment. Unions making their case to the Minister of the day can now prove the need for further freelance-type groups to be included in order that they are protected by this legislation. Unions can now organise groups across various sectors to build cases that can be put to the Minister for consideration and then be covered by the legislation. Many sectors have been hit by bogus self-employment and it must be addressed. It was especially the case in the construction industry. It was evident to all Members. I saw it myself on numerous occasions. When the crash affected the industry some years ago, many young men, in particular, with families, realised they had only basic protections when they lost their jobs, but it was too late then.

The Bill also covers those in full-time or part-time employment and does not make a distinction. The Bill covers those who are lured out of the protection of permanent, pensionable jobs into non-fixed hours, non-fixed low incomes without the benefit of employment protection laws who do not know from one week to the next how many hours or days work they will have. The end result is workers who have no bargaining power, few rights and who can be persecuted by unscrupulous employers.

In 2014 the European Court of Justice, ECJ, brought some clarity to the issue of employed work versus self-employment. The key distinction is recognising that someone cannot be described as self-employed if he or she is doing the same work as other employees and taking direction similar to those employees. This Labour Party Bill is now leveraging the 2014 ECJ ruling regarding the Dutch musicians decision and is bringing in legislation to give it effect in the State.

I will now turn to the provisions of the Bill. Section 1 is the interpretation section.

Section 2 is the principal section which provides the protections for freelance workers that are represented by trade unions. The Bill provides a definition that, "where an individual engages for gain under a contract with an undertaking personally to do any work or provide any services", a trade union can now fully negotiate on his or her behalf on his or her terms and conditions. This is a new litmus test for what constitutes an undertaking or an individual to whom the Competition Act 2002 applies. A principal issue in section 2 is that it enables trade

unions to organise and negotiate collectively on behalf of those individuals who enter into, or work under, contracts personally to do or provide any services or work. The emphasis is on the word “personally”. This will protect those freelance workers who currently face legal uncertainty. Importantly though, it also prohibits self-employed individuals from price fixing against consumer interests and it retains the core public interest principle of the Competition Act 2002. The exemption from the application of the Competition Act would apply only to contracts with undertakings, not consumers. This is a critical component of the Bill that must be understood.

Section 3 applies to a scheme for payments out of public funds by a public body to members of a profession in consideration of the provision of services to members of the public or to a class of members of the public. Where the Government makes a declaration that there is, regarding such a scheme, a public interest in negotiating a collective agreement between the public body concerned and an organisation that is representative of the profession concerned, providing for the terms and conditions under which the service is to be provided, that representative organisation is deemed not to be an association of undertakings for the purposes of section 4 of the Competition Act 2002 and, therefore, section 4 does not apply to the collective agreement. It is again stipulated that nothing in the section prevents the application of section 4 to agreements, decisions or concerted practices affecting the terms or conditions under which services are provided otherwise than under and for the purposes of the collective agreement concerned. It is made clear that, for the purposes of this section, it is immaterial whether members of a profession provide services as sole traders or as members or employees of partnerships or corporate bodies. Section 4 makes standard provision for the Short Title and collective citation of the Bill.

The Bill is very progressive legislation and adds to the array of labour legislation my party has introduced in recent years to protect workers and improve their terms and conditions. I ask that those of all political parties and none support its passage through the House as a progressive piece of legislation. I thank the Government for its support for the Bill to date. I look forward to working with it to bring it through the Houses of Oireachtas as possibly the first Opposition Bill to be brought through the Houses during the term of the Government.

**Deputy Joan Burton:** Of all the changes that have happened in recent decades for individuals and families, perhaps the changes to the structure of work have been the most difficult and challenging. On the one hand, we are all delighted to see people involved in entrepreneurship and building new companies and businesses but, on the other, I doubt if there is a person here who does not know of a job or job situation where the core work somebody has been doing has been stripped down with the wage attaching to the employment with, essentially, the job being reduced to the lowest common denominator in a race to the bottom. When our current President and former member of the Labour Party Parliamentary Party set out the initial proposal in this legislation, it was when that move to deskill and strip down jobs had begun in order that people entered into not just genuine self-employment but bogus self-employment. The Labour Party, through Michael D. Higgins, countered this with the proposal that notwithstanding the structures set out in the Competition Act, people who were traditionally freelance or self-employed such as journalists, actors, people doing voice-overs in radio and TV advertising and people running small-scale businesses on an individual basis such as those operating kennels would be provided with a mechanism for recognition in order that their basic rights as human beings working over a long period of time in a particular employment would be recognised, acknowledged and protected by all of the labour legislation in place at the time concerning terms, conditions and hours of work rather than their entrepreneurship being interfered with in any way.

Nowadays, particularly in social democratic countries, people are protected by a structure of living wages, minimum wages and terms of basic decency in respect of terms and conditions.

I am very happy that the Minister for Jobs, Enterprise and Innovation is here because she has inherited a situation in her Department, as had the Minister for Social Protection, where the unemployment rate has fallen consistently. Let us be very clear. We want people back at work, but we want them employed on decent terms and conditions and for them to be able to join a trade union. I assume that as somebody who worked in primary education over a long period of time prior to her political career, the Minister would have been an active member of the INTO. The Minister knows that primary schools have conditions that ensure staff are treated with some decency and have the right to collective bargaining and access to remedies that brings. I note that this month marks the 70th anniversary of the death of Jim Larkin, somebody who set the standards for labour, industrial relations and the right to form and join a union in this country. I hope Fianna Fáil will support this legislation, as it has done in the Seanad. Make no mistake about it - there is no point in having a society where young people who have been working for ten years and want to get a mortgage with their partner or on their own find out when they bring in their contract of employment or description of employment that they are unable to obtain a mortgage because there is no certainty, no legal framework and no protection.

