



DÍOSPÓIREACHTAÍ PARLAIMINTE
PARLIAMENTARY DEBATES

DÁIL ÉIREANN

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

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DÁIL ÉIREANN

Déardaoin, 29 Meitheamh 2017

Thursday, 29 June 2017

Chuaigh an Leas-Cheann Comhairle i gceannas ar 10 a.m.

Paidir.
Prayer.

Judicial Appointments Commission Bill 2017: Second Stage (Resumed)

Question again proposed: “That the Bill be now read a Second Time.”

An Leas-Cheann Comhairle: Fianna Fáil was in possession. I call Deputy James Browne.

Deputy James Browne: I welcome the opportunity to speak on the Bill. There are three branches of Government - the Legislature, the Executive and the Judiciary. The regulations, structures and functions of these principal organs of Government are fundamental to the protection of our democracy and the rights of the people who live within that democracy. The Constitution was carefully crafted to regulate the relationship between these institutions by setting out the balance of power between them. It does this by means of the separation of powers. The doctrine of the separation of powers operates by putting in place a degree of independence between the parties whereby a system of checks and balances can operate. The three institutions are to work as a counterweight to each other. Any erosion of the separation of powers or those checks and balances must be fiercely resisted. Erosion of the separation of powers can occur by the encroachment of one arm of the State on the other. It can also occur when one arm of the State attempts to undermine another arm of the State.

To return to the Government’s proposed Judicial Appointments Commission Bill 2017, I have carefully read it and it is clearly a flawed Bill. It fails the test of the separation of powers, both legally and philosophically, and in doing so it undermines all three institutions of our State and, consequently, the protections in place for our citizens and non-citizens. The consequences for the public may be profound and long term. Why do I say this? First, there is the politics. It was obviously cobbled together in haste to keep the Minister, Deputy Ross, on side with the Government. The legislation is clearly ill-considered and poorly constructed. It reminds me of a farm animal put together by a committee. It is a hodgepodge of compromise between Fine Gael and the Minister, Deputy Ross, with more than a nod to Sinn Féin to ensure its support.

We know the Minister, Deputy Ross, has long displayed a resentment towards the Judiciary and has been only too willing to cast aspersions on the highest judges in the land. He has regu-

larly sought to undermine their credibility and reputations. One only has to read the record of his statements in both houses of the Oireachtas to know that. I want to examine a number of those statements. On the Seanad Order of Business on 15 February 2006, the following exchange was recorded involving the then Senator Ross:

Senator Ross: Senator Jim Walsh raised the matter of the Judiciary on which Senators Norris and O'Toole and I tabled a motion some time ago. I refer to political appointments to the Judiciary and seek a debate on ending political appointments thereto.

Senator Lydon: Certainly not.

Senator Ross: For so long, one party has put its own people in power and then another party has appointed its people to the Supreme Court.

Senator Wilson: That is not correct.

Senator Feeney: Five High Court judges were appointed and they had nothing to do with our party.

Senator Ross: Occasionally a dummy is appointed to fool people. I wish to finish without interruption. In the Bar Library people predict the outcome of Supreme Court decisions on the basis of party affiliation.

This was both a slur on those appointments and a slur on the Supreme Court judges. During the debate on confidence in the Taoiseach on 16 June 2010, the then Senator Ross stated:

If one talks to people in the Law Library, they will say, "That one is yours or that is theirs". They identify judges in private conversation and when they talk about Supreme Court judgments, they can say which way they will go according to the political colour of the judges.

That is not only wholly incorrect but, again, is a slur on judges in the Supreme Court. In the Seanad on 28 February 2007, at a time when the then Senator Ross wanted this House or committees to scrutinise judges, he stated:

I seek a debate on No. 21, motions Nos. 8 and 9, so that we can discuss in a calm way the possibility of making appointments to semi-State bodies and the Judiciary subject to the scrutiny of the House. Unfortunately, the Independent Members have never had an opportunity to make such appointments.

That last sentence is the important one. There, we are getting to the nub of the motivation for this Bill. For the Minister, Deputy Ross, this is an issue about power, in particular the Minister's lack of power, as he sees it. There is clearly resentment and a bitterness towards the Judiciary. It is one of the oldest issues in the book.

The Minister, Deputy Ross, now seeks to have the Government bring forward legislation that will seek to put in people he claims are independent or ordinary people to appoint the judges. He consistently refers to them as being ordinary people. The Minister, Deputy Ross, obviously circulates in more rarefied positions than I do. Where I come from in Wexford, ordinary people are mechanics, electricians and people who work in supermarkets. The Minister, Deputy Ross, seems to consider ordinary people to be those in the establishment, such as people who work in funds, accountants and stockbrokers. These are not ordinary people; these are

people who have their own vested interests. As a result of the demands of the Minister, Deputy Ross, we find ourselves discussing the Bill for three days. We are approaching the end of the session and there are crises in mental health and waiting lists for medical appointments while thousands of people are homeless, yet none of these issues is given priority by the Minister or the Government. Why is there no mental health legislation before the House? Why has desperately needed legislation such as the child care Bill, which seeks to give a voice to children in the courts, not been prioritised? Why has the affordable child care Bill, which will help people with the crippling costs of child care, not been prioritised? Why has the gambling control Bill not been prioritised? This will regulate the Wild West that is our gambling laws and help to protect our children from gambling addiction. The Government could bring forward an endless number of desperately needed Bills to strengthen citizens' rights, yet none of these has been prioritised and, instead, the hobby horse of the Minister, Deputy Ross, was made a priority. His Bill seeks to weaken citizens' rights by undermining the independence of the Judiciary through the politicisation of appointments.

It is clear the Bill will achieve three things. It will damage the quality of justice administered by our courts, politicise the appointment of judges even more than is currently the case and establish an unnecessary and costly super-quango. The administration of justice is a fundamental role played by the courts under our Constitution and it is a cornerstone of the separation of powers. Article 34.6 clearly provides that justice should be administered in courts established by law by judges appointed under the Constitution in public. Hundreds of thousands of cases are dealt with by the courts each year from the District Court all the way up to the Supreme Court. Every case has an impact on our society, even the most minor ones. The most common cases are taken in the District and Circuit Courts. Some of them might seem minor to the outsider, but their outcome is fundamental to the individuals who are involved in them. District Court cases are often fought with the same veracity, hope and determination as a Supreme Court case. The cases are heard by judges who have been appointed under the Constitution. They must have a knowledge of the Constitution, statute law, EU law and common law. In short, they must be experts on the law.

However, they need much more than that. They need a good temperament and they need to weigh up individual cases. The best paid lawyers in the State would make terrible judges. A judge needs to have confidence but not be a zealot. He or she needs to be fair minded and to have the self-awareness to know his or her weaknesses and to acknowledge and address them. A judge must have strength, but must also be willing to yield when necessary, and he or she must have a deep understanding. It requires people who understand the workings of the court to have the expertise to know what makes good judges and the difference between what makes a good judge and a good lawyer. They are not always the same. Deputy O'Callaghan touched on a crucial point when he referred to the consistent determination and attempts by the Government to confuse lawyers with judges. They are not one and the same. When someone is appointed a judge, he or she leaves behind his or her profession as a lawyer. Judges are professionals, but it is not a profession. They are an independent arm of the State and they have the same position under our Constitution as the Taoiseach, but with a different role. It is important that they are kept separate and that they are not undermined by another arm of the State.

One of the stated aims is that the legislation will remove politics from appointments, yet we know from analysis that it will do the opposite. Those and, in particular, the Minister for Transport, Tourism and Sport, who say it will end this either do not understand the Bill or they are fully aware of what it will do. The Bill provides for a majority of lay persons to decide who

should be recommended as judges. These people will have no expertise or knowledge in what is required to make a good judge but they have expertise and knowledge about the running of the establishment. There is no doubt they will be nominated from some of the powerful vested interests in the State. The process will be even more politicised. What will their agendas be? What will they seek in the appointment of judges? As Deputy O'Callaghan mentioned, will pro-life or pro-choice viewpoints be considered, for example? Will people who are looking to undermine the State seek appointment or people who would like other viewpoints in judgments? Will people who feel aggrieved over past decisions and judgments seek to become members of the commission in order that they can control who is appointed to the Judiciary? One of the oldest tricks in the book in politics is where a Minister cannot decide the outcome, he or she decides the people who will be on the body that will decide the outcome. It puts a reasonable distance between the politician and the body. It makes it look independent while doing quite the opposite. This undermines transparency and accountability.

Even with the legislation, the super-quango it will create, the hundreds of thousands of euro it will cost, and the people who will be transferred from the Civil Service to staff it, the Government can still ignore any decisions this advisory body will make. It can do so in the same way it ignored the 1995 legislation two weeks ago. It remains the prerogative of the Executive to appoint who it wants as a member of the Judiciary. The Bill does not even provide for nominations to be ranked in order. It will remain the case that three names will be put forward and the Government will be free to do what it wants, irrespective of this legislation. It will, therefore, do nothing to depoliticise the appointment of judges. It will strengthen the politicisation of appointments but put them at a remove from the Government and in the hands of unknown persons.

One of the reasons the State survived independence, unlike many countries that secured independence but struggled for a long time to establish a strong and stable democracy, was judicial independence. When the new Constitution was introduced, judges who may not necessarily have agreed with it or who came from a different era abided by it and the decisions of the House and continued to act independently. While every judicial appointment has been made by the Executive over the decades, throughout the debate on the Bill, no example has been provided of a judgment where there was interference by a judge or a political party. The Minister for Transport, Tourism and Sport has uttered a great deal of invective in the past about that and I referred to some of his quotes earlier, but he has been unable to give a single example. One of the notable aspects of the debate over the past few weeks has been that people who may not be considered to be friends of Fianna Fáil have said that judges, once appointed, have always acted independently, whether they were appointed under a Fianna Fáil-led or Fine Gael-led Government. Using another old trick in the book, the Minister is trying to deflect by trying to solve a problem that does not exist. He is trying to create a problem to be seen to have solved it while he ignores issues in his own Department, such as the lack of enforcement of penalty points on driver licences.

It has been consistently put forward that the new body will comprise a majority of lay persons but no explanation has been given as to why people who are expert in the running of the courts or in what is required to be a judge should be in the minority. People who may never have set foot in a court will be in the majority. On paper, somebody might look a good potential judge by having been involved in many significant cases, but he or she may have been a junior counsel who sat beside a senior counsel and may never have led a case. He or she may have a successful career, earning lots of money in the courts, but that does not mean he or she will

make a good judge. They may have top marks or top degrees from universities, but that does not make them good judges. As I said earlier, they might not have the right temperament or right sense of fairness.

This Bill also attempts to undermine and demean the Chief Justice of the Supreme Court. She is expected to sit on a committee but not chair it. Instead, she is to sit on the side and effectively be told what to do. As was highlighted earlier, can one imagine the Taoiseach being expected to sit on a committee but not chair it? It would not happen because it would undermine the Taoiseach. Here we have one arm of the State trying to undermine the head of another arm. It is wholly unacceptable to see that being attempted.

The Taoiseach gave examples of regulatory bodies on which the majority of members are independent. Of course, they should be independent. It is demanded that they be. However, these boards are assessing the actions of a professional within a certain profession. It does not involve the separation of powers or one arm of the State trying to interfere with another arm. Trying to bring Supreme Court judges down to that level where they are seen as a body to be regulated is not acceptable. It shows a misunderstanding of judges' role in the Constitution.

The Minister for Transport, Tourism and Sport, Deputy Ross, compared the process to juries which are composed of ordinary people. They are ordinary people but they are there to bring their common sense, common knowledge and common understanding to the facts of a case. It is the judges who continue to run the court and apply the law. It is a different situation.

This is a flawed Bill which will be overseen by a super-quango. We know that on average 15 to 20 judges are appointed every year. However, one could go six months with no judge appointed. What will the civil servants in this super-quango be doing in that time? No one knows. They will probably be sitting around, maybe empire building. We do know, however, that we have three-year olds waiting three years to see a psychologist. We have people who cannot access maternity benefits, as well as delays in medical card and fair deal applications, because we do not have civil servants to administer them. There are three civil servants in the Department of Agriculture, Food and the Marine dealing with one of the most existential crises the State has ever faced, Brexit. However, we can afford to put loads of civil servants into some new commission, give them a lot of money and, perhaps, nothing to do for long periods.

This is a flawed Bill because it undermines the independence of the Judiciary and politicises even more so the appointment of judges, but in a way that reduces transparency and accountability. It is motivated by the whim of one Member who has had a particular agenda for a long time and who has sought consistently to undermine judges. At the very least, this Bill needs more time to be considered and should not be rushed as it is. As I said earlier, it is beyond me why this Bill has been given such priority when so much other legislation badly needs to go through this House. In those circumstances, I ask the House to reject this Bill.

Fianna Fáil has had a Bill on this matter which has passed Second Stage. It is much better legislation in bringing about fairer change for the Judiciary. The Judiciary itself has said it wants change, but not this hodgepodge change being brought through in haste based on a personal agenda which will only undermine one arm of the State.

Deputy Michael Fitzmaurice: I welcome the opportunity to speak on this Bill. It was introduced in a rush over recent weeks when damage had been done, especially with the public, as to the way appointments are made to the Judiciary. What went on at Cabinet with the most re-

cent judicial appointment was disgraceful. For politicians, who are with the public in their different constituencies, what went on calls into question the whole cronyism and nod-and-wink approach to judicial appointments. This is not good when, over the past year, it was claimed that politics was to be cleaned up along with the systems that were in place down through the years.

The Bill will set up a new advisory body for judicial appointments. I looked at the list of those who will be on it and there is a fair representation right across the board. One can have the most expert people on this body with in-depth knowledge of the whole judicial system. However, at the end they have to go with a list of three names but the Government still decides who it will accept. In my book, this is an unusual way of doing it.

When a person goes for a job in the county council or the Civil Service, he or she does an interview, is rated and is given a placement, be it No. 1 or 1,001. That person knows where he or she stands. Councils have an appointments system, which stands for two years and then it is updated. What is wrong with having a system where an independent body interviews those who apply for a particular court, assigns ratings and then appoints them on this merit, rather than the Government deciding it will pick the third candidate, even though there might be two other names ahead of that candidate?

Sadly, it is undisputed that people with certain leanings in certain ways have got the nod down through the years. Was it the case that whoever composed the list was told what names to put forward? We need transparency in the judicial appointments process. We need to show the public that, for once, these processes are changing and are becoming more transparent. There should be a process where people can google to see who applied and their ratings. It can be done through a letter if one wants to keep it confidential. If one applies to be a District Court, Circuit Court, High Court, Supreme Court or Court of Appeals judge, or even to two courts, one should at least know where one stands. This Bill, however, allows the Government or a Minister to decide which of the three names which go forward will be appointed, be it Tweedledum or Tweedledee. That is not good, especially after the tarnished image portrayed over recent weeks.

The one thing that galls me is the fact we spent 80 days in talks, and new politics, a new way of doing things and more transparency were to result from that. It is sad when I look at people I sat down with who would have gone to bank AGMs, who would have taken on the heads of the banks about the way they conducted their business and the way shareholders were treated, and who put forward the need for transparency in the judicial system as one of their leading agendas in the programme for Government. Those people were in Cabinet two weeks ago and did not speak up. It was not the 11th hour and 59th minute. This Bill could have been introduced nine or ten months ago if it was that urgent. It is possible to delay the appointment of someone and go through the process that is required, but someone should not be given a prize just because they were with one for one year, five years or six years. People have asked me whether it bothers people. On the weekend when this issue blew up, it was the most talked about issue in all our constituencies throughout the country. When someone holds themselves up as believing in a new system for judicial appointments, and it was a pretty tough debate when the programme for Government was being put together, but closes his or her eyes when the harm is being done and the horse has bolted, and then comes back and says we need this Bill urgently and this is how we are going to clean it up, it does not give that person credibility. The Minister for Transport, Tourism and Sport would have been better off concentrating on transport because there is a huge deficit throughout the country that needs funding, and a focus on it is needed. Any Minister has enough to do in his or her own job much of the time instead of minding a few dif-

ferent Departments.

Another issue the Minister needs to clear up relates to the fact there is a lot of chat circulating that he made approaches for certain people to be appointed to certain posts in the Judiciary. This needs to be clarified one way or the other because one cannot bring in a Bill or shout about bringing it in when one did what everyone else did down the years. This issue needs to be clarified.

The Bill needs time and needs to be teased out. We need to make sure it is not just under the control of a Minister. I have read the Bill. The only way we can sort this out is to have a system where there are one or two people on it, because if we do not do that, we will have situations where someone will say to give a particular person the twist, as it were, because he or she is leaning that person's way or whatever way. The Judiciary has served the country well in many cases but it is not good that there would be any political influence on the appointments such that they are a reward for being with someone or in favour of a party or group. That is not a good system.

When I talk to people, I can see that much harm has been done at a time when politics tried to gain a bit of momentum and people believed that politics would be pursued in a new way. In respect of what happened two weeks ago regarding the appointment, let me be very clear that I am not questioning the person's ability. I do not question a person's ability because who am I to judge someone's ability? However, that is not what it is about. It is about the system and the way it was done. The system down through the years has been rotten and there is no doubt that we need to change it. I agree with this argument 100%. However, are we changing it with this Bill? At the end of the day, when one brings three names forward, one can pick any of them. I ask the Minister for Justice and Equality to ensure one part of that Bill would ensure a candidate would be on a list and everyone would know where they stand. Everyone would then have the right to say whether they are interested. As was pointed out earlier, there may be ten, 15 or 16 appointments one year and none the next year. That is the way it is. As was pointed out earlier, the other thing we need to watch out for is that we do not have a heap of people wondering what their job title is if there is no appointment because surely there are other things we could get people to do.

I have heard the Judiciary argue that it does not have enough say in it. I have looked at it. In respect of solicitors and different bodies that would be on that board or commission, that is not something I would worry too much about. I still do not think we are solving the problem of the appointment where there are three names. Someone could be the greatest in the world and still not be in it. They could be in three times or be one of the three names the next time and still not be in it. Someone could go on and on. There are solicitors throughout the country who might not lean one way or the other or might not have been politically involved. They will say very bluntly that they never got a crack at the whip. They never got a chance. They might be phoned every now and again to see whether their tax clearance is in order, but that is the end of it. People ask whether this should be said in the Dáil. This is what is being said on the ground. We need to make sure we clean up whatever is wrong and the type of impression it gives.

The harm has been done. The horse had bolted when we started bringing in the Bill. Much harm has been done. It has been one of the most destructive things that has happened to people's confidence since I entered the Dáil. Unfortunately, everyone gets tarnished then. "Isn't it the same craic", is all you will hear from everyone. That is not good. That is not the way it should be done. We have excellent judges in places and many appointments have been good.

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Let no one criticise that part of it. However, there may be some appointments one would question. That is debatable when one looks at certain cases. Politics has to be taken out of this. There is one problem with the Bill. I know it will be said that we must change something in the Constitution but if we have to change something, let us change it if it is for the good and for more transparency. I am an Independent Deputy but I think Independents have been damaged. The Minister for Transport, Tourism and Sport was asleep at the wheel when that Cabinet meeting took place and he did not block that appointment because it was not life or death and it was not a week, two weeks or a month. We could have let this Bill come in if it was going to come in and then take the high moral ground and say, "Aren't I great?". The problem is that the damage has been done. Anybody who is speaking of bringing in a Bill now needs clean hands. He who comes seeking equity must come with clean hands and needs to clarify whether he ever made such representations.

An Leas-Cheann Comhairle: I understand Deputy Eugene Murphy is sharing his time with Deputy Ó Cuív. Is that agreed? Agreed.

Deputy Eugene Murphy: I will make a short contribution on this Bill. I welcome the opportunity to make a brief comment on it.

I have to say at the outset, I agree with Deputy Fitzmaurice that this is a rushed scenario. It is an issue for many Deputies as to why this matter needed to be rushed through so quickly. I make this quite clear because I have been picking up comments outside over the past few days and I am a little concerned at comments that Fianna Fáil does not want change or some changes. We want change but we want it done in the right way and we want time and space given to reform. It is somewhat misleading to have a charge out there that Fianna Fáil does not want change. The fact is that, in October 2016, we published a Bill which was totally committed to achieving reform in this area. I believe genuinely, as my party colleagues do, that some change is needed in this scenario in order that people have full confidence in the system.

It is important to state that the judicial system as a whole has been really good and in a European context is often referred to for its equity and fairness. While now and again one might have reservations about some judgments or whatever, generally we have a good system of justice.

As for political connections, I hold the view that everybody in Ireland has a political connection. Everybody in this country believes in this or that. They believe in a party or some other party, or they believe in Independents. I never buy into this argument about political connections. It is overplayed. I acknowledge that down through the years, those who perhaps were close to one political party or another were appointed to positions but when one looks at the overall administration of justice in the country, the vast majority of those appointed carried out their work diligently, equitably and fairly. Whatever concerns some, including the Minister, might have about political appointments and why we need transparency, the way justice has been handed out by the Judiciary over the years has been good in general.

It is true to say some have political connections and one could say they are at an advantage if their names are on the list which goes to the Cabinet, while it is often said that canvassing should be prohibited. Many who are appointed because of political connections, as I have already stated, will turn out to be excellent judges. We should not have a system whereby a person should be excluded from subsequent nomination to judicial office because he or she was involved in politics. We should face this question head on. Why should they be excluded more

than anybody else? What we do not know is if there are good candidates who apply to be judges and who, because they did not know anybody in Cabinet or any Deputy, were overlooked and never got the opportunity of being promoted to the position of judge.

For all of those reasons, the system needs to be changed. We need a recommending body that can identify who it believes will be the best person for the position of judge. We should have a recommending body that ranks individuals in terms of their suitability for that job.

Under the Constitution, which is appropriate, the Government has the final say. One should remember this all is well laid out in the Constitution. Regardless of the system in place or how it operates, the Government can disregard the list of candidates provided by the Judicial Appointments Advisory Board and appoint a candidate of its choosing. That is the scheme that currently operates under the Constitution. However, it need to be changed and broadened to ensure that it is fairer and that the best - there may be persons who we do not know and who do not have connections - have an opportunity to be considered and appointed.

I remind Members that the Fianna Fáil Bill was published in October 2016. I stress that point because of what I hear from some of the public that Fianna Fáil does not want change. We were advocating change as far back as October last. That Fianna Fáil Bill sought to establish a judicial appointments commission to recommend to the Government the names of the individuals who it believes would be the most suitable to be judges based on merit. For each position, it would recommend three persons.

I will conclude because Deputy Ó Cuív has a major contribution to make, as have Deputies Kelleher and Thomas Byrne.

Welcome back to quango land, the quango land to which the Minister and the Government were so vehemently opposed. They are right that there have been too many quangos but here comes quango number one under the new system. How much is it going to cost? It is estimated this will cost €1 million to start off and as all will be aware, that cost of €1 million will quickly rise to €2 million and €3 million. In my view and that of my party, it is necessary and important to point out to the public that there will be a significant and unnecessary wastage of public money on what has been proposed here.

Deputy Éamon Ó Cuív: It is important to look at what actually happens in the appointment of judges. As somebody who was in Cabinet for a considerable period of time, I am aware of the reality. The reality is not what is spun in the media, namely, that politicians put their pals into these positions. In the vast majority of cases many members of the Cabinet, particularly those who were not in the legal profession before politics, do not know the names that come before them. Under the present system, they get a long list of names and are told those are suitable. That, obviously, is flawed from an information point of view as were one appointing a board, for example, one would try to get some reason as to why those who were being proposed to one for appointment were suitable for the job. Therefore, the system is flawed because it does not give the Cabinet enough information.

We must preserve the absolute right of Cabinet to make a decision having followed a good process, not because it is in the Constitution but because it is right to be in the Constitution. In other words, on the one hand those who make decisions with a lack of information are not acting responsibly and the Cabinet has to act responsibly while on the other, the ultimate appointment of judges has to rest with those elected by the people.

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As my colleague, Deputy Browne, stated earlier, a coterie of powerful people in this city would like all appointments to be made by a clique that we would never see and who we would never know and they want everything done by that clique. I checked one day by putting down a parliamentary question to every Department. I asked for the geographic location of all the members of all the boards of all the agencies under each Department and what became apparent was that a disproportionate number of those board members came from Dublin, not from the rest of the country. I suspect that if I had seen those people's addresses on Google Maps, I would have found a very large number of dots between the south bank of the Liffey and Bray, in the most salubrious areas. No doubt, I would have found no member of any State board from some of the poorer parts of the Minister of State's constituency. Increasingly, in all the processes we are putting in place, we are promoting circumstances in which, in reality, a small group of people who know one another, mix in the same circles and come from the same class are obtaining more and more power unseen. I object to that. What democracy is about is saying the small person has the exact same vote on election day as the most important person, be it the President or a millionaire. That is right because it is what democracy is about. The only committee in this country elected by and answerable to all the people is the committee called Dáil Éireann, of which there is a sub-committee called the Government, which we elect democratically and openly and which the people can fire if they feel it has acted in an improper way. Therefore, we must guard with jealousy the constitutional right of that committee to be the final arbiter.

There is a certain deficiency that I accept. I know from having been in Cabinet that one got a list of names, big or small, and was told the individuals thereon had been checked and were all suitable. One looked at the list of names and did not know any of them. One did not have any recommendation or any cur síos as to why they were suitable or why some were more suitable than others. I do not know the stance of others of the National University of Ireland, NUI, candidates on the Seanad ballot paper. If one does not know them at all, one gets a bit of a blurb about them. If one knows someone and believes he or she is a good character, one will probably give him or her a high enough stroke because one knows what one is getting. Therefore, I accept there is a deficit of information given to the Cabinet on why one person is more suitable than another. The Government's Bill does not address this, however. It states three names will be given but there will not be any information on why the candidates believe they are suitable and why some might be more suitable than others. It shortens the list by comparison with the previous arrangement but it does not eliminate the difference.

May I address another challenge we have to face? At present, if a very good person who is appointed as a judge happens to have a relative in politics, it is very easy in our present system, because we have a small country, to point the finger and say, "Aha, wouldn't you know?". Again, our proposal, unlike that of the Government, deals with that issue. Where that charge is made under our proposal, one can say that, based on information given by someone who examines candidacy independently, it stands up that the candidate fits the criteria. People should not be put into jobs or fail to get a job because they happen, by birth, marriage or any other relationship one can think of, to be connected to a politician. We need a system that defends not only the person who might be appointed but also those who make the appointment. Under the Government's proposal, this does not happen.

Let me refer to the usual end-of-term madness that seems to arise in this House. At the end of a term, either by political direction or because the Civil Service suddenly acquires a massive amount of energy - I have seen both - legislation has to be rushed through as if the future of the

country depended on it. I am sure the Minister of State got the Friday afternoon memo, and I am sure the Leas-Cheann Comhairle and Deputy Kelleher got a few in their time. The memo arrived on a Friday evening with a very nasty decision to be made very urgently because time had run out. When the memos arrived, I used always to get someone to ring the relevant section and find out when it got the file. If I learned it had it for six months, I would say I was going to hold it for six months. In the normal course of events, however, I normally signed off on a file on the same evening if I got it in good time. This Bill is the equivalent of the Friday evening memo. It is of no urgency and will not tackle the real problems that the real people are trying to deal with, including losing houses, social segregation in Dublin city, traffic congestion, the inability to buy a house for love or money, and homelessness. If the Government were rushing legislation today to try to deal with those issues, I could understand it, but it has been trying to rush a Bill that not one person in my constituency has raised in my clinic. Not one person has been pressing me about it because most people accept that no matter what human system, safeguards or processes one puts in place, there will in a large group of people be a few who are suboptimal. There is no human way of guarding against that, but most people accept two points, the first being that the vast majority of judges are good and that there are good appeals mechanisms within the system if a judge gives a decision that is flawed, and the second being that no matter what might be said about judges, they act independently. No Member of this House would ever talk to a judge about a judicial matter or try to interfere or influence him or her in any way.

I sincerely believe the Government should withdraw this Bill and enter proper dialogue on the best way of dealing with this issue. It does need to be dealt with but it is not of overwhelming urgency. It would be far better to do this right than to rush through a flawed Bill only to realise, having passed it, that it contains a major mistake. One of the most wrongful provisions in the Bill is such because of the position in which it is putting the Chief Justice. We must protect the status of positions like that, not because of the person but because of the office.

Being Chief Justice should mean that one is the leader in justice, in right and in standards. To say that the person the Cabinet will have picked because it believes he or she is the best, who under a proper system would have been recommended as being the best, should not
11 o'clock chair the commission is demeaning of one of the highest constitutional offices in the land. I do not understand the reason somebody is proposing that. As has been pointed out here today, judges have to have legal training, but they are not practising lawyers; they are practising judges. The Chief Justice is not a practising lawyer but is a practising Chief Justice.

Deputy Thomas Pringle: It has been baffling and quite embarrassing the way issues relating to this Bill have been played out both inside and outside this House. I stress that if there is such a sense of urgency to reform the judicial appointments system, why has it only taken place after the Taoiseach and the Government appointed the former Attorney General to the Court of Appeal? Much has been made of the fact that this Bill will take the politics out of the appointment of judges, but the reason it is coming forward is purely political. It is coming forward with such a sense of urgency to appease the junior partners in the coalition Government.

Fianna Fáil had a similar Bill in committee which the Government killed off, so to speak, by the use of the money message because it was not in its interests, again for purely political reasons. It was also because the Bill could have stolen the Minister, Deputy Shane Ross's, thunder and his reason for being. If the Government was mature and proper, it would have joined with Fianna Fáil and allowed the Minister, Deputy Ross, and Deputy O'Callaghan to move the Bill

through Committee Stage and we could have reached this point far quicker without the sense of urgency and without any opposition in the Dáil.

The Dáil has been unfairly blamed for the slow progress of Bills being passed. However, Fine Gael is obstructing the progress of Bills while at the same time fast-tracking the particular Bill we are debating today. That shows it is not new politics that is at fault here but the inability of the Government to maintain the integrity of the legislative process because it does not have the courage to engage in democratic debate.

My colleague, Deputy Catherine Connolly, in her contribution to the debate on the Bill, rightly said that all of this is an illusion. It is an illusion that the Government is serious about reform, an illusion that politics will finally be taken out of the equation in judicial appointments and an illusion that this reform will adequately filter down to address the grave inequalities and elitism plaguing the rest of the judicial system.

Even if this Bill gets through the House, and it might not as it is possible the justice committee will use its procedures to stall it and not have it passed before the summer recess, the Government still retains the power to appoint as a judge whoever it wishes. In fact, the Government could essentially bypass the new judicial appointments commission if it does not like the three recommended names put forward by the commission because that power is protected within the Constitution. It would require a referendum before that is ever changed and since we already have a Citizens' Assembly tasked with debating the need for certain referendums, we have missed that boat.

How can we take politics out of the process when the Attorney General, which is a political appointment, will sit on the new commission and where no rationale is given for the recommendation of candidates in the text of the Bill? The Bill is becoming more and more reflective of the farcical political process at play between the coalition and Fianna Fáil.

The Bill provides for the commission to be made up of a lay chairperson and a majority of lay members. I note the commentary focusing on lay people in the appointments process and what is essentially a fear some seem to have of lay people in general. It is as if we are terrified of anyone outside the inner circle of the elite having a say in what is in essence an institution that upholds the Constitution of the people's Republic. The people are the final arbitrators regarding the Constitution, so surely the people should be able to have a say in who interprets and implements that Constitution.

Earlier in the week, I listened with amusement to retired judges discuss on a radio programme how we could not have lay people being in a majority on the new commission and putting forward names for selection. The serving judges know all the applicants and they believe they are best placed to make a recommendation, but I do not believe the Judicial Appointments Advisory Board has ever made a recommendation. We hear that it has put forward seven, eight, ten and, in some cases, as many as 20 names. That shows that those involved in the existing system are incapable of offending any of its elite members in that they do not want to choose one name over another to put forward as a person who is best placed for the job. The process of putting forward three names still allows the political process to choose the person on whom they want to bestow patronage.

The retired judges said that in no other system would it be expected that people who were not intimately involved in the actual job would put forward names. I cannot think of any other

job application process in this country or in the world where three, seven or ten people's names are put forward as being good enough to do the job. Any application and interview process results in the person who is best qualified for the job being appointed. That is not a slight on anybody else who applied for the job. It just means that at that particular time they were not the best qualified persons. Every ordinary mortal in the country has to go through that process to get a job, but we are told it is not right to expect judges or those in the legal profession to go through that process. That is wrong.

This commission should put forward one name and say that of all the candidates it has this person is the one it believes is the most suitable for the position at the time. It should put it up to the political process and allow the political process appoint the person recommended by the commission.

If ordinary citizens are trusted as jurors to make very important decisions on the guilt or innocence of people before the courts, which perhaps might destroy their lives, and nobody questions the jury system, why are we questioning the role of ordinary citizens now? The Medical Council has a lay majority as do other regulatory bodies for different sectors. I agree with the sentiment that no regulatory bodies should be self-regulating or self-appointing.

The Judicial Council Bill, which was only published in recent weeks, should be dealt with and a judicial council put in place before this Bill progresses as it will provide a mechanism for the investigation of complaints against judges and enable the preparation of draft guidelines concerning judicial conduct and ethics. That should be part of the process of deciding whether a candidate is suitable for a particular job and if that code of conduct and ethics is in place, the proposed candidates can be compared in that regard.

Surely this culture needs to be established before we bring in a new process to appoint judges. The commission must also be accountable and take heed of the ethical guidelines as set out by the judicial council. It is clear there is no co-ordinated or concerted effort to bring about reform in the Judiciary, despite this issue dominating the political career of the Minister, Deputy Shane Ross.

Ultimately, we need to focus on the diversity of the sector, not just between lay people and professionals but within the pool of professionals themselves. We need to foster diversity within the law profession by encouraging people of all classes, gender and ethnicity to take up law. That will mean reforming the way people can enter law school and significantly reducing the cost of getting a qualification, which is prohibitive. The nepotistic and patronage culture inherent in both the Law Society and the Bar Council are further prohibitive in terms of those already practising, particularly for women in the sector.

Unfortunately, the Bill as it stands will not address this issue, particularly as section 7 of the heads of Bill has been removed from the text of this Bill. That section would have ensured that the Public Appointments Service and the commission must have due regard to gender balance and diversity as well as merit in the decisions it makes for judicial appointments. Throughout our system we insist on gender balance and gender equality in appointments, including the local authority system and so on, yet we will not insist on it in this case.

Fostering diversity starts at the very beginning - in our society. I have tried on two occasions to have passed an economic, social and cultural rights Bill in the Dáil, which would enshrine the rights to housing, health and education in the Constitution. That would have been

a basis by which we could foster equality among all our citizens and ensure that class, gender and ethnicity are no longer barriers to employment or even to accessing our justice system, such as the provision of free legal aid. It is important that we change our society to ensure we bring about more diversity in the legal profession and, subsequently, in the judicial profession.

It cannot go unsaid that the cost of access to the justice system is still an outstanding issue about which the Government could care less. There does not seem to be a sense of urgency to address this, yet if the Government was serious about reform, it would have started with more genuine measures, for example, increasing access to free legal aid for people who cannot afford to access the justice system, rather than playing a political game to appease its coalition partners.

Deputy Billy Kelleher: I welcome the opportunity to speak on this Bill. It is disappointing that we are not speaking in a more unified voice on this legislation, which in a way is important, because we are talking about appointments to the Judiciary and given that an earlier Bill, published by Deputy O’Callaghan, addressed many of the issues that were of concern regarding the appointment of judges.

Two issues are being mixed up in this debate. One is the issue of the appointment of judges and the other is how judges act after appointment. Very few Members of this House have claimed that our judges have acted inappropriately once appointed, that they would be still politically motivated or that they would be partisan or would make decisions for political reasons. During my time in this House and during my lifetime as a citizen, I have found that the members of the Judiciary, by and large, have behaved impeccably in the context of their interpretation of the Constitution and the discharging of their duties in the various courts on a daily basis from the District Court right up to the Supreme Court. Many of the major decisions that have been made in the Supreme Court have caused headaches from time to time for Governments that may have appointed those particular people. I certainly believe that the impartiality and the independence of the Judiciary is fully intact, even though the system of appointment is flawed. That is an important point to put on the record.

In any analysis done and any comparisons made between various common law jurisdictions and those without common law across the world, Ireland ranks very favourably in terms of the independence and impartiality of the Judiciary. It is one of the key components in ensuring that any democratic country functions and citizens’ individual rights are protected and upheld, that laws are scrutinised by the higher courts and that a Constitution is protected and upheld as well. That is important for the rights of citizens right through to commercial rights, copyright, research and development and in respect of international investment and mobility. When consideration is given to locating in Ireland, the independence of the Judiciary is considered. Therefore, the impartiality of our Judiciary cannot be questioned. I have heard very few Deputies in this House, of all political colours and none, question the impartiality of its members.

Therefore, the point at issue goes back to the original matter of the appointment process. There is no doubt it is flawed because, as has been pointed out, there is a better chance possibly of being appointed to the Bench if one is of a political persuasion. Equally, if one is of the wrong political persuasion at a particular time, one may not get appointed to the Bench. A person who had previously been involved in politics could find himself or herself not being able to be appointed, even though he or she may have eminent qualifications because of a political association, or, otherwise, he or she is being appointed because of a political association. Equally, I do not think in a country of our size where many people have been and are involved

in politics, that it should either be an impediment or an impetus to one being appointed. That said, there is a need to put in place a process that is more transparent and brings forward names of people of merit and substance to Cabinet for appointment to the Judiciary.

There are many aspects to assessing an applicant's ability to be a judge and we should not have a box-ticking paper exercise. There needs to be a robust interviewing process. There also needs to be an assessment of the broad range of skills required for a person to sit on a Bench of any court, namely, fairness, humanity, knowledge of the law, of the Constitution and of society and the challenges facing it. All these elements must be brought into play when assessing the suitability and merit of a person who has made an application to become a member of the Bench.

In that context, this Bill, as proposed, is flawed in a number of ways. Perhaps I can be accused of being partisan because Deputy O'Callaghan and I are both members of the same party, but I believe the Bill he proposed provides for a fairer assessment of how to assess the merits of a person making an application to become a member of the Judiciary.

Ultimately, the Government - unless we change the Constitution - will always have the overriding responsibility in appointing a member of the Judiciary. That is clear and evident in our Constitution and it has served us well, as Deputy Ó Cuív pointed out, in the context that this Parliament is elected by the people and Government is elected by this Parliament. Therefore, there is accountability and answerability and those members will have to stand by the decisions they make at some stage either to this Parliament or, ultimately, to the people during a general election. There are checks and balances on the broader decision-making process at Cabinet.

A major problem for Cabinet under the current process - it will even be worse under this Bill being proposed by the Minister, Deputy Ross, and sponsored by the Fine Gael Minister for Justice and Equality - is that reasons are not given as to the suitability of those who are proposed to Government for consideration, other than a list of the names being handed to Cabinet for it to make an adjudication thereon. The process will not give the reasons those people are suitable or a varying scale of their suitability and quality. Many times judges have been appointed to the Bench where nobody in the Cabinet would have been familiar with the individual. We must have a robust system if the members of Cabinet are to appoint judges through this system and where their hands are tied in making any other decision in that context because of this proposed legislation. We must have a robust system of scrutiny to assess the merits of the various applications, distil them down and present the various names to Cabinet and the reasons those people are suitable. That is very important. Otherwise, the Government will be appointing members without any knowledge as to why those people have been recommended other than the fact that they have been recommended. That is not good enough if we are passing legislation that sends out a message that there is a robust system in place to assess the suitability of the recommendation to Government to appoint members of the Judiciary.

The Minister, Deputy Ross, has been on a personal crusade on this issue for a long time. In advance of being elected to Dáil Éireann, he was previously a Member of the Seanad and he also wrote articles that appeared on the back of the *Sunday Independent* on a regular basis. He would have shouted from the high heavens about cronyism, sweetheart deals, pork barrel politics, grubby political parties and all that flows from that. Since he was elected to the Dáil, but more importantly since he was appointed to Government, he has not exactly exonerated himself from engaging in pork barrel politics. Rather, he has been very much to the fore of it in getting his nose stuck well into the trough by giving out constituency goodies, namely, the reopening

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of Stepside Garda station. He was so anxious, enthused and excited to inform his constituents that it was to be reopened that on the day Máire Whelan was appointed to the Court of Appeal, he sat stum and silent at Cabinet and refused to open his mouth when at the very least, the decision that was being made was questionable. I am not questioning the individual who was appointed but the system and the process was very questionable. What is more questionable is the fact that the Minister, Deputy Ross, was in such a hurry to stand outside Stepside Garda station with a banner espousing his pork barrel politics, that he had not time to disapprove of the appointment and point out that the process should have gone through the Judicial Advisory Appointments Board and that people should have applied in the normal course of events. He believes that judicial appointments and cronyism had been at the centre of all the ills of the State for many years, yet when he had a chance to stop something like this happening, he had not the time, energy, inclination or the wit. Whatever he had, I know one thing for sure, which is he was in a fierce hurry to go to Stepside to hold up a banner to announce that Stepside Garda station was being reopened because he insisted on it at Cabinet.

I listened to the debate. I was in the House for some of the contributions, which were interesting. Deputy Jonathan O'Brien made very valid points. He spoke in support of the Bill, but conditionally. Deputies O'Callaghan, O'Dea and many others made very positive contributions. Deputy Tóibín opened his contribution by scathingly attacking the Fianna Fáil Party for its appointments to the Judiciary over the past 50 years. He more or less said that all of the ills of society are due to Fianna Fáil and its appointment of judges to the Bench. I went back to my office and checked the various appointments that Fianna Fáil made over the past 50 years. Many of them were of no note whatsoever and left no lasting impression on the Bench, but the individuals involved did their job diligently. Some were the finest legal minds and, subsequently, very wise judges who made very profound decisions. By and large, they did their duty and were appointed by Fianna Fáil Governments, under the Constitution, in accordance with the law at the time. When they were appointed, they upheld the Constitution and worked within the law.

I then checked the appointments made by the Sinn Féin Party to see what judicial appointment it had made over the past 50 years. Of course, it ran a parallel system of justice at the time. I could not find the name of any person it appointed to its benches. I know it had systems of justice in place. Last week, I was accused by Deputy Adams of having a brass neck because I am a member of the Fianna Fáil Party. My face and my brass neck are available for public inspection at all times. The brass neck and face of Sinn Féin were not always available to the public when it dispensed justice. That is an important point. I cannot stand in the Chamber on a continual basis and be lectured by a party that had very questionable appointments to its judicial process. The only person I found who was appointed to the judicial process by Sinn Féin was Freddie Scappaticci, one of the finest dispensers of justice we have seen this country. Young boys were taken down laneways and alleyways and had their kneecaps shot and their elbows beaten in with bars. That was the justice that was dispensed.

I can stand here and say that those judges appointed by Fianna Fáil Governments were appointed in accordance with the Constitution and the law of the time. Their primary motivation when they took up their positions was to uphold the Constitution and stand by the law. I cannot accept lectures from Deputies Adams or Tóibín about what Fianna Fáil did or should have done with regard to appointments to the Judiciary. By and large, our appointments were for the right reasons. People may sometimes have had political associations. However, let us be clear. They may sometimes have had political associations with other political parties but they were still

appointed by Fianna Fáil-led Governments.

The brass neck and face of Sinn Féin was not always available to the public when it dispensed justice. That is an important point because I cannot stand in the Chamber and be consistently lectured by a party that had very questionable appointment to its judicial process. The only person I found was appointed to the judicial process by Sinn Fein was Freddie Scappaticci, one of the finest dispensers of justice we have seen in this country. Young boys were taken down lane ways and alleyways, and had their kneecaps shot and their elbows evening with Boris. That was the justice that was dispensed. I can stand in the House and say that any judge appointed by the Fianna Fail Governments were appointed in accordance with the constitution and law of the day. Their primary motivation when they took the bench was to uphold the Constitution and stand by the law. I cannot accept lecturers from Deputy Adams or to been about what Fianna Fail did or should have done with regard to appointments to the Judiciary. By and large, our appointments were for the right reasons. Sometimes there may have been political associations, but sometimes people had associations with other political parties and were still appointed by Fianna Fail led Governments.

In terms of the context of the actual process of justice in this country in recent years, it is the District Court which interacts with the citizens of the country on a daily basis. As has been pointed out, there has been many a robust defence put up by a citizen in our District Court and passionate debate from passionate solicitors defending citizens. Judges adjudicating on such cases are not from an elitist imaginary group. Rather, they are people who were fairly good at doing the leaving certificate, who got the required points, who went to college and who subsequently earned degrees and became solicitors or barristers. It is more than likely they were solicitors because barristers like to climb to the higher courts a little more quickly. They are not people of elite standing; rather, they are citizens of the State who happen to be smart people. I would like to think that we would have smart people on the Bench. I would like to think that the people sitting on the Bench and dispensing justice on a daily basis in our courts throughout the country hail from all walks of life. If there was ever a move towards elitism in terms of where one comes from, that is not necessarily a failing of the judicial appointments process. Rather, it is a failing of our education system. Addressing the issue of investment in primary and secondary schools in socially deprived areas and ensuring there are access programmes for people who are unable to get to college is the real solution if there is elitism, as has been suggested by some, in the District Court. It is not a failing of the appointments process, but of our education system and broader social solidarity.

Part 5 of the Bill deals with the judicial appointments commission office and states, “There shall be attached to the Commission an office to be known as the Judicial Appointments Commission Office (in this Act referred to as the “Office”) which shall assist the Commission in the performance of its functions.” With all due respect, we have many quangos in this country. I cannot understand this. The Government of the day, on behalf of the people of this country, appoints between 16 and 20 judges. In order for those decisions to be made, it is proposed that we will establish an office. Part 5 goes on to state, “The Office shall be funded by moneys provided by the Minister with the consent of the Minister for Public Expenditure and Reform.”

I assume the Minister for Transport, Tourism and Sport, Deputy Ross, will have to be consulted, particularly as he predominately acts as the Minister with responsibility for opening Garda stations and - in cases where the Minister for Justice and Equality is told what to do - justice. I honestly believe that, in their heart of hearts, Fine Gael Members are hoping against hope that the Bill will be defeated or, at best, substantially amended. I am quite definite about that.

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Some of the measures in the Bill are quite extraordinary. The Chief Justice, Ms Susan Denham, whom I have never met in my life and about whom I do not know anything, is eminently qualified and sits in the highest court in the land, as outlined by the Constitution. She will not be allowed to chair the appointments commission. I have no difficulty with laypersons being on the commission but at the very least the Chief Justice should chair it.

Questions were asked as to whether we trust juries to dispense justice. Of course, we trust juries throughout the country to dispense justice. We would be very concerned, however, if a proposal to appoint the chairmen of juries as judges and appoint judges as members of juries were put forward. We would raise eyebrows about such a proposal. I suggest that the office of the President of the Supreme Court be afforded respect, not in a deferential way but in the context of its importance as a constitutional position and that the holder of the office be appointed to chair the appointments commission. At the very least, that should be done.

When the Minister of State goes back to the Department, she might take note of what has been said not just here but by many others who have concerns. It would be nice if we could get broad political support for a Bill that will address the accepted flaws in the process by means of which we appoint judges in order to ensure that the best people are always appointed and that those who may have political affiliations or who may have had such affiliations in the past will not, regardless of the nature of those affiliations, be penalised if they are best qualified for particular positions. I urge the Government to withdraw this Bill so that this process can be revisited. Given the pace at which justice and politics move in this country the judicial system or the political system would not grind to a halt in a couple of months. I do not commend this Bill: I condemn it.

Deputy Bríd Smith: Deputy Kelleher's face and brass neck may be open to scrutiny but that is not the case in regard to all in the Fianna Fáil Party, particularly some previous Taoisigh in respect of whom tens of millions of euro was spent on investigations because their faces and brass necks were not open to scrutiny. I refer the Deputy to all of the tribunals that had to be conducted in this country to get to the truth.