Last week I spent a morning talking to people and a number of union officials from Mandate about the Tesco strike. What is involved there, which we see every time we go shopping, is the attempt to strip down jobs. It concerns people who are working on fairly decent pay and conditions. We know many of them agreed to take the package on offer, but what fewer people know is that there are another 3,500 or 3,600 people behind them, many of whom have been working in my or other local Tesco branches for 20 or 25 years, whose jobs, entitlements and rights will be stripped down. We need to be clear about where we stand on it.

We read about Bus Éireann. How many times in this country has €9 million stood in the way of finding a real solution to an industrial relations difficulty through bargaining and the employer and trade unions looking at the terms and conditions of work and issues like productivity and negotiating? We have a Minister for Transport, Tourism and Sport who is hands-off and says, "Don't touch me on this," but that is not good enough. We normally have the Independents in the Independent Alliance sitting close by. The Minister of State, Deputy Finian McGrath, like the Minister for Jobs, Enterprise and Innovation, has been an active member of the INTO. We are asking him to come in here and stand up for workers' rights and the right to decent pay and conditions, and collective bargaining. We are asking the same of the Minister for Children and Youth Affairs and the Minister of State, Deputy Seán Canney. In a Dáil that I once saw labelled "the do-nothing Dáil", I ask that we put aside our party differences and look at young people entering work with hope and expectation but finding out that they have no framework to obtain their rights as people offering their fantastic skills and services to an employer who is making them a contractor, consultant or associate. In all of those situations, some of which are in relatively highly paid positions, the end result is that the people pay a low rate of social insurance as a self-employed person which means that should they have an accident or illness, they have no cover. Should they experience a spell of unemployment, accessing cover if their partner is working will prove very difficult on a means-tested basis. When commentators talk about young people being disenchanted with politics, the Dáil needs to look tonight at what legislation like this would mean. I remember when we reversed the €1 cut in the minimum wage that Fianna Fáil had brought in and people said to me, "Nobody will care. It affects only 70,000 or so women." People did actually care. The end result is that, with the Labour Party in

government, we established a Low Pay Commission. The Minister's lowest point was probably that 10 cent an hour increase in the minimum wage because this is fundamental to how a modern economy will prosper. It will only prosper if workers get decent pay and conditions. We all know we came through hard times when it was difficult to achieve that but those times are past and now is the time to improve and implement improvements in workers' pay and conditions.

When one is in difficulty in a job, one's greatest protection is, generally speaking, one's trade union. The workers who are weakest are those who do not have a trade union or a collective voice to which to reach out that will act on their behalf to protect their best interests. That is what the Bill is about.

**Minister for Jobs, Enterprise and Innovation (Deputy Mary Mitchell O'Connor):** I welcome the opportunity to speak to this Private Member's Bill which seeks to amend the Competition Act 2002 to provide that section 4 of that Act shall not apply to collective bargaining and agreements in respect of certain categories of self-employed workers. The motivation behind the Bill is clear in that it aims to protect certain categories of vulnerable workers and to ensure that their rights to better their terms and conditions are protected in terms of the Competition Act. However, as the House will be aware, when the Bill was originally introduced in Seanad Éireann, the Government had real concerns as to some aspects of the provisions while understanding the motivation behind it. In particular, the Government believed the original Bill went beyond its stated policy objectives and was not sufficiently targeted or focused. In addition, there were concerns as to the impact on the Exchequer and its compatibility with both national and EU competition law.

On Report Stage in Seanad Éireann, the Government introduced a series of amendments which addressed these concerns. I am pleased to recall that these amendments were agreed unanimously across all parties. These amendments now mean that a structured process will be in place to consider requests for exemptions from section 4 of the Competition Act 2002 on a case by case basis. This reflects one of the considerations of the European court ruling on the Dutch musicians case in December 2014, where the court ruled that consideration of exemptions from competition law should be treated on such a case by case basis.

In summary, a new process provides the following main elements. A trade union can apply to the Minister for Jobs, Enterprise and Innovation for an exemption from the application of section 4 of the Competition Act 2002 to collective bargaining and agreements in respect of specific classes of self-employed workers. In such an application, the trade union must provide evidence that the members in question are either "false self-employed" or "fully dependent self-employed" as defined. In addition, it must provide evidence that if those workers were exempted from section 4, there would be minimal or no economic effect on the market, that it would not lead to significant costs to the State and would not fall foul of competition law generally. Furthermore, the Minister may prescribe by ministerial order, following consultation with any other Minister of the Government or any other person or body who ought to be consulted, such classes of self-employed workers to be exempt from section 4 of the Competition Act 2002. All orders made under the Competition Act 2002 must be laid before both Houses of the Oireachtas, which may pass a resolution to annul with 21 sitting days. The entire Bill shall come into operation no later than three months after its enactment.

As regards the definitions of "false self-employed" or "fully dependent self-employed" workers, these have been based on European court case law in the Dutch musicians case for the first category and on deliberations at the International Labour Organization in respect of the

second category.

The Bill also inserts a new Schedule 4 to the Competition Act 2002 and, therefore, gives effect to a previous Government commitment given in the social partnership agreement, entitled Towards 2016. The new Schedule exempts from section 4 of the Competition Act 2002 those three activities outlined in the Towards 2016 commitment, namely, actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists. These are the categories of workers that have been referred to repeatedly in previous debates on the Bill.

I believe this amended Bill provides a fine balance in meeting the stated objectives underpinning it, while at the same time remaining consistent with competition law. Before I close, I commend the work undertaken by Senators Ivana Bacik and Gerald Nash on the Bill during its passage through Seanad Éireann. I particularly wish to recognise their collaborative and open approach to working with the Government to progress the Bill to meet the stated objectives underpinning it while remaining consistent with competition law. As noted, the Bill as passed by Seanad Éireann includes the amendments proposed by the Government on Report Stage. Therefore, I can confirm to the House that the Government will not be opposing the Bill on Second Stage in Dáil Éireann.