I have been struck by some of the comments from Fianna Fáil, in particular the flowing rhetoric of Deputy O'Callaghan about the separation of powers and the sanctity of the Judiciary. His emotional rhetoric was so strong I thought at one point that he was going to break down. Given the language used one would think this Bill was a revolutionary assault on the judicial system in this country and that the entire legal apparatus of the State was under threat. Dire consequences will ensue if God forbid lay people were to meddle in the sanctity of the work of the judicial system. All sorts of horrors would unfold if the barbarians were to breach the walls of the King's Inns. Perhaps the most hilarious comment was that the Solomon-like wisdom of our impartial Judiciary could be fatally compromised, and the process sullied, by virtue of a majority of laypeople on an appointment board or commission.

Listening to Deputy O'Callaghan one would be forgiven for thinking that the right of the King's Inns inherited from the British Crown - the legal system the British gave us - is all that stands between us and some sort of apocalypse. We are told that judges and the wider legal system are independent, fair and impartial and that judges are skilled and learned wise people with such specialist and accumulated knowledge that no one, certainly not a layperson, could deign to play any role in the dispensing of law. I find this hilarious, as would most working class people who have had dealings with the legal system and the dispensation of justice. I have listened to judges outlaw strikes, grant injunctions against protesters, sentence poor people to

prison and defend the rights of private property over human and economic rights, as evident from the tens of thousands of evictions that have taken place in this country to favour the banks and the building societies.

My overwhelming impression of our Judiciary and legal system is that its number one defining element is not justice and impartiality or non-politically deciding on matters like King Solomon on impenetrable law or legal points. It is a class-ridden system that dispenses law, not justice, in a class-ridden way and on behalf of a particular class. I will reiterate what other Deputies have reported from *The Irish Times* about the road to becoming a barrister:

...it can be “prohibitively expensive” and the financial drain sometimes makes it impossible to continue practising law.

The Barrister-at-Law (BL) degree at the King’s Inns costs €12,560. For would be barristers without an undergraduate law qualification, a diploma or legal studies required before the BL, it costs another €12,560.

Fledgling barristers have to “devil” with an experienced barrister (a “master”) for at least one year and often two years or more. This mandatory work experience is unpaid. A master might pay a devil’s expense but it is at the master’s discretion.

This is generally but not always the case. For example, I know a young barrister from Ballyfermot, an area with a very dense population, whose family, which is a large family, had to endure great sacrifices to ensure he had that education - one barrister from an area the size of Ballyfermot. Let us not pretend that this is an open profession or a representative group of Irish citizens. By its nature, it is overwhelmingly the higher classes and the wealthy who attend the King’s Inns and become barristers.

In regard to how we currently select judges, listening to Fianna Fáil Members one would swear there was some elaborate process that sifted the great and good and selected them on the basis of their accumulated knowledge and nothing else. One judge, a Fianna Fáil appointee, told us in the media last year that at least one third of the Judiciary are straightforward political appointees selected for their political alliances. If Fianna Fáil is in government, we get Fianna Fáil judges, selected not for their wisdom but for what cumann they were in. If Fine Gael is in government, we get Fine Gael judges, again selected not for their wisdom but for what networks they built up when in Young Fine Gael branches in college. Despite the hype and the mystique that Fianna Fáil and others are attempting to spin the deciding factor is not their accumulated academic Trojan work or the legal tracts that they have published but the group of select friends they made when in Young Fine Gael or Ógra Fianna Fáil during their attendance at various colleges, or the spurs that they earned in the L&H debating societies.

For those who argue against this Bill to say that what is in place is a perfect system and we risk collapsing it by sullyng it with a majority of laypeople on a commission is an insult to our intelligence. This is not a radical proposal. It is a mild change that will not fundamentally alter the class nature of the legal system in this country. It will sift candidates by wealth and background before they get to the Bar much more robustly than any appointments board can do. It is telling that barristers, judges and Fianna Fáil are intent on keeping the system as is, a system that is clearly political, elitist and class-ridden. Solidarity-People Before Profit wants greater radical reform. We do not believe in the myth that our legal and judicial system is impartial, non-political and based on merit. We want it to be much more accountable and open.

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We have faith in ordinary citizens and their ability to dispense justice and fairness. The law as it is practised requires the old boys' networks of Fianna Fáil and Fine Gael, with the odd crumb thrown in for the Labour Party when part of a coalition Government. This Bill will not change or challenge this but it opens up the system to scrutiny and we welcome this. We will seek to push it further and we will seek greater democracy and transparency in the system. A majority of laypeople on the commission will not signal the start of any revolution but it opens up debate on this area.

I am unsure about the appointment of the Attorney General to the commission. It is clearly a political appointment and this should not happen. There should not be an emphasis on the financial or commercial expertise of appointments rather the emphasis should be on social diversity and class diversity. We propose to table amendments to that effect and to open further the slight crack that this Bill provides into the class-ridden judicial system in this country.

Deputy James Lawless: The genesis of this Bill is not new politics or reform but the worst kind of grubby old politics, a deal done with undue haste to satisfy a pet project of an Independent Minister who seeks to hold the Government to hostage. The Government, led by Fine Gael, the party of Collins, O'Higgins, Cosgrave *et al*, which claims to be the genesis of this State has unashamedly bowed to the Minister in respect of this particular hobby-horse of his. One wonders to what new low it is prepared to stoop to allow this Government to shuffle towards the summer recess.

The crusade of the Minister, Deputy Ross, in respect of the Judiciary is reminiscent of the worst excesses of the jingoistic, little Englander, Brexit yellow press - my grandfather called them "The Tory Papers" - which engaged in an anti-judicial assault during the Brexit debate. The front page of *The Daily Mail* was festooned with pictures of Supreme Justices, named and shamed as enemies of the State. There was shock horror and indignation that one of them even spoke a continental language, among their rabid culture of the Brexit debates. Unfortunately, this type of anti-electoral tyranny appears to be at the heart of this Bill. Having been kept at bay, thankfully, for close on 12 months because wiser minds in Fine Gael prevailed, despite the promises during the formation of Government, the Bill was advanced following the recent scandal. The Bill is now being progressed at shocking speed at the expense of all other business.

As an Opposition first-term Deputy trying to submit Private Members' Bills and work them through the system to reach even First Stage, it is shocking to see the speed with which all other business has been disregarded and cast aside so that the hobby-horse of one Independent Minister can take centre stage and be the subject of 19 hours of debate this week and possibly more discussion next week. That undue haste is matched only by the unseemly speed at which the Taoiseach sped to the Phoenix Park, at least metaphorically, the previous Sunday to prevail upon the President to fast-track the appointment of the former Attorney General in order to cover his and the Government's blushes.

It is also notable that since the Minister for Transport, Tourism and Sport, whose Bill we all know this is, took office, his Department has published only one item of legislation. As my colleague said few moments ago, perhaps he is the Minister for Stepside Garda station but he is certainly not the Minister with responsibility for transport because we see problems across the transport sector, with creaking park-and-ride facilities, a lack of investment in the motorways and the entire greater Dublin area suffering from a lack of commuter infrastructure. I was not surprised to see very little substance in replies to parliamentary questions yesterday because I am accustomed to it at this stage. The greater Dublin area transport plan was produced and then

forgotten as quickly. Perhaps the Minister would be better advised to concentrate on his own Department.

With regard to the one item of legislation he did introduce, on the Order of Business prior to Christmas I was obliged to remind the Government that implementation of the provisions of the Vehicle Clamping Act 2015 was long overdue. That legislation was originally introduced in 2014 but I was obliged to raise the matter with the Taoiseach in December 2016 to ask when its provisions would be brought into force. Thankfully, the process in that regard has commenced but it took some prodding to make it happen. This is in stark contrast to the speed and passion with which this Bill is being pursued.

It is certainly the case that Fianna Fáil sees the need for change in the judicial appointments system and we are open to this suggestion and reforms. One is reminded of old politics in the sense that Deputy O'Callaghan proposed a very detailed, thorough and considered Bill on which he had been working for some time. There was cross-party support for and interest in the Bill in question from Deputies on all sides, and particularly those on the Opposition benches. Many Deputies spent time finessing proposed amendments to the Bill, none of which ever actually got off the ground because, unfortunately, the Government, falling back on the worst type of old politics, found it was a money Bill and would involve a charge on the Exchequer. The latter meant that the Bill could not be progressed. The financial charge on the Exchequer would have been slight, but it was nonetheless used as an excuse by the Government to avoid dealing with the substantive matter until now, with the Minister for Transport, Tourism and Sport, Deputy Ross, successfully bringing it back onto the agenda.

Even now, when it has effectively admitted its error in the handling of, and procedures used in, the recent appointment of the Attorney General to the Court of Appeal, will the Government concede that an apology is due to the three High Court judges who were overlooked, disregarded and ignored and who had made their cases clear to the Attorney General - we understand the Tánaiste was aware of the latter - but whose applications proceeded no further? Will the Government even have the good grace to issue an apology to those three judges, who went through the correct procedures and channels and yet their cries fell on deaf ears? An apology would be welcome. They did everything right in terms of applying through the appointments board and informing the Attorney General. While the appointment may have been within the letter of the law, it certainly was not within the spirit of it.

There have been repeated and substantial observations from senior members of the Judiciary, the Bar Council, eminent judges, judicial experts and experienced commentators in recent days, all offering stark warning in the context of the advancement of the Bill. Yet it appears, as per the worst excesses of Brexit, that we have had enough of experts. The likes of the President of the Supreme Court, the Chief Justice, the President of the Court of Appeal, the President of the High Court, the President of the Circuit Court and the President of the District Court are all to be disregarded. We have had enough of experts. Their joint letter to the Taoiseach was an unprecedented step. The Government has refused to engage and publish it. This is a first in legal history. The substantive concerns raised in the letter are unprecedented in the history of the Irish State, but some members of the Government are determined to press ahead, although we have heard welcome concerns raised from the Government benches in recent days. The Minister, Deputy Ross, knows better.

It is reminiscent of when the Government attempted a power grab on Dáil committees not so long ago. At that point, it was forced to consult the people in a referendum. At the time, seven

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former Attorneys General signed a letter and published it in *The Irish Times* warning against proceeding in that regard. The Government went ahead regardless. It had had enough of experts. We see the same pattern today. Thankfully, on the occasion to which I refer the people put a brake on the Government's advance. The mandate of the people was sought at the ballot box and they said "No, enough is enough". People rightly put a halt to the gallop of those involved in that power grab. In the same way, an attempt was made to abolish the Seanad shortly afterwards but the people also put a halt to that. They respect the separation of powers and the Houses of the Oireachtas even if, perhaps, the Government may not always do so.

On Tuesday evening we heard how the most fundamental layer of local democracy was also whipped away by the previous Government, when town councils were abolished by the then Minister with responsibility for the environment, Phil Hogan. At least the Labour Party, which was a substantial part of that Government, has had the good grace to admit regrets about this move and express its concern. It has had the courage to do so and yet the Fine Gael Party, which remains in power, has had no such Damascene moment and has not yet considered the error of its ways.

Recently the Taoiseach spoke in the House about a book club. He spoke about books he might recommend for people to read over the summer recess. One of these books is *Hillbilly Elegy* by J.D. Vance, which I read recently. It is a good read. It was one of the Taoiseach's favourites and he regaled us with tales of it. However, I am not sure whether he has read it yet - perhaps he will do so on his summer break - because if he had done so, he surely would have learned from it a tale of a dysfunctional society, fake news, a distorted value system and a dysfunctional anti-establishment, anti-intellectual frenzy that ultimately elevated President Trump to power. The Government now appears to be engaged on the same type of cowboy crusade against the Judiciary.

Continuing with the book club theme, I will consider another volume, *The Irish Constitution* by J.M. Kelly, a seminal work known to law students for decades. It is probably the most authoritative work on the Irish Constitution. It is littered with references to judicial independence, the importance of the independence of the Judiciary, respect for the office, respect for the Chief Justice and respect for the State. At one point in the book, Kelly suggests that any attempt to interfere with the system of judicial appointments would be unconstitutional. It is notable that the late John Kelly was a previous occupant of the seat now held by the Minister, Deputy Ross. The late John Kelly was a Fine Gael Deputy for many years. He was a Minister, he served as Attorney General and he was an extremely eminent and distinguished legal academic. Could he ever have foreseen that his beloved party, Fine Gael - the party of law and order - which he served so well, would cast aside his ideas and volumes and all the decades of legal thought behind them?

Turning to the substance of the Bill, the concept of a lay panel, a lay chair and the anti-judicial bias, there is no evidence that these are required or necessary. Dr. Eoin O'Malley published research in April which shows that there is no evidence to back up the contention that political appointments or appointments that are politically influenced have any bearing on the exercise of functions, or the outcomes of same, or on the performance of the judges. In that context, the position here is in stark contrast to the United States, where Senate hearings, appointment hearings and ratification hearings are highly politically-charged affairs and where and Supreme Court vacancies are kept open for years. In some cases, such as the vacancy arising from the death of Justice Scalia, no appointment was made because the partisan tensions in the US Congress are so extreme and great that agreement could not be reached. We have not seen this

system in Ireland. This has not been the case. In fact, evidence would suggest that Fianna Fáil Governments certainly reached across the floor in every sense and appointed many judges who may not have been of the same political persuasion. Academic evidence confirms this. Dr. Eoin O'Malley's recent paper highlights the fact that political appointments or appointments that are politically influenced have no bearing on judges' performance of their functions or duties. We do not have such a politically charged, highly partisan approach to the Judiciary as may occur in some other jurisdictions. Ireland is not the United States; ours is not a partisan culture. I think reference was made earlier today to Ruadhán Mac Cormaic, who carried out a study of the Supreme Court going back over 80 years of jurisprudence, the Judiciary, evidence and decisions. Mr. Mac Cormaic, in his article in yesterday's edition of *The Irish Times*, stated "if you were to be asked to come up with a way not to design a piece of legislation, this would be it". That is Ruadhán Mac Cormaic, an expert on the Supreme Court - but we have had enough of experts. Again, there is no evidence of any kind of excess or persuasion. I would tend to think, "If it is not broken, do not fix it", but perhaps the Government or the Minister, Deputy Ross, knows better.

I ask the House to consider the international experience across the common law world. We are part of the common law judicial system, another reason it is imperative judges follow within the ranks and follow certain procedure. That is how law is made. In the common law system, the system of precedents and *stare decisis* is exactly how these decisions are arrived at. We can compare Ireland with other jurisdictions across the common law world. New Zealand, for example, is considered to be the country affording the greatest degree of freedom to the State and the Government in terms of judicial appointments. The way in which New Zealand conducts its appointments to its Judiciary represents the greatest freedom in terms of the Government having the most latitude. Yet it is ranked first for judicial independence and judicial integrity. Despite many claims, much debate and suggestion to the contrary, primarily from supporters of the Minister, Deputy Ross's Bill, Ireland is ranked fourth. That is not bad. England and Wales, whose system is probably the closest in the common law world to the system the Minister, Deputy Ross, wants to introduce, is ranked sixth. That is within the top ten but far behind Ireland and behind New Zealand, which has no such system in place. It does not lead to better outcomes.

The language of this obsession with a lay majority and the idea that nothing but a lay member will do is wrong. The concept of judicial versus non-judicial is also unclear and there is a gratuitous disregard for the Chief Justice. It would appear the judges targeted in this legislation are excluded and forced into a minority position and it appears to be a form of perverse logic that they are precluded by virtue only of having professional expertise in the field in which they are asked to make considerations. They are excluded for knowing something about it because we have had enough of experts. It is wrong for any appointment to be made on the basis of political bias but it is equally wrong to suggest that a politically involved individual should be excluded from any elevation or career progression.

In the past few days, we have heard much talk of the King's Inns, to which I will return in a moment, but it is worth considering some of the political alumni from that institution. We can look to Wolfe Tone, Robert Emmet, Daniel O'Connell, Patrick Pearse, C. J. Haughey, Garret FitzGerald, Mary Robinson and Mary McAleese, to name seven or eight. The concept that a political appointee is somehow to be excluded from consideration for judicial office is a nonsense. Many of the most eminent politicians, statesmen and leaders who have served this State graduated from King's Inns or the Law Society at Blackhall Place because the two go hand in

hand. That is, the practice of the law and the practice of politics have so much overlap and so much interest in the Constitution and the way in which the State functions that the type of individual who pursues one invariably pursues both and that is normal across the western world.

If one were to analyse why there may be difficulties in appointing judges, perhaps one would find it is less to do with the system and more to do with the reality that the attractiveness of judicial office has been diminished in recent years by the Government in many ways - in practical ways, such as in respect of pension entitlements and salary. There is often very little sympathy in this regard because people do not like to talk about politicians, judges or holders of senior office, but the reality is they are experienced, qualified people. It is a reality that a senior counsel will earn more at the Bar than by taking judicial office. The new pension rules mean that senior counsel will have to wait 20 years to accrue pension entitlements. Considering it takes the guts of 20 to 30 years to build up a practice after study for five, six, seven or eight years and five, six or seven years of devilling, by the time one is advanced in one's career or reaching career peak, one is probably ten or 20 years away from retirement, usually the former. These kinds of pension rules and changes to entitlements are therefore an inhibitor to people joining the Bench and taking on appointments and perhaps this should be considered.

Another point that should be considered, and it is recognised and has been amplified in this debate, is the political culture that has pervaded the Judiciary in recent years and the clashes. The separation of powers has not been observed, despite many claims to the contrary, and the Government again paid great lip service to this in recent weeks. The temerity of any Member of this House or anyone else to question the Judiciary was challenged, yet it is the Government itself that has led an assault on the Judiciary over the past number of years, which has led to a highly charged atmosphere in which judicial appointments are less attractive at this point than they once were. It is a fact that for many judges, it is an extremely stressful environment and there are difficulties in the position. The role of judicial integrity and political perspective, that increasing conflict, makes many less inclined to make that leap. Again, the position of Chief Justice, the highest judicial office, is needlessly assaulted in the Bill. We respect that office. We respect the office of the Ceann Comhairle. We respect the office of the Taoiseach. We bow when we enter the Chamber. That is correct and proper and these are high constitutional offices which deserve respect. The Chief Justice is, for no other reason than being gratuitously inflammatory, being reduced to a bit-part player on these judicial committees.

It is also true that the Cabinet, even if this Bill were in place, could still ignore the recommendations proposed. In Deputy O'Callaghan's Bill, that is, the Fianna Fáil Bill that was introduced, if the Cabinet were to ignore a recommendation from the appointments board, it would have to produce a good reason and a statement stating why it had done so. In the Bill before the House there is nothing of the sort. The Bill could pass the Houses and be entered into law and signed by the President and the same thing that happened two weeks ago could happen all over again. There is nothing in the Bill to address the recent controversy and this must be considered by all in the House before we proceed.

There is also a potential conflict of interest with the Attorney General sitting on the board, the same board that makes and then accepts the recommendations. *Nemo iudex in causa sua*, as one would say at the Bench, but this clear conflict is contained, writ large, in the Bill. There are measures against former judges and many others.

I am conscious of the time but references have been made in the past few days to the King's Inns establishment and practice and study at the Bar. It is worth putting on record that not every

applicant who walks into the King's Inns has a silver spoon in his or her mouth. Many, including myself, worked in other walks of life, had other jobs, finished a day's work and cycled over to night studies at the Bar. I was fortunate to be working in Dublin at the time, so the King's Inns was only a short distance away. I studied at weekends and by night. Many come from the country - from Galway, the west, all corners of the island - and that traditional route of night study, evening diploma and weekend course in the King's Inns is very valid. In fact, our former Taoiseach, Jack Lynch, went along the same path and there are members of the Supreme Court who did the same, so the idea that the Bar is this elitist, unattainable, inaccessible institution is simply untrue.

An Ceann Comhairle: I call Deputy Thomas Byrne and ask him to propose the adjournment of the debate.

Deputy Thomas Byrne: I want to say one thing before I propose the adjournment. How dare Fine Gael line up with Sinn Féin to transform radically our Judiciary?

Deputy Jonathan O'Brien: Sit down.

Deputy Thomas Byrne: It is an absolute outrage. How dare Sinn Féin-----

Deputy Jonathan O'Brien: Sit down.

Deputy Thomas Byrne: -----give its unqualified support to the most controversial legislation?

Deputy Jonathan O'Brien: The Deputy did not read my speech-----

Deputy Thomas Byrne: At least when we facilitate this Government, we do so on the basis of achieving something for our voters. Sinn Féin has given unqualified support to the Bill, and Fine Gael is disgracefully lining up with Sinn Féin on it. It is absolutely outrageous. They are bringing the whole system of administration of justice into disrepute.

Deputy Jonathan O'Brien: Shut up.

Deputy Thomas Byrne: That is what this unholy alliance will do.

Deputy Jonathan O'Brien: Come off it.

Deputy Thomas Byrne: I propose the adjournment. I will speak on the substance of the Bill when we resume the debate.

Deputy Jonathan O'Brien: The Deputy might get his headline now.

Debate adjourned.

Message from Select Committee

An Ceann Comhairle: The Select Committee on Education and Skills has completed its consideration of the Education (Admission to Schools) Bill 2016 and has made amendments thereto.

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Leaders' Questions

Deputy Charlie McConalogue: I wish to raise with the Tánaiste the report of the expert panel on concrete blocks in counties Donegal and Mayo published two weeks ago. The report outlines how up to 4,800 homes in County Donegal and 345 homes in County Mayo are affected by defective blocks.

It identified the issue in County Donegal as being the presence of the mineral muscovite mica in the blocks, while in County Mayo it identified the presence of pyrite as the reason for their being defective. The report also outlined that this happened as a result of a failure to implement appropriate manufacturing standard and of a failure of the building control authorities to properly oversee manufacturing standards.

Anyone who watched “Prime Time” last Thursday and saw Eddie and Maria McDaid from Buncrana, County Donegal, show their home to the cameras, and who saw Mr. McDaid put his foot to the base of the block at the outside of his home and take it apart with his foot, would have been horrified. I commend “Prime Time” on its public service in broadcasting that programme last week and a similar programme a number of months ago. Families such as the McDaid's are living a nightmare. They are faced with a situation where their homes, into which they have put their life and soul, are deteriorating and, in cases, crumbling around them. They are facing a situation in which they still have to pay a mortgage on those homes and cannot insure them.

Up until now the Government's response to this issue has been entirely unsatisfactory. It has tried to delay having to deal with it. It delayed initially when agreeing to the expert panel. When it announced the establishment of that panel in November 2015, the terms of reference gave the panel a report date of May 2016, yet the Government did not put the full membership of that committee in place until April 2016. This meant that the report was delayed until October of last year. It was then delayed until December of last year. When the draft report was submitted to the Department in February of this year, the Government still did not get around to publishing it until two weeks ago.

This delaying must stop and these families must be offered hope and a way out of their nightmare. There was a large meeting of affected homeowners in Donegal last night. What we now need, and what those people who are living that nightmare need, is a commitment from the Tánaiste and the Government that a remediation scheme will be put in place, as happened previously with the pyrite cases in the east of the country. Will the Government give a commitment to put a remediation scheme in place? Will it implement the full recommendations of the expert panel report?

The Tánaiste: I thank the Deputy. The Government and I recognise the seriousness of the issues which he has raised this morning and the impact they have had on individual families. It is very distressing for these families. It involves more than 5,000 houses, including local authority and private housing. The Minister received the report recently and is now examining the recommendations. The Government has not delayed. It takes the issue very seriously and is determined to find solutions to help those families. The expert report has been received very recently. It was the right route to take to have experts examine what precisely the technical solutions should be. We have to examine what they might be and what action can be taken and then put the solutions in place. I am sure the Deputy will agree that the Department and the Minister should, in the first instance, examine the recommendations.

I wish to assure the Deputy, and all of the people who have been affected by this, that the Government is determined to deal with the situation and to take action to help the families which the Deputy has described because it is extraordinarily distressing to either buy a house or be living in one in which such serious problems as this have emerged. The Deputy has talked about a remediation scheme. I want to assure him that the Minister and Ministers of State are determined to deal with this, to put the proper solutions in place, and to help the families who have been impacted by this issue.

Deputy Charlie McConalogue: My specific question to the Tánaiste was whether the Government will give a commitment to put a remediation scheme in place. So far, neither the Minister of State, Deputy English, nor the Minister, Deputy Eoghan Murphy, nor the Taoiseach, when I raised this here with him last week, have given such a commitment. Nothing less than that is required. Perhaps when the Tánaiste replies further she can address that point.

The terms of reference for the expert panel did not include dealing with whether there should be a remediation scheme. That was left for afterwards. It was left for the politicians to deal with. After the delays in the panel reporting which I have previously outlined, this draft report has been with the Government since the beginning of this year. There has been sufficient time already to consider the issue and the recommendations of the panel. We should not be delaying any further. Will the Tánaiste give a commitment here this morning that a remediation scheme will be put in place? Will the panel's full recommendations be implemented in order that controls are put in place to ensure this can never happen again?

The Tánaiste: I understand there are eight recommendations in the report which has been received by the Minister, two of which are being implemented immediately. As a number of different stakeholders are involved in this issue, there is a need for the expert report to be analysed and to bring the stakeholders together before I can answer the question precisely. The Deputy will appreciate that we need to see precisely what the technical solutions are and to look at who the stakeholders are, where the responsibility lies and so forth. As I have said already, the Minister is determined to deal with the issue. The Government recognises how very difficult this is for the families involved and the need for an urgent solution, which the Deputy has raised. It was the right route to take to get the expert report and to look at the solutions. The Minister and Ministers of State will act on it immediately.

Deputy John Brady: It became apparent this morning that the huge delays in maternity benefit payments did not come as a complete shock to the Taoiseach, who was the Minister for Social Protection at the time. In fact, he had been made aware of the delays a full three months in advance. One cannot ignore the fact that this issue was brought to public attention in May, when the then Minister was immersed in a leadership bid. Having 1,300 women on maternity leave without any payment and a further 2,850 claims for maternity benefit pending was hugely inconvenient for the Taoiseach, Deputy Varadkar.

This morning, through a freedom of information request, we learned that staffing levels within the Department had become unsustainable months earlier and that several warnings had been issued. The principal officer with responsibility for maternity benefits had emailed the assistant secretary general in the Department as far back as 14 February to caution that "unless we get an extra staff injection (and I am saying we need six immediately) we will remain in a position where we are paying far too many maternity benefit claims after the commencement of leave date".

Another document, dated March, shows that the office in Buncrana was down a full 20% in terms of staff levels. The documentation also raises questions about the impact the introduction of paternity benefit in September 2016 had on the Department's capacity. What was the Taoiseach's response to all of this? It was to do absolutely nothing. It was not until the delay in maternity benefit payments made the news in May that the Taoiseach eventually apologised to all the women concerned.

It seems that the Taoiseach and his Government simply do not get it. That was the message which was sent out and which is still going out. The Government simply does not get it. These are not just figures. This impacted the lives of new mothers in a very real way. It caused additional pressure at a time when there is no shortage of pressure. What was the Taoiseach's response? It was a shrug of the shoulders, a scripted apology and total and utter cold indifference. That apology has now been made all the emptier because the Taoiseach stood idly by and allowed it to happen. This shows an alarming contempt for all mothers. The Tánaiste's Government is a nasty government.

An Ceann Comhairle: A question please.

Deputy John Brady: It has no time for all those people who require social support. Why did the Taoiseach sit on his hands and abandon thousands of new mothers?

Deputy Finian McGrath: We are not nasty.

The Tánaiste: The Taoiseach in his then role as Minister for Social Protection clearly took action because the processing of maternity benefit payments is now up to date and claims from mothers going on maternity leave are processed as they start their leave. The message I want to get out to pregnant women is that those applications are being dealt with immediately and they will have their payment immediately. Approximately 18,750 claimants are in receipt of maternity benefit payment at present.

The Deputy is right in saying the Department has acknowledged delays in processing claims from February to early June, during which period some mothers experienced a delay of up to four weeks. The Department has apologised for those delays. It is a very efficient Department and it dealt with the problems. The delays were temporary and were caused by a combination of staffing and operational difficulties that can arise in a Department from time to time. The Buncrana office, which processes the maternity benefit claims, had a very high staff turnover. The time required to source staff to fill the vacancies and their subsequent training presented issues.

On the operational side, a new IT system was put in place which took a bit of time to become fully operational. The good news is that the applications are being dealt with immediately as they arrive in the office. Further good news is that the processing of paternity benefit claims is up to date. The Department continues to make every effort to ensure people are dealt with in a timely manner. To alleviate any delays, additional staff were assigned to the area and staff are working overtime, including on Saturdays.

Every initiative has been taken by the then Minister and by the Department to ensure that when claims for maternity benefit and paternity benefit are received, they are dealt with immediately. Both are completely up to date at present. Clearly, action was taken to deal with the temporary operational and staffing issues I have described.

Deputy John Brady: The Tánaiste's response clearly shows again that the Government does not get it. It does not have any regard for people who depend on social benefits, and her response clearly shows that.

I concur with the Tánaiste that the staff in the Department are very efficient - efficient in the fact that they highlighted concerns over staff levels a full three months before the Taoiseach responded. He only responded because it hit the headlines. The response to the freedom of information request clearly shows there was a flurry of activity in the Department at the time to try to fix this problem. This only happened because it was in the spotlight and the media were focusing on it. It was an inconvenient time because it came in the middle of the Tánaiste's leader's leadership bid. Only then was action taken in a blind panic. The Taoiseach might have been too focused on his hate campaign against other social welfare recipients to pay attention to the issue affecting thousands of mothers who were entitled to their benefit and were not being paid.

I will again ask the question and maybe the Tánaiste will give an accurate response. Why did the Taoiseach not act a full three months prior to when he actually did? Why did he sit on hands and allow these payments go unpaid?

The Tánaiste: The Government has shown total respect for people who are making such claims and always will because we recognise the difficulties claimants have. The Deputy's characterisation is extremely inaccurate and the bottom line is that the issue has been dealt with. The action has been taken. The staff----

Deputy John Brady: It was only dealt with because it hit the headlines.

Deputy Michael Ring: It was dealt with.

The Tánaiste: It has been dealt with because the Department recognised there was an issue and provided the staff resources and training to ensure the people who needed this benefit in a timely way were dealt with.

Deputy John Brady: It was not timely. Three months earlier would have been timely.

The Tánaiste: The issue has been dealt with. Everyone, including the then Minister and the staff in the Department, recognised that it was an issue that needed to be dealt with. Action has been taken and I ask the Deputy to recognise that.

Deputy Brendan Howlin: The national economic dialogue has been taking place yesterday and today, but in truth it is a farcical exercise. The dialogue is happening without any indication from Government of what the fiscal space for next year might be. We are asked to discuss expenditure without knowing how much there is to spend. As my colleague, Deputy Burton, noted last week, the summer economic statement - up to last year it was the spring economic statement - which according to the programme for Government was originally to be produced in spring, will now not appear for another couple of weeks. Last year it was published on 21 June - we were told that was because it was the first year of a new Government. This year it will probably be a month later than that.

Any notion of genuine budgetary oversight has gone out of the window. Certainly, the notion of meaningful input from a committee of the House is gone. Instead of open and accountable budgeting, we are forced to look at the Minister, Deputy Donohoe, to give us titbits

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of information on economic planning. He has told us he expects approximately €500 million of fiscal space to be available. He reiterated last week that this would be divided in a 2:1 ratio between spending and tax cuts. Indeed, the Taoiseach has indicated that tax cuts are higher up the list than any welfare increases to the most vulnerable.

If a third of the funding is used for tax cuts, it would leave €335 million for public spending, €180 million of which is already ring-fenced for the new public sector pay deal. That will leave a grand total of €155 million for investment in public services next year. Over the past three years, additional spending in health alone came to €300 million in 2015, €910 million in 2016 and €500 million in 2017, this year. There is no way the Government can produce a realistic Estimate for the Department of Health out of €155 million. That would leave nothing for pensioners or anyone else.

When will we have the summer economic statement, setting out in clear terms the fiscal parameters for next year in order that we will not have a farcical debate but one anchored in reality? Does the Tánaiste accept there is not enough fiscal space available to allow for any tax cuts next year? When will the Committee on Budgetary Oversight be given the information it needs to do the job it is charged to do by this House?

The Tánaiste: I was at the dialogue yesterday. It was an extremely worthwhile exercise. The various partners and stakeholders attended and all contributed in a very positive and constructive way. It has been an extremely useful exercise over the past two days with huge participation by all the stakeholders. I have no doubt interesting initiatives and recommendations will arise from that discussion. I chaired a session discussing productivity and competition in the Irish economy. It was very relevant and useful in dealing with issues to support enterprises in this country. I have no doubt a number of initiatives will emerge from that discussion.

It is too early to speculate about the upcoming budget. We have committed to a 2:1 split in the programme, as the Deputy knows. I can assure the House that it will be a fair budget and one that helps people in every part of Ireland. As the Taoiseach said yesterday, we should focus on the totality of expenditure and taxation and examine existing spending programmes as well.

Of course, it also has to be a budget that prepares us for Brexit and ensures our competitiveness is at the heart of everything we do. We now have hard data since the Brexit referendum that shows the immediate impact from Brexit has been more muted than initially anticipated. This is consistent with trends emerging in the US and the euro area. We welcome those improvements in the euro area which will be positive for us, although the UK growth has slowed in the first quarter of 2017. We know the Irish economy is particularly exposed because of the decision in the UK. The Minister for Finance will address the Deputy's points about the statement and giving the information to the Committee on Budgetary Oversight. I have no doubt that will take place in the coming weeks.

Deputy Brendan Howlin: The programme for Government promised a new era of transparency in budgetary formation. It was the most important dialogue between Fianna Fáil and Fine Gael in the formation of Government. It meant we would have the participation of this House in budgetary formation. I suggested the national economic dialogue but it was not simply to be a forum where people came and did what they always did, namely, lay out a list of aspirations, hopes and demands; it was actually to engage in the real negotiations for the budget by knowing what was available and saying what the priorities should be within that fiscal limit.

What is happening now is the opposite of that transparency. It is making a mockery not only of the commitment for this House to be a real participant in budgetary formation but of an open budgetary system. I despair of real parliamentary accountability in relation to budgetary reform. When will the summer economic statement, which was due weeks ago, actually be published, and will it be published before the Dáil goes into recess?

The Tánaiste: The Taoiseach addressed the issue yesterday and, as Deputy Howlin said, the Government will publish the summer economic statement in the coming weeks.

Deputy Brendan Howlin: What does that mean?

The Tánaiste: It means in the coming weeks. I do not have a specific date.

Deputy Brendan Howlin: Will it be before the recess?

The Tánaiste: It is clear that the fiscal space in 2018, in particular, will be limited and that reflects the carry-over of the full-year cost of commitments from budget 2017 and the impact of the recent public service pay agreement, if ratified.

Given that Deputy Howlin has raised the economy it is worth reflecting on the fact that we have the fastest growing economy in Europe. Unemployment is down, incomes are up and inequality is narrowing.

Deputy Peadar Tóibín: Not in the regions.

The Tánaiste: As the Taoiseach said again yesterday, as the budget approaches balance we have better scope to make decisions about investment in the future. We have to plan for this growing economy, the growing population and the growing workforce. Because of the prudent management, in which Deputy Howlin himself played a part, we are now in a much better economic position to make those decisions than we were before.

Deputy Mick Barry: The news has just come through from the Central Criminal Court and I am the first to report it to the House. Deputy Paul Murphy, not guilty; Councillor Michael Murphy, not guilty; Councillor Kieran Mahon, not guilty; Frank Donaghy, not guilty; Michael Banks, not guilty; and Scott Masterson, not guilty. That is a stunning defeat for the Deputies on the Government benches and the political establishment. The political establishment in this country wanted to create a powerful chill factor, a powerful warning against anyone who would engage in serious protest against the Government, austerity and the anti-working class agenda. It has failed. I make the call that all the remaining charges in the other Jobstown trials would be immediately dropped. The Government is wasting a fortune in taxpayers' money on these cases.

Deputy Mary Mitchell O'Connor: What about the separation of powers?

Deputy Mick Barry: More than €10 million will be spent on trying to make out that the accused in Jobstown are guilty. Let us save some money here and be prudent. Let us drop all the remaining charges.

Deputy Bernard J. Durkan: That is up to the court. On a point of order, a Cheann Comhairle.

Deputy Mick Barry: I congratulate-----

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An Ceann Comhairle: There is no point of order.

Deputy Bernard J. Durkan: There is a point of order. The House cannot instruct the courts.

Deputy Mary Mitchell O'Connor: No, there is separation of powers.

An Ceann Comhairle: Nobody is instructing anybody as far as I can see.

Deputy Mick Barry: I congratulate the Jobstown defendants, the community of Jobstown and the men and women of the jury for defending the right to protest.

An Ceann Comhairle: Does Deputy Barry have a question?

Deputy Mick Barry: I have a question and I will soon come to it. Could the Tánaiste comment on the appalling vista that now opens up regarding the role of the Garda Síochána in this affair? The jury has just thrown out a case that was based on 180 witness statements from members of the Garda Síochána, three of whom – a chief superintendent, an inspector and a sergeant – said they heard Deputy Paul Murphy say: “Will we let her go or will we keep her all night?” That claim was completely contradicted by the video evidence. One could understand that one garda might have misheard but not that the three gardaí misheard the exact same words. Can the Tánaiste deny that there was an orchestrated conspiracy by the Garda Síochána to pervert the course of justice?

The Tánaiste: One thing we do not do in this House is re-run court cases. There is a separation of powers.

Deputy Mary Mitchell O'Connor: Hear, hear.

The Tánaiste: We just heard the result of this case and we respect the court decision. Justice takes its course in any trial. The evidence is considered. This was a jury trial and the jury made its decision. Justice takes its course. We can discuss lots of things in this House but we certainly do not re-run the evidence that is given in a trial and I do not intend to do that now.

Deputy Barry spoke about a Government agenda on the issue but that is simply untrue. The courts do their work and we do our work in this House.

Deputy Mick Barry: This is a stunning defeat for the political establishment. A Government Minister gave evidence for the prosecution in this case. The former Tánaiste was the star witness for the State. To the crimes of the Labour Party of heaping austerity on working class voters down through the years we can now add a shabby attempt to frame socialists and working class activists for standing up for their communities and against austerity.

Deputy Brendan Howlin: That is shocking.

Deputy Mick Barry: Ordinary people will think the role of the Labour Party in this affair has been shocking.

Deputy Brendan Howlin: That is an outrageous argument.

Deputy Mick Barry: Clearly, there was an attempt to gain revenge against those of us on the left who have defeated the Government on bin charges.

An Ceann Comhairle: Deputy Barry should ask a question please.

Deputy Mick Barry: Does the Tánaiste disagree that what was at stake, with four of the six defendants who stood in the dock today being members of Solidarity, was an attempt, following the surge to the left and the Corbyn surge in the UK, for the Government to get its retaliation in first and to knock the left back? That has failed quite spectacularly and the left is on the front foot now.

The Tánaiste: While a court case is under way in this House we have always followed the precedent of not commenting on it in detail. We follow that very carefully, as in many court cases there is always the possibility of appeal, and I intend to continue to do that today.

Questions on Promised Legislation

Deputy Charlie McConalogue: There are reports and newspaper coverage this morning on the upcoming EU budget. I refer in particular to comments by the budget Commissioner, Günther Oettinger on the requirement for cuts in the EU budget as a result of Brexit and also for cuts in the CAP budget or, alternatively, that other finances would be found to plug the hole following the UK leaving the EU.

It is estimated that between 7% and 9% of the CAP will be lost as a result of the United Kingdom leaving the EU. It is crucial from the point of view of rural Ireland and the farming community, where 70% of net incomes are made up from European payments, that we do not see a reduction in that budget. Could the Tánaiste give a commitment that the Government supports maintaining the budget and ensuring there is not a reduction in CAP payments following Brexit?

The Tánaiste: I assure the Deputy that Ireland continues to regard the maintenance of a strong, effective and well-financed CAP that contributes to public good as a priority into the future. As the Deputy said, Commissioner Oettinger has today published a reflection paper on the future shape of the EU budget. That was to be expected. Reference was made to it in the newspaper article. A co-decided amendment would be required to change the regulations and the figures. I assure the Deputy that Ireland will argue very robustly for a strong CAP budget in any negotiations.

Deputy John Brady: The proposals from the Minister for Communications, Climate Action and Environment, Deputy Denis Naughten, regarding the creation of a new charging regime for waste collection means that commercial operators will themselves choose which option to take. This gives far too much leeway to private companies and far too little to the consumer. The proposed annual support of €75 to assist those with lifelong medical conditions that cause incontinence is totally insufficient. Regardless of which option is taken by the companies - per-lift or per-kilogram charges, by-weight bands or by-weight allowance charges - people with lifelong or long-term medical conditions that cause incontinence will have more waste and will, therefore, have increased charges imposed on them. This is totally unacceptable and unfair.

An Ceann Comhairle: Will the Deputy please put his question.

Deputy John Brady: There are, however, no provisions in place for low-income families or lone parents who will not be able to afford any of these additional charges.

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

Deputy John Brady: How will the people who cannot afford these charges be assisted?

The Tánaiste: More than half of households will be unaffected by the phasing out of flat fees. For those on flat fees, waste collectors will have an alternative usage option in place before the phase-out.

Deputy John Brady: It is about low-income families.

The Tánaiste: This measure is targeted at helping everybody in the State to make a contribution to ensuring that we protect our environment. These are very important changes and families-----

Deputy John Brady: It is good to do that, but I am talking about low-income families.

The Tánaiste: -----or households can contact their existing service providers today to find out what their charges are and discover if they will be affected by the new arrangements. The new system will commence in the autumn after the Department has implemented the regulatory changes. The phase-out will be over 12 months. In the meantime, families will be able to see the existing charging options and what new ones are to be offered over the summer. A family will only have to make a decision when their existing flat-rate contract expires between autumn 2017 and autumn 2018. There is plenty of time for people to get in contact, examine the options and go for the most efficient and effective one for themselves. By their own behaviour they can impact the charges that will be before them.

Deputy John Brady: They are at the mercy of private companies.

Deputy Brendan Howlin: Last September, I published a Bill to propose the regulation of crisis pregnancy counselling in Ireland. The need for legislation in this regard is clear to all by now. As I have said repeatedly, women in crisis pregnancy situations are being abused by charlatans who lie to them. Those rogue agencies are still operating in this city although they have been condemned by those on all sides in the House. Here we are coming to end of another Dáil term and no action has been taken to shut the agencies down. I accepted the bona fides of the Minister for Health when he assured me that he was moving to regulate counselling in these areas. At a meeting for International Women's Day, officials from his Department gave the Labour Party a commitment that the statutory instrument to do so would be brought to the House before the summer recess. Yesterday the Minister, Deputy Harris, said that no such commitment had been made and that regulation would not happen before September at the earliest. This is not good enough. The Labour Party did not press its Bill because we were assured that action would be taken. When will action be taken, as promised by the Government and the Minister for Health?

The Tánaiste: I recognise the work done by Deputy Howlin on this issue. I join him in condemning these services, which have effectively abused women who are pregnant and have given information that is not truthful or objective. The Minister has been working on this. There has been a consultation. On foot of this, the Minister is proceeding with a designation of the two distinct professions of counsellor and psychotherapist under the Act. Each will have its own register under one registration board. This is necessary in order to deal with rogue counsellors or rogue psychotherapists.

Deputy Brendan Howlin: When will it happen?

The Tánaiste: The Minister will be in a position to do that in September.

Deputy Mattie McGrath: The Government gave specific commitments in the programme for Government in respect of measures to tackle elder abuse. We have heard many reports and we are all aware of cases. What measures has the Tánaiste taken or where stands the Government regarding the introduction of legislation or the taking of action in respect of elder abuse. This abuse often happens in homes and within families. It is often in the form of financial abuse, but there can be many other types also.

The Tánaiste: Elder abuse is an issue that needs to be recognised. One of the initiatives that help hugely in recognition of this is, for example, the proper supervision by HIQA of nursing homes. If there is elder abuse in any situation and if anybody is aware of it, then it needs to be reported and action taken by the relevant services. I am not aware that any legislation is planned on it. It is primarily a practice and care issue-----

Deputy Mattie McGrath: I have a Bill on it.

The Tánaiste: -----that people need to recognise and ensure that action is taken to prevent it or interrupt it.

Deputy Marc MacSharry: Reference to increased State support for older people is made on page 82 of the programme for Government. During the hustings relating to his party's leadership election, the Taoiseach, Deputy Varadkar, published a document on 22 May in which he committed to the restoration of the bereavement grant. Members will recall that this was when he was still Minister for Social Protection. As Minister, he also re-centralised the information section of the Department, with 35 positions being transferred back to Dublin from Sligo. When will the bereavement grant be restored in line with the pre-election commitment of the Taoiseach? What stage is this commitment at? When will the grant be restored? Are staff being recruited for the Sligo office to administer this plan as it was before and can the Tánaiste inform the House in this regard?

The Tánaiste: I have no doubt that this will be considered in the context of the budget. I pay tribute to Senator Marie-Louise O'Donnell who recently published a very comprehensive study on the issues relating to bereavement.

Deputy Eoin Ó Broin: A number of weeks ago, the Taoiseach said that the water services (amendment) Bill 2017 would be published at the start of June. July is almost upon us and that has yet to happen. Will the Tánaiste inform the House if it is still the Government's intention to publish the Bill and have it passed before the recess? If it is delayed, will the Tánaiste explain the reasons?

The Tánaiste: I will ask the Minister to liaise directly with Deputy Ó Broin on that. It is my understanding that the legislation is still being worked on.

Deputy John Brassil: In light of the recent exposure around the very poor governance in many of our universities, will the Tánaiste tell the House when the universities (amendment) Bill will be introduced? The purpose of this legislation will be to ensure compliance with Government guidelines on remuneration, allowances, pensions and staffing numbers in the university sector, all issues that were the subject of much recent publicity. I fear that if the correct

legislation is not in place, continued poor governance will prevail. The heads of the Bill were approved in October 2012, which is nearly five years ago. We really need action on this.

The Tánaiste: I understand that amendments to the legislation are being worked on by the Minister but that the process in this regard will not be completed before the recess. The Bill will proceed later this year.

Deputy Thomas Byrne: Perhaps the Tánaiste could set out in more detail the Government's proposals for the religious criteria relating to school admissions. While the Minister for Educational and Skills, Deputy Bruton, has set out - in little detail - his preferred solution, he has said that there is a lot of work to do on the proposals with the Attorney General. What is the reality of these proposals if the Minister has simply given a policy preference that has not been worked on by the Attorney General? What are the chances that the proposals will ever appear in legislation? I do not recall any other situation where a Government Minister has come forward with a policy that, as he admits himself, must be worked on by the Attorney General. It is extraordinarily strange to do this on such a major issue. Will the Tánaiste outline if there is any practical reality of legislation being introduced in this area?

The Tánaiste: The Minister has been extremely clear on this measure. I understand that Committee Stage proceedings in respect of the relevant legislation took place yesterday. Ongoing consultation with the Attorney General on an issue such as this would not be unusual.

Deputy Michael Healy-Rae: On the programme for Government, the retention of the proposed Shannon liquefied natural gas, LNG, terminal as a project of common interest status, is of paramount importance. The proposed LNG project is vital to north Kerry and west Limerick. I want the Government to remain in line with the programme for Government. This project is of paramount importance and I would like the Government to continue to pursue it and to honour the commitment contained in its programme.

The Tánaiste: I will ask the relevant Minister to liaise directly with the Deputy and bring him up to date on what actions are being taken.