**Deputy Niall Collins:** I welcome the opportunity to discuss the Competition (Amendment) Bill 2016, which is being taken in Private Members' time and tabled by the Labour Party.

As I outlined last week, my party has a long track record of supporting workers' rights and balanced industrial relations legislation. The constitutional right of citizens to form associations and unions is enshrined in our progressive Constitution, Bunreacht na hÉireann, which was introduced under Eamon de Valera in 1937. Fianna Fáil has a strong record on worker protection from bringing in the National Minimum Wage Act 2000 to instituting the labour relations machinery of the State by establishing the Labour Relations Commission which has now been replaced by the Workplace Relations Commission. Furthermore, it has been a consistent policy of my party to end exploitable low-hour type arrangements and contracts. We have consistently stated that for any item of industrial relations or employment rights legislation to be fit for purpose, it must strike a proportionate balance between ensuring workers' rights are protected while providing flexibility in the workplace.

This is a balanced and proportionate legislative proposal. Fianna Fáil supports this Private Members' Bill. Having reflected on the matter, we will support its passage to the next Stage in the legislative process. The Bill was tabled by Senator Ivana Bacik and was passed during Private Members' time in the Seanad last October, where the Fianna Fáil Party supported it. This follows our support last year of a motion passed in Dáil Éireann to ensure freelance workers have the right to bargain collectively. Amendments were brought forward to the original Bill by the Department of Jobs, Enterprise and Innovation and, I believe, subsequently accepted by Senator Ivana Bacik to strengthen provisions in the Bill. Currently, competition law prevents actors who provide voice-overs for advertisements, musicians and freelance journalists from negotiating pay collectively. Irish Equity, representing theatre directors, actors and stage and set designers in Ireland, is part of SIPTU. In 2004 the then Competition Authority ruled that the collective agreement concluded by SIPTU and Equity and the Institute of Advertising Practitioners constituted an unlawful agreement on the basis that each self-employed voice-over actor was considered to be a business undertaking. However, that has impeded the exercise of the right of collective bargaining, representation by trade unions for many workers and their union

representatives in this sector. The restriction put on these workers has affected wages across the entire industry and impacted upon thousands of workers in the media, arts and cultural sectors. A list of some of those affected include actors doing voice-overs on radio, television, film or theatre; freelance journalists and photographers; writers for radio, television and film drama; musicians; and skilled tradesmen. Those workers have been denied the right to bargain collectively.

It is not disputed that competition law should preclude price-fixing agreements among cartels of businesses. The concern is that many self-employed persons are workers in the true meaning of that term. Many have little, if any, control over the legal minutiae or the nature of the contractual relationship with those for whom they work. In reality, they are employees on the basis that they earn their living from providing their labour for remuneration to others and they have been denied their right to bargain collectively. Crucially, this Bill would enable such persons to exercise the right to bargain collectively and negotiate pay and conditions. It would deem that such persons not be classed as undertakings for the purposes of competition law. Importantly, self-employed individuals would continue to be prohibited from price fixing in the best interests of consumers.

It is hoped the Bill will fulfil the commitment made in Towards 2016: Ten-Year Framework Social Partnership Agreement and assist workers' campaign for increased pay and conditions in the media, arts and cultural sectors. In 2012, congress wrote to the Minister for Jobs, Enterprise and Innovation seeking an exemption from the Competition Act in regard to the collective agreement in question. Regrettably, however, it was dismissed by the Fine Gael-Labour Party Government of the day. Significantly, in 2014 the European Court of Justice ruled that such workers can be categorised correctly as self-employed in one context but not in another. The court said that the classification of a self-employed person under national law does not prevent that person being classified as an employee within the meaning of EU law if his independence is merely notional, thereby disguising an employment relationship. Despite this, the Competition Authority, which is now known as the Competition and Consumer Protection Commission, stated it would uphold its original decision rebuffing the concept that the actors concerned could be viewed as other than undertakings.

It is long overdue that freelance journalists, Irish musicians and voice-over artists be given the right to have collective bargaining via their trade unions recognised formally in Irish employment law. Having reflected on the matter, Fianna Fáil fully supports the passage of the Bill to Committee Stage. It is balanced and important legislation which should be dealt with as an urgent matter by the Minister for Jobs, Enterprise and Innovation and the Joint Committee on Jobs, Enterprise and Innovation.

On behalf of my party, I commend all workers who have been involved in this campaign and also the Labour Party.

**An Leas-Cheann Comhairle:** I call Deputy David Cullinane who is sharing time.

**Deputy David Cullinane:** I am sharing time with Deputy Michael Quinlivan.

I welcome the Bill. I commend the author of the Bill and also the Labour Party for bringing it forward. I take the opportunity to thank the Labour Party Members for the support they gave my party for Bills we brought forward on workers' rights.

The Bill rights a wrong that has continued for quite some time. It will allow trade unions

once again to organise and to negotiate collectively on behalf of individuals who enter into or work under contracts personal to them or who provide any work or services. It will also allow for collective negotiation and bargaining on the terms and conditions of a scheme whereby services are provided to the public by members of a trade, profession or vocation and paid for out of public funds. As a result, it will restore the right of the National Union of Journalists, the Musicians Union of Ireland and Equity, the actors' union, to negotiate collective bargain rates for their members and not before time. This is a welcome advance in the long-running campaign to have collective bargaining rights returned to freelance workers. It is a step in the right direction for the many freelance journalists, musicians and actors who have suffered since their right to be represented by a union in collective bargaining was removed from them over ten years ago.

The Bill also deals with false self-employment for those categories of workers, something that is on the rise in the State. In the construction industry, for example, the proportion of those self-employed has grown from 25% in 2006 to 38% in 2015. We have cases across the country of individual tradespeople who have relationships with individual contractors who are sub-contracting work. I have seen situations evolve in the past few years in particular where somebody enters what might be termed a bogus self-employment relationship, which is very damaging. It means that those people have no employment protections, no right to redundancy payment and PRSI contributions are not being made by the employer. This is used to disguise the employee-employer relationship.

We need to make sure the law catches up with this emerging practice and that we reflect in our law the actuality of the employee and employer relationship. In 2016, the think-tank, TASC, compiled a report on bogus self-employment. It states:

The 'bogus' or 'constrained' self employed are located within the self employed without employees. Interviews show that the offer of employment is often conditional on accepting a status as self-employed. This can be achieved by the employer (the principal subcontractor) without any intervention by the designated worker. The process is entirely self-administered and the checks to prevent bogus self-employment are purely formulaic.

The report goes on to state:

Bogus self-employment results in loss of PRSI income which is unlikely to be compensated for by lower claims. We estimate that a minimum of 25% of those reported as self-employed without employees are 'bogus' or 'constrained' self-employed; they amount to nearly 7% of the industry workforce. This minimum figure would generate a loss of PRSI contributions of €21m per annum. In fact, the annual loss will be a multiple of this and closer to the upper bound figure of €83m per annum.

The spread of bogus or constrained self-employment is part of a broader problem of short-termism in the Irish construction industry where competition risks becoming a race to the bottom. Working conditions have deteriorated as has the skill base of the industry. One desirable and immediate change would ensure that the PRSI contributions generated by the self-employed are increased to become equivalent to those generated by employees; this would enable both employees and self-employed to avail of the same PRSI funded benefits.

Sinn Féin has no quarrel at all with the genuine self-employed, many of whom are union members. Self-employment in construction includes small businesses with a few employees. It



also includes independent craft workers who may employ others sometimes. Such craft workers may specialise in small build and maintenance work. They may also be subcontractors on larger sites. In fact, they may be all of these things at one time or another, and employed workers too when times are rough. Such people work on their own account; they really are their own boss. The law recognises that. Revenue includes these points in its guide on self-employment. Someone is self-employed if, among other things, he or she has control over what is done, how it is done, when and where it is done and whether he or she does it personally. They are also free to hire other people, on his or her terms, to do the work which has been agreed to be undertaken.

The issue of bogus self-employment is one that needs serious attention by this House and while the Bill does not tackle bogus self-employment, it at least raises the issue when it highlights forced self-employment when it comes to collective bargaining rights.

Despite my quarrels with the Labour Party Deputies in recent years and their involvement in government, I again wish to commend them for bringing forward the Bill. I also commend the Minister for her support and the Fianna Fáil Party for its support. My party will give the Bill its full support and I hope it will progress through the Dáil as quickly as possible. Whatever differences we have - the Minister cited some concerns about the Bill - they can be aired and dealt with on Committee Stage, but I hope all those musicians, freelance journalists and other workers who need this protection will get it very quickly if we do our work here as quickly as we can.

**Deputy Maurice Quinlivan:** I welcome the Bill and particularly thank the Labour Party for bringing it forward. I also welcome the trade union members in the Visitors Gallery who have done a great job, with many progressive politicians, in running a concerted campaign for many years to build the case for justice and it is pretty clear. It is great that there was consensus in the Seanad, which was very significant. It seems there is also consensus in the Dáil, which is good.

For 14 years our colleagues have been suffering owing to a ruling under competition legislation, which was particularly significant. Esther Lynch of the European Trade Union Confederation wrote: "The Authority's decision effectively turned the clock back almost 200 years to the era of the Combination Laws, which made it unlawful for workers to 'join together' to press their employer for shorter hours or more pay." The legislation had devastating consequences for workers across the sectors affected. The Arts Council investigated standards of living in the sector. Although the investigation took place some years ago, it is worth hearing the findings again because they really bring home the crisis in the sector. In 2010 it was found that just two in five professional artists spent all of their time working as artists because there was just not enough income for them to earn. One third often or always worked more than 55 hours a week. In other words, they had to do additional jobs to supplement their income. The figures from 2008 are still shocking. The average income in 2008 of a professional artist was just under €15,000, with half of artists earning €8,000 or less. In many cases, we are talking about poverty wages. Therefore, this legislation is long overdue.

It is welcome that the Bill received cross-party support in the Seanad. I appreciate the quality of the Bill and let us hope it receives full support in the Dáil Chamber, as I assume it will. Let us send a united message from the Dáil that the issue must be addressed and that it is fundamental in terms of our respect for the dignity of people who make a huge contribution to our society. From time to time I see politicians trying to grab the limelight when artists do something wonderful. This is an opportunity for us to pay them back for the wonderful work they do. They have been waiting 14 years to have this wrong addressed. Let them not wait any longer.

It is important to recognise our obligations under the International Labour Organization, ILO, conventions. ILO convention No. 87 relates to freedom of association and the protection of the right to organise. It was ratified by the State in 1955 and reads: “Workers and employers, without distinction whatsoever, shall have the right to establish and, subject only to the rules of the organisation concerned, to join organisations of their own choosing without previous authorisation”. It is implicit in the words “without distinction whatsoever” that no distinction can be drawn to exclude this right from workers who happen to be engaged under a contract to provide services, that is, self-employed. I understand the State will respond to the ILO in November. Would it not be wonderful if the Bill was passed by then in order that officials could attend the ILO and relate the good news that this wrong had been righted and that we were fully compliant with ILO rules? I remind the Chamber that we are speaking about the fundamental right to collective bargaining of very vulnerable workers. It is very important, whatever amendments the Government has in mind, that it keep centre-stage the fundamental right to collective bargaining of vulnerable workers. We should all be able to support it and see the legislation through the Chamber.