Deputy Martin Kenny: The matter I wish to raise relates to inspections that farmers must go through. Many farmers are the victims of farm inspections taking place around the country. In the programme for Government there is a commitment to introduce a "yellow card" scheme, which means that when a farm inspection is to take place, the farmer may be told of two or three problems that must be dealt with so they can be remedied before inspectors return a week or so afterwards. This week we had farmers from north Tipperary before a committee who feel they are the victim of overly zealous farm inspections. That is happening all over the country. Fair play as the yellow card scheme is in the programme for Government but we are nearly a year and a half into this Government's term and nothing has been done. When will the yellow card scheme be introduced for farm inspections, as it would relieve many of these matters?

An Ceann Comhairle: We might get a yellow card system here. It might not be any harm.

Deputy Martin Kenny: We could have a black card system.

The Tánaiste: I do not have the date and I will have to ask the relevant Minister to get back to the Deputy on it.

Deputy Bernard J. Durkan: The Garda Síochána compensation (malicious injuries) Bill is

very important promised legislation, given the ongoing comments about the Garda, the difficult job gardaí do and the risks they take. When is it expected that the Bill might appear before the House? Has the full analysis of all the legal niceties been examined?

The Tánaiste: I am glad to be able to tell the Deputy that the heads of that Bill were cleared at Cabinet on 9 May. I assume it will now go for pre-legislative scrutiny.

Deputy Pearse Doherty: The programme for Government makes very clear commitments on the extension of the BreastCheck programme. How does the Government stand over the fact that 143 women in Donegal who have been referred by their GPs to the systematic breast disease clinic have been waiting over a year for appointments and another couple of hundred women have been waiting six months? This is simply unacceptable. As a woman and somebody with a leadership role in the Government of this State, will the Tánaiste indicate what action the Government can take to ensure these women are not waiting extraordinary lengths of time for an appointment in a breast clinic after being referred by their GPs and presenting possible symptoms of breast cancer?

The Tánaiste: I recognise the importance of the matter and it is very important that Breast-Check has been extended for women aged between 65 and 70. Timely access to BreastCheck is very important and I absolutely agree with the Deputy in that respect. There is a system in place so if there is an urgent referral from a GP, such as outlined by the Deputy, arrangements can be made so the person can be seen quickly, as opposed to the more routine referrals. I do not know the particulars of the cases in Donegal but sometimes when there have been delays in BreastCheck it has been due to the lack of availability of staff such as radiologists. I will ask the Minister the precise reason for those delays in Donegal. I will ask him to revert to the Deputy with the details as it is a serious matter.

Deputy Pearse Doherty: I thank the Tánaiste.

An Ceann Comhairle: Last but by no means least, I call Deputy Madigan.

Deputy Josepha Madigan: My proposed divorce Bill is due to be discussed by the justice committee on 12 July. What timeframe could be expected for it to return to the House for final approval? In that vein I inquire about the family courts Bill, which has not yet gone to pre-legislative scrutiny but is of utmost importance to litigants going through divorce, separation and other family law matters.

The Tánaiste: The family courts Bill must go for pre-legislative scrutiny. The Deputy asked about the timeframe for her own Bill. Once the pre-legislative work has been done it will be a matter for the Business Committee to determine the precise timetable around it.

An Ceann Comhairle: That concludes questions on proposed legislation. I congratulate the Tánaiste, the leaders and acting leaders because today is the first day I can recall when we have concluded Leaders' Questions and questions on promised legislation within the allocated time. We completed them with three minutes to spare.

Deputy Seán Canney: It is new politics.

Deputy Michael Ring: She is a very good Tánaiste.

The Tánaiste: I cannot claim the credit.

An Ceann Comhairle: Well done.

Deputy Michael Ring: She is very effective.

Neighbour Disputes (Vegetation) Bill 2017: First Stage

Deputy Aengus Ó Snodaigh: I move:

That leave be granted to introduce a Bill entitled an Act to address neighbour disputes concerning vegetation that causes a nuisance including the obstruction of sunlight; to provide for mediation of neighbour disputes and formal adjudication if necessary by adjudication officers appointed by local authorities; to provide for the appeal and enforcement of decisions made by adjudication officers; and to provide for related matters.

Some might scoff at this legislation or the idea of having legislation to deal with overhanging trees. It might not be the most pressing need in our society but for many people it is a constant irritant that neighbours' bushes or trees have grown wild, reaching a height that affects sunlight or enjoyment of space, but they have no means of recourse unless they wish to go through the courts. As we know, that is an expensive prospect for most people.

The Oireachtas Library and Research Service did some work for me on this and it indicates that in Ireland there is no specific legislation governing overhanging branches or the height of trees and hedges in privately owned gardens. Our neighbours in England have such legislation, strangely enough, with an anti-social behaviour Act. It produced regulations for the height of hedges in 2005. As I stated, some may scoff at this but anybody who has dealt with neighbours and constituents on an ongoing basis would be aware that disputes like this can happen between neighbours. Some of those disputes escalate when the neighbours are dismissive or even hostile to requests for trees to be lopped or pruned. It may become all-consuming and a battle between neighbours, sometimes leading to legal and physical confrontation.

My intention with this Bill is to provide through the local authority a mediation system so somebody can report to the local authority and it can initiate a mediation process to try to ensure the matter can be dealt with. The topic was raised in the last Dáil in the petitions committee, with a number of cases coming before that committee. We asked the Minister and the Department at the time if the intention was to address the matter as there was no recourse in law and we were referred at that stage to a mediation Bill now making its way through the Houses. It is a welcome addition and I hope that when it becomes an Act it will address these disputes if people go to a solicitor. We are trying to capture what can be done before people have to go to any legal officer or the courts in the first instance.

Only last Friday I spoke with an elderly couple who came into the office and had been asked by a neighbour to prune a tree they own. They had agreed to do it and engaged a tree surgeon to do the work. Lo and behold, the clearly disgruntled neighbour came in with a chainsaw and cut the tree down to its roots. The case has escalated into a case of trespass and criminal damage. This happens on occasion and people would be aware of it. A simple Bill like this would help. In preparing the Bill I used the Office of the Parliamentary Legal Adviser, which referred me to draftsmen, including Ms Susan Gunn, Mr. David Dunne and Mr. David Hegarty, who helped in preparing this legislation. We went through the existing legislation to see if it could be amended and legislation from abroad, all with the intention to formulate a method to ensure these dis-

putes could be solved or mediated, or where mediation fails, there would still be recourse to the courts. The local authorities should, through its officers, be able to make a decision on whether action is required and carry it out.

I recommend this legislation and I hope there will be a chance on Second Stage to elaborate on it. I am keen for it to get to Committee Stage so all the Deputies in the House who have come across such cases of dispute can give their experiences and address the problems. The idea is for us to produce laws to deal with particular problems in our society. This issue does not affect everyone, but when it does affect someone, it can be all-consuming. It can prevent people enjoying their gardens and properties as they are supposed to, and as is set out in law.

An Ceann Comhairle: Is the Bill opposed?

Tánaiste and Minister for Jobs, Enterprise and Innovation (Deputy Frances Fitzgerald): No.

Question put and agreed to.

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

Deputy Aengus Ó Snodaigh: I move: "That the Bill be taken in Private Members' time."

Question put and agreed to.

Judicial Appointments Commission Bill 2017: Second Stage (Resumed)

Question again proposed: "That the Bill be now read a Second Time."

Deputy Thomas Byrne: This outrageous legislation and the outrageous unholy alliance that is coming together to pass it deserve the fullest possible debate.

Deputy John Brady: It is new politics.

Deputy Thomas Byrne: It is new new politics, where every priority of the ordinary citizens of this country is put to one side. Housing is out the door, the health service is out the door and legislation on the most significant political issue - water - is delayed again. There was no answer from the Tánaiste to a question on that subject earlier. Instead, one Minister, Deputy Shane Ross, with a bee in his bonnet over many years about the Judiciary, decides it, and the Government and Sinn Féin agree to facilitate his whim. The idea that Fine Gael, on the whim of one Independent Deputy and in alliance with Sinn Féin, would radically overhaul our Judiciary and change the way the Judiciary is appointed is simply outrageous. It is unthinkable to the grassroots members and supporters of Fine Gael throughout the country, but this is what it is reduced to.

Sinn Féin saw Fianna Fáil opposing and decided it had to be for it. For no price at all, it offered its full support to the Government. At least the DUP in the North got £1 billion. Fianna Fáil said we would facilitate passage of the Education (Admission to Schools) Bill provided a section on special education was included, and the Minister, Deputy Bruton, responded to that, but Sinn Féin does not appear to have looked for anything. It has gone hook, line and sinker with this particular procedure. I cannot believe that Fine Gael Deputies and Ministers are com-

fortable with this unholy alliance.

The Minister, Deputy Ross, seems to think the Judiciary is just another quango which he does not like and which should be dealt with in some fashion. He and the Government fail to understand that the Judiciary, especially the higher elements, are part of the Government of the country. This Government is split into executive, legislative and judicial elements. The Judiciary can make or break laws. They interpret the Constitution and run our courts system. They can make or take away the freedom and civil liberties of people if they deem it necessary to punish criminal offences. It is a very important body which, through all the years of the Troubles, kept this State running. It was the most important organ of the State to ensure justice was done and people were punished for their crimes. Sometimes this was done at great risk to the members of the Judiciary, and I am aware of several members of the Special Criminal Court who have ongoing Garda protection.

I know that, given all that history and having regard to the importance of the Judiciary, it is not in the hearts of Fine Gael to line up with Sinn Féin, whose members are not in the House. I know that the Minister for Justice and Equality, Deputy Flanagan, and the Tánaiste and Minister for Jobs, Enterprise and Innovation, Deputy Fitzgerald, do not believe in what they are doing and do not agree with this legislation. I know they are not comfortable lining up with Sinn Féin and that they will find it hard to go back to local party meetings or branch supporters and tell them they have a great new law which Sinn Féin is backing.

Deputy Charles Flanagan: This is provocation. I am being provoked but I will not respond.

An Ceann Comhairle: The Minister is showing admirable restraint.

Tánaiste and Minister for Jobs, Enterprise and Innovation (Deputy Frances Fitzgerald): Deputy Thomas Byrne is very energised about this.

Deputy Thomas Byrne: I am trying to get the Minister to his senses. He is a solicitor by profession and has generally carried out his ministerial duties with aplomb. He has been dignified but it is totally undignified for any Government of Ireland, particularly Fine Gael, to line up with Sinn Féin on the whim of one Independent Deputy to change the way our Judiciary is appointed. I urge them to stop, to hold back and pause. I understand the Committee on Justice and Equality, in its wisdom, has paused this.

This is a branch of our Government. It is an authority which is separate but equal. It can overrule our legislation, can imprison people and can interpret legislation. It can create new rights and has done over the years, sometimes in a very welcome way and sometimes not. If we do not like the rights they create or recognise under the Constitution, there can always be a referendum as the ultimate arbiter. The Government is denigrating the Judiciary with this Bill and Members sitting behind the Ministers have spoken about it.

Minister for Justice and Equality (Deputy Charles Flanagan): That is more provocation.

Deputy Thomas Byrne: The Minister is laughing because he knows it is true.

Deputy Charles Flanagan: It is not.

Deputy Thomas Byrne: It is undignified for the Chief Justice of Ireland to sit on a committee with someone else chairing it and it is disrespectful of the way our constitutional system

of checks and balances works. The Chief Justice oversees the judicial system and has one vote in the Supreme Court, with nominal charge of the system, but the Government will relegate her - it is Chief Justice Denham at the moment - to simply one member of a committee with a lay chairperson.

It is very worrying that the Public Appointments Service will now indirectly appoint judges. Deputy Ó Cuív has spoken very well on this matter. The Government is simply replacing one elite with another. The Minister, Deputy Ross, speaks of a Government elite deciding on judicial appointments, but at least that elite is elected by the public. It is answerable to the public and can be kicked out of office over judicial appointments. Governments have fallen on judicial appointments over the years, so they can be matters of political controversy.

It is not simply about packing a board. The Minister, Deputy Shane Ross wants to pack it in another way using the Public Appointments Service. We should be deeply interested in who is a member of the Supreme Court or the Court of Appeal. We should take note of whom Governments appoint or the Public Appointments Service recommends because these institutions of State rightly have so much power. They can make law, break it if it is deemed to be unconstitutional and can interpret it, so it is very important we know the direction of these people. We do not need to know how they will decide in individual cases, but it is in the public interest for some analysis to be done of who is appointed to the Judiciary because they can change the direction of the country. That is the way our system works, so it is very important to get the right people in the system. I am not convinced this Bill will do it.

The number of lay people proposed by this Bill is extraordinary but, as Deputy Ó Cuív said earlier, it will not mean someone from the Aran Islands will be appointed to the judicial appointments commission. The Public Appointments Service will just create a new elite, mostly from Dublin and mostly from one part of Dublin. Deputy Ó Cuív has the figures to prove this is happening with other appointments. A new elite is being formed that is unelected and unaccountable. We are contracting these things out to other people, but they socialise and mix together. These people speak at conferences and in the media and have their influences and networks, but the only influence and network in this House should be in accordance with the Constitution, which states that it is the Government that appoints the Judiciary in a fair and transparent way. I do not believe this legislation does that.

Simply put, those who know the people who would be good judges and could give those names to the Government are not allowed to be on the appointments commission. The legislation which Fianna Fáil has put forward was prepared by Deputy O'Callaghan. It is a disgrace that the Government has refused to issue a money message for that legislation for no reason other than that it wants to stall the legislation on the instructions of the Minister, Deputy Ross. The Fianna Fáil Bill recognises that within the Judiciary and the legal profession there are those who can analyse people's particular talents and skills and then present that analysis to the Government in the form of ranked candidates, which is very important in order to allow the Government to tell who is the best candidate who deserves appointment in the view of the judicial appointments commission as proposed by Fianna Fáil. Ultimately, the Government would then make a final decision. That is not available under the Bill proposed today.

I o'clock The most we can ask for at this point is for passage of the Bill to be paused and that the Government think very seriously about the Judiciary, the nature of our constitutional system and the alliances the Government is building in order to get this Bill passed. Those alliances are not just with Sinn Féin, which is very important, but also with

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the sole Independent who is really fighting for the Bill. The Government backbenchers who were not preferred for ministerial office are telling the real story. That is where the truth comes out. Some backbenchers feel more free to speak their minds than their colleagues who, now that they have been appointed to ministerial office, and I am referring to junior Ministers rather than Deputy Flanagan, will not speak out on this issue. However, I presume that those recently elevated to office were previously of a mind with their colleagues who have spoken out on this issue. I congratulate those who have spoken out because they, when they go back to their constituencies, voters and the ordinary, decent members of Fine Gael, have found that people are aghast that this Bill is a priority in view of the fact that only last week the Government showed that when needs must, it does not comply with the existing rules. This will continue to be the case. The unholy alliances that have been formed and the rushing through of this legislation are a disgrace.

There is much else on which the House could be working. In terms of education, people have been waiting over a year for the Technological Universities Bill 2015, while the Education (Admission to Schools) Bill 2016 is devoid of any substance because the baptism barrier issue has not been addressed and the Bill is hardly worth the paper it is written on. That Bill has also been awaited for a year. There has been a substantial amendment to the Bill in regard to special needs which has added to its value and I am grateful for that. These are just some of the issues in the area of education and skills. There are many other areas with which the Dáil could be dealing if this controversial Bill were not being forced through. The Bill could be considered over a longer period of time and the best of both it and the Bill proposed by Fianna Fáil could be taken. The fundamental issue raised by Fianna Fáil Bill is that the Chief Justice should chair the appointments body, as has been similarly proposed by Fine Gael backbenchers. Surely there is a meeting of minds in this regard and it should be possible to do so. Fianna Fáil would work with that and that is what the production of legislation is about.

I attended the Select Committee on Education and Skills for six or seven hours yesterday while dealing with the Education (Admission to Schools) Bill 2016. I pay tribute to the Minister for Education and Skills, Deputy Bruton in that regard. Because the Government does not have sufficient numbers of Deputies, he has to take the views of the Opposition on board or risk losing a vote on the Bill and thereby put into legislation a feature that either he does not want or his officials may think completely unworkable. However, he has taken a very constructive approach and has even withdrawn some of his amendments with which the Opposition Deputies were not particularly happy and will revert to us on them before Report Stage. That was a brilliant example of new politics in terms of the fundamental job of this House, which is making legislation and creating better laws.

Under the previous Government and former Governments involving Fianna Fáil in which I remember serving as a backbencher, as I am sure the Ceann Comhairle also does, there was often a dismissive attitude if backbenchers put forward views different to those of the all-powerful Minister. That has changed for the better because of the composition of the House. This is the opportunity for the Minister for Justice and Equality, Deputy Flanagan, to shine in embracing new politics and coming up with a workable solution to which all Members could sign up. What could be better than the entire House coming up with an agreed approach on this issue? That is what should happen in regard to judicial appointments rather than one Minister forcing his will on a party that is lining up with another party that should know better than to start discussing the Judiciary. The House should be working towards an agreed approach. I was grateful to see the signals from Deputies Deering and Farrell. Deputy Deering has said

that he will not vote for the Bill unless it is changed. I presume their point of view is feeding into the discussions they have with the Minister, any text messages on the issue that are being sent by Members, or the WhatsApp groups there are in Fine Gael. It is a positive sign that those Deputies can speak out. Fianna Fáil will work with the Government if it is willing to amend the Bill, in particular in regard to the position of the Chief Justice and the composition of the appointments commission. There are good things in both this Bill and that proposed by Fianna Fáil. The good thing about the Government Bill is that it proposes reform. Fianna Fáil does not agree with much of its detail and the Bill it proposes is a serious effort to address this issue. However, there is plenty of time to deal with them.

I was uncomfortable when the Judiciary began speaking out on this issue. I am not used to it and would not open my mouth one way or the other about the court case that was mentioned earlier. Whether a person is found guilty or not in a court case is no business of Members; it is entirely for the Judiciary. In the same way, legislation is the business of the House and Members must ensure it is constitutional, although the Supreme Court has the ultimate say on constitutionality and can interfere in that regard. I was a little uncomfortable with the comments of the Judiciary this week in regard to the legislation. That said, the fact that such commentary was so unprecedented shows the seriousness of the issue. This is not about the self-preservation of some kind of grubby system. As I have said, it is replacing one system with another. It is very difficult to get the system right because it involves a branch of government that can decide on laws. That members of the Judiciary have spoken out on the issue should give pause to the Minister. While I do not know him very well, I have dealt with the Minister on various issues over the past ten years and sat with him on the justice committee. I am sure that the comments of the Judiciary gave him pause for thought this week. The Minister's comments on this issue were not as sharp as those of the Taoiseach, who pointed out the importance of the separation of powers and criticised the Judiciary.

I hope I give the Minister pause for thought by saying that the future of the Judiciary and its membership should not be decided by the Minister, Deputy Ross, and supported by Sinn Féin and Fine Gael working together. That is not what should happen. All Members should work together on this issue. Fianna Fáil are willing to do so. We have shown that by producing legislation dealing with this issue. The best possible outcome on this issue should be sought. There is no need to rush it. The Government cannot deliver the legislation for Deputy Ross because it does not have sufficient numbers to do so. He needs to be told that. I presume that the only commitment Fine Gael can give to Deputy Ross is that it will bring forward the legislation. It has no control over a vote on the legislation. I do not know if it will pass. It is possible it will not. It will face a hard battle on Committee Stage as the Government does not have a majority on the Select Committee on Justice and Equality. We will wait and see what happens at that committee. Its make-up is interesting. I have no doubt that my colleagues on it have every intention of working very closely with other committee members, including those from Fine Gael, to achieve the best possible outcome. That is where this must happen. If this Bill gets to Committee Stage, I have no doubt that Deputy Flanagan will be able to sit around a table at that committee with his Fine Gael colleagues, Deputy O'Callaghan and two Deputies representing Independents4Change who have a strong interest in justice matters - out of the glare of this debate and all the politics - and work out a good solution on this issue. I urge the Government to step back a little and tell Deputy Ross that the best it can do is to bring the Bill to Committee Stage.

I would like to see the entire House come together on this issue. If it is to be Deputy Ross

versus the remainder of the House, that does not really matter. If the House were to come together on this issue, it would send a signal that the Judiciary is a branch of government that Members respect and want to see the best people appointed to and that Members recognise that the importance of this matter is such that it should not be subject of political debate. I therefore ask the Government to hold back and to think of the alliances it is making on this issue. They are not conducive to the making of good laws, nor are they good for the future of the Judiciary.

Tá mé chun críochnú ansin. Tá sé tábhachtach go bhfuil gach rud pléite againn maidir leis an mBille seo. Measaim go bhfuil deis againn agus deis ag an Rialtas, deis atá á ofráil ag Fianna Fáil, obair le chéile chun na nithe is fearr den dá thaobh a chur le chéile ionas go mbeadh an Dáil agus an tOireachtas ag labhairt le haon ghuth ar an ábhar tábhachtach seo faoi bhráinse agus craobh den Rialtas seo maidir le ceapacháin bhreithimh. Tá sé an-tábhachtach go n-oibreoimid le chéile agus nach mbeidh dhá pháirtí amháin ag obair le chéile chun toil Aire nó Teachta amháin a chur i bhfeidhm. Ní hé sin an tslí cheart le deileáil leis seo. Caithfimid dul níos moille agus an rud is fearr a dhéanamh don tír seachas do Bhaill Dháil Éireann amháin.

Deputy Pat Casey: The separation of powers in any republic is a delicate and essential balance to ensure citizens can make laws and have the law judged in an independent manner. In the Irish context, the broad history of the Irish judicial system is one that merits great praise. Our judges have in the main been independent, fair and sometimes quite brilliant in interpreting the laws of our Republic. Many of our constitutional and civic rights have been defended and enhanced by the actions of our judges, and miscarriages of justice are rare in Irish judicial history.

However, Ireland is a republic. In a republic, the essential element is that the people are sovereign. This means that the people must have the essential political power to govern through their elected representatives. To govern democratically in the modern age, there must be a transparent appointments system to all public positions, but in particular to powerful appointments such as the appointment of a judge. The current system that is in place is in need of reform. There is no doubting that. The events surrounding recent appointments to the Court of Appeal are a perfect example of a method of appointment that does not command the necessary impartiality and transparency that is essential if we are to maintain and enhance public confidence in our democratic institutions.

All democratic institutions have come under intense public scrutiny in recent times. Our modern age, as the Taoiseach describes it, demands that the appointments process to senior positions in public life be of the highest standard. How we appoint our judges and the process of how we decide to appoint judges is also of crucial importance. The events of the past two weeks have not reflected well on this, however. In this constitutional Republic, the Government is charged with appointing judges. The reality of the past two weeks, however, is that this Bill is being rushed through by Fine Gael and its new friends in Sinn Féin to cover the political embarrassment of the Minister for Transport, Tourism and Sport, Deputy Ross, over last week's appointment of a judge. We are now engaged in a farce of a debate over the very important subject of the impartial appointment of judges. Too often we hear of politicians living in the Leinster House bubble and being removed from the issues of the real world. This is an accusation we share with the legal community who are accused of living in the bubble of the Four Courts or the Law Library and being removed from the concerns of ordinary citizens. I, as a newly elected Deputy, have often tried to combat this accusation by working on the issues that are at the top of citizens' concerns. It is with some frustration, therefore, that an important issue that should be carefully teased out in Parliament and outside it is dominating the political

agenda while housing, mental health and education are being put on the political waiting list by Fine Gael, Sinn Féin and the Independent Alliance. I find that hard to take. I also think that the longer this farce of a debate goes on, the more damage that will be done to everyone in this Dáil.

What we need to do is to reset carefully the atmosphere surrounding this debate. Badly thought-out legislation in judicial reform will only damage the carefully established separation of powers that has been developed and has evolved over decades. Deputy O'Callaghan, Fianna Fáil justice spokesman, takes this issue very seriously, and he is right to do so. He is also a highly experienced lawyer, and this is not a disadvantage here but a great asset. He believes in substantive reform of our legal system, but Deputy O'Callaghan and we in Fianna Fáil believe in substantive reform that is carefully formulated with widespread consultation with the members of our legal community and with international best practice taken into account. The Fianna Fáil proposal of a truly independent yet balanced judicial appointments commission is a fair attempt to put forward an appointments system that is transparent, professional, independent and yet values the fact that appointments to the Judiciary require the input of those who currently occupy these crucial positions. Serving senior judges, from their professional experience, day in, day out, and their academic and legal publications, hold an institutional knowledge that is vital in the appointment of competent judges. If we were dealing with senior medical appointments, for example, we would require consultant surgeons involved in the appointment of surgeons. In fact, the public demands that professional competency be adjudicated on by those who are at the highest levels of their profession. Fine Gael, Sinn Féin and the Independent Alliance, however, want to diminish the role of our senior judges. This is degrading and populist legislation at its worst.

The role of retired judges is also excluded from consideration in the Government's Bill. Many of our retired judges are some of the finest legal minds that exist in this country, yet because the Minister, Deputy Ross, has a bias against judges, they are all to be excluded in this unusual alliance of Fine Gael, Sinn Féin and Deputy Ross. We also know that one of the realities in judicial appointments is that it is in many instances difficult to get well-qualified and experienced legal personnel to put themselves forward for consideration to be a judge. This Bill and the undercurrent of disrespect towards our Judiciary that has been a feature of this debate is not going to convince any solicitor or barrister to put him or herself forward for consideration. As I said at the outset of my contribution to this debate, the separation of powers between the political world of Parliament and Government and an independent Judiciary and legal system is a vital and delicate balance. There will always be a healthy tension between the courts and Parliament. Lawmakers and those who adjudicate on our laws are often somewhat at odds. That is the purpose of checks and balances that are vital to protect citizens from overreach by either Parliament, the Government or the Judiciary.

When changes need to be made to the judicial system, the utmost care and sensitivity must be used to protect that balance. This Bill is not that change. It is politics, and it is potentially dangerous politics. At the end of the day, long after the political arguments and game playing that tend to dominate Parliament day to day, the citizens of this State require a judicial system that is independent, robust and has the confidence of those who need the legal system. It is still not too late for a reset on this Bill. Parliament is at best seriously divided on this issue. There should be maximum consensus in this Dáil on judicial reform. Instead we have partisan and political manoeuvring. That is the worst possible atmosphere in which to change the method of judicial appointments. The Government prioritisation of this Bill has meant other more vital issues are taking a back seat. This is another bad day for this Dáil. I ask the Members supporting

this Bill to reconsider pushing this through. Our Republic deserves better than this.

Deputy Dara Calleary: This is the first occasion on which I have been in the Chamber with the Minister for Justice and Equality, Deputy Flanagan. I wish him well in his new office. He brings much experience, and I commend him on his work in the Department of Foreign Affairs and Trade. I did detect a change in tone in the Department of Justice and Equality at the weekend. His comments to his back bench colleagues around this Bill show a bit of experience of ground hurling coming to fruition. That is good because until now the Bill was sailing through without much challenge. I have more faith now that the Committee Stage process will result in changes to the Bill. Nobody is against reform and the Judiciary cannot be immune to reform. The separation of powers does not preclude us from highlighting the need for reform. The timing of this Bill and the urgency being given to it in the context of the challenges facing our country are quite extraordinary. The Minister of State at the Department of Education and Skills, Deputy Halligan, of the Independent Alliance, has an interest in things extra-terrestrial. He believes in life in other territories and I was thinking over the past few days that if aliens came down from space and looked at this republic of ours, they would see the Minister for Transport, Tourism and Sport, facing transport challenges such that our cities are congested to the gills. Anybody trying to get to work in Dublin this morning faced enormous delays and there will be no money for roadways in the Transport Infrastructure Ireland pipeline after 2019. They would ask is the Minister of State with responsibility for people with disabilities threatening to leave Government over our refusal to ratify the UN Convention on the Rights of Persons with Disabilities or over the inordinate delays experienced by children with disabilities around the country, the lack of occupational therapy, physiotherapy and basic services. They would ask is Deputy Halligan threatening to leave Government over the problem around cardiac care in his constituency. The Minister and Ministers of State I have referred to are apparently threatening to leave Government over the appointment of judges. It is a very serious issue but in the context of the challenges facing this Republic is it one that will pull down the Government? I do not think so.

There is a housing crisis, the Government has done an amazing *volte face* on a commitment to have families out of hotels by the end of July. Quietly amidst the sound and fury of this Bill it has ditched that commitment and families will still be hotels in August, September, October, November and December. Meanwhile we will have a new gold-plated quango, compliments of Deputy Ross. Is it not ironic that the man who made a career out of having a go at quangos is now championing a gold-plated quango? In fact this is not even gold-plated, it is full gold, not the cheap stuff. This is top class gold from wherever it comes. To be fair to Deputy Ross when one has a career as a journalist it is easy pickings for the likes of me who googles “Shane Ross+quangos” because there is any number of headlines and articles. I got a good one he wrote on 6 January 2013 with the headline “How a Quango Failed a Nation”. It was about Transport Infrastructure Ireland. Now we are being bequeathed the judicial appointments commission office with staff, directors, all sorts of things that go with them, boards that are the subject of controversy, that will include lay people who will probably get expenses that the old Shane Ross would be submitting freedom of information requests on and fulminating about in *The Sunday Independent*. He has decided, however, that this is the number one priority facing this Republic and the Government has fallen into line behind him. That is extraordinary in 2017 given the challenges we face.

We do need reform, that is why Deputy O’Callaghan put forward a Bill on reform. Nobody is denying that we need reform. Deputy Bríd Smith earlier criticised Fianna Fáil’s opposition

to this Bill. She cited the various tribunals that have happened in this State over the past 20 or 30 years which investigated former members of this party. I would say straight back to her that those tribunals and the moral strength and conviction of the judges who ran them shows the strength of the Judiciary and no matter who appoints the judges they uphold the law, the rules that this Legislature passes. They uphold that law regardless of whether a person is Taoiseach, or a citizen, regardless of a person's standing.

All of those championing, and chomping at the bit for, this legislation, who say we are need of reform have failed to cite instances of the Judiciary systematically failing the State. It is not the Judiciary that is failing the State, it is other arms of the Department of Justice and Equality by putting things in front of the judges that maybe should not be there in the first place or by the management and challenges facing An Garda Síochána. Is it not extraordinary that the new Minister's first major legislative outing is nothing to do with the reform of An Garda Síochána, given the challenges facing it, or with asylum seeking, given the decision of the courts some weeks ago about asylum seekers and the right to work but it is this? It still misses the mark on opportunities for reform. If we are going to reform our Judiciary there are many areas we need to consider. Deputy O'Callaghan has set out a roadmap for doing that. We need to consider the gender make-up. There is a gender quota in this Chamber. I was sceptical about it but it certainly worked in 2016 and it has the potential to work even better. Should we consider a gender make-up for our Judiciary to ensure it reflects and represents those who may appear before it? Is there any serving judge with a disability who understands what it is like to live with a disability and to fight a country and a system that seems determined to fight people with disabilities? A judge with a disability would have experience of going through that system and being able to bring that experience to judgments in relevant cases. How many members of the new Irish community who have moved to this country in the past 20 years from different parts of the world are members of the Judiciary? They know why they moved here, the opportunities they sought and the challenges that new community faces such as those often presented to them by the Department of Justice and Equality in respect of citizenship rules and ridiculous waiting periods.

Yes, we need reform but the manner in which this is being done will preclude reform and the political controversy associated with it will ensure that the reforms that are needed are forever associated with the stigma of this Bill and its background. We know the rushing through of this Bill was the price for Deputy Ross's support for the appointment of the former Attorney General to the Court of Appeal, as well as the Garda station. The Minister need not be throwing those eyes over at me. He knows it. He has been around here longer than me. The only person who has been here longer than him is Deputy Ross. The reform of the Judiciary is now associated with the quagmire of that appointment.

The Minister should get out the hurl and take it to this Bill with the zest with which he has taken it to people over the years. Now that his constituency is a five-seater again, I am sure it will be sharpened up. He needs to sit down with the members of the Oireachtas Joint Committee on Justice and Equality who have a real interest in this Bill and in reform and ask what they need and what do we want the Judiciary of a 21st century republic to look like. We want it to uphold the tradition of challenging that republic, and the tradition it has shown since the foundation of the State of protecting the Republic at a time when there were people trying to take it down by paramilitary means, people now associating themselves with this Bill. Judges stood up to them, sometimes at their own personal cost and at risk to their personal safety. That tradition of standing up for the Republic must be protected in judicial reform. This Bill, and the

circumstances of its introduction, does not represent standing up for the Republic or the legislation but bowing down to cronyism, to the lowest common denominator of politics. That is not the way this Bill or this House should be. As someone with a long background in this area and service to this House the Minister should not let this be the hallmark of his first major Bill as Minister for Justice and Equality.

Deputy Willie Penrose: I welcome the opportunity to contribute to the debate on this Bill. On 27 October last I contributed to the debate on Deputy O’Callaghan’s judicial appointments Bill, which was a significant and welcome improvement on the absurdity of Deputy Ross’s proposals when he introduced a Bill in 2014. I will relay some of the things he postulated as representing the way forward.

I congratulate my midlands colleague, Deputy Flanagan, on his elevation to the position of Minister for Justice and Equality. He was a very fine spokesman on justice for his party a number of years ago and he has long experience as a solicitor. He practised in the midlands in the District Court, the Circuit Court and the High Court. I am sure he has appeared in the Supreme Court to give instructions in some cases. He knows that, irrespective of who makes his or her appointment, a judge takes the oath of office extremely seriously once on the Bench. No matter who one appears before and regardless of whatever views he or she might have had, he or she adheres to the oath of office and dispenses justice fairly, impartially, objectively and in accordance with his or her oath and the law of the land, which prevails in respect of and dictates the course of the case he or she is hearing. Political persuasions are cast aside. The legislation before us is now saying that anyone who has any contact with politics or politicians is contaminated. It is incredible that someone would have to live in a cocoon well away from being seen talking to anyone of any political persuasion or none. “Cronyism” is a loose term of banter which has now taken on a particular meaning and which is being used widely to disparage people. That is the purpose for which it is being used. If one has any degree of friendship at all, one is a crony. I look on that as being a friend of someone from whom one might have sought advice in the past and from whom one received dispassionate and objective advice. That is now elevating itself to the level of cronyism, which is completely objectionable. I have appeared in all the courts in the land over the past 27 years and I am sure I never knew nor cared who appointed the members of the Judiciary. I always got a fair hearing on behalf of clients, as did my opponents.

Judges make decisions and, having practised in courts across this land, they are very experienced. People who apply for the Bench are often at the top of their profession, whether it is as a solicitor or barrister. They will have spent a considerable period gaining experience, competence and intellectual ability. Going on the Bench often results for them in a significant reduction in remuneration. When a person applies for a position, he or she does so on a confidential basis. I can foresee a situation whereby the group responsible for recommending people for appointment will be so large, we will not be able to guarantee confidentiality. All it takes is one person to say something. One could tie it up like the JAAB by making it a criminal offence to give out information. Be that as it may, there is always speculation. I cannot say that anyone ever breached the Act, but there was always speculation as to whether Willie Penrose, BL, or some other individual would become a judge. That is fair. It may be either informed or idle speculation but people who make applications do so in confidence. They want to ensure that if they are not successful, it will not be publicised. It is a significant rebuff to individuals if they are not chosen. As the Minister will know, it is a big decision to become a member of the Judiciary. As such, I reject this idea of cronyism.

Deputy O'Callaghan's Judicial Appointments Commission Bill always struck me as sensible, constructive and balanced. It contrasted sharply with the proposals published by Deputy Ross, who is now a Minister, in 2013. He wanted a judicial appointments council to recommend suitably qualified candidates on merit and he wanted a joint committee of the Oireachtas to consider the recommendations and then nominate judges for appointment by the President. Most bizarrely, he wanted the Constitution amended to stipulate that no judge or practising lawyer could have no role in the assessment of the qualifications of the candidates or in recommending their suitability. That was the most harebrained idea. I say to the Minister for Justice and Equality, Deputy Flanagan, who is very experienced, that it would knock one for six. It knocked us all for six, which is why I castigated it. That was daftness on stilts. It was so manifestly absurd that I could not understand how its author could be taken seriously as either a political commentator or a practising politician, let alone as a Minister. It is one thing to come out with gadfly blustering, which is clearly entertaining for a readership in the leafy suburbs, but it does not contribute anything serious to the debate on this issue.

In opposition, Deputy Ross was a noisy distraction. In government, he has become an empty space. If he spent as much time worrying about his Department as he does about another Minister's, we would be all better off. I see Deputy Troy is present. The Deputy is an Opposition spokesman on transport. We would prefer if the Minister for Transport, Tourism and Sport ensured that there were trains with adequate capacity, speed, comfort and frequency leaving our major towns of Longford and Mullingar for the east. We would rather there were enough jobs to keep people in their own areas, but they need to go eastwards in the morning and to come home in the evening. The Minister should be ensuring that there are buses on the roads. He should be ensuring that the station at Thomastown reopens. If he concentrated on all of those issues, he would be kept extremely busy and would not be distracted.

This Bill has clearly been rushed to accommodate the crusade upon which the Minister, Deputy Ross, has embarked. He spelled out his desire for reform a number of years ago and brought forward a judicial Bill in 2013 which can only be described as a whopper. It sought to eliminate, at a stroke, input from any member of the Judiciary. His judicial appointments council would have ensured that no judge, member of the Bar Council or Law Society, or anyone of that ilk, to use his term, would have an input. In the Minister's view, they are all insiders. He has exhibited an unusual distaste for anybody of any professionalism or expertise. I am not much into getting expert input myself in that we, as politicians, should do our own work without relying on commissions and experts. Surely, however, members of the Judiciary, particularly the Chief Justice and presidents of the various courts, have invaluable insights to impart and contribute to the assessment of applicants by a judicial council. Potential applicants for judicial vacancies will clearly have practiced in these courts on numerous occasions, whether as solicitors or barristers, both of which professions have full rights of audience and advocacy with some excellent solicitors doing so. They are in a prime position to give a view as to the suitability of an applicant's abilities, competence, intellectual capacity and, the most important attribute of all, temperament. The latter is critical to an appointment. On appointment to the Bench, one severs the relationships one enjoyed prior to appointment. It can be a lonely place from that perspective.

The Minister for Transport, Tourism and Sport, Deputy Ross, could have proposed something that I know the Minister for Justice and Equality, Deputy Flanagan, would like to see. There is no doubt that the JAAB system requires an overhaul. There must be improvements, changes and enhancements, all of which we would welcome. The big thing to do, however,

would be to create a judicial council. The Chief Justice, Mrs. Justice Susan Denham, has been calling for it for at least three or four years. Funnily enough, if people were to read back through the records of this House, they would see that I have called for it on four or five occasions in the past five or six years. I think that is the most important thing. It would have a huge input in terms of continuing professional development and education for everyone involved, but particularly judges. It could also deal with complaints if someone feels aggrieved about any particular aspects or matters, whether he or she is a litigant or a representative. It could be an advocate or an instructing solicitor, or the solicitor might be the advocate. This would be the most important thing. In fact, this Bill should not be coming forward without that being on tow. The example of Hamlet, prince of Denmark comes to mind. Both should be brought forward together-----

Deputy Charles Flanagan: Not far behind it.

Deputy Willie Penrose: -----and not far behind. The Minister, Deputy Flanagan, knows it. We are lucky to have him because at least he understands this. We do not have to spend time spelling it out. He knows this better than anyone else from his wide and expansive practice in his county and across the midlands. That is where this game is at. I think it would be important and judges would welcome it. They have been looking for this for a long time. However, this legislation has been rushed.

This legislation would have been significantly improved if the Minister for Justice and Equality and, more particularly, the Minister for Transport, Tourism and Sport, Deputy Ross, had been willing to accommodate significant elements of the Judicial Appointments Commission Bill proposed by Deputy O'Callaghan. There is a lot of changes in that. My colleague and party leader, Deputy Howlin, spoke about all manner of things the other night. We know the State, in various guises, is the biggest consumer of legal services. We have the separation of powers and we have to jealously guard it. We have no right to be making comments on a case before the courts or a decision of the courts. In fairness, the Minister, Deputy Flanagan, always cautioned us to ensure that we do not make any comments on current or potential cases. We have no right to make comments on anything that is before the courts. Concomitant with and ancillary to that is that we have rights. We cannot be restricted in bringing forward legislation irrespective of whether the Judiciary has a different view. As legislators, we are entitled to our view and we are given by the people the role to bring forward legislation as we see fit. However, such legislation must be constructive and balanced.

Committee Stage will provide an opportunity to significantly enhance and change for the better the Bill as proposed. I think there will have to be significant changes or amendments. In the context of the Government not commanding an overall majority, the Bill may not progress further. I can perceive significant difficulties in the Seanad. This is not just an argument; it is about ensuring that the legislation which emerges will be the very best.

Deputy Calleary referred to quangos, and this is a significant quango. The Minister for Transport, Tourism and Sport, Deputy Ross, was a Senator when he was writing for the newspapers. I remember his fulminating every Sunday about quangos. They were strident columns in the newspaper. He castigated various Governments of every colour and hue about their, shall we say, innovative ways of creating quangos. Sometimes it suited the Government of the day to establish a quango because it wanted to depute to the latter the decisions that it did not want to make. In fairness, the Minister was right about that. The Government would have been devolving responsibility for particular matters or for decisions that it did not wish to take or did not

want to be answerable for in the Dáil. That was one of the things that used to drive people mad. The then Senator also fulminated about the costs of these quangos, but now he is advocating the establishment of the mother of all quangos. The fact that he cannot accommodate the Chief Justice in terms of her being appointed as chairperson of the panel-----

Deputy Robert Troy: It is scandalous.

Deputy Willie Penrose: -----is frightening. I always would have great confidence were a committee to be set up to evaluate applications. If picking an electrician, for example, for a simple job, one would hardly expect that the committee would be chaired by a carpenter or a plumber. It would have someone with expertise in electrics. It is that simple. Members of the Judiciary have their own ways of communicating. The Chief Justice, the President of the Court of Appeal, Mr. Justice Sean Ryan, the President of the High Court, Mr. Justice Peter Kelly, the President of the Circuit Court, Mr. Justice Raymond Groarke, and the President of the District Court, Her Honour Judge Rosemary Horgan, communicate. In fairness, Deputy O'Callaghan's judicial appointments commission would have been recommending that there would be three individuals ranked for each judicial vacancy. It would be merit based and the number of recommendations would have been reduced from seven to three. These proposals are universally accepted and I support them. They were endorsed by the judicial appointments review committee that was established by the judges themselves. The judges want these changes. Therefore, let us work with them. We can put our own individual Oireachtas slants on them.

The Minister for Transport, Tourism and Sport, Deputy Ross, does not seem to understand that, under the Constitution, the Government would still reserve the right to not accept any recommendation made pursuant to any Act. The Government is so empowered by the Constitution. I heard the Minister, Deputy Ross, saying yesterday that he had an agenda and that this is only a halfway house, but the Minister for Justice and Equality, Deputy Flanagan, cooled his ardour and his engines. If the Minister, Deputy Ross, wants to get what he really wants, he had better go back to the people in a referendum. That is the only way he will get what he wants because those in government are the only people empowered by the Constitution to appoint judges. The Government still can reject everyone, but if it rejected someone under Deputy O'Callaghan's proposed Bill, it would have to say, "Penrose was not fit because he did not have expertise in commercial law", or whatever. That is fair enough. If I do not have it, I do not have it. However, it is clear that the Minister, Deputy Ross, does not understand that.

Deputy O'Callaghan's Bill would provide for a commission that had a well-thought-out mixture of competencies. As well as the Chief Justice and the presidents of the various courts referred to, there would be nominees from the Citizens Information Board, the Higher Education Authority, the Competition and Consumer Protection Commission, the Irish Human Rights and Equality Commission, the Free Legal Advice Centres, the Law Society and the Bar Council. There was also provision for gender balance on the commission. It was absolutely spot on. It got everything right. All of those people had various expertises. It was not necessarily legal expertise, but they were people of stature. The commission would also have had to have regard to the importance of promoting gender and cultural diversity and, the Leas-Cheann Comhairle will be glad to hear, ensuring that a sufficient number of judges were proficient in the Irish language. One of the facts is that a judicial career is often embarked upon after a career in practice, and I support this. That is a feature which enhances judicial independence. Our judges are not schooled before appointment. I think that is important.

On the salary package for judges, and I might conclude on this although it might not be the

most attractive thing to say, it should be an attractive option for practitioners well into their 50s and early 60s to consider. The recent changes that were made-----

Deputy Charles Flanagan: Pensions.

Deputy Willie Penrose: -----by the then Minister for Public Expenditure and Reform, my own party colleague, were wrong. They emasculated the pensions of judges. Let us be big enough to recognise that this is a major issue. We will soon reach a stage where some of those we wish would apply will not do so. The recent changes to which I refer were a mistake, particularly as the savings made were insignificant. This Bill should become a vehicle to reverse those changes. If we go to committee and utilise Deputy O’Callaghan’s Bill with this legislation, we will get the best of both worlds. We will get what everyone wants to achieve. It is no use having argy-bargy between one side and the other. That is what we want to get rid of. We do not want that. We want to have the separation of powers clearly demarcated in the Constitution. We want to adhere to that principle. We could get the best of all worlds if we work hard enough in committee and achieve what we all want to achieve, namely, reformation and modernisation of the appointment process for members of the Bench.

Deputy Robert Troy: I welcome the opportunity to contribute on this legislation. The name given to the legislation might be inaccurate. Instead of being called the Judicial Appointments Commission Bill, perhaps it might be better framed as the “Shane Ross Judicial Grievance Bill”, because that is what this is all about. The Minister for Transport, Tourism and Sport has had huge interest in this area over the past number of months. I have listened over the past number of days as contributions were made and everybody acknowledges that reform is needed. Everybody acknowledges that nothing stands still. We must benefit from the mistakes of the past and use them to inform decisions into the future. Everyone also acknowledged our judicial system is wholly independent. Even the Minister, Deputy Ross, in a letter to *The Irish Times* yesterday, himself acknowledged that “With a few notable exceptions our judges have served the nation with independence and wisdom”. I congratulate the Minister, Deputy Flanagan, for having the courage and conviction to pull this back from a Minister who is not responsible for this Department. He is to be commended on that. I hope the Minister, Deputy Flanagan, will take on board the concerns raised by people on this side of the House and by people in his party. It is a little disappointing, despite the fact the Minister encouraged Fine Gael Members to participate in this debate, that when I look at the speakers, not too many have participated. It is also a little bit disappointing that the Members of the Minister, Deputy Ross’s own political party, although he does not describe it as a party-----

Deputy Charles Flanagan: There is one of them here.

Deputy Robert Troy: The members of his party who decided to join him in government are not contributing. They are not coming in and being wholesome and fulsome in their support of this. There are notable concerns coming from notable, independent commentators. There are notable concerns coming from the Judiciary, which we all acknowledge is wholly independent. They have written to the Taoiseach. Our party leader has asked the Taoiseach to make that letter available. I do not know whether the decision to publish that letter has been made. There is huge concern that this rushed legislation will do damage. The one thing I find a little interesting is there are times when the Minister, Deputy Ross, quotes independent experts. He quotes them for his own advantage but if any independent experts do not side with what he is saying, he brushes them aside as lobbyists. If there is such a will on his part to reform how the Judiciary is appointed, why has a Government, of which he is a very influential member, blocked Deputy

O'Callaghan's Bill? It is a Bill that, as Deputy Penrose said, met wide approval. It came before the Dáil in October of last year and could have advanced to Committee Stage if the Government decided to sign the money bill. That did not happen. Where was the priority of reformation back then? Why did he not ensure this went through Committee Stage at that time?

I could not sleep the other night and I wondered what would bore me and put me to sleep so I went to Google and looked at some of the Minister, Deputy Ross's articles from the Sunday papers.

Deputy Mattie McGrath: It is a sad life.