**Deputy Michael Harty:** I congratulate Senator Ivana Bacik on introducing the Competition (Amendment) Bill 2016 and successfully piloting it through the Seanad. However, because of the Government’s amendments, I am afraid the inclusive nature of the original draft has been watered down and the scope of the Bill has been narrowed significantly by excluding the service economy. The Bill excludes self-employed professionals from engaging in collective bargaining and balloting on various Government contracts. In the current draft freelance journalists, voice-over actors and session musicians may gain an exception from the Competition Act to engage in collective bargaining but not other categories. The original intention was to protect vulnerable workers, but, sadly, the amended Bill only provides for a small number of categories. For example, doctors, dentists and other professionals are denied the right to engage in collective bargaining. I know that it may be unfashionable to describe doctors as vulnerable workers, but I can tell the House that general practitioners, GPs, particularly in rural Ireland, are an endangered species and competition law is a significant reason for this. GPs are not allowed to engage in collective bargaining on their contracts. It is virtually impossible to persuade a young doctor to work in general practice, particularly in a rural practice. GPs are almost entirely dependent on the HSE for their income. The HSE considers doctors to be freelance workers but does not allow them to engage in collective bargaining. However, the vast majority of GPs cannot make a living without participating in the general medical scheme. Any individual, professional or tradesman who is dependent on one organisation for the majority of his or her income is vulnerable to changes that organisation may introduce unilaterally. In other words, he or she is false self-employed. The introduction of free visits for children aged under six years is a good example of a major change introduced unilaterally without allowing GPs to engage in collective bargaining or ballot on the agreement.

The Bill does provide scope for a trade union to petition the Minister for Jobs, Enterprise and Innovation for an exemption from the Competition Act. However, it is the view of the medical organisations that any such decision would be taken in the context of the political climate rather than of looking at the merits of the relevant petition. The medical organisations have suggested that if the proposed Schedule 4 was amended, it would ensure the Oireachtas had the power to decide who should be classed as a vulnerable worker or a false self-employed person. In this regard, the Bill is a missed opportunity. Last November the Minister stated she was seriously concerned about the scope of the original Bill and the impact it would have on the Exchequer. Undoubtedly, the changes to the Bill to which the Minister has agreed will limit the

impact on the Exchequer, but they fail to recognise many groups who view themselves as false self-employed. The result is a formula which will help some freelance workers, but it is not based on anything that might be described as justice for many groups who consider themselves to be false self-employed. However, they are excluded from the Bill. Having said that, I will support the Bill because at least it initiates change for some self-employed workers.

**Deputy Mattie McGrath:** The Bill has its origins in the Seanad and been introduced by my colleague, Deputy Alan Kelly. It allows for self-employed persons to engage in collective pay bargaining with employers. I note, however, that the Labour Party spokesman in the Seanad, Senator Gerald Nash, said the Bill would apply to persons such as actors engaged in voice-over work, session musicians and freelance journalists. He also said it was the culmination of a 12 year campaign and that although the Labour Party might be in opposition, it was still delivering significant change for working people. This is delusion and denial at an almost unprecedented level. Perhaps the Labour Party might remember the pointed criticism of former Labour Party Deputy Eamon Moloney when he said:

I do not like using the word “austerity” ... When I was growing up we just used the word “hardship”. The people in most working class estates do not use the word “austerity”. I am aware it is cool for the career socialists to speak about austerity but it is an awful word. Hardship is much better, and people like Dickens used it. I do not know how the word “austerity” crept in.

Do these sound like the words of someone who believes his former party champions workers’ rights? Does the decimation the Labour Party experienced at the local and general elections reflect this so-called championing of workers’ rights? It abandoned them. Whatever the merits of the Bill, I cannot listen to the brazen hypocrisy of a political party that broke almost every political promise it had made and betrayed the working class and the working poor in communities throughout the State in a five-year period. It now comes along with this initiative. On a daily basis I hear Deputy Alan Kelly claiming this, that and the other. These are overhangs from what he was going to deliver and had in the pipeline, but this seems to be an overhang from a long 12-year battle.

As a self-employed person, I understand self-employment. As Deputy Michael Harty and others said, self-employed persons are vulnerable workers and the Bill is a missed opportunity. There are self-employed persons in many sectors. It is a strange tactic, but there are many false self-employed persons. Many people are being forced by companies to enter a self-employed role. We need them to have their place at the bargaining table. We need them to be supported because it is a sea change. Whether they are musicians, actors or in other roles in the arts, they need to be supported and respected. It is welcome that this issue is being debated, but we need to be more honest with ourselves and face reality and the challenges for this cohort. They have no support and will have nothing in the pension pot unless they put it in themselves and very few are able to do this. If they get sick, they have very few benefits. Therefore, they are a very vulnerable sector and deserve better than what is provided for in the Bill. Government amendments have watered the Bill down also. We need to be mindful of the people concerned and put ourselves in their shoes. They are trying to eke out a living and raise their families and need to have confidence that they will be able to sustain themselves and their families. They want to continue to do the trade they love, but they are only getting lip service from the Government and the institutions of the State.

**An Leas-Cheann Comhairle:** With the permission of the House, I call Deputy Bríd Smith

who missed her slot earlier. Is that agreed? Agreed.