Deputy Robert Troy: After the last general election, the former Taoiseach made the grand offer to Fianna Fáil to abandon our election promises and form a coalition. Had we accepted that offer, poor Deputy Ross would not have been in Cabinet. He was critical about reform. He said reform does not butter parsnips and, while it is important, it is not something that came up at the doors. He cited the housing crisis and asked why it was not being tackled. It is now 12 months into a Government of which he is a member and the promise that was made to end homeless families sleeping in hotels has been broken. Now he is rushing through legislation and we must ask why. The reason he is rushing it through - I understand he was going to bring down the Government if this was not adopted before the summer - is because he sat on his hands when the former Attorney General was appointed to the Court of Appeal. He was exposed; he did not care about the appointments process so long as he got what he wanted.

There was an article in my local newspaper in which the member of the Independent Alliance from my constituency said what Fine Gael did was wrong - as if the Independent Alliance was not part of the Government - but it is okay because the Minister, Deputy Ross, has a Bill that will proceed before the summer recess. If the legislation was imminent three weeks ago, why did he agree to that appointment? If, as we are led to believe, the legislation was imminent three weeks ago, why was that appointment agreed to? We know that previous judicial appointments were blocked by the Minister, Deputy Ross, saying he wanted a reform of the system. Those blockages of judicial appointments led to a backlog in court cases, which led to a delay in the administration of justice. The other day, he said it was something he had championed all his political career. What he hopes some people will forget is that he is now into his fourth decade as a Member of the Oireachtas. One can go back and look at the debate on *KildareStreet.com* from 1995, when the legislation was changed following the appointment of an Attorney General directly to the courts. Would you believe it? It appears he did not contribute to the debate at all but of course, this is something he has championed all his political life. Perhaps he was writing a column for the Sunday newspapers in the week in question. Questions have been asked of me continually over the past number of weeks by stakeholders in the area of transport, tourism and sport. Where is the passion? Where is the commitment? Where is the dedication? We do not see it in the area of transport. The only legislation the Minister, Deputy Ross, has pursued in his own Department over the past 12 months is on drugs and driving. It took him until December to bring forward legislation that the Minister, Deputy Donohoe, had left waiting for him when he assumed office. Only yesterday, during Priority Questions in the Chamber, he confirmed he does not know if a statutory instrument or legislation is needed to give the Irish Aviation Authority the power to regulate noise. This issue is preventing the construction of a second runway and impeding development. There already has been a double-digit number of accidents or deaths involving cyclists this year. One of the Minister, Deputy Flanagan's ministerial colleagues has put her name to that legislation. A junior ministerial colleague has also put her name to it. The Minister, Deputy Ross, is not bringing it before the Dáil. Why is that?

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The Minister, Deputy Flanagan, is very familiar with the issue of Brexit and was doing a good job on it in the Department of Foreign Affairs and Trade.

Brexit is one of the biggest challenges facing the aviation sector, which supports approximately 50,000 jobs. The Minister for Transport, Tourism and Sport did not even meet his European counterparts to discuss how the open skies policy will be maintained following Brexit until I exposed that he had not spoken to them. That is an absolute joke. It is a pity the Minister does not bring the same vigour and commitment to the areas for which he has responsibility as he has to this legislation, which is not under his control.

The Minister, Deputy Ross, is correct that political allegiance should not bring advantages to anyone in any walk of life when applying for a job. While it should not result in preferential treatment or favouritism, nor should it disqualify someone from a position. I find, and I am sure the Minister in his long political career has found likewise, that the majority of people who are active in political parties have a strong social conscience, want to give something back to society and have, at the top of their agenda, a desire to benefit their community. The Minister, Deputy Ross, appears to believe there is something wrong with those who are involved in a political party. I remind him that the only difference between the Independent Alliance and the political parties is that members of the former receive an additional €40,000 per annum from the public purse to spend as they wish on campaigning and hiring staff to do constituency work. Has every job allocated, sanctioned or approved by the Independent Alliance in the past 12 or 18 months gone through the public appointments process? Have all of these jobs been advertised or have some Independent Alliance supporters been appointed to internal positions? I do not know the answers to those questions because I did not bother researching the matter, but given the Minister's stance on such issues, I expect that is not the case.

My fear is that the Bill will facilitate greater political patronage because it does not set out the criteria to be met by the lay members of the new commission or from where these members will come. They could be appointed through the public appointments process, which means party members could apply and be appointed to sit on the commission as lay members. Deputy Jim O'Callaghan's Private Members' Bill, on the other hand, stipulated that the commission should include nominees of the Free Legal Advice Centres and Irish Human Rights and Equality Commission, respectively. The Bill before us includes no such stipulation. Deputy Callery referred to having representatives of the disability sector and new communities sit on the commission, whereas the Bill makes no such recommendation. There is no requirement that the three persons whose names will be submitted to the Government be selected on the basis of ability and the Government of the day is not required to accept any of the recommended appointments. It can reject all three nominees and proceed to make an alternative appointment.

Is it not ironic that the Minister, Deputy Ross, who wants to eliminate political appointments, has rejected the recommendation of the Mahon tribunal that appointments to the National Transport Authority be made by an independent commission, choosing instead to retain the power of appointment to the authority. This is a case of "Do as I say, not as I do".

The Attorney General is a political appointment and there is nothing wrong with that. However, the Attorney General will sit on the commission proposed by the Government and at Cabinet. This matter hardly amounts to a complete removal of political influence from the process.

A number of speakers highlighted the proposal to ask the Chief Justice to sit on a committee which he or she will not chair. To be fair to the Government, I imagine many of its members are holding their noses and compromising on the Bill to retain the support of the Minister, Deputy Ross. Nevertheless, this provision shows disrespect towards the most senior judicial officeholder in the State and its key legal office.

A number of speakers pointed out that a layperson chairs the judicial appointments commission in Scotland. While that it is correct, the chief justice of Scotland does not sit on that country's judicial appointments commission. The commission reports to the chief justice who, in turn, reports to the Scottish Government. Is it not amazing that Sinn Féin cites the Scottish model in support of this legislation? I am not overly enthused or excited by the fact the Minister is happy to accept the support of a party that once used to spend its time threatening members of the Judiciary. While it no longer threatens the Judiciary, it does not use it because it has its own kangaroo courts.

Nowhere in the legislation is it specified what qualities a person will need to possess to be appointed a judge. It is important to set out in legislation the qualities a person who takes up such an important role must have. While these may seem obvious, we should specify that they must be persons of high integrity, independence of mind and moral courage and must have a high level of intellectual skill, a sound temperament and common sense and be impartial, objective, fair and composed. The Fianna Fáil Party set out these criteria in its proposals. One wonders why they are not set out in the Bill.

As I stated, it is wrong that the Chief Justice will not be asked to chair the new committee. My constituency colleague, Deputy Penrose, stated there is a rumour that he will some day serve on the Bench. Given that we come from the same village and fish out of the same pond for votes, I hope that day comes sooner rather than later. In all seriousness, however, the Deputy is correct that if one asks someone to chair an interview board for a teaching post, hospital surgeon position or any other job, one will ask a person with the relevant experience to do the job. If the Minister, Deputy Ross, is serious about what he says, school principals would never sit on an interview board because they would choose their friends to be part of their team. What tends to happen is that the captain of the team picks the best person to serve on the team. When one sees how the Minister is performing in his Department and the Trojan horse he has introduced to reform the judicial appointments system, which everyone agrees needs to be reformed, one wonders whether the captain of this team picked the right people to serve in government.

Deputy Mary Butler: While Fianna Fáil fully believes in the need to reform the judicial appointment process, the Government's Bill is deeply flawed. Fianna Fáil has proposed legislation on establishing a judicial appointments commission that would be independent of Government and make recommendations to same based on an assessment of the merits of applicants for judicial office. We must ensure that the best and most suitable and qualified people end up on the Bench. This is an important process and it cannot be rushed. I welcome that the Oireachtas Committee on Justice and Equality will not facilitate the Government in ramming the Bill through in haste. Like most other Bills, it will take its due course.

We entrust senior judges on the Bench to make life and death and responsible decisions and to rule effectively and impartially using the evidence that is available to them. They need to know the Constitution. They should be impartial, patient, shrewd and fair minded. We need the best and most suitably qualified people on the Bench. Will this Bill deliver the best person for the job? No.

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I sat in the Chamber yesterday and listened as the Minister for Transport, Tourism and Sport, Deputy Ross, spoke at length about this Bill, in respect of which he has held the Government to ransom. He said that “political interference ... should be reduced to a minimum” and that he wanted to see an end to the system of “political colour” influencing appointments. I wondered whether this could possibly have been the same Minister who, having spoken about the Judiciary for numerous years and taken the high moral ground on all issues relating to judicial appointments, sat at the Cabinet table and allowed the appointment and elevation of the Attorney General to the Court of Appeal while she was also sitting at the Cabinet table. I wish to state categorically that I am referring to the process and not the individual. It is unheard of that the applicant would be present for Ministers’ discussion of a new role and paid position. Was it even discussed? Was the Cabinet presented with a *fait accompli*? We will never know, as Cabinet confidentiality reached new heights after that particular debacle. I cannot understand how this was allowed to happen.

The Minister, Deputy Ross, lost all credibility in respect of his Judicial Appointments Commission Bill. This was the highest level of cronyism, which he wants to be removed from politics. It is funny when a person’s own area or constituency is affected. I await with bated breath the announcement on the five other Garda stations now that Stepside will be reopened. Will it be one for every Independent Alliance Deputy in the audience? Time will tell.

This situation casts a slur on the last Cabinet meeting of the former Taoiseach, Deputy Enda Kenny. For a man whom I have respected, his role ended disappointingly and on a low note.

Our judicial appointments process needs to be reformed to ensure people are appointed to judicial office based solely on merit. For this reason, Fianna Fáil proposed its legislation on establishing a judicial appointments commission whose recommendations would be based on an independent assessment of the merits of applicants for judicial office. The Government’s proposed commission will not allow for such an independent process. Among its faults, the Government’s Bill will require the Chief Justice to sit on a commission that she will not chair. This is indicative of the disrespect the Government has for the Judiciary. A proposal that the Taoiseach would sit on a committee but not be its chairman would rightly be dismissed out of hand by the Government.

The Bill excludes the presidents of the Circuit and District courts from full membership of the commission. It also recommends that the majority of the commission should be lay members, namely, persons who are neither judges nor lawyers. This grouping of judges and lawyers in the same category by the Government ignores the fact that judges are not members of the legal profession. That they were previously members is not a basis for assuming that judges and lawyers, if in a majority, would have a negative influence on the commission. It would be considered remarkable if surgeons in hospitals were selected by a panel, the majority of whose members had never carried out surgery or even worked in a hospital.

The Bill proposes that the three persons recommended by the commission will not be ranked in order of merit. The failure to do so defeats the entire purpose of having a commission that seeks to recommend the best candidate. The Fianna Fáil Bill establishes a judicial appointments commission to recommend to the Government the names of individuals who it believes would be the most suitable, based on merit, to be judges. For each position, it would recommend three people. The Government scheme has the same provision. Under our Bill, however, the three would be ranked as Nos. 1, 2 and 3 in order of merit. In no way does this offend the constitutional prerogative that rests with the Cabinet. Under neither scheme must the Cabinet

opt for anyone on the list. However, there is benefit in a body with expertise telling the Cabinet who it believes are the three best people in a certain order.

It is important that there be a complete separation from the political process. Another difference between the Minister's scheme and the Fianna Fáil Bill is that we want to have the recommending body completely separate from the political process in order that there would not be people who were part of the political process on the recommending body. For this reason, we believe the Government's scheme to be inappropriate, given that the Attorney General will be on the recommending body. Names will come to the judicial appointments commission, the Attorney General will be a part of that commission when the names are being considered, and those three names will then be nominated to the Cabinet where the Attorney General also sits. That does not achieve the objective of separating the political process from the initial recommending process. The political process will ultimately decide who is appointed, so the recommending process should be protected. There will be replication and infiltration between the two bodies if the Attorney General is on both.

Another main substantive difference between the two proposals is that nothing really changes under the Government's Bill. The new recommending body will nominate three people whose names will go to the Cabinet. The Cabinet will then operate in the same way it does now. It must consider the three names. If it does not like them, it can say that the person whom it selects was not recommended by the commission. Under our Bill, there would be a greater hurdle for the Government to overcome. The Government would get the names of Nos. 1, 2 and 3. If it did not select or recommend any of those for appointment, it would need to give a reasoned decision for that. This is an important point, given that three judges applied for the position the Attorney General received when she was elevated to the Court of Appeal. We did not receive answers to that question last week. Were the three people who applied for the job even considered or discussed at Cabinet? Once again, however, Cabinet confidentiality knew no bounds.

One matter on which Fianna Fáil agrees, and on which we have changed our position since Second Stage of our Bill, is the Minister's proposal that District Court judges should be eligible for appointment to the High Court. That is fair. If one is a lawyer of 20 years' standing, one can be made a District Court judge, but if one becomes a District Court judge after 20 years, one then becomes ineligible for appointment to the High Court. It would be unfair for that situation to apply.

I will turn to the exclusion of former judges. The Government's Bill includes a categorisation of laypersons, the effect of which is to merge people who hold judicial office and people who were or are practising lawyers. It is inappropriate to merge them and it simply plays to the agenda of the Minister, Deputy Ross. Why is it that, under the Government's scheme, former judges are precluded from being on this recommending body? If one is trying to identify someone who would have a good idea of what it takes to be a judge, one would think that a former judge would be suitable to fulfil the role. Under the Minister's scheme, though, that is not permitted.

While preparing what I was going to say today, I rang my constituency office in Waterford and asked the girls there whether anyone had contacted me this week about the Judicial Appointments Commission Bill 2017. The answer was-----

Deputy Jim O'Callaghan: No.

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Deputy Mary Butler: -----"No". When I asked what I had been contacted about, they told me: housing, homelessness, waiting lists, home help hours and the main story of the past two weeks in Waterford and a matter on which I have been campaigning for the past two years, the lack of 24-7 cardiology cover. I have discussed this issue several times in the Chamber. From 5 o'clock this evening, the cath lab in the south east will be closed. If a person has a coronary attack in Waterford and needs some kind of cardiology intervention after 5 p.m., the cath lab is closed. It opens eight hours a day, Monday to Friday, 9 a.m. to 5 p.m., and it is closed 16 hours a day. It is also closed all day Saturday and Sunday. Two weeks ago this Sunday, Mr. Thomas Power presented to University Hospital Waterford. Unfortunately, the doors of the state-of-the-art cath lab were closed and there was no interventional cardiologist consultant on duty. Unfortunately, poor Mr. Power was transferred to Cork and died 30 minutes up the road in Dungarvan. He was 39 years of age, newly married and his wife was expecting their first baby. That is what is exercising people at the moment, not the Judicial Appointments Commission Bill 2017.

This morning I attended the launch of the pre-budget submission of the Alzheimer Society of Ireland. I thought to myself, "What are we doing?" We are here in Leinster House, but what are we doing as parties and as Government? What are we doing for people? I decided that the Government is spending the whole time being reactive. It is not being proactive. I am speaking about the married couple of 63 years who were separated because of bureaucracy, HSE guidelines, not meeting the criteria and not meeting the rules and regulations. No one in charge with a bit of discretion could say, "Stop, this is wrong." The only way this couple resolved the situation was to contact Joe Duffy's "Liveline" show. I work very hard, like every other Deputy in this House, and I asked myself what it took to make something happen.

I stood on the floor of this House approximately two months ago and raised a Topical Issue matter about a six year old girl in Waterford whose name is Emily. Emily was brain-damaged at birth and is non-verbal. Her mum and dad care for her 24-7. Emily was looking for a ceiling track hoist. The HSE offered her a ground hoist, but unfortunately it was not suitable for her house. I spoke to the Minister of State, Deputy Finian McGrath, and to the Minister, Deputy Harris, on two occasions and they fully agreed with me that this child should have a hoist which would make her life that little bit easier. She still has not received that hoist. I asked myself what I should do and whether I should get her parents to ring "Liveline" because, unfortunately, at the moment, it is only when something hits the headlines that anything happens. We have to stop being reactive and become proactive because people are suffering.

Like every other Deputy in the House, I could stand here and talk for 24 hours about all the people who need home help services or who have been on waiting lists for two years. I am the first to accept that we have come through tough times and that we do not have an endless pot of money, but we have to determine what is most important to us. Can we not look after our own citizens such as Emily? There are 700 people in Ireland who have both Down's syndrome and dementia. There are 700 adults, most of whom are in their early 40s. There is one person in Ireland who has Down's syndrome and is 71 years old. That is unheard of, but people with Down's syndrome are living longer. It is fantastic to think that is happening. The majority of these 700 people with Down's syndrome, however, have now developed dementia. They are prone to it. The majority of them live at home with parents who are in their early 70s or hitting their 80s. These parents are very worried about what will happen when they die. As a society, are we doing enough for them? We are not.

I know I have gone off on a bit of a tangent but I appeal to the Minister and the Government

to be more proactive and to stop being reactive, because these are real people with real issues. It is regrettable that the proposals put forward by the Government are not for the purpose of achieving genuine reform but instead are for the purpose of appeasing one member of Government whose proposals in this area are ill-considered and deeply flawed. Fianna Fáil remains committed to achieving reform in this area, as outlined in our own Judicial Appointments Commission Bill, which was published in October 2016 by my colleague, Deputy Jim O'Callaghan.

Deputy Anne Rabbitte: I thank the Minister, Deputy Flanagan, for being here to listen to us. I, along with my party, will not be supporting this Bill. This Bill is regrettably not about reform. It is the unholy price that Fine Gael is prepared to pay for power, and the cost of it is the undermining of the judicial system.

I will carry on from where Deputy Butler left off. It is possibly off the topic of the Judicial Appointments Commission Bill 2017, but as Fianna Fáil's Front Bench spokesperson for children and youth affairs, it would be negligent of me not to highlight where the Government is failing children. The Government is failing to protect children. Dr. Geoffrey Shannon was before the Joint Committee on Children and Youth Affairs yesterday and he produced the report, more than 500 pages long, of an audit he conducted for An Garda Síochána. The summary of the audit related 91 cases. No different from the cath lab about which Deputy Butler spoke, I speak about the out-of-hours service for children which we do not have countrywide. We only have it in four counties. One cannot get a social care worker after 5 p.m.

Out of the more than 5,000 entries on the PULSE system which Dr. Shannon looked at, there were 91 cases of children being taken under section 12. Section 12 is where An Garda Síochána has to intervene to remove a child. I am conscious there are children in the Gallery listening to this, but it is where parents fail to parent and a complaint is made to An Garda Síochána. Regrettably, when there is no social care worker to make that intervention or assessment, gardaí have to intervene, for which they are not trained. In some cases they are left with no choice but to bring a child back to the Garda station for the night. In some cases they present them to a hospital. In most of these cases, however, the child is returned to the family. In some cases there were repeated returns. One of the reasons cited in most of the reports on these section 12 interventions was cases of alcohol and drug abuse where families could not cope and failed to parent.

The Government is failing wholeheartedly to protect children. The fact we are ramming through a Bill two or three weeks before we have annual leave and while there is a whole list of other priorities for us to address is an unbelievable rejection of children. In terms of the protection of children's rights, this Government has been dragging its heels on key issues and legislation. We have yet to see the child care (amendment) Bill which is supposed to bring much-needed reform to the guardian *ad litem* service used in Ireland.

Guardians *ad litem* act as the voice of the child in courtroom proceedings, and provide a vital service in protecting children at their most vulnerable. The current system used to appoint guardians *ad litem* as well as the regulation of the overall guardian *ad litem* system is in dire need of reform. There are patchy appointment mechanisms, whereby a child may be appointed more than one different guardian *ad litem* at different points in any given legal proceeding, or may be denied one for arbitrary reasons. There are no central qualification or selection standards, which means that, while there are many highly qualified and diligent guardians *ad litem*, the system is wide open to exploitation. In all these cases, children in need of strong representation pay the price. Without this reform, we are failing to ensure children's rights to be heard are

protected, thus failing under Article 42 of our own Constitution as well as the United Nations Convention on the Rights of the Child.

Furthermore, the Minister for Justice and Equality continues to sit, as it were, on the gambling control Bill. I have spoken at length on this Bill and I have asked numerous parliamentary questions about it. The previous Taoiseach told me the reason it was not being addressed was because digitisation moves too fast. He sort of dismissed me. Unfortunately, gambling goes on and, unfortunately, it is all happening online at this time. Unfortunately children can access it and place a €5 bet wherever they want once they have an online account. If they fail there, they get an enticement to bring them back into the market. I am talking about children of 15 being able to gamble online. That gives them the first sweetener and the first taste of success. All the while the Government has been sitting on its hands since 2013 with what would be very good legislation if it was brought forward. I asked if we could rewrite it and produce something better. My esteemed colleague, Deputy O'Callaghan, said it was very good and that the Government should be allowed to bring it forward. I have begged the Government to bring forward this Bill, but it is refusing to do so.

The industry is asking for this legislation to be introduced. All the while young hurlers, footballers and other sports enthusiasts are gambling hand over fist. Cuan Mhuire is full to the gills with young people who are gambling and getting themselves in debt. Husbands and partners are gambling life savings away. Hospitals are full. The incidence of suicide is at an unmerciful level. One of the factors feeding into it is gambling. It is a hidden secret. When I held a public meeting recently I was told it is something we do not talk about. However, we are prepared to talk about the judicial system. We have no problem bringing legislation on that into the House three weeks before annual leave and we are told it has to be done.

Deputy Jim O'Callaghan: Hear, hear.

Deputy Anne Rabbitte: Why are we not supporting the people who elected us and the people on the ground who are struggling? Families, husbands, wives and children are struggling. Sometimes children do not have food put on the table because a father or mother is gambling every last penny that comes in. All the while we do not have a regulator or regulation. Why do we not have that? It is because the Government has been sitting on its hands since 2013 and is not prepared to introduce it. It is not prepared to man up to the hard facts. That would be serving the people.

We all agree that the judicial system needs reform, but the Government had the opportunity last October when Deputy O'Callaghan introduced his Bill. If the Government had been reasonable and understood what was needed, it would have grasped the Bill with open arms and worked with it, but it decided not to.

Is the Minister, Deputy Ross, really interested in reform or is he just interested in showboating? I believe he is interested in showboating. If he were serious about his portfolio, he would note that British tourist numbers are down by 4%. Our bread and butter in the west of Ireland is tourism and he is not prepared to address it, talk about it or deal with it. He has not met industry representatives on it and it is part of his portfolio. Shame on him.

I will move back to gambling. Particularly as gambling has moved online, a large number of children and young people are sadly becoming addicted before they even reach 18 years of age. The experience of bullying is an innately harmful and damaging experience for a child or

young person. As the digital world becomes intricately interwoven with the real world, particularly for younger people, the experience of cyberbullying has sadly become commonplace. Whether it is the sharing of intimate or otherwise damaging images online, or the circulation of rumours through messaging apps, the Internet has truly opened up new modes of bullying.

Both the special rapporteur on child protection and the Law Reform Commission have noted this phenomenon and called for legislation to be brought forward which creates specialised offences in the area of cyberbullying. In April 2017, the then Minister for Justice and Equality, Deputy Fitzgerald, indicated that the drafting of the heads of a Bill addressing these issues was under way, but we have yet to see anything concrete in this regard. All the while, constituency offices around the country are hearing very sad tales of teenagers and children who are experiencing online harassment or bullying.

The Minister, Deputy Zappone, has failed to introduce legislation to implement the single affordable childcare scheme, meaning that many children will once again be deprived of access to quality affordable child care.

In the absence of a strong legislative framework to protect the rights of children, we are utterly failing to protect children, particularly those who are most at risk, such as those in foster care, involved in family law proceedings and those from underprivileged backgrounds.

It is important to understand the legislation that is awaited. The affordable childcare scheme Bill is to provide a single affordable childcare scheme to replace the current non-statutory schemes. Pre-legislative scrutiny took place in February and we are awaiting the Bill. The child care (amendment) Bill is to provide for extensive reform of guardian *ad litem* services in child care proceedings. It was expected in February or March 2017 and is now promised for next session. The adoption (information and tracing) (No. 2) Bill is to extend the provisions of the Adoption (Information and Tracing) Bill to inter-country adoption. The date for that Bill is unknown and I have submitted a parliamentary question on it. I have already spoken about the gambling control Bill, which has been sitting there since 2013. Shame on the Government.

According to Sinn Féin we live in a bubble here. Sinn Féin Members talk about the bubble of Leinster House; I think they are in the bubble. Deputy Butler, who spoke before me, talked about real issues. When I ring my constituency office are people interested in discussing the Judicial Appointments Commission Bill this week? Absolutely not. What are we talking about? I am talking about the lack of a superintendent in Gort whom we lost in 2013 and I am wondering when we will get a replacement. Two superintendents are to be appointed in the entire country and I am lobbying to get one reappointed in Gort. However, as I am not a member of the Independent Alliance, I hold my breath on getting a superintendent.

I am well outside the bubble. My feet are clearly on the ground as to what is affecting people. The Judicial Appointments Commission Bill has taken up all our time this week and will seemingly continue into next week. The Oireachtas committee has now advised that it will not accept it. Why are we wasting time on this? What is the fear of the Minister, Deputy Ross? I believe he was embarrassed by the manner of the appointment of the former Attorney General to the Court of Appeal. I think he hung his head in shame and felt he could not cope with it. It was fear and a knee-jerk reaction. It was like “Get me out of here.”

Last week the dwarfs came forward to us. Deputy Butler put on a beautiful presentation where we had 16 dwarfs who are participating in the World Dwarf Games in Canada in August.

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They came to make a fabulous presentation to us because they get no funding. That is in the area of sport, which also falls under the brief of the Minister, Deputy Ross. Those 16 people meet up in different locations to train every week. They are the most amazing people. They will go to Canada to fly the flag and represent Ireland. However, the Government has not given €1 towards it. We are lobbying really hard to get them a few euro to offset some of their costs with flights and accommodation. One of them is 12 years of age and his family is very proud of him. It is horrific to think that we do not acknowledge people who have put in the effort and are going forward to represent our country and who will represent us so well. I raise this because it falls under the brief of the Minister, Deputy Ross.

Local government in Galway is under severe pressure. We are about to hit bankruptcy being €2 million in arrears. We need local government funding; we need intervention. While we have a good network of roads, most of the roads that need an upgrade are controlled by TII. Who is responsible for that? It is the Minister, Deputy Ross. On numerous occasions I have asked him to provide an injection.

We need a Minister who is prepared to legislate and work on his brief. He is the Minister for Transport, Tourism and Sport. Unfortunately we are not seeing any actions from him. He is far too interested in items that do not fall under his remit. It is an old axe he wants to grind. It is about populism and being the centre of attention. He has been the centre of attention all week. If Members on the other side of the House really believed in it, why have we not seen more speakers? I have never in my life seen as few speakers from the other side of the House. Either they do not understand it or they do not support it. Either way it is apparent to me that this is the Shane Ross Bill - earlier Deputy Troy said we should rename the Bill. I do not mean to be flippant but it is very apparent that there is very little support for the Bill coming from the other side of the House.

Home help, homelessness and the domiciliary care allowance are the real issues that are outside of the bubble. Claims for domiciliary care allowance now take 22 weeks to process and getting the July provisions is like finding hen's teeth. It is wrong for people to have to wait 22 weeks, almost half a year, for the domiciliary care allowance. People were told initially it would take 14 weeks and then the time kept being pushed out. The last response I got from the direct line for Deputies was that I should not check again as no date could be provided. That is no response to give to a Deputy or for me to have to give to a constituent but, regrettably, that is the reality on the ground.

Last Christmas I spoke to the Minister for Health about a young lady, Beatrice, who needed an emergency medical card. She is in an unusual position in that she has a life-limiting condition and will not reach full life expectancy. She is an 11 year old child. The situation is complicated because she is Brazilian and does not have full status in this country, which means she fails to qualify for an emergency medical card. She needs medical attention and intervention all the time and she is waiting on an emergency medical card but because she does not have the right reference numbers she will not receive it.

A woman in north Galway who has four children is waiting for a house from Galway County Council. Her landlady has told her she must move out of her house for the simple reason that her daughter is returning to Ireland. The four children are all under the age of 17 years and the eldest is hoping to go to college this year, which she will do, with the help of God. The woman is on a waiting list for housing with Galway County Council. She has been told that she must present as homeless with her four children in the middle of August when her tenancy

lease is up. They will probably be presenting when the leaving certificate results are out. Can one imagine the trauma she is going through? She is asking herself what she is doing. She will be homeless with four children and she does not know if she is going to get a house. All of the children are in education locally. One is in national school, two are in secondary school and hopefully the fourth one is going on to college. I meet that lady on a regular basis but I have no comfort for her because I do not see any solution. Yet, I have 20 minutes today to speak about judicial appointments. That is totally wrong. What all of us should be working on and keeping to the forefront are the people with sick children, those who are homeless, those who are seeking home help hours, people with the domiciliary care allowance, and people looking for the back-to-education allowance. That is what is real but somewhere along the line, Members on the other side of the House have taken their eye off the ball. They lack imagination, vision and deliverability. It is a shame on them. It is an absolute shame that the Minister, Deputy Ross, can bring them to this point but what is even more shameful is that he is not here himself to hear the debate.

Deputy Jim O’Callaghan: Hear, hear.

Deputy Mary Butler: Hear, hear.

Deputy Anne Rabbitte: I feel bad that people such as the Minister of State, Deputy Moran, are taking the criticism on his behalf. The Minister, Deputy Ross, should be here to take it. I would love to tell him to his face about the child he is letting down, the dwarf children, the child with the medical card and about homelessness because he does not want to hear the real facts. Guess who is in the bubble in Dáil Éireann. It is the Minister, Deputy Ross.

Deputy Timmy Dooley: Like other colleagues I welcome the opportunity to address this Bill, but at the outset I wish to put on record how disappointed I am that we are spending time here discussing this Bill today at a time when there are so many other issues that are of the gravest concern. The Minister for Justice and Equality is well aware of issues in his area that we could be addressing. The Minister of State, Deputy Moran, is well aware of issues in his jurisdiction that are far more important and critical to the daily lives of many people than this issue. As a constituency worker, the same as everybody who is elected to this House, I can state that nobody has come to me in recent times requesting or suggesting that this legislation is either necessary or is of such profound importance that we should be debating it here today. I add my voice to those of other speakers who have listed the kind of issues we should be addressing. I will elaborate further on that in the course of my contribution.

It is appalling that Fine Gael has rolled over for the Minister, Deputy Ross. I cannot fathom it. Fine Gael, based on the spread of representation it has, is a party which fully understands the vast array of issues that matter to the lives of so many people. It is not about spreading blame for the existence of those issues but we are elected here to try to resolve them, in so far as we can. We are facilitating the existence of the Government, notwithstanding our desire to implement our own manifesto, because we recognised that could not happen as we were not in a position to make it happen. We swallowed our pride and we facilitated the emergence of a Government in order that the country could be governed. Others, including Sinn Féin, who interestingly enough are supporting this Bill but who are not here, sat on their hands. We tried to identify areas that were unique to us in terms of our manifesto and we sought some compromise from the hardest ravages of what Fine Gael would do if the party was left to its own devices. It does pain all of us on this side of the House that we are left debating this instrument of which the impact at best will be minimal.

It is unfathomable why the Government did not engage with Deputy O’Callaghan, who brought forward a Bill that was proportionate in response to the issue of ensuring that the appointment of judges was transparent and there was a perception of transparency. If one goes back and looks at the appointment of judges, notwithstanding for whom they cast their ballots, by and large they were of the highest standard. I see nothing in this Bill that suggests this approach provides any greater capacity to address the perceived problem than the Bill devised by Deputy O’Callaghan would have done. I really am at a loss. We on this side of the House believe in reform. The Bill Deputy O’Callaghan proposed was based on the establishment of a judicial appointments commission that would be fully independent of Government and would make recommendations to the Government with an appropriate, independent assessment based on the merits of the judicial application. That is reform but perhaps it did not meet the test set by the Minister, Deputy Ross, who seems to want to leave blood on the floor and settle old scores that seem to have preyed on his mind for decades. There is obviously something in his past that makes him want to level the playing pitch in terms of the Judiciary. I fail to understand what it is. Perhaps it would be appropriate for him at some point to clearly outline those issues.

The Ministers of State, Deputies Moran and Finian McGrath, generally come to the House in a spirit of co-operation. Such Deputies are sometimes elected on single issues. They are not getting their legislation through but the Minister, Deputy Ross, is. The Minister, Deputy Flanagan, knows well that Fine Gael has rolled over yet again to keep the Minister, Deputy Ross, happy. He was not satisfied with getting the Stepside Garda station re-opened in return for allowing the Attorney General to move on and make space for one of Fine Gael’s own members to fill that position. I do not question in any way the right of the Taoiseach, Deputy Varadkar, to appoint the individual he saw fit. The fact that he happens to be a member of Fine Gael is of no concern to me because I have every expectation that the Attorney General will discharge his duties in line with the Constitution and by his best lights. The fact that he was a member of Fine Gael is, to me, an irrelevance and it should also be irrelevant to the Minister, Deputy Ross, but it clearly is not.

On the occasion of achieving the Stepside Garda station re-opening, I understand that the Minister, Deputy Ross struggled with his conscience. A mighty battle ensued around the Cabinet table. At least that is what we are told by certain informed sources in the media. We are told there was also a mighty struggle of conscience last weekend when, yet again, the Minister, Deputy Ross was on a knife edge. His posterior must be sore from sliding along that knife over the last weeks. He must be in pain. The Minister, Deputy Ross, won out when the conscience lost yet again. He seems to have been so happy after that Cabinet encounter and after beating his conscience into submission that he awarded himself a round of applause around the Cabinet table. He was so impressed with defeating the conscience and in getting what he wanted from Cabinet. He is happy. He was the great defender of the public good as a Senator, as a publicist, as a panellist, as a columnist, as an author and as a backbencher but in truth, when he got in here he could not resist putting his snout to the very bottom of the pork barrel to help himself to the fattiest and tastiest piece of flesh, I assume to fortify himself for the next election campaign in Dublin Rathdown and he needs fortification. If we look at the track record of the Minister, Deputy Ross, over recent months he will need some fortification when he knocks on the doors of the good people of Dublin Rathdown.

Debate adjourned.

Visit of Council of Europe Delegation

An Leas-Cheann Comhairle: I will interrupt Deputy Dooley for just a second. On my own behalf and that of the Members of Dáil Éireann, I want to take the opportunity to offer a céad míle fáilte to Mr. Thorbjørn Jagland, Secretary General of the Council of Europe. I welcome him and his entourage. I hope they have a very enjoyable and fruitful stay in Ireland.

Judicial Appointments Commission Bill 2017: Second Stage (Resumed)

Question again proposed: “That the Bill be now read a Second Time.”

Deputy Timmy Dooley: I add my voice to the welcome for the Secretary General.

I believe it will take more than putting a snout to the bottom of the barrel and fortifying oneself with the flesh in the barrel. The Minister will need a full metal jacket when he knocks on the doors of the people of south County Dublin. From speaking with people who have contacted me recently on issues that relate to them, I do not believe their priorities are about resolving an unresolvable problem with the Judiciary.

For months after the Minister, Deputy Ross, was appointed, he appeared to have gone into hiding. We assumed that he was coming to grips with the enormity of the task of becoming the Minister for Transport, Tourism and Sport at a really difficult time and because of the range and breadth of issues facing him. Sadly, I was wrong. Perhaps I should have known. I served in the Seanad for the term between 2002 and 2007 with the then Senator Ross. He was always given to the sound bite and in many cases it was form over substance. When he was appointed to the Cabinet I believed that this might change and that he was developing a plan for the transport, sport and tourism sectors. We still await the plan. For months he failed to meet with companies in the public transport sector during a period of a lot of industrial unrest. He did not meet the workers and I am not so sure that he met some of the people in his own Department with responsibility for that area. When Bus Éireann was on strike across the country he showed absolutely no empathy with the travelling public who use public transport. He just sat back and waited for it all to move on, causing huge damage to the State and for those who use public transport.

I should not be surprised. If one goes back over Deputy Ross’s history, it can be seen that he had a great campaign when he was a Senator and wanted to make his way over here from the rarefied halls over there. He realised he had to become a little more punter-focused and a little more consumer-driven. He led a campaign to resolve a problem that was already being resolved. Some people may have forgotten about it. He set himself up as the champion of the motorist on the M50, when the then Government was already addressing the issues around implementing barrier-free tolling. Evening after evening, as motorists were stuck waiting to cross the M50 or get through the toll barrier, the then Senator Ross was on “Five Seven Live” or whatever radio station that would have him, expounding on the problems and how he had the solution. This was even as the problem was under resolution. At present, however, when we again are reaching gridlock on the M50, when there are no toll barriers and when congestion and the capacity of the M50 are reaching the threshold beyond which they would have a serious drawback on the economic activity of Dublin, the Minister, Deputy Ross, is coming forward with no plans. There are no plans that I am aware of or he is being pretty silent about them. The people who drive home this evening from work and who use the M50 might well recall their great champion from some years ago. As a Minister he really can make a difference now,

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but he is concentrating on the resolution of problems that in my humble opinion do not exist.

The Minister, Deputy Ross, made a name for himself, he got elected and he has folded the tent. As the great hunter of scapegoats in the Seanad, he recognised another punter issue; house prices were then escalating at an enormous rate. People were queuing day after day for auctions. A show house would open and the queues would get longer. The first ten houses would be sold in a new development for €300,000 and a week later the next ten houses would be released for €320,000. The house price situation escalated out of control at the time. He led a big campaign on the issue and who did the then Senator Ross blame at the time? The hapless auctioneer, that is, the person whose duty, responsibility and role in life was to get the best return for the vendor. The then Senator Ross led a campaign in the Seanad. Day after day and week after week, he traipsed in. He wanted to bring in all sorts of regulations and he was going to put these people on the back foot. All the while it was clear that it was the lending practices and policies of certain financial institutions that had led to the escalation in house prices. Do Members know what the then Senator Ross said next? He was enamoured of the chief executive of one of the financial institutions - the institution was Anglo Irish Bank and the chief executive was Seánie FitzPatrick. The then Senator Ross was so impressed with the work of Seánie FitzPatrick and the way in which he grew value in Anglo Irish Bank that he suggested Seánie FitzPatrick should be Taoiseach. That is the kind of analysis and approach that is - for me - synonymous with the Minister, Deputy Ross. He has been an appalling failure in his role as the Minister for Transport, Tourism and Sport.

Debate adjourned.

Topical Issue Matters

An Leas-Cheann Comhairle: I wish to advise the House of the following matters in respect of which notice has been given under Standing Order 29A and the name of the Member in each case: (1) Deputy Noel Rock - the need for a primary care centre in Finglas; (2) Deputy Niamh Smyth - the status of the Holy Family special school in Cootehill; (3) Deputy John Bras-sil - ambulance services and response times serving the Killarney area; (4) Deputy Niall Collins - the need to review the Disabled Drivers and Disabled Passengers (Tax Concessions) Regulations 1994; (5) Deputy Mick Wallace - the use of Shannon Airport by US military aircraft; (6) Deputy Eugene Murphy - the withdrawal of banking services in Roscommon and east Galway; (7) Deputy Mary Butler - the financial position of St. Carthage's rest home, Lismore; (8) Deputy Fiona O'Loughlin - the closure of L6047, Coughlanstown Road in Kildare; (9) Deputy Gino Kenny - the future of Luggala House, Wicklow; (10) Deputy Mattie McGrath - census data on high unemployment levels in Tipperary; (11) Deputy Martin Ferris - weekend home help hours; (12) Deputy Anne Rabbitte - the supports to families of children receiving medical treatment abroad; and (13) Deputy Clare Daly - the use of Shannon Airport by US military aircraft.

The matters raised by Deputies Niamh Smyth, Clare Daly, Eugene Murphy and Anne Rabbitte have been selected for discussion.

Sitting suspended at 3 p.m. and resumed at 3.30 p.m.

Ceisteanna - Questions

Priority Questions

Departmental Programmes

1. **Deputy Niall Collins** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation when the terms of reference for the review of the Succeed in Ireland programme will be completed following the recent public consultation; the reason for the delay in finalising this; and if she will make a statement on the matter. [30515/17]

4. **Deputy Maurice Quinlivan** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation if the terms of reference for the review of the Succeed in Ireland initiative have been finalised; the number of submissions that were received through the public consultation process; and the timeframe for the review to be completed. [30650/17]

Deputy Niall Collins: The Minister is well aware of the Succeed in Ireland programme, and we have raised the topic in her capacity as Tánaiste on Leaders' Questions. The review is supposed to be ongoing but now seems to be delayed. There are a number of issues around that, including the terms of reference, the appointment of the independent reviewer and the interim arrangement that should transpire. Will the Minister address those in the reply?

Tánaiste and Minister for Jobs, Enterprise and Innovation (Deputy Frances Fitzgerald): I propose to take Questions Nos. 1 and 4 together.

As announced previously, my Department will soon be commissioning an independent review of the Succeed in Ireland programme. That review, which will be carried out after details of the initiative's full and final costs are available, will equip us with a thorough understanding of the programme's results and its contribution to employment generation in the State. This is in the interests of good governance and ensuring value for money for the taxpayer.

The Deputy knows that on 20 April, my Department launched a public consultation calling for observations on the draft terms of reference for that review. The consultation period ended on 26 May. We received 17 different submissions that are now being examined. The responses we received came from a broad range of stakeholders, including public representatives and the public. Many of the submissions provided general observations on the Succeed in Ireland initiative and its perceived strengths. Others provided specific observations on the draft terms of reference themselves. They will all guide us in the approach ahead. There has been no delay in finalising the terms of reference. We are completing the examination of all the responses to the public consultation, which will help, as I have indicated, to shape the final text.

I acknowledge that the Succeed in Ireland initiative has contributed to the Government's ongoing efforts to win more foreign direct investment, FDI, and jobs for the people of this country. Securing more FDI will remain a key priority of mine as Minister for Jobs, Enterprise and Innovation. I look forward to working with agencies to attract more overseas investment and employment to Ireland. We are all committed to that goal.

I hope what has arisen between IDA Ireland and ConnectIreland can see a resolution as soon as possible. I will make any efforts I can in that regard. There have been some legal efforts and I hope they will come to a conclusion and we will be able to go ahead with the review.

Deputy Niall Collins: It is important to point out at the outset that ConnectIreland has told us that legal action was never taken between the two parties. There was a dispute and that is not at issue. For IDA Ireland to allege there was legal action and to seek to hide behind the veil of impending court proceedings was very disingenuous. We must be very honest. IDA Ireland is not above questioning or scrutiny, and in this instance it has acted quite dishonourably. Its representatives refused to come before the committee on which Deputy Quinlivan and I sit, which really equates to them giving two fingers to the Oireachtas. The way it has handled a number of its interactions with ConnectIreland is very regrettable.

Is there any way the Minister could facilitate the continuation of the programme while this process is under way, perhaps by means of an interim contract? We have been offered different legal advice from what IDA Ireland proffered, indicating there is no impediment to offering an interim contract. Would the Minister go as far as to have the Attorney General, the Government's legal adviser, look at this? It would be very important not to lose the momentum because ConnectIreland is delivering. IDA Ireland has backtracked on some of the statistics offered in a previous debate and it has acknowledged that ConnectIreland has delivered far more than IDA Ireland had previously stated.

Deputy Frances Fitzgerald: I am somewhat constrained in what I can say about this because it is essentially a dispute between the two bodies. There is a difference of opinion as to how many jobs the contract has delivered, the verification process and other details in the operation of the contract. I am hopeful the dispute will be settled in a mutually acceptable way for both sides, and I expect both sides to try to come to a resolution on this. It is in the interests of both organisations and I pay tribute to them. I pay tribute to IDA Ireland for what it has done over the years and the amount of FDI brought here, and I pay tribute to ConnectIreland for the work it has done in recent years. It is unfortunate this dispute has arisen, as I am sure the Deputy will agree. We need to resolve this before we speak about another contract or decide on the future of the scheme. We need to do a proper review and have those terms of reference. Until we know the costs, detail and precise information on the scheme, it would be difficult to go ahead with that. I appeal to both sides to come to a resolution on this in order that we can draw a line under it and then decide the future of such a scheme.

Deputy Niall Collins: Will the Minister publish the submissions received by the Department, as to my knowledge they have not been made available publicly? Will she finalise the terms of reference, as we are dealing with interim terms of reference? The review is supposed to be independent of the Department as well as IDA Ireland and ConnectIreland. Where are we with that review? There seems to be drift. We got past the end of the contract date, when we last raised this and there seemed to be a bit of stonewalling coming from IDA Ireland and the Department, although the Minister was not there at the time. That was so we would get to the point where the contract had expired. There has been much momentum built up and many leads in the pipeline, but we are letting a really good opportunity slide by, all on the basis that IDA Ireland is the golden boy. I am calling out IDA Ireland on its treatment of ConnectIreland, which has been reprehensible. It feels threatened by ConnectIreland, although it should not. IDA Ireland must be bigger than that. We should bear in mind that the Succeed in Ireland initiative addressed the Dublin regional imbalance by bringing in the smaller type of clients that IDA Ireland does not target.

Deputy Frances Fitzgerald: I have given the Deputy the number of submissions to the Department. I will check if the people who made submissions were advised as to whether they would be public or private, but if it is feasible to publish them, I have no objection to it. It might

be helpful for people to see those submissions. I will certainly check it out and revert to the Deputy on that.

We need every initiative coming from our diaspora around the world to help us with FDI. If a successful model can be found and will continue to work, or if the existing model could be adapted somewhat, that should come about. That would compliment the work of IDA Ireland. I stand by the work IDA Ireland does. It is unfortunate this position arose, and I certainly want to see it resolved if there is anything I or my Department can do. There is no delay with this. I am very keen that this is brought to a conclusion so that we can move on. The Deputy rightly says there is scope for initiatives such as this and I pay tribute to everyone involved. We need all these jobs.

Deputy Niall Collins: What about the independent review?

Deputy Frances Fitzgerald: There is no decision on that yet but the person will be independent and as soon as I have made a decision, I will inform the House.

Deputy Maurice Quinlivan: I agree with the comments of Deputy Niall Collins about IDA Ireland, whose conduct in this debacle has been disgraceful, as has the way it has treated ConnectIreland and the Succeed in Ireland project. There is no legal dispute, despite what IDA Ireland states. IDA Ireland failed to come before the jobs committee when we requested it to come, citing a legal case which I do not believe existed. The debacle with ConnectIreland and the Succeed in Ireland initiative really puzzles me and I highlighted my frustration on this issue with the previous Minister on a number of occasions. This is a job creation scheme that used our diaspora across the world to bring jobs to Ireland, the majority of which were to small towns where IDA Ireland clients do not operate or locate. The ConnectIreland team has established a network of 89,652 connectors in 147 countries and I agree with the figure it gives for jobs created of 2,822. The creation of these jobs costs the State substantially less than an IDA Ireland-created job, with the cost being €4,000 per job as opposed to €10,500 for those created by IDA Ireland. If no jobs were created, it would have cost the State nothing. In what world would it make sense to shut this down? I urge the Minister to re-examine the initiative as it is a worthwhile programme operated at low cost with huge economic benefits to the State.

Deputy Frances Fitzgerald: We should acknowledge that the work IDA Ireland has done in recent years to attract foreign direct investment has been very impressive. The results can be seen and there is a pipeline of very good projects in companies which want to invest in Ireland, some of which I have already met. It is unfortunate that a dispute has arisen. IDA Ireland received clear advice about appearing before the committee and that, until there was a legal resolution, its representatives would not be in a position to do so. They are happy to talk to the committee generally about their programmes, however.

I discussed the terms of reference for the review and the Deputy made available various statistics. We have to look at what the precise figures are and to look at the costs and I agree with Deputy Collins about the need for an independent review. That is the intention. I hope that, possibly through arbitration, we can come to a resolution that is satisfactory to both sides.