**Deputy Bríd Smith:** We welcome the Bill as an attempt to address a growing problem, that is, the use of bogus self-employment contracts and definitions that will stop workers from accessing rights and using legislation that is supposed to be there to protect workers. It seeks to ensure that anti-competitive laws are not used against groups of workers who are deemed to be self-employed. I am not sure it will deal with the wider, growing issues at the heart of why workers are in this situation, in the form of the use by employers of bogus self-employment contracts. I am a member of the Joint Committee on Jobs, Enterprise and Innovation and with companies like Deliveroo and Uber we have seen that there is a growing phenomenon whereby employers insist that workers sign a contract which explicitly says they are not workers but a business that is selling a service to the employer. The result, for the bosses or entrepreneurs that came up with this whizz-kid idea, is that they do not have to pay minimum wage rates and are not responsible for workers' health, safety or sick pay. God forbid that they be entitled to a pension.

This is not a new phenomenon. It has been around for a long time and is old as the system of capitalism itself. It is not a result of some shiny new, high-tech economy but is an attempt to individualise workers, to atomise them, to stop them coming together as a collective and organising as a union. This attempt will ultimately fail and workers will organise, whether they are in Deliveroo or any other company that attempts to classify them not as workers but as individual, self-employed service deliverers. They will come together as a collective and no amount of legal jargon or anti-competitive laws will stop that. This Dáil should legislate to make it illegal to classify workers as self-employed for the purpose of stopping them organising and forming and building trade unions, but it will not do so as long as we have a Fianna Fáil-Fine Gael majority. We need to make the attempts of Deliveroo and Uber illegal and allow workers the legal right to organise and have access to their union in their workplace, even if they have to hang around street corners waiting for information on an app, as Deliveroo workers do. Fianna Fáil and Fine Gael combine to stop us achieving that and they always use the excuse that it is bad for foreign direct investment.

The growth of bogus self-employment is just the tip of the iceberg and the iceberg is also about low-paid, flexi-hour contracts, if-and-when contracts, non-union employment and other attacks on the traditional values of working class people by the great and good in academia, as well as some newspaper columnists who think the very idea of a secure, pensionable, well-paid job belongs to history books and has no place in the brave new world where foreign direct investment and paying no taxes are treated as sacred cows.

While we support the Bill, it is really only an answer to a bigger question, that is, how we reverse the onslaught on workers' rights over the past decade or so. The first step will be to encourage workers themselves to take action by joining a union and standing up and fighting, something we saw magnificently in the Tesco strike. This is why the battle in Bus Éireann is very important. It is an attempt orchestrated by the Government, by the Department of Transport, Tourism and Sport and the NRA to make a secure pensionable permanent job in transport a thing of the past. This manufactured crisis in Bus Éireann could have been dealt with by the intervention of the Minister and will be a litmus test for the workers' movement. Bus Éireann workers cannot fight this battle alone but need and deserve the support of their colleagues in Dublin Bus, Irish Rail, the wider labour movement and the wider community. Just as we came out to support Tesco workers, we need to support Bus Éireann workers too, particularly where our community services are being cut, such as those from Athlone to Westport and Derry to

Dublin. Communities are going to suffer and they need to get on side with workers to insist their rights are protected.

If we stop the spread of bogus self-employment and lead the fight to preserve every job that pays decent wages, we will go a long way to doing what we should do, and what this House is failing to do, for workers. We need to proclaim that the State is not a neutral actor in the fight between competitively vicious employers and workers who are at the whim of their definition of what they are or are not. The State needs to put itself on side for workers' rights because this is not a level playing field with two equal actors. It is, in effect, a class war and is one our side will have to wake up to for victory. Tesco workers got together and fought alongside communities and other trade unionists and we will have to do the same for Bus Éireann workers and everybody else whose secure, pensionable jobs are under threat or who are being forced into low, if-and-when and flexi contracts. The passing of this Bill will play a small role in that war but it will be workers themselves, as it has always been, who will determine its outcome by getting organised and fighting back. We can echo that and be a voice for them, but we need solidarity to come back onto the agenda in order that people's rights are not trampled on. I commend the Senator who brought forward the Bill.

**Deputy Jan O'Sullivan:** This is a historic Bill because it is the first Private Member's Bill to go through any House of the Oireachtas since the general election. I have described this Dáil as the "do-nothing Dáil" but the Minister for Jobs, Enterprise and Innovation, Deputy Mary Mitchell O'Connor, may be able to prove me wrong on this occasion and show that new politics will work. New politics has not worked well in other areas, but this is a Private Member's Bill which has come from an Opposition party. The Government has worked with our Senators and the indications are that it will be supported by all sides, apart from Deputy Mattie McGrath, who was not clear as to where he stood or if he even understood the Bill in the first place. He has completely forgotten that he supported the soldiers of destiny in the lead-up to the cut in the minimum wage but he cannot resist taking his current position. We are, however, very grateful for the support of all the other speakers so far.

The Bill builds on the good work Labour Party Senators did in this and the previous Seanad. It was first introduced by Senator Ivana Bacik and builds on the work Senator Gerald Nash has done in protecting and advancing workers' rights as Minister of State by increasing the minimum wage, protecting the right to bargain collectively and introducing registered employment agreements, among other things.

*9 o'clock*

We should also acknowledge the work of the trade union movement with regard to this legislation and others on which we have worked with them. I single out Mr. Séamus Dooley of the National Union of Journalists, NUJ, in particular. I attended an event in his company in my constituency. At that stage, the NUJ was concerned that freelance journalists were in a precarious position. We have also worked with SIPTU and Equity on other workers in professions that are not secure such as session musicians, voice-over actors and other actors. There are many others also. One of the good things about this legislation is its flexibility which enables it to adapt to what is an ever-changing workplace.

Jim Larkin was mentioned. When he was fighting for workers rights at the foundation of the Labour Party, work was very different to today. We must, therefore, adapt to changes and protect workers in the current situation as well as in the future. The current labour scenario

includes temporary contracts and bogus self-employment. The latter is particularly prevalent in the construction industry. These are all issues which we must deal with head-on. The Labour Party is proud to support the trade union movement on these matters.