Deputy Maurice Quinlivan: Can the submissions that have been made be published? They should be published if they can be. I appreciate that a review is ongoing but how long will it take? This project was shut down in March and there is no legal impediment to the Department providing a bridging contract until a new tender is won. I have concerns about how the review

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was conducted from the start. I sent a parliamentary question to the Minister this morning and was not happy with her response. We were contacted to be told there was no email address for submissions on the website. The website has been down for a number of weeks and no submissions have been published. Nobody is dissing IDA Ireland but we are expressing our concern about the way it has treated ConnectIreland. IDA Ireland has not acted responsibly.

As the Joint Committee on Jobs, Enterprise and Innovation was examining the Succeed in Ireland initiative, we were provided with the number of jobs created, to guide members on the effectiveness of the programme. ConnectIreland provided a much larger number of jobs, at over 2,000, but IDA Ireland disputed this figure, stating that only 535 were created and that a portion had not yet been verified. The day after the Succeed in Ireland programme was shut down, a number of jobs were verified so they could not be included in official tallies or for the committee's consideration, making the programme seem less successful than it had been. When will the review be published?

Deputy Frances Fitzgerald: I would like to see the review. We need to get resolution first so that we have all the details and can move on to do the review. I understand from IDA that, to date, the Succeed in Ireland programme, operated by ConnectIreland, has generated approved projects with the potential to deliver 2,831 jobs, of which 575 have been verified as delivered on the ground with a further five, notified in this quarter, awaiting verification. IDA Ireland pays ConnectIreland for each job delivered on the ground. I hope that, once we decide on the terms of reference, the review can be done because we need it to be done and published so that we can move on from this incident between the two bodies.

Brexit Issues

2. **Deputy Maurice Quinlivan** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the way in which she plans to address the level of unpreparedness of businesses for Brexit (details supplied). [30623/17]

Deputy Maurice Quinlivan: The question is about Brexit and the unpreparedness that exists not just in Government, but in businesses across the State. A quarterly survey of InterTradeIreland showed that 97% of businesses have no plan in place to deal with Brexit, while a later survey showed that 98% had no plan, so the level of preparedness had gone down.

Deputy Frances Fitzgerald: The Government is investing heavily in promoting and supporting the need for businesses to become Brexit-ready. I agree with the Deputy that we need companies to think very clearly about the challenges posed by Brexit. Ever since the result of the UK referendum, the agencies under my remit have been highly engaged in encouraging and supporting companies to prepare for Brexit. Enterprise Ireland created a UK export website featuring documents, videos, etc., addressing the key Brexit challenges, including the immediate currency aspects.

EI's current Prepare for Brexit campaign includes a Brexit scorecard and this is being taken up by more and more companies to self-assess their preparedness. It encourages them to think about the different elements of Brexit and how they may be impacted. There is also a Be Prepared grant of up to €5,000, which is available through the local enterprise offices. Some 12,000 businesses have accessed it and this shows that companies are thinking about it and analysing their situation. The LEOs and EI are also working directly with clients and Bord Bia

has launched a similar tool.

InterTradeIreland interviewed 750 SMEs on both sides of the Border in the period January to March 2017, which is a relatively small sample. I am concerned about the lack of preparation in companies. My Department recently published the findings of a survey of over 1,000 SMEs on the challenges posed by Brexit, which indicated that, while only 37% felt that there was some immediate impact, 61% expected to be impacted over the following 18 months. Currency costs and financial issues were the key concerns.

Deputy Maurice Quinlivan: The first survey showed that 97% of businesses were not prepared and the next showed 98%, when one would have expected it to go in the other direction. The level of unpreparedness is unacceptable one year on from the Brexit vote. The fact that the level has deteriorated should concern us a lot.

InterTradeIreland's staff levels have dropped consistently over the past six years and it has fewer staff than last year, despite the Brexit vote and the increased workload this has brought. A freedom of information request from the Department outlined that InterTradeIreland already operated on a very tight budget, given the cuts imposed jointly by both finance Departments, and it is just about able to carry on its legislative duties.

Enterprise Ireland has lost 273 members of staff in the past ten years. How can this agency realistically prepare businesses exposed to Brexit in addition to the usual work it does when staff numbers are depleted so much? Is the level of staffing and funding affecting the preparedness levels of businesses for Brexit?

Deputy Frances Fitzgerald: There is much work to be done by all stakeholders, including the Government and organisations representing businesses. Judging from my experience yesterday with many of these groups and from a meeting I attended in Enterprise Ireland last week with a range of businesses, there is a wide variation in companies' preparedness for Brexit and awareness of it. Companies totally dependent on the UK market are exquisitely sensitive to the impact and are thinking through market diversification and the research and innovation they need to do. There is much thought and concern on the issue. Initiatives are being taken by many companies. Enterprise Ireland is working hard to ensure companies are putting plans in place. The Department is supporting InterTradeIreland and providing it with additional funding this year to undertake a range of initiatives to help SMEs adapt to changing circumstances. The impact on small and medium enterprises, in particular those with a dependency on the UK market, will be very challenging. They will need to diversify, which can be challenging at a time when companies are watching their margins and it can be difficult to put the money in. No effort will be spared to work with businesses and their representatives to ensure they have plans in place to deal with Brexit.

Deputy Maurice Quinlivan: I thank the Minister for taking an interest in this issue. I also want to mention the recent admission of the Minister for Foreign Affairs and Trade, Deputy Coveney, that special status for the North is needed. However, we must ensure the agencies discussed today are ready to assist in all possible circumstances, including no deal being reached and World Trade Organization, WTO, tariffs introduced. As a result of the disarray in the Tory Government in Britain, this outcome is a very strong possibility, and we consequently need to prepare our jobs agencies to take pre-emptive action to help businesses and exporters. To assume the DUP will do anything positive for Ireland with respect to Brexit would be a massive mistake.

In excess of 1,933 categories of goods are traded South to North and 2,269 traded North to South. Businesses will need extensive help in navigating any obstacles should the worst come to pass and no deal be agreed. Will the Minister commit to re-examining staffing levels at these three agencies to ensure they are adequately resourced and staffed and can provide all necessary assistance and preparation?

Deputy Frances Fitzgerald: I have made it clear that we will be supporting InterTradeIreland and increasing its budget. The Department and I have been working on further measures targeted at the needs of companies in terms of working capital, which is an issue, and business development. We will be surveying companies again in the near future. The Deputy is correct in terms of the impact on trade between North and South and the need to be alert to that. Trade between the Republic of Ireland and Northern Ireland is currently extensive and far-reaching. The value of goods traded South to North in 2016 was €1.65 billion while North to South trade was €1.05 billion. It is very significant for SMEs. Over 15% of Irish SMEs' exports are destined for Northern Ireland and the key sectors involved include dairy products, meat and live animals. A recent study undertaken by InterTradeIreland and the ESRI analyses a so-called worst-case scenario whereby WTO tariffs would apply. It shows that there would be a very significant effect on trade between North and South if that eventuality were to occur. That points to the importance of the Brexit negotiations, the right outcome being reached and being very clear about the impact on trade.

Office of the Director of Corporate Enforcement Legal Cases

3. **Deputy Niall Collins** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation her views on the collapse of a trial (details supplied) following the trial judge's comments regarding the conduct of the investigation by the Office of the Director of Corporate Enforcement, ODCE. [30223/17]

Deputy Niall Collins: I ask for the view of the Minister and the Government on the fallout from the recent trial of Seán FitzPatrick. All Members are now aware of how that case ended. Bearing in mind that it was a retrial and in view of the comments made by the presiding judge during the trial and after the verdict, some of which was quite damaging, damning and concerning, notice must be taken of the failings in the case.

Deputy Frances Fitzgerald: The shortcomings and investigative practices of the ODCE highlighted by Judge John Aylmer in the case of the DPP v. Sean Fitzpatrick are completely unacceptable. They fell far short of the standard impartial, unbiased and thorough investigation we expect and demand.

My predecessor, the Minister of State at the Department of Education and Skills, Deputy Mitchell O'Connor, wrote to the Director of Corporate Enforcement, Mr. Ian Drennan, on Wednesday, 24 May requesting a report, as Deputy Collins is aware, under section 955(1)(a) of the Companies Act 2014. She asked that the report provide an explanation of issues related to the investigations by the ODCE into Anglo Irish Bank since 2008. These included the issues referred to by the judge and Deputy Collins, including the coaching of witness statements, late disclosure of documents, a perceived bias by ODCE investigators, the shredding of documents, and any other relevant matters. I received the report from the Director of Corporate Enforcement on the day it was due. I thank Mr. Drennan for that.

I have sought advice from the Attorney General on the report. The report sets out the facts relating to the case and does not purport to be an investigation or an inquiry but is solely a review of the facts and will prove very helpful. Upon receipt of advice from the Attorney General, I will be in a better position to determine the next steps. Action will then be taken to address any shortcomings. This could include changes in procedure, organisational restructure, enhanced powers, and possibly new legislation. Once the report is published and thoroughly analysed, the direction for the future can be considered in terms of changes that may be necessary on foot of the report.

Deputy Niall Collins: To recap on the details of the case, it was the longest-running criminal trial in the history of the State, as the Tánaiste is aware. It showed all and sundry how inept the State is in terms of investigating and prosecuting white-collar crime. The majority of the blame must rightly be laid at the door of the ODCE. Equally, an eye must be cast on the actions or inactions of the Garda Síochána and on the Office of the Director of Public Prosecutions, DPP. Other trials are going on every Monday through to Friday. This House will have to consider who holds the Office of the DPP to account in terms of its quality control and throughput, much of which is questionable. I am glad the Tánaiste recognises the seriousness of the comments made by the judge in regard to witness coaching, the shredding of documents and the biased and partisan approach of the ODCE. The Tánaiste said she received the report on the date it was due and it is good that it was delivered in a timely fashion and sets out the facts. I hope it sets out a little more in terms of the role of the professionals involved in the case or the lack of professional involvement. Will the Tánaiste publish the report? How soon can Members expect to have sight of it? It is a huge issue of significant public interest and the public is entitled to know how such a serious case, dealing with events which impacted on the lives of so many people, failed abysmally.

Deputy Frances Fitzgerald: It is very important that any action taken is in line with fair procedures, due process and natural justice and with full knowledge. I must be very aware of that. I do not want to take any action that would exacerbate the situation. The rights of persons named in the report would have to be respected and legal advice in respect of publication will have to be obtained. However, my intention is to publish the report and I would like to do so. The Attorney General received the report a couple of days ago when it was received by the Department. I want to give him time to consider the report and carry out any redaction necessary to protect those named in it. However, the Director of Corporate Enforcement was asked for a report of all the facts, which would cover various stakeholders. Deputy Collins mentioned the Garda and the DPP in this regard. The Director of Corporate Enforcement was asked for a factual report, which is what I have received.

There is some legal work to be done on it. As soon as I have that, I would like to publish the report.

Deputy Niall Collins: The Tánaiste has just left the Department of Justice and Equality and has intricate knowledge of the detail on the Commission on the Future of Policing in Ireland and the body of work it is about to undertake. What is her view of the proposal that we should investigate establishing a serious crime and fraud agency similar to what exists in the UK? It was not explicitly mentioned or stitched into the terms of reference of the Commission on the Future of Policing in Ireland, but it is certainly something that we could look at in terms of addressing white-collar crime now and in the future. While the Criminal Assets Bureau focuses solely on criminal assets and follows the money trail in relevant cases, the State has been shown to be inept in terms of dealing with white-collar crime, which, with the advance of technology,

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takes place on so many different levels. Having a properly constituted and resourced agency similar to that in the UK is something that we need to give serious consideration to. Can the Tánaiste give her views on that, because she did say in her previous reply that she might look at restructuring. She seems to be open to a suggestion that will work.

Deputy Frances Fitzgerald: We have to learn the lessons from what has happened here. We have to be clear about the applicability of what happened here and whether that is more widespread. This was a hugely important case. Was it confined to this case? If so, how and why did this happen? What are the facts that surrounded the particular approach to the issues that I have outlined, that the judge spoke about and to which the Deputy is referring?

4 o'clock We have to think very seriously about whether we have the appropriate structures in place and whether an agency such as the Deputy described is necessary. On the issue of the future of the Commission on the Future of Policing in Ireland, it will be looking at the administrative arrangements of Garda resources.

The Deputy mentioned that criminals are using ever more sophisticated technology. There is a specialist unit in the Garda at the moment, but it is inevitable that it will be advanced further, given what we are seeing now in terms of international crime and encryption.

Question No. 4 answered with Question No. 1.

IDA Ireland Site Visits

5. **Deputy Alan Kelly** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the criteria which is being used by IDA Ireland to ensure site visits by potential inward investment companies to regional counties. [30516/17]

Deputy Alan Kelly: This is the Tánaiste's first time taking parliamentary questions relating to her new Department. I wish her well in her new role.

My question is on IDA Ireland. I have plenty of time for IDA Ireland. It has a very good chief executive and some fantastic people working for it, but I feel that it does not always have the resources that it needs. I have often argued in this House for more resources for it.

I want to raise the issue of regionality. The latter, and bringing jobs into regions, is a critical component of the programme for Government, and it is something that we all advocate in this House. I want to get into the detail of the criteria used for site visits and for pushing certain potential inward investment companies to certain parts of the country. What criteria are used when it is decided where some companies should be encouraged to go? We cannot break confidentiality for specific companies, but I want to see a transparency of process.

Deputy Frances Fitzgerald: IDA Ireland remains firmly committed, as do I, to increasing regional development. That is why the agency has targeted a minimum increase in investment of 30% to 40% in each region outside of Dublin by the conclusion of its current strategy in 2019. Progress is being made towards that goal. Sometimes this is not reflected properly, and I will provide some statistics that support what I am saying.

In 2016 over half of all IDA Ireland-supported jobs created were based outside of Dublin. That is important. There are currently 23 IDA Ireland-owned units and 84 IDA Ireland-owned sites which are available for marketing as locations for investment. These are spread through-

out the country. If Ireland did not have those sites it would clearly diminish Ireland's ability to win mobile foreign direct investment, FDI, particularly for the regions.

Determining which of these sites may be attractive to a client depends very much on the particular requirements of the company concerned. Factors that are habitually important to overseas investors include the suitability of local infrastructure for the particular business, the proximity of transport hubs and the availability of skilled talent. It is often the case as well that multinational companies seek to base themselves as close as possible to businesses operating in the same industry. There is a wide variety of factors.

IDA Ireland always does its utmost to encourage clients to locate in areas that are most in need of investment. That is very important. I want to see that approach continue because we want to see the benefits of FDI spreading across the country into areas that need that investment. We have to remember, however, that the ultimate decision as to where to invest is always taken by the company itself.

It is also important to remember that site visit activity does not necessarily reflect investment potential because at least 70% of all new FDI comes from existing IDA Ireland client companies. It should also be emphasised that FDI only forms one part of investment in regional locations. Indigenous enterprise is responsible for a significant portion of employment growth, particularly outside of Dublin.

Deputy Alan Kelly: I am well aware that companies ultimately make their own decisions. I am also aware that the companies already here expand and make up a large proportion of the investment. Ultimately, companies that do come here have to be shown specific locations. There is no hidden agenda here. I have had direct experience in helping to get IDA Ireland into my own county. I was directly involved with First Data, the announcement in respect of which was massive for our county. I intervened and, as a result, we got Amneal into Cashel. I am working in a number of other areas at the moment. My real issue is that we can go out and explain to people that there is no hidden agenda and that IDA Ireland is doing its best for the regions. However, we could then look at the data, see a lack of investment in some regional areas, realise that €150 million has been put aside for investment in buildings under IDA Ireland's programme and the Action Plan for Jobs and identify the fact that some of the locations that should be targeted for investment have not been targeted. People then become concerned that the criteria are not fair and perceive that FDI clients, potential or current, are not being pushed towards the areas in which we need this investment most. We need to show some transparency and ensure that the public can have confidence, because it is not always backed up by the statistics or the capital funding that is available because it is being pushed into areas that already have FDI.

Deputy Frances Fitzgerald: If the Deputy has any suggestions about increased transparency he should give them to me. There is nothing secret about the kind of work that IDA Ireland has been doing. I can give the statistics on the site visits which show that good progress is being made toward the goal that IDA Ireland has set for itself. It is clear that there is a goal of a 30% to 40% increase in FDI in every region outside Dublin by 2019. That is the goal and that is what it is working towards. Some 173 site visits were made in the first quarter of 2017. That is up from 136 over the same period last year. Given the number of visits that are being made, it is quite clear that it is spread across the country. There are areas to which it is more difficult to attract investment, and obviously there is a focus on those areas as well. IDA Ireland is extremely committed, from what I have seen since I took office, to investment in every region of

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Ireland. In 2016, 52% of all new jobs that were created were created outside Dublin. That is a success. The Deputy is probably referencing some particular areas, but clearly huge progress is being made with 52% of all new jobs being created being outside the capital. Some 55% of all the site visits in 2016 were to locations outside of Dublin, so IDA Ireland is behaving in a way that reflects the targets it has set for regional development.

Deputy Alan Kelly: I have a lot of time for the chief executive of IDA Ireland and many of the people who work for the organisation. They do a very good job but the transparency the Minister spoke about can come through in the way in which IDA Ireland converses with local authorities and, in particular, Members of the Oireachtas. We all have to use our own constituencies as examples. Benamore Park in Roscrea is one of the best sites in Ireland and I have not heard of it being the subject of any real visits. It has been there for years. Sky Innovation Park is located in Tipperary town. The latter and Roscrea are the two towns in Ireland - not to mention County Tipperary - which badly need investment. They have suffered a great deal. It does not come through that they are on the top of the agenda of those who make the decisions in respect of itineraries and visits. If we could deal with that and have transparency along the way, it would help all of us in doing our jobs. They are practical examples of how the Minister could bring about such transparency because the decision-makers in IDA Ireland need to ensure that they push this out to enough locations.

Deputy Frances Fitzgerald: I take the Deputy's point and will ask IDA Ireland to consider his points because we need the support of Deputies and Senators and all local stakeholders in order to advance jobs investment. If there are initiatives that Deputies think could be taken in their areas, I want to hear about them, particularly as we now have regional action plans. I assume the Deputy is linking with the regional action plan in his area.

Deputy Alan Kelly: I launched it-----

Deputy Frances Fitzgerald: If that is the case, he can direct some of these questions to the regional action committee-----

Deputy Alan Kelly: -----which means I am speaking with knowledge.

Deputy Frances Fitzgerald: The regional action plans are very important in the context of the points the Deputy makes. As they become more powerful and attuned to the needs of their areas - they will have a certain level of familiarity in this regard already - Enterprise Ireland and IDA Ireland will listen to them and their recommendations will guide where the sites are located and where the jobs go. It does depend on the company and we have to recognise that.

Other Questions

Comprehensive Economic and Trade Agreement

6. **Deputy Mick Wallace** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation further to Parliamentary Question No. 257 of 31 May 2017, the eight areas that the Government has excluded from the Comprehensive Economic and Trade Agreement, CETA; the process by which decisions to exclude particular policy areas are made; the number of submissions for exceptions that were made to her Department; the Departments from which they

originated; the policy areas to which they related; and if she will make a statement on the matter. [30236/17]

18. **Deputy Mick Wallace** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation her views on the potential impact of CETA in view of the fact that the State's negative list of eight policy areas is considerably shorter than other member states, for example, Germany, which has 25 pages of exemptions; her further views on the fact that Ireland's negative list does not include services such as water, education or health; and if she will make a statement on the matter. [30237/17]

Deputy Mick Wallace: I welcome the Minister to her new job. I hope she enjoys it more than the previous one.

Deputy Frances Fitzgerald: Deputy Wallace is everywhere.

Deputy Mick Wallace: The European Commission explanatory document on negative lists states that all sectors or sub-sectors that are not listed on the negative list are, by default, open to foreign service suppliers under the same conditions as domestic service suppliers. The Minister's predecessor stated that substantive engagement took place, sector by sector, to identify Ireland's interests over the course of negotiations. However, the negative list for Ireland refers to only eight areas, effectively leaving almost all areas of life in this country open to the provisions of CETA, which is nothing less than an attack on our power to regulate in the interests of the public. Why is this the case?

Deputy Frances Fitzgerald: There is a very straightforward answer to the point the Deputy has made. He has made it several times, for example, in respect of Germany. The latter has a shorter list than Ireland and it is important to note that the German list is prepared by the 16 Länder while Ireland's is a single national list. That is the first point to explain the disparity between the two lists.

Ireland is an open trading economy. Under successive governments Ireland has continued to promote a policy for open international trade and competition. This has greatly benefited our economy. The process by which decisions are made regarding exemptions is through a comprehensive consultation with Departments at every stage of a negotiation of a free trade agreement.

The EU-Canada economic and trade agreement, CETA, commits Canada, the EU and its member states to permit access to each other's domestic services market and to treat foreign services suppliers no less favourably than their own service suppliers.

It is important to note that one of the features of Canada-Ireland economic relations has been the high level of Canadian investment in Ireland, which we welcome. We will also welcome the visit of the Canadian Prime Minister next week. At the end of 2015, Ireland's FDI stocks in Canada amounted to over €4 billion, making Ireland the thirteenth largest source of FDI to Canada, and there are some 400 Enterprise Ireland client companies doing business in Canada.

There are exceptions to the general commitments to liberalisation of the services market. These are listed in Annex I, reservations for existing measures and liberalisation commitments, and Annex II, reservations for future measures to the agreement. There are EU-specific exceptions that cover all of the member states and Ireland is also covered by its own specific exceptions. We need to look at those two lists.

The annexes list all the existing measures and restrictions that the EU and Ireland want to maintain in respect of Canadian service providers. It is important to note that CETA does not cover public services. EU member states will be able to retain ownership of public monopolies, CETA will not force governments to privatise or deregulate public services - such as the water supply, health or education - and EU member states will continue to be able to decide which public services they want to keep public and subsidise them.

Deputy Mick Wallace: Given that it is the Minister's first time answering questions in her new capacity, I would expect her to paint a prettier picture than the one we anticipate. There is a lot to be said for trade deals around the world. I am totally in favour of doing business with different countries but very often these trade deals have led to various types of problems. Much of the research around CETA comes straight from fairyland. The modelling used, for example, assumes constant full employment so no one can be unemployed due to imports. It assumes balanced trade so a country's total output cannot be undermined by a trade deficit. It assumes no international capital flows. It is a false notion that companies will not be able to shift investment abroad.

I know that this is a new portfolio for the Minister and that she is being fed a certain line by the civil servants. However, the picture is not as rosy as we have been led to believe and as the Minister is starting out in this area, I ask her to look under the covers to see exactly what CETA will mean for the people of Ireland.

Deputy Frances Fitzgerald: I ask the Deputy to do the very same. He should look under the bonnet of CETA as well to see the huge advantages it offers in Ireland. It covers virtually all aspects of economic activity. The Deputy should consider the new market opportunities which are very significant for many Irish firms and in the context of Brexit they will welcome those opportunities. Irish companies will now be able to bid for Canadian public contracts as limitations on those will end under CETA. Irish firms will also benefit from the recognition of product standards and certification thus saving on the double testing on both sides of the Atlantic. Ireland has strong protections for the beef industry through restrictive quotas for Canadian beef entering the EU. CETA will also provide very significant opportunities for the dairy industry which could find Brexit quite challenging given its dependence on the UK market. There are many opportunities in CETA for Irish firms and business which will help many Irish families. It is very important to consider that aspect as well.

Deputy Mick Wallace: While the Minister was busy looking under the bonnet of the Department of Justice and Equality and trying to defend the poor Garda Commissioner day and night, I was looking under a few other bonnets, including those of CETA and the Transatlantic Trade and Investment Partnership, TTIP, for several years. I can assure her that there are problems in these areas. The Minister mentioned beef. No one in his or her right mind would claim that the regulation around the production of beef anywhere in North America, be it the United States or Canada, is as good as ours. When beef comes in from Canada it will be cheap, as is the case with beef from Brazil. Beef from the latter is coming into Ireland into wholesale units where it is repackaged and sold as if it was Irish, with the original labels removed. It is produced for a third less than Irish beef because our regulation is much better. Likewise, CETA and TTIP, when it unfortunately arrives here, will make it difficult for Irish producers of food to compete with Canada and the USA because of their lower standards of regulation.

Deputy Frances Fitzgerald: While Irish meat export volumes to Canada are low, there is a real prospect of growing business with that country. That is important for producers here. I am

not saying there are no difficulties with these international trade agreements - I accept there can be aspects - but I am asking the Deputy to have a more comprehensive approach to it because there are huge opportunities. The removal of Canada's 26.5% import tariff will be significant. The Irish dairy industry will benefit from Canada opening a new bilateral quota with the EU of 18,500 tonnes of cheese and the elimination of all tariffs on its milk proteins. These are important initiatives which will help very important sectors in Ireland to grow their markets and diversify, which is even more important given the challenge of Brexit. I am pointing out all the positives around CETA which will impact on farm families and business up and down this country as they face into the challenging period ahead. That aspect of these trade agreements is certainly worth putting on the floor of the House.

Legislative Programme

7. **Deputy Niall Collins** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation when the heads of the Bill regarding protections for workers on insecure, low-hour contracts will be published in 2017, in view of the urgent need. [30224/17]

51. **Deputy Richard Boyd Barrett** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the timeframe for the publication and enactment of legislation dealing with low-hour contracts and precarious work; and if she will make a statement on the matter. [30475/17]

Deputy Niall Collins: What is the status of legislation to protect workers on insecure and low-hour contracts? Has the Tánaiste had the opportunity to read her way into the brief? It is an issue the Joint Committee on Jobs, Enterprise and Innovation has invested nearly all its time in to bring the legislation forward. It is an issue which featured very prominently in my party's election manifesto and it was one of the issues we highlighted in the confidence and supply agreement between the Fianna Fáil and Fine Gael parties to underpin the minority Government. I impress on the Tánaiste the urgency of the legislation.

Deputy Frances Fitzgerald: I appreciate the urgency of this. My Department received recently the first draft of the Bill from the Office of the Parliamentary Counsel and, subject to Government approval, I envisage the publication of the Bill at an early date once the drafting process is complete. The joint committee has confirmed it does not wish to engage in pre-legislative scrutiny of the draft legislation. As such, the Bill, once published, can come straight to the House in keeping with the urgency to which the Deputy refers. The Government's legislation will ensure employees are better informed about the nature of their employment arrangements and, in particular, their core terms at an early stage of their employment. Employees will not have to wait to get those details. It will strengthen the provisions around minimum payments to low-paid, vulnerable workers who may be called in to work for a period but not provided with that work. That is an issue which has been raised. It will also deal with quite a number of other things.

Deputy Niall Collins: I appreciate that the Tánaiste sees that the Bill is urgent but she has not provided us with a date. I press her to do so. Is it likely we will see the Bill before the House in the current session at least to kick off its passage through the Oireachtas? In the work of the joint committee, pretty much everyone has been on the same page, which is important. It is legislation which will impact on the most vulnerable people in the employment landscape. The fact we have been waiting so long impresses on us all the urgency of the Bill. I would not like to see the opportunity being lost. We all know how precarious the current Dáil is. That is

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the result that was handed to us by the public. There is so much expectation on the Bill that I impress the point on the Tánaiste again and ask her if she has a date in mind.

Deputy Frances Fitzgerald: It is clear that good progress has been made. This was only referred to the Office of the Attorney General on 4 May, but there has already been a first draft from the Office of the Parliamentary Counsel. While I cannot provide the Deputy with a precise date, all the indications are that the Bill will be published at an early date once the drafting process is finalised. I appreciate the points the Deputy makes and the points which were made at the joint committee. It is important to move to ensure workers on low-hour contracts who consistently work more hours each week than are provided for in their contracts of employment are entitled to be placed in a band of hours which reflects the reality of the hours they have worked over an extended period. There are also other aspects of the Bill. I will discuss it further with my officials to see if I can get a clear indication. Given that a first draft has been provided, it may be in the House early in the next term, depending on the complexity and responses of my Department.

Question No. 8 replied to with Written Answers.

Science, Technology and Innovation Strategy

9. **Deputy James Lawless** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation if she has considered the need for a dedicated stand-alone office of a chief science adviser that would be free of other responsibilities and solely responsible for advising the Government and its members on scientific and research issues; and if she will make a statement on the matter. [30412/17]

Deputy James Lawless: Can an office of chief scientific adviser, free of other responsibilities, be created? Such an office was in place under previous Administrations but it was merged. Does the Government have a view about re-establishing the office?

Minister of State at the Department of Jobs, Enterprise and Innovation (Deputy John Halligan): I thank Deputy Lawless for his important question and his attendance at the briefing with Professor Mark Ferguson of Science Foundation Ireland, which I hope he found informative.

The office of chief scientific adviser to the Government was created in 2004 to provide expert advice on matters of science policy. In November 2011, the public sector reform initiative called for a rationalisation and reduction in the number of State bodies. Following consultation with Departments and on foot of a memorandum for Government, it was decided to dissolve the office of chief scientific adviser. However, it was agreed that Professor Mark Ferguson, director general of Science Foundation Ireland, SFI, would assume the role of chief scientific adviser in addition to his SFI responsibilities. Deputy Lawless has met Professor Ferguson on a number of occasions. The Government was of the view that the suppression of the office of the chief scientific adviser as a stand-alone office could be done without undue adverse impact on the Government's access to advice on scientific matters. The decision to combine the role with the role of director general of the SFI ensures greater synergies between the development of policy and the support of national scientific aims. Like Deputy Lawless, I am very interested in science. We have many discussions on it. I have looked at this very carefully and wondered if it had an impact on the advice the Government receives on all issues. I believe it has not.

In his role as chief scientific adviser, Professor Ferguson sits on a number of committees, including the implementation group on Innovation 2020 and the high-level group which informs national policy and direction for Horizon 2020 and EU framework programmes. He also represents Ireland at both EU and international fora. Ireland has a national target to win €1.25 billion in competitive funding from Horizon 2020 and has already drawn down €424 million. I am satisfied, having looked at it very carefully, that there has been no diminution of the quality of advice offered by the chief scientific adviser notwithstanding that there is no specific office for that role.

Deputy James Lawless: I thank the Minister of State for the reply and the invitation to attend the briefing with Science Foundation Ireland, which was a very useful session. I do not want to talk about the individual, because we have learned about doing that on different topics in the House over recent days. I want to talk about the formulation of the offices and the relationship between them. It was a progressive move in 2004 to create the office of chief scientific adviser. There were many arguments in favour of that policy. I attended recently the science march with a number of academics, policymakers and others with an interest in the area who came together to make the point that a more evidence-based policy was needed with a whole-of-Government approach and to call for investment in research, development and science. The Minister of State and I have often talked about that and I know he understands the need for it. It was regressive to abolish the position in 2012. In the same way, we have an Attorney General, who is separate from the Chief Justice, an Office of the Parliamentary Legal Adviser, and a budget office that is being created, which have different functions in terms of advice to the Government and are separate to the multiple agencies that stem from Government. At the time the office was abolished, it was understood that it was for financial considerations. One would hope that, as financial fortunes are, hopefully, beginning to be restored, there may be scope to revisit it. There was some criticism at the time of the abolition that it was seen as a shortsighted move and one that potentially created a conflict of interest in terms of the agency and the advisory roles. It is important enough to be reconstituted into its own office now that budget conditions, hopefully, allow that to be a possibility again.

Deputy John Halligan: I will make a number of brief points. It is important to note that, when required to do so, Professor Ferguson provides top-level, independent and informed advice to the Government, either in response to direct requests or through his involvement in cross-departmental groups such as Horizon 2020. I took some advice and made some inquiries on the model in other countries. Interestingly, there are other countries which invest far more in science than we do, and the Deputy and I agree that we should probably be doing a lot more in research and development, but there is no one model followed in some of the top countries across Europe for the structuring of their chief scientific adviser's role. In some countries, for instance, the UK, New Zealand and Malta, which are pretty highly involved in research and development, there is a separate chief scientific adviser. In other countries the role is undertaken by national academics. The Royal Netherlands Academy for Arts and Science does not have a dedicated, if one likes, chief scientific officer, while in others it can be a mix of the head or the president of the national academy of funding bodies. I considered countries across Europe and elsewhere to see if it was a disadvantage to us not to have it, and I found it not to be so.

Deputy James Lawless: Perhaps we will agree to disagree as I think it would be useful to create a separate office. Were we to reconstitute the office, it would recognise the status that the Government and the State place on science and research. Another point I make is that currently it is aligned to the Department of Jobs, Enterprise and Innovation. Research needs a whole-of-

Government approach. My understanding is that around 2004, when it was created, this office came within the remit of the Department of the Taoiseach. As part of that, it had a whole-of-Government approach. It is not just the Department of Jobs, Enterprise and Innovation that needs that sort of evidence-based policy advice but all of Government.

Yesterday there was, arising from the recent Nevin report, a Topical Issue that I had tabled on the lack of research and development funding. I expected either the Minister or the Minister of State at the Department of Jobs, Enterprise and Innovation to take it or, if not, perhaps the Minister for Education and Skills. I was surprised to see a Minister of State at the Department of Finance take it. It was a good debate and the Minister of State made good points. However, it highlighted the number of stools between which research and development can fall, that is, education, enterprise and, in yesterday's case, finance. Things such as research and development tax credits came into yesterday's debate, which amplifies and highlights the need for a whole-of-Government approach. Perhaps when considering the chief scientific adviser in whatever guise, at least under the Department of the Taoiseach there was that broad role.

Deputy John Halligan: I agree to a certain degree with what the Deputy is saying. When I was in opposition, I called specifically for a ministerial position to deal exclusively with innovation and research and development, which is why I specifically asked the Taoiseach, if I were to be reappointed in this position, that he would add research and development to the portfolio. Having regard to the advancement of technology, science, research and development, and innovation, I agree absolutely with the Deputy that the Government or future Governments will probably have to look at that position, where we dedicate a particular role to research and development.

I will not go through the detail of the role of the chief adviser now. Probably the best thing I could do is send a note to the Deputy on Professor Ferguson's exact role. The Deputy will find that he is comfortable in his role. He has great people with him at university level and within the Department who were able to deal with all of the Departments. However, there is an argument to be made and a discussion to be had on the Deputy's last point about a combination of roles and so on.

Question No. 10 taken after Question No. 11.

IDA Ireland Data

11. **Deputy Brian Stanley** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the strategy her Department will pursue to ensure that the IDA Ireland performance regarding inward investment in County Laois is improved; and her contact in IDA Ireland in this regard. [30217/17]

31. **Deputy Brian Stanley** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the actions the Government will take to ensure that there is not a repeat of the severely low job creation figures in IDA Ireland backed enterprises in County Laois in 2015 and 2016. [30218/17]

Deputy Brian Stanley: These questions relate to IDA Ireland's performance in County Laois, which has been very poor, to put it mildly. We want to try to ascertain Government strategy in terms of getting jobs into the regions, particularly the midlands, because we are falling

seriously behind according to replies that we have received to parliamentary questions from the Department.

Deputy Frances Fitzgerald: I have already stated here today that the Government is committed to regional development. The Deputy can see from the IDA Ireland figures the percentage of new jobs that are being created and the investment made outside of Dublin. We are working towards ambitious targets to ensure that employment and investment are fairly distributed, if one likes, as much as possible throughout the country. I am sure the Deputy is familiar with the fact that in June 2015 my Department published a midlands regional enterprise strategy as part of the Action Plan for Jobs. I take the Deputy's point that more needs to be done, especially in counties such as County Laois. County Laois is marketed by IDA Ireland as part of the midlands region, together with counties Westmeath, Longford and Offaly. There are 30 multinational companies based in the midlands, employing 4,280 people. There are 115 people employed by those IDA Ireland client companies based in County Laois.

Site visits represent one tool through which IDA Ireland has sought to encourage more investment in County Laois. There were ten such visits to the county across 2015 and 2016, which ultimately led to the creation of 28 new IDA Ireland-supported jobs. I assure the Deputy that the agency continues to promote County Laois as an investment location to overseas companies. I am hopeful that further jobs will be created there by IDA Ireland companies and clients in the future.

County Laois is also part of the midlands region for the purposes of the regional action plans. The County Laois local enterprise office, LEO, is currently advancing three projects which are in receipt of approximately €230,000 of funding through the LEO competitive fund. The Deputy will be familiar with that fund. It was made available for the regional action plans. That will support the growth of micro-enterprises and innovation in small firms, which is more necessary now than ever, as well as job creation.

Deputy Brian Stanley: I thank the Tánaiste for her reply. A lot of good work is being done at local level by the local enterprise office and the local authority. We, as public representatives, the Sinn Féin representatives no less than anyone else, are working to improve infrastructure and facilities in the county and make it attractive for inward investment. However, the record in County Laois is appalling. There were 39,609 net new jobs created in IDA Ireland-backed companies in 2015 and 2016. County Laois, as the Tánaiste noted, got just 28 of them. That is 0.07% of them. I am not arguing that County Kildare should have got less, but it got 1,140 in the same period. County Laois is at the bottom of the league and has been so consistently for more than two decades. Why?

Bord na Móna has plans for some of its Coolnamona sites and IDA Ireland has been tasked with marketing them. It has been requested by Bord na Móna to do that. There are business parks in the county and huge infrastructure improvements in terms of motorways and broadband. The facilities in the county in terms of hotels, golf courses, swimming pools and sports facilities are excellent. It has the infrastructure needed to address quality of life issues. When I became a councillor, I was told that we lagged behind in respect of all those matters. We have done all of that and have excellent facilities and infrastructure in the county. All parties are behind this, yet 0.07% of jobs are going to the county. There are 10,000 people a day commuting out of County Laois to work. That is not acceptable in a county of 85,000 people.

Deputy Frances Fitzgerald: The Deputy makes relevant points about the development of

the infrastructure that is needed to sustain foreign direct investment and to create jobs. In every county we are looking at both the foreign direct investment and the indigenous companies that we want to support because small and medium enterprises are the backbone of job creation in the country. I take the points the Deputy is making but it seems to me from what he is saying that Laois is well placed to attract further FDI and we support the IDA to do just that. We want to see all of the regions benefitting. We also have the regional action plans to make sure of that. They all have ambitious programmes now. There is potential in the area. We want to grow that number. We want to increase the level of FDI-driven employment in the county. The Deputy has made a very good case. We need to try to ensure companies are attracted to the region and that more jobs will be created. There are 30 multinational companies based in the midlands area. I have already given that statistic that 70% of jobs that are created with IDA companies are created by companies already here. There is potential to grow locally from those companies.

Deputy Brian Stanley: I thank the Tánaiste for her reply. I welcome the midlands regional enterprise strategy. I want the Minister to focus on the Laois part of it. We do not want to take a hands-off approach on the IDA. It is funded by the taxpayer and public funds. The Minister is new in the job. I congratulate her and wish her the best of luck in her new role. I want to give the county particular focus. We cannot continue to be forgotten about. When the Tánaiste was Minister for Children and Youth Affairs, she focused on Laois and came down to visit the facilities there. She prioritised certain things she was asked to do locally, which was welcome. I want her to do the same with this. I want her to recognise there is a black hole here in terms of IDA investment. I want her to contact her senior officials in the IDA and ask them to specifically focus on the business parks and facilities we have in the county and to try to use the midlands regional strategy to improve matters.

Deputy Frances Fitzgerald: I have no doubt the IDA will look at the transcripts of this discussion and note the points the Deputy has made very persuasively, as Deputies from every county also have. I reassure the Deputy the regional focus is a very important one for the IDA. It is a very serious one. The job creation that is happening outside Dublin is testament to that, with over 52% of jobs that have been created being outside Dublin. I reassure the Deputy the IDA engages regularly with the local authority in Laois and with those in Longford, Westmeath and Offaly. There is more work to be done. We are supporting IDA and its staff to continue the very intensive focus on job creation and meeting new companies. I have already met quite a number of companies that are showing a huge interest in investing in Ireland. Every effort will be made to ensure the kind of investment we have seen in the past few years will be continued.

Enterprise Support Schemes

10. **Deputy Brendan Smith** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation the steps she will take to assist enterprises that are heavily dependent on exporting to the British market; and if she will make a statement on the matter. [30430/17]

Deputy Brendan Smith: I wish the Tánaiste well in her new role in Government. The agri-food, construction and engineering sectors are major players in our local economy in Cavan-Monaghan and the Border region in particular. That goes for north of the Border as well. Those sectors have already been impacted by Brexit, particularly with the reduction in the value of sterling. The Government needs to give out a clear message that new initiatives will be taken

to support those sectors through difficult times. The longer the Brexit negotiations go on, the greater the uncertainty. There is real concern among enterprises that built up good businesses in very difficult times and they need support from Government now.

Deputy Frances Fitzgerald: I recognise the points Deputy Smith is making. I can see from my conversations with the IDA and Enterprise Ireland in particular that what the Deputy says is absolutely accurate in terms of the challenges facing companies that are dependent on the British market. The UK is a strategically important market for Irish-owned companies. Some sectors such as food, timber, construction and engineering are very dependent on that market. The uncertainty around Brexit is a real issue. Some of the companies have said they are somewhat concerned that we have not seen the same focus on trade that we have seen on other issues. That is to some degree a timing issue in the negotiations. It is worth saying that in 2016, 35%, or €7.55 billion of Enterprise Ireland client exports went to the UK. By contrast, ten years ago, 45% of EI client exports went to the UK, so we have seen market diversification. Market diversification needs to be supported. There will be a particular focus on the eurozone market, which is important. EI recently launched a strategy to increase client exports to the eurozone by 50%, from €4 billion to €6 billion, by 2020. Since the UK referendum result, my Department and its agencies, InterTradeIreland, Enterprise Ireland and the local enterprise offices have been actively engaging in supporting companies to assess and address their exposure to Brexit. I have already spoken about the EI scorecard. I encourage all businesses to take part in that exercise. Some, but not all companies - even those with huge exposure to the UK market - are necessarily getting involved in that exercise. It is essential they do so and look at their strengths and how they can diversify and look at innovation in order that they have new products. It is not that easy to move from the UK market because companies went there for a very good reason; they were meeting a need there and the prices were good. Diversification will be challenging but it is necessary.

Deputy Brendan Smith: I thank the Tánaiste for her reply. I would like her to come to the region and meet enterprises. Over the years we have had particular obstacles in trying to attract foreign direct investment to Cavan-Monaghan and the Border region because of the troubles we endured as a community over many decades. Thankfully, during that period people with great entrepreneurial spirit developed businesses and enterprises. Thankfully, some of those in my constituency of Cavan-Monaghan have become international corporations. There was a great spirit of initiative and of getting up and doing things. Those companies are predominantly in the agrifood, construction and engineering sectors, as I said earlier. They export to Britain, which is their major market so the fluctuation in the value of sterling is an issue. Similarly, Britain is often a landbridge for product leaving our area and heading to destinations in other parts of Europe or outside Europe because the ports in Northern Ireland are heavily used by companies from south of the Border. There are particular difficulties there with regard to access to other markets. If the Tánaiste could come to the region and meet with those small, medium and large enterprises, she would get a feel for the concerns they have. I am not suggesting she does not have that knowledge but I think it would be beneficial. Some weeks ago, I brought a delegation of senior French parliamentarians to the Cavan-Monaghan area. They met businesses and on leaving Ireland they told me they went away with a totally new perspective on Brexit and how it affects our island. They said they would bring that message back to their parliament and Government. It is important that at senior Government level, people like the Tánaiste are in a position to come and meet those enterprises and local communities.

Deputy Frances Fitzgerald: I certainly will be doing that. Part of my remit is to make

sure there is job growth in the regions. There are particular issues in the areas the Deputy mentioned. I will make a number of points. Clearly, we want to continue to export to the UK but there will have to be some developments and we will have to reposition our offer to some degree. The UK market, however, will remain key. Having said that, we will be obliged to make a number of other strategic responses to Brexit. We will have to look at innovation and market diversification. Those companies will have to if they have not engaged already. It varies quite a lot. Some companies are really analysing very carefully and clearly the potential impact of Brexit although it is hard to know precisely given the uncertain state of the negotiations at this point in the early stages. Some companies are examining that. The Department is working on measures targeted at the needs of companies across the economy around working capital and business development because we will have to support our companies during this very difficult period for them.

Deputy Brendan Smith: I emphasise that I am a realist and I know it is not easy to attract foreign direct investment to rural areas. An additional impetus is needed to try to attract foreign direct investment to the Border area, which has the skills pool and people required. At a time such as this, we must ensure there is good collaboration between agencies, North and South, as there has been over the years. Many of the companies and enterprises I spoke about have sister companies north of the Border and many are all-Ireland companies, with plants on both sides of the Border. Business owners from Armagh, Fermanagh and Tyrone have visited me and expressed great concern about the effects of Brexit on their companies. It is equally important that they get through these difficult times. We must address the issues, concerns and challenges arising from Brexit on an all-Ireland basis. We must ensure the co-operation that has existed, particularly since the signing of the Good Friday Agreement, is built upon in the challenging 18 months ahead of us. The loss of a job in Fermanagh impacts on my constituency, just as the loss of a job in Cavan-Monaghan impacts on the economy of Fermanagh. Thankfully, for upwards of 20 years, the island has been experiencing a great movement of people, goods and services that it did not experience prior to 1998.

Deputy Frances Fitzgerald: The Deputy makes the point very well regarding the importance of North-South trade and the great developments we have seen in this area, which have been facilitated by the political changes of recent years. I hope these issues can be resolved in the near future because trade between North and South is significant. As the Deputy noted, changes on one side of the Border impact on the other side of the Border. For this reason, a particular energy is needed to deal with the challenges he describes. This is one of the reasons we established the all-island dialogue, which Deputy Smith may have attended. The dialogue has featured tremendous engagement between businesses North and South and it will be a bulwark against the challenges that will inevitably arise.

An increased focus is needed on IDA Ireland and Enterprise Ireland and we must support business through this difficult period. We must also ensure the appropriate financial initiatives are in place. One of the big issues facing all companies is access to finance to enable them to engage in research and innovation. While it is difficult in a period of uncertainty to invest in innovation and research and development, it is key to growth. Companies must be provided with finance to help them prepare for Brexit. I take the Deputy's points regarding the particular needs of the Border area.

Departmental Budgets

12. **Deputy Thomas P. Broughan** asked the Tánaiste and Minister for Jobs, Enterprise and Innovation her priorities for budget 2018; the amount of increased funding she expects to access; projects or areas for such; if increased resources are being sought for her Department's agencies for Brexit work; and if she will make a statement on the matter. [30229/17]

Deputy Thomas P. Broughan: I also wish the Minister well in her new portfolio. I am sure she will miss the Department of Justice and Equality and the lengthy questions both I and other Deputies used to submit to her. I also wish the Minister of State, Deputy Halligan, well in the portfolio he has retained.

Budget 2018 will be vital. I do not agree with removing any part of the Department and transferring it to another Department. In what appears to be a reflection of the hard-right ideology of the new Taoiseach, it appears employment will be moved into the Department of Social Protection. These are different functions and responsibility for employment should be in the same Department as responsibility for jobs. What areas will not be included in the Department's Estimates this year?

A couple of Deputies discussed the issue of Brexit at length. What additional resources will the Department be allocated to address the issue of Brexit? The previous Minister secured an additional €100 million for the Department last year. I wonder how ambitious the new Minister will be in at least matching that achievement.

Deputy Frances Fitzgerald: Final decisions have not yet been made on the specific functions of the Department that may transfer. It is important to have close co-operation with the Department of Social Protection because we want people to move seamlessly into employment when opportunities arise. We do not want there to be barriers preventing people from taking up jobs that become available.

The Deputy asked about the forthcoming budget. My Department is engaging with the Department of Public Expenditure and Reform on budget 2018. It is too early in the process, however, to be definitive about the Department's capital and current ceilings for 2018, which will not be finalised until later in the year.

As part of 2017 budget negotiations, the overall gross allocation to my Department was substantially increased to €858 million, which included the highest ever capital allocation of €555 million provided to my Department. This increase was targeted at ensuring my Department's enterprise agencies were in a position to respond proactively to the evolving Brexit situation.

I have already held discussions in the Department and with others on a number of discrete and significant priorities for the coming year. These include the need to continue progress on delivering on the Government's regionalisation agenda, which I have discussed with Deputies, and its commitment to create 200,000 extra jobs by 2020, including 135,000 jobs outside Dublin. A second priority is to ensure the Department's enterprise agencies are in a position to provide transformational supports for indigenous enterprise. I discussed this important point with Deputy Brendan Smith. We must also continue the roll-out of research and development investment in support of the Government's science strategy, Innovation 2020, and provide, if required, contingency funding and access to finance packages over two years to support firms most at risk from the threat of Brexit. As the Deputy is aware, some firms will be more at risk

from Brexit than others. I intend to ensure that these priorities are at the forefront of discussions on budget 2018.

Deputy Thomas P. Broughan: The Minister's predecessor established a Brexit unit in the Department. How many officials are engaged in the unit and what type of ongoing work is it doing with business on the ground in the regions and in the capital? The previous Minister informed us in January that Enterprise Ireland would recruit an additional 39 staff and IDA Ireland would recruit an additional ten staff to prepare for Brexit. Will the Minister comment on the work the enterprise agencies have been doing? Can additional resources be allocated to these bodies? There is still grave anxiety about the prospect of Brexit. We heard a British Minister speak casually about trucks being pulled over on the roads in the context of North-South trade. It would be intolerable to be dragged back into that environment with that type of Border.

Brexit has already impacted on tourism numbers from the United Kingdom and the used car trade. Other worrying issues are developing, such as the possibility that the projected growth rate will be cut. In addition, the Economic and Social Research Institute has indicated Brexit could cost 40,000 jobs. What will be the focus of the Department? The Minister must take a dynamic role in the budget.

Deputy Frances Fitzgerald: The focus must be on addressing the issues of most concern to business in the run-up to Brexit. This includes meeting the challenges presented by our reliance on the United Kingdom in the context of Brexit. It is difficult at this stage because we do not know what will be the final shape of Brexit. However, Brexit has significant implications for trade generally but specifically for firms which are dependent on the UK market. The focus in the budget will be on ensuring that we have a range of initiatives in place that are supportive of business in this environment. Addressing the issue of access to finance will also be key because businesses will need to invest in capital, innovation and research and development. The Government wants to be able to help businesses to do this. We also want to ensure they access funding that is available from international resources and take all necessary steps to prepare for Brexit. I will consider these initiatives in the context of the budget.

As the Deputy correctly noted, additional funding was provided in last year's budget to facilitate significant recruitment in the enterprise agencies. This continues to be supported by my Department and the Department of Public Expenditure and Reform.

We are aware of the need to have staff on the ground doing the work and dealing with the challenges for businesses in the run up to Brexit. The latter is a question of businesses' development, preparations and access to finance so that they can take the necessary steps to cope with Brexit.

Deputy Thomas P. Broughan: My final point is on the subject of a parliamentary question that we will not reach but that relates to this matter. In terms of the census returns on unemployment, many of us found it disturbing that there were 79 major blackspots around the country, for example, in Waterford and Limerick. In those areas, 27% of people reported themselves as being unemployed, which is far above the figures that the Taoiseach and his predecessor have talked about. In fact, seven of the blackspots are in Dublin constituencies.

Is the Minister's Department meeting or speaking to the CSO? Are these figures coming across in programmes? For example, certain people cannot get on community employment, CE, schemes, training schemes or the like with a view to returning to work. What initiatives

will the Minister take in respect of constituencies like Waterford and the north, west and south sides of Dublin?

Acting Chairman (Deputy John Lahart): Does Deputy Quinlivan wish to ask a question on the same matter?

Deputy Maurice Quinlivan: Yes. I tabled a question on this issue to the Minister, but it was referred to the Department of Social Protection. It concerned the blackspots highlighted by the CSO, 17 of which are in my constituency of Limerick, with eight of the top ten in Limerick city. If creating jobs in Moyross, Southill and St. Mary's Park is the responsibility of the Department of Social Protection rather than the Minister's Department, what work is she undertaking with the former to ensure that people in those areas, especially young people, who have been left behind are able to access the workforce? CE schemes, apprenticeships and so on could be considered. Will the Minister's Department liaise with the Department of Social Protection, given how important this issue is?

Unfortunately, that Limerick is in the top ten is not news to us. It was in the same situation in the previous stats.

Deputy Frances Fitzgerald: We can see what is happening with the unemployment rate. Its decrease is positive and is spread across the country. I recognise that there are particular challenges in some areas but, as the recovery continues, we want the decrease to reach further and deeper in every region. The Department of Social Protection's focus on activation plays an important role, as does access to apprenticeships. We need to communicate more about the range of opportunities that are available to young people. They have a variety of options beyond the CAO process, which is not a route that everyone wants to take. We must ensure that young people understand this and that information is available to them so that they can take up various options.

The census was the subject of a different question. I will ensure that replies are made available to both Deputies.

Acting Chairman (Deputy John Lahart): Does Deputy Niall Collins wish to ask a brief supplementary question?

Deputy Niall Collins: Yes. I will pick up on the topic raised by the Deputies. I tabled a priority question about the CSO's publication on employment blackspots and highlighted the situation in Limerick in particular. While I recognise that the relevant functions have been transferred to the Department of Social Protection, there is an overlap, so will the Minister furnish us with her views on the matter?

I wish to impress upon the Minister the point that, in Limerick and the other blackspots, unemployment is intergenerational, with households having two, three or four generations of unemployment. That is the key underlying factor. What can the Minister do to try to address this situation? Unemployment seems to be rolling over and rolling over within particular households in places like Limerick, Waterford, Dublin and so on.

Deputy Frances Fitzgerald: Employment is increasing across the country and will impact on all areas. There is also the important work being done under the regional action plans for jobs. The topics raised by the Deputies are for those regional plans and initiatives. Skills assessments and apprenticeship opportunities are being developed across the country.

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The intergenerational issues that Deputy Niall Collins outlined are challenging, but access for young people in those families must be our focus. We are examining all of the issues around access to training programmes and skills. The strong approach being taken by the Department of Social Protection to activation plays an important role in work that will help those families and break the vicious cycle.

Written Answers are published on the Oireachtas website.

Financial Emergency Measures in the Public Interest: Statements

Acting Chairman (Deputy John Lahart): These statements will adjourn after two hours and ten minutes. The following arrangements apply pursuant to the order of the Dáil of Tuesday, 27 June: speeches shall be confined to a single round from a Minister or Minister of State and the main spokespersons of Fianna Fáil, Sinn Féin, Labour, Solidarity-PBP, Independents 4 Change, the Rural Independent Group and the Social Democrats-Green Party group or a Member nominated in their stead and shall not exceed 15 minutes in each case; a Minister or Minister of State shall make a concluding statement that shall not exceed ten minutes; and all Members may share time.

Minister for Finance (Deputy Paschal Donohoe): I thank the Business Committee for arranging this opportunity to make a statement on FEMPI. As the House is aware, I am obliged under legislation to review the operation and effectiveness of the FEMPI legislation, having regard to the overall economic conditions in the State and our national competitiveness, and then to consider whether the relevant Acts continue to be necessary, having regard to, among other matters, the revenues of the State. A written report of my findings is in the process of being laid before the Oireachtas today and I want to take this opportunity to share the main findings with Deputies.

Overall, my conclusion is that the FEMPI legislation has been highly effective at temporarily reducing the public service pay bill. Upon full implementation of the Lansdowne Road agreement, there will be an outstanding €1.4 billion in FEMPI savings still dependent on the operation of FEMPI pay and pension measures. Unfortunately, the corollary of this is that there is a continued necessity for that legislation, as repeal in a single year is unaffordable. Thankfully, the recent negotiations on an extension of the Lansdowne Road agreement, or Lansdowne Road II, have provided us with a negotiated approach to exiting the FEMPI legislation that is balanced, fair and sustainable. Crucially, the Government's establishment of the Public Service Pay Commission and the tasking of that commission with providing inputs to the parties on a roadmap out of FEMPI assisted in the negotiations.

The terms of the proposed agreement, which have been commended by the Workplace Relations Commission, WRC, to both parties, will substantially achieve the ambition of exiting FEMPI over the period 2018 to 2020. If these proposals are accepted by public servants - I am conscious that they are being balloted on at the moment, so I do not want to say too much - they will form the basis on which the remaining FEMPI measures will be dismantled over the coming years. Importantly, these proposals have been fully costed and are compatible with our overall fiscal policy.

I will address each of the points - the effectiveness, continued necessity and proposed extension of the Lansdowne Road agreement - in turn. The Financial Emergency Measures in the

Public Interest Acts have been a cornerstone of budgetary consolidation. Over the period 2008 to 2014, these pay measures were responsible for a €2.2 billion reduction in the public service pay bill. More than that, these reductions assisted in the terribly difficult and painful process of correcting our finances between 2008 and 2014.

As a member of a currency union, it was impossible for Ireland to use one of the traditional policy tools, namely, currency devaluation, to achieve improvements in our external competitiveness and the price of our exports. Prices and wages, while starting from a high base, have risen at rates slower than those with whom we trade. Actual and overall, or nominal, adjustments in wages in the past few years also contributed to improvements in our competitiveness. As a result, our competitiveness index improved by a fifth between 2008 and 2017. In turn, this hugely assisted with our export-led recovery.

Additionally and crucially, the changes in public pay allowed the Government to prioritise recruitment to our public service at a time of huge difficulty. Since the beginning of 2014, an additional 20,850 public servants have been recruited to meet demands for enhanced public service delivery. These include 5,243 more teachers, 2,360 more special needs assistants, 3,073 health and social care professionals, 2,267 nurses and 1,426 consultants, doctors and dentists. Given the constrained resources available during the period, this level of recruitment would have been impossible in the absence of the FEMPI legislation.

Our economic recovery is progressing but vulnerabilities remain. Levels of private and public debt are high. Our highly concentrated industrial base represents another recurring and continuing risk facing the economy. As a result, output and employment continue to be exposed to particular risks and shocks. Loss of competitiveness is another potential risk for our economy and it is amplified by the current constraints in the housing sector. Deputies will be aware that, while recent economic data and forecasts are positive, risks remain.

The International Monetary Fund's recent review of our economy found that "outlook remains positive, but with substantial, mainly externally-driven downside risks". Closer to home, the Irish Fiscal Advisory Council, an independent body established as part of our reformed budgetary architecture, was more explicit when it concluded that:

In the medium term, more persistent downside risks are visible. Principal among these is the possibility that the outcome of negotiations on the UK's departure from the EU could lead to a more sustained negative impact on Irish economic growth than is currently estimated.

Additional risks are posed by the appropriateness of the wider euro area monetary policy for Ireland over the medium term, as well as by a variety of potential external demand and exchange rate shocks. Changes in US and EU policies, particularly around corporation tax, could also negatively impact on foreign direct investment, FDI, flows into Ireland. The Department of Finance forecasts now assume a hard Brexit. Work carried out by my Department and the ESRI shows that the impact of Brexit on Ireland will be significant. In the long run, the worst-case scenario - that is to say, in the absence of a trade deal with the UK - is that after ten years our national income could be 4% below what it otherwise would have been in a no-Brexit situation.

Of concern in all of this is the continued high level of Irish Government debt, €201 billion, which continues to place limits on the ability of our finances to cope with potential risks abroad.

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Looking further ahead, the Irish Fiscal Advisory Council recommends that “fiscal policy should be cautious reflecting still high debt levels and risks to long-term revenue and growth”. It goes on to say, “Strong adherence to the new framework is essential to avoid repeats of the policy mistakes that contributed to multiple economic crises in recent decades.” It is for these reasons that I judge there to be a continued need for the continuation of the existing legislation.

Turning to the draft public service stability agreement for the period 2018 to 2020, I contend that we have a balanced approach to public service pay in this agreement which is compatible with the economic conditions of the State, national competitiveness and available revenues. I will explain why. While international risks and domestic vulnerability remain it would be disingenuous of me to stand up and say that no progress has been made. The truth is that the State’s finances have considerably improved from when the first Act was introduced in 2009. Even since 2015, the growth in the economy has been greater than we then anticipated. For that reason, it was appropriate to revisit the terms of the then Lansdowne Road agreement to reflect these improvements and provide for conditions for potential industrial peace over the next three years.

It is also important to allow wages to increase in a controlled and sustainable manner. Lower wage growth can add to disinflation pressures which, in turn, imply higher real interest rates and greater difficulties in managing public and private debt and generating sustainable domestic demand. As I have said on many occasions, wage growth is good for how our society will evolve. People need to see that progress is being made and that incomes are improving. For example, a public servant currently earning €37,500 will benefit by over €2,700 per annum, or almost 7.5%, across the lifetime of this agreement. As well as providing for affordable increases in pay for public servants, the proposed agreement also provides for an additional pension contribution by public servants in lieu of the pension-related deduction, which will be crucial in terms of putting our public service pension bill on a more sustainable long-term footing in the future.

These proposals represent a package of measures that is balanced, fair and affordable. They represent a significant milestone in the unwinding of the emergency legislation that was introduced across the crisis period - an unwinding which has been called for in this House. Perhaps most importantly in the context of the current discussion, the proposed agreement provides for a series of pay increases which will unwind FEMPI pay reductions for all public servants earning up to €70,000, which is equal to almost 90% of all our public servants, over the period to 2020. As such, this provides a clear and realistic route out of the FEMPI legislation.

The legislation that is the subject of this debate was necessary to restore order to the public finances at a time of unprecedented economic crisis. That said, the Government is committed to the affordable and orderly unwinding of the legislation. We have now begun the process of doing so. Under the collective agreement framework of the Lansdowne Road agreement, it is our intention to continue this work in the context of a proposed extension to that agreement, which was negotiated in recent weeks and which is now subject to ratification by the unions and associations concerned over the coming weeks and months.

Deputy Niall Collins: I am delivering our party’s contribution on behalf of my colleague, Deputy Calleary, who cannot be here. Fianna Fáil has long called for the unwinding of the FEMPI legislation in a fiscally responsible manner. We want to see a fair deal for public sector workers, particularly for low and middle-income earners. It is imperative that we have strong and sustainable public services and that industrial unrest is avoided. FEMPI must be unwound in a responsible and sustainable way that treats public servants fairly and ensures the provision

of vital public services to those who need them. Reversing FEMPI immediately will do nothing to solve problems surrounding pay inequality and will only succeed in restoring pay to the higher-paid civil servants. Industrial unrest will ultimately cost everyone dearly.

The Government and trade unions came to an agreement earlier this month. However, key challenges remain. Each union and association must now consider the proposals and then put them out to ballot of its members. Time must now be given for the unions and associations to vote and the process should be allowed to proceed.

Despite the agreement earlier this month, key issues remain to be resolved. The agreement is vague to say the least on pay equalisation. Workers who joined after 2013 will still be paid less than their colleagues who took up their posts before then, despite doing the exact same job. The agreement states that any solution to this issue must not give rise to implications for the fiscal envelope of the agreement. It is difficult to see how this issue will be resolved in such circumstances. This is a major issue and the Government must outline in more detail how it intends to deal with it.

Staff retention and recruitment is another key issue affecting the public sector, which the agreement fails to address fully. In areas like nursing and the Defence Forces numbers have been falling to critically low levels. This not only affects the services themselves but also the conditions of existing employees. The agreement is also vague on retired public servants. In particular it is not clear how the difference between retirees who retired before 2012 and after 2012 will be addressed. I ask the Minister when summing up to respond to some of these issues relating to vagueness.

As we are discussing FEMPI, I take the opportunity to quote from a letter that I and other Oireachtas Members received from a GP in a rural practice, which happens to be in my constituency. It relates to FEMPI and the broader health service. It states:

As you may be aware the all-party *Oireachtas Committee on the future of Healthcare/Slaintecare Report* recommendations are up for debate in the Dáil before the summer recess. We GPs would greatly appreciate your support in bringing the following to the attention of your colleagues before and/or during the debate.

1. Since the implementation of the free GP care for children under 6, attendance of such children at my practice has increased by 40%. This increase has also been reflected in the local out-of hours service, Shannondoc. Indeed I have several children under 2 attending me who have attended 30+ times in the first year of life, outside of vaccinations and developmental checks. This illustrates that people do not appreciate that which is free and instead overuse it. This has resulted in elderly genuinely unwell people being unable to access the GP when they genuinely need to be seen which has increased the number of people needing admission to hospital as they are seen later in their illness.

2. The new Accident and Emergency department in University Hospital Limerick opened on Monday 29th May (2 years late). I happened to be attending for a sexual assault and decided to have a look around. The new area is 3 times the size of the existing A&E and was already, 19 hours after opening, at 3am, full of trolleys. This is partly because of the problem detailed above and partly due to a lack of beds in the hospital itself.

3. There are 46 GPs in our West Limerick Shannondoc area. Of those 46, at least 11 will be retiring in the next 5 years. There are NO GPs to replace them. We currently struggle to

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find locums to cover holidays and have zero chance of finding anyone in case of illness or other emergency. My partner retired 2 years ago and I have been unable to find an assistant. This is for the following reasons:

- Young GPs now qualifying do not see Ireland as a viable prospect to run a business and are emigrating in their droves.
- Those who stay can pick and choose the jobs they want as there is such a shortage
- Due to the demand they can afford to work in cities where they have the back-up of a hospital nearby, where they don't have to do out of hours work or house calls, where they can work as employees with all of the rights and none of the responsibilities of running a business.
- Rural GP is not attractive to them.

General practice needs your help. Put simply, if this continues, when you are older and need care, there will be no doctors to care for you.

I am quoting this letter because it goes on to mention FEMPI. It states:

One of the first things that needs to be addressed (now that it is being addressed with all other parties affected) is the reversal of the FEMPI cuts. GP [general practice] was hit with 38% cut in funding over 3 years which was greater than any other group. That cut in funding was not to our wages but to the gross money coming into our surgeries out of which we have to pay mortgages/rent, staff, professional indemnity and for all the courses and conferences that are obligatory for us to maintain our medical registration.

At the same time as the FEMPI cuts, many more patients became eligible for medical cards due to unemployment, then you had the under-6 card and the over-70 [medical] card. This dramatically cut our private income also.

We cannot continue to provide the level of service that we have done for the last 40 years, plus take on all of the extra work that Slaintecare has suggested without funding and more doctors, and we will not get more doctors without the funding to make it attractive for them to stay.

The other thing that needs to be addressed with urgency is a new contract for GMS GPs. Our contract is over 40 years old and is completely unfit for purpose. Medicine and demand for care has changed dramatically in that 40 years and the new contract needs to reflect this. All parties affected, IMO, NAGP etc. need to be at the table for that negotiation (not consultation) process. We were supposed to have a new contract by July 2015, 2 years later, there appears to have been little progress.

Thirdly funding in general needs to be increased to Primary Care. If we are to appropriately manage chronic illness (which incidentally is not part of our current contract), we need more staff and more money to do so, to purchase equipment and, hopefully if they can be found, hire extra doctors to help. If hospitals are to have any hope of lessening the trolley crisis, we need to increase funding to home help, to carers and to nursing homes so that vulnerable people have somewhere safe to go on discharge. If we are to keep people out of hospitals, we need more access to physiotherapy ... to occupational therapy and to respite care. With an elderly population there is increased demand for house calls for which there is NO remuneration during surgery hours and it makes it financially unviable to do them. Multiple minor surgeries and

other procedures such as contraception are carried out in GP [general practice] and cost up to 10 times less when done in GP as opposed to in hospital but we don't have the time ... or the funds to perform them.

Lastly, with respect to "free" healthcare for all, I used to be in favour. But having seen the effects of the Under 6 card, I can no longer support it. I believe, as do most of my colleagues, that there should be a maximum number of "free" visits and/or a small charge for each visit so that people only attend when really necessary.

General practitioners are at the heart of the healthcare system, completing over 25 million consultations every year (95% of patient contact). The Irish public values their family doctor and wants their GP to be at the heart of their local community. However, we are at a crossroads - unless the recommendations above are implemented, we will never fix our healthcare system. This is our chance, and your chance, to help do that.

That is correspondence I and other Deputies received indicating one rural GP's views of the situation. I wanted to put it on the record of the House because there is a FEMPI angle to it.

I reiterate the Fianna Fáil position on FEMPI. We have long called for the unwinding of FEMPI but we recognise that it is not simple. There are parameters within which that has to be done and it must also be done in a responsible manner and one which is sustainable.

Deputy David Cullinane: I wish to share time with Deputy Nolan.

Acting Chairman (Deputy Bernard J. Durkan): Is that agreed? Agreed.

Deputy David Cullinane: Now that the statements on health are finished, I will return to public sector pay. I welcome the opportunity to have this debate today. I met the Minister and his staff in his office a number of weeks ago and we had a full and frank discussion on the draft public sector pay agreement. The trade union membership will have its say on this matter, and I fully respect the outcome. I wish all of the trade unions well in their work in the coming weeks.

I presented the Minister with a document some months ago setting out my party's framework for a new public sector agreement. What we got is an extension of the Lansdowne Road agreement. As the three-year extension is a bit longer than people expected, essentially it is a new agreement. I welcome many aspects of the agreement. We wanted an agreement that prioritised low and middle-income workers. We also wanted a fair and timely unwinding of FEMPI. We sought a situation where the vast majority of public servants, who had on average 14% taken from them over the course of the austerity years, would have most of their income returned to them. I have publicly welcomed elements of the agreement. However, some issues were not addressed. One core issue in our framework document is equal pay for equal work. Unfortunately, the Minister's proposals and the agreement that is on the table are weak on that issue. Let me be crystal clear; my party is very strong on this issue. It is a red-line issue for Sinn Féin and we are absolutely committed to returning the public service to a single-tier pay system, not only because it is the right thing to do for reasons of equality but because we must also make sure that we can recruit nurses, doctors, gardaí and front-line workers in the public service. It is very important that recruitment can happen and that public sector workers feel they are valued and they are not part of a two-tier pay system.

It does not make sense that equal pay was not addressed in the course of the agreement. I accept it was partially addressed on the pension levy side. There is a vague reference to looking

at the issue at some point in the future - kicking the can down the road, which I am afraid will not do it for the vast majority of those public sector workers who are dependent on the Minister and the trade unions to deal with it once and for all. However, it was also the source of many of the industrial disputes that we had in the State in recent years. Therefore, it makes no sense whatsoever to have a three-year extension of a pay agreement that fails to deal with the core sore that led to many of the industrial disputes and strikes in the first place. As we know, it is a sore in Garda stations, hospitals and schools and it is one of the reasons many of the trade unions are not in a position to support the agreement and have called for a “No” vote. We must respect the rights of the individual unions to take their own positions on the agreement and have their own ballots. The membership of the trade union movement as a collective will make its decision known on the issue.

The agreement makes provision to revisit equal pay for equal work towards the end of 2018 but given the unfairness of this matter, it is deeply disappointing that it has not been put to bed for good. The agreement also kicks into touch the issue of retention, particularly within the health sector and the Defence Forces, despite the fact that this was raised by the Public Service Pay Commission, which the Minister commissioned. In my view one of the reasons it was commissioned was to delay as much as possible the actual negotiations but when the commission did produce a document, retention did feature heavily, although it did not feature all that much in the agreement itself. The agreement provides for talks on this issue towards the end of 2018, but as I said previously to the Minister in this Chamber, retention is a critical issue in the here and now. It is one that cannot wait for another 18 months to be addressed.

Sinn Féin’s priority in all of these issues is to protect workers on low to middle incomes. On the issue of equal pay, I spent many months asking the Minister to cost the restoration of the public sector to a single-tier pay system and we got the reply some weeks ago that it would cost €209 million. We hear over and over again from Fine Gael that the recovery is bedded in. Before the previous election the Government’s mantra was “We are in full recovery”. However, when we point out all of the issues that remain to be addressed, the mantra suddenly changes.

I do not believe FEMPI can or should be unwound in one go, not because I do not believe those on low and middle incomes should get full pay restoration - of course I do - but I would not support a situation whereby the top income earners in the public sector get very significant pay restoration. One could ask if FEMPI was to be unwound in one go what it would mean for ordinary workers. It would mean €66 for somebody on €25,000; €577 for somebody on €30,000; €1,752 for somebody on €35,000; €35,000 for somebody on €150,000 and; €53,000 for somebody on €185,000. One should forgive me for not wanting to support the unwinding of FEMPI which would give the Secretary General of the Department of Finance a pay rise of €53,000. I do not think he would expect that. Neither do I think the Minister would propose that and we would certainly not support it. We are not in favour of giving very large sums of money in pay restoration to people who are already on high incomes.

Under the Haddington Road agreement there was a separate registered agreement whereby those earning above €65,000 already benefit from significant pay restoration. I refer to those earning between €65,000 and €110,000. We fall into that category. It is hugely important that public sector pay is addressed. I accept there is a new agreement on the table. I have acknowledged that it is up to the trade union movement to adjudicate on that matter. We must give them the independence, time and space to be able to do all of that.

We have raised repeatedly with the Minister the issue of equal pay for equal work. We

genuinely believe it was a mistake on his part not to have dealt with the issue. We still appeal to him to deal with it in the upcoming budget. It is something we will address in our alternative budget this year. On the previous occasion when we discussed public sector pay, the Minister seemed to think there was no issue with retention yet we were all able to give him examples of hospitals right across the State that cannot keep wards open or services going because they cannot recruit nurses. I gave him an example from my constituency of a community hospital in Dungarvan where beds were closed because it could not get the staff. The manager of the HSE in the area wrote to all retired nurses, those working part time or on short-time contracts appealing to them to do extra hours or come back into the system in order that the ward could be opened again for patients who need it. That is one example and it is happening in hospitals across the State. With respect, the Minister needs to take his head out of the sand when it comes to retention. It might not be an issue across the entire public service but it is one that affects many areas, and it is one that must be addressed.

We made our message to the Minister very clear. I thank him for agreeing to meet us, which coincidentally was the day after the agreement was signed. The Minister will note the areas where we disagree and the areas where we agree and acknowledge that we have welcomed elements of the pay agreement, which will be good for public sector workers. Anything that is given back to them, when one considers that they had so much money taken from them unilaterally over the course of a number of years, is to be welcomed.

I shall make one final point. I hope that FEMPI - and the Minister's emergency powers under the legislation - is finally taken off the Statute Book. I do not believe we should be using these powers again. We should be negotiating with trade unions, not involving ourselves in unilateral action whereby a Minister can simply cut the pay of public servants.

Deputy Carol Nolan: Go raibh míle maith agat as ucht an deis chun labhairt ar an topaic seo anocht. This issue is of great concern to tens of thousands of workers across the State. These workers are still being treated unfairly, despite the fact that the Government states over and over again that the economy is in recovery. Public sector workers are certainly not feeling that recovery.

I shall begin by outlining Sinn Féin's position on FEMPI. We do not wish to see FEMPI scrapped overnight. We recognise that this would be completely unfair and would eradicate any possibility of investing in critical public services, such as health, housing and education. More fundamentally, Sinn Féin recognises that the scrapping of FEMPI measures overnight would not work. We want a fair and orderly unwinding of FEMPI. People who earn €185,000 would see a gain of €53,000, while those on incomes of €25,000 would receive just €66. What we do wish to see, however, is the immediate repeal of the powers that the Ministers gave themselves in respect of public sector pay. Sinn Féin has consistently called for the fair and orderly unwinding of the FEMPI legislation and as my colleague, Deputy Cullinane, outlined, the party has met the Minister on the issue and we have outlined our views on the draft public sector pay agreement.

I welcome that the agreement works towards a timely and structured unwinding of FEMPI, as we have called for. There are, however, a number of issues with the proposed pay agreement and with the Government's general approach to public sector pay. Previous agreements have disproportionately benefited those on higher incomes in the public sector. This is no surprise because elitism appears to be part of the Government's mantra. The Lansdowne Road Agreement completely favours those earning over €65,000, giving them, as Deputy Cullinane

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outlined, full pay restoration. For those earning less than €65,000, there has been no restoration beyond a flat €1,000 increase. This approach was - and remains - completely unfair. It has led to a lot of mistrust between public sector workers and the Government. Sinn Féin believes that those on middle and low incomes should be prioritised in any pay negotiations. I share the concerns of my colleagues that the new agreement will again favour higher earners. I await the details of the final agreement, which I hope will be made available without delay.

The other key issue that I believe the Government has missed in the negotiations for the new pay agreement is the aspect of equal pay for equal work. I recognise that this matter is outside of the scope of FEMPI, yet it is a hugely important issue within the public sector. As we know, the three teachers' unions have signalled their lack of support for the draft agreement as it currently stands because it does not deal with this matter in a meaningful way. Teachers represent over one third of the public sector workforce and I simply cannot fathom why the Government did not address this issue. It is the single biggest issue that has caused so much unrest and disruption in the education sector in the past year. I truly believe the Minister has missed an opportunity to put this issue to bed. At this stage, I am not even sure it is as much a matter of money as it is one of respect. A firm commitment to the principle of equal pay for equal work, and a clear timescale for the delivery of it, would have been sufficient to take much of the heat out of this contentious issue. This simple acknowledgment of the legitimate grievance of newly-qualified teachers would have saved the Government, teachers and most importantly our children a lot of hassle and disruption. Instead, parents, students and teachers are facing into another academic year with the threat of industrial action hanging over them. The matter of equal pay for equal work cannot be ignored and must be addressed in a constructive and meaningful way.

Deputy Bríd Smith: I shall share time with Deputy Boyd Barrett and with Deputy Copping, should she arrive. The Deputy is not in the Chamber at the moment.

Acting Chairman (Deputy Bernard J. Durkan): Agreed.

Deputy Bríd Smith: I welcome the public sector workers and pensioners who have come to the Gallery for this debate. I note also the absence of members of an Páirtí an Lucht Oibre - which translated loosely means the party of the working people - who are not here at all. Perhaps they are busy licking their wounds after the Jobstown verdict today. They are absent from the Chamber during a debate on an issue that very much concerns working people. This should be noted. I also want people to note the very low attendance at this debate. We would not be having this debate at all if were not for Deputy Boyd Barrett, who represents us on the Business Committee and who insisted that the renewal of the FEMPI legislation be discussed.

Under the legislation, all that is required of the Minister is to come back every year before the end of June to tell the House whether or not FEMPI is to be renewed. Extraordinarily, the renewal of this legislation is not voted on. It just gets through on the say-so of whichever Minister happens to be sitting across the House at the time. Members vote on the Offences Against the State (Amendment) Act each year. We voted on it last week. We do not, however, get to vote on FEMPI but I will table a motion that it should be voted on. At the Business Committee and with the Taoiseach during the week, there was quite an argument to the effect that we should not take a vote on a motion in that respect. We must ask why this is so. It is because it is very sensitive and crucial legislation. It is draconian and unfair. It attacks one sector of the working population in the State consistently every year. It is being pushed as emergency legislation outside of an emergency; it is the longest duration for emergency legislation in the history of the State. Is it not extraordinary that we allow this legislation to remain in force in

such a manner, without even a vote on it?

I would like to say, however, that I am somewhat surprised at Sinn Féin. I understand Fianna Fáil being as blueshirt in its approach to workers as the blueshirts themselves are, but I am surprised at Sinn Féin's attitude-----

Deputy Niall Collins: That is absolutely untrue and I want it withdrawn from the record.

Deputy Bríd Smith: I want to make the argument-----

Acting Chairman (Deputy Bernard J. Durkan): Deputy Bríd Smith should not-----

Deputy Niall Collins: It is absolutely not true.

Deputy Bríd Smith: Will the Acting Chairman stop the clock please?

Acting Chairman (Deputy Bernard J. Durkan): Deputy Bríd Smith must please not invite responses from anyone else.

Deputy Bríd Smith: Will the Acting Chairman please stop the clock?

Acting Chairman (Deputy Bernard J. Durkan): The Deputy will proceed with her business please and she will be heard. However, she must not enter into a wrangle with anyone else.

Deputy Niall Collins: The Deputy should make her own points and not try to characterise Fianna Fáil as something it is not.

Deputy Bríd Smith: That is an extraordinary instruction and one which has never been heard in this House. It is an extraordinary instruction.

Deputy Niall Collins: The Deputy should speak for herself. She specialises in it.

Deputy Bríd Smith: I am told it is Deputy Niall Collins' speciality.

Acting Chairman (Deputy Bernard J. Durkan): Let us move on please.

Deputy Niall Collins: The Deputy is well able to criticise others.

Deputy Bríd Smith: Shout me down but I will continue to make my argument.

To Sinn Féin and anybody else who is listening to this debate, I wish to state that talk about unwinding FEMPI in one go, proceeding with a gentle unwinding of it or easing an item of emergency legislation out of existence is nonsense. FEMPI must be got rid of. I say this not just because it discriminates - it creates unequal pay and has kept public sector workers and pensioners in a low-paid prison. It also discriminates against trade unions from the point of view of negotiation. As a result of the penalties contained within FEMPI, unions have their hands tied behind their backs when they enter into negotiations with the Minister. The evidence of this lies in the history of the ASTI and its relationship with the Lansdowne Road agreement. The ASTI has been absolutely penalised and sent to Coventry because its members rejected the Lansdowne Road agreement. Unions will be voting on this deal over the next few months and I will encourage them publicly to reject it. It is unfair to their members, the pay rises are paltry and by the end of 2020, they will have achieved less than reckoned inflation. With this deal, we would be cementing austerity. Millions of working hours would be given for nothing - on a permanent basis - by workers in hospitals, schools, local authorities and so on. I reiterate - mil-

lions of hours for nothing.

Austerity is being made permanent with this deal. There is austerity in pensions because the pension levy is being made a permanent feature for public sector workers. Therefore, it is really important that unions think very carefully about this. I am surprised by some of the unions enthusiastically endorsing this deal but I am also delighted that some have enthusiastically asked members to reject it on foot of the permanent method of austerity enshrined in it. That is what I would say to Sinn Féin and the majority of workers. We should get rid of the FEMPI legislation so we are not tying workers' hands behind their backs in negotiations. Once it is eliminated, workers would be on a level playing field in negotiations and in a position to argue that highly-paid workers should not get full restoration.

Deputy David Cullinane: I am not sure the Deputy heard us correctly.

Deputy Bríd Smith: Deputies and Secretaries General should not get restoration but the lower paid should. The legislation is based on a series of lies. The first is that the financial emergency and the recession were caused by overspending on public sector workers. That is not true. However, the solution was to cut pay, pensions and working conditions. These people include nurses, doctors, firefighters and teachers; those on whom the State relies. We were told that they bankrupted the country and that we had to go after them and their gold-plated pensions. I do not think so. The one person who will go with a gold-plated pension is Deputy Enda Kenny when he retires. He will probably do that soon and he will have a very nice pension.

More lies are required, including the pretence, as has been mentioned, that we are in a financial emergency. We are not. The gentle unwinding of the FEMPI legislation is forcing these cuts. We were told that the roof would fall in if we eliminated the legislation and Brexit is being used as a stick with which to beat us.

Deputy Niall Collins: The Deputies campaigned for Brexit.

Deputy Bríd Smith: The most pernicious lie is when we are told that if we restore the rights of teachers and firefighters, we would have to cut services. I have spoken about how 11 beds have been cut from the Linn Dara unit because the HSE cannot recruit or retain nurses to provide adolescent psychiatric care. This is because the HSE does not pay nurses enough and treats them unequally. As a result, nurses cannot afford to pay the rents being charged in this country. Services are being cut when their pay is cut, and this is happening particularly in the health sector.

It is amazing how commentators who want to go after the public sector do not give a damn about the homeless and vulnerable most of the time. When it comes to restoring pay, however, they say that it cannot be done because it would hurt the homeless and vulnerable and that we must look after them. They argue that if we restore pay, we would have to cut fire and health services even more. The hypocrisy is astonishing. The choice is not between these workers and the homeless or the sick but rather between the vulnerable and the wealthy, such as the bondholders and developers whose profits and dividends are back to pre-2008 levels. The issue is not that funds are unavailable but, rather, that there is no political will available.

I can provide two examples. We have written off the debts of employers who claimed insolvency and failed to pay their workers' redundancies. We will deal with a redundancy Bill during Private Members' time later. We continue to give tax breaks to vulture funds and real estate investment trusts, and we give charity status worth billions of euro to vulture funds that

make billions from property that is practically being given away to them. The real purpose of the FEMPI legislation is not to save money for the State, because it does not have to save money on public sector workers. The FEMPI legislation is putting down a benchmark for all workers, in the public and private sectors, indicating that their rights and pay are to be curtailed. I can see how this would spill over to the private sector, particularly in regard to pensions. Irish Life has a solvent pension fund with much money in it but it is being cut to bits and the defined benefit scheme is being taken away from thousands of workers. The company is taking its example from the top. The fish rots from the head and the Minister has given private sector employers a good example of how to go after workers' pay. This is a gross injustice.

In the public sector, 40,000 pensioners who have given this State great service but who have retired from work will die and never get the restoration of the pay they deserve at the current rate at which the FEMPI legislation is being unwound. At the other end of the spectrum, young workers are grappling with rents and the cost of living. They are being told that pay equality is something we cannot afford. Many of them will lose at least €100,000 in the course of their working lives as a result. The recession has seen massive increases in attacks on all workers in precarious employment and low hours but all aspects of this happening in the private sector can be seen with the FEMPI legislation. By forcing these cuts and using State legislation against public sector workers, the Minister is effectively colluding in a race to the bottom, all in the name of keeping things competitive. It is outrageous that anybody who claims to represent workers could fall for this nonsense. The worst lie trotted out is that people must be paid at a lower rate in order to keep services running. We can look at losses suffered by low-paid workers and find that those earning approximately €25,000 per year have lost nearly a year's wages already because of this legislation.

I wish to move a motion that is on the Order Paper. I will not read it because it will eat into Deputy Boyd Barrett's time. It is signed by many Deputies but I am sure we will not get to vote on it.

Acting Chairman (Deputy Bernard J. Durkan): These are statements and there is no provision to move a motion.

Deputy Richard Boyd Barrett: As I stated during the week, it is the hallmark of a tin-pot dictatorship to retain emergency legislation after the emergency is officially over. Mubarak did it for 25 years and it is done in all sorts of tyrannical and dictatorial-----

Deputy Bríd Smith: North Korea.

Deputy Richard Boyd Barrett: Yes. That is what is being done, as this is emergency legislation when the emergency is over, even according to the Government. What is the legislation designed to do? It is to bully and intimidate public sector workers, create a two-tier pay structure and accelerate the race to the bottom. The FEMPI legislation is a textbook example of what Naomi Klein called the shock doctrine. This was exploiting a crisis, seeing it as an opportunity to take advantage and do something that Fine Gael and Fianna Fáil always wanted to do but could never get away with except within an atmosphere of crisis.

Deputy Niall Collins: That is complete nonsense.

Deputy Richard Boyd Barrett: It was a neo-liberal wet dream and the parties want to hold on to it.

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Deputy Niall Collins: Does the Deputy wish to explain why he campaigned for Brexit?

Acting Chairman (Deputy Bernard J. Durkan): Never mind the wet dreams, the Deputy should continue with the debate.

Deputy Richard Boyd Barrett: The truth hurts.

Acting Chairman (Deputy Bernard J. Durkan): The Deputy has two minutes and 58 seconds remaining.

Deputy Bríd Smith: We are owed at least one minute.

Deputy Richard Boyd Barrett: That is because of the interruptions.

Deputy Gino Kenny: Fianna Fáil caused the crisis. They have a hard neck.

Deputy Richard Boyd Barrett: They have indeed. At the end of this so-called pay restoration, public sector workers will still earn less than what they earned in 2008, when Fianna Fáil started it and before Fine Gael continued the latter's policies. That is shocking. This affects our young teachers, nurses and, let us not forget, the ushers who come in here and who have also been affected by a two-tier system, along with service workers. They effectively see a yellow-pack and low-paid grade that is enforced by this legislation. These workers did not have a single shred of responsibility for the economic crisis.

How did the people who scapegoated the public sector workers and who wish to continue to do so treat the those who actually caused the crisis? How did they treat them during the emergency years? They did not touch them. It was the one red line. We rolled over and accepted every element of austerity shoved down our throats by the troika. However, in the context of one issue, the Government stated there was a red line that would not be crossed. It would not increase the tax on corporations by one cent. How did those corporations in the interim? Their profits went up every single year from 2008 onwards. Gross pre-tax profits from 2008 - there was one fall in that year - went from €65 billion to the current figure of €95 billion. That is how well they have done, and they are only paying approximately 6% in tax. The Government will not take an extra cent from them but it wants the right to retain emergency pay and pension cuts, along with a two-tier apartheid pay structure for low-paid public sector workers.

I do not agree with Sinn Féin's argument.

If we taxed the people in those corporations which were the culprits, namely, the banks and developers, and all those who are getting unknown billions in tax breaks in the property sector through section 110, we could easily restore all the cuts. Of course, we would not give pay increases to people in excess of €100,000 - we would take it through a tax on higher incomes. However, the Government does not want to do that or even talk about it. This was always about using the atmosphere of crisis to keep workers down and it still is. The cost is not just felt by the workers. It is linked to the current housing crisis because workers' pay does not enable them to pay their rent or get a mortgage. It is directly related to the health crisis because we cannot get nurses and medical professionals to work in our health services, on account of not paying them properly.

Deputy Niall Collins: Deputy Boyd Barrett never told us why he campaigned for Brexit.

Deputy Richard Boyd Barrett: It was because we do not believe in EU austerity.

Deputy Clare Daly: I apologise for missing the opening statement of the Minister but I was at a meeting of the justice committee all afternoon, which has just finished. It is a bit of an affront to call this emergency legislation and it is an insult to people. There are real emergencies in Irish society such as the mental health crisis, the housing crisis, the bed crisis in our hospitals and many others for which there is no emergency response and for which no immediate actions or solutions are offered. Where are the sweeping powers to deal with them? Seven years after its introduction and three years after Fine Gael Ministers started to claim the crisis was over and everything was grand, it is shocking that the Government still relies on emergency powers to implement this portfolio.

The Minister and the Government are trying to create a scenario that would have us believe we are always on the brink, balanced on the edge forever in the need of undemocratic and drastic measures. The Minister said we were beginning a process of exiting FEMPI but a lot of people are very doubtful about that because the reality proves that there is no such intention. In fact, FEMPI has been a cover to bring in structural reforms to the Irish economy to undermine public services and workers' pay and facilitate a race to the bottom for which many in society are paying a price.

The actual Emergency in this State, which led to the Emergency Powers Act 1939, lasted for seven years during a real emergency, namely, the Second World War, but FEMPI has been in place for seven years without an emergency. This step has been taken at the expense of the democratic process because it is about hollowing out public services and replacing political decision-making with economic decision-making. It makes neoliberalism compulsory and the bureaucratic reforms undermine not just the democratic process but also people's financial security.

The Minister is well aware of the report released two days ago by Aviva that revealed the extent of deprivation in this State, with more than 1 million adults struggling to make ends meet. Two thirds of those who are struggling see no prospect of an improvement in their personal circumstances, which tells us quite a lot about the damage that has been inflicted. Even in the dire times of the 1930s, the 1950s and the 1980s, when people were emigrating, people still had aspirations about improvements being made in their lives but those aspirations have now been largely lost, an incredible indictment on the existing political establishment. The generation of today faces the prospect of being worse off than their parents. Secure full-time jobs are diminishing at an alarming rate, no matter what time a person gets out of bed in the morning. Access to decent education is very much under threat because of austerity policies which cut structural investment, enforced a recruitment embargo and downgraded teachers' pay and conditions in 2011.

FEMPI has not made a positive contribution to the Irish economy, not least in respect of the people at the receiving end of its policies. It did not stop inequality and contributed to the reality highlighted by TASC that Ireland is the most unequal society in the EU. In the time of FEMPI, jobs to which people, in years past, would have aspired such as teacher, garda or nurse are now gone - they are an illusion. A nurse trains here at the expense of the Irish taxpayer and goes somewhere else to get a job because a nurse will not get a decent job in Ireland. A teacher, who is charged with developing our young people, is treated like dirt if he or she is recruited under the present regime. However, while all this austerity was being imposed, the top 1% saw their share of wealth go from just over 10% to 12% between 2015 and 2016. This money could easily have been used to restore what was taken from public sector workers but this is an ideological crusade and driving down wages, conditions and job security in the public sector

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was followed in the private sector. A garda and a nurse who want to set up home together now have no hope of buying or renting a house in this city because wages have not caught up with prices. On top of that there are insurance costs, child care costs and other austerity measures.

We now have labour market flexibility, job insecurity, low direct taxation, stealth charges, privatisation and the growth of an unfettered financial sector, which has facilitated the transfer of wealth. There are huge structural problems in the Irish economy but the crash, for which we are allegedly now paying the price, was not created by public sector pay or by teachers or nurses or firefighters, yet it gave the Government a new emergency which it used to drive reforms. It has negatively impacted on the quality of life of all citizens and the fact that 80,000 people left the country did serious damage to communities and public services. I did not believe the Government had any justification for cuts in 2010 but even if it had some, it certainly does not have any now. The Act is grossly unfair and entirely inequitable, in that it impacts on the weakest sections of society, low-paid workers, retired people, families with children with special needs and those who rely on care in the home. The targeting of low-paid and middle-income workers in the FEMPI Act is particularly repulsive and has been one of the key contributing factors to the growth in deprivation we have witnesses and which now are an established fact in Irish society. By taking money out of the pockets of lower-paid workers, the Government is effectively taking money from the local economy and all the rot that sets in consequently.

We need to look at inequality in terms of spending power because disposable incomes have been shattered, as compared with gross salaries, by the breadth of the crash and austerity policies. Average rents across Dublin are astronomical and someone with an average gross salary of €45,000, which does not include many in our public sector, would have to pay over €13,500 in rent per year, that is, over one third of their gross pay. It is sick and does not happen in any other European country to the same extent as it does here. The cynical increase in hours to squeeze free labour from public sector workers is particularly offensive and was a very harsh and cruel measure.

It is somewhat ironic that the trade union movement peddled itself on trying to transform conditions for workers by developing the idea of work-life balance. The squeezing of workplace flexibility hit those with children the hardest. They have to collect their kids and pay extra for childminding but they lose out on the time they need to spend with their children, adding to greater pressures at home and so on. I welcome any measure that puts money back in workers' pockets, but the latest round of proposals leaves an incredible amount to be desired. It dangles the tiny carrot of repaying what was stolen from workers in the first place but makes the robbery of additional hours of free labour from people a permanent fixture of their working conditions. There is no such thing as a free lunch but the few bob being thrown back here is an extortionately priced lunch at the expense of workers' conditions and extra free labour. It turns the pension levy into a permanent cut that will be in place forever. The average public sector worker will be worse off as their 4% rise in wages is less than the projected 4.5% inflation rate over the lifetime of this deal. People are being asked to vote to make themselves worse off.

If I worked in the public service, I would reject this deal and vote accordingly. Unions need to deliver a far better deal for their members because in doing so for their members, they will do so for society, which needs a healthy public service operated by well-paid, secure, permanent, pensionable employment. It used to be seen as a right that even if one were not great at school, one could leave one's job, get a job in a county council, possibly get a council house and that one's children could then go on to be educated, better off than their parents and aspire to do better. All those aspirations have been stood on their head. Undermining the public service is the

bedrock of the counter revolution that has taken place in society to the detriment of our young public sector workers in the main on the one hand, and pensioners on the other. In that respect, the deal is reprehensible. I hope it is rejected. It is insulting that people's working conditions are being dictated under the guise of legislation brought in for an emergency. This deal scapegoats people and society. It is unacceptable, particularly in light of the Government's protestations about how well the economy is doing. I hope the deal is rejected. It should be withdrawn in its entirety and unions should once again be able to negotiate their own rates and conditions.