When Senator Ivana Bacik spoke on Committee Stage in the Seanad, she described a situation that arose following the 2004 ruling of the Competition Authority, as it was then known. That applied a strict interpretation to the Competition Act. It judged that a collective agreement between Irish Equity and the Institute of Advertising Practitioners in Ireland was in breach of competition law. That agreement had set rates for voice-over actors. Senator Bacik explained the practical import of this matter. Until then it was accepted that, for example, unions could publish freelance fee guides. This was a particular issue in the arts and creative sectors, including acting, where unions such as Equity and the NUJ had long made agreements about minimum fee rates and a minimum floor of rights for freelance workers, many of whom were employees in all but name. The Senator also referred to people such as voice-over actors, session musicians and freelance journalists. On foot of the 2004 ruling, that sort of agreement, in setting a minimum floor of fees, was seen to be in breach of competition law. That is the basis upon which the difficult situation arose. There was the 2014 judgment of the European Court of Justice in a case to which reference has already been made. As a result of that judgment, I understand the Irish Congress of Trade Unions wrote to the Competition and Consumer Protection Commission asking it to reconsider the position the then Competition Authority took in 2004. While that did not happen, the judgment of the European Court of Justice paved the way for the Bill before the House. The 2014 judgment clarified that the Bill can be legally introduced.

I welcome the engagement of the Minister, Deputy Mary Mitchell O'Connor, both here and in the Seanad. She referred to the amendments she had moved in the Upper House. We acknowledge that to some extent they narrow the original intention of the Labour Party.

Despite welcoming Deputy Michael Harty's support, I think the Bill can incorporate his concerns in respect of doctors, pharmacists and dentists. The legislation is flexible in so far as new categories can be added. I hope, therefore, that Deputy Michael Harty's genuine concerns can be addressed because of that flexibility.

The Minister has specified the new schedule which exempts the three activities outlined in Towards 2016 - namely, actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists - from section 4 of the Competition Act 2002. In other words, they are exempted from it. However, my understanding is that it can be adapted for the future.

We do not know what other situations will arise in future. We are aware of current examples, namely, those raised by Deputy Michael Harty and others. There is no doubt, however, that the world of work is changing hugely and we must be prepared to protect workers in what is becoming an increasingly unpredictable situation.

It is difficult enough for people whose parents brought them up to think that they will have a job for life, that they would go into a particular career and could rely on being there until reaching pensionable age and retiring happily. The reality for many people, however, is that that is not the world of work which currently exists. Therefore, workers need all the protections they can get. That is why we have put forward a series of proposals. When in government, we were able to implement legislation and regulations. In opposition, we are continuing that work. We are delighted that this is the first Private Members' Bill that has already gone through

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one House of the Oireachtas. The indications this evening are that it will move beyond Second Stage. I urge the Government and other parties to ensure we get this legislation into committee and entirely through this House. We can then ensure collectively that we will protect precarious workers. Many of us know and have met people who are in that situation. These workers deserve and need to be protected. In effect, they should be represented by trade unions and in collective bargaining. That is the intention of the Bill.

I am pleased to have been able to contribute to this debate. I am also pleased that the legislation has such strong support.

**Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy Pat Breen):** I welcome all those in the Visitors Gallery, whether they are actors, musicians or freelance journalists. They are all very welcome and I am sure it is a great night for all of them.

I want to respond to the previous speakers concerning this Private Members' Bill. As earlier interventions have acknowledged, the Bill has as its basis the desire to protect vulnerable self-employed workers, a matter in respect of which I am sure those on all sides can agree.

As was noted, on Report Stage in Seanad Éireann the Government introduced a series of amendments which addressed its concerns. These amendments were agreed unanimously across all parties. The Bill, as passed by Seanad Éireann, is a balanced legislative response which meets the stated objectives underpinning it, while at the same time remaining consistent with competition law. It is also a targeted and focused measure which addresses the underlying aim. It gives effect to the commitment in Towards 2016 concerning exemptions from competition law for three specific categories of self-employed workers, namely, actors engaged as voice-over actors, musicians engaged as session musicians and journalists engaged as freelance journalists.

To respond to Deputies Michael Harty and Jan O'Sullivan, the Bill does not exempt professionals. It is important to point out that if they are members of a trade union they can apply for exemption from competition law.

In the light of what I have said and as my colleague, the Minister, Deputy Mary Mitchell O'Connor, noted, the Government will not be opposing the Bill on Second Stage.

**Deputy Brendan Howlin:** I thank all Deputies for contributing to the debate. I applaud my colleague, Deputy Alan Kelly, for taking up the baton from Senators Ivana Bacik and Gerakd Nash. It is a baton that started its journey many moons ago in the most capable hands of our dear former colleague in this House who is now Uachtarán na hÉireann, Michael D. Higgins, who felt passionately about this issue. As other Deputies have very thoughtfully contributed to this debate, we need to reflect on the future of work in this country because work has changed. There has been a casualisation of work. Above all else, we need to have a predictable future for working people in order that nobody on a Sunday evening is worried about how many hours they will get in the coming week or how many days they will be called on. It is almost like the hiring fairs of the past:

Go deo deo arís ní raghad go Caiseal,

Ag díol ná ag reic mo shláinte,

Bodairí na tíre ag tíocht ar a gcapaill,

á fhiafraí an bhfuilim híreálta

It is almost like that again. We have a situation where there are people who do not know with any predictability that they will have sufficient income to pay their way in the coming week. That is why measures like this are important and groundbreaking.