Deputy Michael Harty: It is disappointing that this debate is only for statements to be given rather than a debate on which Members can vote. That was explained in the House yesterday by saying that last year there were only statements on this issue rather than a debate and the same formula is now being followed. However, last year statements on this issue were made after 30 June when the legislation had been renewed and consequently there was no point in having a debate. It is disappointing there is to be no real debate this year. The debate last year took place in early July if my memory serves me correctly.

The legislation urgently needs to be reversed because the financial crisis is over. I agree with Members who have said that the legislation is being carried on for reasons other than a financial emergency. It is and was draconian, similar to that which would be introduced during wartime rather than a financial crisis. It has been overplayed and needs to be reversed. It appears from the Minister's speech that this will not be done until 2020, which is far too distant. It has enshrined unequal pay in the public service.

Pay equalisation is urgently needed. It is a huge issue for nurses, teachers and gardaí. It feeds into the recruitment and retention of essential staff and services because unequal pay is driving people out of this country. Nurses and doctors, who can work anywhere in the world in a global market, are being forced out of this country because of unequal pay and the legacy issues of FEMPI. Many midwives are leaving the country or the profession because of their working conditions and the responsibility they are expected to take on and the unequal pay they receive while working alongside colleagues who are getting standard pay rates. FEMPI is feeding into the difficulty in recruiting and retaining staff. It has huge legacy issues going far beyond pay. This draconian measure is being continued long beyond the country's financial recovery.

FEMPI was disproportionately applied to general practitioners in an unfair and careless manner. GPs are paid a global fee, part of which is their income but a substantial part of which is the finances they are given to run their practices, yet FEMPI was applied to the entire fee. GPs have suffered a 38% reduction in the finances they get to run their practices. No small business could sustain such a reduction for more than a year or two, but for many years GP practices have been subject to that. It cannot continue. FEMPI is a principal cause of the huge manpower issue in general practice. There is also the issue of outdated GP contracts, as Members understand and has been discussed in the House on many occasions, but FEMPI has torn the heart out of general practice and made it non-viable. GPs cannot run a practice with a 38% reduction in their overall income year upon year. Therefore, they are retiring or emigrating to the Middle East, Canada and Australia. Young GPs are looking at how general practice has been destroyed by FEMPI and thus are not taking up GP lists. There is, therefore, a huge manpower crisis in general practice.

The Committee on the Future of Healthcare has spent 11 months producing the Sláintecare report, which recommends that there be a shift from hospital-centred care to primary and com-

munity-centred care. Who does the Minister think is going to deliver that service? To deliver the service recommended by Sláintecare would require 1,000 extra GPs. With the country's ageing population, it is crucial that there be a shift from hospital care to primary and community care. Demographics show that it will not be possible to sustain the health service unless chronic illness is dealt with outside the hospital system and looked after in communities and in primary and social care. A critical component of that strategy is the retention and recruitment of GPs. That cannot be done while FEMPI has reduced the amount of funding for general practices by 38%. GPs are effectively civil servants, and as eligibility for GP services is extended to greater numbers of the population and eventually the entire population, GPs will be fully paid civil servants and they cannot run their practices on an income that has been reduced by 38% by FEMPI. It has been disproportionately and unfairly applied to general practice in a very uncaring manner. I urge Deputy Donohoe, as Minister for Finance and Minister for Public Expenditure and Reform, to look at this issue specifically because our health care system is in crisis. It cannot continue in its current form. There must be recruitment and retention of general practitioners but FEMPI has torn the heart out of general practice. By not reforming our health service, we are being disingenuous and unfair to our population and to patients. It is an issue of human rights now. The way our patients are treated in our health service is so poor. While many parts of our health service are functioning very well, there certainly are many areas in which the human rights of patients are being infringed on. FEMPI is a huge part of that and I urge the Minister to look at it, in particular with regard to general practice.

Deputy Mattie McGrath: I too am discussing the savage cuts implemented under FEMPI legislation. I find myself in the unusual position of agreeing with most, if not all, of the elements of the motion on FEMPI that has been put down by Solidarity-People Before Profit. That is unusual as Deputies Bríd Smith and Gino Kenny would agree. I agree with them that the justification for the introduction of the Financial Emergency Measures in the Public Interest Act 2009 was the economic crisis and financial emergency which beset the country and that by the Government's own pronouncement, the financial emergency has passed.

The Minister spoke during the last election about recovery but he forgot that it did not travel out beyond the Red Cow roundabout. The Financial Emergency Measures in the Public Interest Acts 2009 to 2015 have been used to cut public sector workers' pay and pensions, as well as those of general practitioners, GPs, among others. The emergency legislation that curtails the rights of workers to free collective bargaining can no longer be justified. The continued use of emergency legislation in the absence of an actual emergency is an abuse of Government power. Anybody would know that. I had children here today from first and second class who knew that. It is wrong.

One example of the way that FEMPI has led to serious consequences in terms of the health infrastructure is the cuts that were imposed on general practitioners. The Minister might think that myself and Deputy Harty prepared our speeches together. We did not even discuss it. The National Association of General Practitioners, NAGP, has called on the Government to urgently reverse financial emergency measures in the public interest, namely, FEMPI fee cuts in general practice. The GP representative body said that general practice has suffered disproportional funding cuts of up to 38% under FEMPI. My colleague, Deputy Harty, referred to this as well. The NAGP has also said that FEMPI is a key factor in the high rate of emigration among GPs as the profession is now not viable in Ireland. We see that every day in rural Ireland. We cannot get doctors or GPs to apply for practices. Does the Government not care about the impact of this or about the health of our people? The NAGP chief executive, Mr. Chris Goodey, has stated

that FEMPI is driving young GPs abroad in search of better terms and conditions. We invest a great deal in training our young GPs and nurses but newly-qualified doctors have demonstrated a lack of faith in the viability of general practice. In 2017, for the first time, ten GP training places have remained unfilled.

It is time to sit up and smell the coffee and for some fairness. We have heard the new Taoiseach - who has proven that he is the same as the last Taoiseach despite only having been in the job for two weeks - say that he wanted to represent all people in Ireland. He is not representing the front-line service workers in our hospitals. The trolley crisis worsens in the middle of summer. The last Taoiseach made many commitments and even had a poster on a billboard saying he was going to get rid of the trolley crisis. We cannot get the doctors and the doctors we have are being mistreated. We cannot get the nurses but we have no problem getting managers. There is no problem in getting them. There is a plethora of them. There were 9% more managers in the HSE in 2016 compared with 2015. We need to be fair and respectful of these people who put their shoulder to the wheel and took the cuts.

We all supported the cuts because they were needed, yet we have been talking about recovery for years. If it is a recovery, why is this emergency legislation still in place? I compliment Deputy Boyd Barrett, who in fairness has been fighting for this debate in the Business Committee for the past two months. The Minister did not want to have it but here we are. Is he listening? *Ba chóir don Aire a bhéal a dhúnadh agus éisteacht.* I hope the Minister is listening because he has not listened to the people or the message he was given after the last general election and he is not listening now. This is wrong and he can make it right. The emergency is well over and we need to be respectful of the people. These are working people who want to work, including GPs, front-line service staff and many others. People cannot live like this. It is foolishness.

As for taking 38% out of a GP's practice, it is obvious that no member of the Government ever ran a business because that provides the income they use to pay all their staff. General practitioners are business people. They are small businesses in every town that pay rates, taxes, heat, light, staff, other doctors and nurses. They are huge employers who operate in my home town and they are being mistreated by the Government. In turn, there are people who cannot access GPs at all and cannot get transport services to the GPs in the towns. Does the Minister want people to lie down in the ditches and die like they did in the Famine? The way the people are being treated is outrageous. Members in this House are being treated poorly as well, with the attempts to vote this legislation through time after time each year. It is wrong and it can never be made right.

FEMPI should be wiped away. The Minister tells us about growth rates of 6% or 12% and that we are the fastest-growing economy in Europe. He is telling lies and porkies. He contradicted himself here this evening because if we have that kind of growth, why do we need financial emergency legislation? If we have a real emergency, the Government will not get cooperation from this House to pass legislation because it is pulling the wool over people's eyes here. It is codswallop to tell us we need this legislation when we do not. The Minister is now the Minister for Finance as well as being the Minister for Public Expenditure and Reform. Being in charge of both Departments amounts to smoke and mirrors. We have a budget coming with less and less so called fiscal space. The Minister should be fair, honest and respectful of the Opposition Members here who want this to be changed. They want the Minister to state the emergency is over and an attempt must be made to loosen the purse strings. If the Minister was ever in business, he would understand that constant cuts are not going to succeed. He has

to stimulate the economy and allow the people who have been affected by all of this to be able to spend again, to be able to have a holiday, to pay their mortgages and be able to put food on the table and perhaps eat out occasionally and to go out and buy some of the commodities that they are not buying now or have not been buying since the recession, as well as to support all the local shopkeepers who all pay VAT, other taxes and rates. They must be able to thrive, or rather to survive again. It is not rocket science. This is not genius talk. If the Cabinet had an understanding of how business works, it would understand that. Allow the people to have spending power. Allow them the dignity of having a decent wage without this financial emergency legislation taking a big hole out of it and allow them to have an economy that is going to work and help them to pay their taxes. Revenue income has fallen this year in spite of the vigorous and aggressive policy of Revenue of pursuing self-employed people in particular, that is, those who are the generators of business and jobs. Look at all the money paid to get foreign direct investment.

Stimulate the people. Allow these workers, including GPs, their staff and all the workers who have been suffering here, to be able to have a dignified wage, a fair day's pay for a fair day's work and to go out and stimulate the economy again. They will put their children to education in order that we will have young doctors and nurses trained again who will not all want to go on the aeroplane the minute they finish because of the regressive and penal type of legislation we are persecuting them with in a charade that has lasted three or four years too long. We have put up with what we have had to put up with. We have put our shoulder to the wheel. It is time the Minister, in advance of the budget, started to think about supporting these people again. They are not looking for anything except fair play. Fair play is fine play by me.

Deputy Róisín Shortall: The draconian cuts in pay and pensions were introduced at a very different time in this country. There was a financial emergency and there may have been some kind of justification for the cuts at the time. The public expected the Government to deal with the awful situation in which the country found itself but it expected this would be done in a fair way. Unfortunately that was not the case. When we look back at who paid the biggest price, it was those who were least able to afford it. The burden of austerity did undoubtedly fall disproportionately to those on low and middle incomes. The FEMPI cuts on public service pay and pensions were drastic and people on fairly modest incomes and pensions were hit with this huge cut in their take-home pay. At the same time, they were hit with a raft of charges. It was a double whammy for many of these public service workers and the result of that undoubtedly decimated many people's standard of living. That was particularly hard to take when there was a very strong sense within the country that the cuts were not being applied fairly and that there were still sections of Irish society - to a large extent the better-off sections - that seemed to be escaping without having to shoulder that burden at all.

We have come through a number of years with those FEMPI cuts and there is no doubt it is time to unwind them fully. I do not understand why we have to wait until 2020 for pay to be fully restored. The approach should be to prioritise those on modest and low pay. That has not been the case. It was a mistake last year to announce that Deputies would have full pay restored in two lots and many others with similar pay, senior civil servants, principal officers and higher grades within the Civil Service were to have their full pay restored but that was a mistake.

Deputy Paschal Donohoe: Not true. That is wrong.

Deputy Róisín Shortall: People at that level could have held off for longer and priority should have been given to other sectors within the public service. The unwinding of FEMPI is

taking too long for people on middle and low incomes.

The glaring area that needs to be addressed is new entrants.

Deputy David Cullinane: Hear, hear.

Deputy Róisín Shortall: That does not mean everything else is fine. I and others have received letters from pensioners in their late seventies or eighties regarding the pension levy. There is something very wrong about such people having to pay a pension levy.

New entrants have been treated disgracefully by the FEMPI cuts. There is a pay generation gap where people are receiving unequal treatment. We are saying it is somehow okay to saddle young people, who are doing the same job, with a bigger burden than middle aged or older people because of a particular event in our economy. There is no justification for that. It is bad enough that the middle-aged generation and older people have saddled young people with enormous debt as a result of the bank bailout. That will have implications for their lives and the country for many years to come. To also say to them they will take the brunt of public sector pay cuts because of their age is completely unfair. It represents the most appalling slap in the face for the young generation. They already feel let down by their elders who made a mess of the economy, who let it rip and were prepared to stand by while the property bubble grew year on year until the country was brought to the brink of disaster and is now saddled with enormous debt for the future. Not only did our generation let down the people coming up behind us, our sons and daughters, but we told them they will pay a bigger price than anybody else. That has caused enormous division within Irish society. Many young people deeply resent what their seniors in politics have done to them. There are cohorts of Irish people in their twenties living in London, Canada and Australia who feel deeply let down by the political system. They regard this two-tier pay system as a slap in the face.

Not only are we telling them that jobs were not available in the years when there was no job growth, forcing them to emigrate but also that if they come back and work here huge problems are stored up for them, namely, lack of access to housing, whether to buy or to rent, the cost of insurance, health care and child care. That is very little encouragement for those people to come back.

My principal concern is about those who stayed behind and continued to run the public service, those who were recruited after 2011 and were treated disgracefully. Those people, on significantly lower pay than their older peers, have now to contend with all those increases in the cost of living. Housing is unaffordable for most people younger than 35 years of age. It is increasingly difficult to put a car on the road because of the soaring costs of insurance. People who have what would have been regarded as decent jobs, such as teachers, nurses, gardaí and others and who in the past could have aspired to doing what people in their twenties and thirties expect to be able to do, namely, save to buy a place of their own, get married, have a family, the normal things that the older generation took for granted, find those normal things are no longer available to many of them. They cannot afford to have normal aspirations on their reduced pay scales. We have all heard from those people and felt that we have abandoned them. They are the abandoned generation who have been left to muddle on and have a strong sense that their seniors in their own professions, in trade unions and particularly at a political level were prepared to pull up the ladder behind them and tell them they could fend for themselves, they could swing for it. That is no way to treat the younger generation and we will pay a price for that. It greatly contributes to a sense of division and lack of cohesion within Irish society.

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I received an email from a young teacher stating that in the first year after he qualified he was lucky enough to earn €19,000 on part-time hours. He got full-time hours, his workload has increased, his rent is skyrocketing, he can barely afford to put a car on the road because his insurance has doubled in three years. He is working next to people who do the same work but earn substantially more than he does. He claims that while it may be difficult to make the case to the Government, it is incredibly difficult to work in a profession that on the face of it values equality so much but values its newly qualified staff so little. He says they are not pawns, they are human beings, with lives to live. He says he qualified as a teacher and in June he will have two post-graduate qualifications but every year his salary is down approximately €8,000 compared with his peers. He has already personally sacrificed €20,000 for the State and that is before even discussing pensions for new entrants. He believes he has sacrificed enough. He wants the public sector pay talks to unwind FEMPI and deliver full pay equality for public servants hired since 2011.

We know, however, that those pay talks have not done that. Far from correcting the mistakes that were made in dumping on the younger generation in previous pay talks, the latest talks have compounded that division. There is now a nod in the direction of the two-tier new entrants. It is interesting to note what the agreement said about them. It states, "Accordingly, it is agreed that an examination of the remaining salary scale issues in respect of post January 2011 recruits at entry grades covered by parties to this Agreement will be undertaken within 12 months of the commencement of this Agreement." As such, it is an examination within 12 months. The agreement also states, "On conclusion of this work, the parties will discuss and agree how the matter can be addressed and implemented in a manner that does not give rise to implications for the fiscal envelope of this Agreement". What we are saying is that we will examine it for 12 months and then discuss it to see how this issue might be addressed within the fiscal envelope. That means we will see how it might be addressed without it costing any more money. To my mind, that is to dump for a second time on new recruits and to deepen the generation gap which has been allowed to develop within the public service. That is disgraceful. It is absolutely right that the teaching unions are opposing the agreement. One teacher - an INTO representative - spoke to me last week about a situation in his school where almost half of the teaching staff next year will be new recruits. He asked how the established staff could possibly sell their colleagues down the river by agreeing to this. That mistake was made in the past and it should not be repeated. One cannot abandon people like that; one cannot abandon colleagues.

I want to speak briefly on the impact of FEMPI on people working in the health service. It is especially the case that nurses have voted with their feet and gone abroad. Nurses, teachers and many others are going off to Dubai and Abu Dhabi where they have the opportunity to raise money so they can lead normal lives by buying homes or considering starting families. It is those normal things they are not able to do here. In the medical profession, consultants have been particularly badly treated, with the creation of a 30% pay gap between new entrants and existing staff. That is certainly a factor in so many going abroad. There is also a very serious problem in general practice. Through the years we have been saying that we must reorient the health service and that general practice and primary care must be the key drivers and service providers for the health service. That is the rhetoric, but the action has been to cut the incomes of general practices. General practice has been more deeply impacted upon by FEMPI cuts than perhaps any other sector. It is not just about GPs' incomes but about those critical practice supports which are so essential to the provision of capacity within primary care to provide services at the most appropriate level locally and in the community. Is it any wonder people are going abroad to develop careers as medics in countries with properly functioning health care systems

and clear plans and where they are treated with respect and valued? Unless we address that, the haemorrhage of staff will continue.

Minister for Finance (Deputy Paschal Donohoe): I thank all Deputies for the contributions they have made in the course of the debate. I want to address some of the claims that have been made about the path of action I am taking on behalf of Government if such a path of action is endorsed by a majority of the unions that are currently balloting on the extension of the Lansdowne Road agreement. I wish to record a number of points which have not been acknowledged by Deputies as they have been criticising me during the debate. Many Deputies referred to the impact of the public service pension reduction, PSPR. I did not hear from a single Deputy who raised this point the fact that by 1 January next year, the PSPR will be eliminated for anybody with a pension of less than €32,000. If one is in receipt of a pension of less than €32,000, the pension reductions which were regressively in place as a result of the crisis will be gone by 1 January next year.

Deputy Bríd Smith: Is that the whole lot of it?

Deputy Paschal Donohoe: I do not even think many of the Deputies criticising me were aware of that-----

Deputy Bríd Smith: I am aware.

Deputy Paschal Donohoe: -----let alone bringing up the fact that it will be gone. As part of my commitment on further steps, I will be meeting the representative bodies for pensioners in the coming period, as I promised to do. I have already met some of them. I will look at what further progress we can make on this. It is also a point which has been raised by Fianna Fáil in the context of the confidence-and-supply agreement we have with it and we will be looking to see what further progress we can make in the area. It is truly extraordinary, however, to hear Deputy after Deputy, particularly some on the far left, stand up and criticise where we are on pension provision without ever mentioning the fact that by the start of next year, those pension reduction measures will be gone for anyone earning less than €32,000.

Claims were made by Deputies, more on the basis of rhetoric than any sense of fact. A number of Deputies appear to believe they are doing their jobs by making themselves hoarse as opposed to referring to the facts which lie at the heart of the debate. At the culmination of the proposed agreement on the extension of the second Lansdowne Road agreement, many of the lowest earning people in our public service will no longer be dealing with the challenges of restoration. They will be seeing their wages increased beyond where we were when we started the horrific journey of the crisis. Again, these are facts which were not acknowledged by many of those who claim to have a monopoly on representing those who work within our society. At the culmination of this extension, many of those with the lowest incomes will not be on a restoration agenda but will in fact be on an agenda of wage increases versus where we were when we started all of this. That is fair, it is what they are entitled to and it respects the fact that some of the work they do is the most difficult and that the challenges they face are the most acute. We are doing that. Again, it is a fact that was not acknowledged at all by those who are the harshest in criticising what we are looking to do.

Another fact not mentioned by those Deputies who have been loudest in criticising the legislation is that this is an agreement which, if endorsed by public service union members, will look to deliver higher benefits to those who have joined since 2013 versus those who joined

pre-2013. One can make the case that it does not do enough. That is legitimate and Deputies are, of course, entitled to that view. To fail to make any reference at all to it in the contributions, however, demonstrates that the only claim of the Deputies is to play to the gallery as opposed to representing those who are in it.

Deputy David Cullinane: With respect, some of us mentioned it.

Deputy Paschal Donohoe: In fairness, Deputy Cullinane did do so, which I acknowledge. The fact is that those who joined pre-2013 will see changes in their wages of between 6% and 7.4%. Anyone who joined after 2013 will see wage changes of between 7% and 10% across the duration of this agreement, if ratified. That was not acknowledged by any of the Deputies across the House who claim to speak the loudest about those affected by the agreement.

I heard this evening the claim that we need to get rid of the FEMPI provisions immediately and swiftly from the same Deputies who a number of months ago were calling on me to develop a path out of FEMPI. Now that we are on the verge of potentially doing that, it is no longer good enough. What has to be done has to be done in a single move. Some Deputies are at least aware of the competing demands on the public purse. They make the point in different ways, while still criticising me, and say that we have to make choices. However, that is then offered up as some sort of evidence of betrayal of those they represent. Instead, what the Government - and some in the Oireachtas who are supporting us - is doing is trying to find a way to balance all the demands.

One particular matter that was raised on a number of occasions and which I have touched on is the difference between pre and post-2013 members of our public service. In the context of the call on me to deal fully with the difficulties in terms of different wage curves and increment levels within our public service, depending on when they joined, Deputy Cullinane did at least acknowledge the cost of that in a single year. It is €206 million. He acknowledged it and, in fairness, he has called on me to provide that information on a number of occasions.

Deputy Bríd Smith: He is a good Deputy.

Deputy Paschal Donohoe: This illustrates the challenge in seeking to make progress on this issue. A 1% change in the cost of all of the public services in our State would be €160 million.

Deputy Bríd Smith: Buttons.

Deputy Paschal Donohoe: Is it buttons?

Deputy Bríd Smith: Yes, if the corporations were taxed.

Acting Chairman (Deputy Bernard J. Durkan): One speaker, Deputy.

Deputy Paschal Donohoe: That says something about the value the Deputy places on the public purse.

Deputy Niall Collins: Magic money tree.

Deputy Paschal Donohoe: It says something about her attitude to the journey our country has gone through that she describes €160 million as buttons.

Deputy Bríd Smith: I said buttons to the corporations.

Acting Chairman (Deputy Bernard J. Durkan): I am sorry, but the Deputy had her say.

Deputy Niall Collins: The Deputy did not say that. She is making it up now.

Deputy Paschal Donohoe: The sum of €160 million is the cost of a 1% increase to all of those who work in our public services. The cost of dealing with the issue of equalising pre and post-wage scales across the period of 2013 in a single year would be €206 million. If I had come into the House and said that I was prioritising dealing with that matter ahead of those others who work in the public services, I would be criticised for doing so and for not trying to find a way to unwind the FEMPI legislation.

Deputy Bríd Smith: The Minister said that last year.

Deputy Paschal Donohoe: If I had come into the House and said that I wanted to do both, let us be absolutely clear that the other changes we would need to make in our tax code and in how we provide services would also be rejected by all of those who are calling and arguing for all of this legislation to be abolished in one single move.

Deputy Bríd Smith: Tax the corporations. That is what we argued for.

Deputy Paschal Donohoe: For those who have made that call on me and who claim to stand up for and represent the workers, I will pay them a compliment that they will not afford to most other Members in this House. I will pay them the compliment of saying that I believe their desire to represent those workers is authentic. So is mine. So is the desire of other Members of the House who understand that there are trade-offs and choices to be made. It is in that spirit that I have looked to find a way of progressing the public service and wage agreements that we have with the unions. The inability of those who, again and again, have asked for a way out of the FEMPI legislation to recognise the fact that we have developed a path to do so is matched only by their unwillingness to acknowledge the facts that are contained in the agreement that is currently under ballot by the public service unions.

Messages from Select Committees

Acting Chairman (Deputy Bernard J. Durkan): The Select Committee on Finance, Public Expenditure and Reform, and Taoiseach has completed its consideration of the Financial Services and Pensions Ombudsman Bill 2017 and has made amendments thereto.

The Select Committee on Justice and Equality has completed its consideration of the Civil Liability (Amendment) Bill 2017 and has made amendments thereto.

Topical Issue Debate

School Accommodation

Deputy Niamh Smyth: I congratulate the Minister of State on his new role, but I am disappointed that the Minister for Education and Skills, Deputy Bruton, is not here to answer in respect of the case of the Holy Family school, as it is one of serious concern. It really upsets me,

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as it does the families and staff of the Holy Family school in Cootehill, County Cavan, who are watching tonight's discussions, to be here yet again discussing the construction, or lack thereof, at the Holy Family school. We need action, not excuses. There are 168 students with special needs from across counties Cavan and Monaghan attending this school. It is the only school of its type in the area. It provides much needed education for pupils and students with disabilities, but currently they are in substandard learning and working conditions. While the school continues to do exemplary work, it simply does not have the proper facilities or resources to cater for all of the pupils' critical needs. These students have everything stacked against them in life and it is simply not fair to expect them, their teachers or their parents to continue to work in the current facility. The project to provide additional permanent accommodation must be progressed without any further delays for the sake of the children, the parents and the staff.

In 2015, the Department of Education and Skills gave the project relating to the Holy Family school in Cootehill full approval for funding. However, there have been many delays and now, in 2017, there is still no new school. I understand that the school submitted the relevant documentation on the stage 2b submission to the Department in April only to be notified five weeks later that it is not in the right order. Is this Government seriously delaying the construction because the information the Department requires is not in the preferred order?

As part of the new build, the school and the prefabs will have to be moved to temporary accommodation, the site of which was secured in June 2016. The Department of Education and Skills has been paying rent for that site for the past 12 months but nothing has happened. Planning permission for the school was granted in 2013 but, to date, it has not been able to proceed. If this continues, the school will have to get an extension of the planning permission. Children are suffering. Their safety, health and education are at risk each and every day that the construction is postponed. Being the only school of its type in counties Cavan and Monaghan, the Holy Family school is and should be a high priority as it accommodates a significant number of students with disabilities. In September, the school will have 48 children with moderate disabilities, 13 with multiple disabilities, 39 with severe and profound disabilities, and 68 with autism spectrum disorder, ASD.

During the past 15 years - it has taken this long to get through the planning process - the number of students in the school has increased. This means trying to accommodate more pupils in already cramped conditions. In 2013, the school had 129 pupils enrolled; now it is up to 168. The school has seen an increase of 11 staff members in the same years. Despite this growth, the school facilities remain in substandard condition and it is completely inadequate as an educational facility. The Holy Family school main building was opened in 1973 and it is really starting to show its age. There are leaks in many of the junior classrooms, the roof is constantly being patched up, some of the ceilings are leaking and the walls are black. There are wooden laths holding up the ceiling and mould growing down the walls. The toilets, bathing area and plumbing system are creaking at the seams. Besides this, there are inadequate parking facilities, forcing the staff to park on the road outside the homes of the neighbouring houses, causing chaos.

Enough is enough. We need a commitment and a guarantee right here right now from the Minister of State as to when the work will commence. Stop the bureaucratic nonsense that files are not in the preferred order.

Minister of State at the Department of Housing, Planning, Community and Local Government (Deputy John Paul Phelan): The Minister, Deputy Bruton, sends his apologies that

he cannot be present for this discussion. I am happy to replace him because this is a subject close to my heart. A few members of my extended family are in similar schools in County Kilkenny.

The Minister thanks the Deputy for raising this matter as it provides an opportunity to outline the current position of Holy Family special school, Cootehill. The school is a multi-denominational, coeducational special needs school that caters for pupils aged from four to 18 years with moderate or profound learning difficulties and students with autism. This project is included in the six-year programme announced on 17 November 2015 to go to tender and construction. The original brief was to provide a 21-classroom school. Following a meeting with the Department of Education and Skills in December 2015, the school and its design team were authorised to increase the scale of the project to deliver a new 26-classroom school. On 18 November 2016 the design team submitted a stage 2a addendum report to the Department for review. The review was completed by the end of January 2017 and the board of management and its design team were authorised to complete stage 2b, the developed design stage. This stage includes obtaining planning permission, a fire safety certificate and a disability access certificate. All statutory approvals have now been secured for the project.

Construction will require moving the existing school to temporary accommodation on a nearby site. The move will be an integral part of the school building project and will form part of the main contract. Planning permission for moving accommodation was secured in August 2016. The fire certificate and disability access certificate were subsequently secured and the Department has authorised the signing of a lease by the school to secure the movement to the other site. The stage 2b detailed design report was recently submitted to the Department by the board of management and its design team. Following receipt of that submission, the Department authorised the board of management to instruct its design team to commence the pre-qualification process for the assessment of suitably qualified contractors to which the project can be tendered. This authorisation was granted by the Department in order to expedite the tender process for this project by running the pre-qualification in tandem with the finalisation of stage 2b. The design team has commenced this process and the closing date for the e-tenders advertisement was 19 June 2017. Following examination of the stage 2b report, some additional items have been requested by the Department, not just in terms of the order in which they were put in. Additional items were requested. A revised submission has recently been received by the Department. Upon review of the revised submission, the Department will revert to the board of management with regard to the further progression of the project at that time.

Deputy Niamh Smyth: I accept what the Minister of State has said but for a review to take five weeks and then be sent back to a board of management or school is an issue. I accept the Minister of State's bona fides to the effect that it is more than just labelling. I have
7 o'clock read the document and the reply. The main thrust of it is labelling and how it is presented. There is not much about additional information. My concern is that it will take another five weeks to decide whether it is right. As a result of the increasing numbers attending Holy Family, the school is bursting at the seams and now is located at two sites. The Holy Family school was built with seven classrooms, although we now have seven classes squeezed into the existing building, with five prefabs on the grounds, and seven classes located at the White Star, which was formerly a hostel. The hostel is on the main street in Cootehill, far removed from the main building. It is not fair for these students to be asked to conduct classes and be educated in a building that was formerly a hostel. In order to make the best of an extremely appalling situation, they have now converted available space, such as the PE room and

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their small therapy rooms, to classrooms. As a result of the necessary alterations to the school, there is no space for visiting therapists. There is not even space to give children time-outs, a regular occurrence in a school like the Holy Family school. Apart from the main building itself, the senior school is in rented accommodation in the former hostel on the main street in Cootehill far away from the main building. In September there will be seven classrooms housed over three storeys, with a total of 58 pupils and 22 staff crammed into every nook and cranny. These conditions are outrageous and appalling. The Holy Family school does not want to have to introduce waiting lists for the first time in its history. As the facilities are not able to accommodate all the children at present, undesirable measures might be taken in September and children might have to go onto a waiting list.

Deputy John Paul Phelan: I thank the Deputy. She obviously feels passionately about the issue. I have been a Member of the Oireachtas for 15 years. The answer to this Topical Issue matter is positive news in the sense that the revised submission was received by the Department on 28 June. At a previous stage, it took six weeks for the request to be made. I am told the average time is between ten and 12 weeks so it is moving faster in this instance than it does in the average case. In terms of the accommodation on the main street in Cootehill, which is a town I know a little, it is a temporary measure until the building is constructed. At this stage-----

Deputy Niamh Smyth: It is a temporary, unsafe building for them to be in.

Deputy John Paul Phelan: If it is fire certified, which it is, and has planning permission-----

Deputy Niamh Smyth: I do not know how the school is even certified.

Deputy John Paul Phelan: Those are the necessary requirements it has to have. It is a temporary provision of accommodation until the school is built. This is progressing quite well. I accept the Deputy's point about the five weeks but I hope that in the ten to 12-week period there will be a positive response to it. I will bring the matter to the attention of the Minister, Deputy Bruton.

Deputy Niamh Smyth: I do not want to be back here talking about this again.

Deputy John Paul Phelan: I understand

Military Aircraft

Deputy Clare Daly: It is somewhat poignant that we are having this discussion on the day the Italian Government announced it cannot take any more migrants. In the region of 10,000 people have already made the journey to Italy, many of them fleeing war in the Middle East. Ireland is a country that claims to be neutral and we cannot shake our heads and say it is nothing to do with us when we continue to allow Shannon Airport to be used on a regular basis by the US military. On Monday 5 June, an inconspicuous US Air Force special operations aeroplane left Shannon heading for the Middle East. The C-146A Wolfhound, 12-3060, looks like a normal civilian plane but is far from it. This aircraft is used to support special forces operating in war zones. It is not me saying this. The US Air Force says the C-146A's "primary mission is to provide U.S. Special Operations Command flexible, responsive and operational movement of small teams needed in support of Theater Special Operations Commands". Air Force Special Operations Command aircrews conduct air lift missions to prepared and semi-prepared

airfields around the world according to the US Air Force. Does this mean that Shannon Airport is now considered by the US to be one of its own prepared or semi-prepared military airfields? The US Air Force's website says that the plan supports overseas contingency operations across four geographic combatant commands, in other words engaged in active fighting with enemy forces. In the first six months of this year, 22,000 US troops passed through Shannon and 377 exemptions to allow US troops carry weapons on civilian planes were granted. In the past 16 years, 2.5 million armed US troops have landed in Shannon and taken off again for war. In the past week, our new Taoiseach reaffirmed the Irish Government's commitment to neutrality in a media question when he was in Brussels. When he was asked if the time had come for a revision of our neutrality he said:

No. Ireland's position on neutrality is longstanding. We believe that by being a country that is neutral but not being part of any military alliance, that it actually makes us stronger in the world, that we're more respected ... beyond this continent, because we aren't members of NATO and we don't take part in military alliance, our focus is on other things, like development for example.

What are those assurances from the Taoiseach worth when we have a scenario in which 4,000 US troops a month pass through Shannon Airport? The Minister of State, Deputy Kehoe, told my colleague, Deputy Connolly, in February that providing overflight and landing facilities for the US military does not amount to a form of military alliance and that strict conditions are in place.

That is utter nonsense. We are sick hearing about what is not on the aircraft. We want to know what is on them and the only way to find out is by searching them.

I have no doubt the Minister of State, Deputy English, will tell me that the movement of troops is a matter for the Department of Transport, Tourism and Sport, rather than the Department of Foreign Affairs and Trade, although he may yet prove me wrong in that regard. It is not good enough to kick this issue around Departments by claiming that these are civilian aeroplanes. They are militarily contracted aircraft and, as such, the Department of Foreign Affairs and Trade should take responsibility for them and ensure that they are searched. While strict conditions are supposed to apply to these flights, the Department does not know whether they are being met because the aircraft are not searched and we will not have certainty until they are searched. What we do know is that these flights are not transporting people halfway around the world on their holidays.

Minister of State at the Department of Housing, Planning, Community and Local Government (Deputy Damien English): As the Deputy will understand, my colleague, the Minister for Foreign Affairs and Trade, Deputy Coveney, is engaged in important business elsewhere and is unable to reply in person. For this reason, I will respond on his behalf. As I do not have details of the aircraft to which the Deputy referred, I cannot respond to the specific matters raised by the Deputy. I was asked to respond to a more general issue.

I welcome the opportunity to reaffirm the Government's policy on landings by foreign military aircraft and reiterate its absolute commitment to maintaining our policy of military neutrality. Responsibility for the regulation of foreign aircraft landing in or overflying the State is shared between Departments. The Minister for Foreign Affairs and Trade has primary responsibility for the regulation of foreign military aircraft, while the Minister for Transport, Tourism and Sport leads on regulation of foreign civil aircraft. As the issue for debate is addressed to the

former Minister, I will confine my focus to foreign military aircraft landing at Shannon Airport.

Successive Governments have made landing facilities at Shannon Airport available to the United States for many years. The facility to land is also made available to military aircraft from other countries. It is for reasons of geography that the majority of landings are made by US aircraft. Since 2013, permission to land has been granted in respect of requests from more than 20 other countries also. Landings are permitted on condition that the requests satisfy a number of conditions which have been set out in this House. Aircraft must be unarmed, must carry no arms, ammunition or explosives, must not engage in intelligence gathering and the flights must not form part of military exercises or operations. These conditions apply to landings by all foreign military aircraft, including US military aircraft.

On 24 November last, the House had the opportunity to debate the Thirty-Fifth Amendment of the Constitution (Neutrality) Bill 2016. While the Government opposed the Bill, the debate was a valuable opportunity to make perfectly clear that the Government remains absolutely committed to Ireland's long-standing policy of military neutrality. As the then Minister for Foreign Affairs and Trade, Deputy Flanagan, informed the House during that debate, Ireland's foreign policy statement, *The Global Island*, clearly indicates that our policy of military neutrality remains a core element of foreign policy. There are no plans to change this long-standing policy.

The Government permits foreign military aircraft to land at Shannon Airport only if they comply with these conditions, which are of the strictest nature and which are imposed precisely because of our military neutrality. When requesting permission for a landing, the United States, like all other states seeking permission to land aircraft here, must indicate in writing that the proposed landing meets the conditions. Bilateral relations with friendly nations, including the US, are founded on trust and information provided by diplomatic missions is accepted in good faith as being accurate. Moreover, in accordance with international practice, foreign military aircraft that are granted permission to land in Ireland are not subject to inspection. I hope this clarifies the matter for the Deputy.

Deputy Clare Daly: I mean no disrespect to the Minister of State in saying his reply has an incredibly familiar ring to it, probably because I have heard it many times before. He will be aware that in a High Court case in 2003, Mr. Justice Kearns ruled that a neutral state may not permit the movement of large numbers of troops or munitions of one belligerent state through its territory en route to a theatre of war with another state. Shannonwatch gathers information daily on militarily contracted aircraft, which are described as civilian aircraft and move groups of troops from one belligerent state to a theatre of war, the devastating consequences of which have given us a refugee crisis greater than any previous refugee crisis.

The Government hides behind its conditions that military aircraft landing here must not be armed, must not be involved in military exercises, etc., but these conditions do not apply to aircraft contracted by the US military. It is a matter for the Department of Transport, Tourism and Sport to issue permits for such landings. In that respect, I welcome the statement by the Minister for Transport, Tourism and Sport, Deputy Ross, that he will have an examination carried out of definitions of civilian and state aircraft and of the monitoring, inspections and oversight in place in this regard. However, I want to know what the Department of Foreign Affairs and Trade proposes to do on this issue. The previous Minister, Deputy Flanagan, spoke about keeping the matter under review. What does this mean given that we do not have evidence of any form of review taking place? Does the Department have plans to search aircraft? If not,

what is the problem with searching them, even if only to prove us wrong? Why did thousands of troops from the United States transit through Shannon Airport in the past month? Why were exemptions obtained for hundreds of personal weapons during these flights if they are not engaged in military exercises? Someone is spending a hell of a lot of money to move troops from one corner of the world to another almost twice daily. We will be responsible if we do not start exercising our responsibility and examine what is going on.

Deputy Damien English: The Deputy contends that allowing US military aircraft to land at Shannon Airport amounts to a change in or weakening of our policy of neutrality which enjoys wide public support and has been pursued by successive Governments for more than half a century. As has been repeatedly stated in the House, that policy has not changed. Ireland is not a member of a military alliance and the Government has no intention of changing that long-standing policy. The facility granted to the United States and other countries to land aircraft at Shannon Airport is transparent and open and the strict conditions that apply to such landings are a matter of public record, having been set out many times in the House.

The practical implementation of the conditions for granting permission for landings by foreign military aircraft is guided by and reflects Ireland's traditional policy of military neutrality to which the Government is full committed. This policy has gone hand in hand with our belief that international engagement is critical to enhancing co-operation and reducing conflict in the world.

Bank Branch Closures

Deputy Eugene Murphy: Déanaim comhghairdeas leis an Aire Stáit. I congratulate the Minister of State, Deputy Phelan, on his appointment. I know how much it means to him and I have no doubt he will be highly capable in his new post and I wish him well. I hope that the Government will last a few years and that he will have an opportunity to shine in his role.

The withdrawal of a number of services from small rural bank branches across the country is causing widespread anger, concern and frustration among business people and the elderly. This is a serious problem in the Roscommon-Galway constituency I represent. Bank of Ireland has proposed to withdraw counter staff and cash facilities from a number of rural branches as part of a move to introduce an advice and self-service type model. Yesterday, my constituency colleagues and I met officials from Bank of Ireland in Leinster House. Unfortunately, the bank is not for turning on this issue. We must shout "Stop" and fight back against this retrograde step.

Small rural bank branches are under threat. The problems in my constituency are in Dunmore and Ballygar, County Galway, and Elphin and Strokestown, County Roscommon. The removal of counter staff and cash facilities would place another major obstacle in the way of businesses which are already struggling to survive and operate in rural areas. I am sure the Minister of State will be aware of such businesses in his constituency. It is important that bank services continue.

I have major security concerns about the banks' proposal that cash services be made available through a courier. Every time a business service is withdrawn, it undermines the ability of small businesses to survive. Many rural businesses are already crippled with rising commercial rates and appalling broadband connectivity. It beggars belief that the banking sector now proposes to place another obstacle in their way. We should be encouraging and supporting

small businesses in rural Ireland, not making them continually jump through hoops. Take for example Dunmore, County Galway, where business people are rightly up in arms. They are fearful that the removal of cashier services will impact on the elderly, resulting in people taking their business out of the region. That is what will happen. For many rural towns like Dunmore, Elphin, Strokestown and Ballygar, the bank was a major focal point and brought a great deal of spin-off business to their regions.

The withdrawal of a number of services in rural branches severely impacts on the elderly, many of whom may not be computer literate or have an online presence. There is a major push by the banking sector to reduce staff numbers as part of a cost-cutting exercise and replace them with technology. There is a major emphasis on trying to move customers towards an online presence with limited or no human interaction at branch level. This will not work for everyone. Rural counties like Roscommon and Galway have a significantly higher percentage of older people, who will be alienated by this latest move to withdraw services from rural bank branches. What are we going to have next? Will there be drive-thru banks? If high-tech banks with video tellers became the only option, they would not work in Roscommon because we do not have broadband connectivity.

The Minister of State is well aware of the situation. I admit that banks are there to make a profit, but we must address this issue. I await the Minister of State's reply with interest.

Deputy John Paul Phelan: I thank the Deputy for his kind remarks. The Minister cannot attend. He was at Dublin Castle today and was present in the Chamber for an earlier debate, but he has had to step out. I am happy to take this matter in his stead.

The issue the Deputy has highlighted about the diminution of services in rural areas is a real one, but he also acknowledged that the State had a 14% share in Bank of Ireland, so the idea that the State can tell it which branches to keep open and closed does not arise. The Deputy correctly referred to the banking sector reducing costs. The major onus for the past eight years has been on trying to have a functioning banking sector, one that is profitable and can stand on its own feet without needing the support of the taxpayer.

I should highlight that, notwithstanding the State's shareholdings in the domestic banks, the Minister for Finance has no direct function in their commercial decisions, including those that form part of the relationship between the banks and their customers. Decisions of this nature are matters for the banks' boards and management. The Minister has responsibility for the banks being run on a commercial, cost-effective, regulated and independent basis so as to ensure their value as assets to the State. Accordingly, it would not be appropriate for the Minister to intervene in actions taken by the banks in matters of this nature.

Relationship frameworks that define the nature of the relationship between the Minister and each of the banks have been specified. These frameworks are available on the website of the Department of Finance. In the case of Bank of Ireland, the State has a 14% minority shareholding. Notwithstanding this, officials in the Department have been provided with briefing material specifically by Bank of Ireland relating to developments in its branch network. I will provide the salient points.

The bank's customers are rapidly changing the way in which they bank - this is similar to the post office network - just as they are changing the way they buy goods or services online and communicate with one another. Only 3% of the bank's customers' total transactions are

conducted over the counter, with 97% of all transactions taking place through other channels. Every month, the bank has 8 million interactions with customers via its mobile app and 14 million interactions through the mobile app, online banking and contact centres combined. In addition, the use of credit and debit card and contactless banking continues to grow, with demand for cheques, foreign currency and coin services continuing to reduce significantly.

The bank comments that, when it examines trends over time within a branch's catchment area and sees a consistent decrease in counter activity, it reconfigures the branch to support how customers are using it. This involves moving staff from behind the counter directly onto the floor where they can provide advice and assistance to customers, including in the use of self-service options. The bank advises that this change has been successful in a growing number of branches, where it has seen an increase in transactions happening in the branches through the enhanced availability of self-service options. The bank has highlighted that, in branches where staff move from behind the counter onto the floor, customers will continue to be provided with a comprehensive range of products and services, the ability to lodge and withdraw cash from easy-to-use self-service devices and access to online and phone services. The changes will also enable greater availability of branch staff to provide personalised financial and banking advice.

Foreign currency exchange and coin transaction services will no longer be available in these branches. If customers still require a counter service, the bank will introduce them to the branch of their choice locally.

Bank of Ireland has highlighted its retention of a strong nationwide presence of approximately 250 branches and 16 additional banking outlets. It maintains that it continues to improve its customer offerings and is investing €10 million in the branch network this year. It also maintains that it understands that business and retail customers increasingly require access to 24-seven facilities for lodgement and withdrawal.

Acting Chairman (Deputy Bernard J. Durkan): I must ask the Minister of State to conclude.

Deputy John Paul Phelan: Can I take it that the rest of the response will be read into the record?

Acting Chairman (Deputy Bernard J. Durkan): It will, but the Minister of State will have a chance to make a second response as well.

Deputy John Paul Phelan: Okay.

Deputy Eugene Murphy: I am happy with that and I know that the Minister of State will endeavour to give me an honest reply. I am not surprised with the answer that I have been given already. The Minister of State is right, in that the Government's part ownership of the bank is small and it cannot tell the bank what to do but, as a rural Deputy, he will realise that there is a larger problem. I presume that he runs constituency clinics. I happened to hold one last Monday in the town of Glenamaddy of "Four Roads to Glenamaddy" fame. It lost its bank some time back. Most of its people are served by Bank of Ireland in Castlerea, but they have received notice that business lodgements can no longer be made over the counter after 12.30 p.m. on a Monday or whatever, which is inconvenient. The bank will argue that business lodgements can be made through machines and that there will be a service. We could argue that back and forth.

The great community in Glenamaddy, including its business people and community leaders,

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has made the point to me that the removal of a bank from a town like Glenamaddy, Ballygar, Strokestown or Elphin creates a significant difficulty for the local economy. Banks are needed.

Maybe we have to start getting serious about post offices and credit unions. Yesterday, the bank insisted to me that it would not withdraw. I have to say that Bank of Ireland runs some good initiatives, for example, Enterprise Towns, and encourages people to get involved. Like the Minister of State, I have attended many such events. They are good but I fear that, if fewer customers attend a branch, we will be asking four or five years down the road what role the bank has.

As politicians, we all must get serious about having a banking system for rural towns and villages. Some good work is being done and some money is coming into communities, but we will lose out if we lose our banking services.

Deputy John Paul Phelan: I will read the last paragraph of my statement into the record before responding directly. The bank has advised that the implementation of any change takes place on a phased basis in branches with a two-month period for comprehensive customer notification. Bank of Ireland has commented that it has a dedicated team committed to supporting vulnerable and elderly customers that provides additional support in the use of its digital and self-service options.

I acknowledge the Deputy's point about rural Ireland. I am surprised that we got a response to a Topical Issue debate from a commercial institution. There is a broader question about how we keep services in rural Ireland, whether that be via credit unions or post offices. Many have closed but, thankfully, many are still open. I believe the Government is actively considering how to create solutions in rural towns like those that the Deputy mentioned. Maybe I am wrong, but I understand that other financial institutions are in some of the towns in question, for example, Strokestown. In my county of Kilkenny, some of the mid-sized towns used to have both of the traditional main banks. In most cases now, however, one might be all that they have. In some places there is no financial institution, which is a broader problem that must and will be addressed.

Deputy Eugene Murphy: I thank the Minister of State.

Acting Chairman (Deputy Bernard J. Durkan): Our next participant is not here.

Deputy John Paul Phelan: I believe the issue was withdrawn or deferred.

Acting Chairman (Deputy Bernard J. Durkan): The Topical Issue was deferred or withdrawn.

Deputy John Paul Phelan: I believe it was deferred.