I express my appreciation to both the Minister and the Minister of State present, but particularly to the Minister, Deputy Mary Mitchell O'Connor. I know that often the default position of a Department is to say no. It takes a lot more effort to say maybe, even if there are difficulties, and to see if they can be addressed. That was the approach the Minister took to my colleagues in the Seanad and it is appreciated. It is an indication that there can be co-operative effort to bring an effective solution to people with real problems if there is a will to do it rather than simply a rejection of it.

I thank my colleagues across the House, including Deputy Niall Collins of Fianna Fáil, who supported the Bill. He made a very important point when he spoke about the need to ensure speedy enactment because too many Bills have passed Second Stage and then entered a sort of limbo land. I ask everybody here to give a commitment that we will have speedy passage through the committee since there is fair wind with this House.

Similarly I thank the Sinn Féin Deputies for their support of the Bill. They have introduced very important legislation themselves and, whenever that happens, I can assure them that they will have the solid support of the Labour Party in the advancement of any workers' rights.

In respect of Deputy Michael Harty's comment, I will say a word about it in a moment if I have time. It was about narrowing the focus. It is true that we had a wider focus in the original legislation but it is not true that this is an end in itself. This is pathfinding legislation that allows other categories through over time. I will say a little more about that.

I should really not be drawn into commenting on Deputy Mattie McGrath because he was the only discordant voice in what was a very constructive debate. He said nothing really about the Bill. He probably has not read the Bill, but dragged himself out just to be a discordant voice. It is not helpful because workers have real issues. People are dependent on us to be mature and act positively. Trump-like, he spoke about our record in relation to labour law. We, in the previous Dáil, in the worst of times, brought in protective legislation that was not achieved anywhere else on the planet, including the broadening of collective bargaining, the restoration of registered employment agreements, the legislation for sectoral employment orders and so much more. We increased the minimum wage twice and established the Low Pay Commission while the Deputy was a cheerleader for the destruction of those very basic supports.

I said this was a genuinely important measure and I mean that. It is important to realise that this Bill is not just about the categories that have been mentioned by many: the voice-over actors, the session musicians and the freelance journalists. Irish Equity has, through SIPTU, been pushing this measure from the very start. The Bill is important because, for the first time, it attempts to define and regulate a phenomenon we have been grappling with for almost half a century, which is this concept of bogus self-employment. That phenomenon was as much a feature of the building industry as it was of the newsroom. In fact the construction industry, as other Deputies have referenced, was riddled with bogus subcontractors and agency workers who found themselves without the most basic safety net when the crash came. Some 250,000 workers lost their jobs when the crash came, a huge number of them on the construction side.



People who were forced into being so-called self-employed found that they had no recourse when their industries collapsed.

We all know about the growth of atypical employment and the decline of the standard permanent and pensionable employment model that we thought was the standard. Our legislation has adapted to cover those in full-time work, part-time work, fixed-term work and so on. It covers all these categories, as Deputy Alan Kelly said, but our law has not adapted properly to deal with those who it is claimed are not workers at all but who it is claimed are self-employed entrepreneurs, which I think was the phrase used. The distinction between workers and self-employed still depends of a set of common law rules. Not many cases come to court, although the Labour Court has regularly had to deal with them. In administrative terms, the rules are policed by the Revenue Commissioners, the Department of Social Protection and the Department of Jobs, Enterprise and Innovation and its agencies, but despite all the policing, or perhaps because the policing is too dispersed and the rules too uncertain, there is widespread, almost institutionalised, abuse.

The victims are the workers who are lured out of the coverage of our worker protection laws that we have been putting in place for decades, out of our social insurance schemes that we have developed over decades and out of the Exchequer. The result is a growing number of people in precarious, non-standard employment that is not just poorly paid and insecure but is completely outside the protection of developed employment law. It is the basic inequality of bargaining power between employers and workers that forces workers into poor rates of pay combined with low and variable hours, little structured training and limited career progression. So much for the hype around the so-called gig economy, a new term, in essence, for bogus self-employment. Employers say they need a level of flexibility to operate their business. That might be the case in some instances, but flexible work is one thing. Insecure work is quite another. Not knowing from one week to the next what hours or pay one might be getting is no way for any family in the 21st century to exist.

My priorities and those of my party are all about making sure the benefits of growth are fairly shared among everybody in society. We have no interest in jobs at any price or the spread of casual labour at the lowest wages that can be paid. The Government must not preside over an economy that is fuelled by a ruthless race to the bottom. We have seen this now and we are going to be challenged on it in respect of the destruction of very decent terms and conditions, for example, for bus workers in an important semi-State company. I am asking, as I did during questions to the Taoiseach, that there be a standard wage rate set for workers such as bus drivers in order that the competition can take place, not on the basis of driving down wages and terms and conditions but on the quality of the service and the bus, the frequency of service and so on. All these things are critically important.

In the early months of this Dáil we tabled our first motion as the Labour Party and it was unanimously accepted. It was a motion on workers' rights that outlined a programme of work to tackle abusive terms and condition of employment, low pay, insecure hours, and enforced and bogus employment. We set out a clear agenda of worker protection that was approved by this House. Approving the Bill before us and securing its speedy passage into law will give practical reality to the intentions set out in that specific motion we put before the House. It will mean a practical and urgent step to tackle bogus self-employment and bring these perverse abuses to an end. I am very pleased that there is such cross-party and cross-Member support for this important initiative.

Question put and agreed to.

**Competition (Amendment) Bill 2016 [Seanad]: Referral to Select Committee [Private Members]**

**Deputy Alan Kelly:** I move:

That the Bill be referred to the Select Committee on Jobs, Enterprise and Innovation pursuant to Standing Orders 84A(3)(a) and 141.

Question put and agreed to.

The Dáil adjourned at 9.20 p.m. until 12 noon on Wednesday, 1 March 2017.