Acting Chairman (Deputy Bernard J. Durkan): We will then move on to the next item of business. Is the Minister of State taking the next item?

Deputy John Paul Phelan: No, I am not.

Acting Chairman (Deputy Bernard J. Durkan): Then we will suspend the House for a few minutes.

Sitting suspended at 7.30 p.m. and resumed at 7.32 p.m.

Protection of Employees (Collective Redundancies) Bill 2017: Second Stage [Private Members]

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

I welcome the opportunity to move this Bill on Second Stage. Picture the scene. It is June 2015. Clerys is broken into two companies; one is the operations company that employs the workers and the other is an assets company. The assets are transferred from the operations company 24 hours before it is liquidated. Workers are left high and dry and the owner of the company sells the assets and pockets the takings. Meanwhile, the taxpayer foots the bill as workers’ entitlements are paid from the insolvency fund. Welcome to Ireland and the world of tactical insolvencies.

This has happened in the past. Clerys was the most high-profile case and captured the imagination of the public. Obviously people were sympathetic to the workers who lost their jobs and were left high and dry but, unfortunately, it was not the only time that this has happened. Party leaders, quite rightly, queued up to offer sympathy but we have to go beyond what has been described in the past as “tea and sympathy” and do something about the situation. Tonight, we have an opportunity to support this Bill and to make sure that another situation like that of Clerys does not arise again in this State.

The purpose of this Bill is to provide for protections for employees in situations of collective redundancy in which the employer is insolvent. We have seen far too many cases over the years in which companies have used the courts to engage in tactical liquidation to avoid paying their debts to their employees and creditors. The cost of this is ultimately borne by the State. In effect, such tactical insolvencies are fraud and amount to theft - the theft of workers’ pay and pensions, the theft of goods and services from other companies and the theft of revenue from the State. At present, all of this is perfectly legal but, of course, we know it is wrong and consequently there is a responsibility on Deputies as legislators to fix this problem. I hope that no Deputy here would purposely allow the continuation of the present loopholes which allow for fraud against ordinary working people and struggling contractors. I sincerely hope that no Deputy here would allow workers to be left with wages unpaid and contractors left with unmet invoices because of the ruthless actions of a selfish few - and it is only a selfish few. The vast majority of employers are decent and would not engage in the type of practices that we saw in the case of Clerys.

I respectfully call on all parties to support this Bill. I specifically call on the Government and Fianna Fáil to support it. Very often we have moved Bills in this House and the Government has critiqued elements of them. We have no difficulty with that. Committee Stage is the place to work out any difficulties the Minister or Fianna Fáil may have with the Bill, but let there be no doubt about it; doing nothing is not an option. Telling us we must wait is not an option. We need to rectify this situation and we need to do it quickly.

The Bill has the support of the Mandate trade union, Unite the Union, the Communication Workers Union and the Financial Services Union. Moreover, the Irish Congress of Trade Unions has consistently called for action on this issue. It perceived it as one of its main priorities and before the last general election lobbied all parties to do something about this issue. These are all private sector unions and they are the unions that must deal with the mess which

is continuously created by this loophole.

The impetus for this Bill lies with the 2016 Duffy-Cahill report and I will give some background to the circumstances that led to it. On 12 June 2015 - two years and two weeks ago - the 130-strong workforce of Clerys was sacked without notice and another 330 workers employed by the store's concession outlets were locked out of their jobs and left facing an equally uncertain future. Clerys was bought by Natrium some time between midnight and 1.15 a.m. on that day and was declared insolvent that afternoon. The workers did not receive any notice. Many of them heard about their job losses through social media or phone calls from friends. They did not receive the statutory redundancy lump sum from the new owners and nor were they paid moneys owed in lieu of redundancy and holiday pay. The obligation to pay for workers' entitlements was left on the State. The company made millions from transferring its assets to a different company. It sold the assets and was away on its toes while the workers were left high and dry and the taxpayer was left to foot the bill.

I do not believe the Minister would stand over that. The then Taoiseach, Deputy Enda Kenny, did not. He quite rightly said this must be dealt with and showed solidarity with the workers of Clerys at that time. I wish to put on the record that I accept he showed solidarity.

Six months later, on 4 January 2016 the then Minister for Jobs, Enterprise and Innovation, Deputy Bruton, and the then Minister of State with responsibility for business and employment, Senator Ged Nash, commissioned a twin-track examination of protections in law for employees with a particular focus on ways of ensuring that the laws surrounding limited liability and corporate restructuring were not used again to avoid a company's obligations to its employees. The task was given to Ms Nessa Cahill and Mr. Kevin Duffy and they presented their findings on 26 April 2016. They found that:

All of those employees [at Clerys], most of whom had accrued significant service, were made redundant when the company by which they were employed became insolvent and was placed in liquidation. They were dismissed without notice and ... the employer did not engage in the type of consultation with their representatives [that one would expect], in this case their trade union, envisaged by the Protection of Employment Acts 1977 to 2014.

Those Acts then did not apply. They also found "The employer did not pay the statutory redundancy lump sums to which they were entitled under the Redundancy Payments Acts 1967 to 2014 ... nor did they receive payment from the employer of other amounts due to them arising from their employment, such as payment in *lieu* of notice and compensation in respect of accrued holidays."

Companies, unfortunately, go out of business and in the majority of cases the employers use the established mechanisms to do right by their employees. It is important that we acknowledge when companies do right because, as I have said, the vast majority do. In this case, the Clerys insolvency was preceded by a company restructuring, which involved a separation into two different entities of the principal property asset and the operations of the business. That was done solely to deprive workers of their entitlement and to allow the company to make huge profits while at the same time liquidating. It was asset stripping a company. It liquidated it, made the workers redundant and bagged all the profits. When the operating entity subsequently became insolvent and went into liquidation, the employees lost their employment without warning or notice and, as an apparent result of the transfer of this asset, the moneys owing to the employees were not paid.

The Protection of Employees (Collective Redundancies) Bill 2016 will provide legislative support for workers to ensure this does not happen again. The main recommendations in the Duffy-Cahill report underpin the Bill. It will provide protection for employees in collective redundancy cases where the employer is insolvent. It will give power to the High Court to return assets which have been improperly transferred and give preferential status to employees. The Bill simply allows the High Court to adjudicate on these matters. If the High Court determines that what happened in Clerys were to happen again where assets were transferred purely for the purpose of a tactical insolvency it could then order the assets to be transferred back to the principal company or the liquidator to ensure that workers were paid. I cannot see how any reasonable person could oppose such a measure. The mandate given to Ms Cahill and Mr. Duffy was to focus on ways of ensuring that limited liability and corporate restructuring are not used to avoid a company's obligations to its employees.

The Bill also provides for a 30-day consultation period where it is known that the company's liabilities are such that they will trigger redundancies. The Minister will also remember the case of TalkTalk in Waterford and many cases over the years where workers were not given proper notice. Many of these workers found out through social media their jobs were lost. Workers need protections in law to ensure they are given proper notice and that proper consultation takes place with the trade unions and the worker representatives. Of course, this does not always happen. The Bill rights that wrong by balancing the rights of the employee and the rights of the employer. It is only in cases where the High Court deems a fraud to have occurred that it will require the assets to be returned to the liquidator for disbursement among the employer's creditors, including the former workforce.

The Bill also provides for a 30-day consultation period between those in control of a company and the employees where the owners believe that the company is on an irreversible road to closure. Failure to comply with the obligations of this Act will lead to a fine of up to €5,000. I believe this to be a reasonable penalty and again all decisions relating to such matters lie with the High Court. It is in the hands of the court to decide the rights of the case and again I find it hard to see how anyone could object to that.

The past ten years have seen a sustained attack on the living standards of hundreds of thousands of families across the State. The funding for key public services was slashed and the State's industrial relations architecture was weakened to favour unscrupulous employers. The end result was a dramatic loss in pay and conditions for many workers. The establishment parties, including the Minister's, not only failed to protect workers, but consciously and deliberately introduced policies which increased levels of deprivation, inequality and in-work poverty.

These policies were bad for workers, bad for the economy and bad for society. A society that builds an economy on low pay, precarious working conditions or any abuse of workers is not a society worth supporting. We saw workers denied their rights and forced to engage in strikes and sit-in protests. Ordinary working people in companies such as Waterford Crystal, Vita Cortex, TalkTalk, Lagan Brick and Game found that when they lost their jobs the law was not there to protect them. Unscrupulous employers were simply allowed to do what they wanted and people shrugged their shoulders and said, "Well, that is just the way it is." Worse, in some cases tea and sympathy is offered and we have statements in the Dáil where everybody queues up to say how terrible it is but nobody is prepared to do anything about it - certainly not those in the establishment parties.

The previous Government established the Duffy-Cahill commission. It looked at the is-

sue in a considered way and made recommendations. We have taken those recommendations, consulted with legal people and produced the Bill in the best interests of working people to ensure workers like the Clerys workers never again lose their jobs. The Bill will also prevent companies from asset stripping and moving the assets to keep them outside the purview of the liquidator and workers, walk away with all the money, sell the assets and deprive workers of their entitlements. It is morally wrong. At the moment it is not legislatively wrong, but we can put that right here today. All of us, Fianna Fáil, Fine Gael, Sinn Féin, Independents and all the other parties can do that here today if we so choose.

I do not know what the Government's position or Fianna Fáil's position on the Bill is. History has told me that when we have moved Bills on workers' rights they have not looked at them favourably in the past. I appeal to the Minister on this. We have supported many Government Bills where we believed the purpose and intent of the Bill was to do the right thing. We understand that even if we have concerns and if our support has caveats, they can be dealt with on Committee Stage. I appeal to the Government and other parties to support the Bill. Let us send a collective loud message from the Oireachtas that we will not tolerate tactical insolvencies, abuse of workers' rights or what happened with Clerys, where workers were left high and dry with unscrupulous employers behaving as they did in that case.

My appeal to the Government and to Fianna Fáil to support the Bill is genuine. I hope they both do so.

Tánaiste and Minister for Jobs, Enterprise and Innovation (Deputy Frances Fitzgerald): The Bill provides a welcome opportunity to discuss the protection of employees in cases where collective redundancies occur due to a company being insolvent. As the Deputy has outlined, the Bill is well-intentioned and is about protecting workers. It is a response to the Duffy-Cahill report on the examination and review of laws on the protection of employee interests when assets are separated from the operating entity. That report was commissioned by the previous Government as part of the Government's response to the closure of Clerys department store in 2015.

The Government supports the broad principles of the Bill. It is well intentioned and in line with proposals being developed in my Department in response to the Duffy-Cahill report. The Bill represents part of the response required and I will point out certain issues to the Deputy where it contains some flaws and drafting errors. It is a very important Bill in the protection of employees.

The Bill deals with only two of the six proposals set out in the Duffy-Cahill report. The Bill should proceed to pre-legislative scrutiny by the relevant Oireachtas joint committee - I am sure the Deputy will not object to that - to allow for a detailed examination and a comprehensive public consultation with employer and employee representatives and other interested stakeholders, in particular the Minister for Social Protection, soon to become Minister for employment and social protection.

We are all well aware that collective redundancies can occur for many reasons and in many different circumstances. However, when they occur in the manner in which they occurred when Clerys department store closed on Friday, 12 June 2015, the impact can be devastating. The manner in which the Clerys workers were treated was shocking. What occurred was an appalling way to treat workers.

Before I address the specifics of this Private Members' Bill, I remind the House of the steps taken by Government in response to the closure of Clerys and will update Deputies on developments. In the immediate aftermath of the sudden closure, a report was prepared for Government and published in July 2015. Entitlements of workers affected were expedited through the Department of Social Protection system. Information on employment rights was also provided to the workers concerned in a speedy and effective way.

In January 2016, the then Minister for Jobs, Enterprise and Innovation, Deputy Richard Bruton, and the Minister of State with responsibility for business and employment, now Senator Ged Nash, commissioned Nessa Cahill, a company law specialist, and Kevin Duffy, the then chairman of the Labour Court, to conduct an expert examination of legal protections for workers with a particular focus on ways to ensure that limited liability and corporate restructuring are not used to avoid a company's obligations to its employees. The Duffy-Cahill report was published on 26 April 2016, following submission to the Government. My Department conducted a public consultation on the report, the responses to which contained divergent views. We also asked the Company Law Review Group, CLRG, to examine legislation with a view to recommending ways company law could be amended to better safeguard employees and creditors. I am pleased to say the work in that regard is at an advanced stage and we should receive the report very shortly. That will be most helpful in terms of the future development of the legislation in this area.

Inspectors from the Workplace Relations Commission, WRC, are conducting an investigation, as authorised officers of the Minister, of the collective redundancies that took place in OCS Operations Limited, the trading company which was the employer of the staff of Clerys, on 12 June 2015. The work of the authorised officers relates to the application of the Protection of Employment Act 1977 to the collective redundancies in question. The 1977 Act imposes a number of obligations on employers who are contemplating collective redundancies, including an obligation to engage in a 30-day consultation period with employees and an obligation to notify the Minister for Jobs, Enterprise and Innovation of proposed redundancies. It provides that collective redundancies should not take effect before the 30-day consultation period has expired but it does contain an exemption for companies wound up due to bankruptcy or insolvency.

The authorised officers' investigation began in April 2016. The investigation has been and continues to be subject to legal challenges. A legal challenge was taken by two of the parties from whom information was sought by the authorised officers. In October 2016, the High Court ruled comprehensively in favour of the authorised officers. An appeal was made and that appeal remains before the Court of Appeal. The investigation by the authorised officers is continuing. Prosecutions have been initiated and are pending before the District Court. I will not comment any further on the investigation but I wished to give the House an update on how it is progressing.

Returning to the Bill, it seeks to address in particular the mechanism for recovering an asset or proceeds of an asset in circumstances where the transfer of the asset had the effect of perpetrating a fraud on the employees. That goes some way to addressing two of the recommendations contained in the Duffy-Cahill report.

I wish to point out some problems and shortcomings in the Bill in areas that need to be addressed. First, the other four recommendations in the Duffy-Cahill report need to be addressed. One of the points in the Duffy-Cahill report was that no one proposal alone would provide the answers sought and that the proposals need to be considered in light of the existing provisions

of employment and company law. The recommendations are interlinked and that is something that needs to be addressed.

Proposal No. 1 seeks to address the central complaint articulated by the unions representing the former Clerys employees about the peremptory manner of their dismissal. Currently, section 14(3) of the Protection of Employment Act 1977 allows an exemption to the requirement to give 30 days notice of redundancies in circumstances of insolvency and Duffy Cahill recommended that this exemption be removed. Proposal No. 1 aims to ensure that employees will have the opportunity to consult with their employer for a period of not less than 30 days before any collective redundancy can take effect, whether the employer is insolvent or not. That is something we would all like to see. Any dismissals in contravention of the legislation would be treated as a legal nullity. Certain issues and consequences of this proposal are also addressed, including the consequences of non-compliance with the consultation requirement and ramifications for directors under the Companies Act 2014. That proposal is fairly fundamental in terms of a response to the Duffy-Cahill report and it is not in the Bill. Those other recommendations would need to be considered.

Some of the provisions and recommendations made by Deputy Cullinane deviate from the Duffy-Cahill recommendations. For example, section 2 of the Bill provides for power of the court to return assets which have been improperly transferred. The provision does seek to implement proposal No. 4 of the Duffy-Cahill report but the proposal to allow a trade union or employee representative make such an application is not recommended in the report. Duffy-Cahill recommends only that the Minister or the liquidator, on delegated authority from the Minister, should be empowered to make such application. That is clearly a point for further discussion and debate.

Section 2 does not provide a definition of employee representative. That is something that would need to be done. Section 2(1)(b) refers to “any property of the company of any kind whatsoever...”. However, the language is different from the Duffy Cahill recommendation, which refers to “an asset of significant value”. The term was used in the terms of reference for the Duffy-Cahill examination against the backdrop of the Clerys closure, where the ownership of the Clerys building was separated out from the company which employed the Clerys workers. The building was clearly an asset of significant value. However, this Bill’s use of the term “any property of the company of any kind whatsoever...” gives rise to a considerably broader approach to the definition of an asset. The wording appears to be taken from company law and care is required to ensure that such use of company law terms in the employment law context does not lead to unintended consequences. There is inconsistency in the Bill. For example, section 7 refers to “an asset of significant value”, while section 2 uses the broader term “any property of the company of any kind whatsoever...”.

I note that the Bill seeks to provide a range of additional powers to the Minister for Social Protection, including the power, as creditor of an insolvent company, to delegate the bringing of applications for asset recovery to the liquidator and to provide funding for that purpose. The financial and administrative costs associated with such an application could be substantial. Whether these costs could be recouped from the Social Insurance Fund requires further analysis and consideration before any decisions are made on implementing this proposal.

A robust public consultation with stakeholders is required in order to get their views. That would be important. We must also take into account the work of the Company Law Review Group on the issue which will be available shortly. Those are important difficulties.

The intention of section 3(1) appears to be in line with the Duffy-Cahill report's proposals, but section 3(2) seeks to change the priority status of creditors. The implications of that provision for the status of other creditors require careful consideration. There are concerns that the preferential rights proposed for employees are too broadly defined in this Bill and, as drafted, it effectively gives a lien on the assets of a business to the employees. I can see where Deputy Cullinane is coming from on this, but there might well be constitutional and property issues that would need to be teased out and considered in terms of the approach taken by him.

The Duffy-Cahill report did not express a view on whether employees should be entitled to priority over other preferential creditors with regard to the distribution of an asset or its value in circumstances where the court has ordered that an asset be restored to the employer. It should also be noted that section 10 of the 1984 Insolvency Act contains references to provisions in the Bankruptcy Act and the Companies Act that purport to provide protections for the Minister for Social Protection in certain circumstances. In addition, the Redundancy Payment Act gives priority to redundancy payments in certain situations. Those are areas that could be teased out in pre-legislative scrutiny.

The Minister for employment and social protection has also expressed reservations about this issue, in particular, that it could have a negative impact on the repayment of employer debts to the Social Insurance Fund and that is an area that needs to be considered. Work is at an advanced stage in the Department on a policy response to the Duffy-Cahill report. A public consultation resulted in a wide range of views and those have been given careful consideration. The Department's proposed policy response consists of a more comprehensive response than that presented in this Bill. I have no doubt Deputy Cullinane will take that into account when it is available, and it should be taken into account when we are considering the legislative process in this area and also the work of the Company Law Review Group.

The Government will not oppose the Bill as it is based on worthwhile objectives that attempt to increase protection for workers in situations similar to the Clerys case. However, because it deals with complex areas of employment law and company law and the interface of both codes, and because of the various issues I have pointed out the Bill would benefit from pre-legislative scrutiny where those issues could be considered and we could take further account of the analysis and recommendations contained in the Duffy-Cahill report, look at the submissions to the Department and the policy response on which the Department has been working.

We want to ensure that we have that comprehensive response to the Duffy-Cahill report and we do not want to see any unintended consequences coming from the Bill, in respect of the issues I have pointed out during my contribution. We need to correct some of the issues that are there.

I repeat that the Government does not intend to oppose the Bill and I commend on Deputy Cullinane on the work he has done on the Bill.

An Ceann Comhairle: I now call on Deputy Clare Daly.

Deputy Clare Daly: I enjoyed that; I apologise to Deputy Niall Collins.

An Ceann Comhairle: On Thursday evenings, I invite Deputies in the order in which they indicated. It is no different this evening.

Deputy David Cullinane: I got caught by that before.

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Deputy Clare Daly: There are no party priorities anymore in this session sadly-----

An Ceann Comhairle: Just on Thursdays.

Deputy Clare Daly: Only on Thursday and we will enjoy it. In deference to the hour and to poor Deputy Niall Collins who has-----

An Ceann Comhairle: Is Deputy Daly giving way to Deputy Collins?

Deputy Clare Daly: I certainly am not. Deputy Collins is probably out of Limerick longer than he feels he should be, so I will try to be brief. That is the best I will do.

I am in some ways torn. I am delighted the Bill is going to pass Second Stage and I very much welcome that the Government will not oppose it. I hope this will be followed up by a quick progress into pre-legislative scrutiny and that this will not be disrupted by a money message or whatever. While this is very positive it is disappointing that the debate is taking place in the midnight slot, so to speak. That is nobody's fault but it does take away from some of the value. It is an important Bill and I welcome that Deputy Cullinane has brought it before the House. I acknowledge this is the third Bill relating to issues of workers' rights brought by Deputy Cullinane in the lifetime of this Dáil. Without patronising, I believe this is a good thing. I hope it will continue because it was notable that in the earlier discussion on FEMPI that the so-called champions of workers' rights, the Labour Party, did not even bother to show up for the debate. I hope that Sinn Féin is more true to the mantle and I am glad it is taking up such legislation so well.

8 o'clock

Deputy Eugene Murphy: That is a nice compliment for them.

Deputy Clare Daly: I think they are brighter, will learn the lessons and will not repeat the mistake.

Deputy Niall Collins: We will keep an eye on them.

Deputy Clare Daly: This is very good legislation. There is something incredibly sad about the fact it has become necessary as a result of the many cases that have arisen regularly, where workers have been victims of tactical insolvencies throughout the State. We should call them victims because they are victims. The most famous case has been Clerys. The conduct of that employer shocked everybody. Even people who would not normally be affected by these situations were deeply affected by what happened there. If any good can come out of that terrible event, I hope it will be in the passage of this legislation and Members owning up to our responsibilities to make sure it does not happen again.

I am glad the Government will not block the Bill. It is interesting that the new Taoiseach spent a considerable amount of time and energy attempting to deal with welfare rogues. As we know, it turned out there was only one example of a welfare fraud case this year. It is fair and relevant that we would concentrate on corporate rogues who consciously rip off workers and the taxpayers. In that sense, the Bill absolutely seeks to do this.

It also is important to say the need for a Bill such as this has arisen because of real cases where employers have behaved in a cynical way to asset strip companies, to hide assets and to wind down companies leaving their workers without redundancy entitlements. This behaviour is premeditated and acts to deny legitimate, legal and statutory entitlements to the employees. As Deputies have pointed out however, these actions often have a knock-on consequence to the

rest of society such as the cost to the Exchequer of social welfare provision and so on.

Obviously, when workers face problems and employers threaten their working conditions, it is an incredibly stressful time. I spent all of my working life as a shop steward but thankfully I have only ever had to deal with cases of voluntary redundancies, which of themselves were quite stressful. They were, however, nothing like the stress that comes from a forced redundancy situation or a liquidation. The loss of a job is traumatic. On top of this, if people are cheated out of wages they have worked for, out of redundancy payments they are legally entitled to, it will really rub the salt in to the wounds. For a person to have such a scenario foisted on them and to see his or her employer - in cases of a profitable employer - getting away with that behaviour is absolutely disgraceful. At the end of the day, companies such as Clerys should be reminded that a lot of their success is due to the contribution of their workforce. Employers need to be reminded that workers are also customers. This should also be borne in mind.

I welcome that the Bill makes a genuine attempt to prevent this type of behaviour from happening by giving powers to the courts to return the transferred assets into the hands of the liquidator, essentially making the employee the preferential creditor and thereby putting employees first in the queue. I believe that employees should be first in the queue because the workers in companies are in general the people with the least to fall back on and need it the most. This applies particularly to people who have made their contribution, worked their hours and so on. This is absolutely appropriate.

The Bill also calls for a compulsory consultation period with workers in the event of a winding down of a company. I believe the measure to be a good one, which leans in favour of the worker, but it could go a bit further in favour of the worker. The reference to the consultation period should specifically mention and recognise the role of workers' representation through their trade unions. We must be honest about this. In cases of tactical insolvencies - that generally happen in smaller companies - even where there is a consultation period, the dynamic between workers and the employer can be very imbalanced and problematic, in particular when workers are young or inexperienced. In this case, the role of the union representative is of powerful assistance - despite the fact that many unions have strayed with regard to their combative approach to defending workers' rights. Nonetheless, this is necessary and we need to move to rebuild it.

It is telling that money cases, or money cases involving employers and businesses, can go to the High Court but when it comes to workers' rights, employees must settle for the Workplace Relations Commission, WRC, and the Labour Court. While I understand that those organisations are put forward as making the courts more accessible for workers, it is problematic that the findings of the WRC and the Labour Court are not binding. Employers have hidden behind this. Even when workers win their cases, those bodies do not have the powers to take back the money or to ensure the judgment is enforced. This is what the Bill is about.

I am delighted the Bill was brought forward and I genuinely congratulate Deputy Cullinane and his office, not just for this Bill, but also for a series of Bills aimed at protecting workers. It is very good but there are areas that could be amended on Committee Stage. I look forward to having the opportunity of doing that, hopefully sooner rather than later.

Deputy Peadar Tóibín: According to Oxfam, the richest 62 people in the world own as much wealth as half of the world's population. In Ireland the gap between rich and poor is increasing with approximately one third of the income located in the top 10% of earners. One in

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five people are low paid in the State and according to Professor James Wickham of the Think-tank for Action on Social Change, TASC, Ireland was the most unequal society in 2015 among the EU 28 member states in terms of gross income. The share of gross income for the top 1% rose from 9.1% in 2013 to 12% in 2015. The middle 60% of the population has dropped from approximately 52% to 45%. There is shrinkage in the middle and an increase at the top.

The over-concentration of wealth in the hands of a few is, I believe, the biggest problem globally at present. Not only does it rob billions of people of the necessities of life such as decent food, water, education, health care and achieving of potential, it is also one of the most destabilising aspects of modern society. Political upheaval follows economic injustice as sure as night follows day. I have no doubt that the over-concentration of wealth in the hands of the few to the cost of the many is a significant contributory factor to the turbulence we see regarding US politics, Brexit and politics elsewhere. It is not business as usual with regard to wealth and poverty in Ireland. This over-concentration of wealth in the hands of the few is accelerating in the time of this Government and has been facilitated by the Government in the past.

There are a number of drivers behind this yawning gap and they are built on unfair global trade deals, tax injustice and cuts in public services such as health care, housing and education. Key to this is workers' pay and conditions. In the last Government, under Fine Gael and Labour, and with this Government, under Fine Gael and the Independents, we have seen these drivers accelerate. Fine Gael and Labour binned the Sunday premium, which effectively amounted to a pay cut for 200,000 low-paid workers. We also saw the proliferation of internships and low-hour contracts. Insecure and precarious work has become the norm among thousands of families in the State and the human effect is drastic, putting fierce pressure on families unable to pay for very simple things in their lives.

We have also seen the proliferation of bogus self-employment. It is estimated there are at least 20,000 subcontractors in the construction industry who are in bogus self-employment. The number may well be higher. Considering what the Revenue Commissioners indicate should be coming in through taxes and the number of PAYE-registered people in the State, there are serious gaps. Workers should be employed directly as they would receive legal entitlements for the fruits of their labour. With bogus self-employment, workers are forced into subcontracting to allow some contractors shirk their responsibilities, including paying minimum wage, employer pay-related social insurance and illness benefit. There is also an effect on jobseeker's benefit. It is reckoned there were approximately €640 million in unpaid PRSI contributions since 2007 because of bogus self-employment. We brought this up before with the Minister for Finance but he was not interested in looking at it.

There are clearly problems with pay, conditions and zero-hour contracts, which have now become endemic. We have seen very profitable companies involved with the widespread use of short-hour contracts, with employees consequently not knowing what will be their shifts from week to week or what income they will earn. A large proportion of people on low pay are forced to sign on and in-work social protection, such as the family income supplement, is vital for keeping food on the table, but this is, in effect, a Government subsidy to businesses, regardless of their profitability.

Is it right that we have an issue with poverty and low income in this State? There are many people in my county of Meath who currently work 40 hours per week on the minimum wage and who cannot afford the cost of rent, never mind food, heat, health care or anything else. Tactical insolvency is another method by which wealth is transferred from low and middle

income earners to the 1%. There are some unscrupulous businesses who separate their assets from their responsibilities. Clerys is the most famous case and the practice literally robs workers. As Deputy Cullinane stated, the Clerys case is not on its own. In County Meath, for example, a company tendered for a State contract. It had decent assets and earnings and it had been trading for a long time. When it delivered the service, it employed new employees under a similarly named company that did not have the same assets, retained earnings or management responsibilities. The company made numerous trips to the Labour Court seeking the reduction of the wages of those workers, and it was successful in doing so. At those points, it could prove to the Labour Court that the company was operating on a shoestring. It separated assets from responsibilities.

Workers are by far the worst hit victims of this practice but the State does not get off lightly either. Where is the €2.5 million of State money used to pick up the Clerys redundancy bill? How many millions of euro are paid on an annual basis from taxpayers to unscrupulous companies that do not pay their own way? Another point to consider is that if we leave this unchecked, companies using tactical insolvencies will have a financial advantage over firms that obey the law. By God it hurts workers more than most but this also hurts the State and puts decent businesses at a disadvantage.

I remember when the Clerys case was unfolding, the Labour Party Minister for tea and sympathy said it would be all okay. In spite of all the talk and platitudes of that Government, we are still in a position where the problem could be repeated today. In the last Dáil I brought forward legislation that would have pierced that corporate veil and prevented those actions but it was refused by the Labour Party and Fine Gael Government. Like so many pieces of workers' rights legislation, Fine Gael refused it and Labour Party Members kept their mouths shut and their heads down.

Today we are discussing legislation from my colleague, Deputy Cullinane, that would close the legal loopholes allowing tactical insolvencies. This Bill would give legislative support to the key recommendations of the Duffy-Cahill report commissioned in the wake of the Clerys closure. It would give power to the High Court to return assets that have been improperly transferred and give preferential credit status to employees. In fairness to Deputy Cullinane and his office colleagues, they have taken a partnership approach to the Bill, sending copies to the different parties and unions. It is a reasonable solution to an unreasonable practice. I call on the Government to be real about this. I note the Minister's words but we have seen platitudes before. Do not do as the Labour Party did in the last Dáil, standing on the streets with the victims of tactical insolvencies to be photographed only to block the necessary legislation in the Dáil.

Deputy Niall Collins: Fianna Fáil fully supports the general principles in this Bill and will support its passage to the next Stage. We also look forward to carrying out some detailed scrutiny of it when it comes before us on Committee Stage. The Bill puts forward proposals to existing company and employment law in collective redundancy cases, as we saw with Clerys. It would apply where there are suggestions an employer is insolvent and it incorporates some of the suggestions of the Duffy-Cahill report. That Government-commissioned report examined the controversial closure of Clerys in 2015, recommending legislative changes aimed at giving better protection to employees affected by insolvency cases, including tactical insolvencies. The Duffy-Cahill report recommended an amendment to employment legislation to include a mechanism for enhanced redundancy payments while highlighting how "it is not desirable to create a special class of redundant worker with legal rights that go beyond those of the generality of workers who lose their employment in circumstances of redundancy".

The Bill is well-intended but it is vital to ensure all existing employment and company law provisions are fully implemented, tested in the courts and enforced as good regulatory practice. The scrutiny we will undertake on the Bill will surely consider this. The findings of the Duffy-Cahill report, as well as the Company Law Review Group's examination into ways company law can be amended to better safeguard employees and creditors, must be carefully examined by this Oireachtas.

As we know, staff at Clerys were informed on 12 June 2015 that the shop had been sold and would be closing with immediate effect. The way staff were treated by the new owners was appalling and unacceptable, and we should do everything in our power to ensure that can never be allowed to arise again. The fact that staff were not consulted or kept informed of the ongoing negotiations was disgraceful. The Department of Jobs, Enterprise and Innovation and the Workplace Relations Commission are currently involved with a court action seeking to prosecute several entities responsible for the sudden closure of Clerys. It will be interesting to see how these play out and it will surely inform us as legislators about the gaps that exist in the legislation. OCS Operations, which ran Clerys until 12 June 2015, and Natrium, the consortium which bought Clerys that same day, are facing charges under the Protection of Employment Act 1977. We in Fianna Fáil support the courageous campaign fought by the Clerys workers and welcome the significant compensation package the workers secured from the current owners in March 2017. This followed a deal brokered among the former workers, owners Natrium and Dublin City Council. There are plans for a €150 million redevelopment of the site to include offices, retail outlets and a hotel, and some of the workers will gain access to training to seek re-employment in the new development after due recognition will be given for their former service. There will also be training and employment opportunities in the north-east inner city, and an understanding has been reached on fair working conditions. Most people would agree that what happened at Clerys was completely unacceptable, and most find the use of the law to create a tactical insolvency repugnant. People are right to pressurise us to bring about a situation where it will not happen again.

I wish to give my thanks and appreciation to our friends and colleagues in the trade union movement who wrote to all of us in the Oireachtas on this matter. I received correspondence today from John Douglas of Mandate and from the Unite trade union who made the point that while legislation in the area of company law can often necessarily incur differences of an ideological nature, this is not the case with this Bill. Fianna Fáil does not approach the issue of employment law from any ideology but from the point of view of what is fair, in the public interest and in the interests of employees.

The Bill would enshrine the right to petition the High Court to transfer back assets to the liquidator. This is a very good way of trying to protect what is due to employees, but we need to look at it in detail and amendments may be needed. We may need to look at whether it is wise to transfer assets back to the same liquidator. I would have a question mark over a liquidator who would act in such a way and be part of a tactical insolvency which deprived employees. We are happy to support the Bill.

Deputy Bríd Smith: It is very telling that any serious legislation to deal with what happened in Clerys does not come from the Government but the Opposition. Staff were given 30 minutes' notice to pack up their stuff and leave. Some had worked for 40 years and I used to be employed by Mandate and knew many of them. Clerys sold the company for €1 and the building itself was subsequently sold for €29 million to the Natrium investment group. The State used €2 million in taxpayers' money for statutory redundancy payments to more than 400

workers who were made redundant without any notice.

We should think about the consequences for those workers. They had 40 minutes' notice that they would have no job the following day. Many were my age, or maybe a bit younger in their 40s and 50s, and knew they had no way to pay bills, rent, mortgages or kids' school fees. We should consider the effect on the workers who had given great service to the company, with many of them very committed for decades. We should consider the chaos, the terror and the financial hardship inflicted on them by the actions of the owners. They lost millions in wages and redundancy payments because of a trick by accountants and financial wizards who have gone on to bigger and better things for themselves. The individuals who planned and executed this robbery, this theft, now plan to make a killing with the site and will probably make millions for themselves.

The greed and avarice of the owners and developers, however, are not what is astonishing. What is astonishing is the inaction of the State and the agencies within the State which are supposed to be charged with protecting workers' rights. Two years later we get some effort to deal with that terrible crime, but this is a Private Members' Bill, not a Government proposal. One should compare the response of this State to the protest by the people in Jobstown in 2014 over water charges, when the full force of the State and its agencies swung into action with dawn raids, people handcuffed and millions spent on a trial with a potential maximum sentence of life imprisonment, but here the State's response is that one person is facing three counts of breaking the protection of employment law and impeding a Workplace Relations Commission inspector. Two other executives associated with the 2015 deal, the previous owners of Clerys, OCS Operations Limited, in liquidation, and Natrium Limited which took over the building are facing charges. The charges have been instituted by the Minister for Jobs, Enterprise and Innovation and the WRC. What do they face under existing law? The Redundancy Payments Act states that an employer who fails to initiate consultations under section 9 or fails to comply with section 10 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500. An employer who contravenes section 12 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding €500, and for failing to co-operate with an authorised officer they shall also be guilty of an offence and liable on summary conviction to a fine of - surprise, surprise - €500. People should not worry, however, because they have a get-out clause. Where an employer is convicted of an offence under section 11 or 14, the employer may plead in mitigation of the penalty that there were substantial reasons related to their business which made it impractical for them to comply with the section under which the offence was committed. Is that strong legislation to protect the livelihoods of 400 workers and their families? My God. To my knowledge, the full force of the State has brought charges that might result in fines of €500. One laptop has been seized but there is no threat of life imprisonment or a substantial fine for the destruction of 460 jobs and livelihoods as a result of financial trickery that will make millions for a tiny few.

We can forget about waiting for this Government to legislate in any meaningful way to protect workers' rights and we can also forget about waiting for the Government to use existing legislation to stop what happened here from happening again. There is no will, no energy and no desire to close off the loopholes or use the law to punish those who knowingly defraud the workforce of its entitlements. Legislation that allegedly protects workers' rights is at best feeble and at worst useless. Like the recent court case involving the boss of Anglo Irish Bank, I will not be holding my breath for this case to deliver justice for the workers in Clerys and for what they have gone through.

I very much welcome this Bill and commend Deputy Cullinane on another Bill that goes some way towards tilting the legal balance in favour of workers in these situations. I welcome the sections that try to stop this type of fraud from happening in the first place and those that try to recover the assets moved to rob workers of their statutory entitlements and of a living. One section of the Duffy-Cahill report that continues to puzzle me in terms of the State's inaction is the review of the Companies Act 2014. Duffy-Cahill states that the Act did not appear to be in need of amendment but that it appeared to be in need of use. In other words, the Companies Act 2014 could deal with these situations but it is not used. I am unsure if we should seek to amend or strengthen the Companies Act or just use its provisions but, in either case, the political will of the Government to introduce new legislation to protect workers and to properly punish employers who treat them in this way is non-existent. I note the Tánaiste said that this Bill needed amendment to strengthen it in terms of protecting workers and I look forward to the debate at the next Stage when the Tánaiste, if she means what she said, will attempt to amend the Bill.

I again thank Deputy Cullinane for putting the Bill forward. It is very useful and is the type of Bill we should be progressing without further delay.

An Ceann Comhairle: I thank Deputy Smith. In the course of her contribution, she referred to what she considered to be the feeble nature of Irish company law and she may well be right-----

Deputy Bríd Smith: Irish industrial law.

An Ceann Comhairle: Irish industrial law. She may well be right in that regard but it is appropriate to acknowledge, having regard to what she said, that all Members subscribe to the basic principle of Irish law whereby any accused is innocent until proven guilty.

Deputy Bríd Smith: Absolutely.

Minister of State at the Department of Housing, Planning, Community and Local Government (Deputy John Paul Phelan): I thank Deputy Cullinane and the Members who contributed to this useful discussion. I note that both Sinn Féin speakers referred to establishment parties offering tea and sympathy. That phrase must have been part of their briefing note. In the establishment of the Duffy-Cahill process, which has led to the review the Tánaiste outlined, more was offered than tea and sympathy. No Member has a monopoly on grievances, in particular in the Clerys case, which was appalling not just in terms of the State but, as Deputy Smith outlined, in terms of the 400 plus employees, many of whom had spent their entire working lives in Clerys, which was an institution in this city and country. For country people coming to Dublin, it was recognised as an institution.

As the Tánaiste outlined, the Department has been preparing its own response to the Duffy-Cahill report which was published a little over 12 months ago. Deputy Cullinane's Bill, which is to be welcomed, deals primarily with two of the six recommendations contained in the report. That is one of the reasons further work is required and the Bill will go to the pre-legislative scrutiny stage for consideration by all Members of the Oireachtas and other interested parties.

Deputy Clare Daly said that there had only been one welfare fraudster in the State in the past 12 months. I do not know where she got that statistic but it is not accurate. The Government wants to deal with this issue and the Tánaiste has indicated that will be done.

Deputy Tóibín bemoaned many things. He gave a litany of things that are wrong, some of

which I agree with, in terms of Irish employment scenarios that have developed in recent years. In particular, he bemoaned internships. I suspect he and I will never agree on such things but internships have a role in ensuring that people starting out in their working careers have the necessary experience to do so. Almost worldwide that is the case, as it now is in Ireland. I note he gave an impassioned plea that the Government not block the passage of the Bill even though the Tánaiste had already indicated it would not be doing so. Sometimes Members should listen more to each other. However, I do not doubt Deputy Tóibín's intentions.

Deputy Niall Collins pointed out the correspondence from the two unions that all Members have received. There is no real political difficulty or differences between Members of the House. When I was Chairman of the Committee on Budgetary Oversight, I discovered how frequently I agreed with Deputy Boyd Barrett. Members of my own party were appalled at that. Why should they be? The job of Members is to serve those who elect us. Their interests should be at the heart of everything we do. Members may differ on ideological grounds but should not do so on the outcomes for the public.

This has been a useful debate. There are many genuine employers who attempt to do the right thing by their employees and were appalled by what happened in the case of Clerys. Members must remember that, in attempting to strengthen laws in order to address situations such as the one referred to, they must take care to do so in a balanced and proportionate manner that does not have unintended consequences for genuine employers across the country. The Duffy-Cahill report said that any changes proposed would require careful drafting so as to confine their effect to the type of situations they are intended to address and have no broader or unforeseen consequences in either field. All Members know the issues involved are complex, cross-cutting and concern important issues to do with people's livelihoods and ability to earn a living. There are also the issues regarding company law, as outlined by many speakers, and the question of how the codes interact with one another.

The Tánaiste has said that an investigation is being carried out by authorised officers from the Workplace Relations Commission into the collective redundancies in Clerys. It is the job of Members, as legislators, to strengthen the law if there are weaknesses in it, which is what this Bill addresses and I have no problem supporting it. People will face charges before the District Court in relation to the matter discussed. I support that this Bill go to pre-legislative scrutiny.

Deputy David Cullinane: I commend Deputies Clare Daly, Niall Collins, Tóibín and Bríd Smith, the Tánaiste, Deputy Fitzgerald, and the Minister of State, Deputy Phelan, on their contributions. I thank the Government for not opposing the Bill as well as those who have said they will support it, albeit with the caveat that it be subject to pre-legislative scrutiny. Sinn Féin has no opposition to that. It is prudent, given the complexity of the issues involved, that that be the case and we have no objection to it.

I concur with the Minister of State, Deputy Phelan, that the vast majority of employers in the State act responsibly and were as horrified as Members were when they heard of the tactical insolvency that took place in Clerys. That makes it all the more urgent for action to be taken. Not only did the workers suffer but taxpayers also suffered because they had to pick up the tab, as do companies when situations such as this one emerge.

Deputy Tóibín pointed out that copies of the Bill were sent to the Irish Congress of Trade Unions, all key trade unions, all the party spokespersons and the Independents before First Stage. That was my attempt at new politics. I said that if they agreed with the intent and sub-

stance of the Bill, and if they agreed something had to be done, then let us convene a meeting at which the Bill could be discussed, amendments could be put forward collectively and it could then be moved on Second Stage. That did not happen. Sinn Féin, therefore, had no choice but to move the Bill, which it has done. It was fortunate that the Bill was chosen in the lottery and is now being debated. In that spirit, we have absolutely no objection to it being scrutinised on Committee Stage. In fact, we have a Bill on the issue of if-and-when contracts that is currently in a similar process and is being examined by the Joint Committee on Jobs, Enterprise and Innovation as well. I am assuming that committee will deal with this Bill as well.

Deputy Niall Collins expressed concern about whether the asset might be transferred back to the liquidator responsible for the tactical insolvency. I do not believe that would happen because the liquidator would not trigger a tactical insolvency. Rather, the company itself would do so. The liquidator would come into play when the assets are transferred and then when the operations part of the company is liquidated. That is something which can be teased out.

The Government made a number of interesting observations with which I agree and the Bill would be strengthened if they were taken on board. The Minister said that she could see that section 2 of the Bill sought to implement proposal 4 of the Duffy-Cahill report. The proposal is to allow a trade union or employee representative make an application to the High Court, whereas the Duffy-Cahill report recommended only the Minister or the liquidator should do so. Again, this is something that can be debated on Committee Stage. It would be useful and important for a trade union to have that right. The Minister also said that section 2 failed to provide a definition in respect of employee representatives. If there are definitions that need to be added to the Bill, we are more than happy to accept amendments to that effect, and we will draft our own if necessary. There is no objection to that.

The Minister said that section 2(1)(b) refers to any property of the company of any kind whatsoever rather than using the words “an asset of significant value”, which is the term in the Duffy-Cahill report. I would not have an objection to an amendment in that regard either. I do not see any reason why that could not be accepted and, again, it is something that can be considered on Committee Stage.

The issue of priority status of creditors arose, where concern was expressed by the Minister to the effect that it was too broadly defined and that it would effectively give a lien on the assets of a business to employees. I agree with that but if it is problematic for certain parties or individuals, it would have to be debated and scrutinised. We would be more than willing to examine those issues as well.

There was an issue concerning proposal one, removing the insolvency exemption from the prohibition on implementing collective redundancies during the consultation period, which is not contained in the Bill. The Minister and the officials would be aware that there is a section of the Bill that does deal with a 30-day consultation period. However, the Duffy-Cahill report dealt with this in detail and a number of recommendations were made. One of the recommendations states, “A further matter that may be addressed as part of the proposed amendment is that an employer could be required to provide certain information to employees and/or their representatives during the consultation period.” If there are elements of the Duffy-Cahill report that are not included in our Bill, we would be more than happy to have those included in order to strengthen it.

I welcome the Minister’s lack of opposition to the Bill. She stated that the Bill should be

referred to the joint committee and subjected to further scrutiny, which I agree with. She then set out the reasons why. The first reason she gave is that account should be taken of the analysis and recommendations contained in the Duffy-Cahill report. That is absolutely right and prudent, and should happen, because of the complex nature of this matter. It was a very detailed report and much work was done on it. It would be very useful if Mr. Duffy and Ms Cahill were witnesses before the committee to assist us with amendments to the Bill. That would add value to the Bill. The second reason given was that account was taken of the Department's public consultation process and submissions made, which are on the Department's website and which I have read. Again, that would strengthen the Bill. Account was taken of work of the company law review group, which the Minister has said will be available shortly. The only caveat I would add is that we have been hearing for a long time that the committee will conclude its work shortly. I hope that the elongated nature of that work and process would not unnecessarily hold up progress on this Bill. Notwithstanding that, there are references in the Duffy-Cahill report to company law, although the authors do put caveats on changes to company law.

The Minister says that the proposed Bill needs to be a balanced and comprehensive response to the Duffy-Cahill report, which is what we all want and is what needs to happen. It is important that the proposed Bill does not give rise to any unintended consequences. All Members, including representatives who are now in government, know that the opposition do not have the experience of teams of people who can give us the technical support that we need when drafting Bills. There may well be unintended consequences. If there are and they need to be ironed out we will absolutely support those amendments, and amendments to any errors in drafting, because it is not our intention to have unintended consequences that would take from the substance of the Bill. No Bill is perfect or without errors, so we are open to making changes.

I hope that over the next number of months we cannot just not oppose this but also do the serious work that needs to be done. We should take the work that the Department, ourselves, Mr. Duffy and Ms Cahill have done and perfect this Bill, and make sure that it is passed as quickly as possible. We must make sure that we are not responsible as legislators for situations where workers are left high and dry because of a tactical insolvency. That would be a failure on our part. We can criticise companies for doing the wrong thing when they do so, but if they are allowed to do it because the law allows them to do it then that is our fault and we have to take responsibility. What we are doing here tonight, I hope, is taking responsibility and taking that first step. Teachta Bríd Smith is right - it should not take the Opposition tabling Bills of this nature in order to force the issue. However, I did not see any evidence of the urgency of this from the Government, notwithstanding some of the work that was done or the point made by the Minister of State, Deputy Phelan, in respect of the report and the group set up to examine the issue. The report was sitting there for a long time and I saw no evidence of any Bill coming from the Government. We now have a Bill which can be amended and perfected and which can make a real difference to workers. I hope that this can happen.

I conclude by commending the Minister of State at the Department of Housing, Planning and Local Government, Deputy Phelan, and the Tánaiste and Minister for Enterprise and Innovation, Deputy Fitzgerald, on their support for the Bill. I also commend the other Deputies who contributed to the debate. I thank the Clerys workers in the Public Gallery because they are the people who were left high and dry and who suffered the consequences of this. It is for them that we do this, and also for future workers who will not face the same consequences as a result of the fact that we in this House will have done our job.

Question put and agreed to.

29 June 2017

Protection of Employees (Collective Redundancies) Bill 2017: Referral to Select Committee

Deputy David Cullinane: 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 8.50 p.m. until 2 p.m. on Tuesday, 4 July 2017.